

SECRETARIAT / SECRÉTARIAT

SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRÉTARIAT DU COMITÉ DES MINISTRES

COMMITTEE
OF MINISTERS
COMITÉ
DES MINISTRES



Contact: John Darcy
Tel: 03 88 41 31 56

Date: 19/06/2019

DH-DD(2019)696

Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers.

Meeting: 1355th meeting (September 2019) (DH)

Item reference: Action plan (17/06/2018)

Communication from Slovenia concerning the case Vizgirda v. Slovenia (Application No. 59868/08)

* * * * *

Les documents distribués à la demande d'un/e Représentant/e le sont sous la seule responsabilité dudit/de ladite Représentant/e, sans préjuger de la position juridique ou politique du Comité des Ministres.

Réunion : 1355^e réunion (septembre 2019) (DH)

Référence du point : Plan d'action

Communication de la Slovénie concernant l'affaire Vizgirda c. Slovénie (Requête n° 59868/08)
(anglais uniquement)



REPUBLIC OF SLOVENIA
MINISTRY OF JUSTICE

Župančičeva 3, 1000 Ljubljana

T: +386 1 369 53 42
F: +386 1 369 57 83
E: gp.mp@gov.si
www.mp.gov.si

DGI

17 JUIN 2019

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

Number: 5111-8/2018
Date: 14 June 2019

**Mr Fredrik Sundberg, Head of Department a. i.
Department for the Execution of the Judgments
Council of Europe**

Subject: Action Plan for the case Vizgirda v. Slovenia

Dear Mr Sundberg,

Attached please find Action Plan for the case *Vizgirda v. Slovenia* (application no. 59868/08, judgment of 28 August 2018, final on 28 November 2018).

Yours sincerely,

Gregor Stojin
State Secretary



Attach.: Action Plan for the case Vizgirda v. Slovenia

DGI

17 JUIN 2019

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

Ljubljana, 14 June 2018

ACTION PLAN

VIZGIRDA v. Slovenia

Application no. 59868/08
Judgment of 28 August 2018
Final on 28 November 2018

I CASE DESCRIPTION

1. This case concerns a violation of the applicant's right to a fair trial (right to fair trial / right to be informed promptly of accusation / right to an interpreter) on account of the courts' failure to explicitly verify the applicant's linguistic competency in the third language (Russian), before providing him interpretation of criminal proceedings and documentation in that language. Therefore, the applicant was deprived from the right to actively participate in the trial against him (a violation of Article 6 §§ 1 and 3 of the Convention).
2. The applicant is a Lithuanian national who lives in Ljubljana (Slovenia). He was arrested in Slovenia in March 2002 on suspicion of complicity in a bank robbery with six others. In May of the same year he was formally indicted (with four other men, all Lithuanians) on charges of robbery, theft and attempted theft of a motor vehicle. All the initial proceedings, including communication with a court-appointed defence lawyer, were interpreted into Russian for him. He was also given transcripts of witness statements in Russian. In July 2002 he was sentenced to eight years and four months in prison. In February 2003 he complained to the domestic courts that, among other things, he did not understand Russian well, that the first-instance court had ignored his statement to that effect, and that his right to use his own language in the criminal trial had been violated. His complaint was ultimately dismissed by both the Supreme Court, in January 2006, and the Constitutional Court in July 2008. Both superior courts found that he had never raised a complaint during the criminal proceedings about not being able to understand Russian, that he had had the assistance of counsel, with whom he had also communicated via the Russian language, that he had participated in his trial and that his right to a fair trial had not been violated.
3. The European Court ("the Court") observed that it was clear that the authorities had been aware that the applicant did not understand Slovenian and had provided him with Russian interpreting and translations in the criminal proceedings. However, the Court found that the domestic authorities had never explicitly verified that the applicant knew Russian well enough to conduct his defence effectively in that language (§91, Vizgirda). It also rejected the Government's argument in favour of a general assumption, that such knowledge could be assumed because Russian was widely spoken in Lithuania and noted that the Government had not given any other explanation why the authorities had believed he had a sufficient knowledge of Russian when appointing an interpreter for him (§92, Vizgirda).
4. The Court observed that the authorities had never informed the applicant of his right to have interpreting in his native language or of his basic right to interpretation into a language he understood (§99, Vizgirda). That, and his basic knowledge of Russian and his position of vulnerability as a foreigner facing criminal proceedings, could explain his lack of objections (§100, Vizgirda). The Court noted that the fact that the applicant's lawyer had not complained about a

lack of Lithuanian interpreting had not relieved the courts of their duty to look into the matter properly (§101, Vizgirda).

5. The court concluded that the language assistance the applicant had received had not allowed him to actively participate in his trial, which had therefore been unfair, and his rights had been violated (§102, Vizgirda).

II INDIVIDUAL MEASURES

6. At the outset, it is recapped that provisions of the Criminal Procedure Act ("the CPA") allow lodging an application for the protection of legality if the European Court finds a violation of the Convention rights. The applicant availed himself of the avenue provided and on 10 January 2019 filed a request for protection of legality before the Supreme Court. The Supreme Court has not yet made a decision.
7. In view of the above, the authorities will inform the Committee of Ministers on the outcome of the proceedings.
8. The authorities would furthermore like to recall that the applicant claimed 31,840 in respect of pecuniary damage (loss of earnings) and EUR 15,000 in respect of non-pecuniary damage. Regarding the pecuniary damage the Court could not discern any causal link between the violation found and the pecuniary damage alleged. The Court therefore rejected this claim. As to the non-pecuniary damage the Court awarded the applicant just satisfaction in the amount of EUR 6,400.

III GENERAL MEASURES

9. The authorities consider that the present violation resulted from the inadequate application of legislation in force by the domestic courts in the applicants' case, taking also into account that the applicant had never raised a complaint during the criminal proceedings about not being able to understand Russian. Furthermore, it was also highlighted in the separate opinion that the Court departed in this case from the existing case-law (§§ 6, 7 Vizgirda - Separate Opinion). The authorities therefore consider that the facts of this case constitute an isolated occurrence. In this respect the Court's judgment publication and dissemination would suffice to ensure that the domestic courts' attention is drawn to the Court's findings and will be capable of preventing similar violations. To corroborate such conclusion, the authorities would like to note that no applications alleging similar violations are pending before the European Court.
10. Nevertheless, following the European Court's judgment, the amendments to CPA were adopted and published in Official Journal Nr. 22/2019 on 5 April 2019. The relevant article 8 CPA was redrafted for the purpose of implementation of the Article 7 (3 and 5) of the Directive 2012/29/EU the European Parliament and of the Council of 25 October 2012 for establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA partially.
11. The Slovenian translation of the judgment has been published on the website of the State Attorney's Office (<http://www2.gov.si/dp-rs/escp.nsf>). It has been therefore made available to judges and legal professionals alike and can be easily accessed. This translation has also been submitted and is available at the HUDOC web page of the Court (<https://hudoc.echr.coe.int/eng>).

12. Summary of the judgment has furthermore been published in a monthly review for judges *Sodnikov Informator*, No. 10/2018, of 30 October 2018. This publication is also available on the website of the Supreme Court (www.sodisce.si/sodna_uprava/sodnikov_informator/).
13. The Court's judgment has also been transmitted to the Supreme Court and to the Ministry of Justice for their information.
14. In view of the above, the authorities consider that judges as well as other legal professionals are now aware of the European Court's findings in this case and the need to comply with the Convention requirements in similar situations.

IV JUST SATISFACTION

15. The amount of just satisfaction awarded in this case was disbursed on 28 February 2019. It has therefore been paid within the time-limit set by the European Court.

V STATE OF EXECUTION OF JUDGEMENT

16. The authorities of Republic of Slovenia will inform the Committee of Ministers on the outcome of proceedings related to the request for the protection of legality.
17. The authorities furthermore deem that the above-mentioned general measures taken are capable of preventing similar violations.