



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

THIRD SECTION

**CASE OF BOROVIĆ AND OTHERS v. SERBIA**

*(Applications nos. 58559/12 and 3 others – see appended list)*

JUDGMENT

STRASBOURG

11 April 2017

*This judgment is final but it may be subject to editorial revision.*



**In the case of Borović and Others v. Serbia,**

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

Luis López Guerra, *President*,

Dmitry Dedov,

Branko Lubarda, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 21 March 2017,

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

## PROCEDURE

1. The case originated in four applications (nos. 58559/12, 9162/15, 14772/15 and 14883/15) against Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”). The applicants are all Serbian nationals and their personal details are set out in the appendix to this judgment.

2. The Serbian Government (“the Government”) were initially represented by their former Agent, Ms V. Rodić, who was recently replaced by their current Agent, Ms N. Plavšić.

3. On 1 September 2015 the applications were communicated to the Government.

4. The Government objected to the examination of the applications by a Committee. The Court rejects this objection after giving it due consideration.

## THE FACTS

### THE CIRCUMSTANCES OF THE CASE

5. The applicants complained about the excessive length of various criminal and civil proceedings (see the appendix to this judgment).

6. All the applicants obtained decisions by the Constitutional Court that found a violation of their right to a hearing within a reasonable time and awarded them various sums of money in respect of non-pecuniary damage (see appendix).

## THE LAW

### I. JOINDER OF THE APPLICATIONS

7. The Court considers that, in accordance with Rule 42 § 1 of the Rules of Court, the applications should be joined, given their similar factual and legal background.

### II. ALLEGED VIOLATION OF ARTICLE 6 § 1 AND ARTICLE 13 OF THE CONVENTION

8. The applicants complained under Article 6 of the Convention that the length of the criminal and civil proceedings in question had been incompatible with the “reasonable time” requirement. The applicant, Mr Željko Đorđević (application no. 14883/15) raised the same complaint under Article 13 of the Convention. Articles 6 § 1 and 13 of the Convention read as follows:

#### **Article 6 § 1**

“In the determination of his civil rights and obligations or of any criminal charge against him... everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ...”

#### **Article 13**

“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**

9. The Government submitted that the applicants could not claim to be victims of the alleged violation within the meaning of Article 34 of the Convention.

10. The Court considers that the Government’s objection is closely linked to the substance of the applicants’ complaint and would therefore more appropriately be examined at the merits stage.

11. The Court further notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. They are also not inadmissible on any other grounds and must therefore be declared admissible.

## B. Merits

12. In the Government's opinion, the finding of a violation by the Constitutional Court and the awarding of compensation for non-pecuniary damage constituted sufficient redress for the breach of the applicants' right to a hearing within a reasonable time.

13. The applicants disagreed.

14. The Court notes that an applicant's status as a "victim" within the meaning of Article 34 of the Convention depends on whether the domestic authorities have acknowledged, either expressly or in substance, the alleged infringement of the Convention and have, if necessary, provided appropriate redress. It is only when those conditions have been satisfied that the subsidiary nature of the protective mechanism of the Convention precludes examination of an application (see *Vidaković v. Serbia* (dec.) no. 16231/07, § 26, 24 May 2011; *Cocchiarella v. Italy* [GC], no. 64886/01, § 71, ECHR 2006-V; and *Cataldo v. Italy* (dec.), no. 45656/99, 3 June 2004).

15. In that connection, the Court notes that the Constitutional Court found that the applicants' right to a hearing within a reasonable time had indeed been violated (see paragraph 6 above), thereby acknowledging the breach complained of and, in effect, satisfying the first condition laid down in the Court's case-law.

16. The applicants' victim status then depends on whether the redress afforded was adequate and sufficient, having regard to just satisfaction as provided for under Article 41 of the Convention (see *Dubjaková v. Slovakia* (dec.), no. 67299/01, 19 October 2004).

17. The Court observes 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. That amount depends, in particular, on the characteristics and effectiveness of the remedy. Thus, States which, like Serbia, have opted for a remedy designed both to expedite proceedings and afford compensation are free to award amounts which – while being lower than those awarded by the Court – are still not unreasonable (see *Cocchiarella*, cited above, §§ 96, 97).

18. In the present cases, the Constitutional Court, in addition to finding a violation, declared that the applicants were entitled to various amounts in non-pecuniary damages (specified in the appendix).

19. Turning to the actual sums awarded to the applicants, the Court notes that the compensation granted in the present case was significantly lower than that awarded for similar delays in the Court's case-law. Whether the amount awarded may be regarded as reasonable, however, falls to be assessed in the light of all the circumstances of the case. They include not only the duration of the proceedings in the specific case, but also the value of the award viewed in the light of the standard of living in the State concerned, and the fact that under national systems compensation will in

general be awarded and paid more promptly than if the matter fell to be decided by the Court under Article 41 of the Convention.

20. In view of the material in the case files and having regard to the particular circumstances of the proceedings in question, the Court considers that the sums awarded to the applicants cannot be considered as sufficient and do not therefore amount to appropriate redress for the violations suffered.

21. The Court thus concludes that the applicants did not lose their status as victims within the meaning of Article 34 of the Convention. The Government's objection in this regard must therefore be rejected.

22. In view of the above, and in particular its finding regarding the victim status of the applicants, the Court concludes that the length of the proceedings at issue was excessive and failed to meet the "reasonable time" requirement.

23. There has accordingly been a violation of Article 6 § 1 of the Convention.

24. After reaching such a conclusion, the Court does not find it necessary to examine essentially the same complaint invoked by the applicant, Mr Željko Đorđević (application no. 14883/15) under Article 13 of the Convention (see *mutatis mutandis*, *Kin-Stib and Majkić v. Serbia*, no. 12312/05, § 90, 20 April 2010).

### III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

25. In applications nos. 9162/15 and 14772/15, the applicants, Mr Ferenc Dimović and Mr Slobodan Ristić, separately raised complaints about the length of the subsequent proceedings before the Constitutional Court. They relied on Article 6 § 1 of the Convention. The Court notes that the length of those proceedings was approximately three and a half years and two years and eight months respectively. The Court has already held that a set of proceedings before a Constitutional Court after an individual constitutional complaint which were of a similar length to the impugned proceedings in this case did not fall short of the reasonable time requirement. There was thus, for example, no violation of Article 6 § 1 of the Convention in constitutional proceedings which lasted approximately three and a half years (see *Posedel-Jelinović v. Croatia*, no. 35915/02, § 26, 24 November 2005).

26. It follows from the foregoing considerations that the applicants' complaints regarding the length of the proceedings before the Constitutional Court are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

## IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. 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.”

28. The applicant, Mr Ljubiša Borović (application no. 58559/12) did not claim a specific amount in respect of just satisfaction but left it to the Court’s discretion. All the other applicants claimed various amounts in respect of non-pecuniary damage (see the appended table). They also requested various sums in respect of pecuniary damage and for the legal costs and expenses incurred before the domestic courts and the Court.

29. The Government contested those claims.

30. The Court finds that the applicants have not shown that the alleged pecuniary damage was actually caused by the length of the proceedings before the domestic courts and does not discern a causal link between the violation found and the pecuniary damage alleged. It therefore rejects the applicants’ claims in respect of pecuniary damage.

31. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the sums indicated in the appended table in respect of non-pecuniary damage and costs and expenses, less any and all amounts which may have already been paid in that regard at the domestic level.

**Default interest**

32. 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. *Decides* to join the applications;
2. *Joins* to the merits the Government’s objection as to the applicants’ victim status, and dismisses it;
3. *Declares* the complaints concerning the excessive length of the impugned civil and criminal proceedings admissible, and the remaining complaints inadmissible;

4. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of each applicant;
5. *Holds* that there is no need to examine separately the complaint under Article 13 of the Convention raised by the applicant, Mr Željko Đorđević (application no. 14883/15);
6. *Holds*
  - (a) that the respondent State is to pay the applicants, within three months, the amounts indicated in the appended table in respect of non-pecuniary damage and costs and expenses, plus any tax that may be chargeable on these amounts, which are to be converted into the currency of the respondent State at the rate applicable at the date of settlement, after the deduction of any amounts which may have already been paid on this basis;
  - (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.
7. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 11 April 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı  
Deputy Registrar

Luis López Guerra  
President

## APPENDIX

No.	Application no. and date lodged	Applicant's name, date of birth	Represented by	Start of proceedings	End of Proceedings	Total length and number of instances since 3 March 2004 (the date on which the Convention came into force)	Constitutional Court decision details; just satisfaction awarded	Non-pecuniary damages requested in euros	Total amounts awarded for non-pecuniary damage and costs and expenses per applicant in euros (Plus any tax that may be chargeable to the applicants.)
1.	58559/12 05/09/2012	<b>Ljubiša BOROVIĆ</b> 03/05/1956 Ivanjica		11/08/1986	17/03/2010	6 years 2 levels of jurisdiction	Už. 2703/2010 28 June 2012 200 euros	See paragraph 28 of the judgment	1,600
2.	9162/15 12/02/2015	<b>Ferenc DIMOVIĆ</b> 24/10/1977 Višnjevac	Viktor JUHAS ĐURIĆ	8/05/2003	06/04/2011	7 years and 1 months 2 levels of jurisdiction	Už 2875/2011 11 December 2014 100 euros	2,000	2,300
3.	14772/15 12/03/2015	<b>Slobodan RISTIĆ</b> 23/09/1939 Kruševac	Milutin KOSTIĆ	23/03/2001	24/06/2011	7 years and 4 months 2 levels of jurisdiction	Už 3453/2012 18 December 2014 700 euros	15,000	2,300
4.	14883/15 17/03/2015	<b>Željko ĐORDEVIĆ</b> 04/04/1965 Kragujevac	Luka ULJAREVIĆ	09/05/2006	19/01/2012	5 years and 8 months 2 levels of jurisdiction	Už 1781/2012 11 December 2014 300 euros	10,000	2,000