



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

1959 · 50 · 2009

SECOND SECTION

CASE OF SIMIĆ v. SERBIA

(Application no. 29908/05)

JUDGMENT

STRASBOURG

24 November 2009

FINAL

24/02/2010

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Simić v. Serbia,

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

Françoise Tulkens, *President*,

Vladimiro Zagrebelsky,

Danutė Jočienė,

Dragoljub Popović,

András Sajó,

Nona Tsotsoria,

Kristina Pardalos, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 3 November 2009,

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

PROCEDURE

1. The case originated in an application (no. 29908/05) 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 Živan Simić (“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 President of the Second Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1942 and lives in Valjevo.

6. On 24 July 1998 and 16 November 1998 the applicant filed two separate claims against his employer with the Municipal Court in Valjevo (“the Municipal Court”), seeking revocation of his suspension from work as well as reinstatement and salary arrears, respectively.

7. On 9 April 1999 the two sets of proceedings were joined.

8. Following a remittal, on 14 March 2006 the Municipal Court ruled against the applicant.

9. On 29 March 2007 and 3 April 2008 the District Court and the Supreme Court, respectively, upheld the decision of 14 March 2006.

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)

10. 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)

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 This Act entered into force on 23 March 2005 and thereby repealed the Labour Act 2001.

12. 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

13. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement, laid down in Article 6 § 1 of the Convention, 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...”

14. The Government contested that argument.

15. The period to be taken into consideration only began on 3 March 2004, when the Convention entered into force in respect of Serbia.

However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time. By that date the proceedings had already been pending well over five years.

16. The period in question ended on 3 April 2008. It thus lasted four years and one month for three levels of jurisdiction.

A. Admissibility

17. 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 the application admissible.

B. Merits

18. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII). The Court reiterates that special diligence is necessary in employment disputes (*Ruotolo v. Italy*, judgment of 27 February 1992, Series A no. 230-D, p. 39, § 17).

19. The Court also 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 paragraphs 10-12 above, as well as, among other authorities, *Stevanović v. Serbia*, no. 26642/05, §§ 53 and 55, 9 October 2007).

20. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see, for example, *Stanković v. Serbia*, no. 29907/05, 16 December 2008).

21. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that the length of the proceedings was excessive and failed to meet the “reasonable time” requirement. There has accordingly been a breach of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. 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

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

24. The Government contested this claim.

25. The Court considers that the applicant must have suffered some non-pecuniary damage as a result of the procedural delay at issue. 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

26. 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.

27. The Government contested this claim.

28. 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).

29. 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

30. 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 24 November 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

F. TULKENS
President