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Date: 26/11/2018

**DH-DD(2018)1176**

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Meeting: 1331<sup>st</sup> meeting (December 2018) (DH)

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

Communication from Slovenia concerning the case of Poropat v. Slovenia (Application No. 21668/12).

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Réunion : 1331<sup>e</sup> réunion (décembre 2018) (DH)

Référence du point : Bilan d'action

Communication de la Slovénie concernant l'affaire Poropat c. Slovénie (Requête n° 21668/12)  
**(anglais uniquement)**

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DGI

22 NOV. 2018

SERVICE DE L'EXECUTION  
DES ARRETS DE LA CEDH

Number: 5111-26/2017  
Date: 22 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 Poropat v. Slovenia**

Dear Mr Sundberg,

Attached please find Action Report for the case *Poropat v. Slovenia* (application no. 21668/12, judgment of 9 May 2017, final on 9 August 2017).

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

Yours sincerely,



*Dominika Švarc Pipan*  
**dr. Dominika Švarc Pipan**  
**State Secretary**

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

Ljubljana, 21 November 2018

## ACTION REPORT

### ***POROPAT v. Slovenia***

Application no. 21668/12

Judgment of 9 May 2017

Final on 9 August 2017

#### I CASE DESCRIPTION

1. This case concerns a violation of the applicant's right to a fair trial on account of the courts' refusal to admit evidence he had wished to adduce in the criminal proceedings in which he was convicted of threatening his neighbour. (a violation of Article 6 §§1 and 3 (d) of the Convention).
2. The applicant had been in conflict with his neighbour R.H. for several years, with both sides instituting a number of legal proceedings against one another. In February 2004 R.H. lodged a criminal complaint alleging that the applicant had threatened to kill him in front of their house. The applicant was ultimately convicted in July 2009 on the basis of testimonies given by R.H. and the latter's colleague who testified that R.H. told him about the incident. The latter had been previously reported to the police for false testimony in an unrelated case. The applicant was sentenced to three months' imprisonment suspended.
3. The European Court ("the Court") noted that the criminal offence in question was not witnessed by any independent witnesses. The Court furthermore noted that the applicant denied the event. After being initially acquitted, the applicant was convicted solely on the basis of testimony of R.H. (applicant's neighbour) and K.C. (the neighbour's colleague). A number of facts raised in the proceedings called into question C.K.'s credibility but were not addressed by the court (§43, *Poropat*).
4. The Court also indicated that in his defence the applicant relied on two main arguments, that R.H. and K.C. could not be believed, and that, despite being available, the video footage of the relevant day had not been secured, let alone examined (§44, *Poropat*). In this respect, the Court considered that reasonable efforts should have been made after R.H. lodged his criminal complaint with the police to secure the footage with a view to verifying whether it had captured the incident. The Court also stressed that the applicant's request to question certain individual who could testify that R.H. regularly influenced witnesses could not be said to have been vexatious and it was indeed relevant to his main line of defence - challenging the reliability of R.H. and K.C. (§47, *Poropat*). Nevertheless, the court refused the applicant's request to question this individual. The Court thus considered that an unfair advantage in favour of prosecution was created and that the applicant was deprived of any practical opportunity to effectively challenge the charges against him (§50, *Poropat*).

#### II INDIVIDUAL MEASURES

5. At the outset, it is recalled that provisions of the Criminal Procedure Act ("the CPA") allow lodging an application for the protection of legality if the European Court finds a violation of the Convention rights.
6. Following the Court's judgment, the applicant availed himself of the avenue provided in the domestic legislation and lodged application for the protection of legality with the Supreme Court.
7. The request for the protection of legality has been granted by the Supreme Court. As a result, the impugned ruling was quashed, and the case was remitted to the first instance court for retrial. In the reopened proceedings, the domestic court decided to discontinue the proceedings due to the fact that the injured party (i.e. R.H.) has withdrawn the charges. The authorities would nevertheless like to highlight that the applicant's conviction was deleted from the criminal offence record. Therefore, he no longer suffers any negative consequences due to the impugned decision in the present case.
8. The authorities would furthermore like to recall that the applicant claimed EUR 5,000 in respect of non-pecuniary damage. The Court awarded him the claimed amount in full. The applicant did not claim just satisfaction in respect of pecuniary damage.
9. In view of the above, the authorities therefore consider that the violation at hand ceased and that the applicant was properly redressed for the negative consequence.

### III GENERAL MEASURES

10. It is recalled that the violation resulted from the courts' refusal to admit evidence the applicant wished to adduce. This position of the courts made it impossible for the applicant to challenge the witnesses' credibility by having the evidence relating to their prior conduct examined. Having regard to the foregoing, to the evidence on which the court relied in reaching its finding that the applicant was guilty, and to the failure of the authorities to secure the video surveillance, the Court found that an unfair advantage in favour of the prosecution was created and consequently the applicant was deprived of any practical opportunity to effectively challenge the charges against him (§50, *Poropat*).
11. At the outset, the authorities would like to highlight that the CPA sets out the principle of unfettered assessment of evidence as one of the basic principles applicable to the criminal proceedings. The latter does not mean that the court may decide arbitrarily. The conclusions about the existence of decisive facts must be based on careful assessment of evidence, logical reasoning and general life experience, and must be reasonably justified by the competent court.
12. The authorities consider that the present violation resulted from the inadequate application of legislation in force by the domestic courts in the applicants' case. The authorities therefore consider that the facts of this case constitute an isolated occurrence. In this respect, in the authorities' view, the Court's judgment publication and dissemination would suffice to ensure that the domestic courts' attention is drawn to the Court's findings and will be capable of preventing similar violations. To corroborate such conclusion, the authorities would like to note that no applications alleging similar violations are pending before the European Court.

13. 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>).
14. Summary of the judgment has furthermore been published in a monthly review for judges *Sodnikov Informator*, No. 6/2017, of 3 July 2017. This publication is also available on the website of the Supreme Court ([www.sodisce.si/sodna\\_uprava/sodnikov\\_informator/](http://www.sodisce.si/sodna_uprava/sodnikov_informator/)).
15. The Court's judgment was also quoted in a leading national legal journal *Pravna praksa: Pravica do izvedbe dokazov kot del poštenega sojenja* (Translation: The Right for evidence taking as a part of fair trial), *Pravna praksa*, No. 11/18, pp. 28-30.
16. The Court's judgment has also been transmitted to the Supreme Court and to the Ministry of Justice for their information.
17. In view of the above, the authorities consider that judges as well as other legal professionals are now aware of the European Court's findings in this case and the need to comply with the Convention requirements in similar situations.

#### IV JUST SATISFACTION

18. The amount of just satisfaction awarded in this case was disbursed on 9 November 2017. It has therefore been paid within the time-limit set by the European Court.

#### V CONCLUSION

19. The authorities of Republic of Slovenia consider that the violation at hand has ceased and that the applicant has been fully redressed for negative consequences.
20. The authorities furthermore deem that the above-mentioned general measures taken are capable of preventing similar violations.
21. The authorities therefore consider that the Republic of Slovenia has complied with its obligation under article § 46 1 of the Convention.