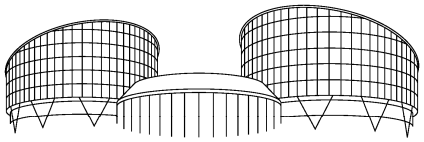

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF RAKIĆ v. SERBIA

(Application no. 78761/12)

JUDGMENT

STRASBOURG

28 April 2015

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

In the case of Rakić 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 7 April 2015,

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

PROCEDURE

1. The case originated in an application (no. 78761/12) 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, Ms Mila Rakić ("the applicant"), on 1 December 2012.

2. The Serbian Government ("the Government") were represented by their Agent, Ms V. Rodić.

3. On 28 August 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 applicant was born in 1949 and lives in Kraljevo.

6. On 6 November 2008 the Municipal Court (*Opštinski sud*) in Kraljevo ordered socially/State-owned companies *Holding Kompanija FVK AD "Vagonogradnja", Holding Kompanija FVK AD,* and *Koncern FVK AD "Vagonogradnja"* (the debtors) to pay to the applicant certain sums on account of salary arrears and employment related benefits.

7. On 5 March 2009 the District Court (*Okružni sud*) in Kraljevo quashed one part of the judgment and remitted it to the first-instance court for a retrial. That part of the judgment is not the subject-matter of the present case. Furthermore, the District Court amended another part of the judgment of 6 November 2008 and upheld the remainder of it.

8. The relevant part of the judgment of 6 November 2008, as amended on 5 March 2009, became both final and enforceable on 20 April 2009.

9. On 28 December 2009 the applicant filed a request for enforcement of the judgment of 6 November 2008.

10. On 29 January 2010 the Court of First Instance (*Osnovni sud*) in Kraljevo, now acting as the competent court, ordered the applicant to remedy some shortcomings in her request for enforcement. On 3 February 2010 the applicant did so.

11. On 26 April 2010 the enforcement proceedings were stayed because the debtors were undergoing restructuring.

12. On 5 September 2011 the applicant requested the Court of First Instance to continue with the enforcement.

13. On 26 September 2011 the Court of First Instance issued an enforcement order. On 17 May 2012 the enforcement order was quashed on appeal, as the debtors' names were changed in the meantime.

14. On 19 June 2012 the applicant informed the enforcement court of the debtors' new names.

15. On 17 September 2013 the Court of First Instance issued a fresh enforcement order. It awarded the applicant 36,567 Serbian dinars (RSD) on account of the enforcement costs. On 13 December 2013 the enforcement order was upheld on appeal.

16. On 30 April 2014 the Court of First Instance ordered the applicant to provide further details about the debtors' names, the amounts of social benefits due and the bank accounts for their payment. On 12 May 2014 the applicant provided the requested information.

17. The judgment of 6 November 2008, as amended on 5 March 2009 is yet to be enforced.

II. RELEVANT DOMESTIC LAW AND PRACTICE

18. The relevant domestic law was set out in *R. Kačapor and Others v. Serbia* (nos. 2269/06, 3041/06, 3042/06, 3043/06, 3045/06 and 3046/06, §§ 57-82, 15 January 2008); *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, §§ 100-104, 13 January 2009); *Adamović v. Serbia*, (no. 41703/06, §§ 17-22, 2 October 2012); and *Marinković v. Serbia* ((dec.) no. 5353/11, §§ 26-44, 29 January 2013).

THE LAW

I. THE GOVERNMENT'S REQUEST FOR THE APPLICATION TO BE STRUCK OUT UNDER ARTICLE 37 OF THE CONVENTION

19. On 23 December 2013 the Government submitted a unilateral declaration requesting the Court to strike the application out with regard to the applicant's complaint under Article 6 § 1 of the Convention.

20. The applicant objected to the proposal.

21. The Court notes that, under certain circumstances, it may be appropriate to strike out an application under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration by the respondent Government, even if the applicant wishes the examination of the case to be continued. It will, however, depend on the particular circumstances whether the unilateral declaration offers a sufficient basis for finding that respect for human rights as defined in the Convention does not require the Court to continue its examination of the case (see *Tahsin Acar v. Turkey* (preliminary objection) [GC], no. 26307/95, § 75, ECHR 2003‑VI, and *Angelov and Others v. Bulgaria*, no. 43586/04, § 12, 4 November 2010).

22. Having studied the terms of the Government's unilateral declaration, the Court considers, in the particular circumstances of the case and in particular because the amount of compensation proposed is substantially lower than the amount the Court would have awarded in similar cases, that the unilateral declaration does not provide a sufficient basis for concluding that respect for human rights as defined in the Convention and its Protocols does not require it to continue its examination of the case (see *mutatis mutandis*, *Magoch v. Poland*, no. 29539/07, § 19, 2 February 2010; and *Dochnal v. Poland*, no. 31622/07, § 69, 18 September 2012).

23. This being so, the Court rejects the Government's request to strike the application out under Article 37 of the Convention and will accordingly pursue its examination of the admissibility and merits of the case.

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

24. The applicant complained of the respondent State's failure to enforce a final court judgment rendered in her favour against the debtors. 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. Admissibility

25. The Court notes that the application 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

26. The Government argued that the enforcement proceedings were conducted with due diligence. In their view, the delays were attributable primarily to the applicant who had failed to abide by the orders of the enforcement court and to choose more favourable means of enforcement.

27. The applicant disagreed.

28. The Court reiterates that, in principle, when an applicant, such as the present one, 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 *Lolić v. Serbia*, no. 44095/06, § 26, 22 October 2013; and *Nikolić-Krstić v. Serbia*, no. 54195/07, § 29, 14 October 2014). It is observed that the present applicant sought enforcement of the judgment in issue on 28 December 2009 and that the enforcement order became final on 13 December 2013. While it is true that on several occasions the enforcement court requested the applicant to submit some additional

information, the applicant complied each time without delay. Nevertheless, the judgment in issue remained unenforced to the present day.

29. 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*; Rašković and Milunović v. Serbia,* nos. 1789/07 and 28058/07, § 74 and § 79, 31 May 2011; and *Adamović*, cited above, § 41).

30. 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.

31. 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).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. 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

33. The applicant requested that the State be ordered to pay, from its own funds, the sums awarded by the final court judgment rendered in her favour on 6 November 2008, as amended on 5 March 2009, 5,500 euros (EUR) in respect of non-pecuniary damage, EUR 1,550 on account of the legal costs for pursuing various domestic proceedings concerning the enforcement, and EUR 660 for the legal costs incurred before the Court.

34. The Government considered the claims excessive and unjustified.

35. 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 judgment rendered in her favour on 6 November 2008, as amended on 5 March 2009, as well as the established costs of the enforcement proceedings, less any amounts which may have already been paid in this regard.

36. Furthermore, 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. Having regard to its case-law (see *Stošić v. Serbia*, no. 64931/10, §§ 66 and 67, 1 October 2013), the Court awards EUR 2,000 to the applicant. This sum is to cover non-pecuniary damage, as well as costs and expenses.

B. Default interest

37. 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. *Rejects* the Government's unilateral declaration and their request to strike the application out of the Court's list of cases;

2. *Declares* the application 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 to the applicant, within three months, the sums awarded in the final domestic judgment rendered in her favour on 6 November 2008, as amended on 5 March 2009, 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 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 28 April 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli	Ján Šikuta
Deputy Registrar	President