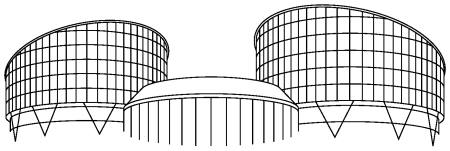

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF MEĆAVA v. SERBIA

(Application no. 47922/08)

JUDGMENT

STRASBOURG

20 May 2014

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

In the case of Mećava v. Serbia,

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

Ján Šikuta, *President,*
Dragoljub Popović,
Iulia Antoanella Motoc, *judges,*
and Marialena Tsirli, *Deputy Section Registrar,*

Having deliberated in private on 15 April 2014,

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

PROCEDURE

1. The case originated in an application (no. 47922/08) 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 a Serbian national, Mr Milan Mećava ("the applicant"), on 29 September 2008.

2. The Serbian Government ("the Government") were represented by their Agent, Mr S. Carić.

3. On 11 October 2011 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1947 and lives in Smederevo.

5. The applicant was employed by "*HP Fagram DP*", a socially-owned company based in Smederevo (hereinafter – "the debtor").

A. The applicant's proceedings

6. On 30 September 2003 the Smederevo Municipal Court ordered the debtor to pay the applicant certain sums in respect of salary arrears, social security contributions and procedural costs.

7. On 22 October 2003 the judgment became final.

8. On 9 January 2004 the applicant lodged an application for the enforcement of the above court decision with the Smederevo Municipal Court.

9. On 17 March 2003 the court allowed the application and issued an enforcement order.

B. Insolvency proceedings

10. On 1 September 2004 the Požarevac Commercial Court opened insolvency proceedings in respect of the debtor, which led to the ongoing enforcement proceedings before the Smederevo Municipal Court being stayed.

11. In 22 November 2004 the applicant duly registered a claim for the sums specified in the judgment referred to above.

12. On 26 April 2005 the Commercial Court accepted the applicant's claim. His right to separate settlement from the immovable property of the debtor was contested and he was instructed to initiate separate civil proceedings in order to secure his right to separate settlement of his claim.

13. The applicant did not initiate separate civil proceedings.

14. On 3 April 2008 the Commercial Court adopted the decision on final distribution of the company's insolvency assets, classifying the applicant into the fourth sequence of payment. In the course of the insolvency proceedings the final judgment in the applicant's favour was partially enforced.

II. RELEVANT DOMESTIC LAW

15. The relevant domestic law was 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, §§ 57-82, 15 January 2008); *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, §§ 100-104, 13 January 2009); *Adamović v. Serbia,* (no. 41703/06, §§ 17-22, 2 October 2012); and *Marinković v. Serbia* ((dec.) no. 5353/11, §§ 26-29 and §§ 31-44, 29 January 2013).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

16. The applicant complained about the respondent State's failure to enforce a final judgment rendered in his favour against the debtor. This complaint falls to be examined under Article 6 of the Convention and Article 1 of Protocol No. 1 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 1 of Protocol No. 1

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. Admissibility

1. Exhaustion of domestic remedies

17. The Government submitted that the applicant had failed to properly exhaust the available domestic remedies as the applicant had not initiated separate civil proceedings for determination of his right to separate settlement.

18. The Court notes that the applicant had a judgment given in his favour which was final and enforceable and the execution of which was the responsibility of the authorities, including, if necessary, the taking of such measures as bankruptcy proceedings (see *Khachatryan v. Armenia*, no. 31761/04, § 60, 1 December 2009). In principle, when an applicant, such as the present one, obtains a final judgment against a State-controlled entity, he or she is only required to file a request for the enforcement of that judgment to the competent court or, in case of liquidation or insolvency proceedings against the debtor, to report his or her claims to the administration of the debtor (see *Lolić v. Serbia*, no. 44095/06, § 26, 22 October 2013). Given that the present applicant did that, the Government's objection must be rejected.

2. Compatibility ratione personae

19. The Government argued that the State could not be held responsible for the debtor in the present case which was a separate legal entity not controlled by the State.

20. The Court has already held in comparable cases against Serbia that the State is liable for debts of socially/State-owned companies (see, for example, *R. Kačapor and Others,* cited above, §§ 97-98, *Rašković and Milunović v. Serbia*, nos. 1789/07 and 28058/07, § 71, 31 May 2011, and *Adamović v. Serbia*, cited above, § 31).The Court sees no reason to depart from that jurisprudence in the present case. Consequently, this argument must be rejected.

3. Abuse of the right to application

21. In their comments on the applicant's observations and claims for just satisfaction the Government disputed the admissibility of the application on the grounds that the applicant had abused his right of application. The Government argued that the applicant had used offensive language which amounted to contempt of the authorities of the respondent State, especially of the Agent.

22. In particular the Government referred to the applicant's description of the Government's observation as "perfidious" and "nonchalantly bizarre".

23. The Court finds that the applicant's remarks, while inappropriate and, thus regrettable, do not meet the minimum threshold of offensiveness and frequency that would make them an abuse of petition (see *Omerović v. Croatia (no. 2),* no. 22980/09, § 33, 5 December 2013, not final yet). This Government's objection must, therefore, also be rejected.

4. Conclusion

24. The Court notes that the application 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

25. The Court notes that the applicant obtained only a part of the amount specified in the final court decision of 30 September 2003. The remainder of the judgment still remains unenforced.

26. The Court observes that it has frequently found violations of Article 6 of the Convention and/or Article 1 of Protocol No. 1 to the Convention in cases raising issues similar to those raised in the present case (see *R. Kačapor and Others*, cited above, §§ 115-116 and § 120; *Marčić*

and Others, cited above, § 60; *Crnišanin and Others,* cited above, §§ 123-124 and §§ 133-134, and *Adamović* cited above, § 41).

27. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or convincing argument capable of persuading it to reach a different conclusion in the present case. There has, accordingly, been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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

29. The applicant sought the payment of the outstanding judgment debt and 6,200 euros (EUR) in respect of non-pecuniary damage.

30. Having regard to the violations found in the present case and its own case-law (see *R. Kačapor and Others,* cited above, §§ 123-126, and *Crnišanin and Others*, cited above, § 139), the Court considers that the applicant's claims for pecuniary damage concerning the payment of the outstanding judgment debt must be accepted. The Government shall therefore pay the applicant the sums awarded in the final domestic judgment adopted on 30 September 2003, less any amounts which may have already been paid in respect of the said judgment.

31. As regards non-pecuniary damage, the Court considers that the applicant sustained some non-pecuniary loss arising from the breaches of the Convention found in this case. The particular amount claimed, however, is excessive. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court considers it reasonable and equitable to award EUR 2,000 to the applicant (see *Stošić v. Serbia*, no. 64931/10, § 68, 1 October 2013).

B. Costs and expenses

32. The applicant did not submit a claim seeking reimbursement of the costs incurred before the domestic courts and the Court.

C. Default interest

33. 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 that there has been a violation of Article 6 of the Convention and of Article 1 of Protocol No. 1 to the Convention;

3. *Holds*
   (a) that the respondent State shall, from its own funds and within three months, pay the applicant, the sums awarded in the final judgment under consideration in the present case, less any amounts which may have already been paid on the basis of the said judgment;
   (b) that the respondent State is to pay the applicant, within the same period, EUR 2,000 (two thousand euros) in respect of non-pecuniary damage plus any tax that may be chargeable on this amount which is to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (c) 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 20 May 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli	Ján Šikuta
Deputy Registrar	President