

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

SECOND SECTION

DECISION

Application no. 6022/08
Budimir BATURAN
against Serbia

The European Court of Human Rights (Second Section), sitting on 3 April 2012 as a Committee composed of:

András Sajó, *President,*
Dragoljub Popović,
Paulo Pinto de Albuquerque, *judges,*

and Françoise Elens-Passos, *Deputy Section Registrar,*

Having regard to the above application lodged on 9 January 2008,

Having regard to the declaration submitted by the respondent Government on 10 September 2010 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:

THE FACTS

The applicant, Mr Budimir Baturan, is a Serbian national who was born in 1946 and lives in Novi Sad. He was represented before the Court by Mr M. Vukosav, a lawyer practising in Belgrade. The Serbian Government ("the Government") were represented by their Agent, Mr S. Carić.

The facts of the case, as submitted by the parties, may be summarised as follows.

On 15 November 1994 the applicant filed a civil suit against a company for payment of contracted fees. Following three remittals, on 22 March 2007 the Municipal court in Novi Sad partly granted the applicant's claim.

On 12 July 2007 and 14 February 2008 the District Court and the Supreme Court, respectively, upheld the judgment of 22 March 2007, thus finally deciding the case.

COMPLAINTS

The applicant complained under Article 6 § 1 of the Convention about the length and the outcome of the civil proceedings at question.

THE LAW

1. After unsuccessful friendly-settlement negotiations, by letter dated 10 September 2010, 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 the Republic of Serbia is ready to accept that there had been a violation of the applicant's right under Article 6 paragraph 1 of the convention and offer to pay to the applicant, Mr Budimir Baturan the amount of EUR 1,200 [...] in respect of the application registered under no 6022/08 before the European Court of Human Rights.
>
> This sum, which covers any pecuniary and non-pecuniary damage as well as costs, shall be paid in dinar counter value, free of any taxes that may be applicable and to an account [specified] by the applicant. The sum shall be payable within three months from the date of delivery of the [decision] by the Court. This payment will constitute the final resolution of the case.
>
> The Government regret the occurrence of the actions which have lead to the bringing of the present application."

In a letter of 18 February 2011 the applicant expressed the view that the sum mentioned in the Government's declaration 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 wish 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).

The Court has established in a number of cases, including those brought against Serbia, 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-....; *Majewski v. Poland*, no. 52690/99, 11 October 2005; *Wende and Kukówka v. Poland*, no. 56026/00, 10 May 2007 and *Čížková v. Serbia*, no. 8044/06, 19 January 2010).

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, when account is taken of the fact that only four years of the impugned proceedings fall within the Court's competence *ratione temporis*, Serbia having ratified the Convention on 3 March 2004 – 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*).

In view of the above, it is appropriate to strike the complaint of the length of proceedings out of the list.

2. The applicant furthermore complained about the outcome of the proceedings at question.

The Court recalls that it is not its function to deal with errors of fact or law allegedly committed by a national court, unless and insofar as they may have infringed the rights and freedoms protected by the Convention (see e.g. *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I). The domestic courts in three instances found that the applicant was entitled a certain amount of compensation, nonetheless only a part of what he had expected to be awarded. However, there is nothing in the case-file that would indicate any appearance of a violation by the domestic courts of any procedural guarantees contained in Article 6 of the Convention and neither there is any evidence of any arbitrariness or unfairness. It therefore follows that this complaint must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Takes note of the terms of the respondent Government's declaration under Article 6 § 1 of the Convention and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike out of its list of cases the complaint of the length of civil proceedings, in accordance with Article 37 § 1 (c) of the Convention;

Declares the reminder of the application inadmissible.

Françoise Elens-Passos	András Sajó
Deputy Registrar	President