



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

THIRD SECTION

DECISION

Application no. 64232/16
Gordana NIŠEVIĆ TADIĆ
against Serbia

The European Court of Human Rights (Third Section), sitting on 25 September 2018 as a Committee composed of:

Pere Pastor Vilanova, *President*,

Branko Lubarda,

Georgios A. Serghides, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having regard to the above application lodged on 21 October 2016,

Having deliberated, decides as follows:

THE FACTS

The applicant, Ms Gordana Nišević Tadić, is a Serbian national, who was born in 1966 and lives in Novi Sad. The applicant is an attorney.

The Serbian Government (“the Government”) were represented by their Agent, Ms N. Plavšić.

A. The circumstances of the case

1. The facts as submitted by the Applicant

1. On 21 October 2016 the applicant lodged an application invoking the fairness and length issues in the context of the civil proceedings concerning ownership rights over certain property.

2. According to the applicant’s submissions, the civil proceedings in question were brought in April 2002, and she was one of three initial plaintiffs. The first instance decision was rendered in June 2013, and the second instance decision in October 2013. In December 2013 the applicant

lodged an appeal with the Constitutional Court, which court rendered its decision in April 2016. Before the Court the applicant complained under Article 6 and Article 1 of Protocol No. 1 about the fairness and the length of the civil proceedings, and sought compensation in the amount of 20,000 EUR.

2. The facts as submitted by the Government

3. On basis of the facts and documents in the case file, the applicant's length complaint was communicated to the Government on 5 October 2017, while the fairness complaint was declared inadmissible upon communication. A friendly settlement in the amount of 3,000 euros was also proposed. The applicant accepted the friendly settlement, whereas the Government sent their observations.

4. In their submissions, however, the Government submitted that the impugned civil proceedings had indeed been initiated in 2002, but only by two plaintiffs, A.H. and M.H.V., excluding the applicant. It was only in November 2011 that the applicant informed the first instance court that she would join the proceedings as the third plaintiff, which was acknowledged and accepted at the hearing held in March 2013. In support of these claims, the Government submitted copies of the applicant's submission of November 2011 and of the minutes of the hearing held in March 2013. Additionally, the Government submitted that the decision of the Constitutional Court of April 2016 did not concern the applicant. The Constitutional Court instead decided upon the applicant's complaints later, in October 2017. In support of this claim the Government submitted a copy of the Constitutional Court's decision of 31 October 2017.

COMPLAINT

The applicant complained that the length of civil proceedings had been incompatible with the "reasonable time" requirement.

THE LAW

5. The Government, nevertheless, did not raise the question of the applicant's abuse of her right to lodge an application. In their observations the Government submitted that the applicant had failed to raise her length complaint and a request for non-pecuniary damage properly in her constitutional appeal, and that the impugned civil proceedings in the

applicant's case lasted only two years, and that, therefore, the length complaint was unfounded.

6. In her reply to the Government's observations the applicant submitted that they were without significance ("bez značaja") and that she properly exhausted all available remedies at the domestic level. She also submitted a request for non-pecuniary damage in the amount of 3,000 euros.

7. The Court recalls that Article 35 § 3 (a) of the Convention allows it to declare inadmissible any application that it considers to be "an abuse of the right of individual application".

8. In the *S.A.S.* judgment (*S.A.S. v. France* [GC], no. 43835/11, ECHR 2014 (extracts)) the Grand Chamber held as follows:

"66. The Court reiterates in this connection that the implementation of ... [Article 35 § 3 (a)] ... is an "exceptional procedural measure" and that the concept of "abuse" refers to its ordinary meaning, namely, the harmful exercise of a right by its holder in a manner that is inconsistent with the purpose for which such right is granted (see *Miroļubovs and Others v. Latvia*, no. 798/05, § 62, 15 September 2009). In that connection, the Court has noted that for such "abuse" to be established on the part of the applicant it requires not only manifest inconsistency with the purpose of the right of application but also some hindrance to the proper functioning of the Court or to the smooth conduct of the proceedings before it (*ibid.*, § 65).

67. The Court has applied that provision in four types of situation (see *Miroļubovs and Others*, cited above, §§ 62-66). First, in the case of applications which were knowingly based on untrue facts (see *Varbanov v. Bulgaria*, no. 31365/96, § 36, ECHR 2000-X), whether there had been falsification of documents in the file (see, for example, *Jian v. Romania* (dec.), no. 46640/99, 30 March 2004) or failure to inform the Court of an essential item of evidence for its examination of the case (see, for example, *Al-Nashif v. Bulgaria*, no. 50963/99, § 89, 20 June 2002, and *Kerechashvili v. Georgia* (dec.), no. 5667/02, 2 May 2006) or of new major developments in the course of the proceedings (see, for example, [*Gross v. Switzerland* [GC], no. 67810/10, §§ 35 and 36, ECHR 2014, and] *Predescu v. Romania*, no. 21447/03, §§ 25-27, 2 December 2008). Secondly, in cases where an applicant had used particularly vexatious, contemptuous, threatening or provocative expressions in his correspondence with the Court (see, for example, *Řehák v. the Czech Republic* (dec.), no. 67208/01, 18 May 2004). Thirdly, in cases where an applicant had deliberately breached the confidentiality of negotiations for a friendly settlement (see, for example, *Hadrabová and Others v. the Czech Republic* (dec.), nos. 42165/02 and 466/03, 25 September 2007, and *Deceuninck v. France* (dec.), no. 47447/08, 13 December 2011). Fourthly, in cases where applicants had repeatedly sent quibbling and manifestly ill-founded applications resembling an application they had previously lodged that had been declared inadmissible (see *Anibal Vieira & Filhos LDA and Maria Rosa Ferreira da Costa LDA v. Portugal* (dec.), nos. 980/12 and 18385/12, 13 November 2012; see also the Commission decisions *M. v. the United Kingdom*, no. 13284/87, 15 October 1987, and *Philis v. Greece*, no. 28970/95, 17 October 1996)."

9. Turning to the present case, the Court notes that the absence of the Government's initial objection as regards the abuse of the right of petition does not preclude it from examining the matter *proprio motu*. It is, indeed, for the Court itself and not the respondent Government to monitor compliance with the procedural obligations imposed by the Convention and its Rules on

the applicant party (see *Miroļubovs and Others*, cited above, § 70). The Court, therefore, has both a right and an obligation to monitor such compliance taking into account all relevant information, whether it happens to be provided by the parties themselves or is otherwise publicly available (see *Zarubica v. Serbia* (dec.), no. 35044/07 and 2 others, §30, 18 June 2015).

10. In view of the foregoing, particularly because the applicant had knowingly based her application on untrue facts and failed to provide the Court with complete and valid documentation, and because she herself is an attorney, which is why she should clearly have known better the Court's Rules of the Procedure and the jurisprudence, the Court is of the opinion that the applicant's conduct constitutes an abuse of the right of individual application within the meaning of Article 35 § 3 (a) of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 18 October 2018.

Fatoş Aracı
Deputy Registrar

Pere Pastor Vilanova
President