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Meeting: 1280 meeting (7-9 March 2017) (DH)

Item reference: Revised action plan (14/02/2017)

Communication from Serbia concerning the case of Zorica Jovanović against Serbia (Application No. 21794/08)

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Réunion : 1280 réunion (7-9 mars 2017) (DH)

Référence du point : Plan d'action révisé

Communication de la Serbie concernant l'affaire Zorica Jovanović contre Serbie (Requête n° 21794/08)  
**(anglais uniquement)**

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DGI  
14 FEB 2017

SERVICE DE L'EXECUTION  
DES ARRETS DE LA CEDH

Belgrade, 14 February 2017

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## REVISED ACTION PLAN

### Zorica Jovanović v. Serbia

Application number 21794/08

Judgment of 26 March 2013, final on 9 September 2013

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#### I CASE DESCRIPTION

1. This case concerns a violation of the applicant's right to respect for her family life on the account of the Respondent State's continuing failure to provide her with credible information as to the fate of her son, who allegedly died three days after his birth in a maternity ward in 1983. His body has never been transferred to her and she has never been informed where he had allegedly been buried (violation of Article 8).
2. The European Court held that "the Respondent State must, [...], take all appropriate measures, preferably by means of a *lex specialis* [...] 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". According to the Court, "[t]his 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 affording adequate compensation as appropriate".

14 February 2017

## **II INDIVIDUAL MEASURES**

3. The Government would like to indicate that the European Court awarded just satisfaction to the applicant in respect of non-pecuniary damage sustained. The amount awarded has been paid to the applicant within the time-frame set by the European Court. The Government therefore considers that the applicant has been redressed in respect of damage sustained.
4. As regards the measures aimed at establishing the fate of the applicant's child, the Government would like to indicate that these measures will be taken within the mechanism to be set up in compliance with the European Court's judgment (see below).

## **III GENERAL MEASURES**

5. The Government has taken a number of steps aimed at enforcing the European Court's judgment in this case, and, notably prepared a draft law 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 draft law has been revised in February 2016 on the basis of the assessment made by the Committee of Ministers at its 1243<sup>rd</sup> meeting (December 2015) (DH) as well as on the observations submitted by civil society.
6. The Government would like to recall that this revised draft law was examined by the Committee of Ministers at its 1250<sup>th</sup> meeting (March 2016) (DH). In the decision adopted in March 2016, the Committee of Ministers noted that the revised draft law prepared by the Serbian authorities to execute this judgment took into consideration a number of questions identified by the Committee, as well as certain concerns raised by civil society, in particular as regards the eligibility criteria and procedure

14 February 2017

for obtaining evidence. The Committee of Ministers noted, however, that the revised draft law still left various issues outstanding, including that of the powers to be vested with the civil courts and the special police unit and the procedure for declassification of medical information and encouraged the Serbian authorities to address the outstanding issues and concerns of parents of “missing babies” in consultation with civil society.

7. Subsequently, in the decision adopted at its 1265<sup>th</sup> meeting (September 2016) (DH), the Committee of Ministers, repeatedly, *inter alia*, strongly urged the authorities to intensify their efforts with a view to adopt the revised draft law, as a matter of utmost priority. In the same decision, the Committee of Ministers strongly urged the Serbian authorities to continue to be engaged with the Secretariat in order to ensure that it addressed the outstanding issues identified by the Committee.
8. In response to the decision of the Committee of Ministers adopted in September 2016, the Serbian authorities have continued to be engaged with the Secretariat in order to ensure that all outstanding issues identified by the Committee were addressed. In this respect, on 4 October 2016 the Government organised in Belgrade consultations between the representatives of the Department for the Execution of Judgments of the European Court and the relevant authorities. In this respect, the Government would in particular like to express its gratitude to the on-going support of the Department for the Execution of Judgments of the European Court in the process of execution of this judgment.
9. In its most recent decision adopted at its 1273<sup>th</sup> meeting (December 2016) (DH), the Committee of Ministers noted the detailed explanations given by the authorities on the outstanding issues identified by the Committee at its 1250<sup>th</sup> meeting (March 2016) (DH), in particular the powers to be vested with the civil courts and the police and the procedure for declassification of medical information. In the same decision, the Committee noted the assurances given by the authorities that the revised draft

14 February 2017

law necessary for the execution of this judgment would be adopted before the end of 2016 and, in this respect, strongly urged them to sustain their efforts to adopt it within this time frame.

10. The Government would now like to inform the Committee of Ministers on the developments following the last examination of this case in December 2016.
11. At the outset, the Government regrets to inform the Committee that the law concerned has not been adopted yet for reasons set out below.
12. On 31 October 2016, the Government transmitted the revised draft law to the Parliament for adoption. To avoid any doubt, the revised draft law approved remained the same as written in the previous revised action plan.
13. Although it was initially planned to discuss the revised draft law at the end of November or at the beginning of December, this discussion has been slightly delayed since the Parliament had to give priority to debate on the budget of the Republic of Serbia for 2017 and other financial laws (including the law on “old” foreign-currency savings adopted to execute the Ališić judgment). This debate took significant amount of time, which affected the timing for examination of the draft law required to be adopted for the execution of this judgment.
14. The Government would however like to stress that at the end of the year parents of the missing babies, notably so-called the Belgrade Group of Parents, addressed a letter to members of Parliament raising a number of concerns with the solutions set out in the draft law and inviting them not to adopt it in the current wording. Being attached to the values of inclusive democracy and remaining focused on the need to find a solution which would comply with the European Court's indications and would take into account parents' concerns to the extent possible, the Government considered it necessary to examine their arguments with a view to finding a global

14 February 2017

solution to the issue of "missing babies". Additional time has therefore been required to ensure that the parents' arguments are assessed properly and the decision made as to whether to pursue the adoption of the draft law in Parliament in the wording as it stands now or to amend it accordingly. The draft law has not however been withdrawn from parliamentary procedure with a view to ensuring that delay in adopting this law is not further being protracted.

15. In the meantime, on 30 December 2016 the session of the Parliament was brought to an end. The next session of the Parliament will start on 1 March 2017. It is therefore expected that the draft law required for execution of this judgment will be debated and adopted at the next parliamentary session.

16. The authorities would like to take this opportunity to express firm commitment of the Republic of Serbia to abide by this judgment and to the Convention standards in this matter. The Government deeply regrets the delay that has occurred in execution of this judgment. However, in view of the above-mentioned facts and complexity and sensitivity of the matter, in particular the comments by the parents of missing babies, adoption of the draft law requires detailed examination by the members of the Parliament. Such detailed examination will ensure that the European Court's indications are fully taken into account. The authorities would like to assure the Committee of Ministers that this matter will be dealt with utmost priority at the next regular session of the Parliament.

#### **IV JUST SATISFACTION**

17. The Government ensured that the just satisfaction awarded to the applicant in respect of non-pecuniary damage sustained has been disbursed within the time-limit set by the Court.

14 February 2017

## **V CONCLUSIONS**

18. The Government shares the Committee's assessment that the revised draft law complies with the European Court's indications in this case and that the outstanding issues have been addressed in full compliance with the Convention standards.
19. The authorities deeply regret the delay in adopting the revised draft law and complying with the European Court's indications. The authorities would however like to reassure the Committee of Ministers that they have intensified their efforts to ensure that the revised draft law will be adopted without any further delay.