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Meeting: 1459th meeting (March 2023) (DH)

Item reference: Action Report (05/01/2023)

Communication from Croatia concerning the case of Miklic v. Croatia (Application No. 41023/19)

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Réunion : 1459^e réunion (mars 2023) (DH)

Référence du point : Bilan d'action (05/01/2023)

Communication de la Croatie concernant l'affaire Miklic c. Croatie (requête n° 41023/19) (**anglais uniquement**)

DGI

05 JAN. 2023

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

ACTION REPORT

Miklić v. Croatia

(app. no. 41023/19), judgment of 7 April 2022, final on 7 July 2022

I. CASE DESCRIPTION

1. This case concerns a violation of the applicant's right to liberty on account of the Rijeka County Court's failure to conduct compulsory psychiatric internment proceedings between 2018-2019 in accordance with the domestic law and to properly assess the applicant's mental state at the moment of prolonging his internment in a psychiatric hospital and base its decision on an objective and recent medical expert opinion (violation of Article 5§1).
2. In June 2017 the Rijeka Municipal Court found that the applicant, as a minor, had committed criminal offences of two counts of intrusive behavior and one threat, while lacking mental capacity. Relying on the psychiatric and psychological expert opinions obtained during the criminal proceedings, it decided that the applicant should be placed in a psychiatric hospital for a period of six months. In September 2017 the Rijeka County Court instituted proceedings for the applicant's compulsory internment in the Rab Psychiatric Hospital. Subsequently, the applicant's placement in a psychiatric hospital was extended until March 2019. In the meantime, in November 2018, the applicant initiated the proceedings before the Rijeka County Court for his release from the hospital and continuation of his treatment at liberty, basing his request on the privately-commissioned expert report. The Rijeka County Court dismissed his motion for outpatient treatment and extended his compulsory internment until March 2020. The County Court, contrary to provisions of Article 37 of the Protection of Persons with Mental Disorders Act, also dismissed the applicant's request to obtain a fresh expert witness evaluation, deeming that the existence of the requirements for the continuation of his compulsory internment had not been called into question. This decision was upheld by the three-judge panel of the Rijeka County Court in April 2019. The applicant's constitutional complaint was dismissed in July 2019. In the course of the above proceedings, the applicant's lawyer submitted several reasoned requests to the domestic court to obtain an independent expert opinion, which requests were all dismissed. Subsequently the applicant was released for an outpatient treatment but due to the deterioration of his condition, in 2020 he was again ordered compulsory confinement which continued in the Vrapče Psychiatric Hospital.
3. The European Court found that the assessment of the applicant's mental state at the moment of prolonging his internment had on the whole been adopted in a procedure at odds with the relevant provisions of the domestic legislation and had not been based on objective and recent medical expert opinion (*Miklić*, §76).

II. INDIVIDUAL MEASURES

4. In response to the European Court's judgment, the authorities have taken the following individual measures.

A. Bringing violation to an end

5. At the outset, the Government recalls that following a fresh expert evaluation by psychiatrist and the replacement of the applicant's compulsory internment with treatment at liberty, the applicant's condition deteriorated and on 14 July 2020 the same court ordered the applicant's compulsory internment in the Vrapče Psychiatric Hospital (*Miklić*, §§ 39-41).
6. The Government notes that on 1 October 2020 the applicant's compulsory treatment expired and the Zagreb County Court finalized the impugned internment proceedings. The Government notes that the applicant was released the same day from the Vrapče Psychiatric Hospital and has continued his treatment at liberty. The Government further notes that to date, to the best its knowledge the applicant has not been subjected to any compulsory internment proceedings nor has he been confined in any medical institutions.
7. In the view of the above, the Government considers that the violation ceased, and no further individual measures are possible.

B. The applicant's redress

8. The Government notes that the applicant did not submit a claim for just satisfaction. Accordingly, the Court considered that there was no call to award him any sum on that account (*Miklić*, §83).

III. GENERAL MEASURES

9. The European Court found that the assessment of the applicant's mental state at the moment of prolonging his internment had on the whole been adopted in a procedure at odds with the relevant provisions of the domestic legislation and had not been based on objective and recent medical expert opinion (*Miklić*, §76).
10. With the view to rectifying the shortcomings identified by the European Court, the authorities took the measures as set out below.
11. The domestic courts aligned their case law with the Convention and the Court's findings. In particular, in its most recent decision of 21 September 2022 no. [U-III-4568/2022](#), the Constitutional Court found that the domestic county courts gave very detailed reasons for their decisions on involuntary placement of the complainant and that the proceedings leading to the involuntary placement also provided effective guarantees against arbitrariness. In particular, the county court competent for conducting compulsory internment proceedings, when extending the complainant's compulsory internment properly applied Article 37 of the Protection of Persons with Mental Disorders Act under which the domestic court may and upon a reasoned request of a party concerned must obtain a fresh expert opinion from a person not employed by the institution concerned. The

Constitutional Court found that the domestic court obtained an impartial medical expert report based on which it was able to properly assess the applicant's mental state at the moment of prolonging his internment in a psychiatric hospital. This way, the domestic court based its decision on an objective and recent medical expert opinion.

12. The Government notes that the present judgment became final only in July 2022 and that there are not yet many examples of similar domestic case-law. However, as shown above, the Constitutional Court took on board the Court's findings and will be applying them in similar cases, thus consistently developing Convention-compliant jurisprudence capable of preventing similar violations. That said, in order to ensure proper application of relevant provisions of the Protection of Persons with Mental Disorders Act, as of 2022 the Judicial Academy has been organizing workshops for judges and judicial advisors of both municipal and county courts. So far, 3 workshops were organized for 44 members of judiciary. In addition, the *Miklić* judgment was recently analyzed in the paper "*Criminal law aspects of recent decisions of the courts of the Council of Europe and the European Union - 2022*" which was presented at a seminar attended by 165 members of judiciary. The Judicial Academy also plans to include European Court's findings in *Miklić* in future educations on this topic.
13. In addition to the above, the authorities also ensured publication measures with a view to raise awareness of domestic judges on the European Court's findings in this case. The judgment was translated into Croatian and published on the [webpage](#) of the Office of the Representative of the Republic of Croatia before the European Court of Human Rights and the [webpage](#) of the Constitutional Court.
14. Furthermore, the Council of Experts for the Execution of European Courts Judgments has been informed of the judgment through a short summary provided by the Office of the Representative (which includes the Constitutional Court and Supreme Court).
15. The competent authorities have therefore been made aware of the European Court's findings and the need to ensure consistent adjudication in line with the Convention standards.

IV. JUST SATISFACTION

16. The Government notes that the applicant did not submit a claim for just satisfaction.

V. CONCLUSION

17. As regards the individual measures, the Government considers that the violation ceased, and that the applicant no longer suffers consequences of the violation sustained.
18. As regards the general measures, the Government furthermore considers that the measures taken are capable of preventing similar violations.
19. The Government therefore deems that all the measures required by Article 46, paragraph 1 have been adopted.