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

SECOND SECTION

CASE OF JOVIĆEVIĆ v. SERBIA

(Application no. 2637/05)

JUDGMENT

STRASBOURG

27 November 2007

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 Jovićević v. Serbia,

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

Mrs F. TULKENS, *President,*
Mr A.B. BAKA,
Mr R. TÜRMEN,
Mr V. ZAGREBELSKY,
Mrs A. MULARONI,
Mrs D. JOČIENĖ,
Mr D. POPOVIĆ, *judges,*

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 6 November 2007,

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

PROCEDURE

1. The case originated in an application (no. 2637/05) 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 Tomislav Jovićević ("the applicant"), on 25 December 2004.

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

3. On 17 October 2006 the Court decided to give notice of the application to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1935 and lives in Beograd.

5. On 16 July 2001 the applicant, along with fourteen other individuals, instituted civil proceedings against his former employer seeking payment of certain sums of money.

6. On 13 August 2003 the Beograd Fourth Municipal Court declared the action inadmissible because the plaintiffs' lawyer had failed to submit a full list of plaintiffs and their addresses, a specification of their claims and a power of attorney.

7. On appeal, on 28 April 2004 the Beograd District Court quashed the first-instance decision and remitted the case. It found that the plaintiffs' lawyer had supplied the requested documents and that the case was suitable for examination on its merits.

8. On 16 November 2004 the applicant filed a complaint with the Supreme Court concerning the length of the proceedings. The Supreme Court forwarded that complaint to the president of the Beograd Fourth Municipal Court, who, having reviewed the case file, informed the applicant that the next hearing in his case was scheduled for 22 December 2004.

9. At the hearing held on that date, the court decided to split the claims made by the various plaintiffs into separate proceedings and another judge was appointed to hear the applicant's case. The newly appointed judge ordered the joinder of the applicant's case to the initial case file, but was unable to obtain that file until 11 June 2005.

10. The court apparently held hearings on 19 January, 11 April, 6 June, 3 July and 23 October 2006.

11. On 5 April 2007 the first-instance court gave judgment in the case and, according to the information provided by the parties to date, the proceedings are currently pending before the second-instance court following the applicant's appeal.

II. RELEVANT DOMESTIC LAW

A. Relevant provisions of the Judges Act and the Obligations Act

12. The relevant provisions of this legislation are set out in the *V.A.M. v. Serbia* judgment (no. 39177/05, §§ 70-72, 13 March 2007).

B. Criminal Code 2005 (Krivični zakonik; published in OG RS nos. 85/05, 88/05 and 107/05)

13. Sections 359, 360 and 361 of this Code define abuse of office (*zloupotreba službenog položaja*), judicial malfeasance (*kršenje zakona od strane sudije*) and official malfeasance (*nesavestan rad u službi*) as separate criminal offences.

C. Relevant constitutional provisions

14. Article 25 of the Serbian Constitution (*Ustav Republike Srbije*), published in the Official Gazette of the Socialist Republic of Serbia (OG SRS - no. 1/90), provided as follows:

> "Everyone shall be entitled to compensation for any pecuniary and non-pecuniary damages suffered due to the unlawful or improper conduct of a State official, a State body or a public authority, in accordance with the law.
>
> Such damages shall be met by the Republic of Serbia or the public authority [in question]."

15. This Constitution was repealed on 8 November 2006, which is when the "new" Constitution (published in OG RS no. 98/06) entered into force.

16. The substance of Article 35 § 2 of the new Constitution corresponds, in its relevant part, to the above-cited text of the previous Article 25.

THE LAW

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

17. The applicant complained that the length of the 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

18. The Government submitted that the applicant had not exhausted all effective domestic remedies. In particular, he had failed to complain about the delay in question to the president of the competent municipal court. It is true that the applicant addressed his length complaint to the Supreme Court; however, in this way he prolonged the time necessary for replying to his complaint. In the Government's view, the applicant eventually obtained positive results and should have used these aforementioned means to expedite the proceedings more often. Further, the applicant had not brought a separate civil suit under sections 199 and 200 of the Obligations Act and Article 25 of the Constitution (see paragraphs 12 and 14 above); nor had he filed a criminal complaint under sections 359, 360 or 361 of the Criminal Code (see paragraph 13 above).

19. The applicant contested the effectiveness of these remedies.

20. The Court recalls that it had already held that the remedies put forward by the Government could not be deemed effective within the meaning of Article 35 § 1 of the Convention (see, *mutatis mutandis*, *V.A.M. v. Serbia*, cited above, §§ 85-88 and 119, 13 March 2007, and *EVT Company v. Serbia*, no. 3102/05, §§ 39 and 41, 21 June 2007). It sees no

reason to depart from those findings in the present case and concludes, therefore, that the Government's objection must be rejected.

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

B. Merits

1. Arguments of the parties

22. The Government submitted that the case was factually and legally complex and that the length of the proceedings was largely attributable to the applicant's lawyer, who had failed to supply the court with all the necessary information (see paragraph 6). As to the conduct of the domestic authorities, the Government pointed out that the first-instance court had split the claims of the many plaintiffs into separate proceedings for reasons of efficiency and that, since then, it has scheduled regular hearings in the case.

23. The applicant contested these arguments, claiming that his case has been pending for an unreasonably long time.

2. Period to be taken into account

24. The Court notes that the proceedings started on 16 July 2001 when the applicant filed his civil action. According to the information available in the case file, they were still pending on the date of adoption of the present judgment. Consequently, they have lasted over six years and four months before two levels of jurisdiction.

25. However, the period falling within the Court's jurisdiction began on 3 March 2004, when the Convention entered into force in respect of Serbia, and has not yet ended. It has thus lasted over three years and eight months before two court instances by the date of adoption of the present judgment.

26. Nevertheless, in order to determine the reasonableness of the length of time in question, regard may also be had to the state of the case on 3 March 2004 (see, among other authorities, *Styranowski v. Poland*, judgment of 30 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3376, § 46). By that date, the case had already been pending two years and eight months.

3. The Court's assessment

27. 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).

28. 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 *Frydlender*, cited above).

29. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or convincing 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 the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

30. The applicant further complained of the fact that, in Serbia, there was no court to which application could be made to complain of the excessive length of proceedings. He relied on Article 13 of the Convention.

31. The Government contested that argument.

A. Admissibility

32. The Court notes that this complaint is closely linked to that examined above and must, therefore, likewise be declared admissible.

B. Merits

33. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI). It notes that the objections and arguments put forward by the Government have been rejected in earlier cases (see *V.A.M. v. Serbia*, no. 39177/05, § 155, 13 March 2007) and sees no reason to reach a different conclusion in the present case.

34. Accordingly, the Court considers that there has been a violation of Article 13 of the Convention on account of the lack of a remedy under domestic law whereby the applicant could have obtained a ruling upholding his right to have his case heard within a reasonable time, as set forth in Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. Article 41 of the Convention provides as follows:

"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

36. The applicant claimed non-pecuniary damages, without specifying an exact amount.

37. The Government contested this claim.

38. The Court considers that the applicant must have sustained some non-pecuniary damage. Ruling on an equitable basis, it awards him 1,200 euros ("EUR") under this head.

B. Costs and expenses

39. The applicant did not make any claim in this respect. Accordingly, the Court is not required to make an award under this head.

C. Default interest

40. 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 application admissible;

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

3. *Holds* that there has been a violation of Article 13 of the Convention;

4. *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 1,200 (one thousand two hundred euros) in respect of non-pecuniary damage, which sum is to be converted into the currency of the respondent State at the rate applicable at the date of settlement, and free of any taxes or charges that may be chargeable;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 27 November 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

F. TULKENS
President