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

SECOND SECTION

CASE OF PETROVIĆ v. SERBIA

(Application no. 75280/10)

JUDGMENT

STRASBOURG

18 February 2014

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

In the case of Petrović 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 Stephen Phillips, *Acting Deputy Section Registrar,*

Having deliberated in private on 28 January 2014,

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

PROCEDURE

1. The case originated in an application (no. 75280/10) 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 Dragan Petrović ("the applicant"), on 2 December 2010.

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

3. On 30 March 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Introduction

4. The applicant was born in 1964 and lives in Šabac.

5. The applicant was employed by "*Zorka -mineralna đubriva*" AD, a socially/State-owned company based in Šabac (hereinafter – "the debtor").

B. The applicant's proceedings

6. On 3 July 2003 the Šabac Municipal Court ordered the debtor to pay the applicant certain sums in respect of salary arrears and procedural costs. On the same date the judgment became final.

7. On 17 May 2007 the applicant lodged an application for the enforcement of the above court decision with the Šabac Municipal Court.

8. On 18 May 2007 the court allowed the application and issued an enforcement order.

9. On 19 February 2008 the enforcement proceedings were stayed because the debtor was undergoing restructuring.

10. On 2 March 2010 the applicant urged the court to continue the enforcement proceedings.

11. On 1 June 2010 the court informed the applicant that the debtor was still undergoing restructuring and that therefore the enforcement proceedings could not be continued.

C. The debtor's status

12. On 10 July 2002 the Privatisation Agency ordered the restructuring of the debtor as part of privatisation process. The restructuring of the debtor is still ongoing.

II. RELEVANT DOMESTIC LAW

13. 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, 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).

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 6 AND 13 OF THE CONVENTION

14. The applicant complained about the respondent State's failure to enforce a final judgment rendered in his favour against the debtor. He 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

15. The Government submitted that the enforcement proceedings had been terminated on 19 February 2008 and that this decision was final. They maintained the since the applicant had lodged his application on 2 December 2010 his application should be rejected as lodged out of time.

16. The applicant disagreed.

17. The Court observes that the enforcement proceeding against the debtor were temporarily stayed until the completion of restructuring of the debtor and that the process of restructuring of the debtor has still not ended. It is further noted that the present case concerns the non-enforcement of the final domestic judgment in the applicant's favour. The judgment at issue became final in 2003 and remains unenforced to the present day. The Court therefore rejects the Government's objection.

2. Exhaustion of domestic remedies

18. The Government submitted that the applicant should have lodged an appeal against the decision of the court to stay the enforcement proceedings of 19 February 2008. The Government further argued that the applicant should have lodged a constitutional appeal.

19. In relation to the Government's first argument, the Court reiterates that, in principle, when an applicant 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 further notes that the applicant urged the Municipal Court to continue the proceedings on 2 March 2010 and the court informed him that the enforcement proceedings could not be continued because of the restructuring of the debtor. Finally, it observes that the domestic law applicable at the relevant time provided that a company undergoing restructuring could not be be subjected to enforcement proceedings. The

Court therefore does not accept that an appeal against the decision of 19 February 2008 could have been successful.

20. In relation to the Government's second argument, it is observed that this Court has already held that a constitutional appeal cannot be considered effective in cases involving the respondent State's liability for the non-enforcement of judgments against socially/State-owned companies undergoing restructuring (see *Marinković v. Serbia,* cited above, § 58). Since the debtor is a socially/State-owned company undergoing restructuring, the Court sees no reason to hold otherwise in the present case.

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

3. Compatibility ratione personae

22. 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.

23. 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.

4. Conclusion

24. 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

25. The Court notes that the domestic judgment in the applicant's favour became final on 3 July 2003. The applicant sought enforcement on 17 May 2007. However, it has not been enforced until the present day.

26. The Court 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 *Crnišanin and Others,* cited above, § 124).

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

28. 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).

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

29. The applicant also complained about the non-enforcement of the same domestic decision in his favour under Article 3 of the Convention which reads as follows:

Article 3

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

30. There is no evidence that the applicant has been subjected to treatment contrary to Article 3 of the Convention. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. 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

A. Damage, costs and expenses

32. The applicant requested that the State be ordered to pay the sums awarded by the final judgment rendered in his favour and 6,250 euros (EUR) in respect of pecuniary and non-pecuniary damage as well as costs and expenses.

33. The Government considered the claims excessive and unjustified.

34. 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 under consideration in the present case, less any amounts which may have already been paid in respect of the said judgment. As far as the applicant's

additional claim for pecuniary damage is concerned, the Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

35. 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. 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. This sum is to cover any non-pecuniary damage, as well as costs and expenses.

B. Default interest

36. 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 complaints under Articles 6 and 13 of the Convention and 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 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, costs and expenses, plus any tax that may be chargeable to the applicant, 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;

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

Done in English, and notified in writing on 18 February 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Acting Deputy Registrar

Paulo Pinto de Albuquerque
President