

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

THIRD SECTION

DECISION

Application no. 25798/08
by Jean Marc TIERCE
against San Marino

The European Court of Human Rights (Third Section), sitting on 14 June 2011 as a Committee composed of:

Ján Šikuta, *President,*
Ineta Ziemele,
Kristina Pardalos, *judges*
and Marialena Tsirli, *Deputy Section Registrar,*

Having regard to the above application lodged on 20 May 2008,

Having regard to the declaration submitted by the Government requesting the Court to strike the application out of the list of cases and the applicant's reply to this declaration,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Jean Marc Tierce, is a French national who was born in 1950 and lives in Galazzano. He was represented before the Court by Mr A. Masiello, a lawyer practising in Borgo Maggiore. The San Marino Government ("the Government") were represented by their Agent, Mr Lucio Leopoldo Daniele, and their Co-Agent Mr Guido Bellatti Ceccoli.

The French Government, having been informed of their right to intervene in the proceedings (Article 36 § 1 and Rule 44 of the Rules of Court), indicated that they did not wish to exercise that right.

A. The circumstances of the case

The applicant is the author of two letters published in the daily newspaper, "*San Marino Oggi*".

On 12 and 13 August 2002 two complaints for libel and defamation were lodged against the applicant, giving rise to two separate criminal proceedings. On 3 June 2004 the applicant received the relevant notification. By a decree of 15 June 2004, the cases were joined.

On 13 October 2004, the applicant's lawyer asked to be provided with a formal, exact and detailed indication of the statements which were alleged to be defamatory according to the complaints lodged.

On 27 January 2009 the proceedings were archived as they had become time-barred, in accordance with a law enacted in 2008 (see Relevant Domestic Law). The applicant received the relevant notification on 15 October 2009.

B. Relevant domestic law

Section 6 of Law no. 93 of 17 June 2008, regarding the speediness of criminal proceedings, in so far as relevant, provides that the judge of inquiry must proceed to archive a case within the peremptory time-limit. At the expiry of such time-limit, the proceedings must be considered published, independent of any such decision by the Judge of Inquiry. The files are consequently transferred from the Registry to the Chief Magistrate (*Magistrato Dirigente*), who arrogates the case to himself, and having verified the state of proceedings and heard the parties, upon the advice of the Attorney General (*Procuratore del Fisco*), proceeds to archive it. Where he/she is of the opinion that it was impossible to comply with the time-limit for reasons of force majeure, he/she may concede an extension of 30 days. No further extensions are allowed. This procedure did not apply in the present case as the relevant proceedings were archived in terms of Article 10 (2), within nine months of the coming into force of the law.

COMPLAINTS

The applicant complained under Article 6 § 1 of the Convention about the length of the proceedings and under Article 6 § 3 (a) that he had not been informed promptly and in detail of the nature and cause of the accusation against him.

THE LAW

A. Article 6 § 1 – length of proceedings

The applicant complained about the length of the criminal proceedings against him. The relevant part of Article 6 § 1 of the Convention provides:

> "In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

On 6 January 2011 the Court received a unilateral declaration from the Government made with a view to resolving the application. The Government requested the Court to strike out the application of its list of cases in accordance with Article 37 of the Convention. The declaration, in particular, reads:

> « Le Gouvernement de la République de Saint-Marin soumet à la Cour la présente déclaration unilatérale afin de résoudre l'affaire en question.
>
> Les tentatives entre les parties de parvenir à un règlement amiable ayant échoué, le Gouvernement reconnaît la violation de l'article 6 CEDH objet de la requête, et par conséquent il est prêt à verser à M. J.-M Tierce une indemnité pour préjudice d'un montant de € 5 500 (cinq mille cinq cents euros), qu'il considère appropriée à la lumière de la jurisprudence de la Cour. Cette somme couvrira tout préjudice matériel et moral ainsi que les frais et dépens de la requête, et ne pourra donner lieu à aucune demande supplémentaire de la part de M. J-M. Tierce.
>
> Le Gouvernement de la République de Saint-Marin propose que la Cour considère ses engagements comme un <autre motif> justifiant de rayer la requête du rôle selon l'article 37 § 1 (c) de la Convention. »

The applicant did not accept the terms of the said declaration arguing that it could not be considered to cover the entirety of his complaints and because the violations complained of arose in relation to proceedings connected to other proceedings which had ended in an acquittal.

The Court recalls that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application or part of 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 or part thereof 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 ([GC], no. 26307/95, §§ 75-77, ECHR 2003-VI).

The Court has established in a number of cases, including those brought against San Marino, its practice concerning complaints about the violation of one's right to a hearing within a reasonable time (see, for example, *Kudła v. Poland* [GC], no. 30210/96, § 131, ECHR 2000-XI; *McFarlane v. Ireland* [GC], no. 31333/06, § 156, ECHR 2010-...; *Tierce v. San Marino*, no. 69700/01, § 32, ECHR 2003-VII).

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 this part of the application (Article 37 § 1(c)).

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*).

Accordingly, it should be struck out of the list.

B. Article 6 § 3

The applicant further complained under Article 6 § 3 of the Convention that he was not informed promptly and in detail of the nature and cause of the accusation against him.

While the effect of the length of proceedings is not eliminated by an acquittal or discontinuation of proceedings (see *Byrn v. Denmark,* cited above; *Witkowski v. Poland* (dec.), no. 53804/00, 4 February 2003; *Oleksy v. Poland* (dec.), no. 1379/06, 16 June 2009), the Court reiterates that a person may not claim to be a victim of a violation of his right to a fair trial under Article 6 of the Convention which, according to him, took place in the course of proceedings in which he was acquitted or which were discontinued (see *Osmanov and Husseinov v. Bulgaria* (dec), nos. 54178/00 and 59901/00, 4 September 2003, and the case-law cited therein).

The Court notes that the proceedings against the applicant were discontinued by the prosecution authorities because the relevant limitation period had expired. The Court considers that in these circumstances the applicant can no longer claim to be a victim of a violation of his right to a fair trial under Article 6 § 3.

It follows that this complaint must be rejected pursuant to Article 35 §§ 3 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 in respect of the length of proceedings complaint 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 so far as it relates to the above complaint in accordance with Article 37 § 1 (c) of the Convention;

Declares the remainder of the application inadmissible.

Marialena Tsirli	Ján Šikuta
Deputy Registrar	President