



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

THIRD SECTION

CASE OF NUHOVIĆ AND KURTANOVIĆ v. SERBIA

(Application no. 57252/13)

JUDGMENT

STRASBOURG

24 February 2015

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

In the case of Nuhović and Kurtanović 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 3 February 2015,

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

PROCEDURE

1. The case originated in an application (no. 57252/13) 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 Adem Nuhović, Ms Enisa Kurtanović, Mr Rafet Nuhović and Ms Selma Nuhović (“the applicants”), on 5 June 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 6 October 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 1947, 1981, 1982 and 1988 respectively and live in Novi Pazar.

6. The applicants’ late wife and mother, Ms Fatima Nuhović was employed by “*Raška*” *Viskozna predionica DOO* Novi Pazar (hereinafter “the debtor”), which was, at the relevant time, a company predominantly comprised of socially-owned capital.

7. On 13 July 2004 the Municipal Court (*Opštinski sud*) in Novi Pazar ordered the debtor to pay Ms Fatima Nuhović certain amount on account of salary arrears and social insurance contributions, plus the costs of the civil

proceedings. By 7 February 2006 this judgment became both final and enforceable.

8. On 3 April 2006, upon Ms Nuhović's request to that effect, the Municipal Court in Novi Pazar ordered the enforcement of the judgment of 13 July 2004 by means of a bank transfer and ordered the debtor to pay Ms Nuhović the enforcement costs. This judgment became final on an unspecified date.

9. On 25 December 2011 Ms Fatima Nuhović passed away. Inheritance proceedings have been instituted shortly thereafter before the Novi Pazar First Instance Court. Those proceedings are still pending.

10. 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 the applicants submitted their claims for the payment of the amount ordered by the judgment of 13 July 2004. The insolvency proceedings are still pending.

II. RELEVANT DOMESTIC LAW

A. Status of the debtor

11. 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.

B. Inheritance Act 1995 (*Zakon o nasleđivanju*, published in the Official Gazette of the Republic of Serbia nos. 46/95 and 101/03)

12. Section 9 of this Act provides that the widow/widower and direct descendants belong to the first order of heirs.

13. Section 39 of this Act provides that the widow/widower and direct descendants are the compulsory heirs.

14. Pursuant to Section 212 of this Act a deceased's estate is transferred by virtue of law to his or her heirs at the moment of death.

THE LAW

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

15. The applicants complained about the non-enforcement of the final court judgment rendered in favour of their late wife and mother. 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

16. The Government argued that the application should be declared inadmissible for the lack of *locus standi* of the applicants. The judgment in question was adopted in favour of late Fatima Nuhović and the applicants have not yet been explicitly recognised as her heirs by the inheritance court. In their opinion, it was necessary to await the outcome of the inheritance proceedings in order to determine if there was a written will, or whether there were grounds which excluded the inheritance rights of certain heirs, or whether the heirs accepted the inheritance and how much each heir was to inherit.

17. The applicants disagreed.

18. 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 lodge 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).

19. In the present case, the Court notes that the applicants, the widower and children, are the closest relatives of late Fatima Nuhović. They belong to the first order of heirs, as well as to the compulsory heirs of late Fatima Nuhović. The Court further notes that the application with no doubt concerns transferable rights, that the applicants have 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 the patrimonial rights of the applicants.

20. Given all the above stated, as well as the relevant domestic legislation (see paragraphs 15-17 above), the Court finds, that the applicants have standing to proceed with their application. That being said, if the Court finds a violation of the Convention, any amount awarded will be payable to the estate of the deceased, since the inheritance proceedings are still pending.

21. 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

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

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

24. 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.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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

26. The applicants claimed that the State be ordered to pay, 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 1,467 for costs and expenses incurred before the Court.

27. The Government contested these claims.

28. 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 *Crnišaniin and Others*, cited above, § 139), the Court considers that the Government should pay the sums awarded in the final domestic judgment of 13 July 2004 (see paragraph 7 above), as well as the established costs of the enforcement proceedings (see paragraph 8 above), less any amounts which may have already been paid on this basis, to the estate of late Fatima Nuhović (see paragraph 20 above).

29. Furthermore, the Court considers that the applicants 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 estate of late Fatima Nuhović to cover any non-pecuniary damage, as well as costs and expenses (see *Stošić v. Serbia*, no. 64931/10, §§ 66 and 67, 1 October 2013).

B. Default interest

30. 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 of the Convention and Article 1 of Protocol No. 1 to the Convention;
3. *Holds*
 - (a) that the respondent State is to pay to the estate of late Fatima Nuhović, from its own funds and within three months, the sums awarded in the final domestic judgment of 13 July 2004, 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 to the estate of late Fatima Nuhović, 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;
4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 24 February 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Mari Elena Tsirli
Deputy Registrar

Ján Šikuta
President