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Meeting: 1310th meeting (March 2018) (DH)

Item reference: Action plan (06/03/2018)

Communication from Serbia concerning the case of Mitrovic v. Serbia (Application No. 52142/12)

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Réunion : 1310^e réunion (mars 2018) (DH)

Référence du point : Plan d'action

Communication de la Serbie concernant l'affaire Mitrovic c. Serbie (Requête n° 52142/12)
(anglais uniquement)

Belgrade, 6 March 2018

ACTION PLAN
MITROVIĆ v. SERBIA
Applications no. 52142/12
Judgment of 21 March 2017, final on 21 June 2017

I CASE DESCRIPTION

1. The case concerns a violation of the applicant's right to liberty and security on the account of his detention between 7 July 2010 and 15 November 2012 on the basis of a decision of a foreign court which has not been recognised by Serbian authorities in an appropriate procedure for recognition of a foreign decisions in criminal matters” (a violation of Article 6 § 1).

2. On 9 May 1994 „District court of Beli Manastir” sentenced the applicant to 8 years of imprisonment for murder. On 21 July 1994 this sentence was confirmed by the “Supreme Court of the Republic of Serbian Krajina”. Consequently, the applicant was sent to serve his sentence in “Beli Manastir District Prison”. These institutions were at the relevant time under the control of the “Republic of Serbian Krajina”, an internationally unrecognized self-proclaimed entity established on the territory of the Republic of Croatia during the wars in the former Yugoslavia. The entity ceased to exist after the adoption of the *Basic Agreement on the Region of Eastern Slavonia, Baranja and Western Sirmium* of 12 November 1995 (i.e. *Erdut Agreement*) by which the Republic of Croatia assumed sovereignty over the entirety of its territory. The entity was never recognised as a state by the Republic of Serbia. Shortly after the adoption of the *Erdut Agreement*, and upon the request of the “Beli Manastir District Prison”, the applicant was transferred on 20 June 1996 to Sremska Mitrovica prison, which is on the territory of the Republic of Serbia. The applicant remained in Sremska Mitrovica prison until 5 February 1999, when he was released for annual leave until 15 February 1999. Due to the applicant's failure to return to the prison on the specified date, a warrant for his arrest was issued. On 7 July 2010, the applicant was arrested when he attempted to enter Serbia from Croatia and sent to Sremska Mitrovica prison to serve the remainder of his sentence. The applicant remained in prison until 15 November 2012 when he was pardoned by the President of the Republic of

Serbia and released. On 4 February 2011 the applicant lodged a constitutional appeal alleged that his detention in Sremska Mitrovica prison violated Article 27 of the Constitution of the Republic of Serbia (i.e. right to liberty and security). The Constitutional Court found that there was no violation of the applicant's rights. On 7 March 2011 the applicant initiated civil proceedings for compensation for unlawful imprisonment. The applicant's claim was rejected.

3. The Court noted that the applicant was convicted for murder by a "court" which operated outside the Serbian judicial system and then transferred to a Serbian prison to serve his sentence. The Court further noted that the Serbian authorities conducted no proceedings for the recognition of a foreign decision as prescribed by the 1977 Criminal Procedure Code (§42 of the judgment). Given that the applicant was detained on the basis of a non-domestic decision which had not been recognized domestically, and in the absence of any other basis in domestic law for the detention, the Court found that the requirement of lawfulness contained in Article 5 § 1 was not met.

II INDIVIDUAL MEASURES

4. The authorities took steps to ensure that violation at hand is brought to an end and to provide redress to the applicant's heirs for the damage sustained.

A. The applicant's situation

5. At the outset, the authorities would like to recall that on 15 November 2012 the applicant was pardoned by the President of the Republic of Serbia and released (§13 of the judgment). The European Court found a violation on account of his detention until this date.

6. On 20 October 2014 the applicant died (§7 of the judgment). His application before the Court was subsequently pursued by his wife and children (§25 of the judgment).

B. Reopening of the civil proceedings

7. The authorities would like to indicate that the domestic legislation provided for concrete and effective avenues to obtain re-examination of cases, including reopening of the proceedings, in cases where a violation is found due to shortcomings of such gravity that a

serious doubt is cast on the outcome of the domestic proceedings complained of. In particular, pursuant to the provision of Article 426.11 of the Civil Procedure Code, the applicant's heirs were able to request the reopening of the proceedings within 60 days following the present European Court's judgment.

8. On 18 May 2017 applicant's heirs requested reopening of the civil proceedings for compensation on account of the applicant's unlawful imprisonment. On 6 October 2017 the first instance court granted leave for reopening of these proceedings.

9. On 21 November 2017 the respondent lodged an appeal against the decision of the first instance court to grant leave for reopening. The proceedings on the applicant's request for reopening of the impugned civil proceedings are currently pending before the second instance court. The competent domestic court has been notified about the Court's findings in this case and its attention has been drawn to the need to accelerate these proceedings and bring them to an end as a matter of priority in line with the Convention standards. The authorities will keep the Committee of Ministers informed of the outcome of the reopened proceedings.

C. The redress for the applicant's heirs

10. It is recalled that the applicant and his heirs did not submit a claim for just satisfaction. Accordingly, the Court considered that there was no call to award any sum on that account (§ 46 of the judgment).

11. The authorities would however like to highlight that it is expected that in the reopened proceedings the applicant's heirs will be awarded compensation for unlawful imprisonment of their relative.

III GENERAL MEASURES

12. The violation resulted from the omission of the domestic authorities to conduct proceedings for the recognition of a foreign decision in criminal matters as set out by relevant provisions of the 1977 Criminal Procedure Code then in force. In response to the Court's findings, the measures have been taken to prevent similar violations as set out below.

A. Measures taken in respect of individuals in the similar situation

13. At the beginning of 2015 a factually similar case of Đ.K. regarding the unlawful detention of an individual on the basis of the decision of the court of “Republic of Serbian Krajina” was brought before the Ombudsman of the Republic of Serbia. After conducting investigation, on 5 September 2017 the Ombudsman rendered a decision in this case (<http://www.ombudsman.rs/index.php/2012-02-07-14-03-33/5271-gr-d-nin-n-z-ni-izvrsh-v-d-s-g-dishnju-znu-z-v-r-u-srbi-i>). In particular, the Ombudsman found a violation of Article 27 of the Constitution (right to liberty and security) on account of the shortcomings in the proceedings for executing the foreign decision in light of the fact that no proceedings for its recognition were conducted. In its reasoning, the Ombudsman expressly referred to the European Court’s findings in the present case.

14. The Ombudsman also issued recommendations for Administration for the Execution of Criminal Sanctions (“the Administration”) to release the complainant and to inform him of his right provided in domestic legislation to claim compensation for unlawful imprisonment.

15. The authorities would also like to highlight that Ombudsman invited the Administration to identify if there any more individuals detained in penitentiary facilities in Serbia on the basis of decisions rendered the courts of „Republic of Serbian Krajina”. In case individuals in the similar situation are identified, the Administration was invited to release them and inform them of the avenue to claim compensation for their unlawful deprivation of liberty.

16. In line with the above Ombudsman’s recommendations, on 19 May 2017 the Administration ensured that Đ.K. was released and informed of the possibility to claim compensation. Furthermore, on 2 June 2017 the Administration informed the Ombudsman that no other individuals are held in prisons in Serbia on the basis of the decisions of the courts of „Republic of Serbian Krajina”. To this end, the authorities would like to confirm to the Committee of Ministers that no individual is currently detained in Serbian prisons on the basis of decisions issued by courts or other authorities of any unrecognized self-proclaimed entities established during the wars in the former Yugoslavia.

17. In view of the above, the authorities consider that publication and dissemination measures will be capable of preventing similar violations.

B. Publication and dissemination measures

18. In 2017, the authorities ensured that publication and dissemination measures were taken to draw the attention of the relevant domestic authorities on the European Court's findings in this case. To this end, the European Court's judgment was translated into Serbian and published in the Official Gazette and on the official web page of the Office of the Government Agent (www.zastupnik.gov.rs) and the Supreme Court of Cassation (www.vk.sud.rs).

19. The European Court's findings have therefore been made easily accessible to judges and legal community nationwide.

IV CONCLUSIONS

20. The authorities consider that the individual measures taken ensured that the violation of the Convention found by the European Court is brought to an end. The authorities will keep the Committee of Ministers informed about the outcome of the reopened civil proceedings for compensation on account of the applicant's unlawful detention.

21. The authorities also consider that the general measures taken are capable of preventing similar violations.