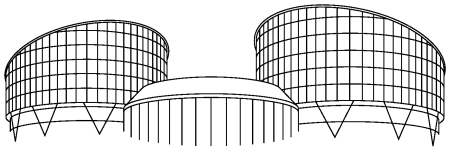

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF VUJOVIĆ v. MONTENEGRO

(Application no. 75139/10)

JUDGMENT

STRASBOURG

15 May 2018

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

In the case of Vujović 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 10 April 2018,

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

PROCEDURE

1. The case originated in an application (no. 75139/10) 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 and Norwegian national, Mr Igor Vujović ("the applicant"), on 13 December 2010.

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

3. On 3 December 2014 the complaint concerning the length of the proceedings was communicated to the Government. Pursuant to Rule 54 § 3 of the Rules of Court the complaint concerning the outcome of the criminal proceedings in question was declared inadmissible.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1973 and lives in Oslo, Norway.

5. On 26 April 2000 criminal proceedings were brought against the applicant and one other person in connection with a traffic accident which had resulted in death of a child.

6. On 25 February 2003 the Court of First Instance in Podgorica convicted the applicant for endangering public traffic and sentenced him and his co-accused to one year and six months' imprisonment.

7. On an unspecified date in 2006 the High Court in Podgorica quashed this judgment and remitted case back to the Court of First Instance.

8. On 18 April 2007 the Court of First Instance adopted a new judgment and again convicted the applicant and his co-accused. But the court reduced the sentence to one year and four months' imprisonment.

9. On 13 November 2009 the High Court further reduced the sentence of the applicant's co-accused, but upheld the judgment of the Court of First Instance in respect of the applicant.

10. The applicant's subsequent appeal against the judgment of the High Court was rejected on 14 June 2010.

11. Following that rejection, on an unspecified date in 2010, the applicant lodged a further appeal on points of law (*zahtjev za ispitivanje zakonitosti pravosnažne presude*) with the Supreme Court.

12. On 26 October 2010 the Supreme Court rejected this appeal.

13. On 11 December 2010 the applicant lodged an action for fair redress (*tužba za pravično zadovoljenje*) with the Supreme Court, complaining about the overall length of criminal proceedings. It was rejected on 31 December 2010.

14. On 19 April 2013 the Constitutional Court rejected the applicant's ultimate appeal.

THE LAW

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

15. The applicant complained that the length of the criminal proceedings had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention, which, in so far as relevant, reads as follows:

> "In the determination of ... any criminal charge against him everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

A. Admissibility

1. The six months rule

16. The Government contended that the applicant's complaint had been lodged out of time. In particular, they submitted that an appeal against the judgment of the second-instance court had not been an effective remedy in the circumstances of the applicant's case (see paragraph 10 above). The applicant should, in their view, have lodged an application with the Court no later than 13 May 2010; i.e. six months after the receipt of the decision rendered at second instance.

17. The applicant maintained that in his case the appeal against the judgment of the second-instance court was an effective remedy.

18. Having examined the documents in its possession, the Court observes that the Supreme Court did not dismiss the applicant's appeal on points of law on any procedural ground. On the contrary, the Supreme Court ruled on the merits of the applicant's appeal (see paragraphs 11 and 12 above).

19. The Court has already established that an appeal on points of law in criminal proceedings is, in principle, an effective domestic remedy within the meaning of Article 35 § 1 of the Convention (*Lakićević and Others v. Montenegro and Serbia*, nos. 27458/06 and 3 others, § 50, 13 December 2011). Accordingly, the Court cannot but reject the Government's objection as regards the timeliness of the applicant's complaint.

2. Exhaustion of domestic remedies

20. The Government further maintained that the applicant had not properly exhausted the domestic remedies, having failed to make use of a request for review (*kontrolni zahtjev*).

21. The applicant submitted that the said remedy had not been effective at the relevant time.

22. The Court reiterates its previous finding that at the time when the application had been lodged there were no effective remedies in respect of complaints relating to the length of proceedings: a request for review became effective as of 4 September 2013 (see *Vukelić v. Montenegro*, no. 58258/09, § 85, 4 June 2013), an action for fair redress became effective as of 18 October 2016 (see *Vučeljić v. Montenegro* (dec.), no. 59129/15, § 30, 18 October 2016), while a constitutional appeal became effective as of 20 March 2015 (see *Siništaj and Others v. Montenegro*, nos. 1451/10 and 2 others, § 123, 24 November 2015, and *Vučeljić v. Montenegro* (dec.), cited above, § 31). In view of the foregoing, the Court must reject the Government's objection as to the exhaustion of domestic remedies.

3. Conclusion

23. The Court notes that this 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

24. The applicant reaffirmed his complaint.

25. The Government maintained that there had been no violation of Article 6 § 1 of the Convention. In particular, they pointed out that the applicant had personally contributed to the length complained of by failing to appear at the hearings scheduled between 13 September 2006 and 13 April 2007 and omitting to inform the domestic court about his whereabouts, particularly his moving to Norway.

26. The Court observes that the proceedings in question took place between 26 April 2000 and 26 October 2010. However, the Court can only examine the period between 3 March 2004, namely the date on which the Convention had entered into force in respect of Montenegro, and 26 October 2010, when the Supreme Court adopted its decision, that being a period of almost six years and eight months at three instances.

27. The Court reiterates that the reasonableness of the length of proceedings is to be determined in the light of the circumstances of the case and with reference to the criteria laid down in the Court's case-law, in particular the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, the *Silva Pontes v. Portugal* judgment of 23 March 1994, Series A no. 286-A, p. 15, § 39).

28. Having examined the documents in its possession, the Court observes that the applicant was unjustifiably absent at two hearings scheduled for 13 September 2006 and 30 November 2006, respectively. The second hearing was rescheduled for 13 April 2007. By failing to appear at these hearings the applicant has adversely contributed to the length of the impugned proceedings for almost seven months.

29. In view of the above and the fact that the applicant failed to point to any period of inactivity by the domestic courts, the Court is of the opinion that the remaining length of approximately six years at three levels of jurisdiction cannot be considered as excessive or unreasonably long (see, *mutatis mutandis, Tyukov v. Russia,* no. 16609/05, §§ 33-35, 2 May 2013).

30. There has accordingly been no violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 §§ 2 AND 3 TO THE CONVENTION

31. The applicant further complained under Article 6 §§ 2 and 3 of the Convention that his right be presumed innocent had been breached since he had not been allowed to examine witnesses on his behalf. The applicant, however, failed to provide the Court with any evidence in support of these allegations. Furthermore, it is not clear how the applicant's presumption of innocence could have been breached based on the alleged refusal of the domestic courts to hear certain witnesses.

32. The complaints under Article 6 §§ 2 and 3 of the Convention are, therefore, manifestly ill-founded and must be rejected pursuant to Article 35 § 3 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 6 § 1 of the Convention concerning the length of proceedings admissible;

2. *Declares* the remainder of the application inadmissible;

3. *Holds* that there has been no violation of Article 6 § 1 of the Convention;

Done in English, and notified in writing on 15 May 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı	Ledi Bianku
Deputy Registrar	President