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Meeting: 1318th meeting (June 2018) (DH)

Item reference: Action report (20/03/2018)

Communication from “the former Yugoslav Republic of Macedonia” concerning the case of Centre for the Development of Analytical Psychology v. “the former Yugoslav Republic of Macedonia” (Application No. 29545/10)

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Réunion : 1318^e réunion (juin 2018) (DH)

Référence du point : Bilan d'action

Communication de « l'ex-République yougoslave de Macédoine » concernant l'affaire « Centre for the Development of Analytical Psychology » c. « l'ex-République yougoslave de Macédoine » (requête n° 29545/10) (**anglais uniquement**)

Skopje, 20 March 2018

ACTION REPORT

CENTRE FOR THE DEVELOPMENT OF ANALYTICAL PSYCHOLOGY v. Macedonia

Application no. 29545/10
Judgment of 15 June 2017, final on 15 September 2017

I CASE DESCRIPTION

1. This case concerns a violation of the applicant company's right to access to a court in the proceedings concerning its claims related to a contract with the State Health Insurance Fund ("the Fund") (a violation of Article 6 § 1).
2. In 2004 Dr Marija Karanfilova's Independent Psychiatric Practice ("the Practice") signed a contract with the Fund on the financing the treatment it provided to health insurance beneficiaries. In 2006 the Practice was ordered by the health authorities to re-register under the new statutory provisions: its name had thus been changed and it had been given a new individual tax number. Two sets of domestic proceedings were initiated against Fund for non-adherence to the terms of the contract of 2004. The domestic courts dismissed those claims for the applicant's lack of standing finding that the contract had been signed by the Practice and the Fund and that the applicant company could not be considered as the Practice's legal successor as they had different individual tax numbers.
3. The European Court indicated that it was struck by the fact that the Supreme Court found, in nearly identical circumstances, involving the same parties and the same contract, that the applicant company had standing to sue in the proceedings. In view of this, the European Court saw no reason to depart from the conclusion of the highest domestic court and considered that domestic courts imposed an unjustifiable procedural obstacle on the applicant company (§§46 and 47 of the judgment).

II INDIVIDUAL MEASURES

4. The measures have been taken to ensure that the violation at hand has ceased and that the applicant company was redressed for its adverse consequences. Relevant details are set out below.

A. Redress for the applicant's company

5. At the outset, the authorities would like to recall that the applicant company claimed 452,178 Macedonian Denars (MKD), equivalent to 7,294 euros (EUR), in respect of pecuniary damage for both applications. It also claimed EUR 1 million per application in respect of non-pecuniary damage.
6. As regards the applicant company's claims in respect of pecuniary damage, the Court considered that the basis for an award of just satisfaction in the present case is the violation of the applicant company's right of access to a court under Article 6 § 1 of the Convention. Therefore, the Court could not speculate as to what the outcome of the impugned proceedings would have been had the violation not been found. It therefore found no causal link between the pecuniary damages claimed and its finding of a violation of Article 6. Accordingly, the Court made no award under that head (§ 55 of the judgment).
7. As regards the applicant company's claims in respect of non-pecuniary damage, the Court considered that the applicant company must have suffered non-pecuniary damage as a result of the violation of the right of access to a court. Deciding on equitable basis, it awarded the applicant company the sum of EUR 3,600 (§ 56 of the judgment).
8. In view of the above, the authorities consider that the applicant company was redressed for the violation sustained.

B. Reopening of the impugned proceedings

9. The authorities would like to indicate that the applicant company had at its disposal a statutory possibility to request reopening of the impugned proceedings following a final judgment given by the European Court finding a violation of the Convention, notably pursuant to Article 400 of the Civil Proceedings Act within the thirty-day time-limit.
10. Pursuant to the information transmitted by the Skopje Court of First Instance the applicant company had not requested reopening of the impugned civil proceedings within the statutory deadline. It therefore transpires that the applicant company failed to avail itself of the statutory possibility to obtain redress for the violation of the right to a fair trial found by the European Court.

11. In view of the above, the authorities consider that the payment of just satisfaction awarded by the Court provided an adequate redress to the applicant and brought to an end the violation found.

III GENERAL MEASURES

12. At the outset, the authorities would like to recall that the violation in the present case resulted from an excessively formalistic approach of domestic courts which dismissed the applicant company's claims for lack of standing on only on the basis of different individual tax numbers between the applicant company and the Practice (§47 of the judgment). The European Court took into account the fact that in a separate set of civil proceedings between the applicant company and the Fund the Supreme Court found that the applicant company had standing in the proceedings. The claim in the present case however never reached the Supreme Court since their value fell below the statutory threshold for lodging an appeal on points of law.
13. The authorities have taken a number of measures aimed at preventing similar violations. These measures are outlined below.

A. Trainings and awareness-raising measures

14. In response to the Court's findings, the authorities carried out several trainings and workshops focusing on Article 6 and the right of access to a court in civil proceedings and the European Court's indications in the present case.
15. To this end, on 6 March 2018 the Academy for Judges and Public Prosecutors carried out the following training for judges: "The scope of violation of the guarantees protected in Article 6 of the European Convention on Human Rights in Civil Matters and the Practice of the European Court of Human Rights". Within its framework, civil judges' attention has particularly been drawn to the European Court's findings in this and other similar cases.
16. In February and March 2018, the Academy for Judges and Public Prosecutors and the Centre for Legal Research and Analysis carried out two further trainings for appellate judges with a view to ensuring that their attention was brought to requirements of Article 6 of the European Convention. The European Court's findings in the present case were also highlighted.
17. The authorities consider that these trainings will be conducive in ensuring that domestic courts comply with the Supreme Court's and the European Court's findings in similar cases and take into account all relevant circumstances (in addition to the tax numbers) when examining legal continuity between different

entities. In light of the fact that the violation resulted from the formalistic approach of domestic courts in the circumstances of the present case, the authorities consider that these trainings in conjunction with the publication and dissemination measures will be capable of preventing similar violations. In this respect, the authorities would like to highlight that there are no similar applications pending before the Court in respect of the Respondent State.

B. Publication and dissemination measures

18. The judgment was published in Macedonian and English language on the website of the Ministry of Justice (www.pravda.gov.mk) and on the website of the Bureau for Representation of the Republic of Macedonia before the European Court of Human Rights (www.biroescp.gov.mk).
19. The Government Agent forwarded the judgment with an explanatory note on the violation found by the European Court to the Constitutional Court, Supreme Court, four appellate courts (including the Skopje Court of Appeal that dealt with applicant company's case), Judicial Council, Association of judges, Ombudsman, Public prosecutor the Republic of Macedonia, Association of public prosecutors, Academy for judges and public prosecutors and Bar association, Ministry of Health, Health Insurance Fund of Macedonia, Skopje II Basic Court.
20. The above-mentioned measures ensured that relevant authorities were now aware of the European Court's findings and the need to comply with the Convention requirements.

III JUST SATISFACTION

21. The amounts of just satisfaction awarded by the European Court were disbursed to the applicant company on 13 December 2017. The payment has been therefore made within the time-limit set out by the European Court.

IV CONCLUSIONS

22. The authorities consider that individual measures the applicant company was redressed for the damage sustained.
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23. The authorities furthermore consider that the general measures taken are capable of preventing similar violations.
24. The authorities therefore consider that Macedonia has thus complied with its obligations under Article 46 paragraph 1 of the Convention.