SECOND SECTION

CASE OF MILIĆ v. MONTENEGRO AND SERBIA

(Application no. 28359/05)

JUDGMENT

STRASBOURG

11 December 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 Milić v. Montenegro and Serbia,

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

Guido Raimondi, *President,*
Peer Lorenzen,
Dragoljub Popović,
András Sajó,
Nebojša Vučinić,
Paulo Pinto de Albuquerque,
Helen Keller, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 20 November 2012,

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

PROCEDURE

1. The case originated in an application (no. 28359/05) against Montenegro and 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 Ivan Milić ("the applicant"), on 19 July 2005.

2. The applicant, who had been granted legal aid, was represented by Ms G. Ćušić, a lawyer practising in Belgrade. The Montenegrin Government were represented by their Agent, Mr Z. Pažin. The Serbian Government were represented by their Agent, Mr. S. Carić.

3. The applicant complained about non-enforcement of a final judgment ordering his reinstatement and a lack of an effective domestic remedy in that regard.

4. On 15 March 2010 the application was communicated to the Governments of Montenegro and Serbia. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant, Mr Ivan Milić, was born in 1966 and lives in Belgrade, Serbia.

A. The first set of civil proceedings and the ensuing enforcement proceedings

6. On 20 June 2002 the Court of First Instance (*Osnovni sud*) in Podgorica ordered that the applicant be reinstated by the Clinical Centre of Montenegro (*Kliničko bolnički Centar Crne Gore*), a State-run medical institution.

7. On 4 February 2003 this judgment became final, and on 16 December 2003 it was confirmed by the Supreme Court (*Vrhovni sud*) in Podgorica at third instance.

8. On 23 April 2003 the Clinical Centre of Montenegro informed the applicant that it could not comply with the judgment in question, but would rather seek an alternative solution.

9. On 22 May 2003 the Court of First Instance issued an enforcement order, which decision was confirmed on 26 June 2003.

10. On 19 August 2003 the Clinical Centre of Montenegro concluded an agreement with the Special Hospital in Risan, also a State-run medical institution, whereby the latter accepted the applicant as its employee.

11. On 30 September 2003 the applicant informed the State Prosecutor that he did not approve of this arrangement.

12. On 17 October 2003 the Special Hospital in Risan issued a decision to the effect that the applicant would become its employee as of 30 October 2003.

13. On 20 October 2003 the applicant received this decision.

14. On 21 October 2009, as submitted by the Montenegrin Government, the applicant concluded an Agreement on Termination of Employment with the Clinical Centre of Montenegro whereby his employment had been terminated as from 3 February 2003 and both parties waived any further claims in this regard.

15. On 26 October 2009 the applicant withdrew his enforcement request.

16. On 5 November 2009 the Court of First Instance terminated the enforcement proceedings and all the enforcement activities which had been carried out in that regard. On 17 November 2009 this decision became final.

B. Other relevant facts

17. On 6 May 2004, upon the applicant's separate claim, the Court of First Instance in Podgorica ordered the Clinical Centre of Montenegro to pay the applicant 4,456 euros ("EUR") for salary arrears for the period between September 2001 and 3 February 2003. This judgment was upheld by the High Court on 5 October 2004. It would appear from the case file that this judgment was enforced on an unspecified date thereafter.

18. On 3 February 2003 the applicant started to work in the Clinical Centre of Serbia for a period of nine months. It would appear from the case file that on an unspecified date thereafter his temporary employment was transformed into a permanent one.

II. RELEVANT DOMESTIC LAW

A. Constitution of Montenegro 2007 (Ustav Crne Gore; published in the Official Gazette of Montenegro - OGM - no. 1/07)

19. Article 149 of the Constitution provides that the Constitutional Court shall rule on a constitutional appeal lodged in respect of an alleged violation of a human right or freedom guaranteed by the Constitution, after all other effective legal remedies have been exhausted.

20. The Constitution entered into force on 22 October 2007.

B. Montenegro Constitutional Court Act (Zakon o Ustavnom sudu Crne Gore; published in OGM no. 64/08)

21. Section 48 provides that a constitutional appeal may be lodged against an individual decision of a state body, an administrative body, a local self-government body or a legal person exercising public authority, for violations of human rights and freedoms guaranteed by the Constitution, after all other effective domestic remedies have been exhausted.

22. Sections 49-59 provide additional details as regards the processing of constitutional appeals. In particular, section 56 provides that when the Constitutional Court finds a violation of a human right or freedom, it shall quash the impugned decision, entirely or partially, and order that the case be re-examined by the same body which rendered the quashed decision.

23. The Act entered into force in November 2008.

C. Right to a Trial within a Reasonable Time Act (Zakon o zaštiti prava na suđenje u razumnom roku; published in OGM no. 11/07)

24. This Act provides, under certain circumstances, the possibility to have lengthy proceedings expedited by means of a request for review (*kontrolni zahtjev*), as well as an opportunity for claimants to be awarded compensation by means of an action for fair redress (*tužba za pravično zadovoljenje*).

25. Section 9 § 2 provides that a request for review can be filed with the court which is dealing with the case at the relevant time.

26. Section 33 § 3 provides that an action for fair redress shall be filed with the Supreme Court no later than six months after the date of receipt of the final decision rendered in the impugned proceedings or, within the enforcement procedure, no later than six months after the date of receipt of the final decision issued upon the request for review.

27. Section 44 further provides that this Act shall be applied retroactively to all proceedings from 3 March 2004, but that the duration of proceedings before that date shall also be taken into account.

28. The Act entered into force on 21 December 2007, but contained no reference to applications involving procedural delay already lodged with the Court.

D. Enforcement Procedure Act 2000 (Zakon o izvršnom postupku; published in the Official Gazette of the Federal Republic of Yugoslavia nos. 28/00, 73/00 and 71/01)

29. Section 4 § 1 provided that enforcement proceedings were urgent.

30. Sections 211-214 set out details as regards enforcement in cases of reinstatement.

E. Enforcement Procedure Act 2004 (Zakon o izvršnom postupku; published in the Official Gazette of the Republic of Montenegro - OG RM - no. 23/04)

31. The Act entered into force on 13 July 2004, thereby repealing the Enforcement Procedure Act 2000. In accordance with section 286 of this Act, however, all enforcement proceedings instituted prior to 13 July 2004 were to be concluded pursuant to the Enforcement Procedure Act 2000.

F. Labour Act 2003 (Zakon o radu; published in OG RM nos. 43/03, 79/04, 24/06 and 25/06; and in the Official Gazette of Montenegro no. 16/07)

32. Section 33 required an employee's consent in order for him to be transferred to another employer.

G. Labour Act 2008 (Zakon o radu; published in OGM nos. 49/08, 26/09 and 88/09)

33. The Labour Act 2008 entered into force on 19 August 2008 thereby repealing the Labour Act 2003. Section 42 § 2 of the former, however, also requires the employee's consent for his transfer to another employer.

H. Relevant domestic case-law

34. Between 1 January 2008 and 30 September 2009 twenty-two actions for fair redress were submitted, of which sixteen were dealt with and six were still being examined. In one case the courts awarded the plaintiff compensation for non-pecuniary damage in respect of the length of civil proceedings. Between 1 January 2010 and 30 April 2011 an additional fifteen actions for fair redress were examined, in three of which the courts awarded damages.

THE LAW

35. The applicant complained under various Articles of the Convention against both Montenegro and Serbia about the non-enforcement of the judgment issued by the Court of First Instance in Podgorica ordering his reinstatement, which became final on 4 February 2003, as well as about the lack of an effective domestic remedy in that respect.

36. The Court considers that these complaints all fall to be examined under Articles 6 § 1 and 13 of the Convention (see *Akdeniz v. Turkey*, no. 25165/94, § 88, 31 May 2005), which, in their relevant parts, read as follows:

Article 6 § 1

"In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

Article 13

"Everyone whose rights and freedoms...are violated shall have an effective remedy before a national authority..."

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

A. Admissibility

1. Compatibility ratione personae

(a) As regards the respondent States

37. The Montenegrin Government made no comment in this regard.

38. The Serbian Government submitted that the application was incompatible *ratione personae* with regard to Serbia. They referred, in particular, to *Bijelić v. Montenegro and Serbia*, no. 11890/05, §§ 67-70, 28 April 2009.

39. The applicant complained against both Montenegro and Serbia.

40. Given the fact that the entire enforcement proceedings have been conducted solely by the Montenegrin authorities, which also had the exclusive competence to deal with the subject matter, the Court, without prejudging the merits of the case, finds the applicant's complaints in respect of Montenegro compatible *ratione personae* with the provisions of the Convention. For the same reason, however, the applicant's complaints in respect of Serbia are incompatible *ratione personae* within the meaning of Article 35 § 3(a), and must be rejected pursuant to Article 35 § 4 of the Convention (see, also, *Lakićević and Others v. Montenegro and Serbia*, nos. 27458/06, 37205/06, 37207/06 and 33604/07, § 41, 13 December 2011).

(b) As regards the applicant

41. The Montenegrin Government submitted that the applicant could no longer claim to be a "victim" as he had concluded the Agreement on Termination of Employment on 21 October 2009, waived any further claims in this regard and had withdrawn his enforcement request. The Agreement had effect as from 3 February 2003, which was before the Convention entered into force in respect of Montenegro and before the applicant lodged his application with the Court. They also maintained that the applicant's submission that he had been forced to conclude the said Agreement was unsubstantiated.

42. The applicant contested these submissions. In particular, he maintained that by the time he had concluded the Agreement the enforcement proceedings had been already ongoing for more than five years but to no avail. He had been forced to conclude the said Agreement and to withdraw the enforcement request as he needed to verify his employment in another institution. His withdrawal of the enforcement request was therefore irrelevant and his rights had been breached.

43. The Court reiterates that, in order to be able to lodge a petition by virtue of Article 34, a person, non-governmental organisation or a group of individuals must be able to claim to be the victim of a violation of the rights set forth in the Convention.

44. Turning to the present case, the Court notes that the domestic proceedings were settled in that the applicant concluded the Agreement on Termination of Employment and thus consented to discontinue to insist that the relevant court judgment be enforced. He

withdrew his enforcement request on 26 October 2009, after which the enforcement proceedings were terminated.

45. The Court also notes, however, that the said agreement did not address the issue of the length of the said non-enforcement, which the applicant alleges constituted a violation of the Convention. In view of that, and without prejudice to the merits of the case, the Court considers that the applicant's Convention complaint still persists and that the applicant's status as a "victim" within the meaning of Article 34 of the Convention remained unaffected by the agreement. The Government's objection in this regard must, therefore, be dismissed.

2. Exhaustion of domestic remedies

(a) Arguments of the parties

46. The Montenegrin Government submitted that the applicant had not exhausted all effective domestic remedies available to him. In particular, he had failed to lodge a request for review and an action for fair redress provided by the Right to a Trial within a Reasonable Time Act (see paragraph 24 above). He had also failed to make use of a constitutional appeal (see paragraphs 19-23 above).

47. The applicant contested these submissions. In particular, he maintained that the remedies referred to by the Government had not existed at the time when he had lodged his application with the Court and that therefore he had not been obliged to make use of them later. He also submitted that in any event these remedies were not effective.

(b) Relevant principles

48. The Court recalls that, according to its established case-law, the purpose of the domestic remedies rule in Article 35 § 1 of the Convention is to afford the Contracting States the opportunity of preventing or putting right the alleged violations before they are submitted to the Court.

49. However, the only remedies which the Convention requires to be exhausted are those which relate to the breaches alleged and at the same time are available and sufficient (see *Selmouni v. France* [GC], no. 25803/94, § 75, ECHR 1999 V, *McFarlane v. Ireland* [GC], no. 31333/06, § 107, ECHR 2010-...). The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness; it falls to the respondent State to establish that these various conditions are satisfied (see *Vernillo v. France*, 20 February 1991, § 27, Series A no. 198; and *Dalia v. France*, 19 February 1998, § 38, *Reports* 1998-I).

50. Once this burden of proof has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government had in fact been used, or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from that requirement (see *Dankevich v. Ukraine*, no. 40679/98, § 107, 29 April 2003).

51. The Court reiterates that the effectiveness of a particular remedy is normally assessed with reference to the date on which the application was lodged (see, for example, *Baumann v. France*, no. 33592/96, § 47, ECHR 2001-V (extracts)), this rule, however, being subject to exceptions which may be justified by the specific

circumstances of each case (see *Nogolica v. Croatia* (dec.), no. 77784/01, 5 September 2002).

(c) The Court's assessment

(i) As regards the request for review

52. The Court has already held that it would be unreasonable to require an applicant to try a request for review on the basis of the Right to a Trial within a Reasonable Time Act in a case where the domestic proceedings had been pending for a number of years before the introduction of this legislation and where no conclusions could be drawn from the Government's submissions about its effectiveness (see, *mutatis mutandis*, *Boucke v. Montenegro*, no. 26945/06, §§ 72-74, 21 February 2012; as well as *Živaljević v Montenegro*, no. 17229/04, §§ 60-65, 8 March 2011). The Court, however, reserved its right to reconsider its view if the Government demonstrated, with reference to specific cases, the efficacy of this remedy (see *Boucke,* cited above § 71, and *Živaljević,* cited above, § 66).

53. In view of the fact that the enforcement proceedings here at issue had been pending for more than four years and six months before the Right to a Trial within a Reasonable Time Act entered into force, of which more than three years and nine months had elapsed after the Convention entered into force in respect of the respondent State, and that no recent case-law concerning the efficacy of this particular remedy has been submitted, the Court sees no reason to depart from its previous finding and concludes, therefore, that the Government's objection must be dismissed.

(ii) As regards the action for fair redress

54. The Court notes that the applicant lodged his application on 19 July 2005, which was more than two years and five months before an action for fair redress was introduced by the Right to a Trial within a Reasonable Time Act (see paragraphs 1 and 28 above). Therefore, at the time when the applicant lodged his application with this Court, there was no available domestic remedy which would have enabled him to obtain redress for the past delay, the effectiveness of a particular remedy being assessed with reference to the date on which the application was lodged (see *Baumann v. France*, cited above, § 47).

55. While the Court has allowed for an exception to this rule, this was usually in cases where specific national legislation as regards the length of proceedings had been passed in response to a great number of applications already pending before the Court indicating a systemic problem in these States. These laws also contained transitional provisions bringing within the jurisdiction of domestic courts the cases already pending before this Court (see *Grzinčič v. Slovenia*, no. 26867/02, § 48, 3 May 2007; *Charzyński v. Poland* (dec.), no. 15212/03, § 20, ECHR 2005-V; and *Brusco v. Italy* (dec.), no. 69789/01, ECHR 2001-IX). Having regard to those considerations, the Court was of the opinion that these States should be afforded an opportunity to prevent or put right the alleged violation themselves and therefore allowed for an exception to the above rule.

56. Unlike in the above mentioned cases, the relevant legislation in Montenegro had not been passed in response to numerous applications pending before this Court, nor does it contain any transitional provision whatsoever with regard to applications already pending before this Court (see paragraph 28 above). Therefore, it is unclear whether the

domestic courts would have ruled at all on the merits of the applicant's action for fair redress had he lodged one.

57. The Court also notes that the applicant cannot be required to avail himself of this avenue of redress at this stage, as its use had long become time-barred in his case (see paragraphs 26, 25 and 16 above, in that order).

58. Having regard to the particular circumstances of the instant case as set out above, the Court considers that the applicant was not obliged to exhaust this particular avenue of redress (see, *mutatis mutandis*, *Novović v. Montenegro*, 13210/05, §§ 40-44, 23 October 2012 (not yet final); *Vinčić and Others v. Serbia*, no. 44698/06 et seq. § 51, 1 December 2009, as well as *Cvetković v. Serbia*, no. 17271/04, § 41, 10 June 2008). The Government's objection must, therefore, be dismissed.

(iii) As regards the constitutional appeal

59. The Court has also already found that a constitutional appeal cannot be considered an effective domestic remedy in respect of length of proceedings (see *Boucke,* cited above, § 79; see, also, *Mijušković v. Montenegro*, cited above, §§ 73-74). It sees no reason to hold otherwise in the present case. The Government's objection in this regard must, therefore, be dismissed.

3. Conclusion

60. The Court notes that the applicant's complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds**.** It must therefore be declared admissible.

B. Merits

61. The Montenegrin Government made no comment in this regard.

62. The applicant reaffirmed his complaint.

63. The Court recalls that Article 6 § 1 of the Convention, *inter alia*, protects the implementation of final, binding judicial decisions, which, in States that accept the rule of law, cannot remain inoperative to the detriment of one party. Accordingly, the execution of a judicial decision cannot be prevented, invalidated or unduly delayed (see, among other authorities, *Hornsby v. Greece*, 19 March 1997, § 40, *Reports of Judgments and Decisions* 1997-II). The State has an obligation to organise a system of enforcement of judgments that is effective both in law and in practice (see *Fuklev v. Ukraine*, no. 71186/01, § 84, 7 June 2005).

64. Lastly, the Court reiterates that enforcement proceedings by their very nature need to be dealt with expeditiously (see *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 23, ECHR 2000-IV).

65. Turning to the present case, the Court notes that the period to be taken into account began on 3 March 2004, which is when the Convention entered into force in respect of Montenegro (see *Bijelić v. Montenegro and Serbia*, no. 11890/05, § 69, 28 April 2009) and ended on 26 October 2009, when the applicant withdrew the enforcement request. The impugned enforcement proceedings had thus been within the Court's competence *ratione temporis* for a period of more than five years and seven months, more than another nine months having already elapsed before that date (see

Mikulić v. Croatia, no. 53176/99, § 37, ECHR 2002-I, *Styranowski v. Poland*, 30 October 1998, § 46, *Reports of Judgments and Decisions* 1998-VIII).

66. The impugned enforcement proceedings concerned the applicant's reinstatement. While it can be accepted that some such cases may be more complex than others, the Court does not consider the present one to be of such complexity as to justify enforcement proceedings of this length. The issue was clearly of great importance to the applicant, the Convention itself requiring exceptional diligence in employment disputes (see, *mutatis mutandis*, *Guzicka v. Poland*, no. 55383/00, § 30, 13 July 2004, *Borgese v. Italy*, 26 February 1992, § 18, Series A no. 228-B, and *Georgi Georgiev v. Bulgaria*, no. 22381/05, § 18 *in fine*, 27 May 2010).

67. As to the conduct of the parties, the Court observes that after the Convention had entered into force in respect of the respondent State and prior to 26 October 2009 the authorities failed to make any attempt whatsoever in order to enforce the judgment in question. The Montenegrin Government did not provide any explanation in that regard. It is further noted that even before the ratification of the Convention the Clinical Centre of Montenegro had merely informed the applicant that the impugned decision could not be enforced, but that they would rather seek an alternative solution. To that end it was agreed with the Special Hospital in Risan to take over the applicant, an option explicitly requiring the applicant's consent, which was clearly lacking in the present case (see paragraphs 32-33 and 10-11 above). The applicant, for his part, would not appear to have contributed in any way to the delay complained of.

68. Having regard to its case-law on the subject (see, *mutatis mutandis*, *Boucke,* cited above, § 89-94), what was at stake for the applicant and the failure of the domestic authorities to display adequate diligence, the Court considers that the non-enforcement at issue amounts to a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

A. Admissibility

69. The Court considers that the applicant's complaint in respect of Serbia is incompatible *ratione personae*, for the reasons already stated in paragraph 40 above.

70. The Court notes that the complaint in respect of Montenegro raises issues of fact and law under the Convention, the determination of which requires an examination of the merits. It also considers that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3(a) of the Convention and that it cannot be rejected on any other grounds. The complaint must therefore be declared admissible.

B. Merits

71. The Court notes that Article 13 guarantees an effective remedy before a national authority for an alleged breach of all rights and freedoms guaranteed by the Convention, including the right to a hearing within a reasonable time under Articles 6 § 1 (see, *inter alia*, *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000 XI).

72. It recalls, further, 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 VII).

73. Finally, the Court emphasises 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.

74. However, as noted above, the existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see paragraph 49 above).

75. Turning to the present case, the Court notes that the Montenegrin Government averred in their preliminary observations that there were remedies available for the applicant's complaint about the length of the enforcement proceedings made under Article 6 § 1, which objections were rejected on the grounds described at paragraphs 52-59 above.

76. The Court concludes, for the same reasons, 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 complaint concerning the length of non-enforcement at issue (see *Stakić v. Montenegro*, no. 49320/07, §§ 55-60, 2 October 2012 (not yet final); see, also, *Stevanović v. Serbia*, no. 26642/05, §§ 67-68, 9 October 2007; and, *mutatis mutandis*, *Rodić and Others v. Bosnia and Herzegovina*, no. 22893/05, §§ 84-85, 27 May 2008).

77. The Court would again observe that it might reconsider its view in this regard if the Government are able to demonstrate in future such applications, with reference to specific cases, the efficacy of the said remedies (see paragraph 52 above, *in fine*).

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

78. The applicant also complained: (a) under Article 1 of Protocol No. 1 to the Convention, that his right to peacefully enjoy his property had been violated in that he had been forced to change the place of residence to search for another job and thus had to leave his property in Montenegro; and (b) under Article 14 of the Convention and Article 1 of Protocol No. 12 thereto, about having been discriminated against.

79. The Court considers that the applicant's complaints in respect of Serbia are incompatible *ratione personae* for the reasons already stated in paragraph 40 above.

80. In the light of all the material in its possession, in particular in view of the fact that the applicant submitted no evidence that Montenegro deprived him of his property in its territory or interfered with it in any way, the Court finds that the complaint in this respect is unsubstantiated and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

81. Quite apart from the fact that the applicant does not seem to have raised this issue before the domestic courts, the Court, in any event, notes that there is no evidence in the case file that there has been any discrimination against the applicant on any grounds. It

follows that this complaint is also manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

82. 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

83. The applicant claimed the damages but maintained that the exact amount was difficult to specify as it was "an enormous figure". He did not submit a properly itemised claim or any documentary evidence in that regard.

84. The Montenegrin Government made no comment in this regard.

85. Pursuant to Rule 60 §§ 2 and 3 of the Rules of Court, the Court requires specific claims supported by appropriate documentary evidence, failing which it may make no award (see the Rules of Court as well as paragraph 5 of the Practice Direction on Just Satisfaction Claims). As regards pecuniary damage, in particular, it is for the applicant to show that pecuniary damage has resulted from the violation alleged. The applicant should submit relevant documents to prove, as far as possible, not only the existence but also the amount or value of the damage (see paragraph 11 of the said Practice Direction). Given that the applicant did not submit a properly itemised claim in respect of the pecuniary damage nor any documentary evidence in that regard and thus failed to comply with Rule 60 §§ 2 and 3 of the Rules of Court, the Court makes no award under this head.

86. On the other hand, it is clear that the applicant sustained some non-pecuniary damage arising from the breaches of his rights under Articles 6 § 1 and 13 of the Convention, for which he should be compensated. Making its assessment on an equitable basis, the Court awards the applicant EUR 7,000 in this regard.

B. Costs and expenses

87. The applicant maintained that he had incurred "significant" costs and expenses, but he had submitted no invoice.

88. The Montenegrin Government did not make any comment in this respect.

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

90. In the present case, regard being had to the above criteria, as well as to the EUR 850 already granted to the applicant under the Council of Europe's legal aid scheme, the Court rejects the applicant's claim in this regard for lack of substantiation.

C. Default interest

91. The Court considers it appropriate that the default interest rate 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* admissible the applicant's complaints under Articles 6 § 1 and 13 of the Convention in respect of Montenegro;

2. *Declares* the remainder of the application inadmissible;

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

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

5. *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, 7,000 EUR (seven thousand euros) in respect of non-pecuniary damage, 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 11 December 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	Guido Raimondi
Registrar	President