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Meeting: 1236 meeting (22-24 September 2015) (DH)

Item reference: Action report (18/08/2015)

Communication from Albania concerning the case of Dauti against Albania (Application No. 19206/05)

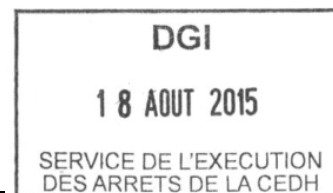
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Réunion : 1236 réunion (22-24 septembre 2015) (DH)

Référence du point : Bilan d'action

Communication de l'Albanie concernant l'affaire Dauti contre Albanie (Requête n° 19206/05)
(anglais uniquement)



ACTION REPORT

Execution of the judgment of the European Court of Human Rights
Dauti v. Albania (19206/05), judgment of 03/02/2009, final on 03/05/2009

I. Case description

1. This case concerns a breach of the right of access to a court in proceedings brought to challenge administrative decisions concerning the award of invalidity benefits to the applicant (violation of Article 6§1).

2. The European Court found in particular that the Commission of appeal on medical examinations regarding the capacity to work had not constituted an “independent and impartial tribunal” and that its decisions, according to the legislation in force at the material time, could not be challenged before domestic courts.

II. Individual measures

1) Payment of the just satisfaction

3. The European Court awarded to the applicant a sum for non-pecuniary damages, paid on 1/07/2009.

Pecuniary damage	Non Pecuniary damage	Costs and expenses	Total
	6 000 euro		6000 euro
Paid on dated 1/07/2009 ¹			

4. The full amount of just satisfaction is granted to the applicant, which it's satisfactory with regard to the individual measures. Therefore no other measures are needed in this respect.

III. General measures

5. The European Court found that having regard to the fact that the Appeals Commission did not constitute an “independent and impartial tribunal” and that its decisions, according to the law in force at the material time, could not be challenged before a domestic court, concluded that there has been a breach of the applicant's right of access to a court under Article 6 § 1 of the Convention.

6. The Parliament of Albania on 14.07.2011 approved some amendments on the Law No.10447, Date 14.07.2011 “On some additional provisions on the law 7703/1993 “On social security”, provided additional criteria aiming to consolidate the function and power of the KMCAP (*Medical Commission on Capacity for Work*) that could satisfy the

¹Through the Decision of the Council of Ministers no. 691, date 18.06.2009 “For the execution of the judgment of ECtHR on the case ‘Dauti v Albania’

principle of impartiality and independence in order to accomplish the findings as set out through the ruling of the Court in the judgment on Dauti case.

7. Legislative changes presented on the new law, provides the composition and the modalities for the assignment of members of KMCAP. According to the law, three of the members are appointed by common consent of Ministers of Health, Minister of Finance and Minister of Labor and Social Affairs. The fifth member of the Commission, who must have a qualified legal background, is appointed by the Decision of Minister of Justice. Article 39/3 and 39/4 of the law provide the period of mandate and its termination, like as the modalities of oath.

8. Furthermore the Law enacted includes a two tier regime under which the decisions of the first level of Medical Commission on Work Capability Assessment may be challenged, within 30 days of the publishing, to the High Medical Commission on Work Capability Assessment. The decisions of the latter are final and binding, but only in the point of view of the medical assessment. The applicant however can approach in any time, the Court of First Instance relating to matters of a procedural nature on the decision issued by the High Medical Commission on Work Capability Assessment², as set forth in article 6 of ECHR. The merits of the case however are decided only by the latter due to the nature of the proceedings and the expertise of this commission in these cases. Furthermore the applicant based on Albanian Code of Civil Procedures, (article 494/(ë) can review the final civil decision following a ruling of the European Court of Judgment.

9. Additionally, for the useful implementation of Law No.10447, Date 14.07.2011, the Council of Ministers approved the CMD no. 505 date 10.06.2015 "*On organization, functioning and reward of High Commission on Work Capability Assessment*" which further state and regulate the functioning and impartiality of members of this commission.

IV. CONCLUSION

10. In conclusion of what have been mentioned, the concern raised by the Court that the *High Medical Commission on Capacity for Work, (KMCAP) of Social Security Institute* didn't constitute an "independent and impartial tribunal", has found redress through the new amendment of the Law n°.7703, dated 11/05/1993 "On Social Securities in the Republic of Albania" (update with the Law No.10447, Date 14.07.2011) and CMD no. 505 date 10.06.2015 "*On organization, functioning and reward of High Commission on Work Capability Assessment*".

11. Therefore, the respondent state consider that the up mention provision have improved the situation and case in question, and that there is no need for other general and individual measures to be taken on this case. As such the responded state requires the final resolution of the case in terms of execution of general and individual measures.

² Article no.137/3 "Code on Administrative Procedure of Republic of Albania" and Law nr. 49/2012 "On organization and functioning of Administrative Court and judgment of administrative dispute" article no.7 and 15.