



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

THIRD SECTION

CASE OF ĆORIĆ v. SERBIA

(Application no. 16796/15)

JUDGMENT

STRASBOURG

25 September 2018

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

In the case of Ćorić 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 Stephen Phillips, *Section Registrar*,

Having deliberated in private on 4 September 2018,

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

PROCEDURE

1. The case originated in an application (no. 16796/15) against 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, Ms Vinka Ćorić (“the applicant”), on 31 March 2015.

2. The applicant was represented by Mr D. Kozomora, a lawyer practising in Novi Sad. The Serbian Government (“the Government”) were represented by their Agent, Ms N. Plavšić.

3. On 28 June 2016 the complaint concerning the length of the proceedings was communicated to the Government while the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1951 and lives in Novi Sad.

5. The proceedings began on 19 November 1999 when a third private party brought a lawsuit concerning his tenancy rights in respect of a flat owned by a respondent. The applicant acted as an intervener in these proceedings on the side of the respondent since she had previously signed a tenancy agreement with him.

6. On 8 April 2003 the first instance court suspended the proceedings (*mirovanje postupka*).

7. On 20 August 2003, 20 October 2005 and 13 May 2009 the first instance court terminated the proceedings having deemed the lawsuit as withdrawn due to the fact that the parties had failed to appear at the

scheduled hearings. All three of these decisions were subsequently quashed on appeal.

8. On 29 March 2012 the first instance court rendered a judgment in favour of the respondent and the applicant.

9. On 22 August 2012 this judgment was upheld on appeal.

10. On 28 September 2012 the applicant lodged a further appeal with the Constitutional Court alleging a violation of the right to a hearing within a reasonable time.

11. On 10 February 2015 the Constitutional Court found a violation of the applicant's right to a hearing within a reasonable time, but rejected her claim for non-pecuniary damages stating that the finding of a violation alone constituted sufficient redress for the said breach. In so doing it noted, *inter alia*, that the applicant had significantly contributed to the length of proceedings in question.

THE LAW

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

12. The applicant 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:

"In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

13. The period to be taken into consideration began on 3 March 2004, when the Convention entered into force in respect of Serbia. However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time (see *Simić v. Serbia*, no. 29908/05, § 15, 24 November 2009).

14. The period in question ended on 22 August 2012 when the Court of Appeals rendered the second instance judgment. It thus lasted for 8 years and 6 months at two levels of jurisdiction.

A. Admissibility

15. The Government submitted that the applicant could not claim to be a victim of the alleged violation.

16. The Court considers that the Government's objection is closely linked to the substance of the applicant's complaint and, therefore, must be joined to the merits.

17. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and is not inadmissible on any other grounds. It must, therefore, be declared admissible.

B. Merits

18. In the Government's opinion, the finding of a violation alone constituted sufficient redress for the breach of the applicant's right to a hearing within a reasonable time because of her own contribution to the length complained of, particularly in view of her failure to appear at two scheduled hearings which ultimately led to the withdrawal of the lawsuit.

19. The applicant disagreed.

20. The Court notes that an applicant's status as a "victim" within the meaning of Article 34 of the Convention depends on whether the domestic authorities have 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, *Vidaković v. Serbia* (dec.) no. 16231/07, § 26, 24 May 2011; *Cocchiarella v. Italy* [GC], no. 64886/01, § 71, ECHR 2006-V and *Cataldo v. Italy* (dec.) no. 45656/99, 3 June 2004).

21. The Court, in this respect, notes that the Constitutional Court found that the applicant's right to a hearing within a reasonable time had indeed been violated (see paragraph 9 above), thereby acknowledging the breach complained of and, in effect, satisfying the first condition laid down in the Court's case-law.

22. The applicant's 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).

23. The Court observes 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 still not unreasonable (see *Cocchiarella*, cited above, §§ 96,97).

24. In the present case, however, the Constitutional Court, in addition to the said finding of a violation, declared that the applicant was not entitled to the compensation of non-pecuniary damage.

25. In view of the material in the case file and having regard to the particular circumstances of the proceedings in question, the Court considers

that the mere recognition of the breach of the applicant's right to a hearing within a reasonable time without any award on account of the non-pecuniary damage suffered cannot be considered as sufficient and does not, therefore, amount to appropriate redress for the violation suffered.

26. The Court thus concludes that the applicant did not lose her status as a victim within the meaning of Article 34 of the Convention. The Government's preliminary objection in this regard must, hence, be rejected.

27. In view of the above, and particularly taking into account that the impugned proceedings lasted for 8 years and almost 6 months within the Court's competence *ratione temporis* at two levels of jurisdiction, the Court concludes that the length of the proceedings at issue was excessive and failed to meet the "reasonable time" requirement.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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

30. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damages.

31. The Government contested this claim.

32. The Court is satisfied that the applicant has undoubtedly suffered distress on account of the delay in the proceedings at issue. It, therefore, awards the applicant EUR 1,500 in respect of the non-pecuniary damage suffered.

B. Costs and expenses

33. The applicant also claimed EUR 1,097 for the costs and expenses incurred before the domestic courts and before the Court.

34. The Government contested this claim.

35. 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 500 covering costs under all heads, less any amounts which may have already been paid in that regard at the domestic level.

C. Default interest

36. 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 to the merits the Government's preliminary objection as to the applicant's victim status and dismisses it;
2. *Declares* the application admissible;
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 applicant within three months the following amounts:
 - (i) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable, in respect of the non-pecuniary damage suffered, and
 - (ii) EUR 500 (five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that the amounts specified above shall be converted into the national 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 25 September 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Pere Pastor Vilanova
President