

ROUND-UP OF JUDGEMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS IN RELATION TO MONTENEGRO

Since April 2009, when the European Court of Human Rights rendered the first judgement in relation to Montenegro, to the end of 2013, the Court rendered the total of 17 judgements in relation to Montenegro.

In the majority of cases (12), the Court established violations of the right to a fair trial (violation of Article 6 of the ECHR), 8 of which were in relation to the right to trial within reasonable time, six in relation to non-enforcement of final court decisions, and two cases in relation to violation of the right to access to court. Violations of the right to peaceful enjoyment of possessions (Article 1 of Protocol 1 of the ECHR) were established in two cases, violations of the right to freedom of expression (Article 10 of the ECHR) in two cases, and a violation of the right to family and private life (Article 8 of the ECHR) in one case.

In as much as 7 cases (41,18%) the Court established a violation of Art. 6, 8 and Art. 1 of Protocol 1 for the non-enforcement of final court decisions.

Note: In the table, acronym ECHR stands for the European Convention on Human Rights.

Table of judgements

	NAME	SOURCE	SUMMARY
1.	Bijelić v. Montenegro and Serbia	http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-92484	In the judgement of 28 April 2009, the European Court of Human Rights established a violation of the right to peaceful enjoyment of property (Art. 1 of Protocol 1 of the ECHR) due to delay of the enforcement of final and enforceable sentence. Court decided that State has to pay €4500 for non-pecuniary damages to the applicant and €700 for costs and expenses.
2.	Garzičić v.	http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-92484	In the judgement of 21 September 2010, the Court

	Montenegro	aspx?i=001-100500	established a violation of the right to access to court (Art. 6 Paragraph 1 of the ECHR) because the Supreme Court had unreasonably refused to consider the request for review. The court decided that State has to pay the applicant €1500 for non-pecuniary damages.
3.	Mijušković v. Montenegro	http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-100492	In the judgement of 21 September 2010, the Court established a violation of the right to respect for private and family life (Art 8 of the ECHR), due to delay in the execution of final judgment on custody and failure of the State to enforce an interim custody order. The Court decided that State has to pay the applicant €10000 for non-pecuniary damages.
4.	Živaljević v. Montenegro	http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-103765	In the judgement of 8 March 2011, the Court established a violation of the right to trial within a reasonable time (Art. 10 of the ECHR) in proceedings which began in 1995. Court decided that State has to pay €1200 to each of the two applicants for non-pecuniary damages.
5.	Šabanović v. Montenegro and Serbia	http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-104977	In the judgement of 31 May 2011, the Court established a violation of freedom of expression (Art. 10 of the ECHR) in proceedings in which the applicant had been convicted for defamation. The Court rejected the applicant's claim for just satisfaction.
6.	Koprivica v. Montenegro	http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-107541	In the judgement of 22 November 2011, the Court established a violation of freedom of expression (Art. 10 of the ECHR) because the domestic court

			ordered the applicant to pay €5000 for damages for defamation, and court costs, which were 25 times higher than his monthly income. It was also decided that the claim for just satisfaction would be reviewed at a later date.
7.	Lakićević and Others v. Montenegro and Serbia	http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-107937	In In the judgement of 13 December 2011, the Court established a violation of Article 1 of Protocol No. 1, the right to peaceful enjoyment of property. Applicants (retired owners of private law firms) complained about the suspension of their pensions between 2004 and 2005 because they had re-opened their legal practices on a part-time basis. Court decided that State has to pay: the first and third applicants €8000 each, the second applicant €6000, and the fourth applicant €4000 in respect of non-pecuniary damages, and €679,80 for the first applicant for costs and expenses.
8.	Barać and Others v. Montenegro	http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-107943	In the judgement of 13 December 2011, the Court established a violation of the right to fair trial, Art. 6 Paragraph 1 of the ECHR: the applicants complained about unfairness of proceedings in which their claims for compensation against their employer were rejected. Final judgment in their case was based on a law which was earlier found unconstitutional and was not in force at the time. The Court decided that the State has to pay €202,34 to each of thirteen applicants for non-pecuniary damages and €4405 for costs and expenses.
9.	Boucke v.	http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-107943	In the judgement of 21 February 2012, the Court

	Montenegro	aspx?i=001-109142	established a violation of Art. 6 Paragraph 1 of the ECHR, the right to trial within a reasonable time, for not enforcing the judgment of payment of support.
10.	Tomić and Others v. Montenegro	http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-110384	In the judgement of 17 April 2012, the Court found no violation of the right to a fair trial. The applicants complained under Articles 6, 13 and 14 of the ECHR and Article 1 of Protocol No. 1 and Article 1 of Protocol No. 12 that the domestic courts rejected their charges, while at the same time they accepted identical charges submitted by their colleagues, and stated that the practice of domestic courts was inconsistent. The Court stated that its role is not to examine how domestic courts interpret the national law, nor to compare the various decisions of domestic courts, even if the procedures are obviously similar, because it must respect the independence of these courts. It also stated that some differences in interpretation may be accepted as an inherent property of every judicial system, which is based on a network of first instance and appellate courts that have competence on a particular territory, which is also the case in Montenegro. However, profound and long-term differences in practice of the highest national court may be contrary to the principle of legal certainty, the principle implicated in the ECHR, which is one of the basic elements of the rule of law. The criteria for assessment whether the opposite decisions of domestic supreme courts are in violation of the conditions for fair trial under Article 6 Paragraph 1 of the ECHR consist of

			<p>determining whether there are “profound and long-term differences” in the practice of the Supreme Court, whether the domestic law provides a mechanism to overcome these inconsistencies, whether this mechanism is applied, and, if so, with what consequences. Finally, it was accepted that when two cases are treated in a different way, it doesn’t necessarily lead to conflicting case law, when this is justified with differences in the factual situation in question. As for this particular case, the Court noted that of six cases provided by the applicants, the Supreme Court made decisions on only one case. The Court also pointed out that the judgement was rendered much earlier than the others and in a case where the prosecutor was in a completely different situation than the applicants.</p>
11.	<p>Stakić v. Montenegro</p>	<p>http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-113297</p>	<p>In a judgment of 2 October 2012, the Court established a violation of the right to a fair trial, i.e. a trial within a reasonable time (Article 6, Paragraph 1 of the ECHR) and the right to an effective legal remedy (Article 13 of the ECHR). The reason for the application was a civil proceeding for damages, initiated upon a claim of the applicant from 1978 before the Basic Court in Podgorica, which has not yet been validly completed. The main trial was concluded twice and first instance judgements were rendered, which were overturned by the High Court in Podgorica in the appeal procedure. The Court awarded the applicant €5000 for non-pecuniary damages.</p>

12.	Velimirović v. Montenegro	http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-113298	In the judgment of 2 October 2012, the Court established a violation of the right to a fair trial, i.e. the right to trial within a reasonable time (Article 6, Paragraph 1 of the ECHR). The applicant complained about the non-enforcement of a judgment that became final on 28 April 1992, in relation to award of a flat by the employer. The Court awarded the applicant €4325.
13.	Novović v. Montenegro	http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-113978	In the judgment of 23 October 2012, the European Court of Human Rights established a violation of the right to a fair trial, i.e. the right to trial within a reasonable time (Article 6 Paragraph 1 of the ECHR), stating that the total duration of the proceedings in question failed to meet the requirement of reasonable period of time. The Court concluded that the proceedings in question were under the competence of the Court <i>ratione temporis</i> in the period of 5 years and 3 months after the respondent State has ratified the ECHR on 3 March 2004, and that prior to that date another 12 years and 8 months passed. Therefore, the procedure lasted a total of 17 years and 11 months. The court rejected the claim for just satisfaction, because the documentation was not submitted within the required time.
14.	Milić v. Montenegro	http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-115210	In the judgment of 11 December 2012, the Court established a violation of the right to a fair trial, i.e. the right to trial within a reasonable time (Article 6 Paragraph 1 of the ECHR) and the right to an effective legal remedy (Article 13 of the ECHR) in relation to Montenegro. The applicant complained

			<p>about the non-enforcement of the final judgment which ordered his reinstatement to work and the lack of an effective legal remedy in this respect. The proceedings in question lasted a total of 6 years and 3 months. The proceedings were within the competence of the Court <i>ratione temporis</i> for more than 5 years and 7 months, and before that for more than 9 months. The applicant was awarded €7000 for non-pecuniary damages and trial costs and fees.</p>
15.	A and B v Montenegro	<p>http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-116972</p>	<p>In the judgment of 5 March 2013, the applicants complained that they were denied access to the courts and to trial within a reasonable time (Article 6 Paragraph 1 of the ECHR). The Court declared the application inadmissible. It established that they were denied the right to peaceful enjoyment of possessions under Article 1 of Protocol 1 to the ECHR in relation to the fact that their savings are not registered and converted into public debt. The reason for the application was the non-enforcement of the final and enforceable court decisions relating to old savings of the legal predecessor of the applicants. The European Court ordered that the State must pay compensation for non-pecuniary damages to applicants within 3 months after the judgements becomes final, in accordance with Art. 44 Paragraph 2 of the ECHR as follows:</p> <ul style="list-style-type: none"> - all instalments including interest accrued on those amounts from the date when the foreign currency savings passed into public debt, to the day when the judgment became final, except for

			<p>any amount that may be paid on this basis in the meantime;</p> <ul style="list-style-type: none"> - total of €3000 plus taxes that may need to be paid for non-pecuniary damages; - €6500 plus taxes for expenses. <p>After the expiry of the above-mentioned three months for payment, until the full amount is settled, the interest on the above amount will be calculated at a rate equal to the marginal lending rate of the European Central Bank plus 3%.</p> <p>The Court in its judgment questioned the effectiveness of the complaint in terms of its efficiency and availability, due to lack of effectiveness of the compensation components. The assessment of whether domestic legal remedies have been exhausted is made in relation to the date of submission of the application. In this case, the Court noted that the application was submitted on 19 October 2005, while the constitutional complaint was filed on 22 October 2007, which was two years later, and therefore it was not available to the applicants at the relevant time.</p>
16.	Vukelić v. Montenegro	http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-120064	<p>In the judgment of 4 June 2013 the Court established a violation of the right to a fair trial, i.e. the right to trial within a reasonable time (Article 6 Paragraph 1 of the ECHR). In 1997 the applicant was awarded the debtor's flat in Bar. However, the judgement was not enforced, as the applicant did not receive the flat, which is why he complained to the ECtHR. The Court held that Montenegro must ensure the enforcement of the judgment within</p>

			<p>three months from it becoming final. The State is obliged to pay the applicant 3 600 euros for non-pecuniary damages within the same period. Vukelić also claimed €208333,88 for pecuniary damages caused by the lengthy court process, but the Court rejected his claim for lack of evidence.</p>
17.	Mijanović v. Montenegro	http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-126349	<p>In the judgement of 17 September 2013, the Court established a violation of the right to fair trial due to the non-enforcement of final decisions (Article 6 Paragraph 1 of the ECHR), as well as the right to peaceful enjoyment of possessions (Article 6 of Protocol 1 of the ECHR). The applicant requested compensation from the former factory “Radoje Dakić”, and the judgment in his favour became final in 2004. The reason for application were proceedings led on applicant’s request for enforcement of the judgement of 22 September 2004. The applicant died in the meantime, and the proceedings before the ECHR were continued by his heirs. The Court found that the Central bank and the Basic court failed to take all necessary measures to ensure the execution of the judgement from one of many accounts that the limited liability company in question had in the Central Bank, and also that the State, as major owner of the company, was obliged to pay the debt. The ECtHR ordered that Montenegro should 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 total amount awarded by domestic courts, including legal interest and court costs from the</p>

			<p>paragraph, in respect of pecuniary damages. In this judgment, the ECtHR noted that the appeal to the Supreme Court for damages compensation for the violation of the right to a trial within reasonable time, and the constitutional complaint are not effective remedies in cases of non-enforcement of final court decisions.</p>
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