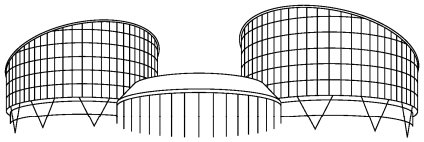

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF RODIĆ AND SVIRČEV v. SERBIA

(Application no. 17148/16)

JUDGMENT

STRASBOURG

19 September 2019

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

In the case of Rodić and Svirčev v. Serbia,

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

Dmitry Dedov, *President,*
Alena Poláčková,
Gilberto Felici, *judges,*
and Liv Tigerstedt, *Acting Deputy Section Registrar,*

Having deliberated in private on 29 August 2019,

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

PROCEDURE

1. The case originated in applications against Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on the various dates indicated in the appended table.

2. Notice of the applications was given to the Serbian Government ("the Government").

THE FACTS

3. The list of applicants and the relevant details of the applications are set out in the appended table.

4. The applicants complained of the excessive length of civil proceedings. In application no. 15434/17, the applicant also raised other complaints under the provisions of the Convention.

THE LAW

I. JOINDER OF THE APPLICATIONS

5. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

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

6. The applicants complained principally that the length of the civil proceedings in question had been incompatible with the "reasonable time" requirement. They relied on Article 6 § 1 of the Convention, which reads 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 ..."

A. Admissibility

7. The Government claimed that the applications should be rejected as inadmissible for the failure of the applicants to properly complain before the Constitutional Court.

8. The applicants disagreed.

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

10. Turning to the present case, the Court has carefully examined the applicants' constitutional appeals, from which it transpires that they expressly complained 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). The Government's argument that the Constitutional Court is "bound" by the request formulated in the constitutional appeal is therefore irrelevant in the present case. The Court observes that the applicants indicated the total length of the proceedings and the number of levels of jurisdiction. They also provided the Constitutional Court with the decisions rendered in the proceedings. Since the impugned proceedings lasted more than nine and nineteen years for two and three levels of jurisdiction, respectively, the Court considers that the cases were *prima facie* meritorious. In such circumstance, the Constitutional Court should have examined the merits of the cases. If it needed any additional information or documents, it could have invited the applicants or the relevant authorities to provide them. In this connection, the Court observes that complaints about the length of proceedings, unlike some other complaints under the Convention, normally do not require much elaboration (see *Šaćirović and Others v. Serbia*, nos. 54001/15 and 3 others, § 12, 20 February 2018, contrast *Golubović and others v. Serbia* (dec.), nos. 10044/11 and 8 others, § 43, 17 September 2013, concerning a complaint about the inconsistent case-law of domestic courts). It follows that the applicants provided the national authorities with an 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 *Muršić v. Croatia* [GC], no. 7334/13, § 72, 20 October 2016).

11. Since the applications are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor inadmissible on any other grounds, they must be declared admissible.

B. Merits

12. 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 *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

13. In the leading case of *Nemet v. Serbia,* no. 22543/05, 8 December 2009, the Court already found a violation in respect of issues similar to those in the present case.

14. 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 these complaints. 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.

15. These complaints therefore disclose a breach of Article 6 § 1 of the Convention.

III. REMAINING COMPLAINTS

16. The applicant in application no. 15434/17 also raised other complaints under various Articles of the Convention.

17. The Court considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, these complaints either do not meet the admissibility criteria set out in Articles 34 and 35 of the Convention or do not disclose any appearance of a violation of the rights and freedoms enshrined in the Convention or the Protocols thereto.

18. It follows that these complaints must be rejected in accordance with Article 35 § 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

19. 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."

20. Regard being had to the documents in its possession and to its case-law (see, in particular, *Nemet v. Serbia,* no. 22543/05, §§ 19-22, 8 December 2009), the Court considers it reasonable to award the sums

indicated in the appended table and dismisses the remainder of the claims for just satisfaction made by the applicant in application no. 15434/17.

21. 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 complaints concerning the excessive length of civil proceedings admissible and the remainder of application no. 15434/17 inadmissible;

3. *Holds* that these complaints disclose a breach of Article 6 § 1 of the Convention concerning the excessive length of civil proceedings;

4. *Holds*
   (a) that the respondent State is to pay the applicants, within three months, the amounts indicated in the appended table, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) 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 claims for just satisfaction made by the applicant in application no. 15434/17.

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

Liv Tigerstedt	Dmitry Dedov
Acting Deputy Registrar	President

APPENDIX

List of applications raising complaints under Article 6 § 1 of the Convention (excessive length of civil proceedings)

No.	Application no. Date of introduction	Applicant's name Date of birth	Representative's name and location	Start of proceedings or date of entry into force of the Convention in respect of Serbia (3 March 2004)	End of proceedings	Total length Levels of jurisdiction	Relevant domestic decision	Amount awarded for non-pecuniary damage per applicant (in euros)[1] [2]	Amount awarded for costs and expenses per application (in euros)[3]
1.	17148/16 23/03/2016	**Radovan Rodić** 03/06/1967	Miljević Natalija Sombor	03/03/2004	06/12/2012	8 years and 9 months and 4 days 2 levels of jurisdiction	Constitutional Court Už-1726/2013 14 September 2015 Inadmissible	2,400	-
2.	15434/17 17/02/2017	**Jovica Svirčev** 03/08/1966	Cicka Jano Kovačica	03/03/2004	23/04/2014	10 years and 1 month and 21 days 3 levels of jurisdiction	Constitutional Court Už-6527/2014 1 November 2016 Inadmissible	1,700	500

1. Plus any tax that may be chargeable to the applicants.
2. Less any amounts which may have already been paid in this regard at the domestic level.
3. Plus any tax that may be chargeable to the applicants.