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Meeting: 1294th meeting (September 2017) (DH)

Communication from NGOs ((YUCOM) - the Lawyers' Committee for Human Rights and (Astra) Anti trafficking action)) (04/09/2017) in the case of ZORICA JOVANOVIC v. Serbia (Application No. 21794/08).

Information made available under Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1294^e réunion (septembre 2017) (DH)

Communication d'ONG ((YUCOM) - the Lawyers' Committee for Human Rights and (Astra) Anti trafficking action)) (04/09/2017) dans l'affaire ZORICA JOVANOVIC c. Serbie (Requête n° 21794/08)
[anglais uniquement]

Informations mises à disposition en vertu de la Règle 9.2 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

DGI

4 SEPT 2017

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH



COMMITTEE OF MINISTERS

COUNCIL OF EUROPE

STRASBOURG

September 4, 2017

SUBMISSION TO THE COMMITTEE OF MINISTERS
OF THE COUNCIL OF EUROPE
UNDER RULE 9.2.

Concerning the execution of judgment in Zorica Jovanovic v. Serbia case
(21794/08)

1. **YUCOM – The Lawyers' Committee for Human Rights** (founded in 1997) is a professional, voluntary, non-governmental association of citizens, associated to protect and promote human rights in accordance with universally accepted civilized standards, international conventions and national law. Since its establishment, YUCOM has been providing free legal assistance to victims of human rights violation, as well as developing cooperation with national and international organizations involved in human rights protection and promotion. YUCOM has profiled itself and gained much recognition as human rights defenders' organization.
2. **ASTRA - Anti-Trafficking Action** is a local non-governmental organization dedicated to eradication of all forms of trafficking in human beings founded in 2002. Since 2012, ASTRA has been running the European number for missing children 116 000 which is operative in 28 European countries. Since the establishment of the line, a large number of calls have been received from the citizens whose babies went missing from the maternity wards after the birth.
3. **YUCOM and ASTRA**, jointly with representatives of the **Belgrade group of "missing babies" parents** (Beogradska grupa roditelja), are making this submission in order to communicate with the Committee of

Ministers under the Rule 9.2 in respect of the execution of judgment of the European Court of Human Rights (ECHR) in Zorica Jovanovic v. Serbia case (application no. 21794/08).

4. We would hereby like to emphasize that it has been four years since the mentioned judgment became final, and that the Republic of Serbia has been delayed with its execution for three years, without any concrete step being taken in this regard.
5. The judgment clearly states that *“the respondent State must, within one year from the date on which the present judgment becomes final... take all appropriate measures, preferably by means of a lex specialis (see the Ombudsman’s report of 29 July 2010 at paragraph 29 above), to secure the establishment of a mechanism aimed at providing individual redress to all parents in a situation such as, or sufficiently similar to, the applicant’s. This mechanism should be supervised by an independent body, with adequate powers, which would be capable of providing credible answers regarding the fate of each child and awarding adequate compensation as appropriate.”*¹
6. In four year time, Serbian State Authorities have unsuccessfully tried to establish certain Commissions that would deal with cases similar to Zorica Jovanovic case, and afterwards created Draft Law which was inadequate for many reasons that were communicated with Committee of Ministers by YUCOM and ASTRA, but also by Ombudsman of the Republic of Serbia. Serbian State Authorities proceeded with the adoption of that Draft Law without taking those serious comments into account.
7. Bearing in mind that all Draft Laws were withdrawn from the Parliament, including the mentioned one as Presidential elections were held in April 2016 and the new Prime minister was appointed, since then **there have been no further steps taken in regard to the execution of this judgment.**
8. It is alarming that **long time has passed without any action being taken** in regard to the execution of this judgment. Additionally, the State has stated their intention to proceed again with the same Draft Law that has already been disputed.
9. One of fundamental rights and an important element of the rule of law is the access to justice which *“obliges states to guarantee each individual’s right to go to court – or, in some circumstances, an alternative dispute resolution body – to obtain a remedy if it is found that the individual’s rights have been violated”*². Parents of children suspected to have disappeared after their birth still have not been granted with this right, the right to access to justice.
10. Our main concern regarding Draft Law on determining the facts concerning the status of the newborns suspected to have disappeared from the maternity wards in the Republic of Serbia is that by this Law the Government will only formally fulfill its obligations from the aforementioned judgment while essentially it will be utterly contrary to the obligations presented to the Republic of Serbia by the European Court in this case. Namely, prescribing a **non-litigation procedure**, with characteristics totally out of compliance with this very

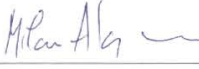
¹ See paragraph 92 of the judgment in Zorica Jovanovic v. Serbia case (21794/08)

² European Union Agency for Fundamental Rights and Council of Europe, *“Handbook on European law relating to access to justice”*, 2016

specific situation that the parents whose newborns are suspected to have disappeared from the maternity wards in the Republic of Serbia are in, or with the demands to determine the truth in these cases, **will not essentially lead to any solution or ascertainment (of truth)**. Given that the European Court of Human Rights has stipulated the forming of "a mechanism that should be monitored by an independent body with adequate powers", it is unclear in what way and which independent body can monitor the work of the non-litigation court in the Republic of Serbia.

11. Additionally, this Draft Law contains numerous unclear provisions and problematic solutions, such as the very **title** which does not include other medical institutions but only maternity wards; the **burden of proof** which is on proposer's side and should be reversed (collecting the evidence should be court's obligation); there is no space for **true investigative actions** to be taken in the non-litigation procedure (the absence of special investigatory powers which an non-litigation court naturally lacks will not in any way create conditions needed to determine the truth about each and every case with circumstances consistent with those from the case of Zorica Jovanovic v. Serbia); creating **new special police unit** to practice some investigative measures is contrary to the Law on the police; the **circle of proposers** excludes children who are believed to be missing babies; the maximum **amount of non-pecuniary damages** is prescribed, which is contrary to the fair trial and the principle of the free judicial opinion; **court decisions** should not be prescribed to allow courts to make a decision that cannot establish the status of the missing child, etc.
12. YUCOM and ASTRA would like to remind on the Decision of the Committee of Ministers CM/Del/Dec(2016)1250/H46-23, which states that: *"the revised draft law still leaves various issues outstanding, including that of the powers to be vested in the civil courts and the special police unit and the procedure for declassification of medical information: encouraged therefore the Serbian authorities to address the outstanding issues and concerns of parents of "missing babies" in consultation with civil society"*. We have to state that neither YUCOM nor ASTRA were contacted, informed or in any way engaged in the States implementation of this judgment since the election process in April 2016, even though we have tried to reopen communication in order to jointly work on finding durable and effective solution for the execution of judgment. On the opposite, we were informed by Medias that there are some new steps being taken in the regard of this case.
13. One of the information that has been published by Medias is that there is an intention to establish another **Commission with a mandate to discover all omissions in the work of relevant State Authorities** regarding their work on discovering all facts. In this regard, we need to stress that this decision was made without consulting non-governmental organizations or Ombudsman institution, but was brought out as a simple way to present that the State is dealing with the implementation of the judgment without true effort on their side. As Medias present, this Commission would not provide answers regarding the fate of each child, but will only determine whether State Authorities have worked according to the Law.
14. Therefore, YUCOM and ASTRA, jointly with representatives of the **Belgrade group of "missing babies" parents**, would once again like to kindly request the Committee of Ministers to **consider all the facts**

indicated in this and previous submissions and take all steps aimed at ensuring that the European Court's judgment in the case of Zorica Jovanovic is fully implemented. In this regard, as Serbian authorities failed to take measures adequate for the execution of this judgment, YUCOM and ASTRA urges the Committee of Ministers to **keep this case on its Order of Business of each DH meeting** and to act according to the Decision CM/Del/Dec(2017)1288/H46-29 "...in the event that the draft law is not adopted within the above deadline, decided to resume consideration of this item at their 1294th meeting (September 2017) (DH) in the light of a draft interim resolution to be prepared and circulated by the Secretariat" in order for this judgment to be fully implemented and plight of the parents of "the missing babies" brought to an end.


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