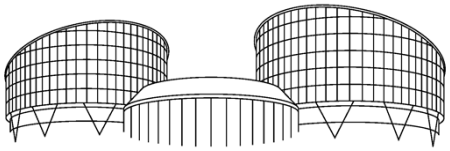

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF ILIĆ v. SERBIA

(Application no. 26739/16)

JUDGMENT

STRASBOURG

23 October 2018

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Ilić 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 an application (no. 26739/16) 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") by a Serbian national, Mr Njegoš Ilić ("the applicant"), on 20 April 2016.

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

3. On 5 October 2017 the complaint concerning the length of the 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

THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1960 and lives in Kragujevac.

6. On 14 December 2006 the applicant instituted civil proceedings against the Kragujevac Clinical Centre requesting damages. In the course of the proceedings eleven hearings were held, whereas five hearings were scheduled, but were not held.

7. On 20 May 2011 the applicant's claim was rejected as unfounded by the Kragujevac Court of First Instance.

8. On 26 December 2011 the Kragujevac Appellate Court ("the Appellate Court") quashed the decision of 20 May 2011 and remitted the case to the first instance court.

9. In the resumed proceedings the applicant sought recusal of the acting judge twice, but both of his motions were rejected.

10. On 4 October 2012, after three held hearings and two hearings which were not held, expert examination and the increase of the applicants claim, the case was transferred to the Kragujevac High Court ("the High Court").

11. On 20 March 2013, following the applicant's two other recusal requests, one of which was adopted, the High Court rejected the applicant's damages claim as unfounded. The applicant appealed.

12. On 21 August 2014 the Appellate Court rejected the applicant's appeal and upheld the decision of 20 March 2013. Thereafter, the applicant filed an appeal on points of law, which was rejected by the Supreme Court of Cassation only on 21 December 2016.

13. In the meantime, on 7 February 2013, the applicant lodged a constitutional complaint with the Constitutional Court complaining about the length of the pending civil proceedings, seeking non-pecuniary damages in the amount of 3,000 euros and publication of the decision of the Constitutional Court. The Constitutional Court transferred the case-file to the Appellate Court, as a competent court to deal with the length complaints of the pending cases, pursuant to Article 8a of the Law on the Organization of the Courts. However, on 23 September 2014 the Appellate Court established that it no longer had jurisdiction to deal with the applicant's complaint since it found that the civil proceedings had been finished. The applicant's case-file was thus returned to the Constitutional Court.

14. On 6 November 2014 the Constitutional Court returned the case-file to the Appellate Court, which on 28 November 2014 again found that it had no jurisdiction to deal with the case. The Appellate Court then transferred the case-file further to the Supreme Court of Cassation, as the competent court. The applicant appealed.

15. On 22 January 2015 the Supreme Court of Cassation rejected the applicant's appeal and upheld the decision of 28 November 2014. It also partially adopted the applicant's complaint concerning the length of the proceedings and awarded him 200 euros for non-pecuniary damage, whereas the rest of claim rejected.

16. On 21 October 2015 the Constitutional Court rejected the applicant's appeal in regards to the length of the proceedings. The Constitutional Court established that even though the impugned proceedings had lasted seven years and eight months, they were very complex and the applicant largely contributed to its length, whereas the competent courts acted efficiently.

THE LAW

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

17. 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 ..., 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."

18. The Government contested that argument claiming that in the specific circumstances of the case, namely the complex legal issue and postponing of the hearings, mainly because of the conduct of the applicant and his frequent recusal requests and written submissions, the length of the impugned proceedings cannot be deemed excessive.

19. The proceedings in question lasted for seven years and eight months in two instances.

A. Admissibility

20. 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

21. 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 applicant 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).

22. 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).

23. 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.

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

25. 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

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

27. The applicant claimed 2,000 euros (EUR) in respect of non-pecuniary damage.

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

29. 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 1,900 in respect of the non-pecuniary damage suffered.

B. Costs and expenses

30. The applicant also claimed EUR 1,830 for the costs and expenses incurred before the domestic courts.

31. The Government contested this claim.

32. 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 100 for costs and expenses for the proceedings before the Court.

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. *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 1,900 (one thousand nine hundreds euros), plus any tax that may be chargeable, in respect of non-pecuniary damage suffered, and
      (ii) EUR 100 (one 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;

5. *Dismisses* the remainder of the applicant's claim 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	Pere Pastor Vilanova
Deputy Registrar	President