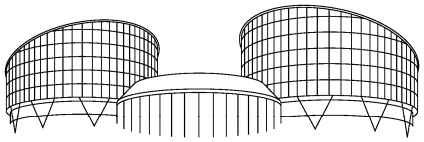

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF OKILJ v. SERBIA

(Application no. 16019/15)

JUDGMENT

STRASBOURG

28 May 2019

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

In the case of Okilj v. Serbia,

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

Georgios A. Serghides, *President,*
Branko Lubarda,
Erik Wennerström, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 7 May 2019,

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

PROCEDURE

1. The case originated in an application against Serbia (no. 16019/15) 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, Mr Dragoslav Okilj ("the applicant"), on 23 March 2015.

2. The applicant was represented by Mr S. Radovanović, a lawyer practising in Belgrade. The Serbian Government ("the Government") were represented by their Agent, Ms N. Plavšić.

3. On 25 April 2016 the application was communicated to the Government.

THE FACTS

4. The applicant was born in 1949 and lives in Belgrade.

5. On 9 May 2005 the applicant lodged a claim seeking ownership of 265 shares of the company Tri Grozda a.d. Beograd

6. On 14 September 2007 the Belgrade Court of First Instance delivered a judgment in favour of the applicant.

7. On 13 December 2011 the Belgrade Court of Appeal reversed the judgment of 14 September 2007, and rejected the applicant's claim.

8. On 3 April 2012 the applicant lodged a constitutional appeal, complaining of a violation of his right to a trial within a reasonable time and requesting compensation in that regard.

9. On 23 September 2014 the Constitutional Court found a violation of the applicant's right to a trial within a reasonable time. It held that the finding of a violation had constituted sufficient just satisfaction in the particular circumstances of the present case for the following reasons. First, the nominal value of the impugned shares was only slightly higher than 200 euros. The case was thus of minor importance for the applicant.

Secondly, it considered that the applicant had contributed to the length of the civil proceedings by failing to lodge a constitutional appeal earlier.

THE LAW

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

10. The applicant complained that the length of the civil proceedings in question had been incompatible with the "reasonable time" requirement, as 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..."

11. The period to be taken into consideration began on 9 May 2005 and ended on 13 December 2011. It thus lasted six years and seven months for two levels of jurisdiction.

A. Admissibility

12. The Government maintained that the applicant could no longer claim to be a victim because the Constitutional Court had acknowledged the breach complained of and the finding of a violation had constituted sufficient just satisfaction in the circumstances of the present case, for the reasons advanced in the Constitutional Court's decision (see paragraph 9 above).

13. The applicant disagreed. Notably, he submitted that while the nominal value of the impugned shares was indeed insignificant, their market value had been more than 3,000 euros in 2006 (during the civil proceedings in question).

14. 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).

15. The Court, in this respect, notes that the Constitutional Court found that the applicant's right to the determination of his 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. The applicant's victim status thus depends on whether

compensation for damages should have been afforded in the particular circumstances of the present case.

16. The Court has already indicated that there is a very strong but rebuttable presumption that in length-of-proceedings cases one of the characteristics of sufficient redress which may remove a litigant's victim status relates to the amount awarded (see *Scordino v. Italy* (no. 1) [GC], no. 36813/97, § 202, ECHR 2006‑V). The Court further notes that factors such as the conduct of the applicant and what is at stake for him or her in the dispute together with other relevant aspects may affect in various degrees the award in respect of non-pecuniary damage (see *Apicella v. Italy*, no. 64890/01, § 26, 10 November 2004) and, exceptionally, lead to no award at all (see *Scordino (no. 1)*, cited above, § 204). The domestic courts will then have to justify their decision by giving sufficient reasons (*ibidem*; and *Šedý v. Slovakia*, no. 72237/01, §§ 90-92, 19 December 2006).

17. The Constitutional Court held in the present case that there was no need to award any compensation because the case was of minor importance for the applicant and, moreover, the applicant had contributed to the length of the proceedings at issue (see paragraph 9 above). The Court disagrees. While it is true that the nominal value of the impugned shares was only slightly higher than 200 euros, the parties agreed that their market value had been much higher at the relevant time. Furthermore, the applicant could not have prevented that the length of the civil proceedings concerning those shares become excessive by lodging a constitutional appeal earlier. The constitutional appeal is simply not a preventive remedy. Indeed, like this Court, the Constitutional Court cannot order that proceedings be speeded up until their length have already become excessive and it has found a breach of the right to a trial within a reasonable time in that regard. The constitutional appeal is thus different from, for example, an appeal against the silence of administration which may be used to speed up administrative proceedings and to prevent their excessive length (see *Vuković v. Montenegro* (dec.), no. 18626/11, §§ 30–31, 27 November 2012). Accordingly, the applicant did not contribute to the length of the civil proceedings. In these circumstances, the finding of a violation by the Constitutional Court did not constitute sufficient just satisfaction (contrast *Milosavljević v. Serbia* (dec.), no. 21603/07, 5 November 2013). The applicant can therefore still claim to be a "victim" within the meaning of Article 34 of the Convention and the Government's objection must be dismissed.

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

B. Merits

19. 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).

20. 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).

21. 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. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings failed to meet the "reasonable time" requirement.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. 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

24. The applicant claimed 1,000 euros (EUR) in respect of non-pecuniary damage.

25. The Government contested this claim.

26. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him the full sum claimed.

B. Costs and expenses

27. The applicant did not submit a claim for costs and expenses.

28. Accordingly, the Court considers that there is no call to award him any sum on that account.

C. Default interest

29. 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*
   (a) that the respondent State is to pay the applicant, within three months, EUR 1,000 (one thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (b) that the amount 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 28 May 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Georgios A. Serghides
President