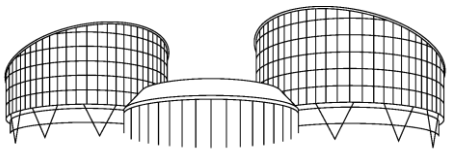

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF VILOTIJEVIĆ v. SERBIA

(Application no. 26042/06)

JUDGMENT

STRASBOURG

10 December 2013

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

In the case of Vilotijević v. Serbia,

The European Court of Human Rights (Second Section), sitting as a committee composed of:

Paulo Pinto de Albuquerque, *President,*
Dragoljub Popović,
Helen Keller, *judges,*
and Seçkin Erel, *Acting Deputy Section Registrar,*

Having deliberated in private on 19 November 2013,

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

PROCEDURE

1. The case originated in an application (no. 26042/06) 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 Dragan Vilotijević ("the applicant"), on 5 June 2006.

2. The Serbian Government ("the Government") were represented by their Agent, Mr S. Carić.

3. On 6 September 2011 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1955 and lives in Valjevo.

A. Background to the case

5. The applicant worked as a truck-driver in a company ("E") until a work-related accident in July 1990.

6. On 27 February 1991 the employer declared him redundant. On 9 July 1992 the Municipal Court (*Opštinski sud*) in Valjevo quashed this decision and remanded the case for reconsideration. This judgment became final on 9 September 1992.

7. On 12 July 1993 and 30 January 1996 the applicant was reassigned to a position of a tractor-driver and a dumper-driver, respectively.

8. On 9 May 1996 the applicant was dismissed.

9. On 29 September 1999 the applicant was reinstated following a court order in that respect (see paragraph 15 below). On 2 March 2000 he was dismissed again.

10. The applicant had instituted a number of civil and criminal proceedings in respect to the above:

B. The civil proceedings

1. The first set of civil proceedings

11. On 6 July 1990 the applicant instituted civil proceedings before the Labour Court (*Sud udruženog rada*) in Šabac against his employer seeking payment of salary arrears due from 6 July 1987 to 1 March 1993. On 9 September 1993 the Supreme Court (*Vrhovni sud*) of Serbia delegated the Municipal Court in Šabac to trial the case.

12. Following remittals in 1995 and 2001, on 28 February 2006 the Municipal Court rejected the applicant's claim. On 28 April 2006 the District Court (*Okružni sud*) in Šabac upheld the judgment of 28 February 2006.

13. On 8 March 2007 the Supreme Court declared the applicant's appeal on points of law inadmissible.

2. The second set of civil proceedings

14. On 13 September 1993 the applicant instituted labour dispute before the Municipal Court in Valjevo seeking revocation of the employer's decisions of 12 July 1993, 30 January 1996 and 9 May 1996 (see paragraphs 7 and 8 above), reinstatement, as well as compensation of due salary arrears, pension benefits and damages. On 18 February 1997 the Supreme Court delegated the Municipal Court in Čačak to trial the case.

15. On 23 February 1999 the Municipal Court, in a partial judgment (*delimična presuda*), ordered the applicant's reinstatement and dismissed his request for revocation of the employer's decision of 12 July 1993 and his claim for the payment of pension benefits. On 26 August 1999 the District Court in Čačak upheld the judgment of 23 February 1999.

16. On 9 May 2000 the Municipal Court suspended the proceedings until a final resolution of the labour dispute instituted by the applicant in 1999 (see Part B.3 below). On 12 July 2000 the District Court upheld the decision of 9 May 2000.

17. On 23 November 2009 the applicant requested the proceedings to be resumed.

18. On 5 March 2010, the Court of First Instance (*Osnovni sud*) in Čačak, now acting as the competent court, rejected the applicant's request pending the outcome of his request for reopening of the case instituted by him in 1999 (see paragraph 28 below). On 17 June 2010 the High Court

(*Viši sud*) in Čačak quashed this decision and reversed the case for reconsideration.

19. On 21 December 2012 the Court of First Instance rejected the applicant's claim for compensation of due salary arrears. On 10 April 2013 the High Court quashed this judgment and ordered a retrial.

20. According to the information in the case-file, the proceedings are still pending before the Court of First Instance.

3. The third set of civil proceedings

21. On 6 October 1999 the applicant filed with the Municipal Court in Valjevo a lawsuit seeking revocation of the employer's decision of 29 September 1999 (see paragraph 9 above).

22. On 8 March 2000 the applicant filed with the same court a lawsuit seeking revocation of the employer's decision of 2 March 2000 (see paragraph 9 above).

23. On 21 June 2000 the Municipal Court joined the two sets of proceedings, ruled partly in favour of the applicant and quashed the employer's decision of 29 September 1999.

24. On 16 February 2001 the District Court in Valjevo upheld the judgment of 21 June 2000 in its part favourable to the applicant, quashed it in the remaining part and ordered a retrial in that respect.

25. Following remittals in 2004, 2005 and 2006, on 21 June 2006 the Municipal Court rejected the applicant's claim for revocation of the employer's decisions of 9 May 1996 and 2 March 2000, reinstatement and payment of due salary arrears and other employment related benefits.

26. On 22 December 2006 the District Court rejected the applicant's appeal.

27. On 19 April 2007 and 15 May 2008 the Supreme Court declared the applicant's appeal on points of law inadmissible.

28. On 2 November 2009 the applicant filed a request for reopening of the case. On 14 May 2010 the Court of First Instance in Valjevo rejected this request. On 23 December 2010 the High Court in Valjevo upheld the decision of 14 May 2010.

29. On 14 January 2011 the applicant submitted new request for reopening of the case. It would appear that this request is still pending before the Court of First Instance in Valjevo.

4. The fourth set of civil proceedings

30. On 26 October 2004 the applicant instituted civil proceedings before the Municipal Court in Valjevo against his former employer for the payment of employment related benefits due from 1 September 1985 to the date of judgment.

31. On 10 September 2007 Municipal Court rejected the applicant's claim. On 31 January 2009 the District Court in Valjevo upheld the judgment of 10 September 2007.

32. On 12 June 2008 the Supreme Court declared the applicant's appeal on points of law inadmissible.

5. The fifth set of civil proceedings

33. On 5 February 2007 the applicant instituted civil proceedings before the Municipal Court in Valjevo against his former employer seeking payment of salary arrears due in the period from 1 April 1994 to the date of judgment.

34. Following a partial reversal in 2009, on 26 January 2011 the Court of First Instance in Valjevo, now acting as the competent court, rejected the applicant's claim.

35. On 7 March 2012 the Appeals Court upheld the judgment of 26 January 2011.

6. The sixth set of civil proceedings

36. On 5 March 2010 the applicant instituted civil proceedings before the High Court in Valjevo seeking compensation of damages from the respondent State for alleged judicial malfeasance in several civil and enforcement proceedings including, inter alia, those described in Parts B.1, 2, 3 and 5 above.

37. On 18 September 2012 the High Court ruled partly in favour of the applicant awarding him 200,000 Serbian dinars (1,725 euros[1]) on account of non-pecuniary damages.

38. On 18 January 2013 the Appeals Court quashed the High Court judgment and ordered a retrial.

39. According to the information in the case-file, the proceedings are still pending before the High Court.

C. The criminal proceedings

40. On 30 April 2008 the District Court in Valjevo dismissed the applicant's request for criminal investigation filed on 4 June 2007 against private persons for alleged criminal offence of perjury and forgery of documents related to the applicant's employment.

41. By 5 May 2008 the domestic courts dismissed the applicant's requests for criminal investigation and indictments against several judges sitting in his civil cases.

[1] The amounts in euros are given for reference only, based on an approximate average value at the relevant time.

42. On 5 November 2008 the District Public Prosecutor (*Okružni javni tužilac*) in Užice dismissed the applicant's criminal complaint against several judges and prosecutors.

D. The Constitutional Court proceedings

43. On 20 April 2012 the applicant filed a constitutional appeal with the Constitutional Court (*Ustavni sud*) of the Republic of Serbia.

44. On 25 February 2013 the Constitutional Court declared the constitutional appeal inadmissible since the applicant failed to provide documents and information expressly requested by it.

THE LAW

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

45. The applicant complained that the length of the second set of civil 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..."

A. Admissibility

46. The Government submitted that the complaint was premature since the domestic courts were yet to decide on the applicant's claim for compensation of damages against the respondent State, as well as his constitutional appeal. They further contested the applicant's victim status in light of the Court of First Instance judgment of 8 September 2012. Finally, they asserted that the applicant is abusing his right to petition by withholding information from the Court that he had lodged a civil claim for compensation of damages against the respondent State and by filing manifestly ill-founded complaints with the Court.

47. The Court again recalls that a separate civil claim for damages caused by procedural delay is not an effective remedy (see, by analogy, *V.A.M. v. Serbia*, no. 39177/05, §§ 85-88, 13 March 2007) and that a constitutional appeal should, in principle, be considered as an effective domestic remedy, within the meaning of Article 35 § 1 of the Convention, only in respect of applications introduced against Serbia as of 7 August 2008 (see *Vinčić and Others v. Serbia*, nos. 44698/06 et seq., § 51, 1 December 2009). It sees no reason to depart from those findings in the

present case and concludes that the Government's objection in this respect must be rejected.

48. The Court notes that on 18 January 2013 the Appeals Court overturned the Court of First Instance judgment of 8 September 2012 and that on 25 February 2013 the Constitutional Court declared the applicant's constitutional appeal inadmissible. Consequently, it is clear that the applicant has yet to obtain a "final acknowledgment" of the violations allegedly suffered or be provided with any other meaningful redress (see *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI). The Court therefore, finds that the applicant has retained his victim status and dismisses the Government's objection in this regard.

49. The Court observes that the applicant, in his letter received on 27 July 2011, did inform the Registry of the Court about the civil suit he instituted for compensation of damages against the respondent State. In view of this, and given the general nature of the Government's argument, the Court finds no grounds whatsoever for concluding that the applicant's application to the Court is an abuse of the right of individual application.

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

B. Merits

51. The Government argued that there had been no major delays attributable to the State and that the length could be explained by the conduct of the applicant, as well as by the duration of the third set of civil proceedings. They also submitted that the background of the impugned proceedings did not require the diligence called for in employment disputes concerning dismissal.

52. 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).

53. The Court recalls that special diligence is necessary in employment disputes (*Ruotolo v. Italy*, 27 February 1992, § 17, Series A no. 230-D) and that this requirement is reinforced additionally in respect of States where the domestic law provides that such cases must be resolved with particular urgency (see, among other authorities, *Stevanović v. Serbia*, no. 26642/05, §§ 53 and 55, 9 October 2007; and *Simić v. Serbia*, no. 29908/05, § 19, 24 November 2009). Finally, repeated re-examination of a single case following remittal may in itself disclose a serious deficiency in the

respondent State's judicial system (see, for example, *Pavlyulynets v. Ukraine*, no. 70767/01, § 51, 6 September 2005).

54. Turning to the facts of the present case, the Court observes that the impugned civil proceedings, which began on 13 September 1993, are still pending before the Court of First Instance, lasting so far over twenty years, of which nine years and six months within this Court's competence *ratione temporis* (Serbia having ratified the Convention on 3 March 2004), in two levels of jurisdiction.

55. The Court also observes that the impugned civil proceedings were suspended between 12 July 2000 and 17 June 2010, pending the outcome of the third set of civil proceedings. However, since all of these proceedings concern the same underlying issue (see, *Cravcenco v. Moldova*, no. 13012/02, § 49, 15 January 2008), namely, the applicant's reinstatement and compensation of damages in that respect, and are inextricably linked to each other, the Court shall also examine the conduct of the third set of civil proceedings between 3 March 2004 and 15 May 2008.

56. 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, for example, *Stevanović*, cited above; *Mikuljanac and Others v. Serbia*, no. 41513/05, 9 October 2007; *Stanković v. Serbia*, no. 29907/05, 16 December 2008; and *Simić*, cited above).

57. 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.

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

II. OTHER COMPLAINTS

59. The applicant also complained about the length, the fairness and/or the outcome of the impugned and other civil proceedings he had instituted against his employer and the respondent State, the outcome of his requests for reopening of the case, as well as about a lack of impartiality on the part of the domestic courts in those proceedings. In addition, he complained about the failure of the respondent party to proceed according to numerous criminal complaints he lodged against private persons, judges and other officers of the court. Finally, he complained about being unlawfully detained for medical assessment.

60. Having carefully considered the applicant's submissions in the light of all the material in its possession, the Court finds that, in so far as the matters complained of are within its competence, they do not disclose any

appearance of a violation of the rights and freedoms set out in the Convention.

61. It follows that this part of the application must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

62. 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."

63. The applicant did not submit a claim for just satisfaction in accordance with the Court's procedure. Accordingly, the Court considers that there is no call to award him any sum on that account.

64. It must, however, be noted that a judgment in which the Court finds a violation of the Convention or of its Protocols imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in its domestic legal order to put an end to the violation found (see *V.A.M*, cited above, § 166, and the authorities citied therein). Having regard to its finding in the instant case and without prejudice to any other measures which may be deemed necessary, the Court considers that the respondent State shall ensure that all necessary steps are taken to allow the trial to be concluded as speedily as possible, taking into account the requirements of the proper administration of justice (see, by analogy, *ibidem*).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the applicant's complaint under Article 6 § 1 of the Convention concerning the excessive length of the second set of civil proceedings admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 10 December 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Seçkin Erel	Paulo Pinto de Albuquerque
Acting Deputy Registrar	President