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

Communication from a NGO (Association for parents of the stolen babies of the Vojvodina region) (20/11/2019) in the case of ZORICA JOVANOVIĆ v. Serbia (Application No. 21794/08)

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 (Association for parents of the stolen babies of the Vojvodina region) (20/11/2019) dans l'affaire ZORICA JOVANOVIĆ c. Serbie (requête n° 21794/08) (**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

20 NOV. 2019

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

THE COUNCIL OF EUROPE

THE COMMITTEE OF MINISTERS OF THE COUNCIL OF EUROPE

Information regarding the December 2019 meeting of the Ministers' Deputies on the implementation of the judgment of the European Court of Human Rights, Judgment in the case of ZORICA JOVANOVIĆ v. SERBIA, Application no. 21794/08

The submitter of the information is the Association of Parents of Missing Babies of Vojvodina (Udruženje Roditelja Nestalih Beba Vojvodine), hereinafter referred to as URNBV. The URNBV is submitting this information to inform the Committee of Ministers under Rule 9.2 concerning the implementation of the judgment of the European Court of Human Rights in case of ZORICA JOVANOVIĆ v. SERBIA, Application no. 21794/08.

As before, we are informing you of the measures taken. The courts in Serbia have begun to adjudicate partly according to the judgment in Zorica Jovanović's case, ie. they have made decisions on the requests of parents who suspect that their children had been abducted at childbirth in Serbian maternity wards, in which the parents were to be paid EUR 10,000 for each applicant. The judgments were rendered rather quickly in Kragujevac and Vojvodina, but in Belgrade no verdict has yet been passed. Namely, the Minister of Health, Zlatibor Lončar sent a letter, on September 9 this year, informing the State Attorney's Office in Kraljevo, which is the party in the proceedings against parents, who represents the State, stating that the other claims of the parents are not similar to Zorica Jovanović's case and that the other parents are not entitled to this amount. That letter has reached all the courts in Serbia and it has influence on judicial decision-making since judges are in the re-selection processes. The pressure on the judiciary has led to self-censorship and fear to make a decision that the minister disapproves of and the consequences are already being felt. Namely, the courts have stopped awarding the aforementioned amount to the parents, relying on the reasons given by the Minister.

Attached to this letter, we send to you the Minister's letter translated into English by and a verdict in Serbian where the parents' claim is dismissed as unfounded. Now we are in fear because we are convinced that this rejected claim will be introduced into the case law and become a binding precedent on which further cases will be settled. This would lead to discrimination against those parents who have not yet received the compensation of non-pecuniary damage.

We believe that the implementation of the judgment in the case of Zorica Jovanović does not suit them. To them is more suitable to conduct trials according to the Law on the Status of Children, which is currently in the Parliamentary procedure,

because it does not specify the amount EUR 10,000, but rather UP TO EUR 10,000, which will depend on the number of parents claiming compensation, because they have allocated funds from the Budget for 600 parents, while that number is much, much higher. Also, some parents who were granted the claims did not receive this amount but much less according to personal discretion of a judge of the High Court (Viši sud) who overturned the first instance decision, as in the case of Njegoš Ilić in Kragujevac.

Thank you for all that you have done for us parents. We promise further cooperation.

In Novi Sad, November 2019

URNB of Vojvodina

Krsto Zoruga

Удружење
"Родитељи настрадалих
бача Војводине"
Младеново



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case.

There is no evidence in the plaintiff's claims that the state departments showed no interest in determining what exactly happened in this case. The Republic of Serbia has not had any knowledge that the parents had were suspecting that something was not right and therefore it cannot take any actions without concrete evidence about this case, and the parents did not make any effort to inform the relevant health authority of their suspicion.

The parents of the twins started informing the authorities of their case only after the media started covering the cases of "stolen babies", and after they have learnt about the European Court of Human Rights' decision on Zorica Jovanovic's case. The plaintiff did not lodge the lawsuit to the Public Prosecutor's Office based in Belgrade until 2016, by which time the case was determined as "out of date".

We believe that there are records covering the labour and the aftercare of their new born baby, and we therefore believe that the medical staff present at labour and during after care should be instructed to provide their professional insight into the matter on behalf of the medical institution in which the baby was born.

If we compare Zorica Jankovic's case with this one, we believe that there are very different circumstances in place. In Zorica Jankovic's case, there were no medical documents (which were destroyed due to floods in the hospital) which would tell the truth about the destiny of her child, which subsequently led to the court decision to award her some monetary compensation.

Considering that the medical documentation is available in Senada Hazibulic's case and that it is covering the labour and the health conditions of the baby after birth as well as the medical interventions, these two cases of stolen babies cannot be compared.

In Zorica Jankovic's case, the European Court of Human Rights has instructed the Republic of Serbia to implement all the measures which would allow all the parents of the "stolen babies" to obtain facts about what exactly happened to their babies, and this decision was published in the Official Gazette of the Republic of Serbia under no 33/13. The court decision also requires the Republic of Serbia to create a law which would provide a legal framework for introduction of legal measures for the purpose of finding facts about the case of "stolen babies". These recommendations have been accepted by the Republic of Serbia and the Minister of Law, the



also requires the Republic of Serbia to create a law which would provide a legal framework for introduction of legal measures for the purpose of finding facts about the case of “stolen babies”. These recommendations have been accepted by the Republic of Serbia and the Minister of Law, the Minister of Health and the Minister for Home Affairs have formed a working group which has prepared a draft law and a procedure for resolving cases of “stolen babies”. However, the procedure for implementation of this law has still not been finalised.

The implementation of this specific law will form a legal basis for dealing with the all lodged cases of the stolen babies and for determining the monetary compensation for those cases which lack available medical documentation as evidence on what exactly happened to their babies.

Although the Republic of Serbia is required to implement all necessary measures in order to be able to deal with all the cases eligible for compensation similar to Zorica Jankovic’s case, this decision of the European Court of Human Rights cannot affect the decision of this court on Senada Hadzibulic’s case. The above decision of the European Court of Human Rights has imposed a legal obligation on the Republic of Serbia which has to be implemented in the required timeframe, but the Committee of the Ministers has the responsibility to oversee its implementation in Serbia. Should this implementation not take place, it can result in the introduction of the measures established by the Committee of Ministers, but it does not have any effect on the right of the plaintiff for compensation, on the basis of all the reasons described above.

The plaintiff has described, in the blunt way, that the Republic of Serbia is hiding the required information on purpose in order to hide what exactly happened to Senada Hadzibulic’s newly born son and in order to hide the fact that the baby has been trafficked. The prosecuted party is not carrying out the identification of the stolen baby on the basis that the Republic of Serbia has not had any knowledge that there was a suspicion that the baby was stolen and that it had not had any factual evidence on the case. The Republic of Serbia did not provide direct health support during the labour and following the labour and did not keep any medical evidence, all of which prevents the Republic of Serbia from taking any responsibility for this case.



Serbia which has to be implemented in the required timeframe, but the Committee of the Ministers has the responsibility to oversee its implementation in Serbia. Should this implementation not take place, it can result in the introduction of the measures established by the Committee of Ministers, but it does not have any effect on the right of the plaintiff for compensation, on the basis of all the reasons described above.

The plaintiff has described, in the blunt way, that the Republic of Serbia is hiding the required information on purpose in order to hide what exactly happened to Senada Hadzibulic's newly born son and in order to hide the fact that the baby has been trafficked. The prosecuted party is not carrying out the identification of the stolen baby on the basis that the Republic of Serbia has not had any knowledge that there was a suspicion that the baby was stolen and that it had not had any factual evidence on the case. The Republic of Serbia did not provide direct health support during the labour and following the labour and did not keep any medical evidence, all of which prevents the Republic of Serbia from taking any responsibility for this case.

Therefore, the decision of this court cannot be influenced by the result of the Magistrate Court case in Kikinda, as each new born baby may have different characteristics at birth and the health conditions, and this court decision did not establish that the baby was stolen, as plaintiff had described in her lawsuit.

Taking into account that the Republic of Serbia is not responsible for this case as no medical service has been provided on their behalf during Senada Hadzibulic's labour, that medical documentation to support the results of the labour and aftercare does exist, that this case differs from Zorica Jankovic's case and that the draft law referring to the cases of the "stolen babies" is yet to be finalised, there is no legal basis for the monetary compensation on this case. This case has therefore been rejected as unfounded against the Republic of Serbia.



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Official stamp of the Ministry of Health
Of the Republic of Serbia
No 7-00-70/2019-16
On 09/09/2019
In Belgrade

Case no: P – 2547/19

The State Attorney's Office in Kraljevo
In Kraljevo,
Cara Lazara Street no

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In relation to your letter no P-2547/19 dated 03/09/2019, in which you have informed us of the court case lodged by Senada and Esad Hadzibulic (residing in Novi Pazar) against the Serbian state with the view to seek compensation for non-pecuniary damage due to the lack of actions from state organs in establishing facts in terms of what has happened with their new born baby, who was born in 1995 (in order words due to the case of lost babies):

We are rejecting the lawsuit lodged by Senada and Esad Hadzibulic due to the lack of suitable evidence.

The plaintiff gave birth to twins at the maternity unit of Serbian Clinical Centre on the 29/09/1995 and one of them passed away on the 04/10/1995. This health institution holds records on the results of this labour and the health conditions of the baby who passed away.

All health institutions containing maternity units are independent legal bodies and they are accountable for the delivery of their health services.

The Republic of Serbia does not hold any records of what happened during Senada Hadzibulic's labour in that maternity unit, it did not provide any health services there and therefore cannot be accountable for any consequences related to this case.

There is no evidence in the plaintiff's claims that the state departments showed no interest in determining what exactly happened in this case. The Republic of Serbia has not had any knowledge that the parents had were suspecting that something was not right and therefore it cannot take any actions without concrete evidence about this case, and the parents did not make any effort to inform the relevant health