



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

THIRD SECTION

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

*(Applications nos. 54001/15 and 3 others – see appended list)*

JUDGMENT

STRASBOURG

20 February 2018

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



**In the case of Šaćirović 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 30 January 2018,

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

**PROCEDURE**

1. The case originated in four applications (nos. 54001/15, 55113/15, 60075/15 and 7193/16) against Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by Serbian nationals, Mr Ismet Šaćirović (“the first applicant”), Mr Žarko Brkić („the second applicant“), an association called Udruženje Akcionara Preduzeća Jugometal (“the third applicant”) and Mr Zoran Bajić (“the fourth applicant”), on 13 October 2015, 24 November 2015, 16 October 2015 and 21 January 2016 respectively.

2. The applicants were represented by Mr Ž. Nikolov, Ms J. Đelić, Mr M. Timotijević and Mr N. Jolović, respectively, lawyers practicing in Novi Pazar and Belgrade. The Serbian Government (“the Government”) were represented by their Agent, Mrs N. Plavšić.

3. On 21 June 2016 the complaints concerning the length of civil proceedings were communicated to the Government and the remainder of the applications was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

**THE FACTS****THE CIRCUMSTANCES OF THE CASE**

4. The applicants’ personal details as well as the facts in relation to each case are set out in the appendix.

5. The applicants complained of the excessive length of different civil proceedings under Article 6 § 1 of the Convention.

6. In the first applicant’s case the Constitutional Court found a violation of his right to a hearing within a reasonable time, but failed to award any

damages. As regards the third applicant the Constitutional Court rejected its appeal. Lastly, as regards the other two applicants, the Constitutional Court held that they had not raised a complaint about the length of the proceedings.

## THE LAW

### I. JOINDER OF THE APPLICATIONS

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

### II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

8. The applicants complained that the length of the proceedings had been incompatible with the “reasonable time” requirement, 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...”

#### A. Admissibility

##### 1. *Exhaustion of domestic remedies*

9. The Government submitted that the first applicant had failed to properly exhaust domestic remedies. Specifically they claimed that the said applicant had failed to submit a claim for non-pecuniary damages at the same time as his constitutional appeal, as required by section 85 of the Constitutional Court Act and that the second and fourth applicants had failed to raise their length complaints before the Constitutional Court.

10. The applicants contested the Government’s objections and maintained that they had complained before the Constitutional Court in a proper manner.

11. The Court has consistently held that the rule on the exhaustion of domestic remedies, under Article 35 § 1 of the Convention, requires that the complaints intended to be made subsequently before it should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law and, further, that any procedural means that might prevent a breach of the Convention should have been used (see, for example,

*Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 72, 25 March 2014).

12. Turning to the present case, the Court has carefully examined the applicants' constitutional appeals. As regards the first applicant, it transpires from his constitutional appeal that he claimed 40,000 euros in respect of damage suffered because of the excessive length of the impugned proceedings, but that the Constitutional Court failed to examine it. Similarly, as regards the second and fourth applicants, it transpires from their constitutional appeals that they expressly complained, albeit in a succinct manner, about the length of the impugned proceedings (contrast *Vučković and Others*, cited above, § 82, in which the applicants did not raise their discrimination complaint before the Constitutional Court, either expressly or in substance). They indicated the key developments and decisions taken in the course of the proceedings. They used words such as "the applicant filed his claim almost eleven years ago", "within reasonable time", "the proceedings lasted more than ten years", "excessive length", in relation to those proceedings on several occasions in their constitutional appeals. The second applicant even claimed a certain amount of money in respect of damage suffered because of the excessive length of the impugned proceedings. They relied on Article 32 of the Serbian Constitution which corresponds to Article 6 of the Convention. Complaints about the length of proceedings, unlike some other complaints under the Convention, normally do not require much elaboration. If, exceptionally, the Constitutional Court needed any additional information or documents, it could have requested the applicants to provide them. It follows that the applicants provided the national authorities with the opportunity which is in principle intended to be afforded to Contracting States by Article 35 § 1 of the Convention, namely of putting right the violations alleged against them (see, amongst many others, *Muršić v. Croatia* [GC], no. 7334/13, § 72, ECHR 2016).

13. The Court thus finds that the applicants properly exhausted domestic remedies. The Government's preliminary objection must therefore be dismissed.

## 2. Conclusion

14. The Court notes that the applicants' complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They 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 applicants and the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII). The Court reiterates that special diligence is necessary in employment disputes (*Ruotolo v. Italy*, judgment of 27 February 1992, Series A no. 230-D, p. 39, § 17).

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 *Frydlender*, cited above).

17. 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 (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), the Court considers that in the instant case the length of the proceedings failed to meet the “reasonable time” requirement.

There has accordingly been a breach of Article 6 § 1.

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

18. 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

19. The applicants claimed various amounts in respect of non-pecuniary damage suffered. The applicants also requested various sums in respect of legal costs incurred in the proceedings before both the domestic courts and the Court. Particularly, the fourth applicant submitted costs and expenses calculation sheet and requested that the costs and expenses incurred should be paid directly to his lawyer, Mr N. Jolović, who he authorised to receive the awarded sum for costs and expenses. The sums requested are indicated in the appendix. In addition, the second applicant requested to be awarded pecuniary damages comprising of the salaries he would have earned had he remained employed, whereas the third applicant requested to be awarded pecuniary damage in the amount of the current value of the stocks belonging to its members with interest.

20. The Government contested the above-mentioned claims,

21. Regard being had to the documents in its possession and to its case-law (see *Blagojević*, cited above, § 30, and *Ković*, cited above, §§ 28-31) 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. As regards the fourth applicant the Court considers it reasonable that the sum indicated in the appendix, covering costs and expenses, be paid directly to his legal representative, Mr N. Jolović (see *Hajnal v. Serbia*, no. 36937/06, § 154, 19 June 2012).

22. As regards the requests for pecuniary damage of the second and third applicants, the Court finds them unsubstantiated. In view of the violation found, specifically its procedural character, the court sees no causal link between the violation found and the pecuniary damage alleged. It therefore rejects their claims in this respect.

### **B. Default interest**

23. 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. *Declares* the applications admissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of each applicant;
4. *Holds*
  - (a) that the respondent State is to pay the applicants, within three months, the amounts indicated in the appendix in respect of non-pecuniary damage, 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 at the domestic level;
  - (b) that the respondent State is to pay the first three applicants, within three months, the amounts indicated in the appendix in respect of costs and expenses, plus any tax that may be chargeable to the applicants on

these amounts, which are to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

(c) that the respondent State is to pay, directly to the legal representative of the fourth applicant, within three months, the amount indicated in the appended table in respect of his costs and expenses, plus any tax that may be chargeable to the applicant on that amount, which is to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

(d) 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 applicants' claims for just satisfaction.

Done in English, and notified in writing on 20 February 2018, 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 place of residence nationality	Represented by	Start of proceedings	End of Proceedings	Total length and number of instances since 3 March 2004 (the date on which the Convention came into force in respect of Serbia); type of dispute	Constitutional Court decision details; just satisfaction awarded (if any)	Non-pecuniary damages and costs requested in euros; pecuniary damages 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.	54001/15 13/10/2015	<b>Ismet ŠAĆIROVIĆ</b> 20/03/1959 Novi Pazar Serbian	Željko NIKOLOV	03/03/2004 (11/01/1996)	29/05/2013	9 years, 2 months and 27 days 3 levels of jurisdiction labour dispute	Už-3767/2012 of 7 April 2015 (constitutional appeal adopted, no damages awarded)	The applicant claimed just satisfaction, but left it to the Court to set the amount.	2,300 + 500
2.	55113/15 16/10/2015	<b>Žarko BRKIĆ</b> 25/03/1949 Belgrade Serbian	Jadranka ĐELIĆ	27/03/2006	03/06/2013	7 years, 2 months and 8 days 2 levels of jurisdiction labour dispute	Už-9010/2013 of 14 April 2015 (the Constitutional Court failed to examine the length complaint)	2,300 + 500	2,300 + 500
3.	60075/15 24/11/2015	<b>UDRUŽENJE AKCIONARA PREDUZEĆA JUGOMETAL</b> 09/12/2003 Belgrade Serbian	Miljan TIMOTIJEVIĆ	01/11/2004	28/07/2011	6 years, 8 months and 28 days 3 levels of jurisdiction civil proceedings concerning debt	Už-1940/2010 of 6 February 2014 (constitutional appeal rejected)	375, 000+6,073,17; 1,876.202.95	600 + 500
4.	7193/16 21/01/2016	<b>Zoran BAJIĆ</b> 05/07/1967 Belgrade Serbian	Nemanja JOLOVIĆ	03/03/2004 (15/01/2003)	31/10/2013	9 years, 7 months and 29 days 2 levels of jurisdiction civil proceedings concerning damages	Už-9560/2013 of 18 November 2015 (the Constitutional Court failed to examine the length complaint)	4,000+17,625.69; 25,000	3,900 + 500

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