



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

SECOND SECTION

CASE OF STANKOVIĆ v. SERBIA

(Application no. 29907/05)

JUDGMENT

STRASBOURG

16 December 2008

FINAL

06/04/2009

This judgment may be subject to editorial revision.

In the case of Stanković v. Serbia,

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Vladimiro Zagrebelsky,

Danutė Jočienė,

Dragoljub Popović,

András Sajó,

Nona Tsotsoria, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 25 November 2008,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 29907/05) against the State Union of Serbia and Montenegro, lodged with the Court, under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”), by, at that time, a citizen of the State Union of Serbia and Montenegro, Mr Radenko Stanković (“the applicant”), on 1 August 2005.

2. As of 3 June 2006, following the Montenegrin declaration of independence, Serbia remained the sole respondent in the proceedings before the Court.

3. The applicant was represented by Mr R. Spasojević, a lawyer practising in Valjevo. The Government of the State Union of Serbia and Montenegro and, subsequently, the Government of Serbia (“the Government”) were represented by their Agent, Mr S. Carić.

4. On 15 March 2007 the Court decided to give notice of the application to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1949 and lives in Mionica.

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

7. On 7 November 2001 the applicant, a bus conductor, was dismissed by his employer, “Lasta Strela”, a transportation company based in Valjevo.

8. On 24 December 2001 he filed a claim with the Municipal Court in Valjevo (“the Municipal Court”), seeking reinstatement and payment of salary arrears.

9. Following a remittal of 14 April 2003, the next hearing in the case was scheduled by the Municipal Court for 27 September 2004.

10. Of the nine separate hearings scheduled between 27 September 2004 and 26 January 2006, it would appear that four were adjourned whilst five were held. As regards the former, two hearings were adjourned because the respondent and/or several witnesses had not been duly summoned and the other two because witnesses, of whom two were proposed by the applicant, had, though duly summoned, failed to appear in court (for which omission they were ultimately fined).

11. On 27 January 2006 the Municipal Court ruled against the applicant.

12. On 25 April 2006 the applicant was served with this judgment.

13. On 3 May 2006 the applicant filed an appeal with the District Court in Valjevo (“the District Court”).

14. On 18 December 2006 the District Court returned the case file to the Municipal Court, requesting it to submit certain missing documents.

15. On 29 March 2007 the District Court upheld the judgment rendered at first instance.

16. On 3 April 2008 the Supreme Court rejected the applicant’s appeal on points of law (*revizija*).

II. RELEVANT DOMESTIC LAW

A. Labour Act 2001 (Zakon o radu; published in the Official Gazette of the Republic of Serbia - OG RS - nos. 70/01 and 73/01)

17. Article 122 § 3 provided that all employment-related disputes were to be resolved by the courts within a period of 6 months from the date of institution of the proceedings.

B. Labour Act 2005 (Zakon o radu; published in OG RS nos. 24/05 and 61/05)

18. This Act entered into force on 23 March 2005 and thereby repealed the Labour Act 2001.

19. The text of Article 195 § 3 of the Labour Act 2005 corresponds to Article 122 § 3 of the Labour Act 2001.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

20. The applicant complained that the length of the above proceedings had been incompatible with the “reasonable time” requirement contained in Article 6 § 1, which reads as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

A. Admissibility

21. The Government submitted that the applicant had not exhausted all effective domestic remedies. In particular, he had neither brought a separate civil lawsuit under Articles 172, 199 and 200 of the Obligations Act nor filed a criminal complaint under Article 243 of the Criminal Code 1977.

22. The applicant contested the effectiveness of these remedies.

23. The Court has already held that the above remedies could not be deemed effective within the meaning of its established case-law under Article 35 § 1 of the Convention (see, *mutatis mutandis*, *V.A.M. v. Serbia*, cited above, §§ 86 and 119, 13 March 2007). It sees no reason to depart from those findings in the present case and concludes, therefore, that the Government’s objection must be rejected.

24. The Court further considers that the applicant’s complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and finds no other ground to declare it inadmissible. The complaint must therefore be declared admissible.

B. Merits

1. Arguments of the parties

25. The Government maintained that there had been no violation of Article 6 § 1 of the Convention. In particular, they noted that: (i) the proceedings have only been within the Court’s competence *ratione temporis* as of 3 March 2004; (ii) the domestic courts have been sufficiently active during this period; and (iii) the applicant himself had not made any attempt to have his case expedited.

26. The applicant reaffirmed his complaint and referred to the relevant provisions of the respondent State’s labour law (see paragraphs 17-19 above).

2. *Relevant principles*

27. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and having regard to the criteria laid down in its case-law, in particular the complexity of the case, the conduct of the parties and of the relevant authorities, as well as the importance of what is at stake for the applicant.

28. It is further recalled that reinstatement proceedings are of crucial importance to plaintiffs and that, as such, they must be dealt with expeditiously (see *Guzicka v. Poland*, no. 55383/00, § 30, 13 July 2004).

29. Lastly, the Court notes that this requirement is reinforced additionally in respect of States where the domestic law provides that such cases must be resolved with particular urgency (see, among other authorities, *Stevanović v. Serbia*, no. 26642/05, §§ 53 and 55, 9 October 2007).

3. *The Court's assessment*

30. The Court observes, in the first place, that the impugned proceedings lasted between 24 December 2001 and 3 April 2008. Since Serbia ratified the Convention on 3 March 2004, they have thus been within the Court's competence *ratione temporis* for a period of four years and one month before three levels of jurisdiction.

31. Secondly, on 3 March 2004 the applicant's case had already been pending for more than two years and two months (see, *mutatis mutandis*, *Styranowski v. Poland*, judgment of 30 October 1998, *Reports of Judgments and Decisions* 1998-VIII).

32. Thirdly, the nature of the applicant's lawsuit was not particularly complex.

33. Fourthly, there had been one significant period of judicial inactivity of more than one year and five months, of which almost seven months had elapsed following the respondent State's ratification of the Convention (see paragraph 9 above).

34. Finally, it is noted that the first instance judgment was served on the applicant some three months following its adoption and that there had been further delays and errors in the processing of his appeal lodged subsequently (see paragraphs 12-15 above).

35. Having regard to the criteria laid down in its jurisprudence and the domestic law (see, in particular, paragraphs 29 and 17-19 above, in that order), as well as the circumstances of the present case, the Court is of the opinion that the overall length of the proceedings complained of has failed to satisfy the reasonable time requirement.

36. There has, accordingly, been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

38. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage.

39. The Government contested this claim.

40. The Court considers that the applicant must have suffered some non-pecuniary damage as a result of the violation found. Accordingly, taking into account the circumstances of the case and making its assessment on an equitable basis, the Court awards the applicant 600 euros (EUR) under this head.

B. Costs and expenses

41. The applicant also claimed an unspecified amount for the costs and expenses incurred domestically, as well as those incurred in the proceedings before the Court.

42. The Government contested this claim.

43. According to the Court’s case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were also reasonable as to their quantum (see, for example, *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI).

44. In the present case, regard being had to the information in its possession and the above criteria, the Court rejects, as unsubstantiated, the applicant’s claims in their entirety.

C. Default interest

45. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, EUR 600 (six hundred euros) in respect of the non-pecuniary damage suffered, which sum is to be converted into the national currency of the respondent State at the rate applicable on the date of settlement, plus any tax that may be chargeable;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 16 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

F. TULKENS
President