

SECRETARIAT GENERAL

SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRETARIAT DU COMITE DES MINISTRES



Contact: John Darcy
Tel: 03 88 41 31 56

Date: 09/05/2018

DH-DD(2018)465

Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers.

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

Item reference: Action report (09/05/2018)

Communication from “the former Yugoslav Republic of Macedonia” concerning the case of BALAZOSKI v. “the former Yugoslav Republic of Macedonia” (Application No. 45117/08)

* * * * *

Les documents distribués à la demande d'un/e Représentant/e le sont sous la seule responsabilité dudit/de ladite Représentant/e, sans préjuger de la position juridique ou politique du Comité des Ministres.

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

Référence du point : Bilan d'action

Communication de « l'ex-République yougoslave de Macédoine » concernant l'affaire BALAZOSKI c. « l'ex-République yougoslave de Macédoine » (requête n° 45117/08) (**anglais uniquement**)

Skopje, 7 May 2018

REVISED ACTION REPORT

BALAZOSKI v. Republic of Macedonia

Application no. 45117/08

Judgment of 25 April 2013, final on 25 July 2013

I CASE DESCRIPTION

1. The case concerns a violation of the applicant's right to a fair trial in that the Supreme Court rejected his appeal on points of law as inadmissible *ratione valoris*, contrary to its earlier judgments in the same proceedings upholding such appeals lodged by the adversary party (violation of Article 6§1).

2. The European Court considered that by adopting a different decision on the same issue in the same proceedings and thereby effectively overruling its previous decisions, without any reference to them or reasoning to the contrary, the Supreme Court in the instant case itself became the source of legal uncertainty (§ 33 of the judgment).

II INDIVIDUAL MEASURES

3. The authorities of the Respondent state have taken measures to ensure that the violation at hand has ceased and that the applicant has been redressed for the negative consequences sustained.

A) Reopening of the civil procedure

4. The European Court of Human Rights considered that, in principle, the most appropriate form of relief would be to ensure that the applicant, if he so requests, was granted a retrial under section 400 of the Civil Procedure Act 2005, in keeping with all the requirements of a fair hearing (§ 39 of the judgment).

5. Following the judgment of the Court, the applicant filed a request for reopening of the impugned proceedings with the Kičevo Court of First Instance. The first-instance court examined the request and on 14 May 2014 granted leave for reopening of the procedure.

6. The adversary party lodged an appeal before the Gostivar Court of Appeal against the decision for reopening of the procedure, stating that the European Court's judgment is not correct and that the first-instance court interpreted the judgment wrongly. The Appellate Court upheld the decision of the first instance court and dismissed the appeal. The decision allowing reopening of the procedure became final and a hearing was scheduled. However, on 4 November 2014 the plaintiff N.B. withdrew the lawsuit against the applicant, and on 11 December 2014 the applicant also withdrew his countersuit against N.B.

7. Therefore, the Government concludes that the domestic courts took fully into account the findings of the Court stipulated in paragraph 39 from the judgment. In view of the above, the authorities consider that the violation has been brought to an end.

B) The applicant's redress

8. The European Court made no award in respect of the damages claimed by the applicant (§38). The Court considered that the most appropriate form of redress would be to ensure that the applicant is granted a retrial (§39).

9. The European Court dismissed the applicant's claim for costs and expenses because the applicant did not submit any supporting documents in respect of his claim for reimbursement of costs and expenses incurred before the domestic courts and before the European Court of Human Rights (§ 42 of the judgment).

C) Conclusions on the individual measures

10. In view of the above, the authorities consider that the violation has been brought to an end and that the applicants were redressed in respect of the damage sustained.

III GENERAL MEASURES

11. It flows from the European Court's judgment that the violation at hand originated from the contradictory judgments made by the Supreme Court in the same case regarding its jurisdiction *ratione valoris* which is incompatible with the principle of legal certainty (§ 33 of the judgment).

A) Measures taken by the Supreme Court of the Republic of Macedonia

12. The Macedonian authorities would like to indicate that this judgment was considered and discussed by the Supreme Court of the Republic of Macedonia. The Supreme Court concluded that this kind of violation should not be repeated. These conclusions were published on the website of the Supreme Court of Republic of Macedonia on 5 December 2014 in the expert paper drafted by the President of the Supreme Court.

B) Training and awareness-raising measures

13. The authorities would like to highlight that the awareness raising measures have been taken to prevent similar violations. The European Court's judgment at hand was discussed on the following workshops/round tables:

- Round table on the topic: "Article 6 of the ECHR through the prism of the principle of legal certainty" held on 20 May 2014, organized by the Academy for Judges and Public Prosecutors. This round table was aimed at the judges from the civil law departments from the Supreme Court, appellate courts and first-instance courts;
- Workshop for consistency of the court practice related with the Civil Procedure Act, held in the period from 17-18 November 2014, organized under the auspices of the project for Strengthening of the Judiciary in Republic of Macedonia. Participants at this workshop were the Supreme Court judges and judges of the appellate courts.

C) Publication and dissemination measures

14. The Macedonian authorities ensured publication and dissemination of this judgment in order to ensure that the domestic courts are aware of and comply with the findings of the European Court in the case of hand. The European Court's judgment has been published in Macedonian and English on the website of the Ministry of Justice (www.pravda.gov.mk). The Government Agent forwarded the judgment with an explanatory note on the violation found by the Court to: the Supreme Court, four Appellate Courts, Basic Court Kicevo, Judicial Council of the Republic of Macedonia, the State Attorney Office, the Office of the Ombudsman, Academy for Training of Judges and Public Prosecutors; the Bar Association and Association of Judges of the Republic of Macedonia.

D) Conclusion on the general measures

15. The Macedonian authorities consider that the general measures taken are capable of preventing similar violations. No further general measures are therefore necessary.

IV CONCLUSION

16. The Government of the Republic of Macedonia considers that the measures taken ensured that the violation at issue has ceased and that the applicant was redressed for the consequences sustained.

17. The authorities furthermore consider that the general measures taken are capable of preventing similar violations.

18. The authorities therefore consider that Macedonia has thus complied with its obligations under Article 46 paragraph 1 of the Convention.