SECOND SECTION

CASE OF ADAMOVIĆ v. SERBIA

(Application no. 41703/06)

JUDGMENT

STRASBOURG

2 October 2012

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Adamović v. Serbia,

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

Françoise Tulkens, *President,*
Dragoljub Popović,
Isabelle Berro-Lefèvre,
András Sajó,
Guido Raimondi,
Paulo Pinto de Albuquerque,

and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 11 September 2012,

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

PROCEDURE

1. The case originated in an application (no. 41703/06) 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 Predrag Adamović, on 10 October 2006. Mr Adamović died on 15 August 2007, and on 27 August 2007 his wife, Ms Ružica Adamović, ("the applicant"), informed the Registry that she wished to pursue the case before the Court.

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

3. On 10 July 2009 the application was communicated to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (former Article 29 § 3 of the Convention).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Civil proceedings

4. The applicant's late husband was employed by Elektron AD, a company based in Belgrade ("the company"). From 1995 to 1998 he was deployed on certain projects in Russia, for which work, apart from his salary, he had the right to claim an allowance calculated in United States dollars (USD).

5. On 18 June 1998 the Commercial Court in Belgrade instituted insolvency proceedings in respect of the company.

6. On an unspecified date thereafter Mr Adamović lodged a pecuniary claim within the insolvency proceedings for salary arrears, deployment allowance, and various social security contributions. On 4 May 2000 the Commercial Court rejected his claim and instructed him to initiate a regular civil suit and request determination of his claim (*radi utvrđivanja osporenih potraživanja*).

7. On 22 June 2000 Mr Adamović, as instructed, lodged a separate civil claim.

8. On 18 November 2002 the Commercial Court rejected the part of Mr Adamović's request regarding the salaries, as it was considered to have been withdrawn, while the request for deployment allowance was partly granted. By virtue of this judgment the company was ordered to pay him USD 4,258.60 towards the unpaid allowances, together with the social security contributions due and statutory interest, plus 44,750 Yugoslav dinars (YUM) for legal costs.

9. On 16 April 2003 and 23 October 2003 respectively the District Court and the Supreme Court upheld the judgment of 18 November 2002. The judgment of the Supreme Court was served on the applicant after 13 February 2004.

10. On an unspecified date thereafter, the said judgment having become final, it was acknowledged within the insolvency proceedings.

11. On 10 September 2003 the costs awarded in the civil proceedings were paid, while on 5 November 2003 the interest calculated on the costs was also paid.

12. On about a dozen occasions between 15 July 2003 and 10 September 2007 the company paid the applicant various smaller amounts in "hardship assistance" (*solidarna pomoć*), to help cover certain medical bills. The total of all these sums amounted to an equivalent of less than USD 3,000. These amounts, however, were not specified as being intended to constitute partial payment of the debt, but as assistance to the applicant's family because of the applicant's late husband's illness.

13. On 28 May 2008 the Commercial Court issued a decision ordering payment of 50% of the guaranteed salary to all the former employees of the company for the period from 1 March 1997 to 18 June 1998. On 5 June 2008 the applicant received a payment under this head of 91,532 Serbian dinars (RSD, about USD 1,800 at the relevant time).

B. The status of the debtor

14. Before the insolvency proceedings the debtor company was entirely socially owned. It has remained registered as fully socially owned in the relevant public registries throughout the insolvency proceedings.

15. On 29 September 2008 the company was put up for auction, in accordance with the provisions of the applicable law (see paragraph **Error! Reference source not found.** below). Following several unsuccessful auction attempts, on 5 February 2010 the Commercial Court authorised the sale of the company to a third private party. The purchase price has been added to the company's assets.

16. On 23 February 2010 the Commercial Court in Belgrade terminated the insolvency proceedings against the company, however continuing with insolvency action against the bankruptcy estate. On 7 October 2011 the Commercial Court authorised payment of certain sums to some of the former employees of the company, but the applicant was not placed on the list for payment.

II. RELEVANT DOMESTIC LAW

A. Forced Settlement, Bankruptcy and Liquidation Act

17. Article 95 of the Forced Settlement, Bankruptcy and Liquidation Act (*Zakon o prinudnom poravnanju, stečaju i likvidaciji,* published in the Official Gazette SFRY no. 84/89 and OG FRY nos. 37/93 and 28/96) provided that with the opening of

bankruptcy proceedings the entire assets of the company were to be transformed into the bankruptcy estate (*stečajna masa*).

18. Upon the opening of the bankruptcy proceedings, the creditors have to report their claims to the bankruptcy council (*stečajno veće*; Article 121), which requests the bankruptcy administrator (*stečajni upravnik*) and other creditors to either approve or dispute any claim (Articles 124 and 125).

19. The creditor whose claim had been disputed in the bankruptcy proceedings shall be instructed to initiate civil dispute or other proceedings requesting determination of his or her claim (Article 127 § 1). The claims finally established in civil proceedings shall take part in the distribution of the bankruptcy estate (Article 127 § 3).

20. All debts of the company are to be paid proportionally, apart from the payments on account of salaries up to the amount of the guaranteed salaries (Article 140), payments on account of the costs of civil proceedings from Article 127 and some other costs, which are to be paid as a priority and in their entirety (Article 138).

21. According to Article 129 of the Act the company subject to bankruptcy, as a legal person, could have been sold separately. Once the company is sold, the bankruptcy proceedings are terminated in relation to the company, while they are to be continued in relation to the bankruptcy estate (Article 130 § 1). Following termination of the bankruptcy proceedings the debtor company is no longer held responsible for any debts of the company (Article 130 § 3).

B. Other relevant domestic law

22. The remainder of the relevant domestic law is set out in the Court's judgments of *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); *EVT Company v. Serbia* (no. 3102/05, §§ 26 and 27, 21 June 2007); and *Marčić and Others v. Serbia* (no. 17556/05, § 29, 30 October 2007).

THE LAW

I. THE DEATH OF MR ADAMOVIĆ

23. Mr Adamović died on 15 August 2007. On 27 August 2007 his wife, Ms Ružica Adamović informed the Court that she wished to maintain the proceedings lodged by her husband.

24. The Government have not contested this request.

25. The Court has already found, in similar situations, that the wife of a deceased applicant can have standing in her husband's stand.

26. Given the relevant domestic legislation (see e.g. *Marčić,* cited above, § 29), as well as the fact that she has a "definite pecuniary interest" in the insolvency proceedings at issue (see, *mutatis mutandis*, *Ahmet Sadık v. Greece*, judgment of 15 November 1996, *Reports of Judgments and Decisions* 1996-V, § 26), the Court finds, without prejudice to the Government's other preliminary objections, that Ms Adamović has standing to proceed in her husband's stead.

II. ALLEGED VIOLATIONS OF ARTICLE 6 AND ARTICLE 1 OF PROTOCOL No. 1

27. Relying on various provisions of the Convention, as well as the Protocols thereto, the applicant essentially complained about the respondent State's failure to fully enforce the Commercial Court's judgment of 18 November 2002 from its own funds. The Court considers that these complaints fall to be examined under Article 6 § 1 and Article 1 of Protocol No. 1. In so far as relevant, these Articles read as follows:

Article 6 § 1

"In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

Article 1 of Protocol No. 1

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. ..."

A. Admissibility

1. *Compatibility* ratione temporis

28. The Government argued that unlike in the *R. Kačapor* case (*R. Kačapor and Others*, cited above), where the insolvency proceedings were initiated only after ratification, in the present case those proceedings were initiated in 1998, before the Convention entered into force in respect of Serbia on 3 March 2004. Hence, the applicant's claim was reduced to what she could have expected at the time of ratification, namely only the proportion of her claim which was payable from the bankruptcy estate. Therefore, the applicant could not claim enforcement of the judgment of 18 November 2002 in its entirety.

29. The Court notes that the applicant's claim was established in civil proceedings after the insolvency proceedings had been initiated. Furthermore, the insolvency proceedings against the debtor company were terminated only on 23 February 2010, while the proceedings against the bankruptcy estate are still ongoing. The Court also recalls that it has already considered similar arguments and rejected them (see, for example, *Marčić*, cited above, §§ 42-43). Hence, the Court decides to reject this argument of the Government.

2. *Compatibility* ratione personae

30. The Government submitted that since the opening of the insolvency proceedings the company had ceased to exist as such. According to the Government a new legal entity – the company in insolvency – was formed, and that for such an entity the State could not bear any responsibility, unlike in the *R. Kačapor* case (cited above), in which the insolvency proceedings were initiated only after the entry into force of the Convention in respect of Serbia. Furthermore, they noted the judgment in the case of *Omerović v. Croatia* (no. 36071/03, § 35, 1 June 2006) whereby the State bears no responsibility for the debts of insolvent companies.

31. While it is true that the Court has emphasised in *Omerović* (cited above) that the State normally cannot be held liable for a situation in which the debtor in respect of whom enforcement is being carried out has no means of satisfying his debt, the Court reiterates its findings in the case of *R. Kačapor* (cited above), which are applicable in the context of enterprises predominantly consisting of socially-owned capital, and finds that in this particular context it is irrelevant whether the insolvency

proceedings were initiated before or after the entry into force of the Convention, since the insolvency proceedings continued after the ratification, and are yet to be completed (see also *Marčić,* cited above). In addition, the Court notes that throughout the insolvency proceedings, until the company was sold, it had been registered as fully socially owned. Moreover, even though the company had been sold, only the rights were sold with it, leaving the debts with the bankruptcy estate, thus not relieving the State of its obligations, established in the *Kačapor* case. Consequently, this argument must be rejected.

3. Abuse of the right to petition

32. The Government argued that the applicant had failed to inform the Court that she had received almost USD 3,000 under various payments as hardship assistance, as well as a payment in accordance with the decision of 28 May 2008, so the applicant's claim had been paid almost in full.

33. The applicant contested these claims.

34. The Court notes that in relation to the payments the Government refer to, no reference was ever made to the judgment of 18 November 2002. The hardship assistance payments were made with reference to the applicant's difficult financial situation and the health problems her late husband and her daughter had suffered, while the payments in respect of the minimum guaranteed salary were not intended to cover the debt from the judgment of 18 November 2002. On the contrary, the judgment of 18 November 2002 explicitly did not discuss the guaranteed salaries, considering this part of the request to have had been withdrawn (see paragraph **Error! Reference source not found.** above). The Court further notes that the Government have not suggested that any payment aimed directly at the enforcement of the judgment of 18 November 2002 has ever been offered to the applicant.

35. The Court reiterates that an application may be rejected as abusive under Article 35 § 3 of the Convention if it was knowingly based on untrue statements (see *Varbanov v. Bulgaria*, no. 31365/96, § 36, ECHR 2000-X, or *Rehak v. the Czech Republic*, (dec.), no 67208/01, 18 May 2004). On the other hand, should an applicant omit to submit all the documents which the Government, or even the Court, would find relevant for the final examination of a case, this should not *per se* amount to abuse of the right of petition (see *Milošević v. Serbia* (dec.), § 40, no. 20037/07, 5 July 2011). The Court further observes that the omission referred to by the Government does not appear to be of any relevance for the determination of the circumstances of the present case. Therefore, this argument also has to be rejected.

4. Conclusion

36. The Court considers furthermore that the present complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

37. The Government argued that since the judgment of 18 November 2002 was of a declaratory, rather than a condemnatory nature, it could not have constituted "a claim" within the meaning of Article 1 of Protocol No. 1.

38. The applicant maintained that the State was accountable for the entirety of the claim established before the domestic courts.

39. The Court notes that the provisions of the applicable domestic law provided only for a declaratory claim to be filed in civil proceedings of this nature, however, they also provide for recognition of such claims in insolvency proceedings, as well as the obligation to enforce, at least in part, any claims so established (see paragraphs **Error! Reference source not found.** and **Error! Reference source not found.** above). Furthermore, the Court considers that an obligation of the State arises from the following circumstances: that the company's debt had been precisely established by an enforceable domestic decision; that the company had been predominantly socially owned at the time the claim was established; and that the claim established against the company remains unsettled. The fact that the judgment of 18 November 2002 failed to emphasise the obligation of payment of the applicant's claim is of no consequence to the existence of the claim itself – this very judgment confirms that the company owes to the applicant a precisely established amount of money, together with interest to be calculated from a precise date, as well as any applicable social contributions. Hence, the applicant's claim was sufficiently established to constitute a possession within the meaning of Article 1 of Protocol No. 1.

40. The judgment of 18 November 2002 became final on 4 March 2003 (more than nine 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). The Court observes that in the present case the continuing non-enforcement of the judgment of 18 November 2002 deprived the applicant of the benefits of success in the litigation which concerned her property rights.

41. Having examined all the material submitted to it, the Court considers that the Government have not put forward any other fact or argument capable of persuading it to depart from its well-established case-law regarding the responsibility of the State for delays in the enforcement of final domestic decisions rendered against socially owned companies.

There has accordingly been a breach of Article 6 and of Article 1 of Protocol No. 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. 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

1. Pecuniary damage

43. The applicant requested that the State be ordered to pay, from its own funds, the sum awarded by the judgment of 18 November 2002, together with statutory interest at a rate to be calculated as of 5 August 1998, less the amount of costs and expenses of civil proceedings which had already been paid to her.

44. She furthermore requested the State to pay the costs of her late husband's funeral.

45. The Government considered that the payment the applicant had received as hardship assistance and in guaranteed salaries should be deducted from the amount established by the judgment of 18 November 2002. They furthermore contested the applicant's claim for the payment of funeral costs.

46. Regarding the claim from the judgment and in view of the findings above, the Court is not convinced by the argument of the Government that payments not specifically referring to payment of the debt established by the judgment of 18 November 2002 could have enabled the fulfilment of the obligations established by the judgment itself.

47. Considering the Government's argument, and 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, §§ 137-139) – in particular bearing in mind the finding in relation to the different nature of the awards from the final domestic judgment and other payments forwarded to the applicant from the company – the Court finds that the Government must pay the applicant the sums established by the judgment of 18 November 2002 in so far as still unpaid. More particularly, the Government must pay to the applicant the full amount of the established claim regarding the deployment allowance and the relevant social security contributions, as well as the statutory interest due to be calculated as of 5 August 1998.

48. As regards the claim for the reimbursement of the expenses of the applicant's late husband's funeral, the Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim.

2. Non-pecuniary damage

49. The applicant claimed compensation for non-pecuniary damage as a result of the impugned non-enforcement in the amount of 10,000 euros (EUR).

50. The Government contested this claim.

51. The Court takes the view that the applicant has suffered some non-pecuniary damage as a result of the violations found which cannot be made good by the Court's finding of a violation alone. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 4,700 under this head.

B. Costs and expenses

52. The applicant also claimed reimbursement of the costs of the proceedings before this Court, without specifying the exact amount, leaving it to the Court's discretion.

53. The Government contested this claim.

54. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the sum of EUR 50 for the proceedings before the Court.

C. Default interest rate

55. 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 there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 thereto;

3. *Holds*

(a) that the respondent State is to 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 following amounts:

(i) the amounts awarded in the judgment of 18 November 2002 together with social contributions and interest, less any amounts which might have already been paid specifically referring to the enforcement thereof;

(ii) EUR 4,700 (four thousand seven hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(iii) EUR 50 (fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) 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 2 October 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Françoise Tulkens
President