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

SECOND SECTION

CASE OF STEVANOVIĆ v. SERBIA

(Application no. 26642/05)

JUDGMENT

STRASBOURG

9 October 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 Stevanović 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 I. CABRAL BARRETO,
Mr R. TÜRMEN,
Mr M. UGREKHELIDZE,
Mr V. ZAGREBELSKY,
Mr D. POPOVIĆ, *judges*,
and Mrs F. ELENS-PASSOS, *Deputy Section Registrar*,

Having deliberated in private on 18 September 2007,

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

PROCEDURE

1. The case originated in an application (no. 26642/05) against the State Union of Serbia and Montenegro, succeeded by Serbia on 3 June 2006 (see paragraph 37 below), 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, Mr Velimir Stevanović ("the applicant"), on 6 July 2005.

2. The applicant was represented before the Court by Mr R. Gajić, a lawyer practising in Belgrade. 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.

3. On 2 June 2006 the Court decided to communicate 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 1954 and lives in Belgrade.

A. The labour dispute and the mediation procedure

5. In 1992 the applicant was dismissed from the job which he held in a local construction company.

6. On 16 June 1992 he filed a claim with the Third Municipal Court in Belgrade (*Treći opštinski sud u Beogradu*), seeking reinstatement.

7. On 16 June 1993 the Third Municipal Court ruled in favour of the applicant.

8. On 22 September 1993 the District Court in Belgrade (*Okružni sud u Beogradu*) quashed this judgment and ordered a retrial.

9. From 23 December 1993 to 15 September 1999, the Third Municipal Court ruled in favour of the applicant on six separate occasions, but each time the District Court quashed those judgments on appeal and ordered a retrial.

10. On 10 November 2000 the Third Municipal Court again ruled in favour of the applicant. It also ordered the respondent company to reinstate him until the adoption of a final decision in the proceedings.

11. On 17 August 2001 the District Court quashed this judgment and ordered a retrial.

12. On 22 February 2002 the Third Municipal Court revoked its provisional reinstatement order of 10 November 2000.

13. On 28 September 2004 the applicant requested his salary arrears.

14. At the hearing held on 8 October 2004, the applicant complained about the delay and sought the removal of the presiding judge.

15. On 18 October 2004 the President of the Third Municipal Court rejected the applicant's request.

16. On 4 February 2005 the applicant apparently failed to appear at the hearing scheduled for that date.

17. On 30 May 2005 the Third Municipal Court invited the parties to take part in a mediation procedure and suspended the reinstatement suit.

18. On 29 November 2005 a mediator was appointed.

19. By April 2006, five mediation hearings were scheduled and/or adjourned.

20. On 2 June 2006 the entire case file was apparently forwarded to respondent State's Agent.

B. The civil compensation case

21. On 17 June 2004 and in respect of the above proceedings, the applicant filed a separate civil claim against the State Union of Serbia and Montenegro, seeking compensation for the breach of his “right to a fair trial within a reasonable time, as guaranteed under Article 6 of the Convention”.

22. On 6 December 2005 the First Municipal Court in Belgrade (*Prvi opštinski sud u Beogradu*) rejected the applicant's claim as inadmissible.

23. On 24 July 2006 the District Court in Belgrade quashed this decision on appeal and ordered a retrial. In its reasoning, *inter alia*, it recognised the applicant's right to have his labour case resolved within a reasonable time and referred to Article 6 of the Convention as legally binding. Finally, the District Court noted that as of 3 June 2006 Serbia was the sole successor of the former State Union of Serbia and Montenegro, meaning that there were no procedural obstacles for the continuation of the applicant's case.

24. On 2 October 2006 the First Municipal Court suspended the proceedings, stating that the State Union of Serbia and Montenegro had ceased to exist in the meantime. Although he was entitled to file an appeal against this decision, there is no evidence in the case file that the applicant actually did so.

C. Other relevant facts

25. In accordance with the Third Municipal Court's order of 10 November 2000, on 6 March 2001 the respondent company reinstated the applicant (see paragraph 10 above).

26. The applicant maintained that the respondent company had in the meantime encountered serious financial difficulties, which is why it was "no longer able to pay its employees" and was "under threat" of being "declared insolvent".

27. On an unspecified date the Supreme Court (*Vrhovni sud Srbije*) apparently instituted proceedings to have the presiding judge in charge of the reinstatement case removed from the bench (*razrešen*).

II. RELEVANT DOMESTIC LAW

A. Relevant provisions of the Judges Act as well as the Obligations Act

28. 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. Relevant provisions of the labour laws

1. *Labour Act 2001 (Zakon o radu; published in the Official Gazette of the Republic of Serbia - OG RS - nos. 70/01 and 73/01)*

29. Article 122 § 3 provided that all employment-related disputes were to be resolved by the courts within a period of 6 months from the date of institution of the proceedings.

2. Labour Act 2005 (Zakon o radu; published in OG RS no. 24/05 and 61/05)

30. This Act entered into force on 23 March 2005 and thereby repealed the Labour Act of 2001.

31. The text of Article 195 § 3 of the Labour Act of 2005 corresponds to the aforementioned Article 122 § 3 of the Labour Act of 2001.

C. Alternative Labour Disputes Resolution Act (Zakon o mirnom rešavanju radnih sporova; published in OG RS no. 125/04)

32. Article 5 and Articles 30-37 of this Act provide, *inter alia*, that a reinstatement case may be resolved by a State-appointed arbitrator. Such proceedings, however, may only be instituted with the consent of both parties and must be concluded within a period of thirty days as of the date of the initial hearing.

D. Relevant constitutional provisions

33. 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 covered by the Republic of Serbia or the public authority [in question]."

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

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

E. Criminal Code 1977 (Krivični zakon Republike Srbije; published OG SRS nos. 26/77, 28/77, 43/77, 20/79, 24/84, 39/86, 51/87, 6/89, 42/89, 21/90 and OG RS nos. 16/90, 26/91, 75/91, 9/92, 49/92, 51/92, 23/93, 67/93, 47/94, 17/95, 44/98, 10/02, 11/02, 80/02, 39/03 and 67/03)

36. Article 243 of this Code defines "judicial malfeasance" (*kršenje zakona od strane sudije*) as a separate criminal offence.

F. The Court of Serbia and Montenegro and the succession of the State Union of Serbia and Montenegro

37. The relevant provisions concerning the Court of Serbia and Montenegro and the succession of the State Union of Serbia and Montenegro are set out in the *Matijašević v. Serbia* judgment (no. 23037/04, §§ 12, 13 and 16-25, 19 September 2006).

THE LAW

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

38. The applicant complained that the reinstatement case, as well as the civil compensation suit, had not been concluded within a reasonable time, as required by Article 6 § 1 of the Convention.

The relevant part of this Article 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. Admissibility

1. Compatibility ratione personae

39. The Government noted that on 6 March 2001 the applicant had been reinstated pending the conclusion of his labour case (see paragraphs 10 and 25 above) and submitted that he had thereby been deprived of his "victim status" within the meaning of Article 34 of the Convention.

40. The applicant recalled that the provisional reinstatement referred to had been revoked in 2002 and pointed out that, from then on, he could have been dismissed at his employer's absolute discretion.

41. Since the complaints in question concern the length of the proceedings at issue, which are still pending, and given the fact that his reinstatement has indeed been devoid of any legal basis as of 22 February 2002 (see paragraph 12 above), 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).

42. The Court therefore finds that the applicant has retained his victim status and dismisses the Government's objection in this regard.

2. Compatibility ratione temporis

43. The Government observed that all of the judgments concerning the applicant's labour claim had been adopted by 2001, that the separate compensation case was itself closely related to those proceedings, and, lastly, that the respondent State had ratified the Convention on 3 March 2004. The applicant's complaints were therefore incompatible with the provisions of the Convention *ratione temporis*.

44. The applicant maintained that the violations in question were of a continuing character.

45. Pursuant to its extensive case-law on this issue (see, among many other authorities, *V.A.M. v. Serbia*, no. 39177/05, § 102, 13 March 2007) and given that the impugned proceedings are still pending, the Court finds that they fall clearly within its competence *ratione temporis* as of 3 March 2004 (see also paragraphs 56-58 below). The Government's objection must therefore be dismissed.

3. Exhaustion of domestic remedies

46. The Government submitted that the applicant had not exhausted all effective domestic remedies.

47. In particular, he had failed to complain about the delay in question to the Supreme Court's Supervisory Board (see paragraph 28 above). Further, he had not made use of the complaint procedure before the Court of Serbia and Montenegro (see paragraph 37 above). Finally, the applicant had neither brought a separate civil lawsuit under Articles 199 and 200 of the Obligations Act and Article 25 of the Constitution (see paragraphs 28 and 33 above) nor filed a criminal complaint under Article 243 of the Criminal Code 1977 (see paragraph 36 above).

48. The applicant contested the effectiveness of these remedies.

49. The Court has already held that the above remedies could not be deemed effective within the meaning of its established case-law under Article 35 § 1 of the Convention (see, *mutatis mutandis*, *V.A.M. v. Serbia*, cited above, §§ 85-88 and 119, 13 March 2007). It sees no reason to depart from those findings in the present application and concludes, therefore, that the Government's objection must be rejected.

4. Conclusion

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

B. Merits

1. Arguments of the parties

51. Even assuming that the applicant's complaints were not incompatible with the Convention *ratione temporis* (see paragraph 43 above), the Government argued that there had been no violation of Article 6 § 1 of the Convention.

52. The applicant reaffirmed his complaints about the length of the proceeding at issue.

2. 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, and the importance of what is at stake for the applicant (see, among other authorities, *Mikulić v. Croatia*, no. 53176/99, § 38, ECHR 2002-I).

54. Further, according to the Court's settled jurisprudence, repeated re-examination of a single case following remittal may in itself disclose a serious deficiency in the respondent State's judicial system (see *Pavlyulynets v. Ukraine*, no. 70767/01, § 51, 6 September 2005).

55. Finally, the Court recalls that reinstatement proceedings are of "crucial importance" to plaintiffs and that, as such, they must be dealt with "expeditiously" (see *Guzicka v. Poland*, no. 55383/00, § 30, 13 July 2004). Indeed, this requirement is reinforced additionally in respect of States where domestic law provides that such cases must be resolved with particular urgency (see, *mutatis mutandis*, *Borgese v. Italy*, judgment of 26 February 1992, Series A no. 228-B, § 18; see also paragraphs 29-31 above).

3. The Court's assessment

(a) Period to be taken into account

56. The Court notes that the labour case was brought on 16 June 1992 and, further, that it is currently still pending at first instance (see paragraphs 5-20 above). Since the respondent State ratified the Convention on 3 March 2004, it has thus been within the Court's competence *ratione temporis* for more than three years and six months.

57. The Court further recalls that, in order to determine the reasonableness of the delay at issue, regard must be had to the state of the labour 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, following eight remittals, it had already been pending for more than eleven years and eight months.

58. Finally, the Court observes that the related civil compensation suit, initiated on 17 June 2004 and suspended since 2 October 2006 at first instance, has been within its competence *ratione temporis* from the outset, a period of three years and three months (see paragraphs 21-24 above).

(b) The labour case

59. The Court notes that, since the respondent State's ratification of the Convention, no decisions on the merits of the applicant's case have been rendered (see paragraphs 12-20 above). Indeed, there has apparently been no movement in the case since 2 June 2006 (see paragraph 20 above; see also, *mutatis mutandis*, *Hefková v. Slovakia*, no. 57237/00, §§ 35 and 36, 31 May 2005). Lastly, the applicant's conduct has not contributed to the procedural delay complained of except, perhaps, in respect of the hearing scheduled for 4 February 2005 (see paragraph 16 above).

(c) The civil compensation suit

60. The Court observes that no hearings have been held in these proceedings. Instead, three decisions on the admissibility of the applicant's claim were adopted by 2 October 2006 and the case was suspended in view of the fact that "the State Union of Serbia and Montenegro had ceased to exist" in the meantime (see paragraph 24 above). The Municipal Court, therefore, refused to consider the applicant's claim on its merits, notwithstanding the fact that Serbia was the undisputed successor of the former State Union of Serbia and Montenegro (see paragraphs 23 and 37 above). Finally, the Court notes that there is no evidence in the case file that the applicant had filed an appeal against the Municipal Court's decision of 2 October 2006, which is why no delay as of that date can be imputed to the domestic authorities (see paragraph 24 above).

(d) Conclusion

61. Having regard to the criteria laid down in its jurisprudence and the relevant facts of the present case, including its complexity, as well as the conduct of parties and of the authorities, the Court considers that the length of each of the two sets of proceedings complained of has failed to satisfy the reasonable time requirement. There has, accordingly, been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

62. The applicant also complained about having had no effective domestic remedy at his disposal to expedite the impugned labour case or obtain compensation for the past delay. The Court considers that this complaint falls to be examined under Article 13, which provides as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Admissibility

63. The Court notes that the applicant's complaint raises issues of fact and law under the Convention, the determination of which requires an examination of the merits. It also considers that the applicant's complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that it cannot be rejected on any other ground. The complaint must therefore be declared admissible.

B. Merits

1. Arguments of the parties

64. The Government stated that there has been no violation of Article 13, but the applicant reaffirmed his complaints.

2. Relevant principles

65. The Court notes that a remedy concerning length is "effective" if it can be used either to expedite the proceedings before the courts dealing with the case, or to provide the litigant with adequate redress for delays which have already occurred (see *Sürmeli v. Germany* [GC], no. 75529/01, § 99, ECHR 2006).

66. The Court also recalls that the best solution in absolute terms is indisputably, as in many spheres, prevention. Where the judicial system is deficient with regard to the reasonable-time requirement in Article 6 § 1 of the Convention, a remedy designed to expedite the proceedings in order to prevent them from becoming excessively lengthy is the most effective solution. Such a remedy offers an undeniable advantage over a remedy affording only compensation, since it also prevents a finding of successive violations in respect of the same set of proceedings and does not merely repair the breach *a posteriori*, as does a compensatory remedy. Some States have fully understood the situation by choosing to combine the two types of

remedy, one designed to expedite the proceedings and the other to afford compensation (see *Sürmeli v. Germany* [GC], cited above, §100).

3. The Court's assessment

67. The Court notes that the Government have already suggested in their preliminary objection that there were remedies available for the applicant's complaints about the length of the proceedings under Article 6 § 1, and finds that, in so far as they rely on the same reasoning by way of their response to the Article 13 complaint, their arguments must, just like their objections, be rejected on the grounds described at paragraphs 46-49 above.

68. The Court considers, therefore, that there has been a violation of Article 13 taken together with Article 6 § 1 of the Convention on account of the lack of an effective remedy under domestic law for the applicant's complaints concerning the length of civil proceedings.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

69. 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

70. The applicant claimed a total of 114,845 euros (EUR) for pecuniary and non-pecuniary damages. As regards the former, he referred to salary arrears, unpaid social security contributions and the free distribution of his employer's shares, while, concerning the latter, he stated that he had suffered considerable mental anguish as a result of the length of the proceedings in question.

71. The Government contested those claims.

72. The Court considers that the applicant's pecuniary claim has not been substantiated by any relevant supporting evidence and finds that it must, therefore, be rejected in its entirety. However, making its assessment on an equitable basis and having regard to the circumstances of the case, the Court awards the applicant EUR 3,500 in respect of the non-pecuniary damage suffered.

B. Costs and expenses

73. The applicant also claimed EUR 7,500 for the costs and expenses incurred before the domestic courts.

74. The Government contested this claim.

75. 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 also reasonable as to their quantum (see, for example, *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI).

76. In the present case, the Court considers that the amount claimed by the applicant is excessive. Regard being had to the information in its possession and the above criteria, however, the Court considers it reasonable to award the applicant the sum of EUR 1,000 under this head.

C. Default interest

77. 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 3,500 (three thousand five hundred euros) in respect of non-pecuniary damage as well as EUR 1,000 (one thousand euros) for costs and expenses, which sums are to be converted into the national currency of the respondent State at the rate applicable on the date of settlement, plus any tax 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 9 October 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

F. ELENS-PASSOS
Deputy Registrar

F. TULKENS
President