



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

THIRD SECTION

**CASE OF MARKOVIĆ v. SERBIA**

*(Application no. 70661/14)*

JUDGMENT

STRASBOURG

28 March 2017

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

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE



**In the case of Marković 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. 70661/14) 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 and Austrian national, Mr Vukoman Marković (“the applicant”), on 13 October 2014.

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

3. On 1 September 2015 the application was communicated to the Government.

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

### I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1951 and lives in Waldegg, Austria.

6. On 28 September 1994 the applicant initiated civil proceedings requesting the division of a certain estate.

7. On 5 January 2009 the Ivanjica Municipal Court suspended the said proceedings until conclusion of another civil case.

8. It would appear that the said civil proceedings are still pending.

9. On 23 June 2011 the Constitutional Court found a breach of the applicant’s right to a hearing within a reasonable time and ordered the speeding up of the impugned proceedings. The court, additionally, declared that the applicant was entitled to the non-pecuniary damages sought, in accordance

with Article 90 of the Constitutional Court Act (see paragraph 13, Article 90, below).

10. It seems that, the applicant contacted the Commission for Compensation on 11 December 2011 and requested the payment of the compensation awarded, but apparently received no response.

## II. RELEVANT DOMESTIC LAW

### **A. The Constitution of the Republic of Serbia 2006 (*Ustav Republike Srbije*; published in the Official Gazette of the Republic of Serbia – OG RS – no. 9806)**

11. Article 32 § 1 provides, *inter alia*, that everyone shall have the right to a fair hearing before a tribunal in the determination of his rights and obligations.

12. Article 170 provides that a “constitutional appeal may be lodged against individual decisions or actions of State bodies or organisations exercising delegated public powers which violate or deny human or minority rights and freedoms guaranteed by the Constitution, if other legal remedies for their protection have already been exhausted or have not been prescribed.”

### **B. The Constitutional Court Act (*Zakon o Ustavnom sudu*; published in OG RS no. 10907)**

13. The relevant provisions of this Act read as follows:

#### **Article 7 § 1**

“The decisions of the Constitutional Court shall be final, enforceable and binding.”

#### **Article 82 §§ 1 and 2**

“A constitutional appeal may be lodged against an individual decision or an action of a State body or an organisation exercising delegated public powers which violates or denies human or minority rights and freedoms guaranteed by the Constitution, if other legal remedies have already been exhausted or have not been prescribed or where the right to their judicial protection has been excluded by law.

A constitutional appeal may be lodged even if all available remedies have not been exhausted in the event of a breach of an applicant’s right to a trial within a reasonable time.”

#### **Article 83 § 1**

“A constitutional appeal may be lodged by any individual who believes that any of his or her human or minority rights or freedoms guaranteed by the Constitution has

been violated or denied by an individual decision or an action of a State body or an organisation exercising delegated public powers.”

**Article 84 § 1**

“A constitutional appeal may be lodged within thirty days of receipt of the individual decision or the date of commission of the actions ... [in question] ...”

**Article 89 §§ 2 and 3**

“When the Constitutional Court finds that an ... individual decision or action has violated or denied a human or minority right or a freedom guaranteed by the Constitution, it shall annul the ... decision in question or ban the continuation of such action or order the implementation of other specific measures as well as the removal of all adverse consequences within a specified period of time.

The decision of the Constitutional Court accepting a constitutional appeal shall constitute a legal basis for requesting compensation or the removal of other adverse consequences before a competent body, in accordance with the law.”

**Article 90**

“... [An applicant who has obtained a Constitutional Court decision in his or her favour] ..., may lodge a compensation claim with the Commission for Compensation in order to reach an agreement in respect of the amount ... [of compensation to be awarded] ...

If the Commission for Compensation does not rule favourably in respect of a compensation claim or fails to issue a decision within thirty days from the date of its submission, the applicant may file a civil claim for damages before the competent court. If only partial agreement has been achieved, a civil claim may be filed in respect of the remainder of the amount sought.

The composition and operation of the Commission for Compensation shall be regulated by the Minister of Justice.”

## THE LAW

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

14. The applicant complained that the length of the civil proceedings in question had been incompatible with the “reasonable time” requirement. He relied on Article 6 § 1 of the Convention, which reads 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...”

### A. Admissibility

15. The Government noted that the applicant had obtained a decision of the Constitutional Court, which had found a violation of his right to a hearing within a reasonable time. However, since he did not bring a separate civil suit for damages, he cannot still claim to be a victim of the alleged violation. For the same reason the applicant must also be deemed as having failed to exhaust available domestic remedies. The Court considers that this objection falls to be examined under the applicant's victim status only (see *mutatis mutandis*, *Vidaković v. Serbia* (dec.), no. 16231/07, 24 May 2011).

16. The Court recalls that an applicant's status as a "victim" within the meaning of Article 34 of the Convention 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).

17. The Court, in this respect, notes that the Constitutional Court found that the applicant's right to a determination of his claim within a reasonable time had been violated (see paragraph 9 above), thereby acknowledging the breach complained of and, effectively, satisfying the first condition laid down in the Court's case law.

18. The applicant's 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).

19. In this connection, the Court recalls 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. This 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 not unreasonable (see *Cocchiarella v. Italy* [GC], cited above, §§ 96, 97).

20. In the present case, the Constitutional Court, in addition to the said finding of a violation, declared that the applicant was entitled to non-pecuniary damages. However, from the material in its possession, the Court observes that it would appear that the applicant was never awarded with any such compensation (see paragraph 10 above).

21. The Court therefore concludes that the applicant did not lose his status as victim within the meaning of Article 34 of the Convention. The

Government's objection in this regard must hence be rejected (see *Prohavska, Prodanović and Others v. Serbia*, nos. 63003/10 and seq, 8 November 2016).

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

### **B. Merits**

23. The Government essentially repeated its arguments submitted with regards to the admissibility of the application.

24. The applicant reiterated his complaint.

25. In view of the above and in particular the Court's finding regarding the victim status of the applicant the Court concludes that in the present case the length of the proceedings in question was excessive and did not meet the "reasonable time" requirement.

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

## **II. 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."

### **A. Damage**

28. The applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage.

29. The Government offered no comments in this regard.

30. 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 3,600 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**

31. The applicant also claimed certain amounts in respect of the costs and expenses incurred before the domestic courts.

32. The Government made no comments in this regard.

33. In the present case, regard being had to the documents in its possession, the Court notes that since the impugned domestic proceedings are still pending the applicant may yet be awarded compensation for the costs and expenses incurred domestically. The applicant's claim for costs and expenses must hence be rejected.

### **C. Default interest**

34. 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*
  - (a) that the respondent State is to pay the applicant, within three months, EUR 3,600 (three thousand and six hundred euros) in respect of non-pecuniary damage, less any amounts which may have already been paid in that regard at the domestic level plus, any tax that may be chargeable to the applicant, which is to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
  - (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;
4. *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