



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

THIRD SECTION

**CASE OF MOMČILOVIĆ AND OTHERS v. SERBIA**

*(Applications nos. 16254/08 and 2 others – see appended list)*

JUDGMENT

STRASBOURG

5 December 2017

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



**In the case of Momčilović and Others 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 14 November 2017,

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

**PROCEDURE**

1. The case originated in three applications (nos. 16254/08, 53679/13 and 22243/14) against Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by three Serbian nationals, Mr Radosav Momčilović (“the first applicant”), Mr Livius Lapadat (“the second applicant”) and Mr Dragan Radin (“the third applicant”). Their further personal and other relevant details are set out in the appended table.

2. The Serbian Government (“the Government”) were initially represented by their former Agent, Ms V. Rodić, who was subsequently substituted by their current Agent, Ms N. Plavšić.

3. On 20 October 2015 the second applicant’s representative informed the Court that the applicant had died on 25 May 2014, and on 14 January 2016 that his heirs were his wife, Ms Dojnica Lapadat, and son, Mr Livius Lapadat. On 30 January 2016 designated heirs expressed their wish to pursue the proceedings on behalf of the second applicant and submitted powers of attorney for the same lawyer. For practical reasons, Mr Livius Lapadat will continue to be referred to as the second applicant in this judgment, although his heirs are now to be regarded as such (see *Tomašević v. Montenegro*, no. 7096/08, §§ 13-16, 13 June 2017).

4. On 20 October 2015 the applications were communicated under Article 6 § 1 and 13 to the Government and the remainder of the applications was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

5. The applicants complained about the failure of the domestic courts to enforce final court judgments rendered in their favour.

6. All applicants obtained decisions of the Constitutional Court, which found a violation of their right to a hearing within a reasonable time and awarded them certain sums in respect of the non-pecuniary damage suffered (see the appended table).

7. The Court further notes that the proceedings in question are still pending before domestic courts as regards the first applicant. With respect to the second applicant, the Court will consider that the proceedings have been terminated on 30 November 2015. Namely, on that day the Zrenjanin Court of First Instance informed the Government that on an unspecified date the second applicant's heirs had transferred their claim to their attorney and that they were therefore no longer parties to the domestic proceedings. Lastly, regarding the third applicant, the proceedings were terminated on 8 May 2013.

## THE LAW

### I. JOINDER OF THE APPLICATIONS

8. The Court considers that, in accordance with Rule 42 § 1 of the Rules of the Court, the applications should be joined, given their common factual and legal background.

### II. ALLEGED VIOLATION OF ARTICLES 6 § 1 and 13 OF THE CONVENTION

9. The applicants complained under Article 6 § 1 and Article 13 of the Convention about the non-enforcement of the final court decisions. In so far as relevant, these Articles read as follows:

#### **Article 6 § 1**

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

### Article 13

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

#### A. Admissibility

##### 1. *The Government’s objection concerning the alleged abuse of the right of petition*

10. The Government submitted that the second applicant’s lawyer intentionally hid from the Court that the applicant had passed away during the proceedings, amounting to an abuse of the right of petition, within the meaning of Article 35 § 3 of the Convention.

11. The Court recalls that an application may only be rejected as abusive within the meaning of Article 35 § 3 of the Convention in extraordinary circumstances, such as if an application was deliberately grounded on a description of facts omitting or distorting events of central importance (see, for example, *Akdivar and Others v. Turkey*, 16 September 1996, §§ 53-54, *Reports of Judgments and Decisions* 1996-IV; *Varbanov v. Bulgaria*, no. 31365/96, § 36, ECHR 2000-X; and *Assenov and Others v. Bulgaria*, Commission decision of 27 June 1996, *Decisions and Reports* (DR) 86-B, p. 54). Furthermore, the applicant is not expected to present all possible information on a case. It is, however, his duty to present at least those essential facts which are at his disposal and which he must be aware are of significant bearing for the Court to be able to properly assess the case (see, for example, *Milosavljev v. Serbia*, no. 15112/07, § 36, 12 June, *Al-Nashif and Others v. Bulgaria*, (dec.) no. 50963/99, 25 January 2001).

12. Turning to the present case, the Court notes that the second applicant’s lawyer informed the Court of the applicant’s death by letter of 20 October 2015. By letter of 14 January 2016 he also submitted the final decision of the Zrenjanin Court of First Instance regarding the determination of the applicant’s successors, whereas by his letter of 30 January 2015 he informed the Court that the applicant’s successors wish to pursue the proceedings with the Court and supplied the Court with powers of attorney signed by them.

13. It follows that the Government’s objection must be dismissed.

##### 2. *The Government’s objection concerning the loss of victim status*

14. The Government submitted that the applicants could no longer claim to be victims within the meaning of Article 34 of the Convention since the Constitutional Court had found that their right to a hearing within a reasonable time had been violated and had awarded them adequate redress.

The violation complained of had therefore been remedied before the domestic authorities and the applicants had lost their victim status.

15. The Court considers that this objection is closely linked to the substance of the applicants' complaints and must therefore be joined to the merits.

### 3. Conclusion

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

## B. Merits

17. The Government submitted that since all applicants obtained decisions from the Constitutional Court they had therefore lost their victim status. 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 applicants' right to a hearing within a reasonable time.

18. The applicants disagreed. They submitted that, in spite of the Constitutional Court's decisions, they were still "victims" within the meaning of Article 34 of the Convention. They argued that the amounts of compensation awarded to them were insufficient. Additionally, the first applicant maintained that his proceedings were still pending and that he could not enforce his significant monetary claim against the debtor who had died in the meantime, an allegation which the Government did not contest in their observations.

19. The Court recalls that an applicant's status as a "victim" within the meaning of Article 34 of the Convention 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 *Vidaković v. Serbia* (dec.) no. 16231/07, § 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).

20. In this respect, the Court notes that the Constitutional Court had indeed found that the applicants' right to a hearing 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.

21. The applicants' victim status then depends on whether the redress afforded to them 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).

22. In this connection, the Court recalls that in non-enforcement 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 not unreasonable (see *Cocchiarella v. Italy* [GC], cited above, §§ 96, 97).

23. Turning to the amounts of redress awarded to the applicants, the Court notes that those amounts are significantly lower compared with the sums awarded for comparable delays in the Court's case-law. It would emphasize, in this respect, the importance of a reasonable amount of just satisfaction being awarded in the domestic system for the remedy in question to be considered as effective under the Convention. Whether the amount awarded may be regarded as reasonable, however, falls to be assessed in the light of all the circumstances of the case. These include not merely the duration of the proceedings in the specific case but the value of the award judged in the light of the standard of living in the State concerned, and the fact that under the national system compensation will in general be awarded and paid more promptly than would be the case if the matter fell to be decided by the Court under Article 41 of the Convention.

24. In view of the material in the files and having regard to the particular circumstances of the proceedings in question, the Court considers that the sums awarded to the applicants cannot be considered sufficient and therefore do not amount to appropriate redress for the violations suffered. Additionally, the Court notes that the enforcement proceedings are still pending in the case of the first applicant. The Court therefore concludes that none of the applicants can be deemed to have lost his status as a victim within the meaning of Article 34 of the Convention.

25. In view of the above the Court concludes that in the present case the length of the enforcement proceedings was excessive and failed to meet the "reasonable time" requirement.

26. The Court accordingly considers that there has been a violation of Article 6 § 1 of the Convention and rejects the Government's preliminary objection as regards the applicants' victim status.

27. Having reached this conclusion, the Court also does not find it necessary to examine essentially the same complaint under Article 13 of the Convention (see *mutatis mutandis*, *Kin-Stib and Majkić v. Serbia*, no. 12312/05, § 90, 20 April 2010).

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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

29. The applicants claimed various amounts in respect of the non-pecuniary damage suffered by each of them, as well as the costs and expenses. The first applicant also requested to be awarded pecuniary damages, which is the amount awarded by the final domestic judgment which remained unenforced. All sums are indicated in the appended table.

30. The Government found the applicants' claims concerning non-pecuniary damage excessive and emphasized that all applicants had already been paid the sums awarded by the Constitutional Court, whereas the third applicant was also paid 8,810 Serbian dinars in respect of costs of enforcement proceedings.

31. Regard being had to the documents in its possession and to its case-law the Court considers it reasonable to award the sums indicated in the appended table in respect of non-pecuniary damage and costs and expenses, less any and all amounts which may have already been paid in that regard at the domestic level.

32. As regards the request of the first applicant, the Court notes that the Government did not comment on this request, but finds that there is no causal link between the violation found and the pecuniary damage alleged. It therefore rejects the first applicant's claim for pecuniary damage.

#### B. Default interest

33. 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 the applications;
2. *Decides* to join to the merits the Government's preliminary objection as to the applicants' victim status, and dismisses it;

3. *Declares* the applications admissible;
4. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of each applicant;
5. *Holds* that there is no need to examine separately their complaints under Article 13 of the Convention;
6. *Holds*
  - (a) that the respondent State shall ensure that all necessary steps are taken to allow the domestic proceedings in the case of the first applicant to be concluded as speedily as possible, taking into account the requirements of the proper administration of justice;
  - (b) that the respondent State is to pay the applicants, within three months, the amounts indicated in the appended table in respect of non-pecuniary damage and costs and expenses, plus any tax that may be chargeable on these amounts, which are to be converted into the currency of the respondent State at the rate applicable at the date of settlement, after the deduction of any amounts which may have already been paid on this basis;
  - (c) 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;
7. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 5 December 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı  
Deputy Registrar

Pere Pastor Vilanova  
President

## APPENDIX

No.	Application no. and date of introduction	Applicant name date of birth nationality	Represented by	Final domestic decision details	Start of proceedings	End of Proceedings	Length of enforcement proceedings	Constitutional Court decision details; just satisfaction awarded (if any)	Amounts of non-pecuniary and pecuniary damages, and costs and expenses requested in euros	Amounts awarded for non-pecuniary damage and costs and expenses per applicant in euros (Plus any tax that may be chargeable to the applicants.) <sup>1</sup>
1.	16254/08 19/03/2008	<b>Radosav MOMČILOVIĆ</b> 11/11/1951 Serbian	-	Fifth Municipal Court in Belgrade XXI P. 630/97 of 13 June 1997	25 March 2002	pending	11 years and 5 months	Už 2694/2009 of 7 July 2011 70,000 RSD (580 Euros)	Non-pecuniary damage + costs: 3,500+500 Pecuniary damage: 59,476.38	Non-pecuniary damage: 3,600 Costs and expenses: 100
2.	53679/13 04/07/2013	<b>Livius LAPADAT</b> 06/01/1934 Serbian	Dragan RADIN	Municipal Court in Zrenjanin P. 1691/05 of 22 January 2007	28 December 2007	30 November 2015	7 years and 7 months	Už 2888/2011 of 23 May 2013 400 Euros	Non-pecuniary damage + costs: 3,600 + 500	Non-pecuniary damage: 3,600 Costs and expenses: 500
3.	22243/14 27/11/2013	<b>Dragan RADIN</b> 30/10/1949 Serbian	-	Municipal Court in Novi Bečej P. 115/08 of 26 June 2008	29 October 2008	8 May 2013	6 years and 9 months	Už 246/2011 of 30 October 2013 200 Euros	Non-pecuniary damage + costs: 3,600+100	Non-pecuniary damage: 3,000 Costs and expenses: 100

---

1. Less any amounts which may have already been paid on this basis at the domestic level.