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

FOURTH SECTION

DECISION

Application no. 4504/17
Božidar STEVANOVIĆ
against Serbia

The European Court of Human Rights (Fourth Section), sitting on 27 June 2023 as a Committee composed of:

Faris Vehabović, *President*,
Iulia Antoanella Motoc,
Branko Lubarda, *judges*,
and Branimir Pleše, *Acting Deputy Section Registrar*,

Having regard to:

the application (no. 4504/17) 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 December 2016 by a Serbian national, Mr Božidar Stevanović, who was born in 1928 and lives in Vranje ("the applicant") and was represented by Mr A. Kačenkov, a lawyer practising in the same town;

Having regard to the information submitted by the respondent Government at the request of the Judge Rapporteur pursuant to Rule 49 § 3 (a) of the Rules of the Court;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The applicant's constitutional appeal (*ustavna žalba*) was rejected by the Constitutional Court on 15 September 2016 as having been lodged out of time. According to the applicant, however, this appeal was in fact lodged within the prescribed time-limit of 30 days. In support of his claim, the applicant submitted a postal receipt.

THE COURT'S ASSESSMENT

2. The applicant complained, under Article 6 of the Convention, that he had been denied access to the Constitutional Court for his complaint about the excessive length of a criminal case and the related compensation "to which he had been entitled". The applicant furthermore considered that his constitutional appeal had been erroneously rejected by the Constitutional Court as having been lodged outside the said time-limit.

3. At the outset, the Court reiterates that it has consistently held that "a constitutional appeal should, in principle, be considered as an effective domestic remedy within the meaning of Article 35 § 1 of the Convention in respect of all applications introduced [against Serbia] as of 7 August 2008" (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 84, 25 March 2014).

4. The Court also notes that decisions of the Constitutional Court are not, in principle, subject to appeal under domestic law. However, Article 91 of the Rules of the Constitutional Court (*Poslovnik o radu Ustavnog suda*) of 2008, as interpreted in the said court's Legal Opinion of 5 February 2009 (supplemented on 2 June 2011), and Article 96 of the Rules of the Constitutional Court adopted in 2013, both provide, *inter alia*, for a remedy in situations such as the one faced by the applicant in the present case – i.e. a request for an exceptional re-examination of an already dispatched decision if it transpires that it was based on a manifest error of the Constitutional Court itself that cannot otherwise be rectified.

5. In addition to that, the Constitutional Court's case-law makes it clear that appellants whose constitutionals appeals were mistakenly rejected for being out of time, among others, can obtain adequate redress, that is the re-examination of their case via this particular avenue (see, for example, Už-3122/2012 of 11 July 2018 and Už-3124/2012 of 7 June 2018).

6. In view of the foregoing and regard being had to the general principles concerning the rule of exhaustion of domestic remedies (see *Vučković and Others*, cited above, §§ 69-77), the Court considers that a request for an exceptional re-examination of a decision referred to previously is, in principle, an effective domestic remedy within the meaning of Article 35 § 1 of the Convention in situations such as the one at issue in the present case.

7. Lastly, the applicant has neither used this remedy nor shown that it was for any reason inadequate or ineffective in the particular circumstances of the case. The Court likewise sees no special circumstances absolving the applicant from the obligation to use it (see, for example, *Vučković and Others*, cited above, § 77, with further references).

8. It follows that the application is inadmissible for non-exhaustion of domestic remedies and must as such be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 7 September 2023.

Branimir Pleše Acting Deputy Registrar	Faris Vehabović President