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

SECOND SECTION

DECISION

Application no. 32645/11
Dobrislav KLJAJEVIĆ and Others
against Montenegro
(see appendix)

The European Court of Human Rights (Second Section), sitting on 5 September 2017 as a Committee composed of:

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

Having regard to the above application lodged on 10 May 2011,

Having regard to the declaration submitted by the respondent Government on 13 February 2017 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 are all Montenegrin nationals, and their further personal details are set out in the appendix. They were all represented before the Court by Mr M. Petković, a lawyer practising in Bor.

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

The applicants complained under Article 6 of the Convention about the length of their civil proceedings concerning a property matter.

The application had been communicated to the Government on 16 December 2015.

THE LAW

The applicants complained about the length of civil proceedings. They relied on Article 6 of the Convention.

After the failure of attempts to reach a friendly settlement, by a letter of 13 February 2017 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 hereby wish to express acknowledgement of the unreasonable duration of the domestic proceedings in which the applicants were involved and are ready to accept that there had been a violation of the applicants' right[s] under Article 6 of the Convention.
>
> Consequently, the Government are ready to pay the amount of EUR 810 (eight hundred ten euros) to Mr Dobrislav Kljajević and Ms Ljubinka Kljajević each, and the amount of EUR 810 (eight hundred ten euros) to Mr Dušan Kljajević and Mr Nikola Kljajević 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 500 (five hundred euros) jointly, to cover any and all costs and expenses, plus any tax that may be chargeable to the applicants in respect of the application registered under no. 32645/11 before the European Court of Human Rights.
>
> This sum shall be payable within three months from the date of 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 29 March 2017, the applicants indicated that they were not satisfied with the terms of the unilateral declaration, without specifying their reasons, and invited the Court to examine their application on the merits.

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 applicants wish 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; see also *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 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; *Živaljević v. Montenegro*, no.17229/04, § 65, §§ 67-68 and 75-78, 8 March 2011; and *Stakić v. Montenegro*, no. 49320/07, §§ 39-41 and 47-61, 2 October 2012).

Having regard to the nature of the admissions contained in the Government's declaration, as well as the amounts of compensation proposed – which are 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*).

Further, the Court interprets the Government's declaration as meaning that in the event of failure to settle within the three-month period indicated in this declaration, simple interest shall be payable on the amounts in question at a rate equal to the marginal lending rate of the European Central Bank plus three percentage points.

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 Article 6 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 28 September 2017.

Hasan Bakırcı
Deputy Registrar

Paul Lemmens
President

APPENDIX

No.	**Applicant's name**	**Date of birth**	**Place of residence**
1.	Dobrislav KLJAJEVIĆ	13/01/1952	Kotor
2.	Nikola KLJAJEVIĆ	03/11/1962	Pavino Polje
3.	Dušan KLJAJEVIĆ	15/01/1959	Pavino Polje
4.	Ljubinka KLJAJEVIĆ	05/08/1955	Bor