



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

THIRD SECTION

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

*(Applications nos. 50117/13 and 6 others – see appended list)*

JUDGMENT

STRASBOURG

23 October 2018

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

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

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

Pere Pastor Vilanova, *President*,

Branko Lubarda,

Georgios A. Serghides, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 2 October 2018,

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

**PROCEDURE**

1. The case originated in seven applications (nos. 50117/13, 50776/13, 60349/13, 62038/13, 63099/13, 64201/13 and 68381/13) 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 were all Serbian nationals and their further personal and other relevant 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 subsequently substituted by their current Agent, Ms. N. Plavšić.

3. On 1 September 2015 and 2 November 2015 the complaints concerning the non-enforcement of the domestic decisions in question were communicated to the Government and the remainder of the applications were 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 applicants complained about the failure by the national authorities to enforce final court decisions rendered in their favour.

6. All applicants obtained decisions by the Constitutional Court, which established a violation of their right to a hearing within reasonable time and awarded them certain sums in respect of the non-pecuniary damage suffered (see the appendix to this judgment).

## THE LAW

### I. JOINDER OF THE APPLICATIONS

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

### II. ALLEGED VIOLATIONS OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION

8. The applicants complained under Article 6 § 1 and Article 13 of the Convention about the non-enforcement of the final court decisions rendered in their favour. In so far as relevant, these Articles 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 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 violations. The Court considers that this objection is closely linked to the substance of the applicants' complaints and must therefore be joined to the merits.

10. As regards the applicants in applications nos. 60349/13 and 63099/13, the Government further argued that they did not suffer any significant disadvantage since their respective enforcement requests were of a relatively small value. The Court notes that in both of these applications, the Constitutional Court had already found a violation of the applicants' right to a trial within a reasonable time. In addition, the Government did not provide any evidence in support of their arguments. The Court therefore is unable to conclude that the proceedings in question had no real significance for the applicants and rejects the Government's objection in that respect.

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

## B. Merits

12. The Government submitted that as all the applicants had obtained favorable decisions from the Constitutional Court they had thus lost their victim status. In the Government's opinion, the finding of the violations in question and the awarding of compensation for the non-pecuniary damage suffered constituted sufficient redress, particularly in view of the "inactivity" of some of the applicants.

13. The applicants disagreed.

14. 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 *Vidaković v. Serbia* (dec.) no. 16231/07, § 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 this respect, the Court notes that the Constitutional Court found that the applicants' right to a hearing within a reasonable time had been violated (see paragraph 6 above), thereby acknowledging the breach complained of and, effectively, 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. In this connection, the Court recalls that in non-enforcement 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).

18. In the present cases, the Constitutional Court, in addition to the said finding of a violation, declared that the applicants were entitled to different amounts of non-pecuniary damages sought (specified in the appendix to this judgment) and in those cases where the non-enforcement proceedings were still pending, the Constitutional Court ordered the competent domestic courts to bring the impugned proceedings to a conclusion as speedily as possible.

19. Turning to the actual sums awarded to the applicants, the Court notes that compensations granted in the present cases are significantly lower

compared with the sums awarded for comparable delays in the Court's case-law. It would emphasize, in this respect, the importance of a reasonable amount of just satisfaction being awarded in the domestic system for the remedy in question to be considered as effective under the Convention. Whether the amount awarded may be regarded as reasonable, however, falls to be assessed in the light of all the circumstances of the case. These include not merely the duration of the proceedings in the specific case but the value of the award judged in the light of the standard of living in the State concerned, and the fact that under the national system compensation will in general be awarded and paid more promptly than would be the case if the matter fell to be decided by the Court under Article 41 of the Convention.

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

21. The Court concludes that the applicants, in these circumstances, 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. Finally, taking into account that the non-enforcement proceedings are still pending in respect of some of the applicants (see appended table), the Court recalls that the State has an obligation to organise a system of enforcement of judgments that is effective both in law and in practice and ensures their enforcement without undue delay (see *EVT Company v. Serbia*, no. 3102/05, § 52, 21 June 2007).

23. In view of the above and in particular the Court's finding regarding the victim status of the applicants, the Court concludes that in the present cases the length of the non-enforcement proceedings was excessive and failed to meet the "reasonable time" requirement.

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

25. Having reached this conclusion, the Court does not find it necessary to examine essentially the same complaints under Article 13 of the Convention (see *mutatis mutandis, Kin-Stib and Majkić v. Serbia*, no. 12312/05, § 90, 20 April 2010).

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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, costs and expenses in respect of the applicants in applications nos. 60349/13, 63099/13 and 68381/13**

27. All applicants claimed compensation for non-pecuniary damage in their initial application forms, but no claims in that respect were made after the communication of the applications to the Government. In addition, only the applicant in application no. 68381/13 requested certain sums (see appended table) in respect of the legal costs incurred in the proceedings before the domestic courts, as well as those incurred before the Court.

28. The Government argued that no award should be made since the applicants failed to request non-pecuniary damage in their just satisfaction claims.

29. In respect of the non-pecuniary damage suffered, the Court makes no awards and finds no exceptional circumstances which would warrant a different conclusion (see *Nagmetov v. Russia* [GC], no. 35589/08, §§ 76-78, 30 March 2017). However, as regards the costs and expenses, the Court awards to the applicant in application no. 68381/13 the sum indicated in the appended table.

**B. Damage, costs and expenses in respect of the applicants in applications nos. 50117/13, 50776/13, 62038/13 and 64201/13**

30. All applicants requested compensation for non-pecuniary damage, as well as the costs and expenses incurred before the domestic courts and the Court in their observations, while referring to the already specified amounts which they had sought in their initial application forms. The sums requested are indicated in the appended table. In addition, the applicant in application no. 62038/13 requested pecuniary damages in the amounts awarded to her by the final domestic judgment itself.

31. The Government considered the sums requested to be excessive.

32. The Court considers that the applicants sufficiently specified their just satisfaction claims (see, *mutatis mutandis*, *Garzičić v Montenegro*, no. 17931/07, § 42, 21 September 2010) and therefore awards to the applicants the sums in respect of non-pecuniary damages as well as cost and expenses as indicated in appended table, less any amounts which may have already been paid in that regard at the domestic level. However, concerning the applicant in application no. 62038/13, the Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

### C. Default interest

33. 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. *Decides* to join to the merits the Government's objection as to the applicants' victim status and dismisses it;
3. *Declares* the applications admissible;
4. *Holds* that there has been a violation of Article 6 §1 of the Convention;
5. *Holds* that there is no need to examine separately the complaint under Article 13 of the Convention;
6. *Holds*
  - (a) that the respondent State shall ensure that all necessary steps are taken to allow the domestic proceedings in those cases where they are still pending to be concluded as speedily as possible, taking into account the requirements of the proper administration of justice;
  - (b) 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;
  - (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;
7. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 23 October 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı  
Deputy Registrar

Pere Pastor Vilanova  
President

## APPENDIX

No.	Application number and date of introduction	Applicant name date of birth nationality	Represented by	Final domestic decision details	Start of proceedings	End of Proceedings	Total length since 3 March 2004 (the date on which the Convention came into force)	Constitutional Court decision details; just satisfaction awarded	Non-pecuniary damages and/or cost and expenses requested in euros	Amounts awarded for non-pecuniary damage and costs and expenses per applicant in euros (Plus any tax that may be chargeable to the applicants.) <sup>1</sup>
1.	50117/13 19 July 2013	<b>Biserka MIJATOVIĆ</b> 7 December 1967 Serbian	Mile PETKOVIĆ	Bor Municipal Court P.1169/06 5 March 2007	15 January 2008	pending	10 years and 5 months	Už-1248/10 12 December 2012 EUR 500	4,900 + 1520	3,600 + 500
2.	50776/13 14 June 2013	<b>Savica JOVIĆ</b> 17 December 1970 Serbian	Mile PETKOVIĆ	Bor Municipal Court P.167/05 16 June 2005	7 September 2006	10 January 2014	7 years and 4 months	Už-1554/10 15 November 2012 EUR 600	4,800 + 1520	3,600 + 500
3.	60349/13 13/09/2013	<b>Ivanka RADIN</b> <b>20/04/1960</b> Serbian	Dragan RADIN	Zrenjanin P.2123/02 30/12/2008	07 May 2009	pending	9 years and 2 months	Už-2667/2010 of 03/07/2013 EUR 400	-	-
4.	62038/13 26 September 2013	<b>Vesna MARINKOVIĆ</b> 26 December 1964 Serbian	Mile PETKOVIĆ	Bor Municipal Court P1.684/05 8 February 2006	7 April 2006	18 January 2016	9 years and 9 months	Už-1561/10 20 February 2013 EUR 200	5,200 + 1520	3,600 + 500
5.	63099/13 20/09/2013	<b>Milica OPRIN</b> <b>29/05/1954</b> Serbian	Dragan RADIN	Zrenjanin P.1300/02 22/04/2003	03 March 2004 (19 January 2004)	31 January 2012	7 years and 11 months	Už-3191/2010 of 20/03/2013 EUR 900 jointly	-	-

1. Less any amounts which may have already been paid on this basis at the domestic level

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		<b>Dijana MEDIC</b> 06/08/1975 Serbian <b>Glorija URUKALO</b> 23/02/1980 Serbian								
<b>6.</b>	64201/13 26 September 2013	<b>Dragana MARINOVIĆ</b> 4 April 1978 Serbian	Mile PETKOVIĆ	Bor Municipal Court P1.1374/07 10 October 2008	22 December 2008	16 August 2011	2 years and 10 months	Už-633/11 8 May 2013 EUR 200	5,200 + 1520	1,500 + 500
<b>7.</b>	68381/13 10/10/2013	<b>Janko DRAGULOVIĆ</b> 12/09/1943 Serbian	Mile PETKOVIĆ	Bor P. 1046/92 of 09/09/1993	03 March 2004 (12 September 1996)	pending	13 years and 8 months	Už-45/2010 28/02/2013 EUR 300	1520	500 in respect of costs and expenses