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Date: 24/10/2019

DH-DD(2019)1221

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Meeting: 1362nd meeting (December 2019) (DH)

Communication from a NGO (30/09/2019) in the Stojkovic group of cases v. Serbia (Applications No. 24899/15)

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 : 1362^e réunion (décembre 2019) (DH)

Communication d'une ONG (30/09/2019) dans le groupe d'affaires Stojkovic c. Serbie (requête n° 24899/15) **(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.

DGI

30 SEP. 2019

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

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30th September 2019

SUBMISSION

**in accordance with Rule 9.2 of the Rules of the Committee of Ministers
regarding the supervision of the execution of judgments and of terms of
friendly settlements**

**by the Association for the Protection of Constitutionality and Legality
in respect of the case of**

STOJKOVIĆ v. Serbia (Application No. 24899/15)

I INTRODUCTION – Description of the case and of the organization

1. This case concerns a violation of the applicant's right to a fair trial within reasonable time on account of excessive length of administrative proceedings lasting from October 2005 until March 2011, in violation of Article 6 of the Convention.
2. The Association for the Protection of Constitutionality and Legality (Удружење за заштиту уставности и законитости, 'the Association') is a local non-governmental professional association of citizens, with headquarters in Belgrade. The Association is dedicated to promote the rule of law, including the protection of the right to a fair trial within reasonable time.

II EXECUTIVE SUMMARY

3. With this submission, the Association challenges the Government's assertions contained in paragraphs 6 and 7 of its Action Report ([DH-DD\(2019\)982](#)) dated 11 September 2019, and asks for the supervision of the execution of the case to be continued. In particular, the Association:
 - points out that the Serbian authorities have not adopted any general measure to prevent violations similar to the violation found by the European Court of Human Rights (hereinafter 'ECtHR') in *Stojković v. Serbia*; and

- emphasizes that the case of *Stojković v. Serbia* (App. no. 24899/15) is not an isolated case, by providing examples from Serbian judicial practice as evidence that violations similar to the violation found by the ECtHR in *Stojković* are quite frequent in Serbia.

III GENERAL MEASURES

a) The Serbian Government failed to adopt general measures capable of preventing future violations

4. The Government stated that *“the measures aimed at preventing excessive length of administrative proceedings have been taken within the context of the Pejčić case”* (paragraph 6 of the above-mentioned Action Report), which was closed by the Committee of Ministers in February 2018.
5. In its Action Report concerning the Pejčić case ([DH-DD\(2017\)625](#) of 1 June 2017), the Government had noted: *“The issue of excessive length of administrative proceedings does ... not constitute a major problem in Serbia calling for comprehensive measures to resolve it. The authorities therefore consider that no other measures are necessary apart from publication, dissemination and awareness raising measures”* (paragraph 21).
6. Against this backdrop, it may be misleading when the Government, in its Action Report on *Stojković*, suggests that measures aimed at preventing the excessive length of administrative proceedings have been taken in the context of the Pejčić case. Keeping in mind the content of the Action Report in the Pejčić case, it seems obvious that the Serbian authorities, after the ECtHR handed down its judgment in *Stojković v. Serbia*, did not adopt any measures aimed at preventing the excessive length of administrative proceedings.

b) *Stojković v. Serbia* case is not an isolated case

7. General measures will usually be required unless a violation is closely linked to the specific circumstances of the case at stake, i.e. unless the case is isolated. If the case is not an isolated one, the respondent state should adopt general measures in order to prevent similar violations in future. It is not enough to state without explanation and substantiation that the case is an isolated one. The isolated nature of the violation must be demonstrated by indicating what specific circumstances of the case rule out the recurrence of similar violations in future. The violation found by the ECtHR in the *Stojković* case did not hinge on facts unique to this case which would make the occurrence of similar violations in future unlikely.
8. The ECtHR found a violation of Article 6 ECHR in the *Stojković* case because the administrative proceeding had lasted for five years and six months. There are many new cases in Serbian judicial practice which show that administrative proceedings are too lengthy. Violations similar to the violation established in *Stojković v. Serbia* are quite frequent in Serbia. Administrative

proceedings and administrative disputes are frequently pending for more than five years. The Association is aware of at least twelve examples of administrative proceedings and administrative disputes pending more than five years:

- a) Administrative Court on 6th September 2018 passed judgment No. 3 U. 6466/15 and quashed the administrative decision in a case where the administrative proceedings and administrative dispute had not been finished within six years. The administrative proceedings were not concluded by this judgment; they have continued after its delivery;
- b) Administrative Court on 29th January 2019 passed judgment No. 4 U. 897/15 and confirmed the administrative decision taken in a case where the proceedings had lasted six years and five months;
- c) Administrative Court on 3rd October 2018 passed judgment No. 7 U. 2913/15 and quashed the administrative decision in a case where the proceedings had not been finished within five years. The administrative proceedings were not concluded by this judgment; they have continued after its delivery;
- d) Administrative Court on 31st October 2018 passed judgment No. I-4 U. 2547/16 and confirmed an administrative decision in a case where the proceedings had lasted six years and nine months;
- e) Administrative Court on 8th June 2018 passed judgment No. I-2 U. 4721/15 and quashed the administrative decision in a case where the proceedings had not been finished within five years and three months. The administrative proceedings were not concluded by this judgment; they have continued after its delivery;
- f) Administrative Court on 22nd June 2018 passed judgment No. III-4 U. 11924/15 and confirmed the administrative decision in a case where the proceedings had lasted eight years;
- g) Administrative Court on 6th September 2018 passed judgment No. 6 U. 13279/15 and confirmed the administrative decision in a case where the proceedings had lasted thirteen years and nine months;
- h) Administrative Court on 27th November 2018 passed judgment No. 10 U. 5068/16 and quashed the administrative decision in a case where the proceedings had not been finished within eight years and eight months. The administrative proceedings were not concluded by this judgment; they have continued after its delivery;
- i) Administrative Court on 4th July 2018 passed judgment No. 15 U. 11953/16 and quashed the administrative decision in a case where the proceedings had not been finished within five years and nine months. The administrative proceedings were not concluded by this judgment; they have continued after its delivery;
- j) Administrative Court on 21st December 2018 passed judgment No. 15 U. 4843/16 and quashed the administrative decision in a case where the proceedings had not been finished within five years and eight months. The administrative proceedings were not concluded by this judgment; they have continued after its delivery;
- k) Administrative Court on 28th June 2019 passed judgment No. 2 U. 351/16 and quashed the administrative decision in a case where the proceedings had not been finished within six years and four months. The administrative proceedings were not concluded by this judgment; they have continued after its delivery;

- I) Administrative Court on 23rd May 2018 passed judgment No. I-3 U. 4583/15 and quashed the administrative decision in a case where the proceedings had not been finished within six years and four months. The administrative proceedings were not concluded by this judgment; they have continued after its delivery.


IV CONCLUSION – Opposition to the Government’s call for the case of Stojković to be closed

The Serbian Government, in Part V of its Action Report, concludes that the general measures taken within the context of the Pejčić case are capable of preventing violations similar to the one found in Stojković v. Serbia (see paragraph 10 of the Action Report). The Government therefore considers that Serbia has complied with its obligation under Article 46 § 1 of the Convention.

It is recalled that no general measures aimed at preventing the excessive length of administrative proceedings have been taken within the context of the Pejčić case. The Serbian authorities have neither adopted, nor even proposed general measures aimed at preventing excessive length of administrative proceedings and administrative disputes. Violations similar to the violation established by ECtHR judgment Stojković v. Serbia frequently occur in Serbian judicial practice.

9. It is submitted, therefore, that the Serbian authorities have not adopted general measures capable of preventing new violations similar to the violation established by the ECtHR in Stojković v. Serbia. The Association for the Protection of Constitutionality and Legality considers, therefore, that the supervision of the execution of Stojković v. Serbia should not be closed.

Savo Manojlović


President of the Association for the
Protection of Constitutionality and
Legality