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Date: 27/03/2018

DH-DD(2018)326

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

Item reference: Action report (22/03/2018)

Communication from Serbia concerning the case of Jovanovic v. Serbia (Application No. 29763/07)

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

Référence du point : Bilan d'action

Communication de la Serbie concernant l'affaire Jovanovic c. Serbie (requête n° 29763/07)
(anglais uniquement)

Belgrade, 22 March 2018

ACTION REPORT
JOVANOVIĆ V. SERBIA

Application no. 29763/07
Judgment of 28 March 2017, final on 28 March 2017

I CASE DESCRIPTION

1. The case concerns a violation of the applicant's right to a fair trial within a reasonable time on the account of excessive length of criminal proceedings before domestic courts between 2006 and 2013 (a violation of Article 6 § 1).

2. On 22 December 2006 the applicant was deprived of liberty on suspicion of participating in criminal association during which 43 persons were also arrested. The applicant was released on 15 June 2007. On 31 July 2009 the investigation against the accused individuals was transferred to the Prosecutor's Office for Organised Crime.

3. On 28 June 2012 the investigation was terminated. On 17 January 2013 the criminal proceedings against the applicant were suspended.

4. The Court found that the length of the criminal proceedings was excessive and failed to meet the "reasonable time" requirement.

II INDIVIDUAL MEASURES

5. The Serbian authorities have taken steps to ensure that the violation at hand ceased and that the applicant has been redressed for the negative consequences of the violations found by the Court.

A. Bringing the impugned criminal proceedings to an end

6. In 2013, the Prosecutor's Office for Organised Crime dismissed charges against the applicant for forming criminal association, and transmitted the case to Higher Public Prosecutor's Office in Šabac to continue criminal proceedings before Higher Court in Šabac for the abuse of office. On 27 June 2016 Higher Court in Šabac acquitted the applicant of criminal charges. On 22 February 2017 this judgment was confirmed by the Appellate Court in Novi Sad. The applicant's acquittal is now final.

7. In view of the above, the authorities consider that the violation has been brought to an end.

B. The applicant's redress

8. At the outset, the authorities would like to recall that the applicant claimed just satisfaction in respect of non-pecuniary damage before the European Court.

9. It is furthermore recalled that the European Court awarded the applicant just satisfaction in respect of non-pecuniary damage in the amount of EUR 1,800 (*Jovanović,* §22).

10. The authorities highlight that the domestic legislation (notably, provision of Article 172 of the Obligation Code) provides the applicant with a concrete and practical avenue to claim any damage in respect of pecuniary and non-pecuniary damages should he consider to have suffered them. Pursuant to the domestic legislation, a claim in respect of pecuniary and non-pecuniary damages could be raised within 3 years following the deleterious facts. In this particular case, the timeframe will expire on 28 March 2020. To the best of the authorities' knowledge, the applicant has not raised any claim for damages before the

domestic courts and has not availed himself of the avenues available in the domestic legislation to this effect.

11. In view of the above, the authorities consider that the applicant has been redressed for the damage sustained.

III GENERAL MEASURES

12. The measures aimed at preventing excessive length of proceedings and introducing effective remedy in this respect are taken within the framework of the *Ristić* case (see Final Resolution CM/ResDH(2014)18).

13. The key measure taken within the context of *Ristić* was the adoption of the new Criminal Procedure Code ("CPC") in September 2011 (in force from 1 October 2013). It introduced a number of novelties aimed at increasing the efficiency of criminal proceedings. It is recalled that within the context of the *Ristić* case the authorities informed the Committee of Ministers about the introduction of "prosecutorial investigation". Pursuant to this concept, prosecutors have an obligation to prove grounds for indicting a person before trial. The previous practice of adducing evidence while in trial resulted in overburdened courts and contributed to excessive length of criminal proceedings.

14. The violation in the present case however continued beyond 1 October 2013, the date when the general measures were adopted in *Ristić*. In this respect, the authorities would like to indicate that certain time inevitably was required for the novelties introduced in the CPC to enhance efficiency of domestic criminal proceedings. To this end, the authorities refer to two novelties introduced in the CPC, namely the institutes of plea bargaining and that of deferred prosecution.

15. The institute of plea bargaining has been made available in criminal proceedings since the entry into force of the CPC. Pursuant to this novelty, a defendant might

benefit from more lenient punishment inexchange for a guilty plea. In addition, the CPC introduced a possibility for the prosecutors to defer prosecution and not initiate criminal proceedings against the suspect if/she fulfills one or more measures ordered by the prosecutor.

16. The purpose of these institutes was to alleviate work of the courts. The authorities would like to highlight that at the time of the impugned facts of this case the domestic courts did not often resort to these legal instruments. However, the domestic courts now became more familiar with these possibilities provided in the domestic legislation. A number of awareness raising campaigns and workshops has been carried out to ensure that domestic courts consider a possibility of resorting to these instruments. These efforts have already made a positive impact. Namely, the Supreme Court indicated that as a result of the application of these institutes the influx of new criminal cases has been significantly reduced (see Amended Unified Backlog Reduction Programme for the period 2016- 2020, dated 10 August 2016, p. 17, available at www.vk.sud.rs).

17. The authorities would furthermore highlight that as a result of novelties the number of pending cases in criminal matters in the first instance before higher courts was reduced from 1 676 cases in 2012, to 1 123 cases in 2016. The number of pending cases before the basic courts in the first instance criminal matters was significantly reduced from 18 882 cases in 2012 to 8 761 pending cases in 2016. The number of criminal cases has therefore been halved.

18. In reflecting about the response to be given to the Court's indications, the authorities also considered the currently applicable Strategy and Action Plan for Reform of Judiciary. These documents set out steps aimed at increasing further efficiency of judiciary, including in criminal matters to be taken until the end of 2018. They are available in English translation on the website of the Ministry of Justice. Within their context, the Supreme Court adopted the above-mentioned Unified Backlog Reduction Programme. It provides for comprehensive and long-

term measures to be taken at the national level to reduce the number of backlog cases, reduce the length of court proceedings (including the criminal proceedings), and increase the level of public trust in the judiciary.

19. The Programme gives priority to priority handling of cases pending for more than five years in criminal matters. Within the backlog cases it is foreseen that there should be no cases pending over five years in criminal matters at the end of the Programme implementation (31 December 2020) while the number of cases pending from three to five years in criminal matters are to be reduced in such a number as not to be categorised as backlog cases.

20. Pending the achieving the above targets and in response to the Court's findings, the authorities considered necessary to further raise the awareness among the domestic judges dealing with criminal cases on the need to comply with the requirement of reasonable length of proceedings safeguarded under Convention.

21. To this end, since 2014 the Academy for Judges and Public Prosecutors has carried out a number of trainings on different aspects of Article 6 of the Convention, including on the Court's findings in *Ristić* and the present case, with a view to accelerating length of criminal proceedings. These trainings were supported by the Council of Europe, the OSCE Mission and other national and international stakeholders. In particular, 57 training courses were held for 1200 judges and prosecutors. In addition, 5 more training courses for 150 judges and prosecutors have been planned for the remaining period of the year 2018.

22. Publication and dissemination measures have also been taken to draw the attention of the domestic judges on the European Court's findings in this case. To this end, the European Court's judgments have been translated into Serbian and published in the Official Gazette and on the Government Agent's official web page. The European Court's findings have therefore been made easily accessible to judges and legal community in the country.

23. The Government considers that the above measures will be capable of preventing similar violations. In this respect, the Government notes that no similar application is currently pending before the European Court. In view of this fact, the authorities consider that the measures set out above will constitute an adequate response to the Court's findings in the present case.

IV JUST SATISFACTION

24. The amount of just satisfaction awarded by the European Court has been disbursed to the applicant on 13 June 2017. The payment has therefore been made within the time-limit set out by the European Court.

IV CONCLUSIONS

25. The authorities consider the individual measures taken have ensured that the violation was brought to an end and that the applicant was redressed for the damage sustained.

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

27. The authorities are therefore of the opinion that Serbia has thus complied with its obligations under Article 46 paragraph 1 of the Convention and propose to the Committee of Ministers to adopt a final resolution and close the examination of this case.