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Meeting: 1521st meeting (March 2025) (DH)

Item reference: Action Plan (15/01/2025)

Communication from North Macedonia concerning the case of Kitanovska and Barbulovski v. North Macedonia (Application No. 53030/19)

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Réunion : 1521^e réunion (mars 2025) (DH)

Référence du point : Plan d'action (15/01/2025)

Communication de la Macédoine du Nord concernant l'affaire Kitanovska et Barbulovski c. Macédoine du Nord (requête n° 53030/19) (*anglais uniquement*)

Skopje, 15 January 2025

UPDATED ACTION PLAN

Kitanovska and Barbulovski

v.

North Macedonia

Applications nos 53030/19 and 31378/20

Judgment of 9 May 2023, final on 9 August 2023

I CASE DESCRIPTION

- 1 At the outset, it is recalled that in the present case the Court found a violation of the rights of the applicant Ms. Kitanovska (A.no. 53030/19), while the application of Mr. Babrulovski (A.no 31378/20) was rejected as lodged out of time
2. The case concerns a violation of the applicant's right of access to a court resulting from a disproportionate rejection by the courts in 2018 2019 of her objection against a payment order issued by notary public, without examination of merits, for not being lodged through a lawyer as required per domestic law (violation of Article 6 § 1).
- 3 The Court noted that in the circumstances of the present case, where the fee was nearly one sixth of the value of the main claim, and the claim was simple and repetitive, the requirement that the applicant conduct her claim through a lawyer, before a civil court of first instance, was disproportionate (§ 55, *Kitanovska and Barbulovski*)
4. It further observed that the limitation to the access of a court applied automatically, without any possibility for the courts to take into account the specific circumstances of the applicant's case, and without any possibility of obtaining an exemption (§ 58, *Kitanovska and Barbulovski*).

II INDIVIDUAL MEASURES

5. The authorities have taken measures to bring the violation to an end. They are set out below.

A. Reopening of the impugned proceedings

6. The authorities indicate that the domestic legislation provides a concrete and effective avenue to obtain re-examination of the applicant's case. In particular, Article 400 of the Civil Proceedings Act, provides an effective and practical possibility to apply for reopening of the impugned proceedings following a judgment of the European Court finding a violation

7. Acting within its legal competences and for the purposes of ensuring proper execution of the present judgment, on 20 September 2023 the Government Agent sent a recommendation to the Basic Civil Court Skopje and the Skopje Court of Appeal when deciding upon a request for reopening of the impugned proceedings to have in consideration the Court's principles stated in the present judgment and the reasons for the violation found.
- 8 On 7 September 2023 the applicant filed a request for reopening of the impugned proceedings. On 25 September 2023 the Basic Civil Court Skopje dismissed the applicant's request as unfounded. The applicant challenged this decision, and the Skopje Court of Appeal accepted the applicant's appeal, quashed the decision from 25 September 2023 and remitted the case. In the remitted proceedings, the Basic Civil Court Skopje requested from the applicant to submit the applications from the present case in order to determine whether she is the applicant in the case at hand. The applicant did not act on this request. Furthermore, the Basic Civil Court Skopje ordered for the request to be submitted to the plaintiff for reply. Since the delivery was unsuccessful, the Basic Civil Court Skopje the court requested from the applicant to submit information on the registry status of the plaintiff. Since the applicant did not submit the requested information, the Basic Civil Court Skopje dismissed the request for reopening of the impugned proceedings with a decision of 15 October 2024. The applicant challenged this decision before the Skopje Court of Appeal.
- 9 The proceedings are currently pending before the Skopje Court of Appeal. The Government shall keep the Committee informed of further developments in this respect.

B. The applicants' redress

5. It is recalled that the applicant claimed MKD 20,000 (equivalent to approximately EUR 320 euros) in respect of pecuniary damage and EUR 9,000 in respect of non-pecuniary damage.
6. Stating that it cannot speculate as to the outcome of the proceedings had the claim against the applicant been examined on the merits, the Court rejected the applicant's claim in respect of pecuniary damage. The Court awarded the applicant the sum of EUR 900 in respect of non-pecuniary damage (§ 65-67, *Kitanovska and Barbulovski*).

III GENERAL MEASURES

7. Necessary measures have been taken to prevent similar violations. They are set out below.

A. Government Agent's recommendation

8. At the outset the authorities would like to recall that in the present judgment the Court found a violation of the applicant's right of access to a court resulting from a disproportionate rejection by the courts in 2018–2019 of her objection against a

payment order issued by notary public, without examination of merits, for not being lodged through a lawyer as required per domestic law (§ 58, *Kitanovska and Barbulovski*).

- 9 In response to the Court's findings and within its legal competences, for the purposes of ensuring proper execution of the present judgment, on 3 August 2023 the Government Agent sent a recommendation to the Appellate Courts, to have in consideration the findings of the Court in the present judgment when deciding in similar cases, as well as to consider the possibility of adopting a conclusion or a stance reflecting the Courts findings in order to prevent similar violations. Furthermore, on the same date the Government Agent sent a recommendation to the Ministry of Justice to undertake measures for appropriate legislative changes (see paragraph below)

B. Conclusion of the Supreme Court and the Appellate Courts

10. In response to the Court's findings and following the Government Agent's recommendation to this end, on 19 June 2024 the Supreme Court and the four Appellate Courts held a meeting and adopted a conclusion with a view of ensuring respect of the Convention. Pursuant to this conclusion, the objection against a payment order issued by notaries public that does not contain a lawyer's signature and stamp is considered as an objection filed by an authorized person in accordance with Article 6 and 13 of the Convention. In the explanation of the conclusion, it was reiterated the obligation of the domestic courts to apply the Court's judgments and its findings when deciding
11. This conclusion was [published](#) on the webpage of the Supreme Court making it accessible to the judges, legal professionals and institutions
12. The authorities deem that the taken measures ensured that the competent authorities are made aware of the Court's findings, which, together with the publication and dissemination measures outlined below will be capable of preventing similar violations.

C. Legislative changes

13. On 26 December 2023 the Government adopted the Action Plan for Implementation of Development Sector Strategy for Justice 2024 2028. The Action plan envisages, *inter alia*, preparation of amendments to the Notary Act, to *inter alia*, achieve compliance with the standards of the European Convention on Human Rights. It is envisaged that this measure will be implemented by the fourth quarter of 2027

C. Publication and dissemination measures

14. The authorities provided publication of the Court's judgment in the case at hand in order to make sure that the domestic authorities, including domestic judges are aware of and comply with the findings of the Court's case at hand. The Court's judgment in the present case has, in particular, been published in Macedonian and posted on the website of the Bureau for Representation of the Republic of North Macedonia before the

European Court of Human Rights (www.biroescp.gov.mk), making it available to the public

15. With a view to facilitating dissemination of the judgment and making it accessible to the legal professionals in North Macedonia, the Office of the Government Agent prepared an analysis of the Court's judgment highlighting its most important findings. The Government Agent ensured that the above mentioned analysis and the Court's judgment were transmitted to all relevant judicial authorities and other competent bodies (including, but not limited to the Constitutional Court, the Supreme Court; the Courts of Appeal in Skopje, Bitola, Gostivar and Štip; the Skopje Basic Civil Court; the Administrative Court; the Higher Administrative Court; the Judicial Council; the Ombudsman's Office; the Academy for Training of Judges and Public Prosecutors; the Macedonian Judges' Association; the Bar Association, the Association of Public Prosecutors and the Ministry of Justice)
16. In view of the above, the authorities consider that the general measures and the awareness-raising measures taken together with publication and dissemination measures will be capable of preventing similar violations.

IV JUST SATISFACTION

17. On 31 October 2023 the authorities ensured that the just satisfaction awarded by the Court has been paid to the applicant. Thus, the payment has been made within the deadline set out by the European Court.

V CONCLUSIONS

18. The authorities will inform the Committee of Ministers of further developments regarding the individual measures
19. The authorities furthermore deem that the general measures taken will be capable of preventing similar violations