

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

THIRD SECTION

CASE OF MILOVANOVIĆ v. SERBIA

(Application no. 19222/16)

JUDGMENT

STRASBOURG

19 December 2017

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



In the case of Milovanović 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 28 November 2017,

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

PROCEDURE

1. The case originated in an application (no. 19222/16) 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 Milovanović ("the applicant"), on 2 April 2016.

2. The Serbian Government ("the Government") were represented by their Agent, Ms N. Plavšić.

3. On 10 November 2016 the complaint concerning the length of the proceedings in question was communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

4. The applicant was born in 1960 and lives in Čurug.

5. On 2 August 2002 the applicant and one of his colleagues (hereinafter "the plaintiffs") instituted civil proceedings against their employer seeking payment of salary arrears and other employment-related benefits.

6. On 8 February 2013, after two remittals the First Instance Court in Novi Sad, specifically its Detached Section in Bečej, ruled partly in favour of the plaintiffs, ordering their employer to pay each of them specified sums in respect of salary arrears. The remainder of their claims was rejected.

7. On 15 April 2013 the Court of Appeal in Novi Sad reversed a part of the above judgment, while upholding the remainder. This judgment was served on the plaintiffs on 6 June 2013.

8. On 29 January 2014 the Supreme Court dismissed the plaintiffs' appeal on points of law as the value of their respective claims was below the statutory threshold allowing for this remedy.

9. On 9 April 2013 the plaintiffs lodged the constitutional appeal, complaining of a violation of the right to a hearing within a reasonable time

in the impugned proceedings. By its decision of 9 December 2015, the Constitutional Court found a violation of their right to a hearing within a reasonable time and awarded each of them EUR 800 in respect of the non-pecuniary damage suffered.

THE LAW

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

10. The applicant complained that the length of the civil 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..."

11. The period to be taken into consideration 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 (see *Simić v. Serbia*, no. 29908/05, § 15, 24 November 2009).

12. The period in question ended on 6 June 2013, when the Court of Appeal judgment was served on the applicant (see paragraph 7 above). It thus lasted more than nine years and three months at two instances.

A. Admissibility

13. The Government submitted that the applicant could not claim to be a victim of the alleged violation.

14. The Court considers that the Government's objection is closely linked to the substance of the applicant's complaint and therefore must be joined to the merits.

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

B. Merits

16. In the Government's opinion, the finding of a violation and the awarding of compensation for the non-pecuniary damage suffered constituted sufficient redress for the breach of the applicant's right to a hearing within a reasonable time.

17. The applicant disagreed.

18. The Court notes that an applicant's status as a "victim" within the meaning of Article 34 of the Convention depends on whether the domestic authorities have acknowledged, either expressly or in substance, the alleged infringement of the Convention and have, if necessary, provided appropriate redress. It is only when those conditions have been satisfied that does the subsidiary nature of the protective mechanism of the Convention precludes examination of an application (see, *Vidaković v. Serbia* (dec.) no. 16231/07, § 26, 24 May 2011; *Cocchiarella v. Italy* [GC], no. 64886/01, § 71, ECHR 2006-V and *Cataldo v. Italy* (dec.) no. 45656/99, 3 June 2004).

19. In that connection, the Court notes that the Constitutional Court found that the applicant's right to a hearing within a reasonable time had indeed been violated (see paragraph 9 above), thereby acknowledging the breach complained of and, in effect, satisfying the first condition laid down in the Court's case-law.

20. The applicant's victim status then depends on wheather the redress afforded was adequate and sufficient, having regard to just satisfaction as provided for under Article 41 of the Convention (see *Dubjaková v. Slovakia* (dec.), no. 67299/01, 19 October 2004).

21. The Court observes that in length-of-proceedings cases one of the characteristics of sufficient redress which may remove a litigant's victim status relates to the amount awarded. This amount depends, in particular, on the characteristics and effectiveness of the remedy. Thus, States which, like Serbia, have opted for a remedy designed both to expedite proceedings and afford compensation are free to award amounts which - while being lower than those awarded by the Court - are still not unreasonable (see *Cocchiarella,* cited above, §§ 96, 97).

22. In the present case, the Constitutional Court in addition to the said finding of a violation, declared that the applicant was entitled to amount of EUR 800 of non-pecuniary damages sought. However, the Court notes that the compensation granted to him was significantly lower than that awarded for similar delays in the Court's case-law. Whether the amount awarded may be regarded as reasonable, however, falls to be assessed in the light of all the circumstances of the case. They include not only the duration of the proceedings in the specific case, but also the value of the award viewed in the light of the standard of living in the State concerned, and the fact that under national systems compensation will in general be awarded and paid more promptly than if the matter fell to be decided by the Court under Article 41 of the Convention.

23. In view of the material in the case file and having regard to the particular circumstances of the proceedings in question, the Court considers that sum awarded to the applicant cannot be considered as sufficient and does not therefore amount to appropriate redress for the violation suffered.

24. The Court thus concludes that the applicant did not lose his status as a victim within the meaning of Article 34 of the Convention. The Government's objection in this regard must therefore be rejected.

25. In view of the above, and in particular its finding regarding the victim status of the applicant, the Court concludes that the length of the proceedings at issue was excessive and failed to meet the "reasonable time" requirement.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. 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, costs and expenses

28. The applicant claimed EUR 75,000 in respect of non-pecuniary damage and RSD 9,928,464.87 and accompanying interest in respect of pecuniary damage.

29. The Government contested these claims.

30. 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 3,100 in respect of non-pecuniary damage, less any and all amounts which may have already been paid in that regard at the domestic level.

31. As the applicant made no claim for costs and expenses incurred before the domestic courts and this Court no award is made in that regard.

B. Default interest

32. 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. *Decides* to join to the merits the Government's preliminary objection as to the applicant's victim status, and dismisses it;

2. *Declares* the applicant's complaint about the length of proceedings admissible;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

4. *Holds*
(a) that the respondent State is to pay the applicant within three months EUR 3,100 (three thousand one hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable on this amount, which is to be converted into the currency of the respondent State at a rate applicable at the date of settlement, after the deduction of any amounts which may have already been paid on this basis;
(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 19 December 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Pere Pastor Vilanova
Deputy Registrar	President