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

SECOND SECTION

CASE OF ZARKOV v. SERBIA

(Applications nos. 65437/10 and 65443/10)

JUDGMENT

STRASBOURG

10 December 2013

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

In the case of Zarkov 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 19 November 2013,

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

PROCEDURE

1. The case originated in two applications (nos. 65437/10 and 65443/10) against the Republic of Serbia both 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 Ljupčo Zarkov ("the applicant"), on 21 October 2010.

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

3. On 15 November 2011 the applications were communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Introduction

4. The applicant was born in 1958 and lives in Bosilegrad.

5. The applicant was employed by HK.PK. *Yumco a.d.*, a socially/State-owned company based in Vranje (hereinafter – "the debtor").

B. First set of proceedings (as regards the application no. 65437/10)

6. On 6 March 2007 the Bosilegrad Municipal Court ruled in favour of the applicant and ordered the debtor to pay him:

(a) salary arrears in the amount of 70,387.12 Serbian dinars (RSD),[1] plus statutory interest; and

[1] Approximately 880 euros (EUR)

(b) RSD 6,262.50[2] for his legal costs.

7. On 29 March 2007 the judgment became final.

8. On 19 March 2008 the applicant lodged an application for the enforcement of the above judgment before the Vranje Municipal Court, proposing that it be carried out by means of a bank transfer.

9. On 24 March 2008 the court allowed the application and issued an enforcement order.

10. On 10 August 2010 the applicant lodged a constitutional appeal.

11. According to the material in the Court's possession, the case is still pending before the Constitutional Court.

C. Second set of proceedings (as regards the application no. 65443/10)

12. On 30 May 2007 the Bosilegrad Municipal Court ruled in favour of the applicant and ordered the debtor to pay him:

(a) salary arrears in the total amount of RSD 28,024[3], plus statutory interest;

(b) employee meal benefits (*naknada za ishranu na radu*) in the amount of RSD 18,900.40[4], plus statutory interest;

(c) holiday pay in the amount of RSD 5,373,33[5], plus statutory interest;

(d) RSD 5,088[6] for his legal costs; and

(e) the pension and disability insurance contributions due for the period 1 January 2004 to 7 June 2004.

13. On 14 June 2007 the judgment became final.

14. On 19 March 2008 the applicant lodged an application for the enforcement of the above judgment before the Vranje Municipal Court, proposing that it be carried out by means of a bank transfer.

15. On 24 March 2008 the court allowed the application and issued an enforcement order.

16. On 10 August 2010 the applicant lodged a constitutional appeal.

17. On 3 April 2013 the Constitutional Court held that the applicant's "right to trial within reasonable time" was violated and ordered the Vranje

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[2] Approximately EUR 76

[3] Approximately EUR 354

[4] Approximately EUR 249

[5] Approximately EUR 68

[6] Approximately EUR 64

Municipal Court and National Bank of Serbia to enforce the final judgment at issue as soon as possible.

II. RELEVANT DOMESTIC LAW

18. 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. JOINDER OF THE APPLICATIONS

19. The Court considers that, in accordance, with Rule 42 § 1 of the Rules of the Court, the applications should be joined, given their common factual and legal background.

II. ALLEGED VIOLATION OF ARTICLES 6 AND 13 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

20. The applicant complained about the respondent State's failure to enforce two final judgments rendered in his favour against the debtor and about the lack of an effective remedy in this connection. He relied on Articles 6 and 13 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."

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

21. On 20 May 2013, the Government informed the Court that on 3 April 2013 the Constitutional Court had found a violation of the applicant's right to a hearing within a reasonable time in respect of the length of the enforcement proceedings at issue in the application no. 65443/10. In view of that, the Government concluded that the applicant had lost victim status.

22. According to the Court's settled case-law, a decision or measure favorable to the applicant is not in principle sufficient to deprive him of his status as a "victim" unless the national authorities have acknowledged the breach and afforded redress for it. It is further recalled that redress afforded by the national authorities must be appropriate and sufficient (see *Kudić v. Bosnia and Herzegovina*, no. 28971/05, § 17, 9 December 2008).

23. As the Court has already said, in a case such as that of the applicant's, comprehensive constitutional redress, in addition to a finding of a violation where warranted, would have to include compensation for both the pecuniary and the non-pecuniary damage sustained, the former requiring the respondent State to pay, from its own funds, the sums awarded in the final domestic judgments at issue (see *Milunović and Čekrlić v. Serbia* (dec.), nos. 3716/09 and 38051/09, § 62, 17 May 2011).

24. Turning to the present case, it is observed that the final domestic decision of 30 May 2007 has yet to be enforced. It is further observed that the Constitutional Court did not award any compensation for non-pecuniary damage to the applicant and failed to order the State to enforce the final domestic decision at issue from their own funds as required by the Court's case-law. Therefore, it must be concluded that the applicant did not lose victim status in respect to the application no. 65443/10.

25. The Court notes that the applications are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. The case must therefore be declared admissible.

B. Merits

26. The Government maintained that the applicant was responsible for the non-enforcement as he had failed to use all available procedural steps at his disposal. In particular, he proposed that the enforcement be carried out by means of a bank transfer only.

27. The applicant disagreed.

28. The Court reiterates that, 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 *R. Kačapor and Others,* cited above, §§ 109-112). It is observed that the present applicant sought enforcement of the final judgments rendered in his favour in March 2008 and that they remained unenforced to the present day.

29. The Court further 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 *ibidem*, §§ 115-116 and § 120; *Crnišanin and Others v. Serbia*, cited above, §§ 123-124 and §§ 133-134; *Rašković and Milunović v. Serbia*, nos. 1789/07 and 28058/07, §§ 74 and 79, 31 May 2011).

30. 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 cases. There has, accordingly, been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

31. 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, Kin-Stib and Majkić v. Serbia*, no. 12312/05, § 90, 20 April 2010).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. 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

33. The applicant claimed EUR 3,640 in respect of pecuniary and non-pecuniary damage.

34. The Government maintained that the Court should not order the enforcement of the domestic decisions under consideration in the present case as the applicant had failed to expressly request that.

35. However, the Court disagrees with the Government. 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-XIV; *Marčić and Others v. Serbia*, cited above, §§ 64-65; and *Pralica v. Bosnia and Herzegovina*, no. 38945/05, § 19, 27 January 2009).

36. 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 judgments under consideration in this case by way of paying the applicant, from their own funds, the sums awarded in the said final judgments, less any amounts which may have already been paid in respect of the said judgments.

37. In addition, the Court considers that the applicant sustained some non-pecuniary loss arising from the breaches of the Convention found in this case. 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.

B. Costs and expenses

38. The applicant did not submit a claim seeking reimbursement of the costs incurred before the domestic courts and the Court. Accordingly, the Court considers that there is no call to award him any sum on that account.

C. Default interest

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. *Decides* to join applications;

2. *Declares* the applications admissible;

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

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

5. *Holds*
   (a) that the respondent State shall, from its own funds and within three months, pay the applicant, the sums awarded in the final judgments under consideration in the present case, less any amounts which may have already been paid on the basis of the said judgments;
   (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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 10 December 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Seçkin Erel
Acting Deputy Registrar

Paulo Pinto de Albuquerque
President