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

Item reference: Action report (28/03/2018)

Communication from Slovenia concerning the case of Vaskrsic v. Slovenia (Application No. 31371/12)

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

Référence du point : Bilan d'action

Communication de la Slovénie concernant l'affaire Vaskrsic c. Slovénie (requête n° 31371/12)
(anglais uniquement)



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28 MARS 2018

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

Number: 5111-14/2017

Date: 26 March 2018

Ms Geneviève Mayer

Head of the Department

Department for the Execution of the Judgements of the European Court of Human Rights

COUNCIL OF EUROPE

**Subject: Action Report for the case Vaskrsić v. Slovenia (application no. 31371/12,
judgment of 25 April 2017, final on 25 July 2017)**

Dear Ms Mayer,

Attached please find Action Report for the case Vaskrsić v. Slovenia. We hope you will be able to proceed with closure of this case.

Yours sincerely,



Tina Breclj
State Secretary

Attach.: Action Report for the case Vaskrsić v. Slovenia

Ljubljana, 26 March 2018

ACTION REPORT

VASKRSIĆ v. Slovenia

Application no. 31371/12
Judgment of 25 April 2017
Final on 25 July 2017

I CASE DESCRIPTION

1. This case concerns a violation of the applicant's right to property on account of the sale of his house at public auction for 50% of its market value in the course of debt enforcement proceedings arising from a principal debt of only 124 euros (a violation of Article 1 of Protocol No. 1).
2. The European Court noted that the sole purpose of the judicial sale of the applicant's house was to repay the debt he owed to a public water-supply company (§79 of the judgment). The Court furthermore noted that after the water-supply company had applied for enforcement of the debt by the sale of the house on 15 June 2010, the enforcement court granted the application within two days and, after a summons to attend the auction had been left in the applicant's mailbox on 20 September 2010, held the first auction on 7 October 2010. It sold the house for half its market value at the next auction, held on 18 November 2010. In this respect, the European Court noted that during that time the enforcement court did not consider any alternative measures to the judicial sale of the house, despite the fact that the applicant appeared to have been employed and to have had a monthly income and that another company in the meantime successfully enforced a much higher debt through the seizure of assets from his bank account (§81 of the judgment).
3. The European Court furthermore observed that the relevant domestic legislation, that is the Enforcement and Securing of Civil Claims Act, did not explicitly place an onus on the enforcement court to opt for less intrusive enforcement measures of its own motion or to require it to reject a request by the creditor if disproportionality arises. Nor does the legislation set any minimum threshold in respect of the amount of the debt owed, so in principle even a minor debt could be enforced by means of the judicial sale of an immovable property, such as a house (§82 of the judgment). Lastly, the European Court noted that the Enforcement and Securing of Civil Claims Act provided for several means of enforcement, including seizure of assets from the debtor's bank account or part of the debtor's salary. The European Court concluded that – having regard to several considerations, in particular the low value of the debt that was enforced through the judicial sale of the applicant's house and the lack of consideration of other suitable and less onerous measures by the domestic authorities – the State failed to strike a fair balance between the aim sought and the measure employed in the enforcement proceedings against the applicant (§87 of the judgment).

II INDIVIDUAL MEASURES

4. The steps were taken to ensure that the violation at hand has ceased and that the applicant has been redressed for the violation sustained.
5. The authorities would like to recall that the European Court awarded the applicant EUR 77,000 in respect of pecuniary damage. This sum amounted to the difference between the market value of his house, EUR 140,000 and the price at which the property was sold, EUR 70,000, plus the one-off payment of 10% interest. The applicant has therefore been redressed in respect of pecuniary damage sustained.
6. The European Court also awarded the just satisfaction in respect of non-pecuniary damage sustained by the applicant due to the feelings of anxiety and distress as a result of the sale of his home - in the amount of EUR 3,000. The applicant has therefore been redressed under this head as well.
7. In view of the above, the authorities consider that the violation has been brought to an end and the applicant redressed for the damage sustained.

III GENERAL MEASURES

8. In response to the European Court's judgment the authorities adopted the legislative measures and carried out a training to raise awareness on the Court's findings.

A. Legislative Amendments

9. The European Court observed that the relevant domestic legislation, that is the Enforcement and Securing of Civil Claims Act, does not explicitly place an onus on the enforcement court to opt for less intrusive enforcement measures of its own motion or to require it to reject a request by the creditor if disproportionality arises in a specific enforcement case. Nor does the legislation set any minimum threshold in respect of the amount of debt owed concerning such enforcement case, so in principle even a minor debt could be enforced by means of the judicial sale of an immovable property, such as a house (§82 of the judgment). While acknowledging that the Contracting States have a wide margin of appreciation in this area and that the aims pursued by the relevant legislation might concern also issues exceeding the mere payment of a particular debt, such as the improvement of repayment discipline in the country concerned, the Court is nevertheless of the view that, given the paramount importance of the enforcement measure taken against the applicant's property, which was also his home, and the manifest disproportionality between this measure and the amount of debt it aimed to enforce, the authorities were obliged to take careful and explicit account of other suitable but less intrusive alternatives (§83 of the judgment).
10. The authorities acknowledge that the violation found in this case resulted from inadequate application of legislation in force. The principle of proportionality is a general principle of law, which should in accordance with the Constitution of the Republic of Slovenia (Article 2 in connection with Article 15, paragraph 3) be applied by domestic courts in each judicial deliberation in enforcement area.
11. In response to the Court's findings, the Government assessed the relevant legislation. In order to prevent similar violations, the Government proposed amendments to the

Enforcement and Securing of Civil Claims Act. The amendments were adopted on 13 February 2018. (Official Gazette of the Republic of Slovenia, No. 11/2018). The amendments entered into force on 25 March 2018.

12. Pursuant to these amendments, notably amended Article 71, paragraphs four to six of the above law, the following additional safeguards are now introduced:

- The court shall inform the social work centre on the process of the enforcement of a property that represents the debtor's dwelling or a dwelling house, in case of payment of a debt which is clearly disproportionate in relation to the established value of the immovable property. The courts are therefore now under an obligation to examine proportionality of sale of a house (home).
- After the decision on enforcement on a house and prior to the decision on actual selling the house (home), the court shall *ex officio* determine if the debtor has other assets or immovable property to settle the debt, based on available electronic records or documents which are submitted to the court. This means that the legislative amendments stipulate expressly an obligation for the enforcement courts to opt for less intrusive measures on its own motion.
- The legislative amendments extend the possibility of the debtor to propose to the court another means of enforcement until the order for sale is issued or to further postpone enforcement on another immovable property throughout the enforcement procedure.
- Enforcement can be postponed for six months on the basis of a reasoned opinion of a social work centre, if immediate enforcement would jeopardize the existence of the debtor or his family members. In such circumstances, the court may decide to postpone the enforcement even without (or before obtaining) the reasoned opinion of the Social Work Centre, but only once and for maximum three months. When there are special circumstances and a special position of the debtor, the court may also postpone enforcement for an appropriate period of time.

13. It is clarified that the Government took into account the European Court's findings in proposing the above-mentioned legislative amendments aiming at preventing the so-called "social enforcement on immovable property" applicable when the debt is low and thus its repayment from the debtor is realistic. The Government also considered the option to set a minimum threshold in respect of the amount of debt with a view to avoiding that minor debts are enforced by means of the judicial sale of an immovable property. However, in the Government's view, such determination of a minimum amount would not cover all situations of possible disproportionality between the actual debt and the value of the debtor's dwelling or the dwelling house, therefore it was not included to the proposed amendments as the approach that is proposed is in government's view more comprehensive and just.

14. In view of the above, the authorities consider that the proposed amendments will be capable of preventing similar violations.

B. Training measures

15. The Ministry of Justice ensured that the European Court's findings in this case were presented during the "Enforcement School for Judges", which took place in Portorož,

Slovenia, between 8 and 10 May 2017, organized by The Judicial Training Centre of the Ministry of Justice. It was attended by members of the judiciary.

C. Publication and dissemination measures

16. The authorities ensured that the European Court's judgment was translated into Slovenian. The translated judgment was communicated to the relevant courts that were dealing with the case in question as well as to Supreme Court and the Ministry of Justice.
17. The Slovenian translation of the judgment has also been published on the website of the State Attorney's Office (<http://www2.gov.si/dp-rs/escp.nsf>). It has therefore been made available to members of the legal profession and public at large alike. This translation has also been submitted and is available at the HUDOC web page of the Court (<https://hudoc.echr.coe.int/eng>).
18. A summary of the judgment has furthermore been published in monthly review for judges "Sodnikov Informator", No. 5/2017, of 31 May 2017. This review is aimed at judges of the domestic courts and will ensure that the European Court's findings are made known to them.
19. The European Court's judgment gained wide attention in Slovenian media. It was also presented in Slovenia's leading legal weekly journal *Pravna praksa* in the article: Lena Šutanovac: Deložacija zaradi 124 evrov dolgaje nesorazmerna – Vaskrsić proti Sloveniji (Pravna praksa, 2017, št. 19).
20. In view of the above, the authorities consider that publication and dissemination measures will be capable of preventing similar violations.

IV JUST SATISFACTION

21. The just satisfaction awarded in this case was disbursed on 25 October 2017 to the applicant. The payment has therefore been made within the time-frame imparted by the European Court.
22. A part of the compensation, in the amount of 11.478,32 EUR, was paid to the insurance company Triglav, d.d. (Vaskrsić's debt repayment to Triglav, d.d.). In this respect, the authorities would like to recall that the practice subsequently followed by the Committee of Ministers and Member States has laid down no restrictions on attachment of sums awarded as just satisfaction for non-pecuniary damage where such attachment is for the benefit of private creditors (§102 in Memorandum CM/Inf/DH(2008)7). For debts which have no causal link with the violation (such as the applicant's debt towards the Triglav company, the question of exemption from attachment has not arisen in the Committee of Ministers' practice respect of sums awarded for pecuniary damage (§100 in Memorandum CM/Inf/DH(2008)7). It is however recalled that the basis framework for issues relating to the attachment of sums awarded as just satisfaction is set by domestic law and practice (§97 in Memorandum CM/Inf/DH(2008)7). The attachment of the part of just satisfaction awarded to the applicant has been therefore carried out in accordance with the provisions of the Slovenian laws.
23. In view of the above, the authorities consider that the just satisfaction has been paid in line with the Committee of Ministers' practice and the European Court's indications.

V CONCLUSIONS

24. The authorities consider that the violation at hand has been brought to an end that the applicant has been fully redressed for the damage sustained.
25. The authorities furthermore hold that the described general measures will be capable of preventing similar violations.
26. The authorities therefore consider that the Republic of Slovenia has complied with its obligation under Article 46 § 1 of the Convention.