

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

SECOND SECTION

DECISION

Application no. 9781/10
Vjera and Dejana BAŠANOVIĆ
against Montenegro

The European Court of Human Rights (Second Section), sitting on 22 November 2016 as a Committee composed of:

Valeriu Griţco, *President,*
Nebojša Vučinić,
Stéphanie Mourou-Vikström, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having regard to the above application lodged on 10 February 2010,

Having regard to the declaration submitted by the respondent Government on 6 June 2016 requesting the Court to strike the application out of the list of cases and the applicants' reply to that declaration,

Having deliberated, decides as follows:

## FACTS AND PROCEDURE

The applicants, Ms Vjera Bašanović, who is a Montenegrin and Serbian national, and Ms Dejana Bašanović, who is a Montenegrin national, were born in 1988 and 1990 respectively and live in Podgorica.

The Montenegrin Government ("the Government") were represented by their Agent, Ms Valentina Pavličić.

The applicants complained under Articles 6 § 1 and 13 of the Convention, about the non-enforcement of the final decision rendered in the favour of the applicants.

The application had been communicated to the Government on 9 December 2015.

# THE LAW

The applicants complained about the non-enforcement of a domestic decision rendered in their favour. They relied on Articles 6 § 1 and 13 of the Convention.

After the failure of attempts to reach a friendly settlement, by a letter of 6 June 2016 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:

> "I declare that the Government of Montenegro herby wishes to express acknowledgement of the unreasonable duration of the domestic proceedings in which the applicants were involved and is ready to accept that there had been a violation of the [applicants'] right[s] under Article 6 paragraph 1 and Article 13 of the Convention.
>
> The Government will ensure that all necessary steps are taken to speedily enforce the final domestic decision rendered in the [applicants'] favour, taking into account the requirements of the proper administration of justice.
>
> Consequently, the Government is ready to pay to Ms Vjera Bašanović and Ms Dejana Bašanović, the amount of EUR 2,700 (two thousand seven hundred euros) jointly, which it considers to be reasonable in the light of the Court's case-law, less any amounts which may have already been paid in that regard at the domestic level in order to cover any non-pecuniary damage as well as [the] amount of EUR 100 (one hundred euros) jointly to cover any and all costs and expenses, plus any tax that may be chargeable to the applicant[s] in respect of the application registered under no. 9781/10 before the European Court of Human Rights.
>
> This sum shall be payable within three months from the date of the delivery of the decision of the Court to strike the case out of its list of cases, as referred to in Article 37 § 1 (c) of the Convention.
>
> These payments will constitute the final resolution of the actions which have led to the bringing of the present application.
>
> The Government wishes to express regret for the occurrence of the actions which have led to the bringing of the present application."

By a letter of 28 August 2016, the applicants indicated that they were not satisfied with the terms of the unilateral declaration on the ground that terms of the unilateral declaration are inacceptable, that the declaration contains no adequate redress nor it imposes any duty on the Government to ensure the enforcement of the impugned decision.

The Court reiterates 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 reiterates 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 has examined the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (*Tahsin Acar v. Turkey* (preliminary objections) [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI; *WAZA Sp. 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 Montenegro, its practice concerning the complaints about the non-enforcement of domestic decisions rendered in applicant's favour (see, for example, *Hornsby v. Greece*, 19 March 1997, § 40, *Reports of Judgments and Decisions* 1997-II; *Fuklev v. Ukraine*, no. 71186/01, § 84, 7 June 2005; *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 23, ECHR 2000-IV; and *Vukelić v. Montenegro*, no. 58258/09, § 98-102, 4 June 2013).

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).

In view of the above, it is appropriate to strike the case out of the list.

For these reasons, the Court, unanimously,

*Takes note* of the terms of the respondent Government's declaration under Articles 6 § 1 and 13 of the Convention 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.

Done in English and notified in writing on 15 December 2016.

Hasan Bakırcı
Deputy Registrar

Valeriu Griţco
President