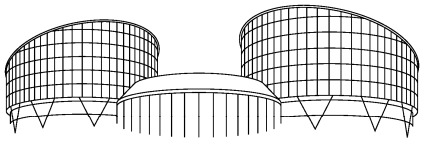

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF STANIVUKOVIĆ AND OTHERS v. SERBIA

(Applications nos. 10921/16 and 3 others – see appended list)

JUDGMENT

STRASBOURG

27 November 2018

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Stanivuković 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 6 November 2018,

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

PROCEDURE

1. The case originated in four applications (nos. 10921/16, 28653/16, 34867/16 and 54956/16) against Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by four Serbian nationals, Mr Dejan Stanivuković ("the first applicant"), Mr Dragan Jevtović ("the second applicant"), Mr Nenad Ćosić ("the third applicant") and Mr Igor Batarelo ("the fourth applicant"), on 14 July, 12 May, 8 June and 5 September 2016 respectively.

2. The Serbian Government ("the Government") were represented by their Agent, Ms N. Plavšić.

3. On 5 October 2017 the complaints concerning the length of labour disputes were communicated to the Government and the remainders of the applications were declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicants' personal details as well as the facts in relation to each case are set out in the Annex to this judgment.

5. The applicants complained of the excessive length of their labour disputes under Articles 6 § 1 and 13 of the Convention.

6. The Constitutional Court found no violation of a right to a trial within a reasonable time in any of the cases, nor awarded damages to any of the applicants.

THE LAW

I. JOINDER OF THE APPLICANT'S COMPLAINTS

7. The Court considers that, in accordance with Rule 42 § 1 of the Rules of Court, the applicants' applications 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 that the length of the proceedings had been incompatible with the "reasonable time" requirement, laid down in 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 ..."

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

1. As regards the non-exhaustion of domestic remedies

9. The Government submitted that the second, third and fourth applicant had failed to raise their length complaints properly in their constitutional complaints.

10. The applicants contested the Government's objection and maintained that they had complained before the Constitutional Court in a proper manner.

11. The Court has consistently held that the rule on the exhaustion of domestic remedies, under Article 35 § 1 of the Convention, requires that the complaints intended to be made subsequently before it should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law and, further, that any procedural means that might prevent a breach of the Convention should have been used (see, for example, *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 72, 25 March 2014, *Šaćirović and Others v. Serbia* [Committee], no. 54001/15 and 3 others, § 11, 20 February 2018).

12. Turning to the present case, the Court has carefully examined the applicants' constitutional appeals. As regards the second applicant, it transpires from his constitutional appeal that he expressly complained, albeit in a succinct manner, about the length of the impugned proceedings (contrast *Vučković and Others*, cited above, § 82, in which the applicants did not raise their discrimination complaint before the Constitutional Court, either expressly or in substance, and *Šaćirović*, cited above,§ 12). They indicated the key developments and decisions taken in the course of their proceedings. They used phrases such as "as it is evident that the respondent protracts the proceedings by different acts", "unfortunately, and I consider it as a shame of the court, I am being served with the [second instance] decision after three years, which makes this dispute lasting six years and which I do not consider as a trial within a reasonable time", "a labour dispute which lasts since 2006, which amounts to a violation of a right to a trial within a reasonable time", "protraction of the proceedings and irresponsibility", "by violation Article 10 of the Code of Civil Procedure the court violated a right to a trial within a reasonable time", "the proceedings lasted more than seven years". They all had also explicitly relied on Article 32 of the Serbian Constitution which corresponds to Article 6 of the Convention. Complaints about the length of proceedings, unlike some other complaints under the Convention, normally do not require much elaboration. If, exceptionally, the Constitutional Court needed any additional information or documents, it could have requested the applicants to provide them. It follows that the applicants provided the national authorities with the opportunity which is in principle intended to be afforded to Contracting States by Article 35 § 1 of the Convention, namely of putting right the violations alleged against them (see, amongst many others, *Muršić v. Croatia* [GC], no. 7334/13, § 72, ECHR 2016, *Joksimović v. Serbia*, no. 37929/10, § 21, 7 November 2017, and *Šaćirović*, cited above, § 12).

2. Conclusion

13. The Court otherwise considers that that the applicants' applications are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They 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 applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII). The Court reiterates that special diligence is necessary in employment disputes (*Ruotolo*

v. Italy, judgment of 27 February 1992, Series A no. 230-D, p. 39, § 17, *Hrustić and Others v. Serbia* [Committee], no. 8647/16 and 2 others, § 16, 9 January 2018, and *Šaćirović*, cited above, § 15).

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 considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

17. There has accordingly been a breach of Article 6 § 1.

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, and *Blagojević v. Serbia*, no. 63113/13, § 23, 28 March 2017).

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, costs and expenses

20. The applicants claimed various amounts in respect of the non-pecuniary damage suffered by each of them. The applicants also requested various sums in respect of legal costs incurred in the proceedings before both the domestic courts and the Court. The sums requested are indicated in the Annex to the judgment. In addition, the second and the third applicant requested to be awarded pecuniary damage comprising of the salaries and contributions they would have earned had they remained employed, whereas the fourth applicant requested to be awarded pecuniary damage comprising of the amount of pecuniary damage for the work-related injuries which domestic courts allegedly failed to award him.

21. The Government contested the above-mentioned claims in respect of non-pecuniary damage and proposed the Court to reject them for being too excessive. However, in respect of the second and fourth applicant, the Government particularly pointed out that they had failed to submit their claims for non-pecuniary damage before the Constitutional Court first, and

that, therefore, their subsequent just satisfaction claims should be rejected for non-exhaustion.

22. The Court takes note of the Government's arguments in regards to the second and fourth applicant's request regarding non-pecuniary damage. However, the Court notes that even if the applicants had submitted requests for non-pecuniary damages before the Constitutional Court, they would have not gained any compensation, since the Constitutional Court had failed to establish that their domestic proceedings were excessively long. Therefore, the Court rejects the Government's objection in regards to the second and fourth applicant.

23. Regard being had to the documents in its possession and to its case-law (see *Blagojević v. Serbia*, no. 63113/13, § 30, 28 March 2017, *Ković and Others v. Serbia*, no. 39611/08 and 2 others, §§ 28-31, 4 April 2017, *Hrustić,* cited above,§ 32, and *Šaćirović*, cited above, § 21) the Court considers it reasonable to award to the applicants 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.

24. As regards the requests for pecuniary damage of the second, third and fourth applicants, the Court find them unsubstantiated. In view of the violation found, specifically its procedural character, the court sees no causal link between the violation found and the pecuniary damage alleged. It therefore rejects their claims in this respect.

B. Default interest

25. 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 applications admissible;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

4. *Holds* that there is no need to examine separately the complaint under Article 13 of the Convention;

5. *Holds*

(a) that the respondent State is to pay the applicants, within three months, the amounts indicated in the appendix 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 at the domestic level;
(b) that the respondent State is to pay the applicants, within three months, the amounts indicated in the appendix in respect of costs and expenses, plus any tax that may be chargeable to the applicants on these amounts, which are to be converted into the 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;

6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 27 November 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, place of residence, nationality	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); Explanation concerning the length (where relevant)	Constitutional Court decision details; just satisfaction awarded (if any)	Non-pecuniary damages, costs and expenses, and pecuniary damages, 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)[1]
1.	10921/16 14/07/2016	**Dejan STANIVUKOVIĆ** 29/04/1971 Novi Sad Serbian	/	27/01/2009	29/01/2014	5 years 2 levels of jurisdiction *(A labour dispute which only in the 1st instance lasted 4 years and 2 months)*	Už-2065/2013 of 2 February 2016 (no violation found, no damages awarded)	10,000+50 /	1,600+50
2.	28653/16 12/05/2016	**Dragan JEVTOVIĆ** 19/10/1966 Čačak Serbian	/	13/11/2008	11/04/2014	5 years and 4 months 2 levels of jurisdiction *(A labour dispute which in the 2nd instance lasted 5 years and 2 months)*	Už-4217/2014 of 15 January 2016 (no violation found, no damages awarded)	3,000+1,000 62,000	1,600+100
3.	34867/16 08/06/2016	**Nenad ĆOSIĆ** 15/02/1955 Užice	/	13/12/2006	20/06/2013	6 years and 6 months 3 levels of jurisdiction *(A labour dispute in which the Supreme Court of Cassation returned the case to the Appellate Court twice; the Appellate Court rendered three decisions)*	Už-371/2014 of 18 December 2016 (no violation found, no damages awarded)	100,000+7,500 90,000	1,200+100
4.	54956/16 05/09/2016	**Igor BATARELO** 28/03/1965 Belgrade Serbian	/	07/02/2006	23/09/2013	7 years and 7 months 2 levels of jurisdiction *(Civil proceedings concerning damages)*	Už-10168/2013 of 3 March 2016 (no violation found, no damages awarded)	5,000+3,940 23,500	2,100+100

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