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

FIRST SECTION

DECISION

Application no. 1703/23
Štefan BOŽIČNIK
against Slovenia

The European Court of Human Rights (First Section), sitting on 6 February 2025 as a Committee composed of:

Georgios A. Serghides*, President*,
Frédéric Krenc,
Alain Chablais*, judges*,

and Viktoriya Maradudina, *Acting Deputy Section Registrar,*

Having regard to the above application lodged on 23 December 2022,

Having regard to the declaration submitted by the respondent Government requesting the Court to strike the application out of the list of cases,

Having deliberated, decides as follows:

FACTS AND PROCEDURE.

The applicant, Mr Štefan Božičnik, was born in 1946. He was represented by Mr D. Medved, a lawyer practising in Krško.

The applicant's complaint under Article 4 of Protocol No. 7 to the Convention concerning his punishment for an offence for which he had been previously punished and related consequences was communicated to the Slovenian Government ("the Government").

THE LAW

The Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issues raised by these complaints. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

The declaration provided as follows:

> "By this unilateral statement, the Government of the Republic of Slovenia acknowledge that the applicant Štefan Božičnik's right under Article 4 of Protocol No. 7 to the Convention ("ne bis in idem") has been violated as a result of the

two suspended sentences being issued to him for the same offence, firstly, by the judgement of the Local Court in Brežice, Ref. No II K 6676/2010 of 2 July 2007, when he was issued a suspended sentence in which he was given an aggregate sentence of 7 months' imprisonment for two counts of theft under Article 211 § 1 of the Criminal Code (KZ), but which would not be imposed if he did not commit a new offence within the probationary period of 3 years, and on the special condition that he pay the damages to the victims, and secondly, by the judgment of the Local Court in Brežice, Ref. No II K 6676/2010 of 27 March 2018, when he was issued a suspended sentence, in which he was given a sentence of 4 months' imprisonment for the offence of theft pursuant to Article 204 §§ 2 and 1 of the Criminal Code, but which would not be imposed unless he committed a new offence within the probationary period of 1 year.

The Government of the Republic of Slovenia declare that they are prepared to pay the applicant financial compensation totalling EUR 3,500.00 (in words: three thousand five hundred euro) in compensation for all the pecuniary and non-pecuniary damage suffered and costs he has incurred as a result of the above-mentioned violation of Article 4 of Protocol No 7 to the Convention. That sum will be paid to the applicant within three months of notification of the decision by which the Court strikes the application from the list of cases pursuant to Article 37 § 1 of the Convention. The Government of the Republic of Slovenia undertake, in the event of default in payment, to pay the applicant simple interest at a rate equal to the marginal lending rate of the European Central Bank plus three percentage points for the whole period from the first day of default until payment.

The Government of the Republic of Slovenia consider that the express acknowledgement of the violation of the rights set forth in Article 4 of Protocol No. 7 to the Convention and the undertaking to pay pecuniary compensation under the above conditions constitute reparation for the pecuniary and non-pecuniary damage suffered and the costs incurred, which is proportionate to the nature and gravity of the violation and corresponds to the financial capacity of the respondent High Contracting Party. "

By a letter of 1 October 2024, the applicant indicated that he was not satisfied with the terms of the unilateral declaration. The applicant argued that the amount of just satisfaction proposed by the Government was too low, especially due to the fundamental nature of the rights violated, prolonged proceedings, and the domestic courts' repeated disregard of his claims.

The Court observes that Article 37 § 1 (c) enables it 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".

Thus, it may strike out applications 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 (see, in particular, the *Tahsin Acar v. Turkey* judgment (preliminary objections) [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI).

The Court has established clear and extensive case-law concerning complaints relating to the right not to be punished twice (see, for example, *Mihalache v. Romania* [GC], no. 54012/10, § 48, 8 July 2019; *Kadusic v. Switzerland*, no. 43977/13, § 82, 9 January 2018; *Velkov v. Bulgaria*,

no. 34503/10, § 44, 21 July 2020; and *Nikitin v. Russia*, no. 50178/99, § 35, ECHR 2004-VIII).

Noting 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)).

In the light of the above considerations, 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 may be restored to the list in accordance with Article 37 § 2 of the Convention (see *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 in so far as they concern the two suspended sentences being issued to the applicant for the same offence, and of the arrangements 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 6 March 2025.

Viktoriya Maradudina
Acting Deputy Registrar

Georgios A. Serghides
President