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**Date**: 26/11/2018

**DH-DD(2018)1175**

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

Item reference: Action report (22/11/2018)

Communication from Slovenia concerning the case of Mirovni Institut v. Slovenia (Application No. 32303/13).

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

Référence du point : Bilan d'action

Communication de la Slovénie concernant l'affaire Mirovni Institut c. Slovénie (Requête n° 32303/13)
***(anglais uniquement)***

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DGI
22 NOV. 2018
SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

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Number: 5111-2/2018
Date: 21 November 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 Mirovni inštitut v. Slovenia**

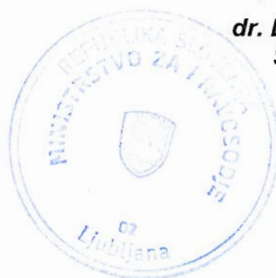
Dear Mr Sundberg,

Attached please find Action Report for the case *Mirovni inštitut v. Slovenia* (application no. 32303/13, judgment of 13 March 2018, final on 13 June 2018).

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 Mirovni inštitut v. Slovenia

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Ljubljana, 21 November 2018

# ACTION REPORT

## Mirovni inštitut v. Slovenia

Application no. 32303/13
Judgment of 13 March 2018, final on 13 June 2018

## I CASE DESCRIPTION

1. This case concerns a violation of the applicant's right to a fair trial on account of a lack of reasons for failure to hold an oral hearing in the proceedings before the Administrative Court concerning a decision of the administrative authority refusing to award the applicant government funding (a violation of Article 6 § 1).

2. The applicant was a Slovenian private institute that carries out research work. In 2003 the applicant submitted a tender to the Ministry of Education, Science and Sport (the Ministry) for an award to carry out a research project. The above Ministry decided not to award the applicant funding. Subsequently, the applicant brought proceedings before the Administrative Court, which dismissed the case in 2011. Further appeals to the Supreme Court and the Constitutional Court were also dismissed.

3. The European Court (the Court) noted that it was well aware that the domestic law does not always require that a hearing be held before the Administrative Court. However, this is permissible only in a limited number of situations. In this regard, the Court observed that the Administrative Court – except in the summary of the parties' submissions – neither acknowledged the applicants request that a hearing be held, nor gave any reasons for not granting the request. Hence, in the absence of any explanation as to why the Administrative Court considered that it was not necessary to hold a hearing, it was difficult for the Court to ascertain whether it simply neglected to deal with the applicant's request for such a hearing or whether it intended to dismiss it and, if that were its intention, what its reasons were for so deciding. It was also difficult for the Court to draw any conclusions as to which legal provision was regarded by the Administrative Court to form a legal basis for not holding a hearing and how this legal provision was interpreted against the factual background of the case (§44, *Mirovni inštitut*).

## II INDIVIDUAL MEASURES

4. At the outset, the Administrative Disputes Act does not provide for the possibility to seek the reopening of the proceedings on the basis of a finding by the Court of a violation of Article 6 of the Convention.

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5. In the context of the reopening of the proceeding the authorities recall that the Committee of Ministers' accepted that a Contracting State could select appropriate measures to redress the consequences of an individual act. Against this backdrop, the authorities would like to highlight that despite the fact that the domestic legislation does not provide for a possibility of reopening before Administrative Court, the domestic law provides an effective and practical avenue to remedy this type of violations. Pursuant to Article 15 of the national Constitution individuals whose human rights were breached, like in the present case, are entitled to obtain redress. The national Constitutional Court already highlighted that this redress may be afforded by ensuring the righ to financial compensation or even just by establishing the violation itself, depending on the circumstances of the given case (see *Gaspari* Action Report DH-DD(2018)956, §§5-10 and Final Resolution CM/ResDH(2018)401).

6. 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 it considered to have suffered it. Pursuant to the national legislation, it is open to the applicant to raise a claim in respect of pecuniary damage within three years following the relevant facts.

7. It is recalled that the applicant claimed just satisfaction in respect of both non-pecuniary and pecuniary damage. The amount claimed in respect of pecuniary damage represented the amount of financing the applicant estimated it would have received had it been successful in the tendering procedure.

8. As to the pecuniary damage, the Court could not speculate as to what the outcome of the proceedings complained of would have been, had the violation of the Convention not occurred. The Court therefore rejected this claim.

9. The Court furthermore noted that, like commercial companies, private institutes may be awarded pecuniary compensation for non-pecuniary damage. Non-pecuniary damage suffered by such institutes may include heads of claim that are to a greater or lesser extent "objective" or "subjective". Among these, account should be taken of the institute's reputation, uncertainty in decision-planning, disruption in the management of the institute and lastly, albeit to a lesser degree, the anxiety and inconvenience caused to the members of the management team. Having regard to these criteria, the Court awarded the applicant EUR 4.800 in respect of non-pecuniary damage.

10. The authorities therefore consider that applicant has been redressed for the damage sustained.

## III GENERAL MEASURES

11. The violation resulted from inadequate case-law of the Administrative Court in this case. In particular, the Administrative Court neither acknowledged the applicant institute's request

to hold a hearing, nor gave any reasons for not granting the request. In the absence of any explanation as to why the Administrative Court considered that it was not necessary to hold a hearing, it was difficult for the Court to ascertain whether it simply neglected to deal with the applicant institute's request for such a hearing or whether it intended to dismiss it and, if that were its intention, what its reasons were for so deciding (§44, *Mirovni inštitut*). In this respect, the Government would like to recall that the Court did not criticise the fact that the domestic law does not always require that a hearing be held before the Administrative Court. The violation rather resulted from the failure of the Administrative Court to provide reasoning why such hearing was not held in the applicant's case.

12. In response to the Court's judgment, a number of measures have been taken to prevent similar violations. These measures are set out below.

### A. The Administrative Court's and the Supreme Court's case-law

13. In response to the Court's findings the authorities would first like to stress that since 2011 when the impugned decision was adopted, the Administrative Court's case-law has improved. In particular, the Administrative Court ensured that its decisions include the legal grounds and adequate reasoning when oral hearing is not held in line with the domestic legislation.

14. To illustrate now Convention compliant case-law, the authorities would like to note that the applicant lodged an action in 2017 before the Administrative Court against the Ministry's decision in another set of proceedings. On 14 June 2018 the Administrative Court held an oral hearing in these proceedings.

15. In the past years (after the impugned decision in the present case) individual Administrative Court's decisions not to hold an oral hearing were also subject of an appeal or of an appeal on points of law. The Supreme Court highlighted that the right to a "public hearing" entails an entitlement to an "oral hearing" unless there are exceptional circumstances that justify dispensing with such a hearing. The Supreme Court also echoed the Court's findings while explaining what are exceptional circumstances that justify dispensing with such a hearing (see for example the Supreme Court's decisions nos. I Up 150/2016 of 23 November 2016, X Ips 220/2016 of 17 May 2017, X Ips 387/2015 of 15 November 2017, I Up 255/2017 of 7 February 2018 and X Ips 251/2017 of 25 April 2018). If the Administrative Court's reasoning was not sufficient the Supreme Court decided to remit the case to the Administrative Court for reconsideration.

### B. Awareness-raising, publication and dissemination measures

16. The Court's judgment was communicated to the Supreme Court, Administrative Court and the Ministry of Justice.

17. 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. This translation has also been submitted and is available at the HUDOC web page of the Court (https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-186513%22]}).

18. A summary of the judgment has furthermore been published in monthly journal for judges "*Sodnikov Informator*", No. 4/2018, of 25 April 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 Court's findings are made known to them.

19. The significance of the Court's decision was also presented at Administrative Law Judicial School on 4 and 5 October 2018. 65 participants attended the School, mainly judges of the Administrative Court and judges of the Supreme Court (Administrative Section) as well six advisers from the Constitutional Court. One of the topics was also "*The meaning of an oral hearing in the administrative dispute*", presented by the Supreme Court judge.

20. The authorities would furthermore like to indicate that following the Court's judgment the violation in question and the Court's decision was discussed among Administrative Court's judges at two recent meetings in 2018 headed by the president of the Administrative Court.

21. Further, the Administrative Court's judges were participating with the Faculty of Law in Ljubljana in the project "*The Meaning of the European Court's case-law and requests regarding an oral hearing in the administrative dispute*" (June – August 2018). The aim of the project was to study and to analyse theory and case-law with regard to holding an oral hearing in the administrative dispute in Slovenia as well as abroad. The study is available on the website of the Faculty of Law (http://www.pf.uni-lj.si/media/pomen.prakse.in.zahtev.escp.pdf).

22. The authorities consider that the present violation resulted from the non-observance of the legal framework in the applicant's case. In this respect, in the authorities' view, the Court's judgment publication and dissemination along with trainings would suffice to ensure that the domestic courts' attention is drawn to the Court's findings and will be capable of preventing similar violations.

## IV JUST SATISFACTION

23. The just satisfaction (EUR 4.800) awarded was disbursed to the applicant on 13 September 2018. It has therefore been paid within the time-limit set by the Court.

## V CONCLUSIONS

24. The authorities consider that the individual measures taken ensured that that the applicant has been redressed.

25. The authorities furthermore hold that the general measures taken are capable of preventing similar violations.

26. The authorities therefore consider that the Republic of Slovenia has complied with its obligation under article 46 § 1 of the Convention.