

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

SECOND SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 18160/06
by Lazar MIKLOŠEVIĆ
against Serbia

The European Court of Human Rights (Second Section), sitting on 28 January 2011 as a Committee composed of:

Nona Tsotsoria, *President,*
Dragoljub Popović,
Kristina Pardalos, *judges,*

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

Having regard to the above application lodged on 4 May 2006 ,

Having regard to the declaration submitted by the respondent Government on 29 June 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 Lazar Miklošević, is a Serbian national who was born in 1940 and lives in Subotica. 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.

A. The criminal proceedings against the applicant

On 24 August 1998 the applicant, at that time a director of a socially-owned company, was indicted for abuse of office.

On 22 May 2002 the District Court in Subotica found the applicant guilty and sentenced him to four years in prison.

On 29 March 2004 the Supreme Court quashed this judgment, and returned the case to the District Court for re-examination.

On 14 February 2005 the District Court relinquished jurisdiction in favour of the Municipal Court in Subotica.

By 8 February 2007 the Municipal Court held six hearings in the case.

In response to the applicant's request, on 7 December 2007 the Municipal Court ordered a financial expertise, which was ultimately completed by 22 April 2008.

On 8 May 2009 the Municipal Court pronounced the applicant not guilty. On 22 April 2010 the District Court in Novi Sad upheld the judgment of 8 May 2009, finally acquitting the applicant.

B. The criminal proceedings against the presiding judge

On 11 July 2005 the applicant filed a criminal complaint against the judge who had presided over his case before the District Court.

On 26 August 2005 the District Court rejected the complaint. On 27 October 2005 the Supreme Court upheld this decision. This decision was served on the applicant after 3 November 2005.

COMPLAINTS

The applicant complained under Article 6 § 1 of the Convention about the length and fairness of the criminal proceedings against him. He also complained about the outcome of the criminal case against the judge, who had presided over his case before the District Court.

THE LAW

1. By letter dated 29 June 2010 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue of the length of the criminal proceedings against the applicant, as 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 Lazar Miklošević, the amount of EUR 3,000 *ex gratia* in respect of the application registered under no. 18160/06 before the European Court of Human Rights.
>
> This sum, which covers any 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 14 August 2010 the applicant expressed the view that the sum mentioned in the Government's declaration was unacceptably low as it did not provide compensation for the pecuniary and non-pecuniary damages he had suffered during and in relation with the time he had spent in detention.

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 *McFarlane v. Ireland* [GC], §§ 155-156, 10 September 2010, *Kudła v. Poland* [GC], no. 30210/96, §§ 130-131, ECHR 2000-XI, and many others).

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 six years and two months 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 this part of the application (Article 37 § 1 *in fine*).

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

2. The applicant further complained about the fairness of the criminal proceedings he had been subject to. The Court notes that by the judgment of 8 May 2009 the applicant was finally acquitted from all the charges put against him, and that throughout the proceedings he was fully able to state his case and challenge the decisions at issue. Furthermore there is nothing in the case file that would disclose an appearance of a violation by the domestic courts of any of the procedural guarantees provided under Article 6 of the Convention.

In principle, and without prejudice to its power to examine the compatibility of national decisions with the Convention, it is not the Court's role to assess itself the facts which have led a national court to adopt one decision rather than another. If it were otherwise, the Court would be acting as a court of third or fourth instance, which would be to disregard the limits imposed on its action (see *Kemmache v. France (no. 3)*, 24 November 1994, § 44, Series A no. 296-C). It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

3. The applicant also complained about the outcome of a separate set of criminal proceedings, in which he sought prosecution of a judge in his case.

The Court reiterates that the Convention does not guarantee any right as such to have third persons convicted and that Article 6 is inapplicable to proceedings with a view to pressing charges against such persons (see e.g. *Panyik v. Hungary* [dec.], § 4, 9 March 2010). It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention, within the meaning of Article 35 § 3(a), and must be rejected pursuant to Article 35 § 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 criminal proceedings against the applicant, in accordance with Article 37 § 1 (c) of the Convention;

Declares the reminder of the application inadmissible.

Françoise Elens-Passos	Nona Tsotsoria
Deputy Registrar	President