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Meeting: 1294th meeting (September 2017) (DH)

Item reference: Action report (20/06/2017)

Communication from Slovenia concerning the case of S.I. v. Slovenia (Application No. 45082/05)

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Réunion : 1294^e réunion (septembre 2017) (DH)

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Communication de la Slovénie concernant l'affaire S.I. c. Slovénie (Requête n° 45082/05)
(anglais uniquement)

DGI

20 JUIN 2017

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

Ljubljana, 20 June 2017

ACTION REPORT
S.I. group of cases v. Slovenia

Leading judgment of 13/10/2011, final on 13/1/2012
Application no.: 45082/03 and 16608/09,

45082/03 S.I. v. Slovenia, judgment of 13/10/2011, final on 13/1/2012
16008/09 Furman v. Slovenia and Austria, judgment of 5/2/2015, final on 5/5/2015

I. CASE DESCRIPTION

1. These cases concern the violation of the applicants' right to respect for their family life as a result of the excessive length of the proceedings concerning custody and visiting rights (violations of Article 8). The case of S.I. also concerns the judge's refusal to enforce an interim decision setting out contact arrangements.

2. The European Court (the Court) noted in S.I. judgment in this respect that between 21 November 2003 and 14 March 2005, no significant steps, apart from the appointment of an expert in psychology, were taken by the domestic court (§71 of the judgment). The Court also noted that had the judge considered that the interim decision of 20 April 2005 was no longer a valid one, she could have changed it or, if appropriate, have issued another kind of decision as stipulated by the domestic law. By merely saying that the enforcement would not be ordered the judge in effect declined to take a formal and reasoned decision on the issue. As a result, the applicant was also deprived of any opportunity to bring the issue to a higher court (§75 of the judgment). Finally the Court noted that the Constitutional Court declared the applicant's appeal inadmissible on the grounds that it did not concern a specific decision of a State body (§78 of the judgment).

3. The Court also noted in Furman Judgment that it was primarily the disregard of the authorities for the cross-border dimension of the case and their general lack of promptness and efficiency that resulted in the delay of nine years between the institution of the contact proceedings and the issuing of the first valid contact order. It furthermore took authorities four years to decide in the enforcement proceedings, more than fourteen years in total (§122 of the judgment).

II. INDIVIDUAL MEASURES

4. The authorities have taken measures to ensure that the violation is brought to an end and the applicant redressed for the negative consequences sustained.

5. In particular, the Court awarded the applicants just satisfaction in respect of non-pecuniary damage. The applicants have therefore been redressed on this head.

6. The authorities would furthermore like to point out that in S.I. case the impugned proceedings was resolved on 15 November 2006, with the parties reaching an agreement on custody and contact rights. The agreement provided that the mother had sole custody of the children and set out contact arrangements for the applicant and the children who were to

spend every Thursday afternoon, every other weekend (from Friday to Monday) and half the school holidays together (§49 of the judgment). The applicant not only restored, but currently maintains regular contacts with his children.

7. In view of the above, the authorities consider that the violation has been brought to an end and the applicant was redressed for the damage sustained.

III. GENERAL MEASURES

8. The authorities recall that the Court found that the violation of the applicants' right to respect for their family life was a result of the excessive length of the proceedings concerning custody and visiting rights and the judge's refusal to enforce an interim decision setting out contact arrangements. Measures aimed at preventing this violations are set out below.

A. Relevant legislative amendments concerning custody and access arrangements (visiting rights)

9. In 2004 Article 10.a of the amended Marriage and Family Relations Act provided that proceedings, including the custody and access arrangements, should be processed with priority.

10. The authorities would furthermore like to add that recently adopted Family Code (Official Gazette of the Republic of Slovenia, no. 15/17), which entered into force on 15 April 2017 and will be applicable as of 15 April 2019, provides that family-related disputes should be processed with priority. The Family Code also introduces mediation as a tool aimed at resolving family-related disputes peacefully.

11. The authorities also note that the Family Code transfers all decision-making regarding family-related issues (including custody and visiting rights) from social work centres to district courts.

B. Measures aimed at increasing efficiency of proceedings concerning custody and visiting rights in Ljubljana District Court

12. Further, in response to the European Court's findings in this case, the authorities have taken a number of measures aimed at increasing the efficiency of justice administration in the Ljubljana District Court, which was involved in the impugned custody and access proceedings. In particular, in accordance with article 73 of the Courts Act the Minister of Justice submitted on 25 January 2012 a request to the president of the Ljubljana Higher Court to conduct an inspection of work in the relevant case of the Ljubljana District Court. The president of the Ljubljana Higher Court ordered the president of the Ljubljana District court to adopt appropriate measures until 31 December 2012. The president of the Ljubljana District Court reported that the relevant case and problem of delays in decisions regarding the issuing of interim orders were addressed by a board of judges from the department of family law of the Ljubljana District Court. The department also introduced a special record of filed proposals for issuing of an interim order and specified a time standard for decisions related to interim order. Judges have to ensure that a proposal for an interim order will be resolved within three months. If the deadline is exceeded the judge responsible has to explain the reason and circumstances for the delay and when he will be able to decide on the proposal.

13. The president of the Ljubljana Higher Court informed legal experts, who gives lectures in the field of marital disputes and disputes between parents and children, about the problems

related to the long time needed for issuing of an interim order and concentrated administration of proceedings in family matters, while requesting them to use their lectures to highlight the possibilities for a more efficient administration of such proceedings.

C. Measures aimed at increasing efficiency of enforcement of interim access orders issued by domestic courts

14. The authorities consider that the violation regarding judge's refusal to enforce an interim decision is an isolated violation and that measures specified in section A and B above are capable of preventing similar violations. In this respect, the authorities note that no similar applications are pending before the Court. This fact testifies to the efficiency of the measures taken.

D. A set of measures implemented within the context of Lukenda group of cases focused on increasing efficiency of judiciary proceedings and introducing an effective remedy

15. On the more general note, the authorities recall that following the impugned facts of the present cases, Slovenian authorities have taken a series of legislative, capacity-building, awareness-raising and other measures nationwide aimed to prevent the excessive length of civil proceedings, including the proceedings for custody and visiting rights, (which was at the root of the violation in these cases) and introduced an effective remedy within the context of the *Lukenda* group of cases also applicable to this type of cases (see Final Resolution CM/ResDH(2016)354 and Action report (DD(2016)1212)). These measures, which were also aimed at remedying shortcomings identified in the presented cases (such as excessive length of proceedings, absence of an effective acceleratory remedy etc.) resulted in the impressive increase of disposal time and average length of proceedings in civil cases, including the cases similar to the cases at hand.

E. Measures aimed at challenging the lack of judge's conduct

16. In response to the findings of the Court that there was no other means to challenge the judge's conduct (§78 of the S.I. Judgment) except before the Constitutional Court, the authorities would like to indicate that according to the Administrative Dispute Act (Official Gazette of the Republic of Slovenia, no. 105/06) a person who believes that his/her human rights and fundamental freedoms were violated can file a complaint (article 4). This is a so called subsidiary judicial protection, meaning that if any other form of due process is not guaranteed a person can file this complaint before the Administrative Court, either to challenge an individual act or an action of a certain state body. The Administrative Court may establish that the act or action is illegal, ban the continuation of individual actions, decide on the plaintiff's request to be reimbursed for damages and order, when necessary, the removal of a violation of constitutional rights and re-establishment of a legal state of affairs.

F. Awareness-raising, publication and dissemination measures

17. The Court's findings in the present case have been brought to the attention of the judges who adjudicate in family-related disputes (paragraph 13 and 19 of the present report).

18. The Judgment in the S.I. Case was also presented in Slovenia's leading legal weekly journal *Pravna praksa* in article: *Applying the best interest of the child principle should not lead to arbitrariness* (*Pravna praksa* 2011, no. 43, p.25).

19. The Judgment of the Furman Case was presented by the State Attorney during the following trainings for judges organised by Judicial Training Center of the Ministry of Justice: 26 January 2016 (seminar for family law judges), 2 and 16 March 2016 (judicial school).

20. To this end, the S.I. Judgment was communicated to the Supreme Court and the Ministry of Justice. The Furman Judgment was communicated to the Ministry of Labour, Family, Social Affairs, and Equal Opportunities, to the Ministry of Foreign Affairs, Local Court of Maribor, District Court of Ljubljana, Maribor Social Work Centre and Maribor Administrative Unit.

21. The Slovenian translation of the judgments have 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.

22. A summary of the judgments have furthermore been published in monthly review for judges "Sodnikov Informator", No. 14/2011, of 5 December 2011 and No. 6/2015, of 1 July 2015. This review is aimed at judges of the domestic courts and will ensure that the European Court's findings are made known to them.

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

IV. JUST SATISFACTION

24. The just satisfaction awarded in this cases was disbursed on 13 April 2012 and on 5 August 2015 (EUR 4,000 and EUR 15,000). It has therefore been paid within the time-limit set by the Court.

V. CONCLUSION

25. The authorities of the Republic of Slovenia consider that the individual measures taken ensured that violation has been brought to an end and that the applicant has been redressed.

26. The authorities furthermore deem that the general measures taken are capable of preventing similar violations.

27. The authorities therefore consider that the Republic of Slovenia has complied with its obligation under article 46 § 1 of the Convention.