

SECRETARIAT GENERAL

SECRETARIAT OF THE COMMITTEE OF MINISTERS
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Meeting: 1201 meeting (3-5 June 2014) (DH)

Item reference: Action plan (18/12/2013)

Communication from Croatia concerning the case of M.S. against Croatia (Application No. 36337/10)

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Réunion : 1201 réunion (3-5 juin 2014) (DH)

Référence du point : Plan d'action

Communication de la Croatie concernant l'affaire M.S. contre Croatie (requête n° 36337/10)
(**anglais uniquement**).

ACTION PLAN
CASE TITLE: M.S. v. CROATIA
APPLICATION NO.: 36337/10
JUDGMENT OF: 25/04/2013
FINAL ON: 25/07/2013



In the *M.S. v. Croatia* judgment, the ECtHR found a violation of Article 8 of the Convention on two factual basis:

- the measures domestic authorities undertook for the protection of applicant's physical integrity from the alleged attack by a private individual were inappropriate;
- the institution of domestic proceedings to divest the applicant of legal capacity were not lawful, did not have a legitimate aim and were not necessary in a democratic society.

INDIVIDUAL MEASURES

Regarding criminal proceedings concerning the alleged attack on the applicant

After the judgment became final, the applicant did not contact any domestic authority, or put forward a request for reopening of criminal proceedings.

Regarding proceedings for divesting the applicant of legal capacity

On 29/10/2012 the applicant was admitted to the Rijeka Clinical Center and hospitalized on the psychiatric ward until 29/11/2012. After her release from the hospital she continued her treatment voluntarily and her mental health rapidly improved.

Taking into account the fact that the applicant regularly attends her appointments with the doctor and cooperates well, on 19/08/2013 the expert witnesses proposed that the proceedings for divesting the applicant of legal capacity be terminated.

On 16 September 2013, the Opatija Municipal Court rendered a decision terminating the proceedings. The decision was served on the applicant by a court delivery service on in December 2013 (as she refused to receive the decision through regular mail).

Additional individual measures are neither possible nor necessary.

GENERAL MEASURES

• **Translation, publication and dissemination of the judgment**

The judgment was translated into Croatian and disseminated to all relevant domestic authorities: the Ministry of Justice, the Ministry of Social Policy and Youth, the Constitutional Court of RoC, and the County Court in Rijeka.

The translation of the judgment is published on the web page of the Government Agent's Office of RoC: www.vlada.hr/uredi/ured-zastupnika.

The Ministry of Justice further disseminated the judgment to the Judicial Academy, a public institution competent for professional training of judges, and called upon the Judicial Academy to take the judgment into consideration in preparing the training programs.

The Ministry of Social Policy and Youth disseminated the judgment to all social welfare centers throughout Croatia and pointed to the obligation of applying the principles set forth in the ECtHR judgment in dealing with similar cases in the future.

- **Legislative changes**

Regarding the institution of the proceedings to divest the applicant of legal capacity

The Republic of Croatia is currently amending two laws which relate to issues identified in the *M.S.* judgment regarding the divestment of legal capacity with the aim of harmonizing domestic regulations governing the institute of guardianship and divestment of legal capacity with Croatia's obligations under various international conventions (including, among others, the ECHR) and developments of international practice in the area of protection of rights of persons with mental disabilities.

Rules regarding limitations of legal capacity and procedures in that regard, as well as rules governing guardianship (requirements for placing a person under guardianship and rights and obligations of the person under guardianship and the guardian) are stipulated in the **Family Law**.

The final text of the Draft has been forwarded to Croatian Parliament. The draft contains significant novelties in this specific area.

Rules relating to protection of persons with mental disabilities (including rules on their treatment) are stipulated in the **Law on Protection of Persons with Mental Disabilities**. The draft of the new Law is currently being finalized.

Regarding the inadequate protection against the alleged attack on the applicant's physical integrity

The violation found with regard to the effectiveness of criminal proceedings relates specifically to the fact that the competent social service failed to give the necessary consent for continuation of criminal proceedings after proceedings to divest the applicant of legal capacity were instituted.

Accordingly, the issue identified in this case is a matter of specific circumstances which relate to provisions of the Family Law governing guardianship, and not a matter of rules of criminal procedure. Therefore, this issue is also to be resolved through amendments to the Family Law, particularly the provisions governing the scope of guardian's authorities and responsibilities.

The Government shall inform the Committee of Ministers in detail on the content of new provisions of relevance for execution of this judgment (regarding both aspects of the violation found in this case) as soon as new legislation is enacted.

JUST SATISFACTION

No just satisfaction awarded.

CONCLUSION

The Government of the Republic of Croatia hereby expresses its commitment to fulfilment of its obligations under Article 46 of the Convention. In that regard, the Government shall keep the Committee of Ministers regularly informed on all new developments regarding the execution of general measures presented above.