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Contact: Ireneusz Kondak
Tel: 03.90.21.59.86

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Meeting: 1514th meeting (December 2024) (DH)

Item reference: Action Plan (30/10/2024)

Communication from Serbia concerning the case of Duric v. Serbia (Application No. 24989/17)

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Réunion : 1514^e réunion (décembre 2024) (DH)

Référence du point : Plan d'action (30/10/2024)

Communication de la Serbie concernant l'affaire Duric c. Serbie (requête n° 24989/17) (*anglais uniquement*)

Belgrade, 30 October 2024

ACTION PLAN

Đurić v. Serbia

Application no. 24989/17, Judgment of 6 February 2024, final on 6 May 2024

I CASE DESCRIPTION

1. This case concerns a violation of the applicant's right to a fair trial since he was not afforded a reasonable opportunity to present his case - in proceedings held between 2006-2016 relating to his request to be recognized as a civilian person disabled as a consequence of war - including at an oral hearing, under conditions that would not have placed him at a substantial disadvantage (violation of Article 6).

2. The Court noted that the rules concerning the admissibility of evidence in the above proceedings, and which provided that certain facts could be determined only through the presentation of written evidence dating back to the time when the injury had been sustained, meant that the applicant was effectively faced with both a legal and a factual inability to have his claim properly examined (§ 80). It also held that it would have been beneficial for a national court to have heard, at an oral hearing, the retired police officer referred to in the police statement examined during the proceedings (§ 81).

3. Thus, the Court found that the applicant did not have an effective right to a fair trial and was not afforded a reasonable opportunity to present his case, including at an oral hearing, under conditions that would not have placed him at a substantial disadvantage (§ 82).

II INDIVIDUAL MEASURES

4. The Serbian authorities have taken steps to ensure that the violation at hand ceased and that the applicant has been redressed for the negative consequences of the violations found by the European Court. These measures are set out below.

A. Reopening of the proceedings

5. Based on the judgment of the European Court, the applicant requested a reopening of the proceedings, in accordance with the Law of Administrative Disputes (Article 56 § 1.7) in order to obtain judicial review of the previous national court decision. The Administrative Court opened these new proceedings on 13 June 2024.

6. The proceeding is currently pending and the authorities will provide further information on its progress.

B. The applicant's redress

7. The European Court awarded the applicant just satisfaction in respect of non-pecuniary damage in the amount of EUR 3,000 and EUR 3,000 in respect of costs and expenses. The payments have been made on 24 June 2024, within the deadline set out by the European Court.

8. In view of the above, the authorities consider that the applicant has been fully redressed for the damage sustained.

III GENERAL MEASURES

9. In response to the European Court's findings, the authorities have taken measures aimed at preventing similar violations as set out below.

A. Convention-compliant legislative reform

10. The authorities would like to note that following the facts of the present case, but preceding the present judgment of the Court, the law applied in the present case - the Civilian Persons Disabled as a Consequence of War Act - was repealed. At the same time, on 1 January 2021, it was replaced with the Act on the Rights of Warriors, Military Disabled Persons, Civilian Persons Disabled as a Consequence of War, and Members of Their Families (Official Gazette of the Republic of Serbia, no. 18/2020).

11. The new law determines the acceptable evidence which can be recognized in the procedure of granting a person the status of a civilian person disabled as a consequence of war

in a much more flexible way than the previously applicable law. Thus, the circumstances relevant for the procedure are determined based on the report of the conducted investigation, as well as other acts of the competent internal affairs authorities and judicial bodies (Article 144). At the same time, the scope of acceptable written evidence has been broadened to medical documentation from the time of the injury (Article 146), as well as written documents created later on, provided they are founded on some documentation from the time of the injury (Article 145).

12. The Court also pointed out the issue of the lack of a public hearing before the Administrative court. However, this observation was restricted to “the very specific and country-specific circumstances of the present case” (§ 81), instead of criticizing the overall legal framework in this regard. Therefore, the present case may be considered an isolated incident, giving no need for a legislative reform in order to be remedied.

13. It follows from the above that the systemic issue of excessive formalism in the administrative proceedings concerning the recognition of a person’s status as a civilian person disabled as a consequence of war has been remedied, providing for prevention of future violations similar to the one sustained by the applicant in the present case.

B. Publication and dissemination measures

14. In 2024, the authorities ensured that publication and dissemination of the present judgment were taken to draw the attention of the relevant domestic authorities on the European Court’s findings in this case. To this end, the European Court’s judgment was translated into Serbian and published in the Official Gazette and on the Government Agent’s official web page. The European Court’s findings have therefore been made easily accessible to judges and the legal community nationwide.

15. The Government Agent furthermore [prepared an analysis of the European Court’s findings in this judgment](#) and ensured its dissemination together with the translated judgment to all relevant domestic authorities.

16. The above-mentioned measures ensured that all domestic courts and relevant bodies are now aware of the Court’s findings and the need to comply with the Convention requirements in similar cases.

IV JUST SATISFACTION

17. The authorities ensured that just satisfaction awarded by the European Court has been disbursed to the applicant on 24 June 2024. The payment has thus been made within the deadline set out by the European Court.

V CONCLUSIONS

18. The authorities consider the individual measures taken ensured that the applicant was redressed for the damage sustained.

19. The Serbian authorities will inform the Committee of Ministers in due course of the progress of the reopened proceedings.

20. The authorities furthermore consider the general measures taken are capable of preventing similar violations.