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Communication from Croatia concerning the case of D.J. v. Croatia (Application No. 42418/10)

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Communication de la Croatie concernant l'affaire D.J. c. Croatie (requête n° 42418/10)
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SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

GOVERNMENT OF THE REPUBLIC OF CROATIA

OFFICE OF THE REPRESENTATIVE OF
THE REPUBLIC OF CROATIA BEFORE
THE EUROPEAN COURT OF HUMAN RIGHTS

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Zagreb, 09 April 2018

ACTION REPORT

D.J. v. Croatia

Application no. 42418/10
Judgment of 24 July 2012
Final on 24 October 2012

The Office of the Representative of the Republic of Croatia before the European Court of
Human Rights

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I. CASE DESCRIPTION

1. The case concerns a lack of an effective and adequate investigation into the applicant's allegations of rape (violations of Article 3 in procedural limb and 8).
2. In particular, the Court found that the violations occurred between 2007 and 2008 resulted from:
 - the failure of the authorities to take all reasonable steps available to them to secure the evidence (§103) (notably, (i) the police never sent the skirt the applicant was wearing for forensic examination and (ii) the police never carried out an *in situ* inspection;
 - the failure of domestic courts to address the applicant's allegations of the bias of the investigation judge (§103).
3. Due to these shortcomings, no material evidence connecting the applicant and the alleged perpetrator were found. The State Attorney therefore decided not to continue with the criminal prosecution. Subsequently, the applicant took over prosecution but after three years decided not to continue with the proceedings. As a result, the applicant's allegations of rape were never examined in criminal proceedings.

II. INDIVIDUAL MEASURES

4. In response to the Court's judgment, the authorities have taken measures aimed at providing redress to the applicant.
5. At the outset, the Government recalls that in *D.J.* the Court rendered the judgment on 24 July 2012 which became final on 24 October 2012. At that time the domestic legislation did not provide the injured party for the possibility of reopening of criminal proceedings following the Court's judgments finding a violation of the Convention. This legal avenue was introduced in the domestic legislation in December 2013. Within this context, the Government would like to highlight that the applicant did not request reopening of the impugned proceedings before the domestic authorities.
6. Notwithstanding, the Government highlights that in a similar case (*V.D., app. no. 15526/10, judgment of 8 November 2011, final on 8 February 2012*), the applicant filed a request for reopening of the impugned criminal proceedings in April 2012. The domestic court granted his request in October 2013 with a view to giving full effect to the Court's findings, even though the applicable domestic legislation at that time did not provide the injured party for a possibility to seek reopening following the Court's judgment finding a violation. It therefore flows out that at the time when the *D.J.* judgment became final the applicant had at her disposal a practical and concrete avenue to obtain reopening of the impugned proceedings under the case-law of the domestic courts. The applicant has however not availed herself of the avenue available to ensure reopening of the proceedings and an effective investigation into the alleged facts nor raised any claim before national authorities.
7. The Government notes that the applicant claimed just satisfaction in respect of non-pecuniary damage sustained. The Court accepted that the applicant suffered non-

pecuniary damage which cannot be compensated solely by the finding of a violation (§ 112). The Court, therefore awarded the applicant just satisfaction under this head.

8. In view of the above, the Government deems that the applicant had at her disposal a concrete and practical avenue to obtain reopening of the impugned proceedings and that she has been redressed for the damages sustained.

III. GENERAL MEASURES

9. Considering it first and foremost the responsibility of the State and a priority of national policies to safeguard victims from sexual violence, the authorities ensured that appropriate measures were put in place to prevent similar violations. These measures are set out below.

A. Measures aimed at securing evidence in sexual violence cases

10. The Government recalls that the violation in this case resulted from failure of domestic authorities to secure the evidence during investigation: the police never sent the skirt the applicant was wearing on the critical occasion for forensic examination and the police never carried out an *in situ* investigation (§ 103).
11. In response to the Court's judgment, the Government has taken measures aimed at ensuring that thorough and effective investigations are conducted in cases of sexual violence.
 - (i) *Legislative changes*
 12. Following the facts of the case, the new Code of Criminal Procedure was adopted. It entered into force in 2011.
 13. Pursuant to its provisions, the State Attorney's Office is now vested with powers to conduct criminal investigations. In principle, the police are conducting enquiries mainly under the order and supervision of the State Attorney's Office. Such fundamental novelty in the concept of criminal investigation will be capable of ensuring that similar violations resulting from inefficient police enquiries are prevented.
 - (ii) *Protocol of Procedure in Sexual Violence Cases*
 14. Following the facts of the case, in 2012, the Government adopted the Protocol of Procedure in Sexual Violence cases. The Protocol drew the inspiration from the Recommendation Rec(2002)5 of the Committee of Ministers to Member States on the Protection of Women Against Violence and its Explanatory Memorandum. It serves as a practical national policy tool mandatory for authorities dealing with sexual violence cases. It ensures inter-institutional cooperation between various authorities as well as non-governmental organisations. The implementation of the Protocol is monitored by the Governments' Office for Gender Equality.
 15. The Protocol introduced standardised operating procedures that relevant authorities are obliged to follow in order to ensure a victim-oriented approach and prevent ineffective investigations in sexual violence cases.

16. To this end, the Protocol requires that investigative actions in sexual violence cases are conducted by a specially trained expert within the police assigned to dealing with these types of cases. To enable the application of the Protocol in practice, the Ministry of the Interior ensured that specially trained police officers are made available in police departments throughout the country. Moreover, in the Criminal Police Administration of the Ministry of the Interior, there are 4 posts envisaged for police officers specialized in dealing with cases of sexual violence.
17. The Protocol furthermore sets guidelines on how the initial information shall be obtained from a victim, notably:
 - placing the victim in appropriate premises,
 - establishing a relationship of confidence with the victim and providing appropriate psychological support to the victim,
 - interviewing the victim professionally yet sensitively, in a non-discriminatory manner,
 - ensuring that appropriate investigative actions aimed at establishing the circumstances of the case are promptly taken, in particular: securing the scene of the crime, medical examination of the victim, gathering of the material evidence and their forensic examination, interviews with witnesses.
18. The Protocol was disseminated to relevant stakeholders competent for taking action in sexual violence cases under the Protocol (e.g. the Ministry of the Interior, the State Attorney's Office, domestic courts, the Ministry of Justice, the Ministry of Health, the Government's Office for Gender Equality, the Ombudsperson for Gender Equality as well as to NGOs). It has also been made publicly available on several web sites sponsored by the State authorities and NGO's.

(iii) Standard setting measures for the police

19. In response to the Court's findings in this case, in 2013, the Ministry of the Interior issued an Instruction to the police as to how to conduct investigative actions in cases of sexual violence.
20. The Instruction further reinforced the standards set up by the above-mentioned Protocol regarding the police. To this end, the instruction prescribed a detailed chart indicating steps to be taken by the police in sexual violence cases, ensuring that investigative actions ordered by the state attorneys are carried out efficiently and effectively.
21. The Government highlights that the instruction has been disseminated widely to police departments throughout the country.

B. Measures aimed at ensuring impartiality of judges in sexual violence cases

22. The Government recalls that the violation furthermore resulted from the failure of domestic courts to address the applicant's allegations of the bias of the investigation judge (§103).

23. The lack of perceived impartiality of the investigative judge in the applicant's case was primarily related to the judge's prejudicial approach regarding the applicant's behaviour prior to the alleged rape (§ 100).

24. In response to the Court's findings, the measures have been taken to ensure that judges' conduct towards victims in cases of sexual violence is aligned with the Convention standards. These measures include change of the relevant domestic case-law and training measures.

(i) Change of the domestic case-law

25. Following the facts of the case, prejudicial approach towards victims, including the use of unacceptable language and expressions of a judge's private opinion regarding the nature of sexual violence, has been recognised as a conduct contrary to the dignity of the judicial profession. Such conduct constitutes a disciplinary offence.

26. In particular, in a decision of 24 September 2009 (U-IX-3911/2009) the Constitutional Court found that a judge's description of a defendant's actions in a rape case was inappropriate to the point of unacceptable derision of rape. Relying on the Recommendation of the Committee of Ministries no. R (94)12 on the independence, efficiency and role of judges, the Constitutional Court held that such wording was contrary to the dignity of the judicial profession and could not possibly be construed as the judge's assessment of the facts or his understanding of the law. The Constitutional Court therefore upheld the decision of the State Judicial Council finding the judge disciplinary liable and removing him from the office (decision is available at www.usud.hr).

27. The Constitutional Court has since adhered to the above-mentioned case-law. In its decision no. U-IX-1182/2013 of 18 December 2013, the Constitutional Court upheld the decision of the State Judicial Council on disciplinary liability of a judge and highlighted that judicial profession should be performed objectively and without prejudice, in a non-discriminatory manner (decision is available at www.usud.hr).

28. The above decisions have by now become a well-established case-law of the Constitutional Court and are followed closely by domestic courts. It is therefore capable of preventing similar violations under this head.

(ii) Training measures

29. In response to the Court's findings, it has been considered necessary to carry out training measures aimed at raising awareness among judges of the necessity of displaying particular care in handling sexual violence cases. To this end, in 2016, the Supreme Court and the Judicial Academy organized a two-day seminar aimed specifically at members of the judiciary. Furthermore, the Judicial Academy organized 6 workshops for members of the judiciary throughout the country covering the same topic. Their attention has been drawn to the European Court's findings in the case at hand and the need to ensure that any allegations of bias of judges in sexual violence cases are examined thoroughly and answered properly.

30. The Government considers that the above training measures will be capable of preventing similar violations under this head.

C. Measures aimed at strengthening the protection of victims of sexual violence

31. The Government recalls that the applicant was examined by three different doctors within eight months following the alleged rape, with the first doctor not recording injuries which might have been compatible with rape. During subsequent investigation it was therefore not possible to establish the exact cause of the applicant's injuries.
32. The Government further recalls that the applicant's complaints in this respect were not examined separately by the Court, but within the overall context of conduct of the investigative authorities (§ 64).

(i) Measures concerning medical examination of victims of sexual violence

33. In line with the above, it is important to note that the above-mentioned Protocol obliged the Ministry of Health to put in place an adequate domestic framework for medical examination of victims of sexual violence.
34. With a view to giving full effect to the Protocol, the Ministry of Health prepared the Medical Protocol for Sexual Assault Medical Forensic Examinations in Cases of Sexual Assault in 2016. Pursuant to the Medical Protocol, a doctor has an obligation to examine the victim of sexual violence and describe details of each injury found and take photos thereof. Relevant samples of biological traces necessary for further forensic examinations shall be taken during the examination, thus excluding the necessity for victims' reiterated examinations.
35. The Government deems that the Medical Protocol will ensure effective collection of evidence capable of prosecuting sex offenders.

(ii) Measures strengthening the position of victim in criminal proceedings

36. Recognizing delicate position and vulnerability of victims of sexual violence, the new Criminal Procedure Act has been adopted and subsequently amended. With the purpose of strengthening the victim's position, every victim of a criminal offense against sexual freedom has a right to free legal aid (lawyer), free consultations before being interviewed and a right not to answer questions concerning his/her private life that are not related to the offence at issue.

(iii) Setting up the victim support system

37. The Government highlights that due to the fact that victim support system was not in place at the relevant time, the risk of secondary victimisation for victims of sexual violence was high. Therefore, the domestic authorities set up a system of providing timely and efficient support to victims of sexual violence. Professionals and volunteers working within the victim support system provide victims with practical information and emotional support.

38. To this end, in 2013 the Government established the National Call Centre for Victims of Criminal Offences. Croatia thus became a part of the European countries that implemented the 116 006 phone number to their victim support system. It is an anonymous, toll-free number, available to victims of all criminal offences.
39. Furthermore, in response to the Court's findings, victim support departments have been established within county courts. These courts are responsible for conducting criminal proceedings for most serious crimes of sexual violence, including rape.
40. In addition, the Ministry of Justice regularly funds local NGOs providing support to the victims of sexual violence. For instance, the Ministry of Justice has allocated approximately EUR 368,000 from its budget for this activity, for the period 2016 – 2018.

D. Awareness raising measures

41. In response to the Court's findings, the authorities carried out a number of workshops for professionals dealing with sexual violence cases.
42. To this end, the Judicial Academy organized several trainings for State attorneys now responsible for carrying out criminal investigations in sexual violence cases:
 - in 2016 workshops on protection of victims' rights in sexual violence cases as well as the State's procedural obligations under Article 3 of the Convention,
 - in 2017 workshops on recognising the needs of victims and inter-institutional cooperation with various stakeholders within the victim support system.
43. Specialized trainings were also organized for police officers:
 - in 2013 and 2014 workshops on victim support and cooperation between the Ministry of the Interior and Ministry of Justice,
 - in 2016 workshops on the obligations of the police in rape cases under Article 3 of the Convention,
 - continuous trainings organized by the Police Academy for police officers conducting investigative actions in sexual violence cases, which are carried out through regular educational programs and additional three-day seminars held once a year. In 2017, this seminar was attended by police officers from 20 different Police Departments,
 - in 2017, the Police Academy organized a five-day seminar on criminal investigations in sexual offence cases which was attended by 20 police officers.
44. In view of the above, the Government deems that the above measures are capable of ensuring that criminal investigations into sexual violence are carried out in an efficient and thorough manner.
45. Furthermore, in cooperation with domestic NGOs, the Government initiated the following projects aimed at enhancing inter-institutional cooperation in sexual violence cases and providing multidisciplinary professional assistance for victims:
 - in 2013, a one-year project on victim support aimed enhancing the police capacity to effectively protect the rights of victims of sexual violence through various trainings,

- in 2015, a two-year project *Relevant institutions and civil society organizations - voice for victims of sexual violence* aimed at promoting the rights of victims of sexual violence,
- in 2016, a one-year project *Targeted Early Victim Needs Assessment and Support* provided an opportunity for legal experts to examine the application of EU regulations concerning victims and to identify possibilities for further improvement, as well as to develop the tools for early and targeted individual assessment of protection and support needs of victims of crime,
- in 2017, a two year project *Building a more effective protection: transforming the system for combating violence against women* aimed at enhancing the domestic authorities' capacity for effective action in cases of violence against women.

E. Publication and dissemination

46. In order to raise awareness of the violation found, the judgment has been translated into Croatian. The translation is available on the webpages of the Office of the Representative of the Republic of Croatia before the European Court of Human Rights (hereinafter: the Office of the Representative, www.uredzastupnika.gov.hr) and the Constitutional Court (www.usud.hr). The judgment is further re-published in the HUDOC database. The judgment has therefore been made available to all legal professionals, including the police officers, state attorneys and judges.
 47. The legal scholars have also scrutinised the judgment, notably:
 - in the article "*The Court's case law directly or indirectly related to the police conduct*", by the former Constitutional Court's judge Mr Ivan Matija, published in the law journal "*Policija i sigurnost*" of 2012,
 - the book "*Judgments of the European Court of Human Rights against the Republic of Croatia in Criminal Cases*" published in 2013 by the Zagreb Law School.
 48. With a view to facilitate its dissemination, the Office of the Representative drew up an analysis of the judgment and highlighted the Court's key findings.
 49. The analysis and the Croatian translation of the judgment were disseminated to the Ministry of Justice as well as to the domestic authorities involved in the impugned investigation (the Split County Court, Ministry of the Interior, the State Attorney General's Office and the Ministry of Health).
 50. Members of the Council of Experts for the Execution of the Court's judgments have also been made aware of the Court's findings.
 51. The Government therefore ensured that the competent authorities, including those who acted in breach of the Convention, have been made aware of the Court's findings.
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52. In view of the above, the Government considers that the general measures are capable of preventing similar violations. To this end, the Government highlights that there are no similar applications currently pending before the Court.

V. JUST SATISFACTION

53. On 24 January 2013 the just satisfaction awarded to the applicant was paid. The payment has therefore been effected within deadline imparted by the Court.

VI. CONCLUSION

54. The Government deems that the individual measures taken have provided an effective avenue to bring the violation to an end and that the applicant was redressed in respect of the damage sustained.
55. The Government considers that the general measures taken are capable of preventing similar violations in the future.
56. The Government therefore deems that all the measures required by Article 46, paragraph 1 have been adopted.


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