CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

DECISION

Application no. 27919/05
by Radomir MARKOVIĆ
against Serbia

The European Court of Human Rights (Second Section), sitting on 10 June 2008 as a Chamber composed of:

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

and Sally Dollé, *Section Registrar*,

Having regard to the above application lodged on 8 July 2005,

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 declaration submitted by the respondent Government on 4 February 2008 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

A. The circumstances of the case

The applicant, Mr Radomir Marković, is a Serbian national who was born in 1938 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.

The applicant was dismissed by his employer following the outcome of two separate sets of disciplinary proceedings; the final decisions having been adopted on 7 August 1991 and 6 September 1991, respectively.

On 23 August 1991 the applicant filed a claim with the Labour Court (*Sud udruženog rada*), seeking annulment of the decision dated 7 August 1991, his reinstatement, as well as salary arrears.

It would appear that the applicant had subsequently requested that the decision of 6 September 1991 also be annulled.

Following two remittals, on 27 February 2003 the First Municipal Court (*Prvi opštinski sud*) in Belgrade, to which the case had subsequently been transferred, ruled in favour of the applicant.

On 5 November 2003 the District Court (*Okružni sud*) in Belgrade rejected the applicant's claim concerning the annulment of the decision dated 6 September 1991. It also, quashed the remainder of the First Municipal Court's judgment and ordered a retrial in respect of the decision dated 7 August 1991, the applicant's reinstatement and salary arrears.

On 23 December 2004 the Supreme Court (*Vrhovni sud*) rejected the applicant's appeal on points of law (*revizija*) filed in respect of the part of his claim which had already been rejected by the District Court. On 5 May 2005 and 17 November 2005 the applicant's further request for the protection of legality (*zahtev za zašitu zakonitosti*) was dismissed by the Chief Public Prosecutor's Office (*Republičko javno tužilaštvo*) and the Supreme Court respectively.

As regards the applicant's remaining claim, concerning the annulment of the decision dated 7 August 1991 and his reinstatement, the First Municipal Court adjourned the three hearings scheduled for 4 March 2004, 6 June 2005 and 6 September 2005, pending the outcome of the above proceedings before the Supreme Court.

From 20 March 2006 to 16 January 2007 the First Municipal Court held nine separate hearings.

On 9 February 2007 the applicant filed a request, seeking exemption from the obligation to pay litigation costs.

By 7 June 2007, however, both the Fist Municipal Court and the District Court refused this request.

On 12 September 2007 the First Municipal Court ruled against the applicant as regards the remainder of his claim and on 7 February 2008 the District Court confirmed this judgment on appeal.

On 31 March 2008 the applicant filed a complaint with the Constitutional Court (*Ustavni sud*), noting, *inter alia*, the excessive length of his labour case.

On an unspecified date thereafter the applicant apparently filed an appeal on points of law against the District Court's decision of 7 February 2008.

COMPLAINTS

The applicant relied on Articles 6 and 13 of the Convention. In substance, however, he complained about the length of the proceedings in question, as well as the absence of an effective domestic remedy for procedural delay.

THE LAW

A. Length of proceedings and the lack of an effective domestic remedy

By letter dated 4 February 2008 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 Articles 6 paragraph 1 and 13 of the Convention and offer to pay the applicant, Mr Radomir Marković, the amount of EUR 3,000 *ex gratia* in respect of the application registered under no. 27919/05 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 labour case, pending domestically, shall be considered by the Serbian courts separately and is not affected by this declaration.
>
> 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 13 May 2008 the applicant appears to have expressed the view that the Government's unilateral declaration was unacceptable.

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 four years and two 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 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 the application (Article 37 § 1 *in fine*). Accordingly, it should be struck out of the list.

In the particular circumstances of the present case and since the domestic proceedings are still pending, however, the Court considers that the State should ensure that all necessary steps are taken to allow the matter to be concluded as speedily as possible, taking into account the requirements of the proper administration of justice (see, *mutatis mutandis*, *Katić v. Serbia* (dec.), no. 13920/04, ECHR 4 March 2008).

The Court's strike-out decision shall therefore also be 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. 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 under Article 6 § 1 and 13 of the Convention 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.

Sally Dollé Registrar	Françoise Tulkens President