



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

SECOND SECTION

CASE OF NEMET v. SERBIA

(Application no. 22543/05)

JUDGMENT

STRASBOURG

8 December 2009

FINAL

08/03/2010

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 Nemet v. Serbia,
The European Court of Human Rights (Second Section), sitting as a
Chamber composed of:
 Françoise Tulkens, *President*,
 Ireneu Cabral Barreto,
 Vladimiro Zagrebelsky,
 Dragoljub Popović,
 Nona Tsotsoria,
 İşıl Karakaş,
 Kristina Pardalos, *judges*,
and Françoise Elens-Passos, *Deputy Section Registrar*,
Having deliberated in private on 17 November 2009,
Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 22543/05) 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 a Serbian national, Mr Laslo Nemet (“the applicant”), on 6 June 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 V. Medović a lawyer practicing in Novi Sad. The Serbian Government (“the Government”) were represented by their Agent, Mr S. Carić
4. On 30 August 2006 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

THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1963 and lives in Novi Sad.
6. On 7 June 1996 he filed a lawsuit against his former wife, seeking division of their marital property.

7. On 22 March 1999 the applicant instituted another lawsuit, this time against an individual who had subsequently bought the property in question.

8. On 25 March 1999 the Municipal Court (*Opštinski sud*) in Novi Sad joined these two sets of proceedings into a single case.

9. The Municipal Court scheduled a total of sixteen hearings, only two of which had been held since 3 March 2004.

10. On 13 July 2005 the Municipal Court appointed an expert. On 22 February 2007, however, it appointed a new expert because the original expert had failed to provide his findings.

11. On 25 March 2008 the Municipal Court ruled partly in favour of the applicant.

12. On 28 January 2009 the District Court (*Okružni sud*) in Novi Sad quashed this judgment and ordered a re-trial.

13. According to the information in the case file submitted by the parties, the case is still pending at first instance.

THE LAW

14. Under Article 6 § 1 of the Convention, the applicant complained that the length of the above proceedings has been incompatible with the “reasonable time” requirement. Under Article 13 of the Convention he implicitly complained that he did not have an effective domestic remedy at his disposal in order to have these proceedings expedited.

15. 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, *mutatis mutandis*, *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; *Cvetković v. Serbia*, no. 17271/04, §§ 38 and 42, 10 June 2008) and finds no reason not to do so on this occasion. The complaints are therefore admissible.

16. The Court observes that the period to be taken into consideration began only on 3 March 2004, when the recognition by Serbia of the right of individual petition took effect. 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. The Court notes that the case had been pending for seven years and nine months on that date. The case is still pending at first instance, thus being within the Court's competence *ratione temporis* for a period of more than five years and nine months.

17. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present application (see *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII). Having examined all the material submitted to it, the Court

considers that the Government have not put forward any fact or convincing argument capable of persuading it to reach a different conclusion in the present circumstances. 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.

18. Moreover, in the light of 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.

19. Relying on Article 41 of the Convention, the applicant claimed 8,000 euros (EUR) in respect of non-pecuniary damage. The Government left the matter to the Court's discretion. The Court considers that the applicant must have sustained some non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 2,000 under that head.

20. The applicant also claimed 101,250 dinars (RSD) for the costs and expenses incurred before the Court. The Government contested the claim. 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. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 600 for the proceedings before the Court.

21. 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.

22. Furthermore, having regard to the fact that the proceedings in question are still pending before the domestic courts the Court considers that the most appropriate form of redress would be to bring them to a conclusion as soon as possible, by conducting them in accordance with the requirements of Article 6 § 1 of the Convention.

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, the following sums:
 - (i) EUR 2,000 (two thousand euros), plus any tax that may be chargeable, for the non-pecuniary damage suffered, and
 - (ii) EUR 600 (six hundred euros), plus any tax that may be chargeable to the applicant, for costs and expenses;
 - (b) that the amounts specified under (a) shall be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
 - (c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 8 December 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President