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

SECOND SECTION

CASE OF BRANY AND JUGOKOKA v. SERBIA

(Application no. 60336/08)

JUDGMENT

STRASBOURG

5 November 2013

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

In the case of Brany and Jugokoka v. Serbia,

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

Paulo Pinto de Albuquerque, *President,*
Dragoljub Popović,
Helen Keller, *judges,*
and Seçkin Erel, *Acting Deputy Section Registrar,*

Having deliberated in private on 15 October 2013,

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

PROCEDURE

1. The case originated in an application (no. 60336/08) against the Republic of Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Brany D.O.O. and Jugokoka D.O.O. ("the applicants"), on 5 December 2008. Both applicants are limited liability companies, with their seats in Belgrade.

2. The applicants were represented by Mr A. Bosijoković, a lawyer practising in Belgrade. The Serbian Government ("the Government") were represented by their Agent, Mr S. Carić.

3. On 19 October 2011 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

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

A. Civil proceedings

5. On 18 November 1994 the applicants initiated civil proceedings before the Belgrade Commercial Court against *DD "Yuko Farma",* a socially-owned company from Žitište (hereinafter: "the debtor") seeking damages arising from the debtor's failure to fulfil conditions of contract on breed of chickens.

6. On 3 June 1998 the Belgrade Commercial Court accepted the applicants' claim and ordered the debtor to pay the applicants 813,120

Serbian dinars (RSD) in respect of damage sustained, plus statutory interest and RSD 15,514.25 for legal costs.

7. On 5 October 1998 the Belgrade High Commercial Court quashed the judgment of 3 June 1998 and returned the case to the first-instance court for fresh consideration.

8. On 13 May 2005 the Belgrade Commercial Court dismissed the applicants' civil suit.

9. On 20 October 2005 the Belgrade High Commercial Court quashed the decision of 13 May 2005 and returned the case to the first-instance court.

10. On 1 November 2006 the Belgrade Commercial Court stayed the proceedings due to the opening of insolvency proceedings against the debtor. On 8 November 2007 the proceedings resumed.

11. On 27 November 2007 the Belgrade Commercial Court declared that it lacked jurisdiction to deal with the case and transferred it to the Zrenjanin Commercial Court.

12. On 8 May 2008 the Zrenjanin Commercial Court adopted a judgment by virtue of which the debtor was ordered to pay the applicants RSD 813,120 (approximately 10,000 euros) for damages, plus statutory interest and RSD 586,912.40 (approximately 7,200 euros) for their legal costs.

13. The judgement became final on 5 June 2008.

B. Insolvency and enforcement proceedings

14. On 6 September 2006 the insolvency proceedings were opened against the debtor.

15. On 10 June 2011 the applicant lodged an application for the enforcement of the judgement of 8 May 2008 in respect of the costs awarded.

16. On 13 June 2011 the Zrenjanin Commercial Court allowed the application and issued an enforcement order.

17. In 16 June 2011 the applicant received the payment in respect of the legal costs.

18. In the course of insolvency proceedings the applicants received 0,44% of the sums awarded in respect of pecuniary damages by the final judgement of 8 May 2008.

C. Civil proceedings against the State

19. On 27 August 2008 the applicants filed a civil suit against the State under Article 172 of the Obligations Act seeking damages because of the length of the civil proceedings described above.

20. On 25 September 2009 the Second Municipal Court in Belgrade rejected their claim.

21. On 9 February 2012 the Belgrade Appellate Court upheld this judgment.

22. On 23 April 2012 the applicants filed an appeal on points of law before the Supreme Court of Cassation.

23. The case is pending before the Supreme Court of Cassation.

D. The status of the debtor

24. Before the insolvency proceedings the debtor company was predominantly socially-owned. It has remained registered as predominantly socially-owned in the relevant public registries throughout the insolvency proceedings.

25. On 24 April 2012 the Niš Commercial Court terminated the insolvency proceedings against the company. This decision became final on 29 May 2012. On 25 July 2012 the debtor was erased from the Companies' Register.

II. RELEVANT DOMESTIC LAW

26. The relevant domestic law is set out in the Court's judgments of *EVT Company v. Serbia* (no. 3102/05, §§ 26 and 27, 21 June 2007); *Marčić and Others v. Serbia* (no. 17556/05, § 29, 30 October 2007); *R. Kačapor and Others v. Serbia* (nos. 2269/06, 3041/06, 3042/06, 3043/06, 3045/06 and 3046/06, 15 January 2008, §§ 57-82); *Vlahović v. Serbia* (no. 42619/04, §§37-47, 16 December 2008); *Crnišanin and Others v. Serbia* (nos. 35835/05, 43548/05, 43569/05 and 36986/06, 13 January 2009, §§ 100-104); *Adamović v. Serbia*, (no. 41703/06, §§ 17-22, 2 October 2012) and *Marinković v. Serbia* ((dec.) no. 5353/11, 29 January 2013, §§ 26-29 and §§ 31-44). Relevant provisions concerning the Obligations Act are set out in the *V.A.M. v. Serbia* (no.39175/05, §§ 71-72, 13 March 2007)

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 6 AND 13 OF THE CONVENTION ARISING FROM THE NON-ENFORCEMENT OF THE JUDGEMENT OF 8 MAY 2008

27. The applicants complained about the respondent State's failure to enforce final the judgment rendered in their favour against the debtor and about the lack of an effective remedy in this connection. They relied on

Articles 6 and 13 of the Convention which, in so far as relevant, read as follows:

Article 6 § 1

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

Article 13

"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

1. The six-month rule

28. The Government submitted that the applicants should have lodged the application with the Court within six months of 6 September 2006, which is the date of the opening of the insolvency proceedings against the debtor.

29. The applicants disagreed.

30. Having regard to the fact that the judgement under consideration in this case was rendered only in 2008 the Government's objection is rejected.

2. Exhaustion of domestic remedies

31. The Government submitted that the applicants had not exhausted all available, effective domestic remedies. Notably, the Constitutional Court had harmonised its case-law with that of the Court in the context of the respondent State's liability for non-enforcement of final judgments rendered against socially-owned companies. Since the applicant failed to lodge a constitutional appeal, the Government argued that the application should therefore be rejected for non-exhaustion of domestic remedies.

32. The applicants disagreed.

33. The Court has already held in cases such as the applicants' that a constitutional appeal should indeed be considered to be an effective domestic remedy within the meaning of Article 35 § 1 of the Convention, but only in respect of applications against Serbia lodged after 21 June 2012 (see *Marinković v. Serbia,* cited above, § 59). It sees no reason to hold otherwise in the present case, and notes that the applicants had lodged their application with the Court on 5 December 2008.

34. It follows that the Government's objections concerning the exhaustion of domestic remedies must be dismissed.

3. Conclusion

35. 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

36. The Court notes that the judgment of 8 May 2008 became final on 5 June 2008 (more than five years ago) and is yet to be enforced. The Court notes that a delay in the execution of a judgment may be justified in particular circumstances. However, the delay may not be such as to impair the essence of the right protected under Article 6 § 1 of the Convention (see *Burdov v. Russia,* no. 59498/00, § 35, ECHR 2002-III).

37. The Court observes that it has frequently found violations of Article 6 of the Convention in cases raising issues similar to those raised in the present case (see *R. Kačapor and Others*, cited above, §§ 115-116, and *Adamović v. Serbia*, cited above, §§ 40-41). Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Accordingly, there has been a breach of Article 6 of the Convention.

38. The Court does not find it necessary in the circumstances of this case to examine essentially the same complaint under Article 13 of the Convention (see *mutatis mutandis, Slovyev v. Ukraine*, no. 4878/04, § 25, 14 December 2006, and *Kin-Stib and Majkić v. Serbia*, no. 12312/05, § 90, 20 April 2010).

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

39. The applicants further complained about the length of civil proceedings described in paragraphs 5-13 above. The Court observes that the present application was introduced on 5 December 2008, and that the constitutional appeal is considered to be an effective remedy for the length of proceedings in respect to all applications introduced as of 7 August 2008 (see *Vinčić and Others v. Serbia*, nos. 44698/06, 44700/06, 44722/06, 44725/06, 49388/06, 50034/06, 694/07, 757/07, 758/07, 3326/07, 3330/07, 5062/07, 8130/07, 9143/07, 9262/07, 9986/07, 11197/07, 11711/07, 13995/07, 14022/07, 20378/07, 20379/07, 20380/07, 20515/07, 23971/07, 50608/07, 50617/07, 4022/08, 4021/08, 29758/07 and 45249/07, § 51, 1 December 2009).

40. Since the applicants failed to use this particular avenue of redress, this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

41. 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

42. The applicants claimed RSD 82,597,315,20 [approximately 723,000 euros (EUR)] in respect of pecuniary damage.

43. The Government contested the applicants' claim.

44. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

45. It must, however, be noted that a judgment in which the Court finds a violation of the Convention or of its Protocols imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in its domestic legal order to put an end to the violation found (see *Apostol v. Georgia*, no.40765/02, §§ 71-73, ECHR 2006, and *Marčić and Others v. Serbia*, cited above, §§ 64-65, and *Pralica v. Bosnia and Herzegovina*, no. 38945/05, § 19, 27 January 2009).

46. Having regard to its finding in the instant case, and without prejudice to any other measures which may be deemed necessary, the Court considers that the respondent State must secure the enforcement of the final domestic judgment of 8 May 2008 by way of paying the applicant, from their own funds, the sums awarded in the said final judgment, less any amounts which may have already been paid in respect of the said judgment.

B. Costs and expenses

47. The applicants also claimed RSD 103,000 (approximately EUR 900) for the costs and expenses incurred before the domestic courts. The amount claimed relates to court fees that the applicants had to pay in the civil suit lodged by the applicants under Article 172 of the Obligations Act (see paragraphs 19-22 above).

48. The Government failed to provide any comments in this respect.

49. In accordance with 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 (see, for example, *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI).

50. Since costs and expenses claimed by the applicants are not related to the violation found, the Court rejects this claim.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning the non-enforcement of the final court judgment rendered in the applicants' favour admissible and the remainder of the application inadmissible;

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

3. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;

4. *Holds*
   (a) that the respondent State shall, from its own funds and within three months, pay the applicants, the sums awarded in the final judgment of 8 May 2008, less any amounts which may have already been paid on the basis of the said judgment;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 5 November 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Seçkin Erel	Paulo Pinto de Albuquerque
Acting Deputy Registrar	President