

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

SECOND SECTION

DECISION

Application no. 23108/08
Stojadin LJUBISAVLJEVIĆ
against Serbia

The European Court of Human Rights (Second Section), sitting on 26 March 2013 as a Committee composed of:

Paulo Pinto de Albuquerque, *President,*
Dragoljub Popović,
Helen Keller, *judges,*

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

Having regard to the above application lodged on 18 April 2008,

Having regard to the declaration submitted by the respondent Government on 4 March 2011 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:

FACTS AND PROCEDURE

The applicant, Mr Stojadin Ljubisavljević, is a Serbian national, who was born in 1934 and lives in Vladičin Han.

The Serbian Government ("the Government") were represented by their Agent, Mr S. Carić.

The application had been communicated to the Government on 6 December 2010.

A. The circumstances of the case

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

1. The first set of civil proceedings

On 26 March 1997 the Vladičin Han Municipal Court ("the Municipal Court") ordered B.T. to pay the applicant 1,845.76 "new dinars" (YUM - approximately 470 German marks (DEM) at the time)[1] in compensation for damage caused to his property and YUM 510 (approximately 130 DEM at the time) in respect of legal costs. B.T. was also ordered to undertake certain steps to prevent further damage to the applicant's property by allowing its connection to the sewer system.

That judgment became final on 12 March 1998. On 4 September 1998 the Municipal Court issued a writ of execution.

The compensation and legal costs were paid in 2001. Thereafter, the Municipal Court had taken some procedural steps in view of the full enforcement of the judgment in question. In particular, after an expert examination with police assistance, on 14 January 2003 it authorised the applicant to undertake the ordered action by himself or through a third party on account of the debtor.

On 13 June 2003 the Municipal Court ordered seizure of the debtor's salary in respect of the enforcement costs.

On 3 December 2003, after having examined the property in question, the bailiff concluded that police assistance was necessary for the full enforcement.

It would appear that no further steps had been taken until 31 March 2009 when the Municipal Court ordered the continuation of the enforcement proceedings.

2. The second set of civil proceedings

On 29 March 2002 the Municipal Court ordered B.T. to demolish illegal constructions on the applicant's property (a concrete wall, five metal pillars and two concrete blocks), as well as to pay him YUM 19,740 (approximately 680 DEM at the time) in respect of legal costs.

That judgment became final on 13 January 2003. On 22 May 2003 the Municipal Court issued a writ of execution.

On 9 October 2005 a part of the impugned concrete wall was demolished by a court-appointed company with police assistance. It was considered that further enforcement (in particular, removal of metal pillars) would endanger security. The experts' opinions, of 22 August 2007 and 3 March 2008, confirmed this.

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[1] According to the exchange rates fixed by the then National Bank of Yugoslavia

On 14 April 2008 the Municipal Court held a hearing at which the applicant insisted on the continuation of the enforcement. At the subsequent hearing, held on 20 January 2011, the Municipal Court decided to discontinue the part of the enforcement proceedings concerning the construction works and to continue with the enforcement in respect of legal costs. However, it would appear that they have not yet been paid to the applicant.

COMPLAINT

The applicant complained of the non-enforcement of the final domestic judgments of 26 March 1997 and 29 March 2002. He relied on Article 6 § 1 of the Convention.

THE LAW

On 4 March 2011 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 § 1 of the Convention and offer to pay to the applicant, Mr Stojadin Ljubisavljević, the amount of EUR 3,600 to cover any and all non-pecuniary damage and EUR 400 to cover any and all expenses plus any tax that may be chargeable to the applicant in respect of the application registered under no. 23108/08 before the European Court of Human Rights.
>
> These sums shall be payable within three months from the date of delivery of the decision of the Court. This payment shall constitute the final resolution of the case.
>
> The Government regret the occurrence of the actions which led to the bringing of the present application".

By a letter of 28 April 2011, the applicant indicated that he was not satisfied with the terms of the unilateral declaration.

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 (see *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 non-enforcement of domestic decisions (see, for example, *Felbab v. Serbia*, no. 14011/07, 14 April 2009; *R. Kačapor and Others v. Serbia*, nos. 2269/06 *et al*., 15 January 2008; and *Vinčić and Others v. Serbia*, nos. 44698/06 *et al*., 1 December 2009).

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

Turning to the nature of the proposed redress, the Court considers that these amounts should be converted into the currency of the respondent State at the rate applicable at the date of payment. In the event of failure to settle within this period, 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 (see *Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

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 the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention.

Françoise Elens-Passos Deputy Registrar	Paulo Pinto de Albuquerque President