

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

THIRD SECTION

CASE OF JOKSIMOVIĆ v. SERBIA

(Application no. 37929/10)

JUDGMENT

STRASBOURG

7 November 2017

This judgment is final but it may be subject to editorial revision.



In the case of Joksimović v. Serbia,

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

Pere Pastor Vilanova, *President,*
Branko Lubarda,
Georgios A. Serghides, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 10 October 2017,

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

PROCEDURE

1. The case originated in an application (no. 37929/10) against Serbia 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 Zoran Joksimović ("the applicant"), on 1 July 2010.

2. The Serbian Government ("the Government") were represented by their former Agent, Ms V. Rodić, who was more recently substituted by their current Agent, Ms N. Plavšić.

3. On 23 October 2014 the complaint concerning the length of the proceedings was communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

4. The Government objected to the examination of the application by a Committee. After having considered the Government's objection, the Court rejects it.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1957 and lives in Belgrade.

6. On 15 June 2004 the applicant was injured in a traffic accident. He suffered severe serious injuries. An investigation into this incident was initiated in November 2004 and terminated in May 2005, with no criminal charges being brought.

7. On 10 June 2005 the applicant lodged a civil claim for non-pecuniary damages with the Second Municipal Court in Belgrade against the Belgrade City's Transportation Company (*Gradsko saobraćajno preduzeće Beograd*).

8. On 27 December 2007 the Second Municipal Court ruled in the applicant's favour. On 3 July 2008 the District Court quashed the decision and remitted the case to the first instance.

9. On 23 October 2009 the Second Municipal Court adopted a partial decision (*delimičnu presudu*) against which the applicant and the defendant appealed on 7 December 2009 and 10 December 2009, respectively.

10. On 30 September 2010 the Court of Appeals in Belgrade quashed the decision and remitted the case to the Court of First Instance for a re-trial.

11. In the meantime, on 22 December 2009, the applicant lodged an appeal with the Constitutional Court complaining under Article 32 of the Constitution (a provision which corresponds to Article 6 of the Convention) about the overall fairness of domestic proceedings and their length. The Constitutional Court's decision was rendered on 4 November 2010. No violation in respect of the applicant's complaints was found.

12. Due to applicant's change to the value of the dispute (*vrednost spora*), on 31 October 2010 the Court of First Instance ruled that it had no further jurisdiction to examine the applicant's complaint. The case was then sent to the High Court in Belgrade.

13. On 20 June 2013 the High Court adopted a partial judgment against which the applicant and the defendant appealed to the Court of Appeals in Belgrade.

14. On 6 June 2014 the Court of Appeals partly quashed the impugned judgment.

15. It would appear that the case is still pending before the High Court.

16. Additionally, on 28 October 2014 the applicant lodged a new submission with the Constitutionals Court concerning, *inter alia*, the length of the impugned proceedings. It would appear from the facts of the case that the Constitutional Court has not yet responded.

THE LAW

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

17. 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 in so far as relevant 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

18. The Government submitted that the applicant had failed to properly exhaust domestic remedies. They claimed that the constitutional appeal was, in principle, an effective remedy but that the applicant had failed to make proper use of it. Notably, the applicant had failed to substantiate his claims.

19. The applicant contested this and maintained that he had complained before the Constitutional Court in a proper manner.

20. As already held by the Court the rule on exhaustion of domestic remedies under Article 35 § 1 of the Convention requires that the complaints intended to be made subsequently before it should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law and, further, that any procedural means that might prevent a breach of the Convention should have been used (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 72, 25 March 2014). In the present case, the applicant had, in his constitutional appeal, relied on Article 32 of the Constitution which corresponds to Article 6 of the Convention and had complained about the assessment of evidence and the length of impugned proceedings.

21. In Court's view, by doing so the applicant provided the national authorities with the opportunity to properly address his complaints, an opportunity which is in principle intended to be afforded to Contracting States by Article 35 § 1 of the Convention (see *Muršić v. Croatia* [GC], no. 7334/13, § 72, ECHR 2016).

22. The Court thus finds that the applicant properly exhausted domestic remedies. The Government's preliminary objection must therefore be dismissed.

23. The Court notes that the applicant's complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

24. The applicant reaffirmed his complaints.

25. The Government reiterated that there had been no violation of Article 6 of the Convention since there were no periods of judicial inactivity and even if there were some they could only be attributed to the applicant. In any event, the overall length did not appear to be excessive.

26. 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).

27. While it is true that proceedings in the present case did not last too long until 2010, when the applicant lodged his constitutional appeal, the Court's notes that the impugned proceedings are still pending before domestic authorities. The proceedings in the present case have, thus, been lasting twelve years at two levels of jurisdiction which is incompatible with the requirements set out in Article 6 of the Convention.

28. 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 *Frydlender*, cited above).

29. 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 in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

30. There has accordingly been a breach of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. 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

32. The applicant claimed 235,000 euros (EUR) in respect of pecuniary and EUR 73,000 in respect of non-pecuniary damage.

33. The Government contested these claims.

34. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 3,600 in respect of non-pecuniary damage.

B. Costs and expenses

35. The applicant made a general claim concerning costs and expenses incurred before the Court and left it to the Court to decide on the exact amount.

36. The Government did not express an opinion on the matter.

37. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the applicant, who was not represented by a lawyer, the sum of EUR 100 under this head.

C. Default interest

38. The Court considers it appropriate that the default interest rate 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 complaint concerning the length of civil proceedings 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, the following amounts**,** to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 3,600 (three thousands six hundreds euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 100 (one hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) 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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 7 November 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Pere Pastor Vilanova
Deputy Registrar	President