CONSEIL DE L'EUROPE
COUNCIL OF EUROPE

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

SECOND SECTION

DECISION

Application no. 18369/07
by Novak JOSIPOVIĆ
against Serbia

The European Court of Human Rights (Second Section), sitting on 4 March 2008 as a Chamber composed of:

Françoise Tulkens, President,
Antonella Mularoni,
Ireneu Cabral Barreto,
Vladimiro Zagrebelsky,
Dragoljub Popović,
András Sajó,
Nona Tsotsoria, *judges,*

and Françoise Elens-Passos, Deputy Registrar,

Having regard to the above application lodged on 19 April 2007,

Having regard to the decision to apply Article 29 § 3 of the Convention and examine the admissibility and merits of the case together,

Having regard to the decision to grant priority to the above application under Rule 41 of the Rules of Court,

Having regard to the declaration submitted by the respondent Government on 22 November 2007 requesting the Court to strike the application out of the list of cases and the applicant's reply thereto,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Novak Josipović, is a citizen of Serbia who was born in 1933 and lives in Belgrade. 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 20 October 1994 the applicant filed a claim against his former partner, Ms S.D., seeking compensation for unjust enrichment in the amount of approximately 10,000 euros. The case was examined at two levels of jurisdiction with several judgments, appeals and remittals.

On 24 September 2007 the District Court decided to return the case file to the Fifth Municipal Court for the third time.

According to the information in the Court's file, the proceedings would appear to be still pending.

COMPLAINTS

The applicant, whilst invoking Articles 6 § 1 and 13 of the Convention, as well as Article 1 of Protocol No. 1, in substance complained about the overall fairness of the proceedings, their excessive length, and the absence of an effective domestic remedy for procedural delays.

THE LAW

A. Complaints concerning the length of proceedings and the absence of an effective domestic remedy

By letter dated 22 November 2007 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving these issues raised by the application.

They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

The declaration, signed by the Government's Agent, 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 rights under Article 6 paragraph 1 and Article 13 of the Convention and offer to pay the applicant, Mr Novak Josipović, the amount of EUR 1,500 *ex gratia* in respect of the application registered under no. 18369/07 before the European Court of Human Rights.
>
> This sum, which covers any pecuniary and 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 judgment by 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.

> The Government consider that the supervision by the Committee of Minsters of the execution of Court judgments concerning [the] Republic of Serbia in this and similar cases is an appropriate mechanism for ensuring that improvements will be made in this context. To this end, necessary cooperation in this process will continue to take place."

In a letter dated 24 December 2007 the applicant expressed the view that the sum mentioned in the Government's declaration was unacceptably low. He further alleged "inefficiency and corruption" in the Serbian judiciary, as well as the "need for the Court to put pressure" on the Government in this regard. The applicant thus concluded that a strike-out of his case would not be justified.

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. In particular, Article 37 § 1 (c) enables the Court to strike a case out of its list if it finds that "it is no longer justified to continue the examination of the application", and it has done so in the past on the basis of certain unilateral declarations by respondent Governments even if the applicants had maintained their cases.

To this end, the Court will carefully examine the declaration made by the Government in the present case in the light of the principles emerging from its case-law (see *Tahsin Acar v. Turkey*, [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI).

The Court notes that it has specified in a number of cases the nature and extent of the obligations which arise for a State Party under Articles 6 and 13 of the Convention concerning the right to a hearing within a reasonable time (see, among many others, *Cocchiarella v. Italy* [GC], no. 64886/01, ECHR 2006; *Kudła v. Poland* [GC], no. 30210/96, ECHR 2000-XI; *Ilić v. Serbia*, no. 30132/04, 9 October 2007). Where the Court has found a breach of these Articles it has awarded just satisfaction, the amount of which has depended on the particular features of the case.

Having regard to the nature of the concessions contained in the Government's unilateral declaration in the present case, as well as the amount of compensation proposed (which can be considered reasonable in comparison with the Court's awards in similar cases, when account is taken of the fact that only three years and eleven months of the impugned proceedings fall within the Court's competence *ratione temporis*, Serbia having ratified the Convention on 3 March 2004), the Court finds that it is no longer justified to continue the examination of this part of the application (Article 37 § 1 (c) of the Convention; see, for the relevant principles, *Tahsin Acar*, cited above; *Haran v. Turkey*, no. 25754/94, judgment of 26 March 2002).

The Court is also 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.

Since the impugned proceedings appear to be still pending, it is to be noted that the Court's strike-out decision is without prejudice to the merits of the applicant's domestic claim or, indeed, his ability to obtain redress for any additional procedural delay which may occur after the date of the present decision.

Finally, the Court recalls that, in accordance with Article 46 § 2 of the Convention, the Committee of Ministers is competent to supervise the execution of its final judgments only. Should the respondent State, however, fail to comply with the terms of its unilateral declaration given in the present case, the application could be restored to the Court's list of cases pursuant to Article 37 § 2 of the Convention (see *Aleksentseva and 28 Others v. Russia* (dec.), no. 75025/01, ECHR, 23 March 2006).

B. Complaints concerning the fairness of the impugned proceedings

Given that the proceedings at issue are apparently still pending, the Court finds that the applicant's other complaints in the present application are premature and, as such, inadmissible for non-exhaustion of domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention.

C. Article 29 § 3 of the Convention

In view of the above conclusions, it is appropriate to discontinue the application of Article 29 § 3 of the Convention.

For these reasons, the Court unanimously

Takes note of the terms of the respondent Government's declaration in respect of the complaints communicated under Articles 6 § 1 and 13 of the Convention (concerning the length of proceedings as well as the absence of an effective domestic remedy), 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 these complaints in accordance with Article 37 § 1 (c) of the Convention;

Declares the remainder of the application inadmissible.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President