



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

THIRD SECTION

CASE OF JOVANOVIĆ v. SERBIA

(Application no. 29763/07)

JUDGMENT

STRASBOURG

28 March 2017

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

In the case of Jovanović 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 7 March 2017,

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

PROCEDURE

1. The case originated in an application (no. 29763/07) against 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 Miroslav Jovanović (“the applicant”), on 3 July 2007.

2. The applicant was represented by Ms V. Kočić-Mitaček, a lawyer practising in Belgrade. The Serbian Government (“the Government”) were initially represented by their former Agent, Ms V. Rodić, being more recently substituted by their current Agent, Ms. N. Plavšić.

3. On 18 December 2014 the complaint concerning the length of criminal proceedings was communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

4. The Government objected to the examination of the application by a Committee. After having considered the Government’s objection, the Court rejects it.

THE FACTS

5. The applicant was born in 1968 and lives in Kaluđerica.

6. On 22 December 2006 the applicant was deprived of liberty on suspicion of participating in criminal association within the police operation “Customs mafia” during which 43 persons were also arrested. The applicant was released on 15 June 2007.

7. On 31 July 2009 the investigation against all the accused was transferred to the Prosecutor’s Office for Organised Crime.

8. On 28 June 2012 the investigation was closed.

9. On 17 January 2013 the criminal proceedings against the applicant were suspended.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION

10. The applicant complained that the length of the proceedings in question had been incompatible with the “reasonable time” requirement. He relied on Articles 6 § 1 and 13 of the Convention, which, in so far as relevant, 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.”

11. The Government contested that argument claiming that in the specific circumstances of the case, namely the large number of accused persons, organised as a criminal group and the fact that they were employed with the state bodies of the Republic of Serbia and in particular because of the type and gravity of criminal acts and a large number of investigation actions that had to be taken, the length of impugned proceedings cannot be deemed excessive.

12. The period to be taken into consideration began on 22 December 2006 when the applicant was arrested and, ended on 17 January 2013 when the proceedings against the applicant were suspended. The proceedings in question have thus lasted for six years and one month in one instance.

A. Admissibility

13. The Court notes that the application 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

14. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicants and the relevant authorities and what was at stake

for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

15. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above).

16. Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion on the merits of the applicant's complaint. Having regard to its case-law on the subject (see *Nemet v. Serbia*, no. 22543/05, § 17, 8 December 2009), the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

17. Accordingly, there has been a breach of Article 6 § 1 of the Convention.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

19. 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

20. The applicant claimed 25,000 euros (EUR) in respect of non-pecuniary damage.

21. The Government considered the sum requested to be excessive.

22. The Court is satisfied that the applicant has undoubtedly suffered distress on account of the lengthy delay in the proceedings in question. It therefore awards the applicant EUR 1,800 in respect of the non-pecuniary damage suffered, less any amounts which may have already been paid in that regard at the domestic level.

B. Costs and expenses

23. The applicant also claimed EUR 10,000 for the costs and expenses incurred before the domestic courts and EUR 2,000 for those incurred before the Court.

24. The Government contested these claims.

25. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the sum of EUR 500 for costs and expenses for the proceedings before the Court.

C. Default interest

26. 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* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there is no need to examine separately the complaint under Article 13 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months the following amounts:
 - (i) EUR 1,800 (one thousand eight hundreds euros), less any amounts which may have already been paid in that regard at the domestic level, plus any tax that may be chargeable, in respect of non-pecuniary damage suffered, and
 - (ii) EUR 500 (five hundreds euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that the amounts specified under (a) shall be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
 - (c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 28 March 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Luis López Guerra
President