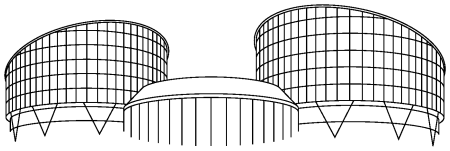

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF JASAVIĆ v. MONTENEGRO

(Application no. 32655/11)

JUDGMENT

STRASBOURG

19 June 2018

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

In the case of Jasavić v. Montenegro,

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

Ledi Bianku, *President,*
Nebojša Vučinić,
Jon Fridrik Kjølbro, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having deliberated in private on 29 May 2018,

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

PROCEDURE

1. The case originated in an application (no. 32655/11) against Montenegro lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Montenegrin national, Mr Ekan Jasavić ("the applicant"), on 13 May 2011.

2. The applicant was initially represented by Ms I. Šabović, a lawyer practicing in Podgorica, and subsequently by Ms S. Lompar, also a lawyer based in Podgorica. The Montenegrin Government ("the Government") were represented by their Agent, Ms Valentina Pavličić.

3. On 16 December 2015 the complaint concerning the length of the proceedings in question was communicated to the Government and the remainder of the application was declared inadmissible, pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

4. The applicant was born in 1964 and lives in Podgorica.

5. Between 3 December 2002 and 15 September 2003 the daily newspaper *Dan* published several articles about a human trafficking case in Montenegro, in which the applicant's name was mentioned in various contexts.

6. On 22 October 2004 the applicant instituted civil proceedings against the publisher of the said newspaper, seeking compensation for non-pecuniary damage due to violation of his honour and reputation caused by the publishing of untrue information about him.

7. On 4 June 2010, following a remittal, the Podgorica First Instance Court ruled partly in favour of the applicant, ordering the publisher to pay the applicant 8,000 euros (EUR) in non-pecuniary damages and to publish the judgment in *Dan*, the daily newspaper in question.

8. On 22 October 2010 the Podgorica High Court amended this judgment by awarding the applicant EUR 4,000 as compensation for the non-pecuniary damage suffered, which judgment was served on the applicant on 29 November 2010.

9. The applicant lodged a constitutional appeal on 14 January 2011.

10. On 7 April 2011 the Constitutional Court dismissed the applicant's appeal. This decision was served on the applicant on 19 May 2011.

THE LAW

I. SCOPE OF THE CASE

11. In his observations, the applicant repeated one of his initial complaints, in particular his complaint under Article 8 of the Convention.

12. The Court notes that the President of the Section, sitting in a single-judge formation, had already declared this complaint inadmissible on 16 December 2015, upon communication of the remainder of the application to the Government.

13. The Court recalls in this connection that it cannot examine the complaints which have already been declared inadmissible and that the scope of the case now before the Court is thus limited to the complaint which was communicated to the Government (see, *mutatis mutandis*, *Stebnitskiy and Komfort v. Ukraine*, no. 10687/02, § 39, 3 February 2011, and *Terra Woningen B.V. v. the Netherlands*, 17 December 1996, §§ 44-45, *Reports of Judgments and Decisions* 1996-VI).

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

14. The applicant complained that the length of the civil proceedings at issue had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

> "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 argued that the judgment of the High Court of 22 October 2010 had been the final decision for the purposes of Article 35 § 1 of the Convention, since a constitutional appeal had not been an effective domestic remedy at the relevant time. The applicant having lodged his application on 13 May 2011, had thus not complied with the six-month requirement set out in Article 35 § 1.

16. The applicant disagreed.

17. In the present case, the applicant lodged his application with the Court on 13 May 2011, that is after the Constitutional Court's decision had already been delivered to him.

18. The Court recalls that, although there may be exceptions justified by the specific circumstances of each case, the effectiveness of a particular remedy is normally assessed with reference to the date on which the application was lodged (see *Baumann v. France*, no. 33592/96, § 47, ECHR 2001-V (extracts)).

19. The Court notes in this regard that at the time when the present application was lodged a constitutional appeal was not an effective remedy in respect of length of proceedings (see *Boucke v. Montenegro,* no. 26945/06, § 79, 21 February 2012, *Živaljević v. Montenegro,* no. 17229/04, § 68, 8 March 2011), and that it became effective on 20 March 2015 (see *Siništaj and Others v. Montenegro,* nos. 1451/10, 7260/10 and 7382/10, § 123, 24 November 2015, and *Vučeljić v. Montenegro* (dec.), no. 59129/15, § 31, 18 October 2016). It therefore considers that the applicant was not required to make use of this remedy at the time.

20. However, the applicant received the High Court's judgment of 22 October 2010 on 29 November 2010 (see paragraph 8 above), which the Government never contested. Given that the applicant lodged his application with the Court on 13 May 2011, the Court concludes that the applicant clearly introduced his complaint within the six-month time-limit, as set out in Article 35 § 1 of the Convention.

21. In view of the above, the Government's objection must be rejected.

22. Since the complaint in question is neither manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor inadmissible on any other grounds, it must be declared admissible.

B. Merits

23. The period to be taken into consideration began on 22 October 2004 and ended on 29 November 2010. The impugned proceedings thus lasted six years, one month and seven days at two instances.

24. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case in question 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).

25. The Court considers that neither the complexity of the case nor the applicant's conduct explains the length of proceedings. The Government did

not supply any explanation for the delay or provide any comment on this matter.

26. Having examined all the material submitted to it and in view of its case-law on the subject, the Court considers that, in the absence of any justification, the length of proceedings of more than six years at two levels of jurisdiction was excessive and failed to meet the "reasonable time" requirement.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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

29. The applicant claimed non-pecuniary damage, but left it to the Court's discretion as to the exact amount.

30. The Government contested this claim.

31. In the Court view, it is clear that the applicant sustained some non-pecuniary loss arising from the breach of his right under Article 6 of the Convention, for which he should be compensated. The Court therefore considers it reasonable to award the applicant EUR 1,500 in respect of non-pecuniary damage, less any amounts which may have already been paid in that regard at the domestic level.

B. Costs and expenses

32. The applicant also claimed EUR 3,315 for costs and expenses incurred before domestic courts, together with statutory interest, and EUR 800 for the costs and expenses incurred before the Court.

33. The Government contested these claims.

34. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession, and the above criteria, the Court rejects the applicant's claim for costs and expenses before the domestic courts as they were not incurred in order to remedy the violation in issue, but considers it reasonable to award the applicant EUR 500 for the proceedings before the Court.

C. Default interest

35. 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 applicant's complaint about the length of proceedings 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, the following amounts:
      (i) EUR 1,500 (one thousand five hundred euros) less any amounts which may have already been paid in that connection at the domestic level, in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant;
      (ii) EUR 500 (five hundred euros) in respect of cost and expenses, plus any tax that may be chargeable to the applicant;
   (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 19 June 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı	Ledi Bianku
Deputy Registrar	President