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

SECOND SECTION

DECISION

Application no. 21603/07
Života MILOSAVLJEVIĆ
against Serbia

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

Paulo Pinto de Albuquerque, President,
Dragoljub Popović,
Helen Keller, judges,

and Seçkin Erel, *Acting Deputy Section Registrar*,

Having regard to the above application lodged on 3 April 2007,

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

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Života Milosavljević, is a Montenegrin national, who was born in 1954 and lives in Bar. He was represented before the Court by Ms I. Milosavljević and Mr D. Milosavljević, his wife and son, respectively.

2. 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. Background to the case

4. In 1993 the applicant instituted civil proceedings for compensation of damages against the Municipality of Kruševac. On 15 June 1999 the

Municipal Court (*Opštinski sud*) in Kruševac terminated the proceedings based on the parties' settlement and the applicant's withdrawal of the lawsuit.

5. On 30 August 2002 the applicant filed a request for reopening of the proceedings. On 9 December 2002 the Municipal Court rejected this request, which decision became final on 20 January 2003.

6. On 1 June 2006 the Ministry of Finance issued the enforcement order for the payment of court fees due with respect to the above proceedings in the amount of RSD 150,560 (approximately EUR 1,770 at the relevant time[1]), increased by another 5% on account of administrative tax.

7. In the meantime, in 2002 the applicant filed several criminal complaints against his former legal representative for *inter alia*, unauthorized representation in the proceedings described in paragraph 4 above. On 7 September 2004 the Public Prosecutor informed the applicant that there is no basis to press charges. The applicant thereafter took over the prosecution of the case on his own behalf, in the capacity of a "subsidiary prosecutor". By 29 September 2005 the courts rejected the applicant's request for criminal investigation as incomplete and incoherent.

2. The main proceedings

8. On 13 September 2004 the applicant lodged a lawsuit ("the initial lawsuit") against the judges and prosecutors acting in the civil and criminal proceedings described above (see paragraphs 4, 5 and 7 above) and the President of the Municipal Court in Kruševac, as well as against the respondent State, seeking: (i) the determination of the "(un)authenticity" of court decisions and documents which concern those civil proceedings; (ii) the "(non)existence" of the legal relationship between the parties to the said civil proceedings; (iii) the "(non)existence" of the liability for damages caused by unlawful acts of the judges and prosecutors acting in the above civil and criminal proceedings. The applicant further indicated that following court decision concerning his claims, he would specify his request for compensation of damages caused by the above civil servants in exercising their public functions.

9. On 19 September 2005 the case was reassigned to a new judicial formation in view of the applicant's lawsuit against the judge originally assigned to the case.

10. On 22 June 2006 the applicant appointed his son Mr D. Milosavljević, a lay person, to represent him.

11. In his submission dated 28 August 2006 the applicant requested the Municipal Court to issue him detailed information concerning this, and other forty four civil and enforcement proceedings to which he is a party.

[1] The amounts in Euro are given for reference only, based on an approximate average value at the relevant time.

12. On 28 September 2006 the applicant filed a complaint with the Presidents of the Municipal Court and the District Court (*Okružni sud*) in Kruševac requesting the proceedings to be expedited.

13. In his submission dated 10 October 2006 ("the amended lawsuit") the applicant: (i) withdrew the statement of claim against the judges and prosecutors; (ii) amended the statement of claim with respect to the respondent State by claiming non-pecuniary damages in the amount of RSD 510,000 (approximately EUR 6,300 at the relevant time) on account of alleged breach of his right to a fair trial and a trial within a reasonable time in the proceedings described in paragraph 5 above and requested an interim measure in that respect; (iii) complained about unreasonable delay in the proceedings; and (d) proposed procurement of certain documents *ex officio*.

14. On 20 April 2007 the Municipal Court forwarded the applicant's initial and amended lawsuits to the respondent State for a reply. On 29 October 2007, following the reply of the Public Attorney's Office, the Municipal Court issued the decision to return the amended lawsuit to the applicant for clarification and completion. In particular, the applicant was ordered to specify the claim with respect to the damages and the corresponding liability of the respondent State, that is, to identify the breaches of the personal/human rights by the State bodies, as well as to propose the supporting evidence. The applicant was warned that failure to respond within 15 days deadline could lead to his claim being dismissed or considered withdrawn.

15. In his letter of 3 April 2008 the applicant requested the Municipal Court to join in twenty seven other civil proceedings against the respondent State, which all concern the applicant's claims for damages for the procedural delays, following which he would withdraw all other lawsuits.

16. On 30 April 2008 the applicant filed with the Municipal Court a memo together with a copy of the initial and the amended lawsuits, for a potential reconstruction of the case file, given that he was apparently informed by the presiding judge that the case file had been lost.

17. On 23 June 2008, after being served with the Municipal Court decision of 29 October 2007, the applicant filed a request with the Municipal Court to provide him with a copy of the amended lawsuit which was said to have been returned to him for clarification, but which was apparently not enclosed. On the same date the applicant lodged a request with the same court to terminate the proceedings for the payment of court fees as statute-barred.

18. On 1 July 2008 the applicant submitted a revised and supplemented lawsuit ("the revised lawsuit") as instructed by the Municipal Court decision of 29 October 2007, seeking primarily the determination of the breach of his right to a hearing within a reasonable time with respect to the civil proceedings described in paragraph 5 above and another set of unrelated civil proceedings, as well as the compensation for damages in that

regard. In addition, the applicant requested the court to determine the authenticity of the information note of the President of the District Court of 16 October 2002 and the Post Office's confirmation of service of a letter, allegedly containing the applicant's appeal against the Municipal Court decision of 9 December 2002 (see paragraph 5 above). The applicant also requested, *inter alia*, an exemption from the obligation to pay litigation costs (*oslobođenje od plaćanja troškova postupka*) and free legal representation (*postavljanje besplatnog advokata*).

19. On 21 July 2008 the Municipal Court dismissed the revised lawsuit as incomplete and incoherent.

20. In his submission of 29 July 2008 the applicant requested: (i) rectification of errors in the Municipal Court decision of 21 July 2008; (ii) *restitutio in integrum* with respect to the court's failure to serve him with a copy of the lawsuit he was ordered to clarify and complete; (iii) a supplementary decision concerning his request for exemption from the obligation to pay litigation costs and free legal representation; and (iv) reallocation of his case from the jurisdiction of the competent District Court and all of the Municipal Courts under its jurisdiction. In addition, the applicant appealed the Municipal Court decision of 21 July 2008 and cancelled the power of attorney to his representative at the time, except for the service of court correspondence.

21. On 22 January 2009 the District Court, before deciding on the appeal, returned the case file to the Municipal Court for deliberation concerning the request for *restitutio in integrum*. On 13 March 2009 the Municipal Court rejected the applicant's request for *restitutio in integrum* as unfounded.

22. On 10 March 2009 the applicant's representative for service of court correspondence requested an update from the Municipal Court regarding the present and seven other civil and enforcement proceedings.

23. On 19 March 2009 the applicant's representative for service of court correspondence requested the Municipal Court: (i) to serve him with a copy of the lawsuit allegedly returned to the applicant for clarification with the Municipal Court decision of 29 October 2007, and (ii) to issue him a decision concerning the request for reallocation of the case to another competent court. On the same date the applicant requested the Municipal Court to issue him decisions concerning the changes of the composition of the courts in the present and other sixteen cases.

24. On 24 March 2009 the applicant filed a submission: (i) proposing rectification of errors and a supplement to the Municipal Court decisions of 21 July 2008 and 13 March 2009; (ii) requesting to be served with the order of the President of the Municipal Court to change the composition of the trial court; (iii) proposing investigation with respect to the service of the lawsuit allegedly returned to him for clarification with the Municipal Court decision of 29 October 2007; and (iv) appealing the Municipal Court

decision of 13 March 2009. On 1 April 2009 the applicant lodged a supplement to the appeal against the Municipal Court decision of 13 March 2009.

25. On 25 August 2009 the applicant requested the trial judge presiding in this and eight other cases to recluse herself.

26. On 29 December 2009 and 23 February 2010 the applicant's representative for service of court correspondence and the applicant, respectively, requested the Municipal Court to provide each of them with detailed information concerning the present and other seventy eight civil and enforcement proceedings to which the applicant is a party.

27. On 10 February 2011 the High Court (*Viši sud*) in Kruševac, deciding on the applicant's appeals, confirmed the Municipal Court decision of 13 March 2009 and reversed the Municipal Court decision of 21 July 2008. In particular, the court held that the Municipal Court failed to forward the applicant the lawsuit he was ordered to clarify and complete with its decision of 29 October 2007 and instructed the Municipal Court, *inter alia*, to decide on the applicant's request for the exemption from the obligation to pay litigation costs and free legal representation. It appears that this decision was never served on the applicant.

28. On 16 March 2011 the Municipal Court forwarded the applicant's revised lawsuit to the respondent State for a reply, which the competent Public Attorney's Office did on 14 April 2011.

29. On 5 August 2011 the applicant again requested the Municipal Court to grant him an exemption from the obligation to pay litigation costs and free legal representation and informed the court about the change of his representative for service of court correspondence.

30. Following the judicial reform, on 23 May 2012 the First Instance Court (*Osnovni sud*) in Kruševac, now acting as the competent court, declared the applicant's lawsuit inadmissible.

31. On 31 May 2012 the applicant, through a lawyer, lodged an appeal against the First Instance Court decision and a request for *restitutio in integrum*.

32. On 10 October 2012 the First Instance Court dismissed the request for *restitutio in integrum* as unsubstantiated.

33. On 20 October 2012 the applicant filed a request with the First Instance Court seeking: (i) rectification of error concerning the deadline for lodging an appeal against the decision of 10 October 2012; (ii) to be served with the High Court decision of 10 February 2011.

34. It would appear that the applicant's appeal is still pending before the second-instance court.

3. The proceedings before the Constitutional Court

35. On 26 January 2009 the applicant filed a constitutional appeal complaining about the length of the civil proceedings instituted by him on 13 September 2004.

36. On 23 June 2011 the Constitutional Court (*Ustavni sud*) of the Republic of Serbia, held that the applicant had indeed suffered a breach of his right to a trial within a reasonable time and ordered the competent court to bring the impugned civil proceedings to a conclusion as soon as possible. In so doing, the Constitutional Court found in particular that the competent courts acted inefficiently in that it took them three years to return the lawsuit to the applicant for clarification and completion, another nine months to dismiss the lawsuit as incomplete and another three years to decide on appeal against this decision. The court however held that the applicant himself contributed to the length of the impugned civil proceedings by filing incoherent and incomprehensible submissions on which the courts could not act upon, and which needed to be returned to him for clarification and completion. In addition, the applicant had waited for two years before amending his statement of claim and withdrawing the claims against judges and prosecutors. For these reasons, the court rejected the applicant's claim for non-pecuniary damages and held that ordering the competent court to bring the impugned civil proceedings to a conclusion as soon as possible would rectify the detrimental consequences of the established breach of the applicant's right.

B. Relevant domestic law

1. The Civil Procedure Act 2004 (Zakon o parničnom postupku; published in Official Gazette of the Republic of Serbia – OG RS, nos. 125/04 and 111/09)

37. Article 100 provided that written pleadings (lawsuits, replies and remedies) must be coherent and must indicate the court, names and addresses of the parties and their representatives, subject matter of the dispute, statement of claim and signature and that any request in the statement of claim must be supported by facts and evidence where necessary. In addition, a lawsuit must contain a specific request regarding the principal and derivative claims, supporting facts and evidence, as well as the statement as to the value of the dispute (Article 187 § 1). The court would return incoherent or incomplete submissions to a party who has no legal representative to correct it, unless otherwise provided by law (Articles 103 § 1 and 278). If such submission was not lodged within the time-limit set by the court, it would be considered withdrawn, and if it was not amended or completed it would be declared inadmissible (Articles 103 § 4 and 279).

2. The Civil Procedure Act 2011 (Zakon o parničnom postupku; published in OG RS, no. 72/11)

38. The Civil Procedure Act 2011 entered into force on 1 February 2012, thereby repealing the Civil Procedure Act 2004. Article 506 provides for the application of the 2004 Civil Procedure Act to all proceedings instituted before the new Act entered into force.

3. Other relevant domestic law

39. Other relevant provisions are set out in the case of *V.A.M. v. Serbia*, no. 39177/05, §§ 71-72 and 86, 13 March 2007; *Vinčić and Others v. Serbia*, nos. 44698/06, 44700/06, 44722/06, 44725/06, 49388/06, 50034/06, 694/07, 757/07, 758/07, 3326/07, 3330/07, 5062/07, 8130/07, 9143/07, 9262/07, 9986/07, 11197/07, 11711/07, 13995/07, 14022/07, 20378/07, 20379/07, 20380/07, 20515/07, 23971/07, 50608/07, 50617/07, 4022/08, 4021/08, 29758/07 and 45249/07, §§ 24-35, 1 December 2009; and *Predić-Joksić v. Serbia* (dec.), no. 19424/07, § 13, 20 March 2012.

COMPLAINTS

40. The applicant complained under Articles 6 and 13 of the Convention about the length of his civil proceedings, as well as about a lack of an effective domestic remedy in that regard. The applicant also complained, under Article 1 of Protocols Nos. 1 and 12 to the Convention, that his property rights were breached and that he was discriminated against on the basis of his citizenship and residence.

THE LAW

A. Alleged violation of Article 6 § 1 of the Convention

1. Arguments of the parties

41. The Government referred to the reasons and conclusions of the Constitutional Court and submitted that the finding of a violation and expediting the impugned civil proceedings constituted sufficient redress for the breach of the applicant's right to a hearing within a reasonable time and that therefore, the applicant had lost victim status. They also contended that the excessive length of the impugned civil proceedings was largely if not exclusively due to the applicant's conduct, namely, the filing of incomplete, incoherent, incomprehensible, frivolous and overdue submissions and

invited the Court to declare the application inadmissible as manifestly ill-founded. Finally, the Government argued that the applicant had abused his right of individual application by filing a number of applications before the Court, and by lodging numerous ill-founded, incomplete and frivolous claims before the domestic courts.

42. The applicant disagreed and reiterated his original complaints.

2. The Court's assessment

43. The Court reaffirms that a constitutional appeal remains, in principle, a remedy to be exhausted, within the meaning of Article 35 § 1 of the Convention, only in respect of complaints introduced as of 7 August 2008 (see *Vinčić and Others v. Serbia*, cited above, § 51), whilst in respect of all complaints lodged earlier, such as the application at hand, any redress provided by the Constitutional Court shall be assessed through the prism of whether the applicant can still be considered to be a victim within the meaning of Article 34 (see *Vidaković v. Serbia* (dec.), no. 16231/07, § 34, 24 May 2011).

44. The Court recalls that an applicant's status as a "victim" depends on the fact whether the domestic authorities acknowledged, either expressly or in substance, the alleged infringement of the Convention and, if necessary, provided appropriate redress in relation thereto. Only when these conditions are satisfied does the subsidiary nature of the protective mechanism of the Convention preclude examination of an application (see *Cocchiarella v. Italy* [GC], no. 64886/01, § 71, ECHR 2006-V; and *Cataldo v. Italy* (dec.), no. 45656/99, 3 June 2004).

45. The Court, in this respect, notes that the Constitutional Court found that the applicant's right to the determination of his claim within a reasonable time had been violated – thereby acknowledging the breach complained of and, effectively, satisfying the first condition laid down in the Court's case law.

46. Furthermore, the Court notes that the Constitutional Court ordered the applicant's proceedings to be expedited. Following the decision of the Constitutional Court in June 2011, the Court of First Instance less than a year later, on 23 May 2012, declared the applicant's lawsuit inadmissible. The proceedings would appear to be currently pending at second instance, following the applicant's appeal. Considering the current status of the case, the Court cannot but conclude that the proceedings have been duly expedited, the applicant's victim status thus depending on whether compensation for damages should have been afforded in the particular circumstances of the present case.

47. The Court has already indicated that there is a very strong but rebuttable presumption that in length-of-proceedings cases one of the characteristics of sufficient redress which may remove a litigant's victim status relates to the amount awarded (see *Scordino v. Italy (no. 1)* [GC],

no. 36813/97, § 202, ECHR 2006-V). The Court further notes that factors such as the conduct of the applicant and what is at stake for him or her in the dispute together with other relevant aspects may affect in various degrees the award in respect of non-pecuniary damage (see *Apicella v. Italy*, no. 64890/01, § 26, 10 November 2004) and exceptionally, lead to no award at all (see *Scordino (no. 1)*, cited above, § 204). The domestic courts will then have to justify their decision by giving sufficient reasons (*ibidem;* and *Šedý v. Slovakia*, no. 72237/01, §§ 90-92, 19 December 2006).

48. Turning to the present case, the Court observes that although the Constitutional Court attributed six years and nine months of the delay in the proceedings - which at that time lasted for almost seven years - to the competent courts, it found that the applicant contributed to the length of the proceedings by filing incoherent and incomplete submissions and by prolonging the amendment of his statement of claim and withdrawing the claims against judges and prosecutors. It accordingly, rejected the applicant's request for compensation of non-pecuniary damage.

49. In the light of the facts of the case set out above, the Court finds the reasons relied on by the Constitutional Court sufficient.

50. The Court therefore concludes that the applicant can no longer claim to be a "victim" within the meaning of Article 34 of the Convention of the alleged violation of his right to a hearing within a reasonable. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

51. Having regard to the above conclusion, the Court does not consider it necessary to examine the other arguments brought by the Government.

B. Other alleged violations of the Convention

52. The applicant, in addition, complained under Article 13 of the Convention about a lack of an effective domestic remedy for the delay in the impugned civil proceedings. In view of the Court's findings in paragraph 50, this complaint is likewise manifestly ill-founded and must be rejected as inadmissible in accordance with Article 35 §§ 3 and 4 of the Convention.

53. Relying on Article 1 of Protocol No. 1 to the Convention the applicant also complained about a breach of his property rights with respect to the impugned civil proceedings. Given that the proceedings at issue are apparently still pending, the Court finds this complaint premature and, as such, inadmissible for non-exhaustion of domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention.

54. The Court has also examined the applicant's complaint about discrimination on the basis of citizenship and residence, under Article 1 of Protocol No. 12 to the Convention. However, there is nothing in the case file which might disclose any appearance of a violation of the Convention in

this regard at the present stage. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Seçkin Erel	Paulo Pinto de Albuquerque
Acting Deputy Registrar	President