

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

SECOND SECTION

DECISION

Application no. 45378/06
by Murat LEKPEK
against Serbia

The European Court of Human Rights (Second Section), sitting on 5 July 2011 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 10 November 2006,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Murat Lekpek, is a Serbian national who was born in 1958 and lives in Novi Pazar. He was represented before the Court by Mr G. Perović, 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 summarized as follows.

On an unspecified date, A.S., a third private party, instituted civil proceedings against the applicant, disputing his title over certain real-estate in Novi Pazar. On 27 January 2003, A.S. requested the Municipal Court in Novi Pazar to order provisional measures against the applicant, preventing him from disposing of the property in question.

On 27 January 2003 the Municipal Court in Novi Pazar ordered enforcement of the said provisional measures, apparently failing to examine the legal basis for the imposition of provisional measures in advance of their enforcement.

On 26 February 2003 the District Court in Novi Pazar upheld this decision.

On 30 November 2005 the First Municipal Court in Belgrade rejected A.S.'s request in the underlying civil case. On 29 January 2008 the District Court in Belgrade upheld this decision.

On an unspecified date the applicant sought withdrawal of the provisional measures.

On 23 February 2007 the Municipal Court in Novi Pazar rejected the applicant's request. On 14 April 2008 the District Court in Novi Pazar quashed this decision.

On 16 May 2008 the Municipal Court in Novi Pazar discontinued the enforcement of the provisional measures.

On 15 July 2008 the District Court in Novi Pazar quashed this decision. In the dispatch note to the Municipal Court, the District Court noted that "the first instance court has failed, until this day, to decide on the merits on the initial submission of [A.S.] – the request for provisional measures."

It would appear that the said provisional measures continue to be in force.

COMPLAINTS

The applicant complained under Article under Article 6 § 1 of the Convention, and Article 1 of Protocol No. 1 that enforcing provisional measures, while failing to decide on their merits, constituted a violation of his procedural and property rights.

THE LAW

By letter dated 19 November 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 Articles 6 paragraph 1 of the Convention and Article 1 of the Protocol 1 to the Convention and offer to pay to the applicant, Mr Murat Lekpek, the amount of EUR 4,200 in respect of the application registered under no. 45378/06 before the European Court of Human Rights.
>
> This sum, which covers 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 led to the bringing of the present application."

In a letter of 7 February 2011 the applicant expressed the view that the sum mentioned in the Government's declaration was unacceptably low, and that he had expected the Court to decide on his claim for pecuniary damages amounting to EUR 837,838 and to award him EUR 200,000 of non-pecuniary damages, as well as EUR 7,548 for costs of proceedings.

The Court notes that this claim goes beyond the scope of the present application and it is open to the applicant to raise this issue before domestic courts (see e.g. *Ilić v. Serbia*, no. 30132/04, § 112, 9 October 2007). Should the outcome of such proceedings be unsatisfactory for the applicant, he will then be able to submit a new application to this Court (in which case the subject matter of the complaint would be different from the present application, which only concerns failure to decide within reasonable time on the imposed provisional measures, see, mutatis mutandis, *Sandu v. Moldova* (dec.), no. 29729/07 of 2 February 2010).

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).

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; and *Wende and Kukówka v. Poland*, no. 56026/00, 10 May 2007).

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*).

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.

Françoise Elens-Passos	András Sajó
Deputy Registrar	President