SECOND SECTION

DECISION

Application no. 38540/07
Mirjana BAUCAL-ĐORĐEVIĆ and Petar ĐORĐEVIĆ
against Serbia

The European Court of Human Rights (Second Section), sitting on 2 July 2013 as a Chamber composed of:

Guido Raimondi, *President,*
Danutė Jočienė,
Peer Lorenzen,
Dragoljub Popović,
Işıl Karakaş,
Nebojša Vučinić,
Paulo Pinto de Albuquerque, *judges,*

and Stanley Naismith, *Section Registrar,*

Having regard to the above application lodged on 24 August 2007,

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

Having deliberated, decides as follows:

THE FACTS

1. The applicants, Mrs Mirjana Baucal-Đorđević ("the first applicant") and Mr Petar Đorđević ("the second applicant"), are Serbian nationals, who were born in 1959 and 1953 respectively and live in Belgrade.

2. The Serbian Government ("the Government") were represented by their Agent, Mr S. Carić.

A. The circumstances of the case

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. On 15 June 2001 the applicants filed a property-related civil claim against another private person before the Third Municipal Court (*Treći Opštinski sud*) in Belgrade. On 25 October 2001 the Third Municipal Court declared it lacked the *ratione loci* competence to consider the claim and referred the case to the Second Municipal Court (*Drugi Opštinski sud*) in Belgrade.

5. After a remittal in 2005, the proceedings continued before the Second Municipal Court until 1 January 2010.

6. As of 1 January 2010, following the reform of the judiciary, the proceedings continued before the Court of First Instance (*Prvi osnovni sud*) in Belgrade.

7. On 23 May 2011 the Court of First Instance ruled partly in favour of the applicants. On 27 July 2011 and 18 January 2012 the same court issued decisions rectifying certain errors in the judgment of 23 May 2011.

8. On 16 December 2011, following the applicants' appeal, the Appeals Court (*Apelacioni sud*) in Belgrade remitted the case for an additional consideration of the applicants' request for an interim measure. On 12 January 2012 the Court of First Instance issued a supplementary judgment accepting the applicants' request for an interim measure.

9. On 5 October 2012 the Appeals Court rejected the applicants' appeal and confirmed the Court of First Instance judgment of 23 May 2011.

10. On 27 December 2012 the applicants filed an appeal on points of law (*revizija*). It would appear that the case is currently pending before the Supreme Court of Cassation (*Vrhovni kasacioni sud*).

B. The friendly settlement proceedings and the relevant newspapers articles

11. By a letter of 3 September 2008 the applicants were informed of the Court's decision to communicate their case to the Government. An information note on the proceedings after communication of an application was forwarded to the applicants together with the letter, including the information that the nature of all friendly settlement negotiations is strictly confidential.

12. On the same date the Court provided the parties with declarations prepared by the Registry, aimed at securing a friendly settlement of the case.

13. On 17 October 2008 and 24 November 2008 the Court received the friendly settlement declarations signed by the parties.

14. In a letter of 26 February 2009 the applicants stated that the amount proposed was not adequate. On 22 May 2009 the applicants informed the Court that they were withdrawing their friendly settlement declaration and that they considered the amount proposed by the Government in a unilateral declaration (which was the same as the amount proposed in the friendly settlement declaration) insufficient.

15. On 6 April 2009 "Glas javnosti", a local daily newspaper, published an article entitled: "Skadar on the Bojana River (*Skadar na Bojani*)". In the article the journalist gave a brief factual summary of the case and disclosed the specific amount proposed by the Court's Registry with a view to securing a friendly settlement. In particular, the second applicant was reported to have stated that the "Court in Strasbourg had punished Serbia with 4,900 euros, but that this money was not paid out [to the second applicant]."

16. On 1 July 2009 "Blic", a daily newspaper, published an article entitled: "Waiting for an apartment for 17 years (*Čekaju na stan već 17 godina*)", in which the journalist described his interview with the second applicant who, again, gave a factual summary of the case and stated that "in 2007 he [had] filed a suit with the Court in Strasbourg, which [had] punished the State of Serbia with 4,900 euros for the excessive length of the Đorđević case".

17. On 1 April 2010 "Tabloid", another daily newspaper, published an article entitled: "Quadrature to Strasbourg (*Kvadratura do Strazbura*)". In this article the journalist gave a factual summary of the applicants' domestic proceedings and went on to state, *inter alia*, that: "Slavoljub Carić, the Serbian Agent before the Court in Strasbourg, in his submission of 6 October 2008, had admitted that the [applicants] had suffered damage due to the inactivity of the Serbian judiciary, and had offered a compensation in the amount of 4,900 euros. This money will be paid out from the budget of the tax-payers, that is, jointly by all Serbian citizens."

C. Other relevant facts

18. On 20 May 2010 the Constitutional Court (*Ustavni sud*) of the Republic of Serbia found a violation of the applicants' right to a hearing within a reasonable time with regard to the impugned civil proceedings, granted the applicants the right to compensation of non-pecuniary damage and ordered the Court of First Instance in Belgrade to expedite the proceedings.

COMPLAINTS

19. The applicants complained under Articles 6 and 13 of the Convention about the length of the property-related civil proceedings, as well as about a lack of an effective domestic remedy in that regard.

THE LAW

A. Arguments of the parties

1. As regards the abuse of the right to petition

20. On 6 July 2009 the Government informed the Court that the second applicant had disclosed the details of the ongoing friendly settlement process to two local newspapers (see paragraphs 15 and 16 above). They further noted the principle of confidentiality of the friendly settlement negotiations, the breach of which could, in certain circumstances, justify the conclusion that the application is inadmissible on the grounds of abuse of the right of petition.

21. On 20 September 2009 the Government submitted that they were withdrawing the signed declarations. They further maintained, referring to the relevant newspapers articles (see paragraphs 15 – 17 above), that the applicants had violated the rules of confidentiality in respect of the friendly settlement proceedings and invited the Court to consider the matter.

22. On 31 December 2010 the applicants admitted that they had breached the rules of confidentiality, but argued that they had done that unintentionally and unknowingly. They also submitted that the Agent was a "hypocrite, unprofessional and acting in bad faith", who was "abusing his position of the representative" and whose submissions "should be taken with additional caution".

23. On 7 March 2011 the Government reaffirmed their views expressed on 20 September 2009. The Government further submitted that the applicants had used offensive language in their submission of 31 December 2010 and in that respect referred to the Court's decision in the *Di Salvo* case (see *Di Salvo v. Italy* (dec.), no. 16098/05, 11 January 2007). They concluded that these statements alone may be considered abusive and invited the Court to declare the application inadmissible.

2. As regards the victim status

24. On 8 September 2010, the Government informed the Court that on 20 May 2010 the Constitutional Court had found a violation of the applicants' right to a hearing within a

reasonable time in respect of the civil proceedings here at issue, granted the applicants the right to compensation of non-pecuniary damage and ordered the Court of First Instance in Belgrade to expedite the impugned proceedings. In view of that, the Government concluded that the applicants had lost victim status.

25. On 31 December 2010 the applicants contested the effectiveness of this remedy. In particular, they argued that they had waited for the Constitutional Court's decision for over two years and that the impugned proceedings were still pending at first instance.

26. On 15 March 2011 the Government reaffirmed their views expressed on 8 September 2010, and invited the Court to declare the application inadmissible for the loss of victim status.

B. The Court's assessment

27. The Court recalls that, according to Article 39 § 2 (Article 38 § 2 prior to 1 June 2010) of the Convention, friendly settlement negotiations are confidential. Rule 62 § 2 of the Rules of Court stipulates that no written or oral communication and no offer or concession made within the friendly settlement framework may be referred to, or relied on in contentious proceedings. This rule is absolute and does not allow for an individual assessment of how much detail may be disclosed (see *Lesnina Veletrgovina d.o.o. v. the former Yugoslav Republic of Macedonia* (dec.), no. 37619/04, 2 March 2010). Moreover, it cannot be excluded that a breach of the confidentiality principle could, in certain circumstances, justify the conclusion that an application is inadmissible on the ground of an abuse of the right of petition (see, *inter alia*, *Hadrabová v. the Czech Republic* (dec.), no. 42165/02, 25 September 2007; *Popov v. Moldova, (no. 1)*, no. 74153/01, § 48, 18 January 2005; and *Benjocki and Others v. Serbia* (dec.), nos. 5958/07, 6561/07, 8093/07 and 9162/07, 15 December 2009).

28. Turning to the present case, the Court notes that the applicants discussed the Registry's friendly settlement proposals in public and disclosed to the press the amounts involved and the initiatives undertaken. It is further observed that the information note enclosed together with the Court's letter of 3 September 2008 had made it clear that the nature of all friendly settlement negotiations was strictly confidential. The applicants, therefore, should have complied with this requirement. In any event, they have failed to advance any convincing justification for not so doing. In view of the above, the Court considers that such conduct amounts to a breach of the rule of confidentiality, which must also be considered to be an abuse of the right of petition as provided for in Article 34 of the Convention.

29. In the light of the foregoing observations, the Court finds it appropriate to reject, on this basis alone, the application in its entirety, in accordance with Article 35 §§ 3 and 4 of the Convention.

30. Having regard to the above conclusion, the Court does not consider it necessary to examine the other admissibility arguments brought by the Government.

For these reasons, the Court unanimously

Declares the application inadmissible.

Stanley Naismith
Registrar

Guido Raimondi
President