SECOND SECTION

CASE OF JUHAS ĐURIĆ v. SERBIA

(Application no. 48155/06)

JUDGMENT
(Revision)

STRASBOURG

10 April 2012

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 Juhas Đurić v. Serbia (request for revision of the judgment of 7 June 2011),

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

Françoise Tulkens, *President,*
David Thór Björgvinsson,
Dragoljub Popović,
Işıl Karakaş,
Guido Raimondi,
Paulo Pinto de Albuquerque,
Helen Keller, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 20 March 2012,

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

PROCEDURE

1. The case originated in an application (no. 48155/06) against 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 Viktor Juhas Đurić ("the applicant"), on 20 November 2006.

2. In a judgment delivered on 7 June 2011, the Court, *inter alia*, found that there had been no violation of Article 6 § 1 of the Convention as regards the applicant's access to a court in the determination of his civil rights and obligations.

3. On 8 August 2011 the applicant, himself a licensed attorney, requested revision of the judgment in question within the meaning of Rule 80 of the Rules of Court.

4. On 11 October 2011 the Court considered this request and decided to give the Government until 23 November 2011 to submit any written observations. Those observations were received on 21 November 2011.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1966. He is a practising lawyer and lives in Subotica, Serbia.

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

A. The applicant's request regarding D.G.

7. On 19 May 2004 the Police Department in Subotica appointed the applicant to represent D.G., a suspect in a preliminary criminal investigation, during his questioning by the police. The applicant provided no legal assistance to the suspect beyond this hearing.

8. On the same day the applicant filed a request with the police, seeking payment of his fees in accordance with the Tariff issued by the Bar Association.

9. Having received no response, on 13 September 2004 the applicant lodged a civil claim with the Municipal Court in Subotica, requesting that his fees be covered (7,800 Serbian Dinars, "RSD", approximately 105 Euros, "EUR", at the time, according to the exchange rate of the National Bank of Serbia).

10. On 21 April 2005, the Municipal Court rendered a judgment in default (*presuda zbog izostanka*) in favour of the applicant. It thereby ordered the Police Department to pay him a total of RSD 18,800 (approximately EUR 230 at the time), on account of his fees and litigation costs, plus statutory interest.

11. On 15 August 2005 the District Court in Subotica quashed this judgment on appeal.

12. On 23 January 2006 the Municipal Court declared itself as lacking jurisdiction *ratione materiae* to consider the applicant's claim on its merit (*oglasio se stvarno nenadležnim za postupanje*) and ordered the applicant to pay RSD 10,500 for litigation costs (approximately EUR 120 at the time).

13. On 29 September 2006 the District Court confirmed this decision on appeal and it thus became final.

14. Both the Municipal Court and the District Court reasoned, *inter alia*, that the fees in question were related to a preliminary criminal investigation, which was a specific kind of administrative proceedings, not a formal criminal procedure, and concluded that his claim was therefore not for the civil courts to determine. The police themselves, however, had had an obligation to decide upon the applicant's request.

15. On 13 November 2006 the applicant paid the litigation costs imposed against him.

16. On 23 January 2008, on the grounds that he had misdirected his payment of 13 November 2006, the applicant was ordered once again to pay the litigation costs at issue plus statutory interest. By March 2009 the applicant therefore paid another RSD 18,068 (approximately EUR 190 at the time).

B. The applicant's request regarding G.I., D.Č., V.Đ., B.Đ. and D.Đ.

17. On 31 July 2006 the Police Department in Subotica appointed the applicant to represent G.I., D.Č., V.Đ., B.Đ. and D.Đ., all suspects in a preliminary criminal investigation, during their questioning by the police.

18. On the same day the applicant filed a request with the police, seeking payment of his fees in accordance with the Tariff issued by the Bar Association (in total RSD 12,960, approximately EUR 155 at the time).

C. The applicant's request regarding S.S., B.B., A.S., and D.J.

19. On 6 August 2008, 24 April 2009, 19 May 2009 and 1 June 2009 the Police Department in Subotica appointed the applicant to represent S.S., B.B., A.S., and D.J., all suspects in a preliminary criminal investigation, during their questioning by the police.

20. On 11 August 2008, 11 May 2009, 21 May 2009 respectively the applicant filed a request with the police, seeking payment of his fees in accordance with the Tariff issued by the Bar Association (in total RSD 48,000, approximately EUR 500 at the time).

II. RELEVANT DOMESTIC LAW AND JURISPRUDENCE

A. The Criminal Procedure Code (Zakonik o krivičnom postupku; published in the Official Gazette of the Federal Republic of Yugoslavia – OG FRY – nos. 70/01 and 68/02, as well as the Official Gazette of the Republic of Serbia – OG RS – nos. 58/04, 85/05 and 115/05)

21. Article 193 § 1 provides, *inter alia*, that "criminal procedure costs" (*troškovi krivičnog postupka*) shall include all expenses incurred in connection with criminal proceedings, "from their commencement until their conclusion".

22. Article 193 § 6 provides that the costs incurred in the course of a preliminary criminal investigation (*pretkrivični postupak*), which concern fees to be paid to a police-appointed lawyer, shall be covered by the police themselves.

23. Article 196 provides, *inter alia*, that a defendant who has been convicted shall bear the costs of the criminal proceedings.

24. Article 197 § 1 provides, *inter alia*, that should criminal proceedings (*krivični postupak*) against a defendant be discontinued, the indictment be rejected, or the defendant be acquitted, the defence lawyer's fees shall be covered from the court's budget.

25. Article 197 § 6 provides, *inter alia*, that should the criminal court reject a claim for costs made under Article 197 § 1, or fail to rule thereupon within a period of three months, the defendant and his or her lawyer shall have the right to file a separate claim before the civil courts.

26. Article 225, *inter alia*, sets out the general duties of the police during a preliminary criminal investigation.

27. Article 226 §§ 7-9, *inter alia*, regulates the questioning by the police of persons suspected of having committed a crime, whose statements may, under certain conditions, be used as evidence in the subsequent criminal proceedings.

28. Article 243 provides, *inter alia*, that a formal judicial investigation shall commence upon the adoption of a specific judicial decision to this effect.

B. The relevant commentary as regards Articles 193, 225 and 226 of the Criminal Procedure Code

29. Costs covered by the police in connection with Article 225 of the Criminal Procedure Code cannot be considered as criminal procedure costs within the meaning of Article 193 thereof (see *Komentar Zakonika o krivičnom postupku*, Prof. dr Tihomir Vasiljević and Prof. dr Momčilo Grubač, IDP Justinijan, Belgrade, 2005, p. 338, paragraph 2).

30. General duties of the police during a preliminary criminal investigation are not formally regulated by the Criminal Procedure Code, the exception to this rule being those activities referred to in Article 226 §§ 7-9 (ibid., p. 397, paragraph 8).

C. The decision issued by the investigating judge of the District Court in Subotica (Ki 25/04 of February 2005)

31. The investigating judge held, *inter alia*, that the defendant against whom the charges had been dropped was not entitled to the full recovery of his lawyer's fees from the budget of the District Court in Subotica. Specifically, he noted that since a part of these fees concerned legal services rendered during a preliminary criminal

investigation it was up to the police themselves to cover any such costs (the defendant's lawyer in the domestic proceedings being the applicant in the present case before the Court).

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

32. Article 1 provides, *inter alia*, that the Civil Procedure Act shall be applied to all property-related/pecuniary matters (*imovinskopravni sporovi*), except those where the law specifically provides for another procedure.

33. Article 16 provides, *inter alia*, that should a court establish its lack of jurisdiction *ratione materiae* it shall, *ex officio*, reject the claim in question regardless of the stage of the proceedings.

E. The Courts' Act 1991 (Zakon o sudovima; published in OG RS 46/91, 60/91, 18/92 and 71/92)

34. Article 12 § 2 (a) provides that Municipal Courts shall have jurisdiction to rule in respect of all property-related/pecuniary claims (*imovinskopravnim zahtevima*) unless they fall within the competence of the Commercial Courts.

35. Article 17 § 1 (z) provides that the Supreme Court shall be competent to assess the lawfulness of all final administrative decisions adopted by the State, unless specifically provided otherwise by law.

36. Article 17 § 2 (v) provides that the Supreme Court shall resolve any conflicts of jurisdiction (*rešava sukobe nadležnosti*) between the lower courts.

F. The Organisation of Courts Act 2001 (Zakon o uređenju sudova; published in OG RS nos. 63/01, 42/02, 27/03, 29/04, 101/05 and 46/06)

37. Article 4 provides that a court of law cannot refuse to consider a claim in respect of which its jurisdiction has been established by law or the Constitution.

G. The General Administrative Proceedings Act (Zakon o opštem upravnom postupku; published in OG FRY nos. 33/97 and 31/01)

38. Article 208 § 1 provides, *inter alia*, that in simple matters an administrative body shall be obliged to issue a decision within one month as of when the claimant had lodged his or her request. In all other cases, the administrative body shall render a decision within two months thereof.

39. Article 208 § 2 enables the claimant whose request has not been decided within the periods established in the previous paragraph to lodge an appeal as if his or her request has been denied. Where an appeal is not allowed, the claimant shall have the right to directly initiate an administrative dispute before the competent court of law.

H. The Administrative Disputes Act (Zakon o upravnim sporovima; published in OG FRY no. 46/96)

40. Article 6 provides that an administrative dispute may only be instituted against an "administrative act", which is, *inter alia*, an act/decision adopted by a State body in the determination of one's rights and obligations concerning "an administrative matter".

41. Article 9 § 1 (1) provides that an administrative dispute may not be instituted against an "act"/decision rendered in matters where judicial redress has been secured outside of the administrative disputes procedure.

42. Articles 8 and 24 provide, *inter alia*, that a claimant who lodged a request with an administrative body shall have the right to institute an administrative dispute before a court in the following situations:

(i) Should an appellate body fail to issue a decision upon his or her appeal within sixty days the claimant may repeat the request, and if the appellate body declines to rule within an additional period of seven days the claimant may institute an administrative dispute.

(ii) In accordance with the conditions set out under (i) above, should a first instance administrative body fail to issue a decision and there is no right to an appeal, the claimant may directly institute an administrative dispute.

(iii) Should a first instance administrative body fail to issue a decision upon the claimant's request within sixty days, in matters where an appeal has not been excluded, the claimant shall have the right to lodge the said request with the appellate administrative body. Should that body render a decision, the claimant shall have the right to institute an administrative dispute against it, and should it fail to rule the claimant shall be entitled to institute an administrative dispute in accordance with the conditions set out under (i) above.

43. Article 41 § 5 provides that where an administrative dispute has been brought under Article 24 the court shall, should it rule in favour of the claimant, order the administrative body in question to decide upon the claimant's original request.

44. Articles 63 provides, *inter alia*, that should the said administrative body fail to comply with this instruction within a period of thirty days, the claimant shall be entitled to request the enforcement of the court's decision. Should the administrative body fail to respond to this request within a period of seven days, the claimant may petition the court to decide his case on the merits, i.e. to adopt the necessary decision in the administrative body's stead. The court shall then request information from the administrative body as to the reasons for its failure to comply with the court's order. Should the administrative body fail to respond within a period of seven days or should its explanation fail to satisfy the court, the court itself shall decide on the claimant's original request.

45. Articles 41 §§ 1-4, 61 and 62 provide details as regards other situations in which a claimant's request may be decided on its merits.

I. The relevant commentary as regards Article 24 of the Administrative Disputes Act

46. There is no deadline for the institution of an administrative dispute in accordance with Article 24 of the Administrative Disputes Act (see *Komentar Zakona o opštem upravnom postupku i Zakona o upravnim sporovima*, Svetislav Vuković, Poslovni biro, Belgrade, 2006, p. 219).

J. The relevant domestic case-law provided by the Government

47. In six judgments rendered between 8 December 1999 and 9 April 2009 the Supreme Military Court and the Supreme Court of Serbia, respectively, ruled on the merits of administrative disputes concerning pension entitlements, the right to stand for elections, property-related municipal decisions, disability benefits and the proposed change in the registration of persons authorised to represent political parties (see Up. br. 2530/03, Už. 133/92, Už. 11/08, U.br. 1739/08, U.br. 48/08 and U.br. 1093/02).

THE LAW

I. THE ORIGINAL JUDGMENT OF THE COURT

48. In its judgment of 7 June 2011, *inter alia*, the Court held as follows:

> "65. ... [I]t is noted that the applicant's fees-related claims clearly fall within the scope of Article 6 § 1 (see, *mutatis mutandis*, *Editions Périscope v. France*, 26 March 1992, § 40, Series A no. 234-B). Further, while it is not this Court's task to decide which domestic court, civil or administrative, had jurisdiction to determine these claims on their merits (see *Beneficio Cappella Paolini v. San Marino*, no. 40786/98, § 29, ECHR 2004-VIII (extracts)), it is noted that: (i) the domestic civil courts had considered the fees issue as an administrative matter and had offered some reasoning in this respect (see paragraph 14 above); (ii) the applicant could therefore have made use of the administrative avenue and, if needed, brought his case to the Supreme Court, apparently without a deadline for so doing (see paragraphs 38-46 above); and (iii) the Supreme Court could, ultimately, either have ruled on the merits or indicated which other court had jurisdiction to proceed (see paragraphs 44, 35 and 36 above, in that order; compare also to *Beneficio Cappella Paolini v. San Marino*, cited above, where both the civil and the administrative courts had declined jurisdiction). Finally, the applicant has failed to provide domestic case-law to the effect that in any other case such as his own the civil courts had declared themselves competent *ratione materiae*, whilst the respondent State has, for its part, produced jurisprudence indicating that the domestic judiciary has been willing to consider very diverse claims within an administrative disputes' context, as well as to grant redress on the merits where appropriate (see paragraph 47 above)."

49. In such circumstances, the Court concluded, unanimously, that the applicant had not been denied access to a court in the determination of his civil rights and obligations. Accordingly, there had been no violation of Article 6 § 1 of the Convention.

II. THE REQUEST FOR REVISION

50. Rule 80 of the Rules of Court provides, in so far as relevant:

> "A party may, in the event of the discovery of a fact which might by its nature have a decisive influence and which, when a judgment was delivered, was unknown to the Court and could not reasonably have been known to that party, request the Court ... to revise that judgment.
>
> ..."

51. On 8 August 2011 the applicant filed a request for revision of the Court's judgment of 7 June 2011, disagreeing with its conclusion that there had been no violation of Article 6 § 1 of the Convention as regards his access to a court.

52. The applicant explained that on 20 June 2011 a major Serbian daily newspaper, *Politika*, had published an article wherein it reported that the Belgrade

Court of First Instance (*Prvi osnovni sud u Beogradu*), as confirmed by its spokesperson, had in the last couple of years been dealing with an increasing number of fees-related claims such as his own, and that many had been resolved by means of the respondent State's acceptance thereof within the civil proceedings.

53. Having read the article on 25 June 2011, on 28 June 2011 the applicant filed a request with the said court, seeking copies of the relevant judgments.

54. On 5 July 2011 the Belgrade Court of First Instance provided the applicant with the copies sought. The four civil judgments in question, of which three were based on the respondent State's explicit acceptance of the plaintiffs' claims, had been adopted between 28 March 2011 and 2 June 2011, and had all become final by 24 June 2011.

55. The applicant maintained that the Government must have been aware of the said jurisprudence, yet had omitted to provide the Court with this information, which would have been decisive for the outcome of the present case – particularly given the Court's holding in paragraph 65 of the original judgment that "the applicant ha[d] failed to provide domestic case-law to the effect that in any other case such as his own the civil courts had declared themselves competent *ratione materiae* ..." (see paragraph 48 above).

56. The Government endorsed the Court's conclusion in its original judgment, as well as its reasoning, and maintained that the domestic court decisions provided by the applicant in support of his request for revision could not be deemed "decisive" as required under Rule 80 of the Rules of Court.

57. Additionally, the applicant had failed to make use of the administrative avenue although he had been instructed to do so by the first and second instance civil courts in Subotica (see paragraphs 38-46 above).

58. Lastly, being a licensed lawyer himself, the applicant should have been aware of the relevant domestic case-law and could have informed the Court thereof, it being noted that all but one of the "new" court decisions submitted by the applicant had become final before the adoption of the Court's original judgment (see paragraph 54 above).

59. In view of the above, the Court considers that, quite apart from the other requirements contained in Rule 80 of the Rules of Court, the jurisprudence discovered by the applicant would not, "by its nature", have been "decisive" within the meaning of this provision.

60. In particular, the relevant civil judgments in the applicant's case had been adopted in 2006 while the judgments provided in support of his request for revision were all rendered in 2011, some five years later (see paragraphs 12, 13 and 54 above). It follows that there is no new evidence that at the relevant time, i.e. in 2006, any domestic civil courts had been willing to declare themselves competent *ratione materiae* in a case such as the applicant's. Moreover, the applicant could have made use of the administrative avenue and, if needed, brought his case to the Supreme Court, which, ultimately, could either have ruled on the merits or indicated which other court had jurisdiction to proceed (see paragraph 48 above).

61. The request for revision should therefore be refused.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Decides to reject the applicant's request for revision.

Done in English, and notified in writing on 10 April 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith Registrar	Françoise Tulkens President