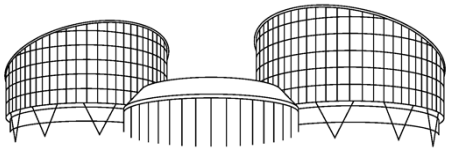

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF DELIĆ v. BOSNIA AND HERZEGOVINA

(Application no. 59181/18)

JUDGMENT

Art 6 § 1 (civil) • Reasonable time • Excessive length of civil proceedings Art 13 (+ Art 6) • Lack of effective remedy in respect of length of proceedings in pending cases • Constitutional Court no longer dealing with such cases • Absence of any compensatory remedy rendered any acceleration of the civil proceedings by virtue of the applicant's constitutional appeal ineffective

STRASBOURG

2 March 2021

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Delić v. Bosnia and Herzegovina,

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

Yonko Grozev, *President,*
Tim Eicke,
Faris Vehabović,
Iulia Antoanella Motoc,
Armen Harutyunyan,
Pere Pastor Vilanova,
Jolien Schukking, *judges,*
and Andrea Tamietti, *Section Registrar,*

Having regard to:

the application (no. 59181/18) against Bosnia and Herzegovina lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a citizen of Bosnia and Herzegovina, Mr Sanel Delić ("the applicant"), on 6 December 2018;

the decision to give notice to the Government of Bosnia and Herzegovina ("the Government") of the application;

the parties' observations;

Having deliberated in private on 9 February 2021,

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

INTRODUCTION

1. The issues in this case are whether the length of civil proceedings which lasted from 2012 until 2020 was compatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention, and whether the applicant had an effective domestic remedy for his length-of-proceedings complaint, as required by Article 13 of the Convention.

THE FACTS

2. The applicant was born in 1975 and lives in Banovići. The applicant was represented by Mr H. Salkanović, a lawyer practising in Živinice.

3. The Government were represented by Mr M. Lučić, Minister of Human Rights and Refugees of Bosnia and Herzegovina.

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

5. On 22 February 2007 K.S. and R.S., a married couple, were convicted of forgery causing a loss to the applicant in the amount of 1,080 convertible marks (BAM)[1]. Their conviction became final on 19 October 2007.

[1] The convertible mark uses the same fixed exchange rate to the euro that the German mark

6. On 23 October 2012 the applicant brought an action for damages against the couple mentioned above and a microcredit organisation involved in this case. He claimed BAM 1,080 plus default interest and costs.

7. It took almost seven years to decide a preliminary question – whether R.S. had properly filed a defence to the applicant's claim. That question was finally decided on 30 August 2019. The Banovići Municipal Court then held two hearings in the absence of K.S. and R.S. (11 September and 7 October 2019) and delivered a judgment on 7 November 2019. It upheld the claim against K.S. and R.S. As regards the third defendant, it ruled that the statute of limitations had expired.

8. While the case was still pending before the Banovići Municipal Court, on 15 January 2018 the applicant filed a constitutional appeal complaining about the length of those proceedings. The Constitutional Court rejected his constitutional appeal on 6 November 2018 (see paragraph 11 below).

9. On 27 January 2020 the Tuzla Cantonal Court upheld the judgment of the Banovići Municipal Court of 7 November 2019 (see paragraph 7 above).

RELEVANT LEGAL FRAMEWORK AND PRACTICE

10. In a pilot decision rendered on 10 May 2017 the Constitutional Court held that the excessive length of proceedings was a systemic problem, found a breach of Articles 6 and 13 of the European Convention on Human Rights and indicated general measures, including the introduction of a preventive remedy for the length of pending proceedings.

11. Having established that the general measures indicated in the pilot decision (see paragraph 10 above) had not yet been fully implemented, the Constitutional Court decided, on 6 November 2018, to no longer deal with the issue of the length of pending (as opposed to terminated) proceedings. It also rejected the applicant's and all other constitutional appeals raising that issue as being substantially the same as a matter that had already been examined by the Constitutional Court. It has since delivered a number of similar decisions rejecting, on the same grounds, hundreds of constitutional appeals raising the issue of the length of pending proceedings.

12. At the same time, the Constitutional Court has continued to deal with the issue of the length of finished proceedings (see, among others, decisions nos. AP 3979/18 of 11 March 2020 and AP 5000/18 of 6 May 2020).

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has (1 convertible mark = 0.51129 euros).

THE LAW

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

13. The applicant complained that the length of the civil proceedings in his case 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 his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

14. The period to be taken into consideration began on 23 October 2012, when the applicant brought his claim against K.S., R.S. and a microcredit organisation (see paragraph 6 above) and ended on 27 January 2020, when the Tuzla Cantonal Court delivered its final judgment (see paragraph 9 above). It thus lasted more than seven years at two levels of jurisdiction.

A. Admissibility

15. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

16. The applicant submitted that his civil case was simple. Furthermore, since he and his family (unemployed wife and two minor children) lived on his monthly disability pension of BAM 765, he added that the case was important for him.

17. The Government argued that the case at issue did not fall into any of the categories of cases which called for particular expedition (such as cases concerning civil status and capacity, employment disputes and child custody cases). They also argued that the infirmity of one of the defendants (K.S.) had slowed down the examination of the case to a certain extent.

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

19. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of justifying the length of the civil proceedings in the instant case. In particular, the Court observes that it took the domestic courts almost seven

years to decide a simple preliminary question (see paragraph 7 above). After that question had been decided, the civil proceedings lasted less than five months at two levels of jurisdiction (see paragraphs 7 and 9 above). This shows that the case was indeed not complex, as pointed out by the applicant (see paragraph 16 above). Furthermore, the Court rejects the Government's claim that the infirmity of K.S. justified the length of the civil proceedings at issue (see paragraph 17 above), since the domestic courts found that his presence was not mandatory (see paragraph 7 above).

20. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

22. The applicant complained of the lack of an effective domestic remedy for his length-of-proceedings complaint. He relied in that regard on Article 13 of the Convention, which reads as follows:

> "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

23. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

24. The applicant argued that a constitutional appeal was clearly not an effective remedy for the length of pending proceedings and that no other remedy was available.

25. The Government maintained that the Constitutional Court's decision in the present case, although formally rejecting the applicant's appeal (see paragraph 11 above), had actually accelerated the proceedings under consideration. The applicant had thus had an effective domestic remedy at his disposal.

26. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI).

27. It must be emphasised at the outset that the present case does not call into doubt the effectiveness of a constitutional appeal for complaints about the length of finished proceedings (see paragraph 12 above). The only issue in the instant case is whether the applicant had any effective domestic remedy at his disposal for his complaint about the length of pending proceedings when he lodged his application with the Court (see, *mutatis mutandis, Mifsud v. France* (dec.) [GC], no. 57220/00, § 17, ECHR 2002-VIII). In this respect, the Court observes that the present application was lodged on 6 December 2018, when the applicant's civil case was still pending at first instance (see paragraphs 6 and 7 above).

28. In this connection, the Court observes that on 6 November 2018 the Constitutional Court decided to no longer deal with the issue of the length of pending proceedings and rejected the applicant's appeal raising that issue (see paragraph 11 above). Even assuming that the applicant's constitutional appeal nevertheless accelerated the civil proceedings under consideration, as submitted by the Government (see paragraph 25 above), this would not be sufficient in itself to render that remedy "effective" within the meaning of Article 13 of the Convention. Indeed, the Court has held that if an acceleratory remedy is used to speed up proceedings which have already lasted too long, it will not be considered effective unless accompanied by a compensatory remedy (see, for example, *Mirjana Marić v. Croatia*, no. 9849/15, § 72, 30 July 2020, and the decisions cited therein). It has not been alleged by the Government that the applicant had any compensatory remedy at his disposal at the relevant time.

29. There has therefore been a violation of Article 13 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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

31. The applicant claimed 6,500 euros (EUR) in respect of non-pecuniary damage.

32. The Government considered the amount claimed to be excessive.

33. Deciding on an equitable basis, the Court awards the applicant EUR 1,800 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

34. The applicant claimed EUR 246 for the costs and expenses incurred before the Constitutional Court and EUR 1,100 for those incurred before the Court. He submitted a bill of costs, based on the tariff fixed by the local bar association.

35. The Government contested the claim as unsubstantiated.

36. 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 were actually and necessarily incurred and are reasonable as to quantum (see, for example, *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI). In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sums claimed, totalling EUR 1,346, plus any tax that may be chargeable to the applicant (see, by analogy, *Šobota-Gajić v. Bosnia and Herzegovina*, no. 27966/06, § 70, 6 November 2007).

C. Default interest

37. 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 application admissible;

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

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

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 1,800 (one thousand eight hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,346 (one thousand three hundred and forty-six euros), plus any tax that may be chargeable to the applicant, 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;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 2 March 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti	Yonko Grozev
Registrar	President