



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

THIRD SECTION

**CASE OF NIKOLIĆ v. SERBIA**

*(Application no. 41392/15)*

JUDGMENT

STRASBOURG

19 March 2019

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

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE



**In the case of Nikolić 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 26 February 2019,

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

## PROCEDURE

1. The case originated in an application against Serbia (no. 41392/15) 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 Marica Nikolić (“the applicant”), on 7 August 2015.

2. The applicant was represented by Ms N. Dautović, a lawyer practising in Novi Sad. The Serbian Government (“the Government”) were represented by their Agent, Ms N. Plavšić.

3. On 20 February 2017 the complaint concerning the length of civil proceedings 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 1949 and lives in Novi Sad.

5. On 1 June 2004 the applicant instituted civil proceedings seeking reimbursement for income she had lost because of a car accident.

6. On 25 February 2008 the Novi Sad Court of First Instance delivered a judgment partly in favour of the applicant and ordered the defendant to pay her a certain amount in that respect.

7. On 30 October 2008 the Novi Sad District Court partly quashed the judgment of 25 February 2008 and remitted the case, upholding the remainder of the judgment.

8. On 2 July 2010 the Novi Sad Court of First Instance rejected the applicant’s claim in the remitted part.

9. On 30 January 2012 the Novi Sad Court of Appeal partly upheld the judgment of 2 July 2010 and partly reversed it granting certain applicant’s claims.

10. On 5 February 2015 the Constitutional Court rejected the applicant's complaint about the length of those proceedings, taking into consideration that the civil courts had rendered four judgments at two instances and that the proceedings had been complex.

## THE LAW

### I. ALLEGED VIOLATIONS OF ARTICLE 6 § 1 AND ARTICLE 13 OF THE CONVENTION

11. The applicant complained under Articles 6 and 13 of the Convention that the length of the civil proceedings in question had been incompatible with the "reasonable time" requirement. Articles 6 § 1 and 13 of the Convention 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."

12. The Government contested that argument, relying on the arguments set out in the Constitutional Court's decision (see paragraph 10 above).

13. The period to be taken into consideration began on 1 June 2004 and ended on 30 January 2012. It thus lasted seven years and eight months for two levels of jurisdiction. The Court also observes that the proceedings in question concerned the applicant's lost income as a consequence of a car accident and were therefore important for the applicant.

#### **A. Admissibility**

14. The Court notes that the application is neither manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor inadmissible on any other grounds and must therefore be declared admissible.

#### **B. Merits**

15. 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).

16. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see, for example, *Nemet v. Serbia*, no. 22543/05, 8 December 2009, *Blagojević v. Serbia* [Committee], no. 63113/13, 28 March 2017, and *Ković and Others v. Serbia* [Committee], no. 39611/08 and 2 others, 4 April 2017).

17. Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion on the merits of the applicant's complaint. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

18. Accordingly, there has been a breach of Article 6 § 1 of the Convention.

19. After reaching such a conclusion, the Court does not find it necessary to examine essentially the same complaint invoked by the applicant under Article 13 of the Convention (see *mutatis mutandis*, *Kin-Stib and Majkić v. Serbia*, no. 12312/05, § 90, 20 April 2010).

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

20. 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

21. The applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage.

22. The Government submitted that the claim was excessive.

23. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards her EUR 2,100 under that head.

### B. Costs and expenses

24. The applicant also claimed EUR 1,130 for the costs and expenses incurred before the Constitutional Court and before the Court.

25. The Government contested this claim.

26. 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 500 covering costs under all heads.

### **C. Default interest**

27. 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 application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there is no need to examine separately the complaint under Article 13 of the Convention;
4. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months, the following amounts:
    - (i) EUR 2,100 (two thousand one hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
    - (ii) EUR 500 (five hundreds euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
  - (b) that the amounts specified above shall be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
  - (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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 19 March 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı  
Deputy Registrar

Pere Pastor Vilanova  
President