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

SECOND SECTION

DECISION

Application no. 59129/15
Mojsije VUČELJIĆ
against Montenegro

The European Court of Human Rights (Second Section), sitting on 18 October 2016 as a Chamber composed of:

Işıl Karakaş, *President,*
Nebojša Vučinić,
Paul Lemmens,
Valeriu Griţco,
Jon Fridrik Kjølbro,
Stéphanie Mourou-Vikström,
Georges Ravarani, *judges,*

and Stanley Naismith, *Section Registrar,*

Having regard to the above application lodged on 23 November 2015,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Mojsije Vučeljić, is a Montenegrin national who was born in 1944 and lives in Podgorica.

A. The circumstances of the case

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

3. On 28 March 2005 the applicant and his siblings ("the plaintiffs") instituted civil proceedings against: (a) the State, as the founder of the public broadcasting service, Radio Televizija Crne Gore ("RTCG"), and (b) G.K., one of RTCG's employees. They submitted that a television

programme transmitted by the RTCG had portrayed their late father in a way which was insulting to both him and his family.

4. On 22 March 2011, after two remittals, the Court of First Instance (*Osnovni sud*) in Podgorica ruled against the plaintiffs.

5. On 2 April 2012 the High Court (*Viši sud*) in Podgorica overturned the judgment of the first-instance court and ruled partly in favour of the plaintiffs, ordering the State to pay each of them compensation in respect of non-pecuniary damage in the amount of 1,000 euros (EUR) with accompanying interest. The court dismissed their claim in respect of G.K. and ordered them to pay him the costs of the respective proceedings. On 7 December 2012 the same court issued an additional judgment ordering the State to make the High Court's judgment of 2 April 2012 public via RTCG and to pay the plaintiffs the costs of the proceedings in connection therewith.

6. On 23 January 2013 the Supreme Court dismissed appeals on points of law that had been lodged by the plaintiffs.

7. On 25 February 2013 the plaintiffs filed an enforcement request (*predlog za izvršenje*). On 7 April 2014, after two remittals, the Court of First Instance issued an enforcement order, followed by an additional order of 27 May 2014.

8. The applicant did not file a request for review while the proceedings (both civil and enforcement) were ongoing or an action for fair redress once they were concluded (see paragraph 22 below).

9. On an unspecified date the plaintiffs lodged a constitutional appeal. On 22 December 2013 the Constitutional Court informed them that the constitutional appeal was incomplete and invited them to amend it within eight days or it would be rejected. On 5 January 2015 the applicant lodged another appeal with the Constitutional Court. On 21 April 2015 the Constitutional Court rejected (*odbacuje se*) the applicant's constitutional appeal for not having been amended as requested and because "it [did] not contain the reasons from which it could be concluded why and in what way the applicant's constitutional rights and freedoms were violated".

B. Relevant domestic law and practice

*1. Constitution of Montenegro 2007 (*Ustav Crne Gore*, published in the Official Gazette of Montenegro - OGM - no. 01/07)*

10. Article 32 provides for the right to a fair trial.

11. Article 149 provides that the Constitutional Court will rule on any constitutional appeal lodged in respect of an alleged violation of a human right or freedom guaranteed by the Constitution, once all other effective legal remedies have been exhausted.

12. The Constitution entered into force on 22 October 2007.

*2. Montenegro Constitutional Court Act 2008 (*Zakon o Ustavnom sudu Crne Gore*, published in the OGM nos. 64/08, 46/13, and 51/13)*

13. Section 48 provided that a constitutional appeal might be lodged against an individual decision of a State body, an administrative body, a local government body or a legal person exercising public authority, in respect of violations of human rights and freedoms guaranteed by the Constitution, once all other effective legal remedies had been exhausted.

14. Sections 49-59 provided additional details as regards the processing of constitutional appeals. In particular, section 56 provided that in cases where the Constitutional Court found a violation of a human right or freedom, it would quash the impugned decision, entirely or partially, and order that the case be re-examined by the same body which had delivered the quashed decision.

15. This Act entered into force in November 2008 and was repealed by the Constitutional Court Act 2015.

*3. Montenegro Constitutional Court Act 2015 (*Zakon o Ustavnom sudu Crne Gore*, published in the OGM no. 11/15)*

16. Section 68 provides that a constitutional appeal can be lodged by a physical person or legal entity, an organisation, a community (*naselje*), a group of individuals, and other forms of organisation which do not have the status of a legal entity if they consider that one of their human rights or freedoms guaranteed by the Constitution has been violated by an individual decision, action or omission of a State body, an administrative body, a local government body or a legal person exercising public authority, once all other effective legal remedies have been exhausted.

17. Sections 69-78 provide further details as regards the processing of constitutional appeals.

18. In particular, section 69 provides, *inter alia*, that if the complaint relates to a court's failure to act within a reasonable time, a constitutional appeal can be lodged only if the remedies provided for by the Right to a Trial within a Reasonable Time Act have already been exhausted or if an appellant can prove that these remedies were not or would not have been effective.

19. Section 76 provides that if in the course of proceedings before the Constitutional Court, an impugned decision has ceased to be in force, and the Constitutional Court finds a violation of a human right or freedom, it will allow a constitutional appeal and award the appellant just satisfaction.

20. Section 38 provides that the Constitutional Court must deliver a decision within 18 months of the date on which the proceedings before that court were initiated.

21. This Act entered into force on 20 March 2015 and thereby repealed the Constitutional Court Act 2008.

*4. Right to a Trial within a Reasonable Time Act (*Zakon o zaštiti prava na suđenje u razumnom roku*; published in OGM no. 11/07)*

22. This Act makes provision, under certain circumstances, for the possibility to have lengthy proceedings expedited by means of a request for review (*kontrolni zahtjev*), and for the opportunity for claimants to be awarded compensation by means of an action for fair redress (*tužba za pravično zadovoljenje*). In particular, section 33 provides, *inter alia*, that an action for fair redress can be lodged by a party who has previously made use of a request for review or who objectively was not able to do so. The action for fair redress must be filed with the Supreme Court no later than six months after the date of receipt of the final decision delivered in the impugned proceedings. This Act entered into force on 21 December 2007.

5. The Constitutional Court's practice

23. For the Constitutional Court's relevant practice see *Siništaj and Others v. Montenegro*, nos. 1451/10, 7260/10 and 7382/10, §§ 94-98, 24 November 2015.

COMPLAINTS

24. The applicant complained under Articles 6 and 8 of the Convention about the outcome and length of the civil proceedings, the length of the enforcement proceedings, and the resulting violation of his right to respect for private and family life.

THE LAW

A. The complaints in respect of the length of the proceedings under Article 6 of the Convention

25. Article 6 of the Convention, insofar as relevant, provides as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ...".

26. The relevant principles relating to the exhaustion of domestic remedies are set out in detail in *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014).

27. The Court reiterates that a fundamental feature of the machinery of protection established by the Convention is that it is subsidiary to the national systems safeguarding human rights. States do not have to answer

before an international body for their acts before they have had an opportunity to put matters right through their own legal system, and those who wish to invoke the supervisory jurisdiction of the Court as concerns complaints against a State are thus obliged to use first the remedies provided by the respective national legal system (see, among many authorities, *Akdivar and Others v. Turkey*, 16 September 1996, § 65, *Reports of Judgments and Decisions* 1996-IV). Article 35 § 1 requires that complaints intended to be brought subsequently in Strasbourg should have first been filed with the appropriate domestic body, at least in substance (see, for instance, *Castells v. Spain*, 23 April 1992, § 32, Series A no. 236, and *Gäfgen v. Germany* [GC], no. 22978/05, §§ 144 and 146, ECHR 2010) and in compliance with the formal requirements and time-limits laid down in domestic law and, moreover, that any procedural means that might prevent a breach of the Convention should have been used (*Akdivar and Others*, cited above, § 66). Where an applicant has failed to comply with these requirements, his or her application should in principle be declared inadmissible for failure to exhaust domestic remedies (see, for example, *Cardot v. France*, 19 March 1991, § 34, Series A no. 200, and *Thiermann and Others v. Norway* (dec.), no. 18712/03, 8 March 2007).

1. The length of the civil proceedings

28. The applicant complains, *inter alia*, about the length of the civil proceedings, which lasted from 28 March 2005 until 23 January 2013 (see paragraphs 3-6 above).

29. It is noted that the applicant in the present case failed to avail himself of either a request for review or an action for fair redress. However, the Court considers that he was not obliged to make use of a request for review in order to expedite the civil proceedings, given that the said remedy was held to be effective as of 4 September 2013 (see *Vukelić v. Montenegro*, no. 58258/09, § 85, 4 June 2013) and the civil proceedings had already been concluded by that time (see paragraph 6 above).

30. As regards an action for fair redress, the Court has previously held that as long as the proceedings were still ongoing and the request for review was not yet considered an effective remedy, the action for fair redress could not be considered capable of expediting proceedings (see, for example, *Mijušković v. Montenegro*, no. 49337/07, § 72, 21 September 2010, and *Boucke v. Montenegro*, no. 26945/06, § 72, 21 February 2012). However, it proved capable of providing adequate compensation for a violation of the right to a trial within a reasonable time (see, *mutatis mutandis*, *Bulatović v. Montenegro*, no. 67320/10, §§ 17-22 and § 151, 22 July 2014). The Court therefore considers it an effective domestic remedy.

31. Furthermore, the Court has previously noted that the new legislation on constitutional appeals explicitly provides for the possibility of lodging a constitutional appeal in respect of not only a decision but also an action or

an omission. In addition, it provides for the possibility of awarding just satisfaction and limits the processing of all the cases pending before the Constitutional Court, including those concerning constitutional appeals, to 18 months at most (see paragraphs 16 and 19-20 above). In view of this the Court has held that a constitutional appeal in Montenegro could in principle be considered an effective domestic remedy as of 20 March 2015, this being the date on which the new legislation entered into force (see *Siništaj and Others*, cited above, § 123). The Court did not consider that there was any exception to this conclusion. In addition, the relevant legislation also explicitly provides for the possibility of lodging a constitutional appeal in respect of complaints relating to the length of proceedings once the remedies under the Right to a Trial within a Reasonable Time Act have been exhausted or if they were for some reason ineffective (see paragraph 18 above). The constitutional appeal must therefore be considered in principle an effective domestic remedy for complaints relating to the length of proceedings as well, so that the earlier case-law in this regard is no longer applicable (see, for example, *Boucke*, cited above, § 79; *Stakić v. Montenegro*, no. 49320/07, § 41, 2 October 2012; and *Novović v. Montenegro and Serbia*, no. 13210/05, § 45, 23 October 2012).

32. The Court notes that the Constitutional Court issued its decision upon the applicant's constitutional appeal on 21 April 2015, that is to say after the relevant date. In so doing, the Constitutional Court rejected it on the grounds that it had been initially incomplete, that it had subsequently not been amended as requested, and that it did not state the reasons why the applicant considered that his human rights and freedoms had been violated. The applicant thus failed to comply with the formalities prescribed by domestic law.

33. In view of the above, the Court considers that the applicant failed to exhaust the available effective domestic remedies and his complaint must accordingly be rejected under Article 35 §§ 1 and 4 of the Convention.

2. The length of the enforcement proceedings

34. The Court notes that the enforcement proceedings lasted from 25 February 2013 until 7 April 2014, or more precisely 27 May 2014, when an additional enforcement request was issued (see paragraph 7 above). Given that a request for review was held to be an effective remedy as of 4 September 2013 − that is to say while the enforcement proceedings were still ongoing − and that the applicant failed to make use of it, the Court considers that his complaint in this regard must be rejected under Article 35 §§ 1 and 4 of the Convention.

B. The remainder of the complaints

35. The applicant also complained about the outcome of the civil proceedings, under Article 6, and under Article 8 about a violation of his right to respect for his private and family life caused by that outcome and the length of the civil and enforcement proceedings.

36. Article 8 provides as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

37. The Court reiterates that the applicant's constitutional appeal was rejected by the Constitutional Court on 21 April 2015 for having been initially incomplete, for not having been subsequently amended as requested, and for not stating the reasons why the applicant considered that his human rights and freedoms had been violated.

38. In view of the above, the Court considers that the applicant failed to raise these complaints properly before the Constitutional Court. Accordingly, they must also be rejected under Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, by a majority,

Declares the application inadmissible.

Done in English and notified in writing on 17 November 2016.

Stanley Naismith
Registrar

Işıl Karakaş
President