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Meeting: 1514th meeting (December 2024) (DH)

Item reference: Action Plan (08/10/2024)

Communication from Montenegro concerning the case of Sinistaj v. Montenegro (Application No. 31529/15)

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Réunion : 1514^e réunion (décembre 2024) (DH)

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Communication du Monténégro concernant l'affaire Sinistaj c. Monténégro (requête n° 31529/15) (**anglais uniquement**)

Podgorica, 8 October 2024

DGI

08 OCT. 2024

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

UPDATED ACTION PLAN

Siništaj v. Montenegro

Application no. 31529/15

Judgment of 23 September 2021, final on 23 September 2021

I CASE DESCRIPTION

1. This case concerns a violation of the applicant's right to fair trial on account of excessive length of proceedings before the Constitutional Court of Montenegro („Constitutional Court“) that exceeded four years (from 2010 to 2014) (Article 6§1).

2. Particularly, the European Court of Human Rights („the Court“) did not consider that the issues before the Constitutional Court were exceptionally complex, or that the impact of the Constitutional Court's judgment went beyond the individual application, such as to justify the protracted character of the proceedings before that court, all the more so given that it took the ordinary courts less than three years and one month to conduct the entire criminal proceedings involving seventeen defendants at three levels of jurisdiction (§27, *Siništaj*).

3. The Court observed as well that the Constitutional Court appeared to have performed only one procedural activity, which was to obtain the case file from the relevant ordinary court (§28, *Siništaj*).

II INDIVIDUAL MEASURES

4. In response to the above-mentioned Court's findings, the authorities have taken measures to ensure that the applicant is provided with an adequate redress for the negative consequences sustained.

A. Measures aimed at bringing the violation to an end

5. At the outset, the Montenegrin authorities would like to recall that the Court noted that the impugned proceedings ended on 18 December 2014, when the Constitutional Court's decision served on the applicant's representative (§26, *Siništaj*).

6. In view of the above, the authorities therefore consider that the violation has been brought to an end prior to the present judgment.

B. The applicant's redress

7. It is recalled that the applicant claimed EUR 6,000 in respect of non-pecuniary damage and EUR 15,525 in respect of costs and expenses before the domestic courts and the Court (§35, *Siništaj*).

8. The Court therefore awarded the applicant EUR 1,500 in respect of the non-pecuniary damage suffered and the sum of EUR 450 in respect of the costs and expenses incurred before the Court (§§37-38, *Siništaj*).

9. In view of the above, the authorities consider that the violation has been brought to an end and that the applicant has been redressed for the damage sustained by way of just satisfaction awarded by the Court.

III GENERAL MEASURES

10. In response to the Court's findings a number of measures already taken and planned to be taken in order to prevent similar violations, notably the excessive length of proceedings before the Constitutional Court, are set out below.

A. Situation in the Constitutional Court

1. Judges of the Constitutional Court

11. At the outset, the authorities avail themselves of the opportunity to explain the composition of the Constitutional Court. Namely, the Constitution of Montenegro

stipulates that the Constitutional Court has seven judges elected by the Parliament of Montenegro by a 2/3 majority. A judge of the Constitutional Court is elected for a period of 12 years. A person who enjoys the reputation of a prominent lawyer with at least 40 years of age and 15 years of work experience in a legal profession, may be elected as a judge of the Constitutional Court. Judges of the Constitutional Court elect the President of the Constitutional Court among their members to a three-year term.

12. Furthermore, the authorities would like to point out to the fact that the Constitutional Court was in a reduced composition in the previous period because four judges were retired meanwhile, so the Constitutional Court operated in an incomplete composition of three judges in total. In fact, on 30 December 2020, at its first session, the Constitutional Committee of the Parliament of Montenegro received the Information on the termination of the mandates of two judges of the Constitutional Court of Montenegro and adopted the Proposal of Decisions on the termination of functions of two judges of the Constitutional Court.

13. On 15 July 2021, at the sixth session of the Constitutional Committee of the Parliament of Montenegro, no candidate was elected from the list of candidates for two judges of the Constitutional Court since no candidate received the required majority.

14. The steps were however taken to rapidly ensure the election of outstanding judges of the Constitutional Court. In particular, on 26 July 2021, at its seventh session, the Constitutional Committee of the Parliament of Montenegro rendered the decision to announce a public call for the election of two judges of the Constitutional Court.

15. On 14 October 2021, the list of candidates who applied for the public call on the election of two judges of the Constitutional Court was published on the Parliament of Montenegro's website.

16. At the 12th session of the Constitutional Committee of the Parliament of

Montenegro held in the period from 30 November 2021 to 9 December 2021, candidates for two judges of the Constitutional Court were interviewed. The 12th session of the Constitutional Committee ended with these interviews, but the Constitutional Committee did not propose to the Parliament the list of the candidates for two judges of the Constitutional Court.

17. On 25 January 2022, the Constitutional Committee of the Parliament of Montenegro repeatedly announced a public call for the election of one judge of the Constitutional Court. The deadline for the candidates to apply was 30 days from the date of the announcement of the public call. The list of the registered candidates was published on the website of the Parliament of Montenegro and available to the public at least 10 days after the date of the publication.

18. On 26 May 2022, the Constitutional Committee of the Parliament of Montenegro announced a public call for the election of one judge of the Constitutional Court, meanwhile on 1 August 2022, 25 and 26 December 2022 it announced the public calls for the election of four judges of the Constitutional Court.

19. Furthermore, on 13 September 2022 and 17 January 2023, the Constitutional Committee of the Parliament of Montenegro carried out the consultative hearing of the candidates who applied for the election of four judges of the Constitutional Court.

20. On 21 September 2022, the Constitutional Committee of the Parliament of Montenegro, drafted a proposal on the termination of function of one judge of the Constitutional Court which was submitted to the Parliament of Montenegro.

21. In conclusion, on 27 February 2023, the members of the Parliament of Montenegro at the 3rd extraordinary session in 2023, elected three judges of the Constitutional Court. The last outstanding judge of the Constitutional Court was elected on 22 November 2023 by the Parliament of Montenegro, thereby a full composition of the Constitutional Court was achieved.

22. Having in mind that one current judge of the Constitutional Court will fulfill conditions for the termination of his employment by force of law, and thus also the conditions for exercising a right to old-age pension on 27 May 2024, the Constitutional Committee of the Parliament of Montenegro published a public call for the election of one judge of the Constitutional Court on 22 January 2024. On 30 August 2024 the Parliament of Montenegro noted the termination of the judicial function of the judge of the Constitutional Court who fulfilled the conditions for an old-age pension.

23. On 5 March 2024, at the 7th session of the Constitutional Committee of the Parliament of Montenegro the list of six eligible candidates for a judge of the Constitutional Court was drafted.

24. In the period from 10 May to 14 June 2024 the six candidates for the post of a judge of the Constitutional Court were interviewed by the Constitutional Committee of the Parliament of Montenegro. However, on 30 July 2024 the above-mentioned Committee at its 10th session concluded that no proposal for the election of one judge of the Constitutional Court was determined because no candidate received the required majority of votes. Therefore, the Committee concluded that the procedure for the election of one judge of the Constitutional Court should be repeated. The Government of Montenegro will inform the Committee of Ministers of any updates in this regard.

25. On 20 March 2024, the Bill amending the Law on the Constitutional Court of Montenegro („the Bill“) which concerns the increase of age limit for retirement of judges of the Constitutional Court was submitted to the Parliament of Montenegro. The proposed provision stipulates that a term of office of a judge of the Constitutional Court terminates from the moment of reaching the age of 67 and 40 years of work in service cumulatively.

26. In the reasoning of the Bill, it is noted that the proposed amendment was aimed at improving the current legal framework, enabling more efficient work of the Constitutional Court and creating conditions for performing judicial duties in

accordance with the requirements of the Constitutional Court and the requirements of the overall system of the state bodies in Montenegro. Furthermore, it is noted that the proposed amendment was aligned with the legal framework in the neighbouring and other countries, where termination of a mandate of the Constitutional Court's judges was regulated by separate laws which prescribe different conditions for the acquisition of right to an old-age pension for judges of constitutional courts apart from general conditions for other employees in public sector, thereby acknowledging the competence and professional experience of the Constitutional Court's judges (e.g. in Serbia the age of 65 and 45 years of work in service, in Bosnia and Herzegovina the age of 70 and in Croatia judges of the Constitutional Court perform their function until the expiry of their term of office regardless of their age). However, the proposed Bill was withdrawn on 16 April 2024.

2. Advisors of the Constitutional Court

27. On 31 January 2022, the Human Resources Management Authority advertised an internal vacancy notice to fill up five vacant positions for the advisory staff at the Constitutional Court. The procedure was completed in April 2023, resulting in the election of only two legal advisors.

28. By the letter of 23 September 2024, the President of the Constitutional Court of Montenegro highlighted that the Constitutional Court at the time operated with only 31 civil servant which was insufficient for large scope of jurisdiction of Constitutional Court and constant influx of cases. Out of 55 working places for civil servants foreseen by the Act on Internal Organisation and Systematization, there were 24 vacant positions, *i.e.* occupancy rate amounts to only 56%, which complicated the functioning of the Constitutional Court.

29. Furthermore, the President of the Constitutional Court emphasized that only nine civil servants (a head of the department and eight legal advisors) were working at the time in the department for constitutional complaints, even though there were 19 positions total foreseen by the Act on Internal Organisation and Systematization in that

department. The low occupancy rate was due to inability to fill vacant positions and maternity leave.

30. In the Department for procedural requirements, case law and documentation, at the time there were only three employees efficiently working, even though there were 6 professional staff positions foreseen by the Act on Internal Organization and Systematization.

31. Moreover, the Department for normative acts for the period of more than two years had been functioning with only two employees, even though the Act on Internal Organization and Systematization provided for eight civil servants (a head of department, six legal advisors and one advisor).

32. To sum up, out of total 33 prescribed professional staff positions which work on constitutional court cases, only 14 employees were effectively working, due to inability to fill vacant positions, temporary incapacity for work and maternity leave.

33. The President of the Constitutional Court emphasized that the Constitutional Court had not filled any vacant advisory positions during the period of previous almost two years.

34. The Government would like to stress out that recruitment procedure, which is carried out by Human Resources Management Authority is lengthy, inadequate and without any guarantees that it will result in selection of the best candidates. Furthermore, that procedure is not in compliance with the position and role of the Constitutional Court in the legal system.

35. In that regard, the president of the Constitutional Court submitted an Initiative on amendments to the Law on Civil Servants and Employees to the Constitutional Committee of the Parliament of Montenegro, with the aim of ensuring the autonomous election of civil servants by the Constitutional Court itself, which will contribute to autonomy and independence, as well as efficiency of the Constitutional Court.

36. On 26 January 2024, the Constitutional Committee of the Parliament of Montenegro held a consultative hearing on the Initiative on amendments to the Law on Civil Servants and Employees. Consequently, the Constitutional Committee in its report of 1 February 2024 supported the Initiative and agreed on its signing by the president of the Committee and its submittal to the Parliament of Montenegro with a view to its further implementation.

37. On 29 July 2024 the Bill amending the Law on Civil Servants and Employees was submitted to the Parliament of Montenegro, with the aim of enabling the Constitutional Court to gain independence and autonomy in the procedure of announcing vacant work positions and in the employment procedure of civil servants and employees of that Court.

38. In the reasoning of the Bill it is stated that the Constitutional Court is the *sui generis* authority which secures the respect and the application of the Constitution and decides on the matters within its jurisdiction in an autonomous and independent manner. Moreover, it is stated that the Constitutional Court failed to be autonomous and independent regarding the employment procedure of its civil servants and employees, but, as the practice indicated, it conducted, with the assistance of the Human Resources Management Authority, lengthy proceedings that did not always result in the selection of an adequate candidate, being in contravention with the practice of the Constitutional Courts of the region and Europe, which act autonomously in prescribing and conducting the procedures of the selection of their employees.

39. The Bill is currently under procedure before the Parliament of Montenegro. The Government of Montenegro will inform the Committee of Ministers of any updates in this regard.

3. Statistical data of the Constitutional Court

40. On 3 November 2022 the Representative of Montenegro before the European Court of Human Rights („the Representative of Montenegro“) submitted official letters

to the President of the Constitutional Court and to the President of the Constitutional Committee of the Parliament of Montenegro in which she pointed out to the significant role of the Constitutional Court, as the last instance to which citizens were obliged to address to, before lodging an application to the Court, in ensuring efficient, adequate and effective protection of human rights and fundamental freedoms of Montenegrin citizens at the national level.

41. In that regard, the Representative of Montenegro emphasized that the Constitutional Court had to find solutions in order to effectively decide on the lodged constitutional complaints and to avoid the potential European Court's findings that the constitutional complaint did not represent an effective remedy in Montenegrin national system, which could produce extremely unfavorable repercussions on the entire legal order of the State of Montenegro.

42. The Representative of Montenegro requested by that letter and on a number of occasions from the President of the Constitutional Court to submit to the Office of the Representative of Montenegro before the European Court of Human Rights („the Office of the Representative“) all the relevant information on the overall procedure related to the processing of constitutional complaints before the Constitutional Court, as well as statistical data on the number of constitutional complaints currently pending before the Constitutional Court and the number of resolved cases along with the number of trainings and seminars held in order to improve the quality and effectiveness of the work of the Constitutional Court.

43. The Presidents of the Constitutional Court of Montenegro by their letters of 23 February 2023, 22 September 2023, 29 February 2024, 3 April 2024 and 23 September 2024 presented the following information regarding the cases before the Constitutional Court initiated by the constitutional complaints:

Year	Filed	Resolved
2019	2154	1197
2020	1329	1264
2021	1220	1433
2022	1004	1613
2023	1161	1549
2024*	914	996

* until 31 July 2024

The average length of proceedings before the Constitutional Court in the procedure initiated by a constitutional complaint	
2021	2 years and 5 months
2022	2 years and 6 months
2023	2 years and 2 months
2024*	1 year and 11 months

* until 31 July 2024

Year	Accepted	Dismissed	Rejected
2019	88	748	348
2020	86	686	446
2021	133	961	319
2022	124	1192	277
2023	178	825	501
2024*	109	517	370

* until 31 July 2024

44. The President of the Constitutional Court, by her letter of 23 September 2024, informed the Office of the Representative that the total number of constitutional complaints pending before the Constitutional Court at the time was 2107.

45. Furthermore, the President of the Constitutional Court informed the Office of the Representative by the same letter that on 27 June 2024 the Constitutional Court had adopted the conclusion that the backlog regarding constitutional complaints filed to the Constitutional Court until the end of 2021 should be resolved by the end of January 2025.

B. Training and awareness-raising measures

46. On 30 September 2019 the Representative of Montenegro co-authored the „Guide to Article 6 of the European Convention on Human Rights - Right to a fair trial“ with Ms Zdenka Perović, the Deputy Protector of Human Rights and Freedoms of Montenegro. The publication was published by the Center for Democracy and Human Rights (CEDEM) with the intention of serving to the legal practitioners. This document puts a particular focus on the European Court's standards regarding the right to a trial within a reasonable time.

47. In March 2021 the „Handbook with selected case-law from the recent practice of the European Court of Human Rights“ was published, as a result of a long-standing cooperation between the Office of the Representative and the AIRE Centre from London, supported by the British Embassy in Podgorica. The purpose of drafting and publishing the Handbook lies in the process of enhancing the notion of the protection of human rights and fundamental freedoms within the scope of our State. The above-mentioned Handbook aims at better understanding and implementation of the human rights standards that are bound to be protected at the national level.

48. This Handbook serves as a useful tool to all individuals and legal professionals, for the purpose of obtaining information on the latest case-law in an easy, acceptable, and concise manner. It is of crucial importance to possess a reliable and up-to-date knowledge on the standards that the Court itself has established through its decisions.

49. During the past period the Office of the Representative was involved as a capacity building partner in the activities carried out by the EU Council of Europe Joint Programme Horizontal Facility for Western Balkans and Turkey. To this end, the Representative of Montenegro participated in a significant number of seminars, round tables, trainings, conferences and meetings, with the purpose of implementing the standards established by the Court through its case-law, including those relating to right to a trial within reasonable time.

50. On 21 and 22 June 2021 the Academy of European Law (ERA) organized a two-day online seminar on "The Charter of Fundamental Rights of the European Union - the right to a fair trial". This was one in a series of seminars planned by ERA for 2021, the concept of each of these seminars was conceived as a combination of presentations and case studies. The abovementioned seminars were intended for judges and state prosecutors and represent an excellent opportunity for judges to improve their knowledge of EU charters, through discussions with experts from all over Europe on the most relevant practical issues and the latest developments in this field.

51. The judges were also enabled to become part of the European network of legal experts in the field of protection of fundamental rights. The key topics of this seminar were: Protection of fundamental rights in Europe; the Scope of application and interpretation of the Charter of Fundamental Rights of the European Union in national legal systems; Article 6 of the European Convention on Human Rights and Article 47 of the Charter of Fundamental Rights of the European Union; effective judicial protection; access to court and defense rights.

52. On 28 and 29 October 2021 the advisors of the Constitutional Court participated at the training „Application of the case-law of the European Court of Human Rights“, organised within the project activities of the Programme Office of the Council of Europe in Podgorica, with the aim of discussing relevant issues which provoke certain dilemmas or inconsistencies in the case-law of the Constitutional Court of Montenegro. At the abovementioned training the advisers took the opportunity to exchange the views on the effectiveness of the constitutional complaint.

53. On 25 and 26 November 2021 the Centre for Training in Judiciary and State Prosecutor's Office („the Centre for Training“), in cooperation with the AIRE Centre in London, organized the training on "Article 6 of the European Convention on Human Rights", within the programme of continuous training of judges and state prosecutors for 2021. The training was attended by 19 participants (14 judges, 4 state prosecutors, and 1 judicial advisor).

54. On 29 and 30 March 2022 the Centre for Training organized a two-day training session on „Article 6 of the European Convention on Human Rights – Right to a fair trial“.

55. In May 2022 the Analysis of the Judgments of the European Court of Human Rights in Respect of Montenegro delivered in 2021 was published, in cooperation with the Office of the Representative and the Supreme Court of Montenegro, with the support of the AIRE Centre in London and the British Embassy in Podgorica. The present judgment was, inter alia, analysed in this publication with the particular focus on the relevant standards of the European Court related to the length of proceedings before the Constitutional Court of Montenegro.

56. On 23 February 2023 the Centre for Training organized a training on „Article 13 of the European Convention on Human Rights: application of an effective remedy at the national level and the effectiveness of the constitutional complaint“. The Representative of Montenegro gave a lecture on the topic „Application of an effective remedy at the national level - a case study.“ The training was attended by 9 participants (4 judges and 5 prosecutors).

57. On 26 February and 11 March 2024 the Centre for Training organized trainings on „Right to an effective legal remedy“ within the programme of initial training of judges and state prosecutors for 2024. The Constitutional Court's judge held a lecture on the relevant topic. The training was attended by 19 candidates for judges and 3 candidates for state prosecutors.

58. On 26 March 2024 the Centre for Training organized a training within the programme of initial training of judges and state prosecutors for 2024 on European Convention on Human Rights. The training on „Right to a fair trial“ was held by a former judge of the Supreme Court of Montenegro. The training was attended by 18 candidates for judges and 3 candidates for state prosecutors.

59. The Centre for Training within its annual programme for continuous trainings of

judges and state prosecutors for 2024 envisaged a training on „Article 13 - Right to an effective legal remedy“ in November 2024 and a two-day training on „Article 6 – Right to a fair trial“ with a focus on a trial within a reasonable time in Decemer 2024.

C. Publication and dissemination measures

60. The Court's judgment rendered in the present case was published and widely disseminated in order to prevent similar violations. In particular, in October 2021 the judgment *Siništaj* was translated and published in the Official Gazette of Montenegro no. 110/21. Moreover, the judgment in Montenegrin is available on the website of the Office of the Representative (<https://www.gov.me/kzcg>), the website of the Supreme Court of Montenegro (<https://sudovi.me/vrhs/sadrzaj/ba3M>), HUDOC and in the legal base „Catalogue of regulations“ which is electronically available to all legal professionals.

61. The Court's judgment was also widely disseminated among the legal community in the country. In particular, the Representative of Montenegro submitted the judgment together with an explanatory note on the violations found to the Supreme Court of Montenegro, the Constitutional Court, the Parliament of Montenegro – the Committee on Political System, Judiciary and Administration and the Centre for Training of Judiciary and Public Prosecutors.

IV JUST SATISFACTION

62. The authorities ensured that the sums awarded in respect of non-pecuniary damage and costs and expenses in the case of *Siništaj* were paid to the applicant on 16 November 2021 in compliance with the Court's indications the case at hand. The payments were thus conducted within the time-limit set out by the Court.

V CONCLUSION

63. The Montenegrin authorities consider that the applicant was provided redress for the negative consequences sustained and thus invite the Committee of Ministers to

close the supervision on individual measures in the present case.

64. The authorities will inform the Committee of Ministers on the outcome regarding the reduction of the backlog of the Constitutional Court and on the further general measures taken in order to prevent an excessive length of proceedings before the Constitutional Court.

Representative of Montenegro
before the European Court of Human Rights
Katarina Peković

