

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

SECOND SECTION

# CASE OF SVORCAN v. MONTENEGRO

*(Application no. 1253/08)*

JUDGMENT

STRASBOURG

13 June 2017

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

**In the case of Svorcan v. Montenegro,**

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

Paul Lemmens, *President,*
Nebojša Vučinić,
Stéphanie Mourou-Vikström, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having deliberated in private on 16 May 2017,

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

# PROCEDURE

1. The case originated in an application (no. 1253/08) against 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, Ms Olga Svorcan ("the applicant"), on 24 December 2007.

2. The Montenegrin Government ("the Government") were represented by their Agent, Ms V. Pavličić.

3. On 3 December 2014 the applicant's 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.

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 1950 and lives in Belgrade, Serbia.

6. The relevant facts of the case, as submitted by the parties, may be summarised as follows.

### A. The first set of proceedings

7. On 18 September 1995 the applicant and her family members instituted proceedings before the Court of First Instance (*Osnovni sud*) in Herceg Novi, seeking division of their joint property.

8. On 5 May 1997 the Court of First Instance in Herceg Novi discontinued these proceedings and instructed the parties to initiate a separate civil case given a number of contentious issues.

### B. The second set of proceedings

9. On 8 September 1997 the applicant's cousins brought a claim against the applicant and her parents before the Court of First Instance in Herceg Novi. On 30 December 1997, the cousins lodged an additional claim concerning the same matter. Both claims were subsequently joined and examined in the same civil proceedings.

10. On 1 October 2002 the Court of First Instance in Herceg Novi ruled against the applicant and her parents.

11. On 25 June 2004 the High Court (*Viši sud*) in Podgorica upheld this judgment on appeal. The judgment, thereby, became final. It was served on the applicant on 15 July 2004.

12. On 17 August 2004 the applicant lodged an appeal on points of law (*revizija*) with the Supreme Court of Montenegro.

13. This appeal was misplaced until 20 January 2006, when the applicant's lawyers intervened and urged the authorities to find it. On 12 January 2007 the applicant amended her appeal on points of law.

14. On 14 February 2008 the Supreme Court of Montenegro rejected the applicant's appeal on points of law as unfounded. This decision was served on the applicant on 6 March 2008.

## THE LAW

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

15. The applicant complained that the length of the above proceedings, considered in their entirety, 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..."

### A. Admissibility

#### *1.* Compatibility *ratione temporis*

16. The Government noted that the proceedings in question had commenced in 1997 and had ended on 14 February 2008, the respondent

State having ratified the Convention on 3 March 2004. The applicant's complaints were therefore incompatible with the provisions of the Convention *ratione temporis*.

17. The applicant contested this objection claiming that the proceedings had started in 1995.

18. Pursuant to its extensive case-law on this issue (see, among many other authorities, *V.A.M. v. Serbia*, no. 39177/05, § 102, 13 March 2007; *Stevanović v. Serbia*, no. 26642/05, §§ 43-45, 9 October 2007; and *Velimirović v. Montenegro*, no. 20979/07, § 34, 2 October 2012) and given that the proceedings had continued after the ratification date, the Court finds that they clearly fall within its competence *ratione temporis* as of 3 March 2004. The Government's objection must therefore be dismissed.

*2. Exhaustion of domestic remedies*

19. The Government submitted that the applicant had not exhausted available domestic remedies and that at the time when the application had been lodged with the Court the proceedings before the Supreme Court were still pending domestically.

20. The applicant did not comment on that.

21. The Court has already held that at the time when the application had been lodged there were no effective remedies in respect of the complaints relating to the length of proceedings: a request for review (*kontrolni zahtjev*) became effective as of 4 September 2013 (see *Vukelić v. Montenegro*, no. 58258/09, § 85, 4 June 2013), an action for fair redress (*tužba za pravično zadovoljenje*) became effective as of 18 October 2016 (see *Vučeljić v. Montenegro* (dec.), no. 59129/15, § 30, 18 October 2016), while a constitutional appeal became effective as of 20 March 2015 (see *Siništaj and Others v. Montenegro*, nos. 1451/10 and 2 others, § 123, 24November 2015, and *Vučeljić v. Montenegro* (dec.), cited above, § 31).

22. The Court further recalls that the last stage of proceedings may be reached after the lodging of the application before the Court, but before the Court determines the issue of admissibility (see *Milić and Nikezić v. Montenegro*, nos. 54999/10 and 10609/11, § 74, 28 April 2015). It sees no reason to depart from those findings in the present application and concludes, therefore, that the Government's objection must be rejected.

*3. Conclusion*

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 proceedings in question took place between 18 September 1995 and 6 March 2008. That is for a period of more than twelve years and five months in three levels of jurisdiction.

25. However, the Court can only examine the period between 3 March 2004, when the Convention had entered into force in respect of Montenegro, and 6 March 2008, when the decision of the Supreme Court was served on the applicant, that being more than four years for two levels of jurisdiction.

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. The Court has already found a breach of Article 6 § 1 of the Convention on account of the length of proceedings before only one instance or level of jurisdiction (see, among others, *Bunkate v. the Netherlands*, 26 May 1993, § 23, Series A no. 248-B, and *Kudła v. Poland* [GC], no. 30210/96, § 130, ECHR 2000-XI).

28. 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. The unreasonable delay before the Supreme Court, in particular, which amounted to almost three years and seven months, as well as the lack of any explanation justifying such a delay, demonstrate that the domestic authorities failed to act with the required diligence under Article 6 § 1 of the Convention. Accordingly, there has been a violation of Article 6 § 1 of the Convention.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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

30. The applicant claimed EUR 118,000 in respect of pecuniary and non-pecuniary damage.

31. The Government contested these claims.

32. 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 1,200 in respect of non-pecuniary damage.

### B. Costs and expenses

33. The applicant also claimed EUR 6,889.34 for the costs and expenses incurred before the domestic courts and the Court.

34. The Government contested these claims.

35. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the sum of EUR 100 covering costs and expenses before the Court only, it being understood that there were no effective remedies for length complaints domestically.

### C. Default interest

36. 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 applicant's complaint about the length of 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 from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, the following sums:
      (i) EUR 1,200 (one thousand two hundred euros), 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 13 June 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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| Hasan Bakırcı<br>Deputy Registrar | Paul Lemmens<br>President |