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Communication from Serbia concerning the case of VRENCEV v. Serbia (Application No. 2361/05)

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Communication de la Serbie concernant l'affaire VRENCEV c. Serbie (Requête n° 2361/05)
(anglais uniquement)

Belgrade, 31 May 2017

ACTION REPORT

VRENČEV GROUP V. SERBIA

Leading application no. 2361/05

Leading judgment of 23 September 2008, final on 23 December 2008

Vrenčev, no. 2361/05, judgment of 23 September 2008, final on 23 December 2008
Đermanović, no. 48497/06, judgment of 23 February 2010, final on 23 May 2010
Grujović, no. 25381/12, judgment of 21 July 2015, final on 21 October 2015
Milošević, no. 31320/05, judgment of 28 April 2009, final on 28 July 2009

I CASE DESCRIPTION

1. These cases concern violations of the applicants' right to liberty on the following grounds:

   – breaches of the applicants' right to be brought promptly before a judge (20 days in *Vrenčev* and 41 days in *Milošević* without a judicial review) back in 2004 and 2005 respectively (violations of Article 5§3);

   – excessive length of detention on remand (seven years in *Grujović*) (a violation of Article 5§3);

   – violation of the applicants' right to be released pending trial in that the authorities failed to consider any alternative for the detention under the circumstances of the cases and used standardised formulas when extending detention (violations of Article 5§3 in *Vrenčev* and *Đermanović*);

- lack of speedy examination (six days) in the review proceedings before the Supreme Court concerning the detention order and the absence of an oral hearing before it back in 2004 (a violation of Article 5§4 in *Vrenčev*);

- violation of the applicant's enforceable right to compensation for unlawful detention (a violation of Article 5§5 in *Vrenčev*).

2. The case of *Grujović* furthermore concerns a violation of the applicant's right to a fair trial on account of excessive length of criminal proceedings, which were brought back in 2008 and were still pending when the Court rendered its judgment (violation of Article 6§1).

II INDIVIDUAL MEASURES

3. The Serbian authorities have taken steps to ensure that the violations at hand have ceased and that the applicants have been redressed for the negative consequences of the violations found by the European Court. These measures are set out below.

A. The applicants' release

4. At the outset, the authorities indicate that the applicants in *Vrenčev*, *Đermanović* and *Milošević* have been already released before the European Court rendered the respective judgments (§23 in Vrenčev, §17 in *Đermanović* and §21 in Milošević).

5. The authorities furthermore highlight that on 10 September 2015 the applicant in *Grujović*, who was still in detention on remand when the European Court rendered its judgment, was released from detention. He was ordered a more lenient measure of home confinement. On 22 March 2016 this measure was replaced by a more lenient ban to leave his town without the court's permission. On 28 February 2017,

the applicant was finally convicted. He is therefore currently held not in pre-trial detention but is rather serving his sentence in a prison.

6. Therefore, no applicant is currently held under detention on remand. The violations under this head have therefore been brought to an end.

B. Bringing the impugned criminal proceedings in *Grujović* to an end

7. It is recalled that the criminal proceedings in *Grujović* were still pending before the trial court when the European Court rendered its judgment (§§19, 61 in *Grujović*).

8. In response to the European Court's findings, the measures have been taken to bring the violation of the applicant' right to a fair trial in *Grujović* to an end. In particular, on 25 August 2015 the Government Agent addressed a letter to the competent authorities highlighting the European Court's findings in this case and drawing their attention to the need to accelerate these proceedings and bring them to an end as a matter of priority in line with the Convention standards.

9. In light of the above, the impugned criminal proceedings in *Grujović* have been brought to an end on 28 February 2017, when the applicant was finally convicted. The violation of the applicant's right to a fair trial on account of excessive length of domestic proceedings has been therefore brought to an end.

C. The applicants' redress

10. At the outset, the Serbian authorities highlight that the European Court awarded all applicants just satisfaction in respect of non-pecuniary damage sustained (§97 in *Vrenčev*, §89 in *Đermanović*, §77 in *Grujović* and §61 in *Milošević*).

11. The applicants in these cases did not claim just satisfaction in respect of pecuniary damage before the European Court. The authorities however highlight that the

domestic legislation (notably, provision of Article 172 of the Obligation Code) provides the applicants with a concrete and practical avenue to claim pecuniary damage should they considered to have suffered it. Pursuant to the domestic legislation, this claim could be raised within three years after a European Court's judgment finding a violation of the Convention becomes final. In these cases, this timeframe already expired (in *Vrenčev, Đermanović* and *Milošević*) or will expire on 21 October 2018 (in *Grujović*). To the best of the authorities' knowledge, the applicants have not raised any claim for pecuniary damage before domestic courts and have not availed themselves of the avenue available in the domestic legislation to this effect.

D. Conclusions on the individual measures

12. In view of the above, the authorities consider that the measures taken ensured that the violations were brought to an end and that the applicants were redressed in respect of the damage sustained.

III GENERAL MEASURES

13. The authorities ensured that appropriate measures have been taken to prevent similar violations of the right to liberty and the right to a fair trial on account of excessive length of criminal proceedings as set out below.

A. Measures aimed at preventing violations of the right to liberty

14. The measures taken focused on ensuring that:

- the right to be promptly brought before a judge is respected,

- the length of detention on remand is brought in compliance with the Convention standards,

- domestic courts consider all relevant facts when considering the possibility of releasing defendants pending their trial,

- the lack of speedy examination in the review proceedings before the Supreme Court and the absence of an oral hearing before is prevented as well as

- the right to compensation in respect of unlawful detention on remand is enforceable.

1. Measures aimed at ensuring the right to be promptly brought before a judge

15. In *Vrenčev* and *Milošević,* it took 20 days and 41 days, respectively, for the applicants to be brought before a judge in person. The European Court considered that this amounted to the violations of the applicants' right to be promptly brought before a judge.

16. Following the impugned facts of these cases which took place in 2004 and 2005, the current Constitution of Republic of Serbia was adopted and entered into force in November 2006. The current Constitution is a rare example among the Constitutions of the Member States which expressly strengthen and guarantees at the constitutional level the right to be brought before a judge within a strict time-frame following apprehension or arrest. It therefore provides individuals with credible guaranties regarding their right to be promptly brought before a judge following an arrest or apprehension.

17. In particular, pursuant to Article 29 of the Constitution, any person deprived of liberty without a decision of the court must be brought before the competent court without delay and not later than 48 hours; otherwise they shall be released. In addition, pursuant to Article 30 of the Constitution, if a detainee has not been questioned when making a decision on detention, the detainee must be brought before the

competent court within 48 hours from the time of sending to detention which shall reconsider the decision on detention.

18. The authorities would like to highlight that the earlier Constitution applicable at the material time did not provide such guaranties. The authorities therefore hold the view that the provisions of the Constitution will be capable of preventing similar violation.

19. Furthermore, in response to the European Court's findings in *Vrenčev* and *Milošević,* new Criminal Procedure Code ("CPC") was adopted in September 2011 (in force since 1 October 2013). Pursuant to Article 212 of the CPC, before issuing a decision ordering detention, the court will question the defendant in connection with the reasons for ordering detention. If by exception from this rule, the decision ordering detention is issued without questioning the defendant, the court will question the defendant within 48 hours from the arrest. After the questioning, the court will decide whether to leave the decision ordering detention in force or to repeal detention.

20. The authorities consider that these legislative changes are capable of preventing similar violations under this head.

2. Measures aimed at preventing excessive length of detention on remand

21. In response to the European Court's findings in *Grujović* that became final on 21 October 2015, the measures taken with a view to bringing the length of detention on remand in compliance with the Convention standards focused on aligning the case-law of the domestic courts with the Convention and training and awareness-raising measures.

22. The domestic courts aligned their case-law concerning detention on remand in the light of the European Court's findings in these cases. To this end, the Constitutional Court has now developed well-established case-law reflecting the European Court's findings in *Grujović*. The Constitutional Court assesses the compliance of the length

of detention on remand taking into account specific circumstances of the case at hand and its complexity.

23. In particular, in the decision of 21 January 2016 the Constitutional Court found that the applicant's detention on remand lasting for more than 4 years and 8 months was not reasonable. At the same time, the Constitutional Court advised the applicant on his right to claim damages in separate proceedings. The authorities would like to indicate that this decision now constitutes a well-established frame of the case-law of the Constitutional Court.

24. The authorities consider that the above Convention-compliant case-law of the Constitutional Court, together with a number of training and awareness measures set out below will be capable of preventing similar violations before the European Court under this head.

3. Measures aimed at ensuring that domestic courts consider alternatives for the detention when considering the possibility of releasing defendants pending their trial

25. It is recalled that in *Vrenčev* and *Đermanović* the European Court found violations of the applicants' right to be released pending trial when prolonging their detention, the authorities failed to consider alternative means of ensuring their presence at the trial and used standardised formulas.

26. In this respect, the authorities would like to highlight that at the time of the impugned facts the domestic courts did not often use bail or other alternative means of ensuring presence at the trial. Following the impugned practice, the domestic courts became more familiar with this possibility provided in the domestic legislation. A number of awareness raising campaigns and workshops has been carried out to ensure that domestic courts consider alternatives for the detention. These efforts have already made a positive impact. Namely, the statistical data clearly indicate

that number of persons concerned with alternative means of ensuring their presence at the trial in 2015 and 2016 increased in comparison to figures for 2013 and 2014.

	2013-2014	2015-2016
Home confinement	319	486
Restricted stay in a town	214	703
Ban to approach a person	104	437

27. In response to the European Court's findings in these cases, the Constitutional Court furthermore aligned its case-law on this point. In particular, the authorities would like to refer to a decision of the Constitutional Court of 3 October 2013. In this decision the Constitutional Court found a violation of the applicant's right to liberty on account of the fact that Court of Appeal in Belgrade – Special Department for Organised Crime did not take into account a possibility of imposing a bail. At the same time, the Constitutional Court decided to publish its decision in the Official Gazette raising thereby the awareness of domestic courts on the relevant standards in this field. The authorities would also like to highlight that the Constitutional Court directly referred to the European Court's case-law in its decision to corroborate its findings.

28. In addition, in order to ensure that judges are aware of the European Court's findings in *Vrenčev* and *Đermanović* and that they invariably consider alternative means of ensuring presence at the trial, a number of trainings and awareness raising measures have been also taken, together with the wide dissemination of these judgments. These measures are set out below.

29. The authorities consider that these measures will be capable of preventing similar violations under this head.

4. Measures taken in respect of lack of speedy examination in the review proceedings before the Supreme Court and the absence of an oral hearing

30. In *Vrenčev*, the European Court found a violation of the applicant's right to liberty due to the two following shortcomings: the lack of speed (six days) in the review proceedings before the Supreme Court when deciding on the applicant's appeal, and the absence of an oral hearing before this court (given that this hearing was not held even when the applicant's initial detention was ordered).

31. In response to the European Court's findings, the authorities highlight that since 2009, the Supreme Court (currently the Supreme Court of Cassation) has no competence to decide on appeals lodged against decisions on detention.

32. In particular, pursuant to Article 214 of the CPC, parties and a defence counsel may lodge an appeal against the decision on detention before the three-judge panel of the same court that ordered detention. The appeal, decision and other documents are immediately delivered to the panel concerned. A decision on the appeal shall be issued within 48 hours. The authorities therefore consider that the lack of speed in the review proceedings will be prevented.

33. With respect to the absence of an oral hearing before the Supreme Court, the authorities would like to recall that this violation occurred since this hearing was not held when the District Court in Belgrade ordered the initial applicant's detention. In this respect, the authorities would also like to recall that following the facts of *Vrenčev*, the legislative framework was changed with a view to ensure the right to be promptly brought before a judge within 48 hours (see above §§16-20). Fundamental procedural guarantees, such as an oral hearing, are thus complied with at the initial stage of the procedure.

34. In view of the above, the authorities consider that measures taken will be capable of preventing similar violations under this heading.

5. Measures aimed at ensuring the enforceable right to compensation with respect to unlawful detention

35. The European Court found that the applicant had no "enforceable right to compensation" given that the Supreme Court has already found that this detention was lawful and the Serbian Government failed to provide any relevant case-law to suggest that compensation for detention in breach convention could be obtained in a subsequent civil suit.

36. In response to the European Court's findings, measures have been taken to introduce the enforceable right to compensation for victims of unlawful detention. In particular, the domestic law prescribes the right to compensation for detention in breach of the Convention. Namely, Article 35 paragraph 2 of the Constitution prescribes that any person deprived of liberty, detained or convicted for a criminal offence without grounds or unlawfully shall have the right to compensation payable by the Republic of Serbia.

37. The domestic courts are putting this constitutional provision in practice. For instance in a decision of 30 May 2012 the Constitutional Court found a violation of the right to liberty and security and awarded the applicant non-pecuniary damage.

38. The fact that the right to compensation for unlawful detention is enforceable in Serbia is also corroborated by the statistical data. For example, between 1 November 2013 and 31 December 2016, an amount of about EUR 4,567,000 was paid by the State for compensation for unlawful detention[1].

39. In view of the above, the authorities consider that measures taken will be capable of preventing similar violations under this heading

B. Measures aimed at preventing excessive length of criminal proceedings

[1] Human Rights in Serbia in 2016, the Belgrade Centre of Human Rights

40. It is recalled that the measures aimed at increasing efficiency of criminal proceedings and preventing their excessive length have been taken within the context of *Ristić* case (see Final Resolution CM/ResDH(2014)18).

41. The most important measure taken within the context of *Ristić* case was the adoption of the new Criminal Procedure Code ("CPC") in September 2011 (in force from 1 October 2013). The new CPC introduced a number of novelties aimed at increasing the efficiency of criminal proceedings. The most remarkable change, in particular, was the introduction of "prosecutorial investigation". Pursuant to this concept of prosecutorial investigation, prosecutors have an obligation to prove grounds for indicting a person before trial. The previous practice of adducing evidence while in trial resulted in overloaded courts and contributed to excessive length of criminal proceedings.

42. In view of the fact that the criminal proceedings in *Đermanović* were still pending before trial court for almost eight years at the time when the European Court rendered its judgment (§61), the authorities will consider whether additional measures are necessary to prevent excessive length of criminal proceedings. The authorities will present relevant information under this head within the context of the *Jovanović* case (app. no. 29763/07).

C. Trainings and awareness raising measures

43. Continuing training and awareness raising measures aimed at domestic judges are an important step ensuring that the domestic courts adhere to the Convention standards concerning the right to liberty and security. The appropriate trainings have been carried out for this purpose.

44. In this respect, since 2015 the Academy for Judges and Public Prosecutors has carried out a number of trainings on different aspects of Article 5 of the Convention. These trainings were supported by the Council of Europe, the OSCE Mission and

other national and international institutions. In particular, thirteen training courses were held for 350 judges and prosecutors. In addition, three more training courses for 65 judges and prosecutors have been planned for the remaining period of the year 2017. The Government would like to highlight that these trainings are offered by the Academy for Judges on on-going basis and will continue in the future as well.

45. The Government considers that the above measures will be capable of ensuring that members of the judiciary are made aware of the European Court's findings in these cases and thus of preventing similar violations.

D. Publication and dissemination measures

46. Publication and dissemination measures have been taken to draw the attention of the relevant domestic authorities on the European Court's findings in these cases. To this end, the European Court's judgments have been translated into Serbian and published in the Official Gazette and on the Government Agent's official web page. The European Court's findings have therefore been made easily accessible to judges and legal community in the country.

47. The Government Agent furthermore prepared an analysis of the European Court's findings in these judgments and ensured their dissemination together with the translated judgments to all relevant domestic authorities, including the Supreme Court of Cassation and the Constitutional Court. The Supreme Court of Cassation ensured that the above-mentioned documents have been transmitted further to all courts in the country. The attention of all judges in the country has therefore been drawn to the European Court's findings in these cases and the need to abide by the Convention standards in similar situation.

48. The above-mentioned measures ensured that all domestic courts are now aware of the Court's findings and the need to comply with the Convention requirements in similar cases.

E. Conclusions on the general measures

49. The authorities consider that the above measures will be capable of preventing similar violations. To the best of the authorities' knowledge, two applications are currently pending before the Court alleging a similar violation. In the first application (*Purić v. Serbia*, no. 27929/10) the Court will examine whether the extension of the applicant's pre-trial detention from 17 August 2007 to 14 December 2007 (which is the date of his release) in accordance with the requirements set in Article 5 § 3 of the Convention. In the second application (*R.B. v. Serbia*, no. 52120/13) the Court will examine whether the extension of the applicant's pre-trial detention from 18 June 2012 to 17 August 2012 (which is the date of his release) was in accordance with the requirements set in Article 5 § 3 of the Convention. The authorities indicate that the above mentioned pending applications deal with the facts that had taken place before the described general measures were undertaken.

IV JUST SATISFACTION

50. The amounts of just satisfaction awarded by the European Court have been disbursed to the applicants within the time-limits set out by the European Court.

V CONCLUSIONS

51. The authorities consider the individual measures taken have ensured that the violations were brought to an end and that the applicants were redressed for the damage sustained.

52. The authorities furthermore consider that the general measures taken are capable of preventing similar violations.

53. The authorities therefore consider that Serbia has thus complied with its obligations under Article 46 paragraph 1 of the Convention.