

SECRETARIAT GENERAL

SECRETARIAT OF THE COMMITTEE OF MINISTERS
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Date: 10/07/2013

DH-DD(2013)791

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Meeting: 1179 meeting (24-26 September 2013) (DH)

Item reference: Action plan (21/06/2013)

Communication from Croatia concerning the case of Bjedov against Croatia (Application No. 42150/09).

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Réunion : 1179 réunion (24-26 septembre 2013) (DH)

Référence du point : Plan d'action

Communication de la Croatie relative à l'affaire Bjedov contre Croatie (requête n° 42150/09)
(anglais uniquement)



ACTION PLAN

CASE TITLE: *Bjedov v. Croatia*
APPLICATION NO: 42150/09
JUDGMENT OF: 29/05/2012
FINAL ON: 29/08/2012

In the above mentioned judgment the ECtHR found a violation of Article 8 of the Convention, due to the omission of domestic courts to apply the proportionality test in civil proceedings concerning the applicant's eviction from her home.

1. INDIVIDUAL MEASURES

On 18 February 2013 Zadar Municipal Court granted applicant's petition and reopened the impugned proceedings. The reopened proceedings are underway and several trial hearings were held.

The respondent state will notify the Committee of Ministers on all further developments regarding individual measures.

2. GENERAL MEASURES

- **translation, publication and dissemination of the judgment**

The judgment has been translated into Croatian language and disseminated to all relevant authorities: the Constitutional Court, the Supreme Court, the Ministry of Social Welfare Policy and Youth, the Ministry of Justice and domestic authorities directly involved in the case – Municipal Court in Zadar and the Municipality of Zadar.

- **practice of the Constitutional Court established by decision U-III-46/2007 (proportionality test)**

The Government firstly notes that the applicant's case is similar to the cases *Ćosić against Croatia* and *Paulić against Croatia* the examination of which was closed by Resolution CM/ResDH(2011)48. The examination of these cases was closed after the Constitutional Court of RoC changed its practice (Constitutional court decision no. U-III-46/2007, presented in the action report submitted in cases *Ćosić* and *Paulić*; see Resolution CM/ResDH(2011)48).

The Government further emphasizes that the Constitutional Court of RoC did not change or depart from its practice established by the decision U-III-46/2007 in *Bjedov* case.

The Constitutional Court of RoC dismissed the applicant's constitutional complaint as formal requirements for lodging a constitutional complaint were not fulfilled in the specific circumstances of the applicant's case. The Government elaborates the former herewith:

The applicant Ms Bjedov lodged a constitutional complaint against the decision of the Supreme Court declaring her appeal on points of law (*revizija*) inadmissible. This is, in its nature, a purely procedural decision and as such not considered a final decision on a person's rights and obligations. The Constitutional Court dismissed the applicant's constitutional complaint against the decision of the Supreme Court on the grounds that she had not put forward any argument relevant for protection of her constitutional rights (see § 2. of the judgment).

For a constitutional complaint to be admissible, domestic remedies must be exhausted and the complaint must be lodged within the 30 day time - limit. The decision on an admissible appeal on points of law is considered a final decision on merits (Article 62 § 3 of the Constitutional Act on the Constitutional Court) and it therefore must be exhausted before lodging a constitutional complaint

Therefore, when a constitutional complaint is lodged against a decision declaring an appeal on points of law inadmissible, such as in the applicant's case, the Constitutional Court may examine it only from the procedural aspect (whether the guarantees of the right to a fair trial were respected in rendering such a decision).

When an appeal on points of law is not admissible under an explicit provision of the Code of Civil Procedure (i.e. article 383, paragraph 3, article 373.a of the CCP), applicants generally file a constitutional complaint and an appeal on points of law at the same time. It is done to ensure that the constitutional complaint fulfills both the exhaustion of domestic remedies and the time-limit prerequisite, so that the impugned proceedings may always be examined in merits. In order to safeguard the rights of the applicants guaranteed by the Constitution and the Convention, in 1998 the Constitutional Court developed "appeal on points of law letters." Applicants, who filed the constitutional complaint and the appeal on points of law concurrently and within the time limit, can always have their case examined in merits.

The applicant Ms Bjedov lodged a constitutional complaint against a procedural decision of the Supreme Court, nonetheless contesting the merits of her case (right to home). Since the Supreme Court's decision is a procedural one, her complaint could have been examined only from the procedural aspect (right to fair trial), which she, however, did not contest. The applicant's complaint in respect of the merits of the case was lodged outside the 30 day time limit, since the final decision on the merits in her case had been the Zadar County Court's judgment.

The Government emphasizes that all the rules explained above are longstanding practice of the Constitutional Court, well known to both applicants and lawyers. The Constitutional Court introduced this practice in 1998. Rules are explained in detail in the instructions for filing a constitutional complaint published on the Constitutional Courts' website.¹

¹
<http://www.usud.hr/uploads/OBRASCI%20USTAVNIH%20TUZBI%20S%20UPUTAMA%20ZA%20ISPUNJAVANJE.PDF>

Therefore, in applicant's case, the Constitutional Court did not depart from its practice established by its decision U-III-46/2007. It merely applied its long standing, well-established and well known practice regarding formal requirements for lodging a constitutional complaint in civil contentious proceedings.

In order to prove the fact that the Constitutional Court continuously applies the practice established by decision U-III-46/2007, the Government encloses to this action plan Constitutional Court decisions U-III-1422/2006 of 6 June 2012 and U-III-405/2008 of 21 February 2012. The enclosed decisions demonstrate that the practice of the Constitutional Court complies fully with the standards set by the ECtHR in the *Čosić against Croatia* and *Paulić against Croatia* cases.

Therefore, the Government deems that no other general measures are necessary in this particular case.

3. JUST SATISFACTION

Just satisfaction awarded to the applicant was fully paid on 21 November 2012 and payment information was delivered to the Execution Department on 7 February 2013.

4. CONCLUSION

The respondent state shall inform the Committee of Ministers on further developments regarding the execution of individual measures in this case.