



FIFTH SECTION

CASE OF SINIŠTAJ v. MONTENEGRO

(Application no. 31529/15)

JUDGMENT

STRASBOURG

23 September 2021

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

In the case of Siništaj v. Montenegro,

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

Mārtiņš Mits, *President*,

Jovan Ilievski,

Ivana Jelić, *judges*,

and Martina Keller, *Deputy Section Registrar*,

Having regard to:

the application (no. 31529/15) against Montenegro lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Montenegrin national, Mr Anton Siništaj (“the applicant”), on 18 June 2015;

the decision to give notice to the Montenegrin Government (“the Government”) of the complaint concerning the length of the proceedings before the Constitutional Court and to declare the remainder of the application inadmissible;

the parties’ observations;

the decision to reject the Government’s objection to the examination of the application by a Committee;

Having deliberated in private on 2 September 2021,

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

INTRODUCTION

1. The present case concerns the length of the proceedings, within the meaning of Article 6 § 1 of the Convention, before the Montenegro Constitutional Court.

THE FACTS

2. The applicant was born in 1959 and lives in Tuzi. He was represented before the Court by Mr Prelević, a lawyer practising in Podgorica.

3. The Government were represented by their Agent, Ms V. Pavličić.

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

5. On 5 August 2008, following an indictment filed on 7 December 2006, the High Court (*Viši sud*) in Podgorica found the applicant guilty of associating with others for the purposes of anti-constitutional activities and preparing actions against the constitutional order and security of Montenegro, and sentenced him to six years’ imprisonment. That judgment was upheld by the Court of Appeal (*Apelacioni sud*) and the Supreme Court (*Vrhovni sud*) on 18 June 2009 and 25 December 2009 respectively. The proceedings involved sixteen other defendants.

6. On 26 March 2010 the applicant and one co-defendant lodged a constitutional appeal, complaining of a violation of the presumption of innocence, the right to a defence and the inviolability of the home, and of having been convicted on the basis of unlawfully obtained evidence. On 28 April 2011 he urged the Constitutional Court to rule on his constitutional appeal.

7. On 5 April 2013 the Constitutional Court did not adopt a draft judgment prepared by the judge rapporteur serving at the time. On 8 August 2013 that judge died, and the case was assigned to another judge.

8. On 27 December 2013 Parliament elected seven new judges to the Constitutional Court.

9. On 23 July 2014 the Constitutional Court dismissed the applicant's constitutional appeal. That decision was served on the applicant's representative on 18 December 2014.

RELEVANT LEGAL FRAMEWORK

10. The Montenegro Constitutional Court Act 2008 (*Zakon o Ustavnom sudu Crne Gore*, published in the Official Gazette of Montenegro (OGM) no. 64/08) provided, *inter alia*, that a constitutional appeal could be lodged against an individual decision after all other effective legal remedies had been exhausted. If the Constitutional Court found a violation of a human right or freedom, it would quash the impugned decision, entirely or partially, and order that the case be re-examined by the same body which had given the quashed decision. This Act entered into force in November 2008.

11. The Amendments to the Constitution (*Amandmani na Ustav Crne Gore*, published in OGM no. 38/13) entered into force on 31 July 2013. They related, *inter alia*, to the composition of the Constitutional Court and the election, mandate and dismissal of its judges and president.

12. The Amendments to the Constitutional Court Act 2008 (*Zakon o izmjenama i dopunama Zakona o Ustavnom sudu*, published in OGM no. 46/13) entered into force on 10 October 2013. They provided, *inter alia*, that: (a) any constitutional appeals pending at the time would be dealt with pursuant to the amended provisions; (b) the Constitutional Court judges and its president at the time would continue their work until the new judges were elected; (c) the Rules of the Constitutional Court (*Poslovnik Ustavnog suda*) would be harmonised with the Amendments within thirty days; and (d) the Constitutional Court was to give its decision within eighteen months of the date when the proceedings before it had been initiated.

13. The Montenegro Constitutional Court Act 2015 (*Zakon o Ustavnom sudu Crne Gore*, published in OGM no. 11/15) entered into force on 20 March 2015, thereby repealing the Constitutional Court Act 2008. It provides, *inter alia*, that a constitutional appeal may be lodged against an

individual decision, action or omission after all other effective legal remedies have been exhausted. It also provides that, in certain situations, an appellant may be awarded just satisfaction, and that the court must give its decision within eighteen months.

THE LAW

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

14. The applicant complained that the length of the proceedings before the Constitutional Court had been excessive, in violation of Article 6 § 1 of the Convention, the relevant part of which 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

15. The Government submitted that the application had been lodged outside the six-month time-limit. They noted specifically that a constitutional appeal had not been an effective domestic remedy for length-of-proceedings complaints at the relevant time and that the applicant should have lodged his application within six months of the date when the Supreme Court’s decision had been served on him.

16. The applicant submitted that his constitutional appeal had not concerned the length of proceedings before the ordinary courts. It was thus irrelevant whether a constitutional appeal had been an effective remedy for such a complaint. Therefore, he had lodged his application within the six-month time-limit.

17. The relevant principles as regards the six-month time-limit are set out in, for example, *Mocanu and Others v. Romania* [GC] (nos. 10865/09 and 2 others, §§ 258-60, ECHR 2014 (extracts)). In particular, the six-month rule is autonomous and must be construed and applied to the facts of each individual case, so as to ensure the effective exercise of the right of individual petition. While taking account of domestic law and practice is an important aspect, it is not decisive in determining the starting-point of the six-month period (see *Sabri Güneş v. Turkey* [GC], no. 27396/06, §§ 52 and 55, 29 June 2012).

18. Turning to the present case, the Court notes that the applicant’s constitutional appeal did not concern the length of the proceedings before the ordinary courts, and that the Constitutional Court ruled on the merits. That being so, the Court considers that the six-month time-limit should be calculated as of the date of a decision of the Constitutional Court (see *Siništaj and Others v. Montenegro*, nos. 1451/10 and 2 others, § 130,

24 November 2015). The decision in question, delivered on 23 July 2014, was served on the applicant on 18 December 2014 and the application was lodged on 18 June 2015, that is, within six months. The Government's objection in this regard must therefore be dismissed.

19. 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

1. The parties' submissions

20. The applicant reaffirmed his complaint. He maintained that the legislative changes from 2013 could not and should not have affected the ruling in the ongoing proceedings, nor could the death of one of the judges justify the excessive length of those proceedings.

21. The Government acknowledged that the proceedings before the Constitutional Court had lasted more than four years, but maintained that this duration had been justified in the circumstances of the case. In particular, the case had been sensitive and complex, raising issues under several Articles of the Convention. It had been precisely due to the complexity of the case that the decision had not been adopted in April 2013 (see paragraph 7 above). Shortly thereafter, the case had had to be assigned to another judge, as the previous judge rapporteur had died (see paragraph 7 above). The court had also performed various procedural actions, notably obtaining the case file from the relevant court (*pribavljanje spisa predmeta*). In addition, there had been a number of important constitutional and legislative changes and seven new judges had been elected to the Constitutional Court in the course of 2013 (see paragraphs 11-12 and 8 above, in that order). All of the above-mentioned events had necessarily affected the length of the proceedings, which had therefore not been unreasonable or excessive. However, old cases pending before the Constitutional Court, including the applicant's case, had been given priority treatment, resulting in a decision being adopted in his case in July 2014. Lastly, it had not been until October 2013 that the legislation had provided for an eighteen-month time-limit for proceedings before the Constitutional Court, to be calculated as of that date.

2. The Court's assessment

(a) Applicability of Article 6 § 1

22. At the outset, the Court is called upon to determine whether Article 6 § 1 applies to proceedings before the Constitutional Court under its criminal head.

23. The Court reiterates that the relevant test in determining whether Constitutional Court proceedings may be taken into account in assessing the reasonableness of the length of proceedings is whether the result of the Constitutional Court proceedings is capable of affecting the outcome of the dispute before the ordinary courts. It follows that Constitutional Court proceedings do not in principle fall outside the scope of Article 6 § 1 of the Convention (see *Gast and Popp v. Germany*, no. 29357/95, § 64, ECHR 2000-II, and the authorities cited therein).

24. Turning to the present case, the Court notes that, in the event of a successful outcome of a constitutional appeal, the Montenegro Constitutional Court did not confine itself to identifying the provision that had been breached; it would also quash the impugned decision and refer the matter back to the competent court for a re-examination (see paragraph 10 above). The consequences of the proceedings could thus be decisive for the convicted persons. In these circumstances, Article 6 § 1 is applicable to the proceedings in issue (see *Gast and Popp*, cited above, §§ 62-68).

(b) Compliance with Article 6 § 1

25. 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).

26. Turning to the present case, the Court notes that the period to be taken into consideration began on 26 March 2010, when the applicant lodged his constitutional appeal, and ended on 18 December 2014, when the Constitutional Court's decision was served on his representative. It thus lasted four years, eight months and twenty-two days.

27. As regards the complexity of the case, the Court can accept that the applicant's case was somewhat complex on account of the issues that it raised (see paragraph 6 above). However, the Court does not consider that these issues were exceptionally complex, or that the impact of the Constitutional Court's judgment went beyond the individual application (contrast *Von Maltzan and Others v. Germany* (dec.) [GC], nos. 71916/01 and 2 others, §§ 131 and 133-34, ECHR 2005-V), such as to justify the protracted character of the proceedings before that court, all the more so given that it took the ordinary courts less than three years and one month to conduct the entire criminal proceedings involving seventeen defendants at three levels of jurisdiction (see paragraph 5 above).

28. As regards the conduct of the relevant authorities, the Court observes that the Constitutional Court appears to have performed only one procedural activity, which was to obtain the case file from the relevant ordinary court (see paragraph 22 above). The Government did not argue that a public

hearing had been held, that there had been a need to obtain expert reports or observations from various authorities or third parties, or that any other procedural steps had been taken, nor did they argue that several sets of deliberations had been held.

29. The Court takes due note of the arguments raised by the Government (see paragraph 22 above). However, it considers that they cannot sufficiently explain the delay in the proceedings at issue. In particular, the constitutional changes referred to by the Government did not relate to the issues raised by the applicant in his constitutional appeal, but rather to the election, mandate and dismissal of the Constitutional Court judges and its president (see paragraph 11 above). In addition, further legislative changes explicitly provided that the judges in office at the time would continue their work until the new judges were elected (see paragraph 12 above), thereby ensuring the continuous functioning of the Constitutional Court. Moreover, these changes entered into force on 10 October 2013, by which time the applicant's constitutional appeal had already been pending for more than three years and six months. Also, the applicant's case was assigned to another judge in August 2013 at the earliest, by which time it had already been pending for three years and four months.

30. With regard to the conduct of the applicant, the Court observes that the Government did not submit that he had contributed to the length of the Constitutional Court proceedings in any way. The Court has no reason to hold otherwise.

31. As regards what was at stake for the applicant, this concerned, *inter alia*, his right to a defence in the criminal proceedings and, ultimately, his conviction for serious criminal offences (see paragraph 6 above). Had the Constitutional Court ruled in his favour, it would have quashed the final decision given in the criminal proceedings and would have ordered that the case be re-examined (see paragraph 10 above).

32. The Court reiterates that it has repeatedly held that Article 6 § 1 imposes on Contracting States the duty to organise their judicial systems in such a way that their courts can meet each of its requirements, including the obligation to hear cases within a reasonable time. While this obligation also applies to a constitutional court, it cannot be construed in the same way as for an ordinary court (see *Süßmann v. Germany*, 16 September 1996, § 56 *in limine*, *Reports of Judgments and Decisions* 1996-IV). Although the Court accepts that its role as guardian of the Constitution sometimes makes it particularly necessary for a constitutional court to take into account considerations other than the mere chronological order in which cases are entered on the list, such as the nature of a case and its importance in political and social terms, the Court finds that a period exceeding four years and three months to decide on a case such as the applicant's, and in particular in view of what was at stake for him, was excessive and failed to meet the "reasonable time" requirement (see, *mutatis mutandis*, *Oršuš and*

Others v. Croatia [GC], no. 15766/03, §§ 108-10, 16 March 2010, where proceedings before the Constitutional Court regarding the education of Roma children lasted four years and one month; see also *Nikolac v. Croatia*, no. 17117/06, §§ 17-18, 10 July 2008; *Butković v. Croatia*, no. 32264/03, § 27, 24 May 2007; and *Šikić v. Croatia*, no. 9143/08, §§ 36-38, 15 July 2010, where the Court found violations of the reasonable-time requirement set forth in Article 6 § 1 of the Convention in cases involving labour-related and housing issues; the constitutional proceedings in those cases lasted approximately three years and four months, three years and six months, and three years and nine months, respectively).

33. There has accordingly been a violation of Article 6 § 1 of the Convention on account of the excessive length of the proceedings before the Constitutional Court.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. 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.”

35. The applicant claimed 6,000 euros (EUR) in respect of non-pecuniary damage, and EUR 15,525 in respect of costs and expenses before the domestic courts and the Court.

36. The Government contested the claims as unrealistic and unfounded.

37. Ruling on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 1,500 in respect of the non-pecuniary damage suffered.

38. 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 450 in respect of the costs and expenses incurred before the Court, plus any tax that may be chargeable to the applicant.

39. 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 complaint concerning the length of the proceedings before the Constitutional Court admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *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 non-pecuniary damage;
 - (ii) EUR 450 (four hundred and fifty 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;

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

Done in English, and notified in writing on 23 September 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller
Deputy Registrar

Mārtiņš Mits
President