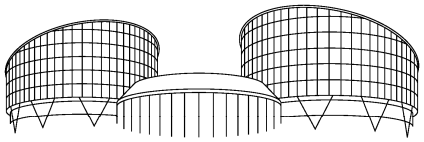

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF ZAJKESKOVIĆ v. SERBIA

(Application no. 34630/11)

JUDGMENT

STRASBOURG

4 June 2019

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

In the case of Zajkesković 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 Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 14 May 2019,

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

PROCEDURE

1. The case originated in an application (no. 34630/11) against the Republic of Serbia 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 Dragiša Zajkesković ("the applicant"), on 11 April 2011.

2. The applicant was represented by Dragana Videnović & Mile Petković, a law firm based in Bor.

3. 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.

4. On 18 December 2014 notice of the application was given to the Government.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1968 and lives in Bor.

6. The proceedings began on 30 March 1992 when the applicant brought a lawsuit against third persons concerning the execution of a contract.

7. On 19 June 1997 the first-instance court accepted the applicant's claim.

8. On 30 October 1997 the appeal court quashed the decision on legal costs, remitted that issue to the first-instance court for a retrial and upheld the remainder of the first-instance judgment.

9. The first-instance court subsequently rendered three decisions on the costs of the proceedings on 23 July 1998, 19 February 1999 and 3 March 2000. All of these decisions were quashed on appeal.

10. On 5 February 2013 the first-instance court rendered a fourth decision on the issue of legal costs awarding the applicant approximately 2,000 euros (EUR).

11. According to the information on the file, the proceedings are currently pending before the second-instance court.

12. On 13 March 2013 the Constitutional Court found a violation of the applicant's right to a hearing within a reasonable time and awarded him EUR 300 for the non-pecuniary damage suffered in this regard. Furthermore, the Constitutional Court ordered the applicant's proceedings to be expedited.

THE LAW

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

13. The applicant 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..."

14. The period to be taken into consideration began on 3 March 2004, when the Convention entered into force in respect of Serbia. However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time (see *Simić v. Serbia*, no. 29908/05, § 15, 24 November 2009).

15. It would appear that the period in question has not yet ended (see paragraph 11 above). It has thus lasted more than 15 years for two levels of jurisdiction.

A. Admissibility

16. 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 awarded him reasonable and sufficient redress (see paragraph 12 above).

17. The applicant disagreed.

18. The general principles concerning this issue were restated in *Cocchiarella v. Italy* ([GC], no. 64886/01, ECHR 2006-V). Notably, the

Court observes 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. 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 still not unreasonable (see *Cocchiarella*, cited above, §§ 96-97).

19. Whether the amount awarded may be regarded as reasonable falls to be assessed in the light of all the circumstances of the case. They include the duration of the proceedings in the specific case, the number of levels of jurisdiction that examined the case, the subject matter of the case, the importance of the case for the applicant on account of the amount involved, whether there were delays attributable to the applicant, the standard of living in the State concerned, and the fact that under national systems compensation will in general be awarded and paid more promptly than if the matter fell to be decided by the Court under Article 41 of the Convention.

20. Having regard to those criteria, the Court considers that the sum awarded to the present applicant does not amount to sufficient redress for the violation suffered.

21. The Court thus concludes that the applicant did not lose his status as a "victim" within the meaning of Article 34 of the Convention. The Government's objection must therefore be dismissed.

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

B. Merits

23. 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).

24. 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).

25. 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 was excessive and failed to meet the "reasonable time" requirement.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

26. The applicant also invoked Articles 13 and 17 of the Convention, but those complaints are totally vague and unsubstantiated.

27. It follows that this complaint is manifestly ill-founded and should be rejected in accordance with Article 35 §§ 3(a) and 4 of the Convention.

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

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

30. The Government contested the claim.

31. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 4,800 under that head, less any amounts, which may have already been paid in that regard at the domestic level.

B. Costs and expenses

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

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

C. Default interest

34. 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 complaint concerning the length of proceedings admissible and the remainder of the application inadmissible;

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 4,800 (four thousand eight hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, less any amounts which may have already been paid to the applicant in that regard at the domestic level;
   (b) that the above amount shall be converted into the 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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 4 June 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Georgios A. Serghides
President