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Meeting: 1324th meeting (September 2018) (DH)

Item reference: Action report (05/09/2018)

Communication from Slovenia concerning the case of Ceferin v. Slovenia (Application No. 40975/08)

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Réunion : 1324^e réunion (septembre 2018) (DH)

Référence du point : Bilan d'action

Communication de la Slovénie concernant l'affaire Ceferin c. Slovénie (Requête n° 40975/08)
(anglais uniquement)



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

Subject: Action Report for case Čeferin v. Slovenia

Dear Mr Sundberg,

Attached please find Action Report for the case Čeferin v. Slovenia (application no. 40975/08, judgment of 16 January 2018, final on 16 April 2018).

We hope you will be able to proceed with closure of this case.

Yours sincerely,

**Tina Brecelj
State Secretary**



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

Ljubljana, 4 September 2018

ACTION REPORT

ČEFERIN v. Slovenia

Application no. 40975/08
Judgment of 16 January 2018
Final on 16 April 2018

I CASE DESCRIPTION

1. This case concerns a violation of the applicant's right to freedom of expression on account of the failure of the domestic courts to provide relevant and sufficient justification when fining him twice (in 2004 and 2005) for contempt of court following certain statements he made, as a defence lawyer, within the context of criminal proceedings (a violation of Article 10).
2. The Court noted that the impugned remarks had basis in the facts the applicant had put forward with a view to challenging the credibility of the experts and the non-disclosure of the lie-detector test results. Whether those facts were sufficient to justify the impugned statements was a matter which should have been properly considered by the domestic courts, even more so given that the applicant had explicitly referred to the factual basis in his remedies (§63 of the judgment). However, the domestic courts have not furnished "relevant and sufficient" reasons to justify the restriction of the applicant's freedom of expression (§66 of the judgment).

II INDIVIDUAL MEASURES

3. The authorities have taken measures to ensure that the violation has ceased and that the applicant was redressed for its negative consequences.
4. The applicant claimed 2,295 EUR in respect of pecuniary damage, corresponding to the fines he was ordered to pay for contempt of the court, plus interest. The Court noted that while it was not in dispute that the applicant paid for the first fine in the amount of EUR 625, the Government submitted that he had not paid the second fine. The Court thus accepted the claim in respect of pecuniary damage only in the amount of the first fine. Accordingly, and considering that interest should have been added in order to compensate for the loss of the award's value over time, the Court awarded the applicant EUR 800 under this head plus any tax that may be chargeable on that amount. (§ 78 of the judgment).
5. The applicant also claimed 15,000 EUR of non-pecuniary damage for the alleged breaches of Articles 6 and 10 of the Convention. The Court awarded the applicant just satisfaction 2,400 EUR in respect of non-pecuniary damage relating only to the violation of Article 10 of the Convention (§ 79).
6. In view of the above the authorities consider that the payment of just satisfaction to the applicant ensured full redress for the damage sustained. In this respect, it is noted that the reopening of the criminal proceedings does not appear to be necessary measure in this case as the applicant was not a party to these proceedings (see, *mutatis mutandis*, Final resolution CM/ResDH(2018)75 in *Radobuljac v. Croatia* and the enclosed action report).

III GENERAL MEASURES

7. The Court noted that violation of Article 10 of the Convention resulted from the practice of the domestic courts, that have not furnished “relevant and sufficient” reasons to justify the restriction of the applicant’s freedom of expression. They therefore failed to strike, on the basis of the criteria laid down in the Court’s case-law, the right balance between, on the one hand, the need to protect the authority of the judiciary and the reputation of the participants in the proceedings and, on the other hand, the need to protect the applicant’s freedom of expression (§ 66 of the judgment).
8. The authorities would first like to point out that the violation in this case resulted from the decisions made by domestic courts and not from the domestic legislation.
9. The authorities considered that it was sufficient to take publication and dissemination measures aimed at preventing similar violations. These measures have been taken as set out below.
10. In particular, 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.
11. A summary of the judgment has furthermore been published in monthly journal for judges “*Sodnikov Informator*”, No. 6/2018, 3.July 2018. The *Sodnikov informator* is also available on the website of the Supreme Court of the Republic of Slovenia (http://www.sodisce.si/sodna_uprava/sodnikov_informator/). This journal is aimed at judges of the domestic courts and will ensure that the European Court’s findings are made known to them.
12. The Court’s judgement was widely quoted in leading national legal journals, including in *Pravna praksa*:
 - dr. Rok Čeferin: Je sodba v zadevi Čeferin res hladen tuš za sodstvo? (Is the judgment in the Ceferin case really a cold shower for the judiciary?), *Pravna Praksa*, 2018, no.5, p.19;
 - mag. Matevž Krivic, Grami in kilogrami na sodniških tehtnicah (Grams and kilograms on Judicial Weighing Scales), *Pravna Praksa*, 2018, no.5, p.20;
 - mag. Robert Golobinek: Ugled in avtoriteta sodstva ter zagovornikova pravica do izražanja (The reputation and authority of the judiciary and the advocate's right to expression), *Pravna Praksa*, 2018, no.6, p.19;
 - Miha Jesenko: Iz odklonilnega mnenja ad hoc sodnika Galiča v zadevi Čeferin proti Sloveniji (From the adverse opinion of the ad-hoc judge Galic in the case Ceferin v. Slovenia), *Pravna praksa*, 2018, no.7-8, p. 25;
 - dr. Rok Čeferin: Kršitev svobode izražanja odvetnikov (Violation of the freedom of expression of lawyers), *Odvetnik*, 2018, no.1, p.43;
 - mag. Nina Betetto, *Odvetnik, pravo in družba* (Lawyer, Law and Society), *Odvetnik*, 2018, no.2, p.24;
 - dr. Rok Čeferin, Sanja Segar: *Odvetnik, pravo in družba - II ali še nekaj besed o nespodobnosti* (Lawyer, Law and Society - II, or a few more words of impropriety), *Pravna Praksa*, 2018, no.23, p.20;
13. The Court’s judgment was also communicated to the Supreme Court and the Ministry of Justice.
14. In view of the above measures, the authorities consider that judges as well as other legal professionals and public at large are now aware of the European Court’s findings in this case and the need to comply with them in similar cases. These measures will ensure that domestic courts apply the proportionality test within the context of similar contempt of court cases.

IV JUST SATISFACTION

15. The just satisfaction awarded in this case was disbursed to the applicant on 16 July 2018. It has therefore been paid within the time-limit set by the European Court.

V CONCLUSION

16. The authorities of Republic of Slovenia consider that the just satisfaction awarded by the European Court put an end to the violation at hand and ensured full redress to the applicant its negative consequences.
17. The authorities furthermore deem that the general measures taken are capable of preventing similar violations.
18. The authorities therefore consider that the Republic of Slovenia has complied with its obligation under article 46 § 1 of the Convention.