



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

THIRD SECTION

CASE OF ŽIVANOVIĆ AND OTHERS v. SERBIA

(Applications nos. 29171/16 and 8 others - see appended list)

JUDGMENT

STRASBOURG

19 September 2019

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

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

In the case of Živanović and Others 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. The applicants were represented by Ms R. Dugošija, a lawyer practising in Žabari.

3. Notice of the applications was given to the Serbian Government (“the Government”).

THE FACTS

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

5. The applicants complained of the excessive length of civil proceedings.

THE LAW**I. JOINDER OF THE APPLICATIONS**

6. 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

7. The applicants complained 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

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

9. The applicants disagreed.

10. 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).

11. 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. Indeed, the Constitutional Court noted that the applicants raised a length-of-proceedings complaint, but considered that they had not sufficiently substantiated it. The Court observes, however, that the applicants indicated the total length of the proceedings and the number of levels of jurisdiction and underlined that the proceedings at issue were labour disputes (which were urgent according to domestic law). They also provided the Constitutional Court with the decisions rendered in the proceedings. Since the impugned proceedings had already lasted between six and eight years for two levels of jurisdiction when the Constitutional Court examined them, 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*, no. 54001/15 and 3 others, § 12, 20 February 2018, contrast *Golubović and others v. Serbia* (dec.), no.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).

12. 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

13. 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).

14. 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.

15. 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.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

17. 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.”

18. 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 applicants’ claims for just satisfaction.

19. 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 these applications 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 applicants' claim for just satisfaction.

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
Acting Deputy Registrar

Dmitry Dedov
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	Start of proceedings	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.	29171/16 17/05/2016	Bogoljub Živanović 05/07/1977	20/09/2005	22/05/2013	7 years and 8 months and 3 days 2 levels of jurisdiction	Constitutional Court Už-5781/2013 19 November 2015 Inadmissible	2,100	500
2.	29923/16 19/05/2016	Zoran Stojković 27/11/1971	11/01/2006	05/06/2013	7 years and 4 months and 26 days 2 levels of jurisdiction	Constitutional Court Už-6208/2013 19 November 2015 Inadmissible	1,800	500
3.	29924/16 19/05/2016	Mileta Joksimović 17/09/1969	08/09/2005	21/08/2013	7 years and 11 months and 14 days 2 levels of jurisdiction	Constitutional Court Už-8527/2013 19 November 2015 Inadmissible	2,100	500
4.	30007/16 19/05/2016	Dragan Tabaković 02/07/1970	08/09/2005	21/08/2013	7 years and 11 months and 14 days 2 levels of jurisdiction	Constitutional Court Už-8527/2013 19 November 2015 Inadmissible	2,100	500

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

No.	Application no. Date of introduction	Applicant's name Date of birth	Start of proceedings	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
5.	30315/16 18/05/2016	Goran Jolić 12/02/1971	28/08/2006	08/05/2013	6 years and 8 months and 11 days 2 levels of jurisdiction	Constitutional Court Už-5153/2013 19 November 2015 Inadmissible	1,800	500
6.	31885/16 26/05/2016	Siniša Savković 15/04/1966	03/10/2005	20/02/2013	7 years and 4 months and 18 days 2 levels of jurisdiction	Constitutional Court Už-2984/2013 26 November 2015 Inadmissible	1,800	500
7.	60667/16 14/10/2016	Dragan Savić 24/11/1970	08/09/2005	03/06/2016	10 years and 8 months and 27 days 3 levels of jurisdiction	Constitutional Court Už-2394/2014 14 April 2016 Inadmissible	3,000	500
8.	60792/16 14/10/2016	Ljubiša Đorđević 20/04/1976	08/09/2005	03/06/2016	10 years and 8 months and 27 days 3 levels of jurisdiction	Constitutional Court Už-2394/2014 14 April 2016 Inadmissible	3,000	500
9.	7795/17 16/01/2017	Vene Aleksov 29/10/1967	08/09/2005	23/10/2013	8 years and 1 month and 16 day 2 levels of jurisdiction	Constitutional Court Už-2917/2014 15 September 2016 Inadmissible	2,100	500