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

SECOND SECTION

CASE OF ČEH v. SERBIA

(Application no. 9906/04)

JUDGMENT

STRASBOURG

1 July 2008

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Čeh v. Serbia,

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

Françoise Tulkens, *President,*
Antonella Mularoni,
Ireneu Cabral Barreto,
Vladimiro Zagrebelsky,
Dragoljub Popović,
András Sajó,
Nona Tsotsoria, *judges,*
and Sally Dollé, *Section Registrar*,

Having decided to dispense with a hearing in the case and, instead, deliberated in private on 10 June 2008,

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

PROCEDURE

1. The case originated in an application (no. 9906/04) against the State Union of Serbia and Montenegro, lodged with the Court, under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"), by, at that time, a citizen of the State Union of Serbia and Montenegro, Ms Natalija Čeh ("the applicant"), on 30 January 2004.

2. As of 3 June 2006, following the Montenegrin declaration of independence, Serbia remained the sole respondent in the proceedings before the Court.

3. The Government of the State Union of Serbia and Montenegro and, subsequently, the Government of Serbia ("the Government") were represented by their Agent, Mr S. Carić.

4. On 10 November 2006 the Court decided to give notice of the application to the Government. Applying Article 29 § 3 of the Convention, it further decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1949 and lives in Belgrade.

6. The facts of the case, as submitted by the parties, may be summarised as follows.

7. On 16 October 1990 the owner of the flat in which the applicant lived filed a civil action with the First Municipal Court (*Prvi opštinski sud*) in Belgrade, seeking her eviction.

8. In his claim, the plaintiff maintained that the applicant had lost "the status of a protected tenant" (*nosilac stanarskog prava odnosno zakupac stana na neodređeno vreme*), as provided for under the relevant domestic legislation.

9. On 4 April 1994 the First Municipal Court ruled in favour of the applicant.

10. On 20 October 1994 the District Court (*Okružni sud*) in Belgrade quashed this judgment in view of the unlawful composition of the trial chamber at first instance and sent the case back for a retrial.

11. From 16 May 1995 to 28 February 2002, the First Municipal Court ruled in favour of the applicant on two separate occasions but each time its judgments were quashed on appeal by either the District Court or the Supreme Court (*Vrhovni sud*) and were remitted.

12. On 2 September 2002 the First Municipal Court ruled again in favour of the applicant.

13. On 29 April 2003 the District Court quashed this judgment on appeal. It noted, once more, the unlawful composition of the trial chamber at first instance and ordered a retrial before the Municipal Court.

14. On 29 January 2004 the applicant complained to the President of the First Municipal Court, stating that the presiding judge in her case, despite repeatedly ruling in her favour, kept committing procedural errors on the basis of which higher courts always had grounds to order a retrial.

15. On 16 March 2004 the President of the First Municipal Court accepted the applicant's request and assigned another judge to deal with her case.

16. From 20 April 2004 to 6 July 2006, the First Municipal Court scheduled another twelve hearings. Only three of those, on 15 September 2005, 11 May 2006 and 6 July 2006, were held as scheduled, while the others appear to have been adjourned on various grounds. In particular the hearings scheduled for: (i) 20 April 2004 and 6 April 2005 were adjourned because of the presiding judge's need for additional time in order to review the case file; (ii) 27 September 2004 because of the absence of the presiding judge; (iii) 24 November 2004, 28 November 2005 and 24 February 2006 because of several witnesses who had either not been served properly or had failed to appear in court; and (iv) 25 June 2004, 2 February 2005 and 26 May 2005 because of the need to obtain additional written evidence and/or hear additional witnesses.

17. The next hearing in the case was held on 5 September 2006.

18. On 11 September 2006 the First Municipal Court decided that the proceedings should not be joined with a related case filed by the applicant separately.

19. On 17 October 2006 the First Municipal Court ruled again in favour of the applicant. In so doing, it recognised the plaintiff as the owner of the flat in question, but, at the same time, held that the applicant, being a protected tenant, had a right to continue living therein.

20. On an unspecified date the applicant, as well as the plaintiff, appealed against this judgment. The applicant, in particular, maintained that she should have been recognised as the owner of the flat in question.

21. On 30 May 2007 the District Court rejected both appeals and upheld the judgment rendered at first instance.

22. On 9 July 2007 the plaintiff filed an appeal on points of law (*revizija*) with the Supreme Court.

23. On 16 August 2007 the applicant filed a request for the protection of legality (*zahtev za zaštitu zakonitosti*) with the same court.

24. The applicant has been living in the flat at issue throughout the proceedings.

II. RELEVANT DOMESTIC LAW

A. Constitution of the Republic of Serbia 2006 (Ustav Republike Srbije; published in the Official Gazette of the Republic of Serbia – OG RS – no. 98/06)

25. The relevant provisions of the Constitution read as follows:

Article 32 § 1

"Everyone shall have the right to ... [a hearing before a] ... tribunal ... within a reasonable time ... [in the determination] ... of his [or her] rights and obligations ..."

Article 170

"A constitutional appeal may be lodged against individual decisions or actions of State bodies or organisations exercising delegated public powers which violate or deny human or minority rights and freedoms guaranteed by the Constitution, if other legal remedies for their protection have already been exhausted or have not been prescribed."

Article 172 §§ 1, 2 and 3

"The Constitutional Court shall have fifteen judges who shall be elected or appointed for a period of nine years.

Five judges of the Constitutional Court shall be elected by the National Assembly, another five shall be appointed by the President of the Republic, and another five shall be appointed at the general session of the Supreme Court of Cassation ...

The National Assembly shall elect five judges of the Constitutional Court from among ten candidates proposed by the President of the Republic, the President of the Republic shall appoint five judges of the Constitutional Court from among ten candidates proposed by the National Assembly, and the general session of the Supreme Court of Cassation shall appoint five judges from among ten candidates proposed at the general session by the High Judicial Council and the State Prosecutors' Council."

Article 175 § 1

"The Constitutional Court shall adjudicate by the majority of votes cast by all judges of the Constitutional Court."

B. Constitutional Act on the Implementation of the Constitution of the Republic of Serbia (Ustavni zakon za sprovođenje Ustava Republike Srbije; published in OG RS no. 98/06)

26. In accordance with Article 9 § 3 of this Act, the Constitutional Court shall be deemed constituted when two thirds of the total number of judges have been elected or appointed, which had been attained by 24 November 2007.

C. Constitutional Court Act (Zakon o Ustavnom sudu; published in OG RS no. 109/07)

27. The relevant provision of this Act read as follows:

Article 7 § 1

"The decisions of the Constitutional Court shall be final, enforceable and binding."

Article 10 § 1

"The Constitutional Court shall have its Rules of Procedure ... which shall regulate, in greater detail, the organisation ... [and the functioning of the Constitutional Court] ... as well as the proceedings ... [before it] ..."

Article 27 §§ 1 and 2

" ... [T]he Constitutional Court shall have a Registry.

The organisation, the tasks, and the functioning of the Registry shall be regulated, in greater detail, by ... the Constitutional Court."

Article 82 § 1 and 2

"A constitutional appeal may be lodged against an individual decision or an action of a State body or an organisation exercising delegated public powers which violates or denies human or minority rights and freedoms guaranteed by the Constitution, if other legal remedies have already been exhausted or have not been prescribed or where the right to their judicial protection has been excluded by law.

A constitutional appeal may be lodged even if all available remedies have not been exhausted in the event of a breach of an applicant's right to a trial within a reasonable time."

Article 83 § 1

"A constitutional appeal may be lodged by any individual who believes that any of his or her human or minority rights or freedoms guaranteed by the Constitution has been violated or denied by an individual decision or an action of a State body or an organisation exercising delegated public powers."

Article 84 § 1

"A constitutional appeal may be lodged within thirty days of receipt of the individual decision or the date of commission of the actions ... [in question] ..."

Article 89 § 2 and 3

"When the Constitutional Court finds that an ... individual decision or action has violated or denied a human or minority right or a freedom guaranteed by the Constitution, it shall annul the ... decision in question or ban the continuation of such action or order the implementation of other specific measures as well as the removal of all adverse consequences within a specified period of time.

The decision of the Constitutional Court accepting a constitutional appeal shall constitute a legal basis for requesting compensation or the removal of other adverse consequences before a competent body, in accordance with the law."

Article 90

"... [An applicant who has obtained a Constitutional Court decision in his or her favour] .., may lodge a compensation claim with the Commission for Compensation in order to reach an agreement in respect of the amount ... [of compensation to be awarded] ...

If the Commission for Compensation does not rule favourably in respect of a compensation claim or fails to issue a decision within thirty days from the date of its submission, the applicant may file a civil claim for damages before the competent court. If only partial agreement has been achieved, a civil claim may be filed in respect of the remainder of the amount sought.

The composition and operation of the Commission for Compensation shall be regulated by the Minister of Justice."

Article 116

"The Constitutional Court shall, within ninety days as of the date of entry into force of this Act, adopt its Rules of Procedure and ... [further regulate the organisation and functioning of its Registry] ..."

The Minister of Justice shall, within ninety days as of the date of entry into force of this Act ... [regulate the composition and the operation of the Commission for Compensation] ..."

D. Rules of Procedure adopted by the Constitutional Court (Poslovnik o radu Ustavnog suda; published in OG RS no. 24/08)

28. Articles 72 and 73 provide additional details as regards the processing of the appeals lodged with the Constitutional Court.

E. Entry into force of the above legislation

29. The new Constitution of the Republic of Serbia, as well as the Constitutional Act on its implementation, entered into force in November 2006.

30. The Constitutional Court Act entered into force in December 2007.

31. The Rules of Procedure of the Constitutional Court entered into force in March 2008.

F. Civil Procedure Act 2004 (Zakon o parničnom postupku; published in OG RS no. 125/04)

32. Articles 181 and 182, taken together, provide, *inter alia*, that the court shall award compensation for the damage suffered by a party to an ongoing civil suit if such damage was caused by any procedural abuse (*zloupotreba procesnih ovlašćenja*) committed by other natural and/or legal persons involved in the proceedings.

III. RELEVANT INTERNATIONAL JURISPRUDENCE

33. At page 34 of the judgment in the *Mavrommatis Palestine Concessions* case (*Greece v. UK, 1924, Series A – No. 2*), the Permanent Court of International Justice, *inter alia*, held as follows:

"... [I]t must also be considered whether the validity of the institution of proceedings can be disputed on the ground that the application was filed before Protocol XII had

become applicable. This is not the case. Even assuming that before that time the Court had no jurisdiction because the international obligation referred to in Article II was not yet effective, it would always have been possible for the applicant to re-submit his application in the same terms after the coming into force of the Treaty of Lausanne, and in that case, the argument in question could not have been advanced ... [In any event, even if] ... the application were premature because the Treaty of Lausanne had not yet been ratified, this circumstance would now be covered by the subsequent deposit of the necessary ratifications ..."

THE LAW

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

34. The applicant relied on Articles 1, 3, 6, 8, 13, 14 and 17 of the Convention. In substance, however, she complained about the length, as well as the overall fairness and impartiality, of the eviction proceedings in question.

35. The Court considers that these complaints fall to be examined under Article 6 § 1 of the Convention only, which, in its relevant part reads as follows:

"In the determination of his [or her] civil rights and obligations ... everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

A. As regards the length of the eviction proceedings

1. Admissibility

(a) Compatibility *ratione personae*

36. The Government noted that even though Serbia ratified the Convention on 3 March 2004 the applicant had lodged her application with the Court on 30 January 2004, more than a month earlier. The application as a whole was thus incompatible with the provisions of the Convention *ratione personae*.

37. The applicant disagreed.

38. The Court notes that the applicant's complaints made initially, that is before the respondent State's ratification of the Convention, were repeatedly reaffirmed thereafter and, further, that the impugned domestic proceedings are themselves still pending.

39. The Government's objection must, therefore, be dismissed (see paragraph 33 above; see also, although in a somewhat different context, *Cenbauer v. Croatia*, no. 73786/01, ECHR 2006).

(b) Exhaustion of domestic remedies

40. The Government maintained that the applicant had not exhausted all effective domestic remedies. In particular, she had failed: (i) to bring a separate civil suit under Articles 172 and 200 of the Obligations Act, Article 25 of the Constitution 1990, and Article 6 § 1 of the Convention; (ii) to lodge a criminal complaint under Articles 242, 243 and 245 of the Criminal Code 1977; (iii) to file a compensation claim under Article 182 of the Civil Procedure Act; and (iv) to lodge an appeal with the "new" Constitutional Court;

41. The applicant argued that none of the remedies referred to could be deemed effective.

42. As regards the Government's submissions under (i) and (ii), the Court recalls that it has already held that the remedies in question were ineffective within the meaning of Article 35 § 1 of the Convention (see *V.A.M. v. Serbia*, no. 39177/05, § 86, 13 March 2007). It sees no reason to depart from this finding in the present case.

43. Concerning the Government's submissions under (iii), the Court notes that Article 182 of the Civil Procedure Act relates to any procedural abuse committed by the parties themselves, or other natural or legal persons involved in the proceedings, rather than the domestic court's own conduct. Since the Government have failed to provide any evidence to the contrary, Article 182 must likewise be deemed ineffective.

44. Finally, as regards the Government's submissions under (iii), the Court reiterates that the issue of whether domestic remedies have been exhausted is normally determined by reference to the date when the application was lodged with the Court (see *Baumann v. France*, no. 33592/96, § 47, ECHR 2001-V (extracts)). In the present case, the application was filed on 30 January 2004. By 24 November 2007 two thirds of the Constitutional Court's new judges were elected or appointed (see paragraph 26 above). Accordingly, and irrespective of the said court's effectiveness within the meaning of Article 35 § 1, the applicant could not have been expected to file a constitutional appeal almost four years after the submission of her application to the Court. Therefore the Court concludes that in the present case and indeed as regards, at the very least, all applications lodged before 24 November 2007, there are no special circumstances which would justify a departure from the general rule of exhaustion of domestic remedies (see, *mutatis mutandis*, *Pikić v. Croatia*, no. 16552/02, §§ 30-33, 18 January 2005).

45. It follows that the Government's objection must be dismissed in its entirety.

(c) Conclusion

46. The Court considers that the applicant's complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and finds no other ground to declare it inadmissible. The complaint must therefore be declared admissible.

2. Merits

(a) Arguments of the parties

47. The Government noted, in the first place, that the proceedings in question have been within the Court's competence *ratione temporis* as of 3 March 2004 only.

48. Secondly, they pointed out that the domestic courts have been sufficiently active thereafter.

49. Thirdly, the Government maintained that the applicant had contributed to the delay complained of and observed, in this respect, that she had filed an appeal against the first instance judgment even though it had been rendered in her favour.

50. Fourthly, the Government maintained that the case was complex and that the applicant had attempted to make it even more complex by asserting her perceived property rights throughout the eviction proceedings, notwithstanding the fact that this was clearly a separate issue.

51. Lastly, the Government concluded that, for the above reasons, there has been no violation of the reasonable time requirement contained in Article 6 § 1 of the Convention.

52. The applicant reaffirmed her complaint.

(b) Relevant principles

53. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and having regard to the criteria laid down in its case-law, in particular the complexity of the case, the conduct of the parties and of the relevant authorities, as well as the importance of what is at stake for the applicant (see, among other authorities, *Stevanović v. Serbia*, no. 26642/05, § 53, 9 October 2007).

54. It is further noted that even where the nature of the domestic case is not, as such, complex, a party to the proceedings may, through his or her own actions, render its examination complex (see, *mutatis mutandis*, *Stoidis v. Greece*, no. 46407/99, § 18, 17 May 2001).

55. Finally, the Court observes that the repeated re-examination of a single case following remittal may, in and of itself, disclose a serious deficiency in the respondent State's judicial system (see *Pavlyulynets v. Ukraine*, no. 70767/01, § 51, 6 September 2005).

(c) The Court's assessment

56. The Court observes that the proceedings in question are apparently still pending at third instance (paragraph 22 above). Since the respondent State ratified the Convention on 3 March 2004, they have thus been within the Court's competence *ratione temporis* for a period of more than four years and three months, as of the date of the adoption of the present judgment.

57. The Court also recalls that, in order to determine the reasonableness of the delay at issue, regard must be had to the state of the case on the date of ratification (see, *mutatis mutandis*, *Styranowski v. Poland*, judgment of 30 October 1998, *Reports of Judgments and Decisions* 1998-VIII) and notes that on 3 March 2004 it had already been pending for more than thirteen years.

58. In view of the criteria laid down in its jurisprudence and the relevant facts of the present case, including the applicant's conduct, the Court is of the opinion that the overall length of the proceedings complained of has failed to satisfy the reasonable time requirement.

There has, accordingly, been a violation of Article 6 § 1 of the Convention.

B. As regards the overall fairness of the eviction proceedings and the impartiality of the domestic courts

59. Given that the proceedings at issue are apparently still pending, the Court finds that the applicant's complaints of unfairness and partiality are premature and, as such, inadmissible for non-exhaustion of domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

60. 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."

A. Damage

61. The applicant claimed 49,000 euros (EUR) in respect of pecuniary damage and EUR 2,000,000 in respect of non-pecuniary damage.

62. The Government contested these claims.

63. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

However, deciding on an equitable basis, it awards the applicant EUR 2,400 as regards the non-pecuniary damage suffered.

B. Costs and expenses

64. The applicant also claimed EUR 15,000 for the costs and expenses incurred before the domestic courts.

65. The Government contested the claim.

66. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to their quantum.

67. In the present case, regard being had to the information in its possession, the Court rejects the applicant's claim for the costs and expenses incurred domestically, given that the impugned proceedings would appear to be still pending and that the costs and expenses in question could thus yet be recovered therein.

C. Default interest

68. The Court considers it appropriate that the default interest 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. *Declares* the complaint under Article 6 § 1 of the Convention, as regards the length of the eviction suit, admissible and the remainder of the application inadmissible;

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

3. *Holds*

   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, EUR 2,400 (two thousand four hundred euros) in respect of the non-pecuniary damage suffered, plus any tax that may be chargeable, to be converted into the national currency of the respondent State at the rate applicable on 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;
(c) that the respondent State shall ensure that the proceedings at issue are concluded as speedily as possible, taking into account the requirements of the proper administration of justice;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 1 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President