



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

SECOND SECTION

CASE OF DORIĆ v. SERBIA

(Application no. 33029/05)

JUDGMENT

STRASBOURG

27 January 2009

FINAL

27/04/2009

This judgment may be subject to editorial revision.

In the case of Dorić 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,

Nona Tsotsoria,

Işıl Karakaş, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 6 January 2009,

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

PROCEDURE

1. The case originated in an application (no. 33029/05) 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 Slobodan Dorić (“the applicant”), on 13 September 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 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 6 December 2006 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 1951 and lives in Belgrade.

6. On 30 June 1988 the Municipality of Voždovac, where the applicant was employed as a clerk, issued a decision leaving the applicant unassigned to a specific post, which ultimately resulted in his dismissal.

7. On 7 October 1988 the applicant thus filed a suit against the Municipality, seeking reinstatement and salary arrears.

8. On 24 January 1989 the Labour Court (*Osnovni sud udruženog rada*) in Belgrade ruled against the applicant, and by 18 May 1989 this decision became final.

9. The applicant subsequently twice requested the re-opening of the proceedings (*podneo predlog za ponavljanje postupka*), but to no avail.

10. On 13 January 1992 the applicant filed a third request of this sort and on 19 March 1996 the Fifth Municipal Court (*Peti opštinski sud*) in Belgrade (hereinafter “the Municipal Court”), to which the case had been transferred, finally decided to have his case re-opened.

11. Between 9 October 1997 and February 2004, the Municipal Court obtained four expert reports concerning the exact amount of salary arrears owed to the applicant, as well as the accrued statutory interest.

12. Following two remittals, on 4 July 2006 the Municipal Court rejected the applicant’s request for reinstatement, but partly granted his pecuniary claim.

13. On 27 June 2007 the District Court (*Okružni sud*) in Belgrade (“the District Court”) ordered the applicant’s reinstatement, but quashed the remainder of the judgment rendered at first instance and ordered a retrial.

14. On 6 March 2008 the Supreme Court (*Vrhovni sud Srbije*) rejected the respondent’s appeal on points of law (*revizija*).

15. The proceedings before the Municipal Court thereafter continued in respect of the applicant’s pecuniary claim only. Following two additional expert reports which had been provided, on 28 June 2008 the Municipal Court again ruled partly in favour of the applicant.

16. On 17 July 2008 the respondent Municipality filed an appeal against this judgment. According to the information made available to the Court by the parties to date, the case is apparently still pending before the District Court.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 6 AND 13 OF THE CONVENTION

17. The applicant complained under Article 6 § 1 of the Convention that the length of the proceedings in question had been incompatible with the “reasonable time” requirement. He further complained under Article 13 of the Convention that he had no means to expedite the proceedings in question or obtain compensation for the past delay.

18. The Government raised various objections to the admissibility of these matters. However, the Court has rejected similar objections in many previous cases (see, for example, *Cvetković v. Serbia*, no. 17271/04, §§ 38 and 42, 10 June 2008; *Tomić v. Serbia*, no. 25959/06, §§ 81 and 82, 26 June 2007; *V.A.M. v. Serbia*, no. 39177/05, §§ 85 and 86, 13 March 2007). It finds no particular circumstances in the instant case which would require a departure from this jurisprudence. It therefore declares these complaints admissible.

19. The Government further stated that there had been no violation of Articles 6 and 13 of the Convention.

20. As regards the applicant’s complaint about the protracted length of the proceedings, the Court observes that the impugned proceedings have been within the Court’s competence *ratione temporis* for a period of more than four years and ten months and would appear to be currently still pending at second instance. On 3 March 2004, the date when the Convention came into force in respect of Serbia, it had already been pending for more than fifteen years and four months. The Court notes that the applicant’s case was not particularly complex and finds that the repeated financial expertise was only needed to calculate the applicant’s salary arrears, as well as the statutory interest, accrued in the course of the proceedings themselves.

21. Having regard to the criteria laid down in its jurisprudence, the Court is of the opinion that the overall length of the impugned proceedings has failed to satisfy the reasonable time requirement. There has, accordingly, been a violation of Article 6 § 1 of the Convention.

22. Moreover, having regard to its findings in respect of Article 6 § 1, as well as its prior judgments on the issue (see, among many others, *Ilić v. Serbia*, no. 30132/04, 9 October 2007), the Court considers that, at the relevant time, there was indeed no effective remedy under domestic law for the applicant’s complaint about the length of the proceedings in question. There has, accordingly, been a violation of Article 13 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. The applicant claimed RSD 2,766,768 and RSD 700,000 for pecuniary and non-pecuniary damages, respectively, RSD 626,850 for the costs and expenses incurred before the domestic courts, and RSD 30,000 for those incurred in the course of his Strasbourg case. The Government contested these claims.

24. The Court notes that the proceedings at issue are still pending and finds, therefore, that the applicant's pecuniary claim must be rejected. However, making an assessment on an equitable basis, the Court awards the applicant EUR 3,500 in respect of the non-pecuniary damage suffered, with default interest based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

25. Furthermore, regard being had to the documents in its possession, the Court rejects the applicant's claim for the costs and expenses incurred domestically, given that the impugned proceedings would appear to be still pending and that the costs and expenses in question could thus yet be recovered therein. The Court moreover rejects, as unsubstantiated, the applicant's claims for costs before the Court.

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* that there has also been a violation of Article 13 of the Convention;
4. *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 3,500 (three thousand five 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 27 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President