

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

DECISION

Application no. 18578/12
Ana Cristina ANDRÉ ATANÁSIO
against Portugal

The European Court of Human Rights (First Section), sitting on 27 May 2014 as a Committee composed of:

Mirjana Lazarova Trajkovska, *President,*
Paulo Pinto de Albuquerque,
Ksenija Turković, *judges,*

and André Wampach, *Deputy Section Registrar,*

Having regard to the above application lodged on 23 March 2012,

Having regard to the unilateral declaration submitted by the respondent Government on 7 March 2014 requesting the Court to strike the application out of the list of cases and the applicant's reply to that declaration,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

The applicant, Ms Ana Cristina André Atanásio, is a Portuguese national, who was born in 1970 and lives in Kayl (Luxembourg). She was represented before the Court by Mr J. J. Ferreira Alves, a lawyer practising in Matosinhos (Portugal).

The Portuguese Government ("the Government") were represented by their Agent, Mrs M. F. da Graça Carvalho, Deputy Attorney-General.

The application had been communicated to the Government.

THE LAW

The applicant complained under Article 6 § 1 of the Convention about the length of administrative proceedings before the Administrative and Fiscal Court of Lisbon (domestic proceedings no. 2858/04.5BELSB).

After the failure of attempts to reach a friendly settlement, by a letter of 7 March 2014 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by the application. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

The declaration provided as follows:

> "Je soussignée M^me^ M. F. da Graça Carvalho, procureur générale adjoint, déclare que le gouvernement portugais offre de verser à M^me^ Ana Cristina André Atanásio, la somme de 3 900 (trois mille neuf cents) euros couvrant tout préjudice moral, et la somme de 1 000 (mille) euros couvrant l'ensemble des frais et dépens, au titre de la requête enregistrée sous le n^o^ 18578/12, portant sur le délai raisonnable.
>
> Ces sommes seront exemptes de toute taxe éventuellement applicable et seront payées dans les trois mois suivant la date de la notification de la décision de radiation rendue par la Cour sur le fondement l'article 37 § 1 c) de la Convention. Le paiement vaudra règlement définitif de la cause.
>
> À défaut de règlement dans ledit délai, le Gouvernement s'engage à verser, à compter de l'expiration de celui-ci et jusqu'au règlement effectif des sommes en question, un intérêt simple à un taux égal à celui de la facilité de prêt marginal de la Banque centrale européenne, augmenté de trois points de pourcentage.
>
> Le Gouvernement reconnaît qu'en l'espèce il y a eu violation de l'article 6 § 1 de la Convention."

By a letter of 25 March 2014, the applicant indicated that she was not satisfied with the terms of the unilateral declaration on the ground that the compensation proposed was unacceptably low.

The Court recalls that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified, under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

> "for any other reason established by the Court, it is no longer justified to continue the examination of the application".

It also recalls that in certain circumstances, it may strike out an application under Article 37 § 1(c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued.

To this end, the Court will examine carefully the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (*Tahsin Acar v. Turkey*, [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI); *WAZA Spółka z o.o. v. Poland* (dec.) no. 11602/02, 26 June 2007; and *Sulwińska v. Poland* (dec.) no. 28953/03, 18 September 2007).

The Court has established in a number of cases, including those brought against Portugal, its practice concerning complaints about the violation of one's right to a hearing within a reasonable time (see, for example,

Frydlender v. France [GC], no. 30979/96, § 43, ECHR 2000-VII; *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 69-98, ECHR 2006-V; *Majewski v. Poland*, no. 52690/99, 11 October 2005 and *Wende and Kukówka v. Poland*, no. 56026/00, 10 May 2007 ; regarding Portugal see *Martins Castro and Alves Correia de Castro v. Portugal*, no. 33729/06, 10 June 2008).

Having regard to the nature of the admissions contained in the Government's declaration, as well as the amount of compensation proposed – which is consistent with the amounts awarded in similar cases – the Court considers that it is no longer justified to continue the examination of the application (Article 37 § 1(c)).

Moreover, in light of the above considerations, and in particular given the clear and extensive case-law on the topic, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the application (Article 37 § 1 *in fine*).

Finally, the Court emphasises that, should the Government fail to comply with the terms of their unilateral declaration, the application could be restored to the list in accordance with Article 37 § 2 of the Convention (*Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

For these reasons, the Court, unanimously,

Takes note of the terms of the respondent Government's declaration and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention.

André Wampach
Deputy Registrar

Mirjana Lazarova Trajkovska
President