



## 18-month delay in enforcing the custodial sentence of an assailant who was meanwhile living in the vicinity of his victims was not reasonable

In today's **Chamber judgment**<sup>1</sup> in the case of [Kitanovska Stanojkovic and Others v. "the former Yugoslav Republic of Macedonia"](#) (application no. 2319/14) the European Court of Human Rights held, unanimously, that there had been:

**a procedural violation of Article 2 (right to life)** of the European Convention on Human Rights.

The case concerned the delayed enforcement of the sentence imposed on one of the assailants found guilty of seriously assaulting a couple during a robbery of their home. Ms Kitanovska Stanojkovic, the first applicant, was very seriously injured and her husband later died from his injuries. The assailants were convicted in a final judgment of November 2012. One of the assailants continued living in the vicinity of the applicants' neighbourhood until July 2014 when he started serving his sentence.

The Court did not criticise the criminal proceedings in the case, which had established the circumstances of the assault and identified those responsible. An effective criminal investigation must however extend to prompt enforcement of the punishment imposed. In the applicants' case, that requirement had been undermined by the delayed enforcement – 18 months – of the custodial sentence, which had been entirely attributable to the relevant authorities. Notably, the delay had occurred due to a lack of coordination between two departments of the same court and the lack of an enforcement judge who could deal with the case.

### Principal facts

The applicants, Olga Kitanovska Stanojkovic, and her daughters, Svetlana Audigier and Olivera Menart, are Macedonian nationals who were born in 1936, 1967, and 1970, respectively. They live in Ponthierry and Massy (in France).

Ms Kitanovska Stanojkovic was very seriously injured during a robbery of her home on 25 October 2011 and spent ten days in intensive care. Her husband, also attacked during the same incident, later died from his injuries. The assailants were subsequently convicted in June 2012 of aggravated robbery and were sentenced to six and five years' imprisonment, respectively. The trial court notably considered that incarceration was necessary on the grounds that the assailants posed a risk to public security. This judgment was upheld by the Skopje Court of Appeal (in November 2012) and by the Supreme Court (in March 2013).

However, one of the assailants – a minor who had been released from pre-trial detention in December 2011 – continued to live in the vicinity of the applicants' neighbourhood for a period of 18 months before starting to serve his sentence. Two incarceration orders were issued against him in January 2013 and March 2014. When he failed to report to the detention facility, the competent enforcement judge wrote on three occasions between February and May 2013 to the minors' department of the trial court in order to obtain further instructions; but the judge's letters received

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

no reply. Furthermore, no action was taken by the authorities for the next 10 months because there was no enforcement judge who could deal with the case. Finally, following an order by the enforcement judge, he was arrested and incarcerated in July 2014.

## Complaints, procedure and composition of the Court

Relying in particular on Article 2 (right to life) and Article 13 (right to an effective remedy), the applicants alleged that the continuing threat which their aggressor had posed to them and the sense of impunity he had been free to enjoy until the authorities enforced his custodial sentence had forced them to leave their village and move to France.

The application was lodged with the European Court of Human Rights on 31 December 2013.

Judgment was given by a Chamber of seven judges, composed as follows:

Ledi **Bianku** (Albania), *President*,  
 Mirjana **Lazarova Trajkovska** ("the Former Yugoslav Republic of Macedonia"),  
 Kristina **Pardalos** (San Marino),  
 Linos-Alexandre **Sicilianos** (Greece),  
 Robert **Spano** (Iceland),  
 Armen **Harutyunyan** (Armenia),  
 Pauliine **Koskelo** (Finland),

and also Abel **Campos**, *Section Registrar*.

## Decision of the Court

The Court did not criticise either the conduct or the outcome of the criminal proceedings in the applicants' case. In particular, the procedural requirements under Article 2 had been satisfied as regards establishing the circumstances of the case and identifying those responsible for the assault.

However, the notion of an effective investigation under Article 2 can also be interpreted as imposing a duty on States to enforce their final judgments without undue delay. Indeed, the enforcement of a sentence imposed in the context of the right to life must be regarded as an integral part of the procedural obligation of the State under Article 2.

In the applicants' case there had essentially been two delays in enforcement of their assailant's prison sentence. First, a lack of coordination between the enforcement judge and the trial court responsible for minors had caused a delay of at least three months during which Ms Kitanovska Stanojkovic's assailant remained at liberty. Secondly, when a fresh incarceration order had been issued, no action had been taken at all to enforce the prison sentence, there having been no enforcement judge to deal with the case.

The applicants' assailant therefore only started serving his sentence in July 2014, that is to say 18 months after his conviction had become final. The Court considered that that 18-month delay, which was entirely attributable to the competent authorities, had not been reasonable. The State's system for enforcing custodial sentences in the present case had therefore not been efficient.

In conclusion, the procedural requirements under Article 2 had been undermined on account of the unjustified delays in enforcing the custodial sentence, irrespective of whether the assailant had, after his conviction, demonstrated any hostility against the applicants. There had therefore been a procedural violation of Article 2 of the Convention.

Given that finding, the Court considered that there was no need to examine separately the applicants' complaint under Article 13.

### Just satisfaction (Article 41)

The Court held that “the former Yugoslav Republic of Macedonia” was to pay the applicants 5,000 euros (EUR) in respect of non-pecuniary damage and EUR 2,420 for costs and expenses.

*The judgment is available only in English.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.