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

THIRD SECTION

DECISION

Application no. 7584/13
Ljiljana TOHOLJ
against Serbia

The European Court of Human Rights (Third Section), sitting on 22 November 2016 as a Committee composed of:

Helena Jäderblom, *President,*
Dmitry Dedov,
Branko Lubarda, *judges,*

and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 25 December 2012,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Ms Ljiljana Toholj, is a Serbian national, who was born in 1970 and lives in Mali Zvornik.

2. The Serbian Government ("the Government") were initially represented by their former Agent, Ms V. Rodić, who was recently substituted by their current Agent, Ms N. Plavšić.

3. On 8 April 1991, the applicant's late father initiated two sets of administrative proceedings regarding the restitution of property.

4. On 20 December 2001 the applicant's father died. On 29 November 2002 the applicant stepped into the proceedings as a successor.

5. On 13 May 2009 the applicant lodged two separate constitutional appeals alleging the excessive length of the above administrative proceedings.

6. On 12 November 2009 and 7 July 2011 the Constitutional Court found a violation of the applicant's right to a trial within reasonable time. She was awarded approximately 1,500 euros (EUR) for each constitutional appeal. The amount awarded by the first decision of the Constitutional Court was paid to the applicant on 7 May 2012. The amount awarded by the second decision of the Constitutional Court was paid to the applicant on 9 October 2015. After the calculation of the applicable interest rate, the applicant received, in total, EUR 4,770 in respect of non-pecuniary damage for the found violations.

7. On 3 April 2015 the first set of the impugned administrative proceedings was concluded. It appears that the second set of administrative proceedings is still pending.

COMPLAINT

8. The applicant complained under Article 6 of the Convention about the excessive length of the above administrative proceedings.

THE LAW

9. The Government asked the Court to declare the application inadmissible since the domestic courts recognised the alleged violation and awarded to the applicant sufficient redress. Therefore, she could not claim to be a victim of the alleged violation.

10. The applicant contested this argument.

11. The Court notes at the outset that the Convention came into force in respect of Serbia on 3 March 2004. Accordingly, the period which falls within the Court's competence *ratione temporis* starts with this date (see, *mutatis mutandis*, *V.A.M. v. Serbia*, no. 39177/05, § 102, 13 March 2007).

12. The Court recalls that an applicant's status as a "victim" within the meaning of Article 34 of the Convention depends on the fact whether the domestic authorities acknowledged, either expressly or in substance, the alleged infringement of the Convention and, if necessary, provided appropriate redress in relation thereto. (see *Vidaković v. Serbia* (dec.) no. 16231/07, § 24 May 2011; *Cocchiarella v. Italy* [GC], no. 64886/01, § 71, ECHR 2006-V; and *Cataldo v. Italy* (dec.), no. 45656/99, 3 June 2004).

13. In this respect, the Court notes that the Constitutional Court found that the applicant's right to a hearing within a reasonable time had been violated (see paragraph 6 above), thereby acknowledging the breach

complained of and, effectively, satisfying the first condition laid down in the Court's case law.

14. The applicant's victim status then depends on whether the redress afforded was adequate and sufficient having regard to just satisfaction as provided for under Article 41 of the Convention (see *Dubjaková v. Slovakia* (dec.), no. 67299/01, 19 October 2004).

15. In this connection, the Court recalls that in length of proceedings cases one of the characteristics of sufficient redress which may remove a litigant's victim status relates to the amount awarded. This amount depends, in particular, on the characteristics and effectiveness of the remedy. Thus, States which, like Serbia, have opted for a remedy designed both to expedite proceedings and afford compensation are free to award amounts which – while being lower than those awarded by the Court – are not unreasonable (see *Cocchiarella v. Italy* [GC], cited above, §§ 96, 97).

16. In the present cases, the domestic authorities, in addition to the said finding of a violation, declared that the applicant was entitled, in total, to approximately EUR 3,000 in respect of non-pecuniary damage. The Court further notes that the actual sum paid to the applicant, after the interest rate had been calculated, was EUR 4,770, in total. This sum is higher than the sum which would be awarded by the Court under the circumstances of the present case. The Court, therefore, finds that the applicant cannot claim to be a victim of the alleged violation regarding the length of the proceedings from the date of the Convention coming into force in respect of Serbia until 12 November 2009 and 7 July 2011 when the Constitutional Court found the violation of the applicant's rights.

17. As to the applicant's complaints regarding the length of the impugned proceedings after the decisions of the Constitutional Court, the Court notes that these complaints were raised for the first time in the applicant's observations submitted to the Court on 4 May 2015. The Court observes that these complaints were not included in the initial application. The Court considers, therefore, that it is not appropriate to take these matters up in the context of the present case (see *Mugoša v. Montenegro*, no. 76522/12, § 71, 21 June 2016; *Melnik v. Ukraine*, no. 72286/01, §§ 61-63, 28 March 2006; *Skubenko v. Ukraine* (dec.), no. 41152/98, 6 April 2004; and *Nuray Şen v. Turkey* (no. 2), no. 25354/94, § 200, 30 March 2004).

18. The application must, therefore, be rejected under Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 15 December 2016.

Fatoş Aracı
Deputy Registrar

Helena Jäderblom
President