SECOND SECTION

**CASE OF STANKA MIRKOVIĆ AND OTHERS v. MONTENEGRO**

*(Applications nos. 33781/15 and 3 others – see appended list)*

JUDGMENT

STRASBOURG

7 March 2017

FINAL

07/06/2017

*This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.*

In the case of Stanka Mirković and Others v. Montenegro,

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

Işıl Karakaş, *President,* Julia Laffranque, Nebojša Vučinić, Valeriu Griţco, Ksenija Turković, Jon Fridrik Kjølbro, Stéphanie Mourou-Vikström, *judges,*  
and Hasan Bakırcı, *Deputy Section Registrar,*

Having deliberated in private on 7 February 2017,

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

PROCEDURE

1.  The case originated in four applications (nos. 33781/15, 33785/15, 34369/15 and 34371/15) against Montenegro lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Montenegrin nationals, Ms Stanka Mirković and Mr Oliver Mirković, and two Serbian nationals, Ms Darinka Marjanović and Mr Igor Mirković, on 30 June 2015.

2.  The applicants were represented by Mr J. Mićković, a lawyer practising in Pljevlja (Montenegro). The Montenegrin Government (“the Government”) were represented by their Agent, Mrs V. Pavličić.

3.  The applicants complained regarding the overall length of administrative proceedings which had been delayed by repeated remittals of the case, and the lack of an effective remedy in that regard.

4.  Notified under Article 36 § 1 of the Convention and Rule 44 § 1 (a) of the Rules of Court of their right to intervene in the present case, the Serbian Government expressed no wish to do so.

THE FACTS

I.  THE CIRCUMSTANCES OF THE CASE

5.  Details of the applicants are set out in the appendix.

6.  The facts of the case, as submitted by the parties, may be summarised as follows.

7.  On 3 December 2004 the third and fourth applicants filed a request with the Restitution and Compensation Commission (hereinafter “the Commission”), seeking compensation for land expropriated from their legal predecessor in 1946.

8.  Between 17 July and 12 August 2005 the first and second applicants made statements waiving their rights in respect of the property belonging to the same legal predecessor in favour of the third and fourth applicants.

9.  On 28 August 2005 the Commission ruled in favour of the third and fourth applicants.

10.  On 14 October 2005 the Ministry of Finance quashed that decision upon an appeal filed on 19 September 2005 by the Supreme State Prosecutor (*Vrhovni državni tužilac*) in his capacity as legal representative of the respondent State.

11.  On 17 April 2006 the Commission issued a new decision, awarding compensation to all the applicants as they were all heirs of the legal predecessor. In so doing, it also examined the waiver statements of the first and second applicants made in 2005, but considered that, pursuant to section 40 of the Restitution of Expropriated Property Rights and Compensation Act, such waiver statements could only be validly made in non-contentious proceedings before a competent court (see paragraph 20 below).

12.  Between 12 June 2006 and 27 March 2014 the competent second‑instance administrative body (firstly the Ministry of Finance and later the Appeals Commission) and the Administrative Court, before which the case was first brought on an unspecified date in 2006, issued sixteen decisions in total (eight decisions each). The second-instance body ruled upon a series of appeals and gave decisions within 55 days, 65 days, 30 days, 53 days, 14 days, 78 days, 94 days, and 132 days. The Administrative Court gave rulings within 1 year 8 months and 17 days, 7 months and 22 days, 7 months and 27 days, 3 months and 23 days, 5 months, 5 months and 19 days, 4 months and 16 days, and 4 months and 23 days.

13.  On at least four occasions, when initiating an administrative dispute before the Administrative Court, the applicants explicitly referred to section 37 and/or section 58 of the Administrative Disputes Act (see paragraph 26 below) and urged the Administrative Court to decide on the merits of their request. The Administrative Court never ruled on the merits of the initial compensation request, but instead quashed or upheld the quashing of the first-instance decision of the Commission. Its last decision was issued on 27 March 2014, in substance remitting the case once again to the Commission.

14.  On 27 June 2014 the Supreme Court upheld the Administrative Court’s decision. The Supreme Court’s decision was served on the applicants on 8 July 2014.

15.  On 25 July 2014 the applicants each lodged a constitutional appeal against the decision of the Supreme Court, relying on, *inter alia*, Articles 6 and 13 of the Convention. The Government submitted that, on the same day, in addition to those constitutional appeals against the Supreme Court’s decision, the applicants had also each lodged a second constitutional appeal against the decision of the Administrative Court of 27 March 2014. No copies of those second constitutional appeals were provided by either party.

16.  On 28 October 2014 the Constitutional Court rejected the applicants’ constitutional appeals against the Supreme Court’s decision as premature, given that the Commission was still considering their compensation request.

17.  On 28 December 2015 the Constitutional Court issued another decision dismissing the applicants’ constitutional appeals. The decision stated that the applicants’ constitutional appeals had been filed against the judgments of the Administrative Court and the Supreme Court. In its ruling, the Constitutional Court constantly referred to the “impugned judgments”. There is no information in the case file as to when that decision was served on the applicants.

18.  On 31 March 2016, at a hearing before the Commission, the proceedings were adjourned at the applicants’ request until this Court ruled on their applications.

II.  RELEVANT DOMESTIC LAW

A.  The Restitution of Expropriated Property Rights and Compensation Act (*Zakon o povraćaju oduzetih imovinskih prava i obeštećenju*, published in the Official Gazette of the Republic of Montenegro - OG RM - nos. 21⁄04, 49⁄07 and 60⁄07)

.  Section 4 provides, *inter alia*, that the General Administrative Proceedings Act shall be applied to restitution/compensation procedures.

.  Section 40 provides, *inter alia*, that inheritance issues in respect of a late owner’s property shall be examined by a competent court in accordance with the Non-Contentious Proceedings Act.

.  The Act entered into force on 8 April 2004.

B.  The General Administrative Proceedings Act (*Zakon o opštem upravnom postupku*, published in the OG RM no. 60⁄03 and the Official Gazette of Montenegro - OGM - nos. 73⁄10 and 32⁄11)

.  Section 212(1) provided that, in simple matters, an administrative body was obliged to issue a decision within one month of a party’s lodging a request, unless a *lex specialis* provided for a shorter time-limit (*ako posebnim zakonom nije određen kraći rok*). In all other cases, the administrative body was obliged to issue a decision within two months of the request being lodged. Amendments which entered into force on 9 July 2011 reduced these time-limits; the administrative body was obliged to issue a decision within twenty days of a party’s lodging a request in relation to simple matters, and within one month in all other cases.

.  Section 212(2) enables a party whose request has not been decided within the periods established in the previous paragraph to lodge an appeal with the appellate body as if his request had been refused. If the appeal is not allowed, the appellant can directly initiate an administrative dispute before the court with jurisdiction.

.  The Act entered into force on 5 November 2003.

C.  The Administrative Disputes Act (*Zakon o upravnom sporu*, published in the OG RM no. 60⁄03, and OGM nos. 73⁄10 and 32⁄11)

.  Section 18 provided that a party could institute an administrative dispute before the Administrative Court if the appellate body did not issue a decision within sixty days or within an additional period of seven days; or if the first-instance body did not issue a decision and there was no right to an appeal. Amendments which entered into force on 9 July 2011 reduced the sixty-day time-limit to thirty days.

26.  Sections 37 and 58 of the Administrative Disputes Act provide, in substance, that the Administrative Court can rule on the merits of an initial request when quashing a lower body’s decision, and that, in principle, it shall rule on the merits when it has already quashed an impugned decision once and the competent administrative body, in re-examination, has failed to issue another decision in accordance with the Administrative Court’s previous judgment.

.  The Act entered into force in January 2005.

D.  Right to a Trial within a Reasonable Time Act (*Zakon o zaštiti prava na suđenje u razumnom roku*, published in the OGM no. 11⁄07)

28.  Section 2 provides, *inter alia*, that parties and interested persons in an administrative dispute are entitled to the judicial protection afforded by this Act. Section 3 provides for a request for review (*kontrolni zahtjev*), a remedy aimed at expediting proceedings.

E.  The Inspection Act (*Zakon o inspekcijskom nadzoru*, published in OG RM nos. 39⁄03, 76⁄09, 57⁄11, 18⁄14, 11⁄15 and 52⁄16)

.  Section 10 provides that anybody can request inspection.

.  Sections 13-19 specify the rights and duties of inspectors, which, *inter alia*, include their right to identify irregularities and order that adequate measures be implemented and adequate fines imposed.

THE LAW

I.  JOINDER OF THE APPLICATIONS

31.  The Court considers that, in accordance with Rule 42 § 1 of the Rules of Court, the applications should be joined, given their similar factual and legal background.

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

32.  The applicants complained regarding the overall length of the administrative proceedings owing to the case being repeatedly remitted. They relied on Article 6 § 1 of the Convention, which reads:

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

33.  The Government contested that argument.

A.  Admissibility

1.  The parties’ submissions

34.  The Government submitted that the first and second applicants had no victim status, given that they had waived their property rights in 2005 (see paragraph 8 above).

35.  They further maintained that the applications had been submitted outside of the six-month time-limit. In particular, a constitutional appeal had not been an effective domestic remedy at the material time, and the last effective remedy had therefore been the Supreme Court’s decision, which had been served on the applicants on 8 July 2014, whereas the applications had been lodged on 30 June 2015.

36.  The Government also maintained that the applicants had failed to exhaust all available domestic remedies, in particular requesting the inspection of the impugned proceedings and using the remedies provided for in cases concerning the “silence of administration”, that is when an administrative body fails to decide on an issue within the statutory time‑limits, both remedies which could have expedited the proceedings.

37.  Lastly, the Government contested the applicants’ additional complaint that the Constitutional Court had ruled twice on the same set of constitutional appeals. They maintained that the applicants had each submitted two constitutional appeals (see paragraph 15 above), one set of appeals had been rejected and the other set had been dismissed. In view of that, the Government maintained that the applications to the Court had been premature, given that the second set of constitutional appeals by the applicants had still been under consideration at the time the applications had been submitted.

38.  The applicants contested the Government’s submissions. In particular, they submitted that the first and second applicants’ statements waiving their property rights had not been accepted in the impugned proceedings, and that they had been duly awarded compensation. As regards the exhaustion of domestic remedies, the applicants maintained that the proceedings before each body individually had not been excessive, but that the problem was the total length of the proceedings as a whole, owing to the case being repeatedly remitted.

39.  In their observations, the applicants also complained regarding the Constitutional Court ruling twice on their constitutional appeals, the second time dismissing them on the merits.

2.  The Court’s conclusion

(a)  The first and second applicants’ victim status

40.  The relevant principles in this regard are set out in *Vallianatos and Others v. Greece* [GC], nos. 29381/09 and 32684/09, § 47, ECHR 2013 (extracts).

41.  The Court notes that the first and second applicants’ waiver statements were duly examined in the administrative proceedings, and indeed were not accepted on the grounds that a waiver statement could only be validly made before judicial bodies in the relevant proceedings. In view of that, the Commission, when ruling on the initial application, awarded compensation not only to the third and fourth applicants, but also the first and second applicants as early as 2006 (see paragraph 11 above). The impugned proceedings, in which the applicants are all parties, are still ongoing.

.  In view of the above, the Court considers that the ongoing proceedings directly concern the first and second applicants, and they have a legitimate personal interest in seeing the proceedings brought to an end. Accordingly, and without prejudging the merits of the case, it concludes that they should be considered “victims” of the alleged violation within the meaning of Article 34 of the Convention. The Government’s objection must therefore be dismissed.

(b)  Six-month time-limit

43.  The relevant principles in this regard are set out in *Mocanu and Others v. Romania* [GC], nos. 10865/09, 45886/07 and 32431/08, §§ 258‑261, ECHR 2014 (extracts).

44.  The Court notes that, following the Administrative Court and the Supreme Court upholding the decision that the case should be remitted, the case is once again before the Commission acting as a first-instance administrative body. The six-month time-limit can therefore not yet have started to run (see *Mocanu* [GC], cited above, § 261, and the authorities cited therein) and accordingly the Government’s objection in this regard must be dismissed.

(c)  Non-exhaustion of domestic remedies

45.  The relevant principles in this regard are set out in detail in *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-75, 25 March 2014.

46.  In another case, the Court observed that attempts to have lengthy administrative proceedings expedited by means of inspection had failed, and dismissed the Government’s objection as to non-exhaustion of domestic remedies (see *Živaljević v. Montenegro*, no. 17229/04, § 15 and §§ 58-59, 8 March 2011). As the Government have provided no domestic case-law to the contrary in the instant case, the Court sees no reason to depart from its earlier finding. The Government’s objection must therefore be dismissed.

47.  As regards the General Administrative Proceedings Act and the Administrative Disputes Act, they provide for remedies in cases where a single administrative body fails to issue a decision within a certain time‑limit (see paragraphs 22-23 and 25 above). While the said remedies are generally effective (see *Vuković v. Montenegro* (dec.), no. 18626/11, §§ 30‑31, 27 November 2012, in which the Commission had failed to rule on the applicant’s request for more than seven years and six months), the Court considers that they were not applicable to the applicants’ case, since most of the bodies did rule within the statutory time-limits (see paragraph 12 above). As for the few exceptions where this did not happen, the Court considers that, even if the proceedings could have been slightly expedited on these occasions, that would not have prevented the repeated remittals of the case and the consequent overall delay, which is the issue in the present case. In view of that, the Court considers that the Government’s objection in this regard must also be dismissed.

.  As regards the Government’s objection that the applicants’ complaint was premature, given that the second set of constitutional appeals was still being considered at the time when they lodged their applications, the Court reiterates that, while the requirement for an applicant to exhaust domestic remedies is normally determined with reference to the date on which an application is lodged with the Court (*Baumann v. France*, no. 33592/96, § 47, ECHR 2001‑V (extracts)), it also accepts that the last stage of such remedies may also be reached after the lodging of the application, but before the Court determines the issue of admissibility (*Karoussiotis v. Portugal*, no. 23205/08, § 57, ECHR 2011 (extracts)). This objection by the Government must therefore also be dismissed.

49.  Lastly, the Court observes that the Government were explicitly asked to provide their opinion on whether a request for review was an effective domestic remedy in respect of administrative proceedings not only before the Administrative Court but also while they are pending before various administrative bodies beforehand (*u upravnom postupku*).  They were also invited to submit to the Court the relevant domestic case-law, if any. The Government provided no comment whatsoever in this regard, nor did they refer to any relevant domestic case-law. In view of that, and similarly to the remedies provided for in the General Administrative Proceedings Act and the Administrative Dispute Act, the Court considers that the request for review could have been of little use to the applicants given that the Administrative Court in principle ruled within the statutory time-limits. While a request for review could have perhaps slightly expedited only that particular part of the proceedings on those few occasions when the Administrative Court failed to rule within the said limits, in any event it could not have expedited the proceedings ongoing before various administrative bodies beforehand, nor could it have prevented the repeated remittals of the case and the consequent overall delay, which is the issue in the present case. As noted above the Government offered no comment or case-law to the contrary. In view of that, the Court cannot but conclude that, whereas the said remedy could be used in order to expedite only the proceedings before the Administrative Court itself, that is an administrative dispute (*u upravnom sporu*) (see *Vukelić v. Montenegro*, no. 58258/09, § 85, 4 June 2013), it cannot be used and hence considered an effective domestic remedy in respect of the part of the proceedings that are ongoing before various administrative bodies beforehand.

(d)  The Court’s conclusion

50.  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

51.  The applicants complained about the length of the proceedings.

52.  The Government made no comment in this regard.

53.  The relevant principles in this regard are set out in detail in, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000‑VII. In particular, the repeated re-examination of a single case following remittal may in itself disclose a serious deficiency in a State’s judicial system (see *Pavlyulynets v. Ukraine*, no. 70767/01, § 51, 6 September 2005).

54.  Turning to the present case, the Court notes that the period to be taken into account began on 19 September 2005, the date on which an appeal was lodged against the administrative decision rendered at first instance (see, *mutatis mutandis*, *Počuča v. Croatia*, no. 38550/02, § 30, 29 June 2006), and is still ongoing. Given that on 31 March 2016 the proceedings were adjourned at the applicants’ request, the duration of the proceedings after that date can only be attributed to the applicants.

55.  Prior to the adjournment, over the course of ten years, six months and eleven days the domestic bodies issued twenty-one decisions (including two decisions of the Constitutional Court) and remitted the case nine times, and once again the case is before the first-instance administrative body awaiting a decision. The Court considers that neither the complexity of the case nor the applicants’ conduct explains the length of the proceedings. The Government did not supply any explanation for the delay or comment whatsoever on this matter.

56.  In view of the above, the Court considers that accordingly there has been a violation of Article 6 § 1 of the Convention.

III.  ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

57.  The applicants complained of the lack of an effective domestic remedy, relying on Article 13 of the Convention, which provides:

“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.”

A.  Admissibility

.  The Court notes that the applicants’ complaint raises issues of fact and law under the Convention, the determination of which requires an examination of the merits. It also considers that the applicants’ complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and cannot be rejected on any other grounds. The complaint must therefore be declared admissible.

B.  Merits

.  The applicants reaffirmed their complaint.

.  The Government made no separate comment in this regard.

.  The relevant principles in this regard are set out in *Sürmeli v. Germany* [GC], no. 75529/01, §§ 99-100, ECHR 2006‑VII, and *McFarlane v. Ireland* [GC], no. 31333/06, § 107, 10 September 2010.

.  Turning to the present case, the Court notes that the Government asserted in their objections that there were remedies available in respect of the applicants’ complaint under Article 6 § 1 regarding the length of the proceedings. These objections were rejected on the grounds set out in paragraphs 46-49 above.

.  For the same reasons, the Court concludes that there has been a violation of Article 13 of the Convention, taken together with Article 6 § 1, on account of the lack of an effective remedy under domestic law for the applicants’ complaints concerning the length of the proceedings (see *Stevanović v. Serbia*, no. 26642/05, §§ 67-68, 9 October 2007, see also *Stakić v. Montenegro*, no. 49320/07, §§ 59-60, 2 October 2012).

IV.  OTHER ALLEGED VIOLATIONS OF THE CONVENTION

64.  On 4 July 2016, in their observations, the applicants complained for the first time regarding the Constitutional Court ruling twice upon the one set of constitutional appeals which they had lodged.

65.  The Government contested this complaint, maintaining that the applicants had each submitted two constitutional appeals, hence there had been two decisions, one for each of the two sets of appeals.

66.  The Court observes that these complaints were not included in the initial application, but were raised in the applicants’ observations of July 2016. The Court therefore considers that it is not appropriate to take these matters up in the context of this application (see *Mugoša v. Montenegro*, no. 76522/12, §§ 70-71, 21 June 2016; *Nuray Şen v. Turkey (no. 2)*, no. 25354/94, § 200, 30 March 2004; *Skubenko v. Ukraine* (dec.), no. 41152/98, 6 April 2004; and *Melnik v. Ukraine*, no. 72286/01, §§ 61-63, 28 March 2006).

V.  APPLICATION OF ARTICLE 41 OF THE CONVENTION

67.  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

68.  In respect of pecuniary damage, the first, third and fourth applicants claimed 26,688.01 euros (EUR) each and the second applicant claimed EUR 86,064.04. They also claimed EUR 3,000 each in respect of non‑pecuniary damage.

69.  The Government made no comment in this regard.

.  The Court is of the view that it has not been duly substantiated that the applicants sustained pecuniary damage as a result of the violation of Article 6 § 1 and Article 13. However, the Court accepts that the applicants have suffered some non-pecuniary damage which cannot be sufficiently compensated by the finding of a violation alone. Making its assessment on an equitable basis, the Court therefore awards the first, second and third applicants EUR 1,560 jointly under this head, and the fourth applicant EUR 1,560.

B.  Costs and expenses

71.  The applicants also claimed EUR 1,000 for costs and expenses incurred before the domestic courts, but submitted that they had kept no invoices in that respect, and EUR 625 in total for costs and expenses incurred before the Court.

72.  The Government made no comment in this regard.

73.  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 claim for costs and expenses in the domestic proceedings and considers it reasonable to award to all the applicants jointly the sum of EUR 625 in respect of the proceedings before the Court.

C.  Default interest

74.  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 the applications;

2.  *Declares* the applications admissible;

3.  *Holds* that there has been a violation of Article 6 § 1 of the Convention;

4.  *Holds* that there has been a violation of Article 13 of the Convention;

5.  *Holds*

(a)  that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i)  EUR 1,560 (one thousand five hundred and sixty euros) to the first, second and third applicants jointly, and EUR 1,560 (one thousand five hundred and sixty euros) to the fourth applicant alone, plus any tax that may be chargeable, in respect of non‑pecuniary damage;

(ii)  EUR 625 (six hundred and twenty-five euros) to all the applicants jointly, plus any tax that may be chargeable to the applicants, in respect of costs and expenses;

(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;

6.  *Dismisses* the remainder of the applicants’ claim for just satisfaction.

Done in English, and notified in writing on 7 March 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı Işıl Karakaş  
 Deputy Registrar President

APPENDIX

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| No | Application No | Lodged on | Applicant  Date of birth  Place of residence  Nationality | Represented by |
|  | 33781/15 | 30/06/2015 | **Stanka MIRKOVIĆ**  29/11/1939  Belgrade (Serbia)  Montenegrin  (“the first applicant”) | Josif MIĆKOVIĆ |
|  | 33785/15 | 30/06/2015 | **Darinka MARJANOVIĆ**  26/10/1931  Belgrade (Serbia)  Serbian  (“the second applicant”) | Josif MIĆKOVIĆ |
|  | 34369/15 | 30/06/2015 | **Igor MIRKOVIĆ**  26/05/1961  Belgrade (Serbia)  Serbian  (“the third applicant”) | Josif MIĆKOVIĆ |
|  | 34371/15 | 30/06/2015 | **Oliver MIRKOVIĆ**  03/04/1963  Pljevlja (Montenegro)  Montenegrin  (“the fourth applicant”) | Josif MIĆKOVIĆ |