SECOND SECTION

DECISION

Application no. 14366/08
Vladan MIJAILOVIĆ
against Serbia

The European Court of Human Rights (Second Section), sitting on 5 February 2013 as a Chamber composed of:

Guido Raimondi, *President,*
Danutė Jočienė,
Peer Lorenzen,
Dragoljub Popović,
Işıl Karakaş,
Nebojša Vučinić,
Paulo Pinto de Albuquerque, *judges,*

and Stanley Naismith, *Section Registrar,*

Having regard to the above application lodged on 19 March 2008,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Vladan Mijailović, is a Serbian national, who was born in 1977 and lives in Belgrade.

2. On 12 April 2011 the President of the Second Section decided exceptionally to grant the applicant leave to present his own case under Rule 36 § 2 *in fine* of the Rules of Court in the proceedings before the Court. The Serbian Government ("the Government") were represented by their Agent, Mr S. Carić.

A. The circumstances of the case

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

1. Civil proceedings for damages (P.br. 1370/07)

4. On 19 December 2006, at around 4.22 p.m, the Internal Police Control Department of the Ministry of Internal Affairs placed a telegram for the applicant at a post office branch in Belgrade, summoning him to meet an

Assistant Interior Minister (*pomoćnik ministra*) and the Inspector General (*generalni inspektor*) of Serbian Police V.B. on 21 December at 12.45 p.m.

5. It would appear that the said post office forwarded the telegram to another Belgrade branch at 6.26 p.m. on the same day.

6. The latter post office branch delivered the telegram to the applicant on 21 December 2006 at 1 p.m.

7. On 22 December 2006 the main manager of the latter post office branch (*upravnik pošte*) acknowledged his staff's responsibility for the late delivery, apologised to the applicant and informed him that he was entitled to claim any damages resulting from the delivery after the prescribed deadlines for transmission and delivery of telegrams.

8. Following a mail exchange between the main manager and the applicant, it would appear that the main manager refused to honour the applicant's claim for compensation, but offered to pay him damages equivalent to three times the cost of a telegram delivery, namely 115 dinars (RSD; approximately one euro (EUR) at the relevant time).

9. Dissatisfied with the proposed settlement, on 16 February 2007 the applicant lodged a civil claim with the First Municipal Court in Belgrade against the respondent State and PTT Srbija (the Serbian postal service), claiming non-pecuniary damages of RSD 2,000,000 (approximately EUR 24,000) caused by the delayed delivery. According to the applicant, he intended to inform the Ministry about the misconduct of its staff. He had been suffering from mental anguish as a result (*trpeo i trpi psihološke patnje i bol*) as he had been unable to attend a long-awaited meeting of utmost importance for him as a result of their negligence in delivering the telegram. The applicant also requested an exemption from the obligation to pay litigation costs (*troškovi postupka*) "in accordance with the law" (see paragraphs 34-35 below).

10. On 26 February 2007 the First Municipal Court ordered the applicant in writing to amend his claim within fifteen days of the date on which he had received that court's request. In particular, the applicant was requested: (a) to specify whether the claim was directed against the respondent State, PTT Srbija, or both; (b) to identify the head offices of each defendant, as well as their respective representatives; and lastly, (c) to specify precisely the kind of non-pecuniary damage he had suffered in terms of Article 200 of the Obligations Act (see paragraph 37 below). The applicant was warned that failure to respond could lead to his claim being summarily dismissed or considered withdrawn. He was finally advised that he could retain a lawyer at his own expense or could approach a free municipal legal-aid service (see paragraph 38 below).

11. In his submission of 19 March 2007 the applicant again requested the court to recognise his indigence as regards the litigation costs, "in accordance with the law". He argued that he did not have the necessary legal skills to represent his own interests in the proceedings effectively. He

provided the court with documentary evidence of his indigence on a compact disc ("CD").

12. The Municipal Court's letter of 26 February 2007 was served on the applicant on 25 May 2007.

13. On 5 June 2007 the applicant identified PTT Srbija as the defendant, and attempted to specify the pecuniary and non-pecuniary damage he had suffered. As regards the pecuniary damage, he requested the court to assess it in view of loss of income that he would have had following the outcome of the meeting with the Assistant Minister. The applicant further requested an award of non-pecuniary damages resulting from the negligent and wrongful acts of postal workers which had caused the applicant mental anguish and pain because of the failure to attend such an important meeting for him and because of the impression given of disrespect for an important political figure such as the Assistant Minister. The applicant also repeated his request to be exempted from litigation costs and stated that he would like to retain a lawyer but could not afford one. He further explained that, as regards the legal aid provided by the free municipal legal-aid services, they had been overwhelmed with similar requests, were unfamiliar with the issue, and had directed him to a lawyer. He had another case (P.br. 1317/07) concurrently pending before the same court and had already been exempted from the obligation to pay those litigation costs given his lack of means. He provided the court with a copy of that decision and resubmitted the CD as evidence of his indigence.

14. On 13 July 2007 the First Municipal Court summarily dismissed the claim as incomplete (*odbacio rešenjem kao nepotpunu*), as the applicant had not fully complied with its order of 26 February 2007. In particular, he had failed: (a) to clearly specify who was the defendant; (b) to specify the exact amount of the pecuniary damage requested; and (c) to specify the ground for non-pecuniary damage in terms of Article 200 of the Obligations Act.

15. On 27 July 2007 the applicant appealed, on the following grounds: (i) the fact that he did not understand what the court meant by "the kind of non-pecuniary damage", or did not specify the pecuniary damage (though he had not initially even been requested to do so), should not have deprived a lay litigant, without sufficient means to pay an attorney, of access to court; (ii) the First Municipal Court had failed to consider his requests related to his indigence, in breach of Articles 6 and 14 of the Convention; and (iii) reiterating his submission of 5 June 2007 as regards his indigence.

16. On 3 October 2007 the Belgrade District Court upheld the decision of 13 July 2007, without a reference to the applicant's requests in respect of costs and legal representation. This decision (Gž.br. 10900/07) was served on the applicant on 5 December 2007.

17. On 31 December 2007 the applicant was ordered to pay RSD 42,500 (at the material time, approximately EUR 540) for the court stamp duty (*sudska taksa*).

18. On 3 March 2008 the Ministry of Justice requested the First Municipal Court to report on the applicant's complaint that his request for legal aid had been disregarded. On 4 March 2008 the First Municipal Court maintained, *inter alia*, that the applicant had not submitted a request to be exempted from paying the costs (or to pay them in instalments) or any document to certify his indigence.

19. It would appear that on 10 April 2008 the applicant received a warning letter (*opomena*) to pay the court stamp duty.

20. On 2 June 2008 the First Municipal Court requested the municipal branch of the Ministry of Finance to increase the initial amount of stamp duty by 50%, given the accrued statutory and punitive interest.

21. On 3 June 2008 the said branch ordered the applicant to pay the increased amount of RSD 69,937 (at the relevant time, approximately EUR 903).

22. On 29 September 2008 the order was repeated.

23. On 28 October 2008 the applicant appealed against that order.

24. On 29 September 2011 the Belgrade regional branch of the Ministry of Finance rejected the applicant's appeal and ordered him to pay the above amount.

25. The applicant maintains that he does not have the means to comply with these orders.

2. The concurrent civil proceedings in damages (P.br. 1317/07)

26. On 13 February 2007 the applicant lodged a civil claim against the State and its Ministry of Internal Affairs, claiming non-pecuniary damage of RSD 2,000,000, stemming from a summons issued by the Ministry requesting him to appear before the police as an accused instead as a witness. He also requested an exemption from the obligation to pay litigation costs.

27. On 13 March 2007 the First Municipal Court issued a decision to exempt the applicant from the obligation to pay the court stamp duty on the ground of his indigence, in accordance with Article 164 § 3 of the Civil Procedure Act (see paragraph 34 below).

28. On 28 October 2009 that court ruled in the applicant's favour, awarding him RSD 50,000 (at the material time, approximately EUR 535) in compensation.

3. Other relevant facts

29. The applicant is unemployed. In 2011 he was entitled to full State medical cover since his income was below a certain amount. This benefit is reviewed annually.

30. It seems that the applicant has initiated five other civil proceedings and also acts as a private prosecutor in another four criminal proceedings before the same Municipal Court.

4. Matters disputed by the Government

31. The Government appeared to suggest a somewhat different version of events, implying that the Registry of the Court had mixed up the two domestic lawsuits brought by the applicant (P.br. 1370/07 and P.br. 1317/07). While the applicant had indeed requested to be exempted from payment of the litigation costs in both domestic suits, they contended that the applicant had never claimed that he lacked legal competence, nor had he requested legal representation or demonstrated that he had insufficient means to pay for legal services in connection with the relevant civil proceedings. They disputed, in particular, that the applicant had made any submission on 19 March 2007 (see paragraph 11 above).

B. Relevant domestic law and practice

1. The 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)

32. Article 67 of the Constitution provides as follows:

Article 67

"Everyone shall be guaranteed the right to legal assistance under conditions stipulated by the law.

...

The law shall stipulate conditions for providing free legal assistance."

B. The Civil Procedure Act 2004 (Zakon o parničnom postupku; published in OG RS, nos. 125/04 and 111/09)

33. As regards a civil claim, Article 100 provides, *inter alia*, that it must be clear and that a party should state the facts on which the claim is based and provide evidence when necessary. In the event of failure to do so, the court shall return the claim only to a party who has no legal counsel to correct it, unless otherwise provided by law (Article 103 paragraph 1). If the claim is not lodged again within the time-limit set by the court, it shall be considered withdrawn, or if it is not amended or completed it shall be dismissed (Article 103 paragraph 4).

34. The free legal aid is reflected in the exemption from payment of costs and free legal representation. With regard to the former, the court shall exempt a party from the duty to pay litigation costs, if a party to a civil

lawsuit is financially unable to bear them (Article 164 paragraph 1), including the costs of witnesses and experts (paragraph 2), as well as court stamp duty (paragraphs 2 and 3). A decision in this respect shall be taken by the competent court of first instance, upon receipt of the party's request to this effect, and in view of all relevant circumstances, including the value of the dispute in question and the party's financial situation (Articles 164 paragraph 4 and 165 paragraph 1). The request must be supported by adequate evidence (statement of means), and, if needed, more evidence may be obtained by the competent court *ex proprio motu* (Article 165 paragraphs 2-4). An appeal to a court of a higher level of jurisdiction is allowed against a decision refusing legal aid, while this is not the case where legal aid has been granted (Articles 165 paragraph 5).

35. Furthermore, when a party is fully exempted from the duty to pay litigation costs in terms of Article 164 paragraph 2, the court of first instance should recognise the right to free legal representation to that party, should this be necessary in order to safeguard his or her rights (Article 166 paragraph 1). Counsel shall in this event be appointed by the President of the court of first instance and chosen from a list of lawyers provided by the Bar Association (Article 166 paragraphs 2 and 3).

3. Commentary on the Civil Procedure Act 2004

36. The time-span within which formal or substantive deficiencies in a civil claim must be rectified may only start running when the court of first instance has decided on a party's request to be exempted from the obligation to pay litigation costs (*Građansko procesno pravo*, A. Jakšić, *Centar za publikacije Pravnog Fakulteta u Beogradu*, 2006, p. 307).

4. The Obligations Act (Zakon o obligacionim odnosima; published in the Official Gazette of the Socialist Federal Republic of Yugoslavia - OG SFRY - nos. 29/78, 39/85, 45/89, 57/89 and the Official Gazette of the Federal Republic of Yugoslavia no. 31/93)

37. Article 200 provides, *inter alia*, that anyone who has suffered fear, physical pain or, indeed, mental anguish as a consequence of a breach of his "personal rights" (*prava ličnosti*) is entitled, depending on their duration and intensity, to sue for financial compensation in the civil courts.

5. The Local Self-Government Act 2004 (Zakon o lokalnoj samoupravi; published in OG RS, nos. 9/02, 33/04, 135/04 and 62/06)

38. Article 18.27 provides that a municipality is to set up, in accordance with the Constitution and law, and if needed, a free municipal legal-aid service for citizens.

COMPLAINTS

39. The applicant complained under Article 6 § 1 of the Convention that the domestic court had rejected his civil claim of 16 February 2007, as amended on 5 June 2007, and had failed to consider his requests to be exempted from the obligation to pay litigation costs and be provided with a lawyer free of charge. The applicant further complained, under Article 14 of the Convention and under Article 1 of Protocol No. 12, that he had been discriminated against on the ground of his indigence.

THE LAW

1. As regards the disputed facts

40. In view of the respondent State's challenge of the facts (see paragraph 31 above), the Court should first examine the scope of the request for legal aid that had been submitted by the applicant.

41. The Court observes that the relevant domestic law does not provide for a formal application form to submit a request to be exempted from the obligation to pay litigation costs or to be provided with free legal representation in the civil context.

42. The Court further notes that the applicant requested, in his civil claim of 16 February 2007, an exemption from the obligation to pay litigation costs (*troškovi postupka*) "in accordance with the law" (see paragraph 9 above). A similar request submitted in the concurrent proceedings before the same court (see paragraph 26 above), equivalent to the request of 16 February 2007, had been processed as a request in terms of Article 164 and had led to the applicant's exemption from the obligation to pay the court stamp duty (see paragraph 27 above).

43. As regards the applicant's submission of 19 March 2007 (see paragraph 11 above), it had been date-stamped by the First Municipal Court and contains the relevant case reference. In any event, almost the same request for free legal representation was submitted, together with CDs in evidence of the applicant's indigence, in further interventions made by the applicant on 5 June 2007 and on appeal (see paragraphs 13 and 15 above).

44. Moreover, according to the domestic law, if a party is fully exempt from the duty to pay litigation costs, the court of first instance shall recognise his/her entitlement to free legal representation, the criteria being "should this be necessary to safeguard the party's rights (see paragraph 35 above, Article 166 § 1).

45. Thus, contrary to what the Government suggested, the Court considers that the applicant repeatedly requested to be exempted from the obligation to pay litigation costs and explained to the domestic courts that

he lacked the legal skills to represent his own interests effectively, and also lacked the funds to be represented by a lawyer.

2. Alleged violation of Article 6 of the Convention

46. Under Article 6 § 1 of the Convention, the applicant complained about his civil claim of 16 February 2007 being dismissed as incomplete before his request to be exempted from the obligation to pay litigation costs and to be provided with a lawyer free of charge had been examined.

47. The Government argued that the application should be declared inadmissible because the applicant had: (i) failed to exhaust domestic remedies; or (ii) submitted the application out of time; or (iii) abused his right of petition; or (iv) failed to demonstrate that he had suffered a "significant disadvantage". In the alternative, they argued that there had been no violation of Article 6 § 1.

48. Notwithstanding the fact that the issue was not disputed by the parties' submissions, the Court must first ascertain whether Article 6 is applicable in the instant case (see, *mutatis mutandis*, *Blečić v. Croatia* [GC], no. 59532/00, § 67, ECHR 2006-III). In these circumstances, the Court does not consider it necessary to examine the admissibility objections raised by the Government, for the reasons laid down below.

49. According to the Court's well-established case-law, the applicability of the civil limb of Article 6 § 1 requires the existence of a "dispute" over a (civil) "right" which could be said, at least on arguable grounds, to be recognised under domestic law (see, for instance, *Rolf Gustafson v. Sweden*, 1 July 1997, *Reports of Judgments and Decisions* 1997-IV, §§ 38-40; the *Masson and Van Zon v. the Netherlands*, 28 September 1995, § 44, Series A no. 327-A). In assessing therefore whether there is a civil "right", the starting-point must be the provisions of the relevant domestic law and their interpretation by the domestic courts (see *Roche v. the United Kingdom* [GC], no. 32555/96, § 120, ECHR 2005-X). Nevertheless, in carrying out this assessment, it is necessary to look beyond the appearances and the language used and to concentrate on the realities of the situation (see *Ahtinen v. Finland*, no. 48907/99, § 38, 23 September 2008).

50. The present case is distinguishable from the cases previously before it (see, for example, *Rolf Gustafson v. Sweden*, cited above, § 39, and *Masson and Van Zon v. the Netherlands*, cited above, §§ 22, 45, 49-51), since the applicant had not cited any provision of domestic law as the basis of his civil claim (see paragraph 9 above). Only after the instruction of the presiding judge of the Municipal Court to this effect had he attempted to specify his claim in terms of Article 200 of the Obligations Act (see paragraphs 11, 13 and 37 above), but, had, in so doing, failed to satisfy the preliminary requirements in order to allow the domestic courts to make a considered assessment of his claim on the basis of the arguments before it (see paragraph 33 above); his civil claim was therefore summarily dismissed

as incomplete by two instances (see paragraphs 14 and 16 above). The Court also notes that the applicant has not referred before the Court either to any provision of domestic law which might give him a foundation for claiming damages for the late delivery.

51. The Court observes that the applicant's action was designed to secure vicarious (tort) liability of the Serbian Postal Service for wrongful and negligent conduct on the part of the postal service workers with the intention of obtaining compensation for non-pecuniary damage allegedly suffered in that regard (compare and contrast with *Baraona v. Portugal*, 8 July 1987, § 39, Series A no. 122). However, the Court considers that the assertion of a right by the applicant is not in itself sufficient to ensure the applicability of Article 6 § 1 of the Convention (compare and contrast with *Osman v. the United Kingdom*, 28 October 1998, §§ 137-140, *Reports of Judgments and Decisions* 1998-VIII). The Court must therefore ascertain whether the applicant's arguments were sufficiently tenable (see, *mutatis mutandis*, *Le Calvez v. France*, 29 July 1998, § 56, *Reports of Judgments and Decisions* 1998-V) to satisfy the essential conditions defined in the law for an award of compensation; it does not have to decide whether they were well-founded in terms of the Serbian legislation (see, *mutatis mutandis*, *Neves e Silva v. Portugal*, 27 April 1989, § 37, Series A no. 153-A) or whether another legal basis would have afforded better prospects of success (see *Editions Périscope v. France*, 26 March 1992, § 38, Series A no. 234-B).

52. Even assuming the establishment of delayed delivery, the Court, however, observes that the applicant did not place before either the domestic courts or the Court any plausible argument substantiating damage resulting from that conduct or to justify his understanding that he would be entitled to be paid damages (see *Kunkova and Kunkov v. Russia* (dec.), no. 74690/01, 12 October 2006, and *Artyomov v. Russia*, no. 14146/02, § 198, 27 May 2010; contrast, for example, with *Baraona,* cited above, §§ 41, and *James and Others v. the United Kingdom*, 21 February 1986, § 81, Series A no. 98). In fact he was neither able to specify a financial loss in terms of pecuniary damage, nor to demonstrate any serious personal prejudice in terms of the intensity or duration of his mental anguish, which could, at least on arguable grounds, have called for an award of compensation under the applicable domestic law.

53. In the light of the foregoing considerations, the Court finds that the applicant did not at the relevant time have a right which could arguably be said to be recognised under domestic law.

54. Accordingly, the Court finds that Article 6 § 1 is not applicable to the proceedings under consideration. The relevant complaint is therefore incompatible *ratione materiae* within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4 of the Convention.

3. Alleged violation of Article 14 of the Convention and Article 1 of Protocol no. 12

55. The applicant further complained, under Article 14 of the Convention and under Article 1 of Protocol No. 12, that he had been discriminated against by the Serbian judicial authorities on the ground of his indigence.

56. The Court also reiterates that Article 14 of the Convention complements the other substantive provisions of the Conventions and its Protocols. It has no independent existence since it has effect solely in relation to the "rights and freedoms" safeguarded by those provisions. Although the application of Article 14 does not presuppose a breach of one or more of such provisions, and to this extent it is autonomous, there can be no room for its application unless the facts of the case fall within the ambit of one or more of the latter (see, among many authorities, *Gaygusuz v. Austria*, 16 September 1996, § 36, *Reports of Judgments and Decisions* 1996-IV, p. 1141), and *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, § 91, ECHR 2001-VIII). In view of the Court's conclusion concerning the complaint under Article 6 § 1 of the Convention (see paragraph 54 above), the complaint under Article 14 in conjunction with that Article is equally incompatible *ratione materiae* within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4 of the Convention.

57. The Court further notes that, contrary to Article 14 of the Convention, Article 1 of Protocol No. 12 extends the scope of protection to "any right set forth by law" and thus introduces a general prohibition of discrimination. Notwithstanding the difference in scope between those provisions, the notions of discrimination prohibited by Article 14 and by Article 1 of Protocol No. 12 are to be interpreted in the same manner (see the Explanatory Report to Protocol No. 12, § 18). In this regard, the Court observes that the applicant has failed to substantiate or even refer to any discriminatory differences in treatment in the present case. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court by a majority

Declares the application inadmissible.

Stanley Naismith
Registrar

Guido Raimondi
President