

## SECRETARIAT GENERAL

SECRETARIAT OF THE COMMITTEE OF MINISTERS  
SECRETARIAT DU COMITE DES MINISTRES



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Meeting: 1310<sup>th</sup> meeting (March 2018) (DH)

Communication from a NGO (YUCOM Lawyers' Committee for Human Rights and Astra – Anti trafficking action) in the case of Zorica Jovanovic v. Serbia (Application No. 21794/08) and reply from Serbia (08/03/2018).

Information made available under Rules 9.2 and 9.6 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 : 1310<sup>e</sup> réunion (mars 2018) (DH)

Communication d'une ONG (YUCOM Lawyers' Committee for Human Rights and Astra – Anti trafficking action) dans l'affaire Zorica Jovanovic c. Serbie (Requête n° 21794/08) et réponse de la Serbie (08/03/2018)  
**[anglais uniquement]**

Informations mises à disposition en vertu des Règles 9.2 et 9.6 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

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COMMITTEE OF MINISTERS  
COUNCIL OF EUROPE  
STRASBOURG

March 2, 2018

**SUBMISSION TO THE COMMITTEE OF MINISTERS  
OF THE COUNCIL OF EUROPE**

**UNDER RULE 9.2.**

**Concerning the execution of judgment in Zorica Jovanovic v. Serbia case  
(21794/08)**

1. **YUCOM – The Lawyers' Committee for Human Rights** (founded in 1997) is a professional, voluntary, non-governmental association of citizens, associated to protect and promote human rights in accordance with universally accepted civilized standards, international conventions and national law. Since its establishment, YUCOM has been providing free legal assistance to victims of human rights violation, as well as developing cooperation with national and international organizations involved in human rights protection and promotion. YUCOM has profiled itself and gained much recognition as human rights defenders' organization.
2. **ASTRA - Anti-Trafficking Action** is a local non-governmental organization dedicated to eradication of all forms of trafficking in human beings founded in 2002. Since 2012, ASTRA has been running the European number for missing children 116 000 which is operative in 28 European countries. Since the establishment of the line, a large number of calls have been received from the citizens whose babies went missing from the maternity wards after the birth.
3. **YUCOM and ASTRA** are making this submission in order to communicate with the Committee of Ministers under the Rule 9.2 in respect of the execution of judgment of the European Court of Human Rights (ECHR) in **Zorica Jovanovic v. Serbia case (application no. 21794/08)**.
4. **We would hereby like to emphasize that it has been almost 5 years since the mentioned judgment became final, and that the Republic of Serbia has been delayed with its execution almost 4 years, without any concrete step being taken in this regard.**
5. The judgment clearly states that *"the respondent State must, within one year from the date on which the present judgment becomes final... take all appropriate measures, preferably by means of a lex specialis (see the Ombudsman's report of 29 July 2010 at paragraph 29 above), to secure the establishment of a mechanism aimed at providing individual redress to all parents in a situation such as, or*

*sufficiently similar to, the applicant's. This mechanism should be supervised by an independent body, with adequate powers, which would be capable of providing credible answers regarding the fate of each child and awarding adequate compensation as appropriate.”<sup>1</sup>*

6. YUCOM and ASTRA, jointly with Belgrade group of “missing babies” parents, was trying for many years now to advocate for the successful implementation of the aforementioned judgment in order to find out the truth about missing children. Unfortunately, all information about deficiencies that we already provided Committee of Ministers with in our previous submissions are still in place as no positive steps were taken by Serbian State Authorities in order to implement this ECHR judgment.
7. It is important to remind on the Decision of the Committee of Ministers CM/Del/Dec(2016)1250/H46-23, which states that: *“the revised draft law still leaves various issues outstanding, including that of the powers to be vested in the civil courts and the special police unit and the procedure for declassification of medical information; encouraged therefore the Serbian authorities to address the outstanding issues and concerns of parents of “missing babies” in consultation with civil society”*. We have to stress that neither YUCOM nor ASTRA were contacted, informed or in any way engaged in the States implementation of this judgment since the election process in April 2017, even though we have tried to reopen communication in order to jointly work on finding durable and effective solution for the execution of judgment.
8. In order to inform Committee of Ministers on the real and practical problems that parents of those children are still facing in Serbia, we would like to familiarize Committee of Ministers representatives with Belgrade group of “missing babies” parents, that cooperates YUCOM and ASTRA are closely cooperate.
9. Belgrade group of “missing babies” parents, gathers more than 1000 of parents, was formed in 2002 after decades of not knowing what happened with their children, in order to compare documentations that parents possess and to try to find the truth as their cases resembled. After Zorica Jovanovic v Serbia ECHR judgment, those parents are awaiting for the execution of it, as they are covered by general measure prescribed in mentioned judgment.
10. Painful struggle of parents for many years now is still ongoing and in order to brief representatives of Committee of Ministers here are several information:
  - Parents were requesting Funeral companies to inform them if their children were buried according to their registry, but written answers were that "supposedly deceased children" from health institutions did not reach the cemetery, were not buried or cremated,
  - Parents contacted health institutions which either refused or mistreated them with answers that there are no medical documentations because there were floods, fires and that our documentation was destroyed.
  - Official State registers of birth and death, which supposed to keep indefinitely all documentation, refused to disclose any information and parents informed Administrative inspection that after conducting supervision declared omissions and deficiencies in the work of Official State registers of birth and death, without any further steps being taken in this regard.

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<sup>1</sup> See paragraph 92 of the judgment in Zorica Jovanovic v. Serbia case (21794/08)



- Parents of missing babies, more than 1000 of them, filed criminal charges as there were no information about their children since their birth in health centers, but those cases ended either as outdated or with the information that there are no enough evidences to proceed with criminal charges.
11. As the years and even decades were passing, and all relevant State Authorities were deaf to parents appeals and questions regarding the fate of their children, number of parents filled applications to ECHR starting from 2008.
12. This long-suffering of more than 1000 parents in the cities of Serbia, is visible in following:
- Missing children were declared dead by Death certificates,
  - Parents were not allowed to take over the body of their child and received the answer that it is within the competence of hospital,
  - There are no grave places because there are no corpses,
  - Parents were given paraffin molds after falsified autopsies, where no analysis confirmed the child's death,
  - Firstborn babies of young married couples were disappearing,
  - Disappearing took place mostly on weekends,
  - The same doctors appear in many cases over the years,
  - When there were twins, an advanced twin allegedly died.
13. All of these lead parents to suspicion in the work of individuals or a well-organized criminal group, and we all expect that Serbian State Authorities seriously and adequately investigate those cases as suggested by ECHR in Zorica Jovanovic v Serbia judgment - by establishing a mechanism that should be supervised by an independent body, with adequate powers, which would be capable of providing credible answers regarding the truthful fate of each child, and not only to reward certain compensation without conducting proper investigation.
14. Therefore, **YUCOM** and **ASTRA** would once again like to kindly request the Committee of Ministers to **consider all the facts indicated in this and all previous submissions** and to remind the State Authorities about their obligations under the Convention for the Protection of Human Rights and Fundamental Freedoms regarding the implementation of ECHR judgments; to remind the State Authorities on the core elements of Zorica Jovanovic v Serbia judgment; to call for serious and efficient approach of Serbian State Authorities in complying with Committee of Ministers Decisions and Interim Resolution and as the most important, to call for urgent execution of ECHR ruling in this case with establishment of proper investigative mechanism capable of determining the truth about each and every case similar to Zorica Jovanovic, as recommended by ECHR judgment.

  
**Milan Antonijevic**  
Director of Lawyers' Committee for Human Rights  




  
**Marija Andjelkovic**  
Director of Anti-Trafficking Action

**Response of the Government of Serbia**  
**to the communication made by the NGOs YUCOM Lawyers' Committee for**  
**Human Rights and Astra – Anti trafficking action**  
**in respect of the case**

**ZORICA JOVANOVIĆ v. SERBIA**

**Appl. no. 21794/08**

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1. In response to the communication made from non-governmental organisations YUCOM Lawyers' Committee for Human Rights and Astra – Anti trafficking action on 2 March 2018, the Government of Serbia has an honour to submit for their attention the following information.

I Reminders on the Court's judgment and its execution

2. It is recalled that the Committee of Ministers positively assessed the draft law prepared by the Serbian authorities in response to the Court's indications and revised in line with Committee of Ministers' decisions. In particular, in its decision adopted in March 2016, the Committee of Ministers noted with interest that the revised draft law took into consideration a number of questions identified by the Committee, as well as certain concerns raised by civil society, in particular as regards the eligibility criteria and procedure for obtaining evidence. In December 2016, the Committee of Ministers noted the detailed explanations given by the authorities on the powers to be vested in the civil courts and the special police unit and the procedure for declassification of medical information.
3. It is furthermore recalled that the draft law was approved by the Government and transmitted to Parliament for adoption in October 2016. However, the adoption of the draft law was delayed first as a consequence of the letter addressed by the parents of "missing babies" at the end of 2016 raising certain concerns on its content and objecting to the adoption of the draft law and second as a consequences of the suspension of parliamentary session due to the presidential elections held in April 2017.
4. Following the formation of the new Government after the elections and in line with applicable procedures, the draft laws which the former Government tabled to Parliament have been withdrawn from parliamentary procedure and returned to the new Government for approval. The draft law prepared to execute this

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judgment has also been withdrawn from Parliament and returned to the Government for approval.

## II Recent developments

5. The incumbent Government continued to seek the most appropriate solution for the humanitarian plight of parents of “missing babies”. To this end, on 16 January 2018, the authorities carried out *bilateral consultations* with parents on the above revised draft law. As a result, the draft law has been further revised to take into account their concerns.
6. At the outset, pursuant to the revised draft law revisited following the consultations held in January 2018, parents who have taken steps to find out the fate of their babies *before the entry into force of the law* will be eligible to benefit from the mechanism set out in the revised draft law no matter when these steps have been taken. It is recalled that the draft law initially provided that only parents who have taken steps to find out the fate of their missing babies *before 9 September 2013* (the date when the Court’s judgment became final) would be eligible to start the proceedings envisaged. It is also recalled that NGOs raised concerns as regards the temporal limitation which is now removed (DH-DD(2015)1378, §5). Thus, their concerns have now been addressed.
7. Secondly, pursuant to the revised draft law revisited courts *shall be under obligation* to determine facts even if parents had not referred to them expressly in their motions. The draft law initially provided that the courts *might* take the above steps. The novelty introduced will therefore enhance the efficiency of courts and their ability to provide credible answers on the fate of missing babies. It is recalled that NGOs raised concerns as to the prior provision (DH-DD(2016)219, §12). Thus, their concerns have now been addressed.
8. Thirdly, it is recalled that the NGOs called for a change of the provision of Article 19 of the revised draft law with a view to ensuring that that “the hearing is held whenever the proposer demands it in the proposal, or in any case, regardless of the contents of the proposal submitted to the court” (DH-DD(2016)219, §19). It is recalled that this provision initially stipulated that the court shall schedule a hearing when it finds a hearing necessary or appropriate. The NGOs’ concerns were taken into account. In particular, pursuant to the now revisited provision of Article 19, the court shall schedule a hearing following an applicant’s motion. If there is no such motion, the court shall schedule a hearing when it finds it necessary or appropriate.

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9. Lastly, it is recalled that the NGOs indicated that the provision of Article 22 “which stipulates that by the decision granting the motion, the court *may award* the proposer a fair monetary compensation for the non-pecuniary damages for the violation to the right of family life, should be changed in such manner that a clear obligation of the court to a fair compensation to the proposer is stipulated” (DH-DD(2016)219, §21). This proposal was granted and the draft law amended accordingly to stipulate that courts shall have an obligation to award damages in case of finding a violation.
10. Other provisions of the draft law were not amended. The mechanism envisaged to execute the present judgment, which was positively assessed by the Committee of Ministers, remained substantially the same.
11. Following the above-mentioned bilateral consultations with the parents, on 1 February 2018 the Minister of Justice signed the draft law and transmitted it to various authorities for their opinion. After having obtained these opinions, the Ministry of Justice transmitted the text of the draft law to the Government for approval.
12. On 8 March 2018, the Government approved it and transmitted to Parliament for adoption. Pursuant to the applicable procedures, the draft law must pass the muster of a parliamentary committee in charge (Committee on Human and Minority Rights) and then be tabled to plenary session for adoption.
13. The Government considers that the mechanism set out in the revisited draft law is in compliance with the European Court’s findings. Being mindful to the plight of parents of “missing babies” the Government highlights that it highly appreciated the bilateral consultations on these issues with the civil sector and parents. These consultations were helpful to the Government in preparing the most recent version of the draft law and ensuring that the parents’ concerns are taken on board to the extent possible under the Convention and the Constitution.
14. The efforts to find a comprehensive solution for this complex and sensitive matter will be intensified. Once the draft law is adopted, the Government of Serbia remains open for constructive suggestions from the civil society with a view to ensuring the proper functioning of the mechanism to be introduced.