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Meeting: 1318th meeting (June 2018) (DH)

Item reference: Action plan (03/04/2018)

Communication from Greece concerning the case of FOURKIOTIS v. Greece (Application No. 74758/11)

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Réunion : 1318^e réunion (juin 2018) (DH)

Référence du point : Plan d'action

Communication de la Grèce concernant l'affaire FOURKIOTIS c. Grèce (Requête n° 74758/11)
(anglais uniquement)

DGI

03 AVR. 2018

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH



**HELLENIC REPUBLIC
PRESIDENT OF THE LEGAL COUNCIL
OF THE STATE
AGENT OF THE GOVERNMENT**

Ms. Geneviève Mayer
Head of the Department
of Execution of Judgments
of the European Court
of Human Rights
DGI, Council of Europe

Reg. No: 54584/ 595481, 674072

Athens, 03 April 2018

Re: Case FOURKIOTIS v. GREECE (application no 74758/11, judgment of 16.06.2016, final on 16.09.2016).

Dear Madam,

I have the honour to submit the attached action plan on the execution of the judgment of the European Court of Human Rights mentioned above.

The Greek Government consider that no other individual and/or general measure is necessary in order to prevent similar violations of the Convention.

Yours sincerely,

Vasileia Pelekou
Delegate of the Agent
of the Greek Government

Cc: Permanent Representation of Greece
to the Council of Europe

ACTION PLAN ON THE EXECUTION OF THE JUDGMENT OF THE EUROPEAN COURT OF HUMAN RIGHTS IN THE CASE OF

**FOURKIOTIS v. GREECE (application no 74758/11, judgment of 16.6.2016, final on
16.9.2016)**

I. DESCRIPTION OF THE CASE

The case concerned the inadequacy of measures taken by the Greek authorities to secure a father's right of access to his children pursuant to a court order. An interim court ruling of February 2011 awarded custody of two children to their mother and contact rights to the applicant, the children's father. However, the applicant encountered difficulties in exercising his contact rights and was subsequently unable to have contact with his children at all. The penalties provided for in the decision in the event of failure to comply – custodial sentence or pecuniary penalty – did not deter the children's mother from impeding the applicant's attempts to fetch his children on the dates scheduled for his contact rights. Accordingly, the applicant complained of the failure on the part of the authorities to take action to enforce his contact rights and of the refusal of the various prosecutors to whom he had complained to let him have copies of the psychologists' reports and the social inquiry reports. The prosecutor had not taken account of the fact that the applicant had not had contact with his children for several months and that the passage of that time without contact had already contributed and would certainly continue to contribute to the children's attitude of rejection towards the applicant. No mediation or other non-confrontational approach had been put in place to help the applicant and his children re-establish their family relationship. The applicant lodged a number of claims and complaints before the court of first instance, but the proceedings were discontinued at the request of the applicant, who stated that he did not want to see a financial penalty, still less a custodial sentence, imposed on the mother of his children. The Court held that the use of measures involving, in cases concerning custody or contact rights, a deprivation of liberty of one of the parents had to be regarded as an exceptional measure and could only be implemented where alternative means had been used or explored. The authorities had failed in their duty to take speedy and practical measures with a view to encouraging the parties to cooperate better, while

having regard to the best interests of the children which also consisted in not allowing a steady dilution or, worse, a breakdown in relations with their father. The authorities had failed to take any action to supervise the enforcement of the judgment scheduling the father's contact. Apart from the social inquiry ordered by the prosecutor responsible for cases involving minors, at the applicant's request in March 2011, and which took five months, no other measure had been implemented by the authorities. That inquiry and the five reports subsequently drawn up had not led to the implementation of any specific measure. The authorities had therefore allowed a *de facto* situation to set in, thus disregarding the judgment of February 2011.

With regard to the authorities' refusal to communicate to the applicant the reports drawn up by the child psychologists, the Court held that it is very important for parents to always be placed in a position allowing them to advance every argument in support of obtaining contact with their child and to be able to have sight of psychiatrists' reports drawn up in cases concerning parental rights of contact with their children. The Court concluded that the authorities had remained well below the level of what could reasonably have been expected of them in order to satisfy their positive obligation to take adequate measures to promote the prospects of holding a meeting between the applicant and his children and protect the former's right to respect for his family life, and, therefore, found a breach of Article 8 of the Convention.

II. INDIVIDUAL MEASURES

1. The applicant was awarded just satisfaction of € 7,000 for non-pecuniary damage and all necessary supporting documents were sent by the Agent's Office to the Financial Control Service for the issue of a payment order.
2. The Public Prosecutor's Office in Athens who has undertaken to implement the appropriate measures for the restoration of the communication between the applicant and his children, considered necessary to continue the efforts proposed by the Centre for Mental Health of Children in its child psychiatry report dated 5 March 2012. Therefore, he ordered a social worker at the Athens Department for the Protection of Children, to intervene and facilitate the restoration of the communication between the applicant and his children. According to the information note of the above social worker dated 7.11.2017, personal sessions were carried out, advisory guidance and support were provided, with a view to remedying the major discord in their filiation and, consequently, restoring the communication between father and children. The

parents showed genuine parental interest and they fully cooperated with the social service, in order to address the psycho-emotional difficulties of their minor children -arising from the parental alienation syndrome- and the improvement of the children's relationship with their father. During this time, the social worker considers the alienation circumstances have ceased to exist. Besides, the groundwork has been done for a more functional relationship and the communication between father and children has been partially restored, as in the last months there is constant communication on a weekly basis, without overnight stay. Moreover, the parents themselves have confirmed the above and stated there is currently no need for further intervention of the social service, which remains, in any event, available for additional intervention, if need be.

III. GENERAL MEASURES

Translation and dissemination of the Court's judgment

1. The judgment at issue was translated into Greek. The translation into Greek of the judgment at issue is also publicly accessible at the website of the Legal Council of the State (www.nsk.gov.gr).
2. The Agent's Office sent the judgment to the Ministry of Justice, Transparency and Human Rights as well as to the Athens Prosecutor's Office for Children and the Centre for Mental Health of Children, in order to be disseminated to all competent administrative and judicial authorities responsible for ensuring the implementation of judgments regulating communication between parents and children, with frequent and timely interventions for psychological-psychiatric support, in case it is shown that members of the family need such support. Moreover, all institutions were instructed that the parent directly concerned should, in any case, be given access to reports relating or likely to affect the contact with his children.

Legislative measures

1. Following the amendment of the Code of Civil Procedure (law 4335/2015), article 611 provides that in family and parental responsibility disputes the civil court is obliged at the hearing and before the opening of the proceedings to make an effort for the friendly settlement of

the dispute, after hearing the parties attending. Such compromise aims at ensuring the child's best interests, otherwise it is not binding on the court.

2. On 21.2.2018 a legislation drafting Committee was set up in the Ministry of Justice, Transparency and Human Rights regarding the reforming of the provisions of family law and in particular the provisions on custody matters, communication and relationship between parents and children. The Committee completes its work by the set deadline of September 2018.

3. In parallel, the Public Prosecutor for Minors (Youth Prosecutor) shall hear all interested citizens on any matter linked to minors on the basis of the child's best interests. He may bring the matter before the competent social services and, if appropriate, mediates personally. Moreover, acting on his own initiative or on a complaint, he may decide to have a social expertise carried out or engage in any other activity, as appropriate. He also develops cooperation with the Society on Protection of Minors (law 4109/2013, article 11), the Social Care Assistants of the Ministry of Justice, Transparency and Human Rights (law 378/1976) and the National Ombudsman who takes reports from any child directly concerned or from the person with parental responsibility or from any third person with first-hand experience of the violation of the child's rights. If intervention of a judicial authority or other public office or body is deemed necessary, the Ombudsman shall send a report to them, to ensure the rights of the child (law 3094/2003, art. 4).

IV. CONCLUSION

Having regard to all the above, the Greek government consider that no other individual and/or general measure is necessary in order to prevent similar violations of article 8 of the Convention.