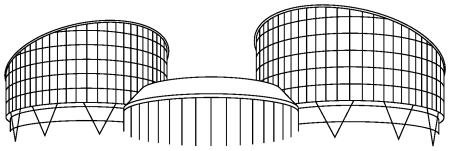

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF DIMITRIJEVIĆ v. MONTENEGRO

(Application no. 17016/16)

JUDGMENT

STRASBOURG

12 December 2017

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

In the case of Dimitrijević v. Montenegro,

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

Valeriu Griţco, *President,*
Nebojša Vučinić,
Jon Fridrik Kjølbro, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having deliberated in private on 21 November 2017,

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

PROCEDURE

1. The case originated in an application (no. 17016/16) 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 Serbian national, Ms Ksenija Dimitrijević ("the applicant"), on 18 March 2016.

2. The applicant was represented by Mr B. Prelević, a lawyer practising in Belgrade. The Montenegrin Government ("the Government") were represented by their Agent, Ms V. Pavličić.

3. On 17 October 2016 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 1946 and lives in Čačak.

5. On 7 September 2005 the applicant instituted civil proceedings before the Court of First Instance (*Osnovni sud*) in Kotor seeking redress regarding various contractual issues.

6. On 4 December 2008 the Court of First Instance in Kotor ruled in favour of the applicant.

7. On 17 November 2009 the High Court (*Viši sud*) in Podgorica upheld this judgment on appeal.

8. On 20 May 2010 the Supreme Court quashed the previous judgments and ordered a re-trial.

9. On 12 August 2011 the Court of First Instance in Kotor ruled against the applicant. This judgment was upheld by the High Court in Podgorica and the Supreme Court on 6 April 2012 and 12 September 2012 respectively.

10. The Supreme Court's judgment was served on the applicant on 20 October 2012.

11. The applicant lodged a constitutional appeal on 28 November 2012.

12. On 30 June 2015 the Constitutional Court rejected the applicant's appeal. This decision was served on the applicant on 25 September 2015.

THE LAW

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

13. 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

14. The Government argued that the applicant's complaint should be rejected for non-observance of the six-month rule. In particular, the impugned proceedings had ended by 20 October 2012, whereas the applicant had lodged the application with the Court on 18 March 2016. The Government furthermore maintained that a constitutional appeal had not been an effective domestic remedy in respect of length of proceedings at the time of its submission by the applicant.

15. The applicant disagreed.

16. The Court has already held that a constitutional appeal in Montenegro could in principal be considered an effective domestic remedy as of 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) and that it must also be deemed as such with respect to complaints relating to the length of proceedings, so that the earlier case-law in this regard is no longer applicable (see *Vučeljić,* cited above, § 31).

17. The Court further 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)).

18. In the present case, the Constitutional Court rendered its decision in respect of the applicant's appeal on 30 June 2015, that is to say after 20 March 2015. Given that the applicant received the Constitutional Court's

decision on 25 September 2015 and that she lodged her application with the Court on 18 March 2016, the Court concludes that the applicant introduced her complaint within the six month time-limit, as set out in Article 35 § 1 of the Convention.

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

20. The Court notes that the applicant's complaint 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 period to be taken into consideration began on 7 September 2005 and ended on 20 October 2012. The impugned proceedings thus lasted seven years, one month and thirteen days at three instances.

22. 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).

23. 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.

24. 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 seven years at three levels of jurisdiction was excessive and failed to meet the "reasonable time" requirement.

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

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."

27. The Court notes that the applicant claimed compensation for pecuniary and non-pecuniary damage in her application form, as well as the costs and expenses incurred before the domestic courts and this Court, but

that no claims in those respects were made after the communication of the application to the Government.

28. The Court therefore makes no awards in those respects and finds no exceptional circumstances which would warrant a different conclusion (see *Nagmetov v. Russia* [GC], no. 35589/08, §§ 76-78, 30 March 2017).

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. *Dismisses* the applicant's claims for just satisfaction.

Done in English, and notified in writing on 12 December 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı	Valeriu Griţco
Deputy Registrar	President