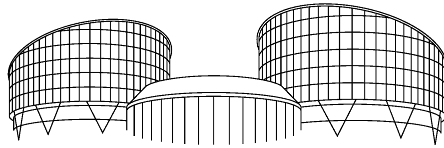

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

DECISION

Application no. 12219/13
Ljubica MRŠO
against Serbia

The European Court of Human Rights (Fourth Section), sitting on 7 February 2023 as a Committee composed of:
Tim Eicke, President,
Branko Lubarda,
Ana Maria Guerra Martins, *judges*,
and Branimir Pleše, Acting Deputy Section Registrar,
Having regard to:
the application (no. 12219/13) against Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 15 January 2013 by a Serbian national, Ms Ljubica Mršo (“the applicant”), who was born in 1954 and lives in Novi Sad, and who was represented before the Court by Mr P. Bogovac, a lawyer practising in Novi Sad;
the decision to give notice of the application to the Serbian Government (“the Government”),
the parties’ observations;
Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns civil proceedings in which the applicant challenged her dismissal by her employer.
2. On 25 February 2009 the first-instance court ruled in favour of the applicant but on 15 June 2010 the appellate court reversed that judgment and dismissed the applicant’s claim as unfounded.
3. The applicant lodged two appeals on points of law against the appellate court’s judgment: one through lawyer N.T. and the other through lawyer M.K.

4. On 1 June 2011 the Supreme Court of Cassation dismissed the applicant's appeals on points of law as unfounded. In the introductory part of its judgment, the Supreme Court of Cassation stated that the applicant had been represented by lawyer N.T., not mentioning lawyer M.K.

5. The judgment of the Supreme Court of Cassation was served on both N.T. and M.K. As evidenced by the certificates of receipt, N.T. received the judgment on 30 August 2011 and M.K. received it on 12 September 2011.

6. The applicant hired a third lawyer, P.B., to lodge a constitutional appeal against the judgment of the Supreme Court of Cassation.

7. P.B. lodged the constitutional appeal on behalf of the applicant on 11 October 2011. In that appeal the applicant stated that she had received the judgment of the Supreme Court of Cassation on 12 September 2011, without providing any further explanation in that regard. She included a copy of the judgment of the Supreme Court of Cassation with her constitutional appeal but did not adduce any evidence regarding the date(s) of its receipt.

8. On 26 June 2012 the Constitutional Court dismissed the applicant's constitutional appeal as being out of time. It found that the judgment of the Supreme Court of Cassation had been served on the applicant's representative on 30 August 2011, and that the constitutional appeal had therefore been lodged outside the thirty-day statutory time-limit for lodging that remedy. The Constitutional Court's decision was served on the applicant on 23 July 2012.

9. The applicant complained, under Article 6 § 1 of the Convention, that the Constitutional Court had wrongly declared her constitutional complaint inadmissible as having been lodged outside the statutory time-limit.

10. She also complained, under Article 6 § 1 of the Convention and Article 1 of Protocol No.1, about the length and overall fairness, as well as the outcome, of the domestic civil proceedings.

THE COURT'S ASSESSMENT

A. Alleged violation of Article 6 § 1 of the Convention on account of lack of access to a court

11. The Court considers that it is not necessary to examine the various objections as to admissibility raised by the Government, as this part of the application is in any event inadmissible for the reasons set out below.

12. The general principles emerging from the Court's case-law concerning the right of access to a court have been summarised in *Zubac v. Croatia* ([GC], no. 40160/12, §§ 76-99, 5 April 2018).

13. The applicant argued that the Constitutional Court should have calculated the thirty-day statutory time-limit for lodging a constitutional appeal from 12 September 2011, when the judgment of the Supreme Court of Cassation had been served on her lawyer M.K. She relied on the legal opinion

of the Supreme Court of Cassation of 7 February 2011 concerning the calculation of the time-limit for lodging an appeal or other legal remedy when a party had appointed several lawyers to represent him or her. According to that legal opinion, if the competent court had not used the power conferred on it by Article 132(2) of the Serbian Civil Procedure Act to serve a decision on only one of the lawyers but had instead served the decision on all of them, the time-limit for lodging an appeal started to run separately from the date on which the decision had been served on each of them.

14. The Government contended that the legal opinion in question applied only to situations where the same lawyers who had been served with a decision had also lodged a remedy against that decision. The applicant, however, had hired a third lawyer to lodge her constitutional appeal against the judgment of the Supreme Court of Cassation, which was an unprecedented situation in domestic practice. The Constitutional Court had therefore rightfully taken the date when she had first been apprised of the judgment of the Supreme Court of Cassation (through the receipt of that judgment by lawyer N.T.) as the relevant date for calculating the statutory time-limit for lodging the constitutional appeal. Alternatively, if it was to be understood that the Constitutional Court had been unaware that the applicant had also been represented by M.K., who had received the judgment of the Supreme Court of Cassation on 12 September 2011, the Government contended that the adverse consequences of that situation had to be borne by the applicant, who had failed to explain the situation in her constitutional appeal.

15. The Court notes that in her constitutional appeal the applicant submitted that 12 September 2011 had been the date of receipt of the judgment of the Supreme Court of Cassation, whereas the Constitutional Court found that she had received it on 30 August 2011 (see paragraphs 7 and 8 above). Although the Constitutional Court did not provide more reasons in its decision making it clear beyond doubt that it was aware that the applicant had been represented by two lawyers before the Supreme Court of Cassation and that the second lawyer had received the judgment of that court on 12 September 2011, the Court cannot ignore the fact that it was the applicant who failed to explain the very particular circumstances of her case in her constitutional appeal (see, *mutatis mutandis*, *Golubović v. Serbia* (dec.), no. 10044/11, § 43 *in fine*, 17 September 2013). Such an explanation was especially necessary having regard to the fact that the Supreme Court of Cassation erroneously stated in its judgment that the applicant had been represented solely by N.T., omitting to mention M.K. (see paragraph 4 above). Indeed, to the Court it seems obvious that, in the circumstances, an explanation concerning her legal representation by M.K. and evidence regarding the date when M.K. had received the judgment of the Supreme Court of Cassation amounted to "other evidence important for decision-making" which the applicant, in accordance with Article 85(2) of

the Serbian Constitutional Court Act, should have included with her constitutional appeal.

16. Consequently, if it is to be presumed that the Constitutional Court decided the case believing that the applicant had been represented solely by N.T., who had received the judgment of the Supreme Court of Cassation on 30 August 2011, the Court considers that the situation was mainly and objectively imputable to the applicant, who failed to explain in her constitutional appeal the circumstances regarding her legal representation and the service of the judgment of the Supreme Court of Cassation on M.K., and that the adverse consequences of that situation should rest on the applicant (see, *mutatis mutandis, Zubac,* cited above, § 121).

17. On the other hand, if it is to be presumed that the Constitutional Court took 30 August 2011 as the relevant date while being fully aware – as a consequence, for instance, of inspecting the entire case file before deciding on the applicant's constitutional appeal – that the applicant's other lawyer had received the judgment of the Supreme Court of Cassation on 12 September 2011, the Court reiterates that it is not for it to settle disputes relating to the interpretation of the domestic law governing access to a court, its role being rather to verify the compatibility with the Convention of the effects of such an interpretation (ibid., § 81). In order to judge the compatibility with the Convention of the manner in which the Constitutional Court calculated the statutory time-limit for lodging the constitutional appeal (starting from 30 August 2011), the Court must attach particular weight to whether the procedure for bringing a constitutional appeal could be regarded as foreseeable from the point of view of the applicant (ibid., § 87). In principle, a consistent domestic judicial practice and its consistent application will satisfy the criterion of foreseeability in regard to a restriction on access to the higher court (ibid., § 88).

18. The Court notes that there do not appear to be any other domestic decisions concerning a situation such as that of the applicant (see paragraph 14 above). The Court cannot, however, disregard that there must come a day when a given legal norm is applied for the first time to a particular set of circumstances (see, *mutatis mutandis, Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, § 115, ECHR 2015, and *C.N. v. Luxembourg*, no. 59649/18, § 46, 12 October 2021). The fact remains that the interpretation in question must appear neither arbitrary nor unforeseeable (see *Kudrevičius and Others*, cited above, § 114).

19. In that connection the Court reiterates that the right of access to a court entails the entitlement to receive adequate notification of judicial decisions, particularly in cases where an appeal might be sought within a specified time-limit (see, for example, *Zavodnik v. Slovenia*, no. 53723/13, § 71, 21 May 2015). The Court notes that Article 84(1) of the Constitutional Court Act provides that a constitutional appeal may be lodged within thirty days from receipt of the individual decision. It cannot thus be said that setting the date

on which the applicant was first served with the judgment of the Supreme Court of Cassation through her lawyer N.T. as the starting date for the calculation of the time-limit laid down in Article 84(1) of the Constitutional Court Act was in the circumstances arbitrary or unforeseeable.

20. The Court also notes that the applicant and her third lawyer had eighteen days to prepare and lodge the constitutional appeal between 12 September 2011, when the applicant's second lawyer, M.K., received the judgment of the Supreme Court of Cassation, and 30 September 2011, when the time-limit calculated from 30 August 2011 expired (see paragraph 5 above). She therefore had sufficient time to comply with that time-limit.

21. The Court lastly notes that the applicant's case was examined at three levels of jurisdiction, namely by the first-instance court, the appellate court and the Supreme Court of Cassation, prior to the proceedings before the Constitutional Court (see paragraphs 2-4 above). She was therefore not deprived of the very essence of her right of access to a court.

22. In view of the foregoing, it cannot be said that the manner in which the time-limit for lodging a constitutional appeal was calculated in the applicant's case prevented her from using that remedy (contrast *Zvolský and Zvolská v. the Czech Republic*, no. 46129/99, § 51, ECHR 2002-IX).

23. It follows that the applicant's complaint concerning lack of access to a court is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Other alleged violations of the Convention

24. The applicant also raised other complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 thereto (see paragraph 10 above).

25. The Court notes that by lodging an inadmissible constitutional appeal the applicant failed to properly exhaust domestic remedies as regards these complaints concerning the proceedings before the first-instance court, the appellate court and the Supreme Court of Cassation (see, for example, *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 72 and 84, 25 March 2014).

26. It follows that the remaining complaints are inadmissible under Article 35 § 1 of the Convention for non-exhaustion of domestic remedies and must be rejected pursuant to Article 35 § 4 thereof.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 9 March 2023.

Branimir Pleše Acting Deputy Registrar	Tim Eicke President