



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

THIRD SECTION

CASE OF PROHASKA PRODANIĆ AND OTHERS v. SERBIA

(Applications nos. 63003/10, 20441/11 and 3931/14)

JUDGMENT

STRASBOURG

8 November 2016

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

In the case of Prohaska Prodanić 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 11 November 2016,

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

PROCEDURE

1. The case originated in three applications (nos. 63003/10, 20441/11 and 3931/14) against the Republic of Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on the various dates indicated in the appended table.

2. The applicants were all Serbian nationals and their further personal and other relevant details and are set out in the appendix to this judgment.

3. The Serbian Government (“the Government”) were represented by their Agent at the time, Ms V. Rodić who was recently substituted by their current agent Ms N. Plavšić.

4. On 18 December 2014 the applications were communicated to the Government.

5. 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

6. The applicants complained of the excessive length of different civil and criminal proceedings under Article 6 § 1 of the Convention.

7. All applicants obtained decisions of the Constitutional Court of Serbia, which found a violation of their right to a hearing within reasonable time (see appended table for details of each civil proceedings and Constitutional Court’s decisions). The court, additionally, declared that the applicants were entitled to the non-pecuniary damages sought, in accordance with Article 90 of the Constitutional Court Act (see paragraph 14, Article 90, below).

8. All the applicants filed requests with the Commission for Compensation for payment of non-pecuniary damages.

9. On 14 October 2010 the Commission for Compensation offered to pay Ms Prohaska Prodanić RSD 60,000 (at the time approximately EUR 600) for non-pecuniary damage incurred and RSD 25,000 for costs and expenses. She refused to accept that payment as the Commission did not specify the deadline by which the sum would be paid. On 15 September 2015, the Ministry of Justice paid her RSD 85,000.

10. The applicant V. Tomić contacted the Commission for Compensation on several occasions and requested the payment of non-pecuniary damage. It would appear that he had received no response.

11. On 16 March 2011 the Commission for Compensation offered to pay Mr D. Trpković RSD 35,000 (at the time approximately EUR 350), but he refused to accept this amount, deeming it insufficient.

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. 98/06)

12. 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.

13. 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. 109/07)

14. 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. JOINDER OF THE APPLICATIONS

15. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

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

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

A. Admissibility

17. The Government submitted that as the applicants obtained decisions of the Constitutional Court of Serbia, which found a violation of their right to a hearing within reasonable time and given that they did not instigate a separate civil suit for damages (see paragraph 14, Article 90, above) they could not claim to be victims of the alleged violation and have also failed to exhaust available domestic remedies. The Court considers that this objection falls to be examined under the applicants’ victim status (see, *mutatis mutandis*, *Vidaković v. Serbia* (dec.), no. 16231/07, 24 May 2011).

18. 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).

19. The Court, in this respect, notes that the Constitutional Court found that the applicants’ right to a determination of their claims within a reasonable time had been violated (see paragraph 7 above), thereby acknowledging the breach complained of and, effectively, satisfying the first condition laid down in the Court’s case law.

20. 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).

21. 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).

22. In the present cases, the Constitutional Court, in addition to the said finding of a violation, declared that the applicants were entitled to non-pecuniary damages.

23. Turning to the actual sums awarded to the applicants, the Court notes that compensations offered by the Commission for Compensation in the present cases are significantly lower compared with the sums awarded for comparable delays in the Court's case-law. It would emphasise, 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.

24. 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 offered to the applicants cannot be considered sufficient and therefore amount to appropriate redress for the violations suffered.

25. The Court therefore 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.

26. 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

27. The Government has essentially repeated its arguments submitted with regards to the admissibility of the applications.

28. The applicants reiterated their claims.

29. 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 proceedings was excessive and failed to meet the "reasonable time" requirement.

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

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

31. Some applicants also raised other complaints under various Articles of the Convention.

32. The Court considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or the Protocols thereto.

33. It follows that this part of the applications is 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

34. 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

35. In her initial application the applicant Ms Prohaska Prodanić requested various amounts in respect of pecuniary, non-pecuniary damage and costs and expenses. She, however, failed to request non-pecuniary damage or costs and expenses in her just satisfaction claim.

36. Thus, the Court is not in a position to award her any amount in that respect.

37. The applicant Mr Vladimir Tomić claimed EUR 30,000 in pecuniary damage and EUR 9,000 in non-pecuniary damage and made no claim for costs and expenses incurred before the Court.

38. The applicant Mr Dejan Trpković claimed RSD 500,000 for non-pecuniary damage and made no claim for costs and expenses incurred before the Court.

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

40. The Court finds that the applicant Mr Vladimir Tomić did not demonstrate that the alleged pecuniary damage had actually been 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 applicant’s claim for pecuniary damage.

41. Regard being had to the documents in its possession and to its case-law (see *Nemet v. Serbia*, no. 22543/05, 8 December 2009), the Court considers it reasonable to award the sums indicated in the appended table in

respect of non-pecuniary damage, less any and all amounts which may have already been paid in that regard at the domestic level.

B. Default interest

42. 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. *Declares* the complaints concerning the excessive length of civil/criminal proceedings admissible, and the remainder of the applications inadmissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *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, 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.
5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 8 November 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Pere Pastor Vilanova
President

APPENDIX

No.	Application no. Date of introduction	Applicant name Date of birth	Representative name and location	Start of proceedings	End of proceedings	Total length and levels of jurisdiction since 3 March 2004 (the date on which the Convention entered into force for Serbia)	Constitutional Court decision details	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
1.	63003/10 20/10/2010	Marija PROHASKA PRODANIĆ 05/07/1942	Poljaković Mira Subotica	03/03/2004	24/08/2010	6 years and 6 months 2 levels of jurisdiction	Už-801/2009 4 February 2010	none
2.	20441/11 04/03/2011	Vladimir TOMIĆ 18/05/1960		03/03/2004	07/02/2014	9 years and 11 months 2 levels of jurisdiction	Už-248/2009 21 October 2010	EUR 3,000
3.	3931/14 20/12/2013	Dejan TRPKOVIĆ 25/05/1972		03/03/2004	24/12/2008	4 years and 10 months 2 levels of jurisdiction	Už-105/2009 22 July 2010	EUR 1,200

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