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

Item reference: Action Plan (29/01/2025)

Communication from Slovenia concerning the case of Dolenc v. Slovenia (Application No. 20256/20)

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

Référence du point : Plan d'action (29/01/2025)

Communication de la Slovénie concernant l'affaire Dolenc c. Slovénie (requête n° 20256/20) (**anglais uniquement**)



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Ms Clare Ovey, Head of Department
Department for the Execution of the Judgments
Council of Europe

DGI

29 JAN. 2025

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

Subject: Revised Action plan for the case Dolenc v. Slovenia

Dear Ms Ovey,

Attached please find Revised Action plan for the case Dolenc v. Slovenia (application no. 20256/20, judgment of 20 October 2022, final on 20 January 2023; judgment on just satisfaction of 22 February 2024, final on 22 May 2024). We will provide you with updates as new developments arise.

Yours sincerely,




Andreja Kokalj
State Secretary

Attach.: Revised Action plan for the case Dolenc v. Slovenia

DGI

29 JAN. 2025

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

Ljubljana, 28 January 2025

REVISED ACTION PLAN

DOLENC v. Slovenia

Application no. 20256/20

Judgment of 20 October 2022, final on 20 January 2023 (first judgment) and
Judgment of 22 February 2024, final on 22 May 2024 (judgment on just satisfaction)

I CASE DESCRIPTION

1. The case concerns the violation of a right to a fair trial due to the recognition in 2017-2019 by Slovenian courts of judgments delivered in Israel in 2005, finding the applicant neurosurgeon liable for approximately 2.3 million euros in medical damages, related to a surgery in 1992, without duly satisfying themselves of the Israeli trial's fairness (violation of Article 6 § 1 of the Convention).
2. The Court found in its first judgment that in their decisions, the Slovenian courts did not attach sufficient weight to the consequences that the non-examination of the witnesses (including the expert on Slovenian law) via the Hague Evidence Convention procedure and the ensuing exclusion of their statements had for the applicant's right to present evidence. It added that this right is a fundamental component of the principle of a fair hearing and the Slovenian courts should have satisfied themselves that it had been respected in the proceedings in Israel before recognising the Israeli judgments (§ 75).
3. On 29 June 2011, E.M. requested the Ljubljana District Court to recognise the above-mentioned Israeli judgments which was allowed on 13 August 2012. The applicant lodged an objection and appeal at Ljubljana District Court, in which he complained that the proceedings in Israel had not been fair, but was unsuccessful with these remedies. On 3 March 2016, he lodged a constitutional complaint. The Constitutional Court dismissed the applicant's complaints concerning the alleged unfairness of the proceedings in Israel because the applicant had failed to raise them in the remedies before the lower courts in a timely manner and remitted the case back to Ljubljana District Court for reconsideration, essentially because it found the lower courts' reasoning concerning the Israeli district court's jurisdiction and the admissibility of uncertified translations to be inadequate.
4. On 12 September 2017, Ljubljana District Court reconsidered the case and dismissed E.M.'s recognition request, finding that there was a lack of reciprocity and a breach of the right to equality of arms related to the exceptionally high award for pecuniary damage. E.M. lodged an appeal and the Supreme Court found in favour of E.M. It observed that an appeal against the recognition of a foreign decision based on public policy was only justified when the effects of such recognition would be contrary to the fundamental principles of Slovenian legal and social order (§ 28). The applicant lodged a constitutional complaint in which he disputed, *inter alia*, that he had waived his right to participate in the Israeli proceedings, but on 28 October 2019 the Constitutional Court in a reasoned decision decided not to accept the applicant's constitutional complaint for consideration (§§ 29-30).

II INDIVIDUAL MEASURES

5. The authorities have taken measures aimed at redressing the applicant, stopping the enforcement proceedings and bringing the violations to an end.

A. Redress of the applicant

Non-pecuniary damage

6. The applicant claimed EUR 500,000 in respect of non-pecuniary damage. Making its assessment on an equitable basis, the Court in its first judgment awarded the applicant just satisfaction for non-pecuniary damage in the amount of EUR 9,600 (§§81, 83).

Pecuniary damage

7. In respect of pecuniary damage, the applicant claimed that the Court should consider the total sum of obligations arising from the recognised Israeli judgments together with associated interest, costs and taxes, which amount to at least EUR 3.4 million (§ 78). The Court in its first judgment considered that the question of the application of Article 41 in respect of pecuniary damage was not ready for decision, reserved the matter and invited parties to submit their written observations (§ 80 and decision § 3(b) and (c)).
8. Following the observations of the parties, the Court in its consequent judgment on just satisfaction awarded the applicant EUR 390.000 for pecuniary damage, which is corresponding to the pecuniary loss he sustained in the enforcement procedure (EUR 329.306) and interests up to 30 November 2023 (§22).
9. The Court also obliged Responding state to ensure that applicant's property is not subject to further enforcement of the claim arising from the Israeli judgments and to compensate him for any sums taken by way of such enforcement after 30 November 2023 without delay (§23).
10. Just satisfaction for non-pecuniary and pecuniary damage, together with the costs and expenses has been paid within the time-limit set by the European Court.

B. Measures aimed at stopping the enforcement proceedings and bringing the violation to an end

11. The applicant and the authorities adopted several steps in order to stop the ongoing enforcement proceedings against applicant and the violation.

Reopening procedure

12. The applicant filed a motion to reopen the proceedings of the recognition of the Israeli judgement (no. I R 367/2016) at Ljubljana District Court in line with clause 10 of Article 394 of the Civil Procedure Act, despite the fact, that Civil Procedure Act does not explicitly provide for a possibility of reopening of the proceedings on the basis of a finding by the Court before domestic courts. State Attorney's Office lodged an intervention to support a motion to reopen the proceedings.
13. Ljubljana District Court suspended the proceedings and filed a request for the review of the constitutionality of the Article 394 of the Civil Procedure Act before the Constitutional court.

14. The Constitutional court rejected the request for the review of the constitutionality of the Article 394 Civil Procedure Act (Decision U-I-200/23-26 of 20 June 2024, published on 15 July 2024) and held that the proceedings could be reopened on the basis of a constitutionally compatible interpretation of Article 394, point 2, of the Civil Procedure Act, according to which reopening of the proceedings may be requested if a party has been denied the opportunity to be heard by the court by means of an unlawful procedure, especially if the Court has found a violation of Article 6 § 1 of the Convention due to the violation of the right to an adversarial procedure and to be heard by the Israeli court.
15. Following the Constitutional court decision Ljubljana District Court adopted a decision on 23. July 2024 to continue the suspended proceedings. E.M. filed an appeal that has not been decided yet.

Enforcement procedure

16. Following the first Court's judgment, the applicant has lodged several applications for a stay of enforcement of deposited funds (the applicant's pension) and immovable property, based on Article 71 of the Enforcement and Security Act. State Attorney's Office filed requests for intervention in enforcement proceedings, which was not granted.
17. Initially the local courts refused the applicant's applications to stay the enforcement proceedings, however, following the legal remedies by the applicant, at the present all the enforcement proceedings on immovable property and on funds are stayed until the final decision on a motion to reopen the proceedings of the recognition of the Israeli judgements. Ministry of Justice provided additional explanations in 2024 in relation to the execution process to support the requests of the applicant.
18. The authorities have been informed that the applicant passed away on 16 January 2025.

Dialogue with E.M.

19. Following the Court's first judgment the State Attorney's Office organized a meeting with the applicant and his lawyer and a meeting with E.M.'s lawyer, which took place in February 2023 in order to reach a possible agreement in respect of pecuniary damage, however, there has been no possibility of an agreement.
20. Following the Court's judgment on just satisfaction (and prior to the publishment of Constitutional Court decision), the Ministry of Justice in June 2024 invited E.M.'s lawyer to a meeting for addressing the situation of E.M., however she declined all suggested dates for a meeting. She expressed E.M.'s willingness for a settlement with the Republic of Slovenia only for the amount of EUR 11.610.395,34 as defined in his claim and the enforcement order No I 1474/2020.

III GENERAL MEASURES

21. The Court noted that the violation at hand resulted from failing of Slovenian courts to duly satisfy themselves that the trial in Israel had been fair, before recognising the Israeli judgments, by which they breached their duty under Article 6 § 1 of the Convention (§76).
22. The authorities would like to point out that the violation in this case resulted from the decisions made by domestic courts and not from the domestic legislation.

23. The authorities therefore consider that the facts of this case constitute an isolated occurrence. In this respect the Court's judgment publication and dissemination would suffice to ensure that the domestic courts' attention is drawn to the Court's findings and will be capable of preventing similar violations. To corroborate such conclusion, the authorities would like to note that no applications alleging similar violations are pending before the European Court.
24. The Slovenian translation of the judgment has been published on the website of the State Attorney's Office (<http://www2.gov.si/dp-rs/escp.nsf>). It has been therefore made available to judges and legal professionals alike and can be easily accessed.
25. A summary of the judgment has furthermore been published in monthly journal for judges "Sodnikov Informator", No. 10-11/2022, December 2022 and No. 12/2024, April 2024. The Sodnikov informator is also available on the website of the Supreme Court of the Republic of Slovenia (http://www.sodisce.si/sodna_uprava/sodnikov_informator/). This journal is aimed at judges of the domestic courts and will ensure that the European Court's findings are made known to them.
26. The Court's judgement was widely quoted in leading national legal journals and in the national media:
- Ustavno sodišče o zadevi Vinko Dolenc (Constitutional Court on the Vinko Dolenc case), Pravna praksa, 8. 12. 2022, no. 46-47, p.25;
 - Vrhovno sodišče o priznanju izraelske sodbe v primeru Vinko Dolenc (The Supreme Court on the recognition of the Israeli judgement in the case of Vinko Dolenc), Pravna praksa, 8. 12. 2022, no. 46-47, p. 26;
 - Alenka Antloga, Priznanje sodbe izraelskega sodišča v Sloveniji in kršitev pravice do poštenega sojenja (Recognition of the judgment of the Israeli court in Slovenia and violation of the right to a fair trial), Pravna praksa, 8. 12. 2022, no. 46-47, p. 34;
 - Nevrokirurg Dolenc: Ni besed, koliko sem pretrpel (Neurosurgeon Dolenc: There are no words for how much I suffered), daily newspaper Delo, 20. 10. 2022;
 - Neštetokrat sem se vprašal, ali iti naprej ali se umakniti (Countless times I asked myself whether to go forward or retreat), daily newspaper Delo, 25. 2. 2023;
 - Morda sem premalo dal svoji družini (Maybe I didn't give enough to my family), daily newspaper Delo, 30. 5. 2023;
 - Interview with the applicant on national television RTV Slovenija, 4.3.2023.
27. In view of the above measures, the authorities consider that judges as well as other legal professionals and public at large are now aware of the European Court's findings in this case and the need to comply with the Convention requirements in similar situations.

IV JUST SATISFACTION

28. The Government reiterates that the payment of just satisfaction was made available to the applicant within the time-limit set by the European Court.
29. The compensation awarded for non-pecuniary damage (EUR 9.600), together with the amount awarded in respect of costs and expenses (EUR 6.000), in total EUR 15.600, was disbursed to the applicant on 23 January 2023.

30. The compensation awarded for pecuniary damage (EUR 390.000) and subsequent additional damage (EUR 3.123,79) together with the amount awarded in respect of costs and expenses (EUR 3.100), in total EUR 396.223,79 was disbursed to the applicant on 3 June 2024.

V STATE OF EXECUTION OF JUDGEMENT

31. The authorities will inform the Committee of Ministers on the outcome of the activities taken in the context of individual measures to stop the consequences of a violation, in particular on the domestic court's decision on reopening of proceedings.
32. The authorities deem that the above-mentioned general measures taken are capable of preventing similar violations.