

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

SECOND SECTION

DECISION

Application no. 10958/08
Nebojša SOKOLOVIĆ
against Serbia

The European Court of Human Rights (Second Section), sitting on 12 February 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 30 January 2008,

Having regard to the declaration submitted by the respondent Government on 8 November 2011 requesting the Court to strike out of the list of cases the part of the application concerning the complaint with respect to the length of the domestic civil proceedings, and the applicant's reply to that declaration,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

The applicant, Mr Nebojša Sokolović, is a Serbian national, who was born in 1958 and lives in Požarevac.

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:

On 1 November 2002 the applicant lodged a civil claim for non-pecuniary damages against a third private party.

On 23 May 2008 the Municipal Court (*Opštinski sud*) in Požarevac ruled partly in the favour of the applicant.

On 19 February 2009 the District Court (*Okružni sud*) in Požarevac overturned the judgment and ruled against the applicant.

On 17 February 2011, upon the applicant's appeal on points of law, the Supreme Court of Cassation (*Vrhovni Kasacioni Sud*) quashed the District Court judgment and upheld the judgment rendered by the Municipal Court.

LAW

The applicant complained under Article 6 § 1 of the Convention about the excessive length of the civil proceedings. In addition, without invoking any particular provision of the Convention, he complained about the outcome of the said civil proceedings.

1. The part of the application concerning the extensive length of the civil proceedings was communicated to the Government.

After the failed attempt to reach a friendly settlement, by a letter of 27 October 2011 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by this part of the application. They further requested the Court to strike out the complaint in this regard 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 Nebojša Sokolović, the amount of EUR 1,200 (one thousand two hundred euros) in respect of the application registered under no. 10958/08 before the European Court of Human Rights.
>
> This sum, which covers any and all 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 named by the applicant. This sum shall be payable within three months from the date of delivery of the decision of 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. "

By letters of 7 and 27 February 2012, the applicant indicated that he was not satisfied with the terms of the unilateral declaration on the ground that the sum proposed in the Government's declaration was unacceptably low. In particular, he claimed EUR 100,000 for non-pecuniary damage.

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-V; *Majewski v. Poland*, no. 52690/99, 11 October 2005; *Wende and Kukówka v. Poland*, no. 56026/00, 10 May 2007; and *Nemet v. Serbia*, no. 22543/05, §§ 17-18, 8 December 2009).

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 taking account of the fact that the impugned proceedings were within the Court's competence *ratione temporis* for almost seven years (Serbia having ratified the Convention on 3 March 2004), during which time the domestic courts considered the case on merits and issued three decisions in three instances – the Court considers that it is no longer justified to continue the examination of this complaint (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*).

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).

2. In his submission of 25 April 2011, without invoking any Article of the Convention, the applicant also complained about the outcome of the impugned civil proceedings.

The Court reiterates that it is not its function to deal with errors of fact or law allegedly committed by the national courts (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I; and *Cornelis v. the Netherlands* (dec.), no. 994/03, ECHR 2004-V (extracts)), as it is not a court of appeal – or, as is sometimes said, a "fourth instance" – from these courts (see, among many other authorities, *Kemmache v. France (no. 3)*, 24 November 1994, § 44, Series A no. 296-C; and *Melnychuk v. Ukraine* (dec), no. 28743/03, ECHR 2005-IX).

It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 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 part of the application concerning the length of the civil proceedings, in accordance with Article 37 § 1 (c) of the Convention.

Declares the remainder of the application inadmissible.

Françoise Elens-Passos
Deputy Registrar

Paulo Pinto de Albuquerque
President