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

FIRST SECTION

DECISION

Application no. 22567/18
Nives MOROVIĆ
against Croatia

The European Court of Human Rights (First Section), sitting on 19 October 2021 as a Committee composed of:

Péter Paczolay, *President,*
Alena Poláčková,
Gilberto Felici, *judges,*

and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to the above application lodged on 3 May 2018,

Having regard to the declaration submitted by the respondent Government on 2 July 2021 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

1. The applicant, Ms Nives Morović, is a Croatian national who was born in 1963 and lives in Split. She was represented before the Court by Ms S. Budimir, a lawyer practising in Zagreb.

2. The Croatian Government ("the Government") were represented by their Agent, Ms Š. Stažnik.

3. The applicant's complaint under Article 6 § 1 of the Convention concerning the lack of access to a court was communicated to the Government, while the remainder of the application was declared inadmissible.

THE LAW

4. The applicant complained about the impossibility to challenge before a court the decision of a State agency dismissing her request to be awarded

funding for her agricultural project. She relied on Article 6 § 1 of the Convention.

5. The situation was a result of a domestic provision setting out that the State agency's decisions in question were not administrative acts and thus could not be challenged before the Administrative Court. Meanwhile, by decision no. U-I-4220/2020 of 20 October 2020, the Constitutional Court invalidated as unconstitutional the provision in question, and, on 12 May 2021, the Croatian Parliament introduced the possibility to challenge the State agency's decisions before the Administrative Court.

6. After failed attempts to reach a friendly settlement, by a letter of 2 July 2021, 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, by way of this unilateral declaration, that the Government of the Republic of Croatia:
>
> (a) acknowledges that in the instant case there has been a violation of the applicant's right of access to court, guaranteed by Article 6 § 1 of the Convention; and
>
> (b) is ready to pay the applicant the amount of EUR 6,300 (six thousand three hundred euros), to cover any and all non-pecuniary damage as well as costs and expenses, plus any tax that may be chargeable to the applicant.
>
> This sum will be converted into Croatian kunas at the rate applicable on the date of payment and will be payable within three months from the date of notification of the decision by the Court pursuant to Article 37 § 1 of the European Convention on Human Rights to the account indicated by the applicant. In the event of failure to pay this sum within the said three-month period, the Government undertakes to pay simple interest on it, from the expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points. The payment will constitute the final resolution of the case."

7. By a letter of 16 August 2021, the applicant requested the Court to continue the examination of her case. She contended that the sum offered by the Government in their unilateral declaration did not take into account the significant pecuniary and non-pecuniary damage she had suffered as a result of the violation complained of and was insufficient to cover the costs of the proceedings before the Court. In addition, she contended that a strike out decision would prevent her from being able to seek the reopening of the proceedings before the Administrative Court, which under domestic law could be reopened only on the basis of a final judgment of the Court finding a violation of the rights and freedoms under the Convention (the relevant domestic provision is cited in *Romić and Others v. Croatia*, nos. 22238/13 and 6 others, § 71, 14 May 2020). At the same time, she admitted that the reopening of the proceedings in her case would be futile since the scheme and funds for which she had applied were no longer available. The applicant

thus insisted that the only redress for the violation complained of was to pay her the amounts she had sought in her claim for just satisfaction.

8. 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".

9. 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 applicant wishes the examination of the case to be continued.

10. 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).

11. The Court has established in a number of cases, including those brought against Croatia, its practice concerning complaints about the violation of one's right of access to a court (see, for example, *Allan Jacobsson v. Sweden (no. 1)*, 25 October 1989, § 65, Series A no. 163; *Melikyan v. Armenia*, no. 9737/06, § 32, 19 February 2013; *Zlínsat, spol. s r.o., v. Bulgaria*, no. 57785/00, § 65, 15 June 2006; *Lovrić v. Croatia*, no. 38458/15, § 41, 4 April 2017; and *Project-Trade d.o.o. v. Croatia*, no. 1920/14, § 73, 19 November 2020).

12. The Court further notes that the domestic provision which was the origin of the acknowledged violation was invalidated by the Constitutional Court and that now there is a possibility of judicial review of the State agency's decisions concerning awarding funding for agricultural projects (see paragraph 5 above).

13. The applicant's argument that the Court's strike-out decision would prevent her from seeking reopening of the proceedings cannot be considered relevant, since she herself admitted that a reopening would be futile in her case and that the only means of redressing the violation would be to receive monetary compensation (see paragraph 7 above).

14. As regards the applicant's claim concerning pecuniary damage, the Court agrees with the Government's contention that there is no sufficient causal link between the acknowledged violation of Article 6 § 1 of the Convention and the alleged pecuniary damage. Indeed, the Court cannot speculate as to what the result might have been if the applicant had been

able to challenge before a court the State agency's decision dismissing her application to be awarded funding for her project. The Court notes that, when on 23 May 2019 the Government were given notice of the application (see paragraphs 3-4 above), the President of the Section, acting as a single judge pursuant to Rule 54 § 3 of the Rules of Court, declared the remainder of the application inadmissible, including the applicant's complaint under Article 1 of Protocol No. 1.

15. That being so, and noting the admissions contained in the Government's declaration, as well as the amount of compensation proposed to cover non-pecuniary damage – 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)).

16. Moreover, in 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*).

17. 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).

18. In view of the above, it is appropriate to strike the case out of the list.

19. Rule 43 § 4 of the Rules of Court provides that when an application has been struck out in accordance with Article 37 of the Convention the Court has the discretion to award costs. The general principles governing reimbursement of costs under Rule 43 § 4 are essentially the same as under Article 41 of the Convention (see, for example, *Union of Jehovah's Witnesses and Others v. Georgia* (dec.), no. 72874/01, 21 April 2015; and *Maras v. Croatia* (dec.) [Committee], no. 20230/15, 17 November 2020).

20. Regard being had to its case-law, the documents in its possession and the costs of proceedings before the Court taken into account in the amount offered by the Government in their unilateral declaration (see paragraph 6 above), the Court considers it reasonable to award the applicant EUR 3,800 in respect of the costs and expenses incurred in the proceedings before the Court, plus any tax that may be chargeable to the applicant.

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;

Holds

(a) that the respondent State is to pay the applicant, within three months, EUR 3,800 (three thousand eight hundred euros) in respect of costs and expenses, to be converted into Croatian kunas, at the rate applicable at the date of settlement, plus any tax that may be chargeable to her;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English and notified in writing on 18 November 2021.

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Liv Tigerstedt
Deputy Registrar

Péter Paczolay
President