



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

THIRD SECTION

CASE OF LJAJIĆ v. SERBIA

(Application no. 58385/13)

JUDGMENT

STRASBOURG

21 July 2015

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

In the case of Ljajić v. Serbia,

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

Ján Šikuta, *President*,

Iulia Antoanella Motoc,

Branko Lubarda, *judges*,

and Marialena Tsirli, *Deputy Section Registrar*,

Having deliberated in private on 30 June 2015,

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

PROCEDURE

1. The case originated in an application (no. 58385/13) 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 four Serbian nationals, Mr Fuad Ljajić, Ms Alma Ljajić, Mr Ertan Ljajić and Ms Samra Ljajić (“the applicants”), on 8 July 2013.

2. The applicants were represented by Mr E. Fetahović, a lawyer practising in Novi Pazar. The Serbian Government (“the Government”) were represented by their Agent, Ms V. Rodić.

3. On 24 September 2013 the application was communicated to the Government.

4. The Government objected to the examination of the application by a Committee. After having considered the Government’s objection, the Court rejects it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1957, 1984, 1989 and 1991, respectively, and live in Novi Pazar.

6. The applicants’ late wife and mother, Ms Sadija Ljajić was employed by “*Raška*” *Holding kompanija AD* Novi Pazar (hereinafter “the debtor”), which was, at the relevant time, a company predominantly comprised of socially-owned capital.

7. On 14 December 2005 the Municipal Court (*Opštinski sud*) in Novi Pazar ordered the debtor to pay Ms Sadija Ljajić certain amount on

account of salary arrears and social insurance contributions, plus the costs of the civil proceedings.

8. On 10 October 2006, upon Ms Ljajić's request to that effect, the Municipal Court in Novi Pazar ordered the enforcement of the judgment of 14 December 2005 by means of a bank transfer and ordered the debtor to pay Ms Ljajić the enforcement costs.

9. On 24 April 2013 Ms Sadija Ljajić passed away. On 9 September 2013 the Novi Pazar First Instance Court issued a decision declaring Mr Fuad Ljajić as the sole inheritor of late Sadija Ljajić.

10. In view of these facts, the applicants' representative informed the Court that Ms Alma Ljajić, Mr Ertan Ljajić and Ms Samra Ljajić no longer intend to pursue their application before the Court.

11. On 25 October 2013 the Commercial Court (*Trgovinski sud*) in Kraljevo opened insolvency proceedings in respect of the debtor (St. 17/2013). On 5 January 2014 Mr Fuad Ljajić submitted his claims for the payment of the amount ordered by the judgment of 14 December 2005. The insolvency proceedings are still pending.

II. THE RELEVANT DOMESTIC LAW

12. The domestic law concerning the status of socially/State-owned companies and insolvency proceedings is outlined in the cases of *Marčić and Others v. Serbia*, no. 17556/05, § 29, 30 October 2007; *R. Kačapor and Others v. Serbia*, nos. 2269/06 *et al.*, §§ 68-76, 15 January 2008; *Adamović v. Serbia*, no. 41703/06, §§ 17-21, 2 October 2012; and *Sokolov and Others v. Serbia* (dec.), nos. 30859/10, § 20, 14 January 2014.

THE LAW

I. AS REGARDS APPLICANTS MS ALMA LJAJIĆ, MR ERTAN LJAJIĆ AND MS SAMRA LJAJIĆ

13. The Court takes note of the information by the applicants' representative that these three applicants no longer intend to pursue their application before the Court. The Court finds no reason to justify a continued examination of their application. It, therefore, decides to strike the application out regarding these three applicants pursuant to Article 37 § 1 (a) of the Convention. The fourth applicant, Mr Fuad Ljajić continues to pursue his application before the Court.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 AS REGARDS MR FUAD LJAJIĆ

14. The applicant complained about the non-enforcement of the final court judgment rendered in favour of his late wife. The relevant provisions of Articles 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention 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

15. The Government disputed the applicant’s *locus standi*.

16. The applicant disagreed.

17. The Court has previously accepted that the late applicants’ close relatives could maintain applications with complaints concerning various aspects of Article 6 of the Convention provided they have a sufficient interest in so doing (see *Raimondo v. Italy*, 22 February 1994, Series A no. 281-A; *Andreyeva v. Russia* (dec.), no. 76737/01, 16 October 2003; *Mihailov v. Bulgaria* (dec.), no. 52367/99, 9 September 2004; *Stojkovic v. “the former Yugoslav Republic of Macedonia”*, no. 14818/02, § 26, 8 November 2007; and *Grosz v. France* (dec.), no. 14717/06, 16 June 2009). In the cases where the applicant is a close relative of a direct victim and lodges the application to the Court after the direct victim’s death, the Court has also recognised the standing of such an applicant if the following criteria were fulfilled: the transferability of the right, the legitimate interest and the direct effect on patrimonial rights (see *Sanles Sanles v. Spain* (dec.), no. 48335/99, ECHR 2000-XI; *Marie-Louise Loyen and Bruneel v. France*, no. 55929/00, §§ 28-29, 5 July 2005; and *Ressegatti v. Switzerland*, no. 17671/02, § 25, 13 July 2006).

18. In the present case, the Court notes that the applicant has been declared the sole inheritor of late Sadija Ljajić. He belongs to the first order of heirs, as well as to the compulsory heirs of late Sadija Ljajić. The Court further notes that the application with no doubt concerns transferable rights, that the applicant has a “definite pecuniary interest” in the proceedings at issue (see *mutatis mutandis*, *Marčić and Others*, cited above, § 39) and that the alleged violation of Article 6 and Article 1 of Protocol No. 1 could have a direct effect on his patrimonial rights.

19. Given all the above stated, the Court finds that the applicant has standing to proceed with his application. Accordingly, the Government’s objection must be dismissed.

20. As the application is neither manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor inadmissible on any other grounds, it must be declared admissible.

B. Merits

21. The Court notes that the domestic judgment under consideration in the present case has remained unenforced for more than nine years.

22. The Court 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; *Crnišaniin and Others v. Serbia*, nos. 35835/05 et seq., §§ 123-124 and 133-134, 13 January 2009).

23. 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 circumstances. Accordingly, there has been a breach of Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention also in the case under consideration.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. 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, costs and expenses

25. The applicant claimed that the State should pay him, from its own funds, the judgment debt, plus the costs of the enforcement proceedings,

4,800 euros (EUR) in respect of non-pecuniary damage and EUR 480 for costs and expenses incurred before the Court.

26. The Government contested these claims.

27. Having regard to the violations found in the present case and its own case-law (see, for example, *R. Kačapor and Others*, cited above §§ 123-26; and *Crnišanić and Others*, cited above, § 139), the Court considers that the Government should pay the sums awarded in the final domestic judgment of 14 December 2005 (see paragraph 7 above), as well as the established costs of the enforcement proceedings (see paragraph 8 above).

28. 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. He also incurred costs and expenses. The Court awards EUR 2,000 to the applicant, to cover non-pecuniary damage, costs and expenses.

B. Default interest

29. 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 strike the application out of its list of cases insofar as it has been introduced by Ms Alma Ljajić, Mr Ertan Ljajić and Ms Samra Ljajić;
2. *Declares* the application admissible insofar as it has been introduced by Mr Fuad Ljajić;
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*
 - (a) that the respondent State is to pay Mr Fuad Ljajić, from its own funds and within three months, the sums awarded in the final domestic judgment of 14 December 2005, as well as the established costs of the enforcement proceedings, less any amounts which may have already been paid on this basis;
 - (b) that the respondent State is to pay the applicant Mr Fuad Ljajić, 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 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;

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

Marialena Tsirli
Deputy Registrar

Ján Šikuta
President