

SECRETARIAT GENERAL
SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRÉTARIAT DU COMITE DES MINISTRES



Contact: Simon Palmer
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Date: 30/09/2011

DH - DD(2011)786E *

Item reference: Action plan / action report

Please find enclosed a communication from Croatia concerning the case of Olujić against Croatia (Application No. 22330/05).

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Référence du point : Plan d'action / Bilan d'action

Veuillez trouver, ci-joint, une communication de la Croatie relative à l'affaire Olujić contre Croatie (Requête n° 22330/05) (**Anglais uniquement**).

* In the application of Article 21.b of the rules of procedure of the Committee of Ministers, it is understood that distribution of documents 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 (CM/Del/Dec(2001)772/1.4). / Dans le cadre de l'application de l'article 21.b du Règlement intérieur du Comité des Ministres, il est entendu que la distribution de documents à la demande d'un représentant se fait sous la seule responsabilité dudit représentant, sans préjuger de la position juridique ou politique du Comité des Ministres CM/Del/Dec(2001)772/1.4).



REPUBLIC OF CROATIA
GOVERNMENT AGENT OF THE REPUBLIC OF CROATIA
BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS

DG - HL

13 SEP. 2011

SERVICE DE L'EXECUTION
DES ARRÊTS DE LA CEDH

Class: 004-01/09-01/75
Reg.No.: 514-10/PK-11-13
Zagreb, 13 September 2011

DEPARTMENT FOR THE EXECUTION OF
JUDGMENTS OF THE EUROPEAN COURT
OF HUMAN RIGHTS
DIRECTORATE GENERAL OF HUMAN
RIGHTS - DG II
SECRETARIAT GENERAL
COUNCIL OF EUROPE
F-67075 Strasbourg Cedex
France

Application no. 22330/05

Olujic v. Croatia

Dear Madam,

Following our letters of 6 July 2009 and 11 November 2010, the Government would like to provide further clarification on the execution of the *Olujic v. Croatia* judgement of 5 February 2009. Namely, the Government would like to provide thorough information on specific provisions relevant for the execution of the abovementioned judgment.

Individual measures of the execution

Disciplinary proceedings are conducted in accordance with applied provisions of the Criminal Procedure Act (Article 72 of the National Judicial Council Act OG 116/2010, 57/2011). Therefore the applicant had the right to request reopening of the disciplinary proceedings based on the Article 502 of the Criminal Procedure Act (OG 152/08). The said Article 502 provides:

„The provisions on the reopening of criminal proceedings shall also apply when a motion for the revision of a final judgment based on the ruling of the Constitutional Court of the Republic of Croatia (hereinafter: Constitutional Court) annulling or cancelling the regulation under which the final judgment was rendered, or based on a decision of the European Court of Human Rights related to a reason for the reopening of criminal proceedings.“

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General measures of the execution

1. Regarding the issue of exclusion of the public from the disciplinary proceedings before the National Judicial Council (further: NJC), the Government emphasises the fact that the new Rules of the NJC (OG 73/11) came into force and previous Rules of the NJC (OG 13/07) ceased to be valid. The relevant provision regarding public nature of NJC's work is stipulated in Chapter IV of the Rules of the NJC (OG 73/11) and reads as follows:

"Article 10

(1) The public nature of the work of the Council is provided for by regular reports on the sessions, decisions and other activities of the Council.

(2) Sessions of the Council where general issues are discussed and decisions rendered shall be public.

(3) The proceedings to appoint judges and presidents of courts shall be public.

(4) In proceedings to dismiss judges, suspend judges from duty, give approval for instituting criminal proceedings, or approval for deprivation of liberty, and in disciplinary proceedings, the public shall be excluded. At the request of the judge against whom these proceedings are being conducted the Council may hold a public session.

(5) Recording of sound and vision at public sessions of the Council shall be permitted only on the basis of a special decision by the Council.

(6) The part of the session at which deliberation and voting take place shall be without the public but the announcements of decisions by the Council are always public.

(7) Announcements to the public media shall be given by the president of the Council, a member of the council appointed by him or the Council, depending on whether the public needs to be informed urgently about a specific matter. If due to urgency the announcement was made by the president of the Council or a member of the Council appointed by him, the president of the Council shall inform the Council accordingly at the next session."

2. In relation to the lack of objective impartiality of the members of the NJC during the disciplinary proceedings it is to note that the legislation was changed from the time of the case because a new NJC Act (OG 116/2010) came into force on 13 October 2010 and was amended on 13 May 2011 (OG 57/2011). New provision regarding the lack of impartiality of the members of the NJC in disciplinary proceedings is prescribed in the Chapter III on Scope and Manner of Work of the NJC of the NJC Act (OG 116/2010, 57/2011)¹ and reads:

"Article 42

(1) The competence of the Council shall include:

...

- conducting disciplinary proceedings and deciding on the disciplinary responsibility of judges

¹ The consolidated text of the NJC Act (published in the Official Gazette no. 116) of 13 October 2010 and the Act on Amendments and Supplements to the State Judicial Council Act (published in the Official Gazette no. 57) of 25 May 2011, as in the text, are to be found on the internet site of the State Judicial Council:

http://www.dsv.pravosudje.hr/index.php/dsv/propisi/zakoni/zakon_o_drzavnom_sudbenom_vijecu

...

(2) *Members of the Council are exempt from performing the duty of member of the Council in proceedings to appoint judges, appointment and dismissal of the presidents of courts, transfer of judges, decisions on dismissal of judges, disciplinary proceedings, conducting proceedings to enrol candidates in the State School for Judicial Officers and proceedings to take the final examinations, management and control of declarations of assets of judges and in proceedings to decide on judges' immunity if the candidate or judge, or one of the candidates or judges:*

1) is his or her spouse or extra-marital partner or an in-law to the second degree regardless if the marriage or extra-marital relationship has ended or not,

2) is his or her blood relative of any degree, and of the lateral line to the fourth degree,

3) is acting as guardian, ward, adoptive parent, adopted child, foster parent, fostered child, accommodated person or host,

(3) Members of the Council, as soon as they learn of the existence of one of the reasons for exemption from paragraph 2 of this Article, shall immediately stop performing all activities in the proceedings and to inform the Council accordingly.

(4) If a member of the Council, aside from the cases in paragraph 2 of this Article, knows of circumstances which may cause doubt in his impartiality in the proceedings from paragraph 1 of this Article, shall immediately inform the Council of this fact, who will render the appropriate decision. "

Moreover, the new Rules of the NJC (OG 73/11) introduced following provision with respect to the communication with the media stipulated in the abovementioned Article 10 Paragraph 7:

"(7) Announcements to the public media shall be given by the president of the Council, a member of the council appointed by him or the Council, depending on whether the public needs to be informed urgently about a specific matter. If due to urgency the announcement was made by the president of the Council or a member of the Council appointed by him, the president of the Council shall inform the Council accordingly at the next session."

Therefore, members of the NJC are not allowed to comment on disciplinary procedure until the decision is final, nor are they allowed to give statements about the judge against whom the disciplinary procedure is conducted.

3. As for the principle of equality of arms in the disciplinary proceedings against judges before the NJC, the Government reiterates relevant Articles stipulated in the NJC Act (OG 116/2010, 57/2011):

"Article 70

(1) In proceedings to decide on the disciplinary responsibility the judge against whom the proceedings are being conducted must be given the opportunity to present his or her defence in person, in writing or through the defence counsel of his or her choice.

(2) *The decision establishing that a judge is liable for a disciplinary offence and imposing a disciplinary penalty may only relate to the disciplinary offence and person denoted by the applicant in the complaint.*

(3) *The decision must be drawn up and dispatched to the parties within 15 days of being rendered.*

Article 71

(1) *The judge has the right to an appeal against a decision to dismiss or on disciplinary responsibility which shall postpone the execution of the decision.*

(2) *The applicant also has the right to appeal against a decision on disciplinary responsibility.*

(3) *An appeal has to be lodged with the Constitutional Court of the Republic of Croatia within fifteen days from the day of delivery of the decision.*

Article 72

(1) *In the conduct of disciplinary proceedings the provisions of the Criminal Procedure Act are applied mutatis mutandis, if this Act does not prescribe otherwise.*

(2) *In rendering a decision on disciplinary responsibility and imposing a disciplinary penalty, the Council is not bound by the applicant's proposal for conduct of disciplinary proceedings.*

(3) *In disciplinary proceedings no fee is payable, and the costs of the proceedings shall be borne by the court in which the judge holds office."*

On another note, the first instance decision in disciplinary proceedings can be contested by a judge against whom the procedure was conducted or by a person who instigated the proceedings by a suspensive appeal to the Constitutional Court and circumstances which render impartiality of a decision doubtful can once more be reviewed by the Constitutional Court of the Republic of Croatia.

4. In terms of measures regarding the length of proceedings before the Constitutional Court, the Constitution of the Republic of Croatia (OG 85/10) was amended specifically in that respect. Relevant Article 123 Paragraph 4 and 5 of the Constitution of the Republic of Croatia provide:

„Article 123

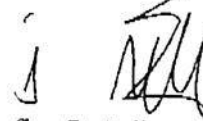
(4) *A judge shall have the right to lodge an appeal against a decision by the National Judicial Council on disciplinary accountability with the Constitutional Court within 15 days after the date on which the decision has been served. The Constitutional Court shall decide on the appeal in the manner and by applying the procedure as determined by the Constitutional Act on the Constitutional Court of the Republic of Croatia.*

(5) *In the cases specified in Paragraphs (4) and (5) of this Article, the Constitutional Court shall rule within no more than 30 days from the day the appeal has been lodged. Such ruling of the Constitutional Court shall exclude the right to a constitutional petition."*

In light of all the measures taken, considering the facts of the case established by the ECtHR, the Government deems that the Croatian legislation is in accordance with the ECtHR standards and no other measures (individual or general) are required to assure that no future violations of this kind occur.

Therefore, in accordance with Article 46 § 1 of the Convention, the Government of Croatia proposes the closure of the execution procedure and the adoption of a final resolution (Article 46 Paragraph 2 of the Convention in relation to Rule 17 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements).

Yours faithfully,



Štefica Stažnik
Government Agent