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Meeting: 1331st meeting (December 2018) (DH)

Item reference: Action report (03/10/2018)

Communication from Slovenia concerning the case of GASPARI v. Slovenia (Application No. 21055/03)

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Réunion : 1331^e réunion (décembre 2018) (DH)

Référence du point : Bilan d'action

Communication de la Slovénie concernant l'affaire GASPARI c. Slovénie (Requête n° 21055/03)
(anglais uniquement)



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SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

Number: 542-108/2016
Date: 2 October 2018

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

— **Subject: Action Report for the case Gaspari v. Slovenia**

Dear Mr Sundberg,

Attached please find Action Report for the case *Gaspari v. Slovenia* (application no. 21055/03, judgment of 21 July 2009, final on 10 December 2009).

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

Yours sincerely,



dr. Dominika Švarc Pipan
State Secretary

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

Ljubljana, 2 October 2018

REVISED ACTION REPORT

GASPARI v. Slovenia

Application no.: 21055/03
Judgment of 21/7/2009, final on 10/12/2009

I CASE DESCRIPTION

1. This case concerns a violation of the applicant's right to a fair trial due to the failure to communicate to her the constitutional complaints in 2001 and 2002, lodged by the opposite party (a violation of Article 6§1).
2. The European Court of Human Rights (the Court) considered it was the Constitutional Court's responsibility to ensure that the applicant was notified of the constitutional complaints and to ensure the applicant's proper participation in the proceedings. Constitutional Court did not take appropriate measures to ensure that the applicant's address was correct (*Gaspari*, §56).

II INDIVIDUAL MEASURES

3. It is recalled that the applicant claimed just satisfaction in respect of both non-pecuniary and pecuniary damage. The sum claimed in respect of pecuniary damage consisted of half of the total value of the property owned by the applicant and her late ex-husband prior to their divorce, which was at stake at the impugned proceedings. The applicant also asked to be awarded full restitution for her loss in the domestic proceedings or, at least, an amount which was in a reasonable proportion to the value of the property to which she was entitled.
4. The Court considered that there was no causal link between the violation of the Convention found and the applicant's claim in respect of pecuniary damage. It therefore rejected this claim.
5. The authorities carefully considered the Court's indication that the most appropriate form of redress in cases where breaching of Article 6 was found would be for the legislature to provide for a possibility to reopen the proceedings and re-examine the case in keeping with all the requirements of a fair hearing. The Court in particular noted that "this would in the present case be best achieved, if the domestic legislation provided for a possibility to reopen the proceedings and re-examine the case in keeping with all the requirements of a fair hearing (*Gaspari*, §80). The Court considered that "*whatever the case may be*" the lack of Article 6 guarantees in the proceedings at issue caused the applicant distress which

cannot be made good by the mere finding of a violation. The Court therefore awarded the applicant EUR 4,000 in respect of non-pecuniary damage.

6. Following the Court's judgment, the applicant requested the reopening of the proceedings before the Constitutional Court. On 14 April 2011, the Constitutional Court decided not to grant leave for reopening of the impugned proceedings. In its decision, the Constitutional Court examined in depth the Court's findings and observations in an effort to give full effect to the Court's judgment. The Constitutional Court highlighted that "in accordance with the first paragraph of Article 46 of the ECHR, contracting states undertake to abide by the final judgments of the ECtHR in any case to which they are parties..." while concluding that "the applicant's emphasis that the ECtHR judgment issued in her case is binding for the Republic of Slovenia is well founded" (§7 of the decision).
7. In the above decision, the Constitutional Court further considered the fact that the Court's judgments are of a declaratory nature. To this end, the Constitutional Court noted that a Contracting State can select appropriate measures to redress the consequences of an individual act that is disputed or measures by which it will be able to ensure that its national legislation is consistent with the requirements of the Convention. Reverting to the present case, the Constitutional Court considered that the Court's indication on the reopening "cannot be interpreted differently than as an indication of *a possible measure*" which could be, in the Court's opinion, appropriate to redress the consequences of the established violation.
8. Against this backdrop, the Constitutional Court referred to the fact that the domestic legislation did not provide for a possibility of reopening before that court. However, the Constitutional Court considered that pursuant to Article 15 of the national Constitution individuals whose human rights were breached, like in the present case, were entitled to obtain redress. The Constitutional Court highlighted that this redress may be afforded by ensuring the right to financial compensation or even just by establishing the violation itself, depending on the circumstances of the given case.
9. In this respect, the authorities would like to highlight that the national legislation (notably, provisions of Articles 168 and 179 of the Code of Obligations) provided the applicant with a concrete and practical avenue to claim damage in respect of pecuniary damage should she considered to have suffered it. Pursuant to the national legislation, it was open to the applicant to raise a claim in respect of pecuniary damage within three years following the relevant facts. To the best of the authorities' knowledge, the applicant has not raised any claim for pecuniary damage before domestic courts and has not availed herself of the avenues at her disposal in the domestic legislation to this effect.
10. In view of the above, and taking into account the amount of just satisfaction given by the Court and the significant lapse of time during which the applicant has never addressed any complaint to the Committee of Ministers, the authorities consider that the violation has been brought to an end and the applicant was redressed for the damage sustained.

III GENERAL MEASURES

11. The authorities have taken measures aimed at preventing similar violations as set out below.

A. Legislative measures

12. The Court observed that there was an explicit provision in section 56 of the Constitutional Court Act requiring communication of a constitutional appeal to the authority concerned (*Gaspari*, §54). The Court further found that “although the Constitutional Court would seem to have established a practice of communicating constitutional appeals also to other parties to the proceedings no legislative provision requiring such existed at the material time” (*Gaspari*, §54).

13. The Court further noted with satisfaction that section 56 of the Constitutional Court Act was amended in 2007 to require communication of the constitutional appeal also to the persons affected by the decision that was being challenged (“Official Gazette of the Republic of Slovenia”, No. 51/2007) (*Gaspari*, §54). The Court observed that this amendment, however, could not have had any impact on the applicant’s situation as it was enacted only in 2007.

14. The authorities therefore concur with the Court’s view considering that the above-mentioned legislative amendments will be capable of preventing similar violations. In this respect, the authorities would like to note that no applications alleging similar violations have been communicated to the Slovenian Government. This fact testifies to the efficiency of the legislative measures adopted.

B. Publication and dissemination measures

15. In response to the Court’s findings, in particular that the non-communication in the instant case occurred as a result of the Constitutional Court serving process at the wrong address, the authorities ensured wide publication and dissemination of the Court’s judgment with a view to drawing the attention of the relevant authorities on the Court’s findings. To this end, a letter with explanatory notes on the Court’s findings has been transmitted to the Constitutional Court and to the Ministry of Justice.

16. The Slovenian translation of the judgment has been furthermore 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#{"itemid":\["001-176505"\]}](https://hudoc.echr.coe.int/eng#{)).

17. The Court’s judgment was also presented in Slovenia’s leading legal weekly journal *Pravna praksa* in the article: Tratnik Andreja, univ. dipl. pravnica, *Inability to participate in proceedings before the Constitutional Court* (*Pravna praksa* 2009, No. 31-32, pp. 34-35).

18. The relevant aspects of the judgment were also included in the Extended Commentary to the Constitution of the Republic of Slovenia, in the part referring to the basic definition and interpretation of Article 22 of the Constitution (Equal Protection of Rights): Galič Aleš, Komentar 22. člena Ustave; in Šturm Lovro (ed.): Komentar Ustave Republike Slovenije – Dopolnitev A; Fakulteta za državne in evropske študije, Ljubljana, 2011, (pp. 274-325).
19. The Court's findings were also summarised in the national report for the XVI Congress of the Conference of European Constitutional Courts held in 2014 entitled "*Cooperation of Constitutional Courts in Europe – the current situation and outlooks*" prepared by the Constitutional Court of the Republic of Slovenia (pp. 21-22).
20. In view of the above, the authorities consider that judges of the Constitutional Court as well as other legal professionals and public at large are now made aware of the Court's findings in this case and the need to comply with the Convention requirements in similar situations.

IV JUST SATISFACTION

21. On 26 February 2010, the amount of just satisfaction awarded was disbursed to the applicant. It has therefore been paid within the time-limit set by the Court.

V CONCLUSIONS

22. The authorities consider that the individual measures taken ensured that violation has been brought to an end and that the applicant has been redressed.
23. The authorities furthermore hold that the general measures taken are capable of preventing similar violations.
24. The authorities therefore consider that the Republic of Slovenia has complied with its obligation under Article 46 § 1 of the Convention.