

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

SECOND SECTION

DECISION

Application no. 19424/07
Ljiljana PREDIĆ-JOKSIĆ
against Serbia

The European Court of Human Rights (Second Section), sitting on 20 March 2012 as a Chamber composed of:

Françoise Tulkens, *President,*
Dragoljub Popović,
Isabelle Berro-Lefèvre,
András Sajó,
Guido Raimondi,
Paulo Pinto de Albuquerque,
Helen Keller, *judges,*

and Stanley Naismith, *Section Registrar,*

Having regard to the above application lodged on 18 April 2007,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Ms Ljiljana Predić-Joksić, is a dual Serbian and Australian national who was born in 1949 and lives in Arncliffe, Australia. The Serbian Government ("the Government") are represented by their Agent, Mr S. Carić.

A. The circumstances of the case

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

1. The first set of proceedings

3. On 15 January 1997 the applicant filed a civil suit in Serbia against her two sisters, requesting the annulment of a contract according to which their late mother disposed of her property prior to her death, against the applicant's expectations from the inheritance. Following a remittal, on 20 April 2007 the Municipal Court granted the applicant's claim. On 6 August 2008 the District Court quashed the judgment of 20 April 2007 and returned the case to the first instance for a fresh examination.

4. On 4 December 2008 the applicant lodged a constitutional appeal, complaining about the length of the above-mentioned civil proceedings and requesting the Constitutional Court to quash the decision of 6 August 2008. The applicant did not request the Constitutional Court to award her any compensation for damages suffered.

5. On 5 May 2011 the Constitutional Court adopted a decision finding that the applicant's right to have a hearing within a reasonable time had been violated and ordered the first and second instance courts to expedite the proceedings, while rejecting the request in relation to the decision of 6 August 2008. The court also ordered that its decision be published in the Official Gazette.

6. On 14 June 2011 the decision of 5 May 2011 was published in the Official Gazette.

7. On 22 September 2011 the Court of First Instance (*Prvi osnovni sud*) in Belgrade granted the applicant's request in its entirety. This judgment would appear to be pending on appeal.

2. The second set of proceedings

8. On 2 April 2007 the applicant filed another civil suit against one of her sisters, claiming damages for the sister's sole use of the property in question.

9. The court held a number of hearings and in February 2008 appointed an expert to determine the damages. As the expert failed to submit his full expert report by April 2009, the court fined him and by September 2009 appointed another expert to submit his opinion on the amount of damages.

10. On 27 July 2009 the applicant filed a constitutional appeal complaining about the length of the said proceedings as well as the right to a fair trial and the right to property.

11. On 15 July 2010 the Constitutional Court found that there had been no violation of the applicant's right to have her civil right determined within a reasonable time, while the other complaints were rejected as premature.

12. It would appear that these civil proceedings are still pending at first instance.

B. Relevant domestic law and practice

1. *The Constitutional Court Act (Zakon o Ustavnom sudu; published in OG RS no. 109/07 and 99/11)*

13. The Constitutional Court Act, in Article 89 §§ 2 and 3, provides for the following:

> "When the Constitutional Court finds that an ... individual decision or action has violated or denied a human or minority right or a freedom guaranteed by the Constitution, it shall annul the ... decision in question or ban the continuation of such action or order the implementation of other specific measures as well as the removal of all adverse consequences within a specified period of time.
>
> The decision of the Constitutional Court accepting a constitutional appeal shall constitute a legal basis for requesting compensation or the removal of other adverse consequences before a competent body, in accordance with the law."

14. Article 90 of the Constitutional Court Act provides that a person whose constitutional appeal had been adopted can request compensation for damages from the Commission for Compensation.

15. On 26 December 2011 the Constitutional Court Act was amended, *inter alia* to abolish the Commission for Compensation and provide that the Constitutional Court would itself determine the compensation for damage (Article 89 § 2), under the condition that a request to that effect had been filed together with the constitutional appeal (Article 85 § 3).

2. *The Rules of the Commission for Compensation (Pravilnik o sastavu i radu Komisije za naknadu štete na osnovu odluke Ustavnog suda kojim je usvojena ustavna žalba; published in OG RS no. 27/08)*

16. Article 3 of the Rules provided for the right of a person to file a request for compensation from the Commission should the Constitutional Court find a violation in that person's case.

3. *Practice of the Constitutional Court and the Commission for Compensation*

17. While it existed, it was a consistent practice of the Commission for Compensation only to award damages if the Constitutional Court had determined one's right to compensation. The Constitutional Court, in its turn, only awarded compensation for damages should a person claim compensation in the constitutional appeal (see e.g. decisions of the Constitutional Court nos. Už-372/2008 of 16 October 2008, Už-536/2008 of 11 December 2008, Už-1685/2009 of 15 November 2009, Už-151/2007 of

1 April 2010, Už-5088/2010 and many others; *a contrario* see e.g. decisions nos. Už-36/2007 of 22 December 2009, Už-265/2008 of 22 December 2009, Už-204/2008 of 18 February 2010, Už-201/2008 of 14 July 2010 and many others).

COMPLAINTS

18. The applicant originally complained about the length of the first set of civil proceedings. By a further submission of 6 January 2009 she also complained about the length of the second set of proceedings.

19. Moreover, the applicant also complained about the violation of Article 8 of the Convention and Article 1 of Protocol No. 1 in both sets of proceedings.

THE LAW

A. The length of the first set of proceedings

20. The applicant's first complaint relates to the length of the proceedings, which began on 15 January 1997 and are still pending at second instance. They have therefore already lasted for eight years within the Court's competence *ratione temporis,* as Serbia ratified the Convention on 3 March 2004.

21. The Government submitted that by virtue of the decision of the Constitutional Court of 5 May 2011 the applicant had lost her victim status.

22. The applicant contested this claim.

23. The Court reaffirms that a constitutional appeal remains, in principle, a remedy to be exhausted, within the meaning of Article 35 § 1 of the Convention, only in respect of complaints introduced as of 7 August 2008 (see *Vinčić and Others v. Serbia*, nos. 44698/06 et seq., § 51, 1 December 2009), whilst in respect of all complaints lodged earlier, such as the application at hand, any redress provided by the Constitutional Court shall be assessed through the prism of whether the applicant can still be considered to be a victim within the meaning of Article 34 (see *Vidaković v. Serbia* (dec.), 16231/07, 24 May 2011).

24. The Court recalls that an applicant's status as a "victim" depends on the fact whether the domestic authorities acknowledged, either expressly or in substance, the alleged infringement of the Convention and, if necessary, provided appropriate redress in relation thereto. Only when these conditions are satisfied does the subsidiary nature of the protective mechanism of the

Convention preclude examination of an application (see *Cocchiarella v. Italy* [GC], no. 64886/01, § 71, ECHR 2006-V; and *Cataldo v. Italy* (dec.), no. 45656/99, 3 June 2004).

25. The Court, in this respect, notes that the Constitutional Court found that the applicant's right to a determination of her claim within a reasonable time had been violated – thereby acknowledging the breach complained of and, effectively, satisfying the first condition laid down in the Court's case law.

26. Furthermore, the Court notes that the Constitutional Court ordered the applicant's proceedings to be expedited. Following the decision of the Constitutional Court in May 2011, the Court of First Instance just four months later, on 22 September 2011, decided on the applicant's case by granting her claim in its entirety. The proceedings would appear to be currently pending at second instance, following the defendants' appeal. Considering the current status of the case, namely that so far the case has been pending on appeal for six months the Court cannot but conclude that the proceedings have been duly expedited, the applicant's victim status thus depending on whether compensation for damages should have been afforded in the particular circumstances of the present case.

27. The Court recalls that even though the applicant had not, in this particular case, been expected to exhaust the constitutional remedy, once she decided to avail herself of it she should have been aware of the requirements in relation to obtaining an appropriate compensation. The Court notes that it has been a consistent practice of the Constitutional Court and the Commission for Compensation to routinely award compensation in relation to complaints of unreasonable duration of proceedings, should a person raise such a request in the proceedings before the Constitutional Court (see e.g. *Vidaković v. Serbia*, paragraph 24 above, as well as the case-law of the Constitutional Court, paragraph 17 above). The applicant failed to submit such a request in her constitutional appeal and has furthermore failed to justify such an omission. In the presence of such a failure, the Constitutional Court found a violation of the applicant's right to have her civil right determined within a reasonable time, in addition ordering the decision to be published in the Official Gazette. It could not, however, have decided on the compensation for damages, while the applicant could not have had such expectations.

28. In such circumstances, the Court considers that the applicant's claim in the constitutional appeal had been fully upheld and that in such circumstances the applicant can no longer claim to be a "victim" within the meaning of Article 34 of the Convention of the violation of her right to a hearing within a reasonable time. Thus, the Court concludes that the applicant is no longer a victim of the alleged violation and that this part of the application must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. The length of the second set of proceedings

29. By a submission dated 6 January 2009 the applicant complained about the length of the second set of proceedings.

30. The Court notes that these proceedings have been pending since April 2007 and would appear to still be at first instance. The Court further notes that on 15 July 2010 the Constitutional Court found the complaint of the length of proceedings manifestly ill-founded, as at that particular moment the proceedings had been pending for just over three years, while at least one year has been attributable to the expert who failed to submit his full expert report. The expert having been duly fined and another expert appointed, the proceedings continued. As the proceedings appear to be still pending at first instance, even assuming that they would merit an examination under Article 6 § 1 of the Convention, the Court reiterates that the constitutional remedy continues to be considered in principle effective and has to be exhausted in respect of complaints introduced after 7 August 2008 (see *Vinčić v. Serbia,* paragraph 23 above). There appears to be nothing to prevent the applicant from reapplying to the Constitutional Court with a fresh appeal, requesting reconsideration of her complaints in the light of the new circumstances, i.e. that two years after the decision of the Constitutional Court and almost five years after the introduction of the suit, the proceedings are still pending at first instance.

31. Therefore, this complaint must be rejected for non-exhaustion of domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention.

C. The remaining complaints

32. Finally, in respect of the applicant's complaints regarding the violation of her rights from Article 8 and Article 1 of Protocol No. 1 in both sets of proceedings, the Court finds that the respective proceedings are still pending, rendering these complaints premature.

33. Consequently, also these complaints must be rejected for non-exhaustion of domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Stanley Naismith
Registrar

Françoise Tulkens
President