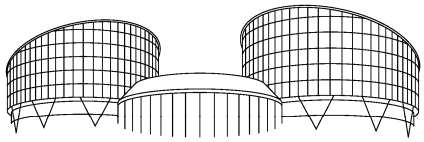

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF LUČIĆ v. SERBIA

(Application no. 13344/11)

JUDGMENT

STRASBOURG

24 February 2015

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

In the case of Lučić v. Serbia,

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

JánŠikuta, *President,*
DragoljubPopović,
Iulia AntoanellaMotoc, *judges,*
and MarialenaTsirli, *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. 13344/11) 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 Serbiannational, MrRadišaLučić ("the applicant"), on 30 December 2010.

2. The applicant was represented by MsR.Garibović, a lawyer practising in Novi Pazar. The Serbian Government ("the Government") were represented by their Agent, Ms V. Rodić.

3. On 20 December 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Introduction

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

5. He was employed by *Raketa-Putnički Saobraćaj AD*, a company based in Užice (hereinafter "the debtor").

6. Since the debtor had failed to fulfil its obligations toward its employees, the applicant brought three separate civil claims, seeking payment of salary arrears and various social security contributions.

B. First and second sets of civil proceedings brought by the applicant

7. On 31 August 2007 and 19 September 2007, respectively, the Municipal Court (*Opštinski sud*) in Užice rendered decisions ordering the

debtor to pay the applicant certain sums. Both decisions became final on 9 October 2007.

8. Due to thedebtor's failure to fulfil its obligations from these decisions,the applicant submitted an enforcement request. On 15 May 2009 the Municipal Court (*Opštinski sud*) in Požega issued an enforcement order tothat effect.

C. Third set of civil proceedings brought by the applicant

9. On 23 July 2009 the Municipal Court in Užice rendered a decision in the third set of civil proceedings brought by the applicant ordering the debtor to pay him an additional sum from the outstanding debt. On 2 September 2009 this decision became final.

10. Due to the debtor's failure to fulfil its obligations from this decision, the applicant submitted an enforcement request. On 29 September 2009 the Municipal Court in Požega issued an enforcement order to that effect.

D. Insolvency proceedings

11. On 12 July 2010 the Commercial Court (*Privredni sud*) inUžice opened insolvency proceedings in respect of the debtor. As a result, all of the ongoing enforcement proceedings against the debtor were terminated.

12. The applicant duly reported his claim based on the above-mentioned court decisions to the insolvency administration.

13. On 8 June 2011 the court accepted the applicant's claim.

14. The insolvency proceedings in respect of the debtor are still ongoing.

E. The debtor's status

15. The debtor, which operated as a socially-owned company, was privatised on 27 December 2002.

16. On 17 July 2007 the privatisation was annulled because the buyer in question had failed to fulfil his contractual obligations.

17. Following the annulment of the debtor's privatisationthe State owned 58.18% of shares in the company.

18. On 11 December 2008 the State sold its shares to a private company.

II. RELEVANT DOMESTIC LAW AND PRACTICE

19. The relevant domestic law concerning the status of socially-owned companies, enforcement and insolvency proceedings is outlined in the cases of *R. Kačapor and Others v. Serbia*, nos. 2269/06 *et al*., §§ 57-64 and §§ 71-76, 15 January 2008 and *Jovičić and Others v. Serbia* (dec.),

no. 37270/11, §§ 88-93, 15 October 2013. Furthermore, the case-law of the Constitutional Court in respect of socially-owned companies, together with the relevant provisions concerning constitutional appeals and the privatisation of socially-owned companies, are outlined in the admissibility decision in *Marinković v. Serbia* (dec.), no. 5353/11, §§ 26-29 and §§ 31-44, 29 January 2013; and the judgment in *Marinković v. Serbia*, no. 5353/11, §§ 29-32, 22 October 2013.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 6 AND 13 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

20. The applicant complained of the respondent State's failure to enforce final court decisions rendered in his favour against the debtor and of the lack of an effective remedy in that connection. The relevant provisions of Articles 6 § 1 and 13 of the Convention, as well as Article 1 of Protocol No. 1 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. As regards the third set of proceedings

21. The Government argued that the application in this part was inadmissible on non-exhaustion grounds. In particular, it argued that the applicant failed to lodge a constitutional appeal against the non-enforcement of the above decision.

22. The applicant disagreed.

23. The Court observes that the rule of exhaustion of domestic remedies contained in Article 35 § 1 of the Convention requires that normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged (see, among other authorities, *Akdivar and Others v. Turkey*, 16 September 1996, § 65, *Reports of Judgments and Decisions* 1996-IV).

24. The Court has consistently held that a constitutional appeal should, in principle, be considered as an effective domestic remedy in respect of applications introduced against Serbia as of 7 August 2008 (see *Vinčić and Others v. Serbia*, nos. 44698/06, 44700/06, 44722/06, 44725/06, 49388/06, 50034/06, 694/07, 757/07, 758/07, 3326/07, 3330/07, 5062/07, 8130/07, 9143/07, 9262/07, 9986/07, 11197/07, 11711/07, 13995/07, 14022/07, 20378/07, 20379/07, 20380/07, 20515/07, 23971/07, 50608/07, 50617/07, 4022/08, 4021/08, 29758/07 and 45249/07, § 51, 1 December 2009).

25. There is no reason to depart from that jurisprudence in the present case with respect to the non-enforcement of the decision of 23 July 2009 (contrast*Milunović and Čekrlić* v. Serbia (dec.), nos. 3716/09 and 38051/09, 17 May 2011, which concerns the non-enforcement of final court decisions rendered against socially/State-owned companies).

26. As the applicant failed to lodge a constitutional appeal against the non-enforcement of the decision of 23 July 2009, the application in this part must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

B. As regards the first and second sets of proceedings

1. Admissibility

27. The Government argued that the application in this part was incompatible *ratione personae* with the provisions of the Convention and/or that it was inadmissible on non-exhaustion grounds.

28. The Court recalls that it has already considered similar arguments and rejected them (see, for example, the judgments in *R. Kačapor and Others*, § 114, and *Marinković*, § 39, both cited above; and the decisions in *Marinković*, § 59, and *Jovičić and Others*, § 102, both cited above). It sees no reason to depart from this approach in the present case, as regards the non-enforcement of the decisions of 31 August 2007 and

19 September 2007. Therefore, the Court decides to reject the Government's admissibility objections in this part.

29. As the application in this part 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.

2. Merits

30. The Court notes that the final court decisions rendered in the applicant's favour remain unenforced to the present date.

31. 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; *Marčić and Others v. Serbia,* no. 17556/05, § 60, 30 October 2007*; Crnišanin and Others v. Serbia,* nos. 35835/05, 43548/05, 43569/05 and 36986/06, §§ 123-124 and §§ 133-134, 13 January 2009*; Rašković and Milunović v. Serbia,* nos. 1789/07 and 28058/07, § 74 and § 79, 31 May 2011*;* and *Adamović v. Serbia*, no. 41703/06, § 41, 2 October 2012).

32. 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 and Article 1 of Protocol No. 1.

33. Having reached this conclusion, the Court does not find it necessary 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. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. 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

35. The applicant requested that the State be ordered to pay, from its own funds, the sums awarded by the final court decisions rendered in his favour,as well as the costs of the enforcement proceedings, plus 2,500 euros (EUR) in respect of non-pecuniary damage.

36. The Government considered the claims excessive and unjustified.

37. Having regard to the violations found in the present case and its own case-law (*R. Kačapor and Others,* §§ 123-26, and *Crnišanin and Others*, § 139, both cited above), the Court finds that the Government should pay the applicant the sums awarded in the court decisions of 31 August 2007 and 19 September 2007, less any amount which may have already been paid in this regard.

38. 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. The particular amount claimed, however, is excessive. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court considers it reasonable and equitable to award the applicant EUR 2,000 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

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. *Declares* the complaint about the non-enforcement of the decision of 23 July 2009 inadmissible;

2. *Declares*the complaints about the non-enforcement of the judgments of 31 August 2007 and 19 September 2007 admissible;

3. *Holds* that there has been a violation of Article 6 of the Convention and of 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 is to pay the applicant, within three months, the sums awarded in the final domestic judgments of 31 August 2007 and 19 September 2007 rendered in his favour, as well as the established costs of the enforcement proceedings related to these judgments, less any amounts which may have already been paid on this basis;

(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 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 24 February 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

MarialenaTsirli	JánŠikuta
Deputy Registrar	President