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

Item reference: Action report (19/10/2018)

Communication from Croatia concerning the case of MARIC v. Croatia (Application No. 50132/12).

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

Référence du point : Bilan d'action

Communication de la Croatie concernant l'affaire MARIC c. Croatie (Requête n° 50132/12)
(anglais uniquement)



DGI

19 OCT. 2018

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

GOVERNMENT OF THE REPUBLIC OF CROATIA
OFFICE OF THE REPRESENTATIVE OF
THE REPUBLIC OF CROATIA BEFORE
THE EUROPEAN COURT OF HUMAN RIGHTS

Class: 004-02/14-02/24

Reg.No.: 50047-03/04-18-74

Zagreb, 18 October 2018

ACTION REPORT

Marić v. Croatia

app. no. 50132/12, judgment of 12 June 2014, final on 12 September 2014

Marić v. Croatia - Action report

I. CASE DESCRIPTION

1. This case concerns a violation of the applicant's right to respect for his private and family life on account of the fact that on 13 October 2003 the State-run hospital disposed of the body of his stillborn child together with clinical waste, leaving no trace of the remains or their whereabouts (a violation of Article 8).
2. In 2003 the applicant's wife gave birth to a stillborn child in a State-run hospital. The parents did not wish to take the child's remains. The hospital therefore sent the remains together with clinical waste for cremation. Shortly afterwards, the parents unsuccessfully tried to find out about the child's burial. As a result, in 2004 they brought civil proceedings against the hospital seeking damages. The domestic courts found that under the domestic law, the child's remains should not have been disposed in such a manner. As no provision of the law required the hospital to inform parents on the child's burial they could not claim damages. In 2012, the Constitutional Court ultimately dismissed the parents' complaint. In 2005 the applicant furthermore brought a criminal complaint against the hospital. In 2009 his complaint was rejected on the same grounds as the civil action.
3. The European Court considered that the central issue in this case was whether the hospital had been authorised to dispose of the body of the applicant's child by treating the remains as clinical waste, leaving no trace of their whereabouts (*Marić*, § 62).
4. Within this framework, the European Court noted that no documents or consent forms relating to this matter existed since they were not required by domestic legislation. The European Court further indicated that the findings of the domestic courts, namely that the procedure in such cases was not coherently regulated, raised questions about the adequacy and consistency of the domestic law in this regard (*Marić*, § 70).

II. INDIVIDUAL MEASURES

5. In response to the European Court's judgment, the Government ensured that the violation had been brought to an end and that the applicant was redressed.
6. At the outset, the Government recalls that the applicant's criminal complaint was rejected. To this effect, the Government highlights that the European Court found that the violation was not based on procedural errors or shortcomings of such gravity that a serious doubt is cast on the outcome of the domestic proceedings complained of. Within this context, the Government considers useful to refer to the Committee of Minister's Recommendation CM/Rec(2000)2

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providing guidance in matters of re-examination and reopening following the European Court's judgment.

7. While reflecting on the most appropriate avenues to give full effect to the European Court's judgment, the authorities took into consideration that the European Court found no ineffective investigation in the case at hand. Within this context, to the best of the Government's knowledge, following the European Court's judgment the applicant has not raised the issue of re-examination of his criminal complaint with any responsible authority. Within this context, the Government was mindful of the Committee's practice in similar cases (for example, the recent Final Resolution CM/ResDH(2018)244 concerning *Elberte v. Latvia*).
8. Secondly, concerning the applicant's civil action for damages dismissed by domestic courts, the Government highlights that the national legislation provided the applicant with a practical and effective avenue to request reopening of the impugned civil proceedings. To this end, provision of Article 428a of the Civil Procedure Code set out that the applicant may, within thirty days of the European Court's judgment becoming final, request reopening of the impugned proceedings. The Government notes that it was open to the applicant to request reopening of the impugned civil proceedings before 12 October 2014. The applicant however, did not avail himself of this avenue within the prescribed time-frame.
9. The Government furthermore submits that the European Court put right the applicant's claim for just satisfaction for damages for distress, which were also raised before the domestic courts. To this end, it is recalled that accepting that the applicant suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation, the European Court awarded the applicant just satisfaction in respect of non-pecuniary damage in the amount of EUR 12,300.
10. Lastly, the Government notes that the applicant did not request any just satisfaction in respect of pecuniary damage before the European Court.
11. In view of the above, the Government considers that the national legislation provided effective avenues of bringing the violation to an end and that the applicant was redressed for the negative consequences sustained.

III. GENERAL MEASURES

12. Giving full effect to the European Court's judgment, the Government considered it necessary to take the regulatory and awareness-raising measures aimed at preventing similar violations.

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A. Regulatory measures

13. The Government was mindful of the European Court's indication that the inadequacy and inconsistency of the domestic law were raised within the context of disposal of bodies of stillborn children (*Marić*, § 70).
14. With a view to ensuring certainty and foreseeability of the relevant domestic regulation and being committed to ensuring that the domestic regulations afford adequate legal protection, in 2016 the Ministry of Health addressed a binding instruction to the State-run hospitals on the procedure to follow in similar situations. Giving full effect to the European Court's indications, the Ministry of Health prepared binding documents and consent forms to be obtained from parents of stillborn children before their burial.
15. Pursuant to the above binding instruction, parents not willing to claim the remains of their stillborn children are required to sign a consent form waiving any subsequent rights regarding their disposal. Solely after having obtained such consent, the State-run hospitals will be able to dispose of remains of stillborn children in the burial place set out and approved by parents. The above instruction has therefore effectively addressed the key shortcoming identified by the European Court in the present judgment. It will ensure that in similar situation a certain and foreseeable procedure is observed. This instruction is therefore capable of preventing similar violation.

B. Publication and dissemination measures

16. With a view to ensuring that relevant stakeholders are made aware of the European Court's findings and the need to adhere to Convention standards in this field, the Government ensured appropriate publication and dissemination of this judgment.
17. To this end, the Office of the Representative of the Republic of Croatia before the European Court of Human Rights ("the Office of the Representative") made sure that the European Court's judgement has been translated into Croatian and published on its official web page.
18. The Office of the Representative furthermore drew up an analysis of the European Court's findings which was disseminated to all members of the National Council of Experts for the Execution of the Judgments of the European Court along with the Croatian translation of the judgment. The Office of the Representative particularly made sure that the analysis and the translation were brought to the attention of the authorities, including the Ministry of Health, and courts involved in the impugned proceedings.

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19. In 2014, a short summary of the European Court's judgment was published in the *Review of the jurisprudence of the European Court of Human Rights* containing summaries of selected Courts' judgments published quarterly by the Office of the Representative. *The Review* was further disseminated to relevant authorities and published on the official website of the Office of the Representative.
20. The Government holds the view that the above publication and dissemination measures made relevant stakeholders aware of Convention standards in this type of situations and their obligation to take into account the Court's findings while exercising their competencies.
21. The Government therefore considers that the regulatory measures described above coupled with publication and dissemination of the Court's findings will be capable of preventing similar violations.

IV. JUST SATISFACTION

22. The European Court awarded the applicant just satisfaction in respect of non - pecuniary damage. On 26 November 2014 the Government disbursed the amount awarded to the applicant. Payment has therefore been made in compliance with the European Court's indications.

V. CONCLUSION

23. The Government considers that the individual measures have brought the violation to an end and provided redress to the applicant.
24. The Government furthermore considers that the general measures taken are capable of preventing similar violations.
25. The Government therefore deems that all the measures required by Article 46, paragraph 1 have been adopted.

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