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Pursuant to 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, we hereby submit this communication on the general measures in the

Case of X v. Croatia

(app. no. 11223/04)

In this case, the European Court of Human Rights (hereinafter referred to as the "ECtHR“) found that a violation of Article 8 of the Convention had been committed due to the failure of the State to ensure the right to respect for the applicant's private and family life. The violation resulted from the fact that the applicant, having been judicially divested of her legal capacity (capacity to act), was excluded from proceedings which resulted in the adoption of her daughter.

In its Action Report of July 27, 2011, the Croatian Government argued that the ECtHR "... *neither directly, nor indirectly maintained that the parent divested of the capacity to act should be necessarily a party to the adoption proceedings of his/her child“*. However, in the present case the applicant complained, *inter alia*, specifically about the fact that she had not been a party to the adoption proceedings (§ 39). Deciding on the merits within the context of Article 8 of the Convention and in relation to the applicant's complaints, the ECtHR had ***"... difficulty in accepting that every person divested of the capacity to act should be automatically excluded from adoption proceedings concerning his or her child, as the applicant was in the present case."*** **(§ 53)**. Indeed, in the case at hand, the ECtHR did not focus only on the right of the applicant to be heard in the adoption proceedings, but also concluded that the ***"... decision-making process must be such as to ensure that their [parents'] views and interests are made known to and duly taken into account by the local authority and that they are able to exercise in due time any remedies available to them."*** **(§ 48)**. In this context, the respondent State should recognize parents in similar situations as parties to the adoption proceedings. Furthermore, the Committee of Ministers already invited the Government to provide information on ***"measures taken or envisaged to make it possible for parents divested of the capacity to act to participate in adoption proceedings in respect of their children, in particular to be able to exercise in due time any remedy available to them in those proceedings."***

In November 2011, the applicant made public statements on the case concerned and disclosed her full identity to the public. She gave an interview to the local media and said: *"I would only like to hear her [daughter's] voice for a moment. I would say to her: 'My dearest, I love you and I never gave you up, I can't forget you.'"*[1] Various newspapers reported on the obligatory instruction issued by the Government to the centers for social welfare as described in the Action Plan submitted; however the instruction itself was never made public. In well-established case law precedents, the ECtHR has emphasized that the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life. The Government, taking into account that this violation in the case has led to an irreversible legal situation that terminated family life between the applicant and her daughter, must undertake significant legal measures to prevent these consequences from happening in similar cases.

The Government is still maintaining legislation that allows plenary guardianship and, therefore, all people under such guardianship (fully divested of legal capacity) are automatically excluded from potential adoption proceedings concerning their children. As of December 31, 2011, a total of **16,355 people have been fully divested of legal capacity** in the Republic of Croatia according to the official statistical data of the Ministry of Social Policies and Youth. Although both the People's Ombudsman and Ombudswoman for Persons with Disabilities have been warning the Croatian Government that significant steps necessarily have to be undertaken to harmonize legislation and judicial practice with the UN Convention on the Rights of Persons with Disabilities, and in spite of the fact that various civil

[1] Daily newspaper "24 sata", November 13, 2011 http://www.24sata.hr/sudbine/i-dalje-se-nadam-da-cu-vidjeti-svoju-kcer-i-reci-joj-da-ju-volim-242255 (Croatian only)

society organizations in Croatia have proposed possible alternatives to the Government, nothing has been changed and the number of persons fully divested of legal capacity is growing year after year.

Article 23 of the UN Convention on the Rights of Persons with Disabilities places an obligation on the Croatian authorities to take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships on an equal basis with others. It ensues from Paragraph 2 of the same Article that furthermore, the State shall **render appropriate assistance to persons with disabilities in the performance of their child-rearing responsibilities.**

In our opinion, an understanding of the general context in which the Croatian Government sees parenthood of people with disabilities is necessary in order to support the argument that the Government must fully execute the ECtHR judgment in the present case. In the Republic of Croatia, there are no State-based policies in place aimed at providing support to parents with disabilities to raise their children. In addition, the Government did not demonstrate in this case that any kind of support had been provided to the applicant in child-rearing before her child was given up for adoption. The imperative that all decisions of the State authorities must be taken in the best interests of the child does not exclude the obligation of the State to apply the principle of proportionality in exercising its public authority. A fair balance between the rights of the child, the rights of parents and the public authorities is not struck in many cases concerning people with disabilities, especially those who are divested of legal capacity. Parenthood of people with disabilities is a taboo and those people are, when possible, prevented from even having or raising children. For example, legislation on contraceptive medical measures dating back from 1978 gives the State authorities the right to perform sterilization of women deprived of legal capacity.[2] This being noted, even the novel legislation on assisted reproduction does not allow this medical procedure to be forced on persons who are considered incapable of raising children due to their health condition.[3] In the case of Krušković v. Croatia (also under supervision by this Committee) the ECtHR found that a violation of the human rights of the applicant had been committed, as he was unable, due to the restriction of his legal capacity, to have his paternity recognized by law.

The only measure that the Government did implement in order to execute the judgment in the present case was of an administrative nature, and in fact, falls within the framework of actually depriving parental rights to people with disabilities and in no way struck a fair balance between the interests of all parties in the relevant circumstances. Full deprivation of legal capacity has been shown to be the most effective way of restricting human and civil rights of persons concerned, including those rights connected to parenthood. Although the Government argues that the obligatory instruction to the centers for social welfare is aimed at "hearing" parties concerned, it should be highlighted that giving a "statement" before the center for social welfare is not at all the same as being heard in proceedings before an independent tribunal. Taking one's statement in the proceedings before the center for social welfare and including that statement in the case file does not meet the standards required by the Convention for a hearing before an independent tribunal.

[2] Act on Medical Measures for Exercising the Right to Free Decision-Making on Childbirth (Croatian: Zakon o zdravstvenim mjerama za ostvarivanje prava na slobodno odlučivanje o rađanju djece), May 1, 1978.

[3] Article 10, Paragraph 1 of the Act on Medically Assisted Reproduction (Croatian: Zakon o medicinski pomognutoj oplodnji), OG 86/12.

In conclusion, measures undertaken by the Croatian Government to execute the ECtHR judgment in the case of X v. Croatia are inappropriate and, therefore, we urge the Committee of Ministers **to continue supervision in this case**. We further suggest devoting special attention to possible changes in Croatian Family Law aimed at the recognition of the rights of all parents to be recognized as parties to the proceedings concerning the adoption of their children, regardless of limitations placed on their legal capacity.

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