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Contact: John Darcy
Tel: 03 88 41 31 56

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Meeting: 1355^h meeting (September 2019) (DH)

Communication from a NGO (Association for the Protection of Constitutionality and Legality) (22/08/2019) in the case of KOSTIC v. Serbia (Application No. 41760/04) (EVT Company group, 3102/05).

Information made available under Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1355^e réunion (septembre 2019) (DH)

Communication d'une ONG (Association for the Protection of Constitutionality and Legality) (22/08/2019) dans l'affaire KOSTIC c. Serbie (requête n° 41760/04) (groupe EVT Company, 3102/05)
(anglais uniquement).

Informations mises à disposition en vertu de la Règle 9.2 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.



COMMITTEE OF MINISTERS OF THE COUNCIL OF EUROPE
STRASBOURG

Belgrade, July 31st 2019.

SUBMISSION TO THE COMMITTEE OF MINISTERS
OF THE COUNCIL OF EUROPE
UNDER RULE 9.2

concerning the case of

KOSTIĆ v. SERBIA (app. no. 41760/04)

1. The Association for the Protection of Constitutionality and Legality (Удружење за заштиту уставности и законитости), Serbia, Belgrade, is local non-governmental professional association of citizens dedicated to the promotion of rule of law and protection of human rights. The Association would like to make a submission to the Committee of Ministers under Rule 9.2 concerning the case of Kostić v. Serbia (app. no. 41760/04). Kostić v. Serbia (app. no. 1760/04) was classified as a repetitive case and initially examined under the (now closed) leading case of EVT COMPANY v. SERBIA (app. no. 3105/05).
2. The European Court of Human Rights (hereinafter: the Court) delivered judgment in the case of Kostić v. Serbia (app. no. 41760/04) on November 25th 2008. The judgment became final on February 25th 2009. In this judgment the Court found a violation because the Serbian authorities failed to fulfil their positive obligation to enforce a demolition order rendered in respect of a building that had been constructed without the required authorisation.

The Serbian Government, in their Action Plan submitted on March 16th 2017, has stated that “authorities have taken measures to increase efficiency of enforcement of final demolition orders in respect of unauthorized construction”. In the Government Action Plan submitted on May 17th 2016, it stated “the Government highlights that applicable law prescribes efficient and fast-track ex officio procedure” for enforcement of demolition order.

3. It is submitted that the measures taken by the Serbian authorities have not enabled efficient and effective enforcement of demolition orders rendered against illegal and unauthorized construction works. Unauthorized and illegal construction of buildings in Serbia still is very frequent. The Serbian authorities do not take appropriate measures to enforce demolition orders rendered against such buildings and construction works.

4. An example for non-enforcement of demolition orders against unauthorized and illegal construction works pertains to construction works on a mini hydro plant on Balkan Mountain (Serbian: Стара Планина) near village Rakita in south-eastern Serbia. There had been unauthorized construction works on constructing an illegal mini hydro plant. The Serbian Ministry of Environmental Protection, on January 4th 2019, passed decision no. 922-480-501-00171/1/2018-04, ordering the immediate demolition of the unauthorized building. But this decision (i.e. demolition order) has not been enforced yet.

During a session of the Serbian Parliament held on July 25th 2019 concerning construction works on said hydro plant on Balkan Mountain, the Serbian Minister of Environmental Protection, Goran Trivan, stated that the Serbian authorities would not demolish on the parts of the hydro plant constructed so far (quotation: *"state ... cannot and shall not demolish construction works build so far"*, Serbian: *"država ... ne može i neće rušiti objekte koji su napravljeni već do sada"*).¹

Serbian authorities have not stopped unauthorized construction of a hydro plant on Balkan Mountain. Construction of the hydro plant on Balkan Mountain is still ongoing.²

The non-enforcement of decision (i.e. demolition order) no. 922-480-501-00171/1/2018-04 issued by Serbian Ministry of Environmental Protection on January 4th 2019, the quoted statement of Goran Trivan, Serbian Minister for Environmental Protection and a fact that construction of hydro plant is still ongoing, are evidence that the Serbian authorities are not willing to enforce demolition orders in particular cases.

5. The illegal construction of an important building – a hydro plant – on Balkan Mountain has generated a lot of media attention in Serbia.³ There were protest rallies with thousands

¹ National Assembly of the Republic of Serbia, record from Parliamentary Session held on July 25th 2019, Parliamentary Question in July, response of the Serbian Minister of Environmental Protection Goran Trivan on question asked by Member of the Parliament Đorđe Vukadinović, available at: http://www.parlament.gov.rs/Poslani%C4%8Dka_pitanja_u_julu.37103.941.html, July 25th 2019.

² Daily newspaper „Danas“, Article „Trivan: Question why construction of mini hydro plant in Rakita have not been stopped – for other state organs“ (Serbian, „Trivan: Pitanje zašto u Rakiti nije zaustavljena gradnja MHE – za druge državne organe“), published on 7th July, 2019, available at: <http://www.danas.rs/drustvo/trivan-pitanje-zasto-u-rakiti-nije-zaustavljena-gradnja-mhe-za-druge-drzavne-organe/>, 31st July, 2019.

Internet portal „Južne vesti“, Article „Liberty and Justice Party: If institutions don't do their job, we are going to block construction works in Rakita“, (Serbian, „Stranka Slobode i Pravde: Ukoliko institucije ne rade svoj posao, trajno ćemo blokirati radove u Rakiti“), posted on 16th July 2019, available at: <https://www.juznevesti.com/Politika/SSP-Ukoliko-institucije-ne-rade-svoj-posao-trajno-emo-blokirati-radove-u-Rakiti.st.html>, 31st July, 2019.

³ Daily newspaper „Blic“, Article „Who is getting rich by destroying rivers in Serbia“ (Serbian: „Ko se bogati uništavajući reke po Srbiji“), published on 18th October 2018, available at: <https://www.blic.rs/vesti/drustvo/ko-se-bogati-unistavaju-ci-reke-po-srbiji-raskopana-korita-i-katastrofalne-posledice-a/xqyfzy3>, 31st July, 2019.

participants, against building of hydro plant on Balkan Mountain.⁴ This is why it would be particularly important for the Serbian authorities to show willingness to enforce the demolition order. The authorities' failure to do so amounts to a failure to send a clear message that unauthorized construction works would not be tolerated. This, we submit, hinders the implementation of the general measures required in the Kostić v. Serbia case.

6. If the Serbian authorities are not ready to enforce a demolition order rendered in respect of such an important building as this hydro plant, and in a case with a lot of public attention, it cannot be expected that the authorities will effectively enforce demolition orders rendered against less important buildings in cases without any media attention. This is why it is necessary for the authorities to provide evidence that the unauthorized construction works on the hydro plant on Balkan Mountain are demolished.
7. Unauthorized and illegal construction works on the hydro plant on Balkan Mountain are clear evidence that the Serbian authorities have not taken appropriate measures to increase efficiency of enforcement of final demolition orders in respect of unauthorized construction. Despite the procedure described in the Government's Action Plan submitted on May 17th 2016, enforcement of demolition orders against unauthorized construction is neither efficient nor effective in the absence of political will to enforce demolition orders in particular cases.

Radio "Free Europe", Journalist Report "Fear in Rakita" (Serbian, "Strah u Rakiti", 26th December 2018, available at: <https://www.slobodnadrugina.org/a/staroj-planini-i-potpuno-ugasilez/29672210.html>), 31st July, 2019.

Internet portal "Balkan Green Energy News", Article "Without water there is no life, and mini hydro plants will totally extinguish life on Balkan Mountain", (Serbian: "Bez vode nema života, a male hidroelektrane bi ga na Staroj Planini potpuno ugasile"), posted on 25th April 2019, available at: <https://balkangreenenergynews.com.rs/bez-vode-nema-zivota-a-male-hidroelektrane-bi-ga-na-staroj-planini-i-potpuno-ugasilez/>, 31st July, 2019.

Daily newspaper "Danas", Article "Green Party submitted criminal charges against construction works on mini hydro plant in village Rakita" (Serbian, "Zelena stranka podnela krivičnu prijavu zbog gradnje mini hidroelektrane u selu Rakita"), published on 13th May 2019, available at: <https://www.danas.rs/drustvo/zelena-stranka-podnela-krivicnu-prijavu-zbog-gradnje-minihidroelektrane-u-selu-rakita/>, 31st July, 2019.

"Deutsche Welle", Journalist Report "Fight for the river in Rakita – someone will lose a head" (Serbian, "Borba za reku u Rakiti – Ovde će nekome odleteti glava"), posted on 13th July 2019, available at: <https://www.dw.com/sr/borba-za-reku-u-rakiti-ovde-%C4%87e-nekome-odleteti-glava/a-49577288>, 31st July, 2019.

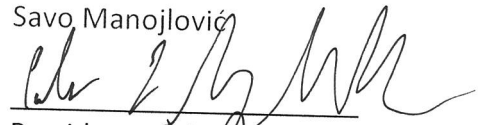
⁴ Internet portal "Balkan Green Energy News", Article "The biggest ecological rally »No for Mini Hydro Plants« was held in Belgrade" (Serbian, "Održan najveći ekološki protest »Ne za MHE« u Beogradu") posted on 28th January 2019, available at: <https://balkangreenenergynews.com.rs/vise-hiljada-protestanata-zatrazilo-od-vlade-i-predsednika-srbije-zaustavljanje-gradnje-mhe/>, 31st July, 2019.

Radio Television of Serbia, Journalist Report "Rally against constructing of mini hydro plants" (Serbian, "Protest protiv izgradnje mini hidroelektrana", posted on 27th January 2019, available at: <http://www.rts.rs/page/stories/sr/story/125/drustvo/3400701/protest-protiv-izgradnje-mini-hidroelektrana.html>, 31st July, 2019.

Internet portal "Balkan Green Energy News", Article "Thousands of citizens rally to protest against construction of mini hydro plants on Balkan Mountain" (Serbian, "Više hiljada građana protestovalo protiv izgradnje MHE na Staroj Planini"), posted on 3rd September 2018, available at: <http://balkangreenenergynews.com.rs/vise-hiljada-gradana-protestovalo-protiv-izgradnje-mhe-na-staroj-planini/>, 31st July, 2019.

8. Providing evidence of the demolition of the unauthorized construction works on the hydro plant on Balkan Mountain would substantiate the Government's claim that some progress concerning general measures in the Kostić v. Serbia case has been achieved. The Association for the Protection of Constitutionality and Legality invites the Committee of Ministers to urge the Serbian authorities to provide such evidence, and to demonstrate progress in implementing the case of Kostić v. Serbia.

Savo Manojlović



President of the Association for the
Protection of Constitutionality and
Legality