



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

THIRD SECTION

CASE OF TOMOVIĆ AND OTHERS v. SERBIA

*(Applications nos. 5327/11, 5352/11, 5364/11, 5370/11, 5381/11, 5389/11,
5390/11, 13351/11, 13353/11, 17353/11, 17376/11, 17396/11, 17399/11,
17404/11, 17418/11, 17420/11, 17422/11, 17427/11 and 17434/11)*

JUDGMENT

STRASBOURG

24 February 2015

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

In the case of Tomović and Others 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 nineteen separate applications (nos. 5327/11, 5352/11, 5364/11, 5370/11, 5381/11, 5389/11, 5390/11, 13351/11, 13353/11, 17353/11, 17376/11, 17396/11, 17399/11, 17404/11, 17418/11, 17420/11, 17422/11, 17427/11 and 17434/11) 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”). The applicants are all Serbian nationals, and their further personal details are set out in the Annex to this judgment.

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

3. On 28 November 2013 the applications were communicated to the Government.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Civil proceedings brought by the applicants

5. All the applicants were 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 applicants brought numerous separate civil claims, seeking payment of salary arrears and various social security contributions.

7. The applicants obtained final court decisions ordering the debtor to pay them certain sums. The essential information as to the domestic proceedings in respect of each application is indicated in the annexed table.

B. Insolvency proceedings

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

9. The applicants duly reported their respective claims based on the above-mentioned court decisions to the insolvency administration.

10. On 8 June 2011 the court accepted the applicants' claims.

11. On 29 July 2014 the applicants' representative informed the Court that some of the decisions at issue had been partially enforced in the insolvency proceedings.

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

C. The debtor's status

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

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

15. Following the annulment of the debtor's privatisation the State owned 58.18% of shares in the company.

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

II. RELEVANT DOMESTIC LAW AND PRACTICE

17. The relevant domestic law concerning the status of socially-owned companies, enforcement and insolvency proceedings are 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. JOINDER OF THE APPLICATIONS

18. The Court considers that, in accordance with Rule 42 § 1 of the Rules of the Court, the applications should be joined, given their common factual and legal background.

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

19. The applicants complained of the respondent State's failure to enforce final court decisions rendered in their 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. Admissibility

20. The Government argued that the applications were incompatible *ratione personae* with the provisions of the Convention and/or that they were inadmissible on non-exhaustion grounds.

21. 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*, § 102, both cited above). It sees no reason to depart from this approach in the present cases. Therefore, the Court decides to reject the Government's admissibility objections.

22. As the applications are neither manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor inadmissible on any other grounds, they must be declared admissible.

B. Merits

23. The Court notes that the final court decisions rendered in the applicants' favour remain unenforced to the present date.

24. 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; *Crnišanić 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).

25. 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.

26. 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

27. 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

28. The applicants requested that the State be ordered to pay, from its own funds, the sums awarded by the final court decisions rendered in their favour, as well as the costs of the enforcement proceedings, plus 5,000 euros

(EUR) in respect of non-pecuniary damage to each of them. The applicants also claimed EUR 450 each for the legal costs incurred before the Court.

29. The Government considered the claims excessive and unjustified.

30. Having regard to the violations found in the present case and its own case-law (*R. Kačapor and Others*, §§ 123-26, and *Crnišaniin and Others*, § 139, both cited above), the Court finds that the Government should pay the applicants the sums awarded in the court decisions specified in the Annex, less any amounts which may have already been paid in this regard.

31. As regards non-pecuniary damage, the Court considers that the applicants 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 to award EUR 2,000 to each applicant 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

32. 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 join the applications;
2. *Declares* the applications 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 applicants, within three months, the sums awarded in the final domestic judgments rendered in their favours specified in the Annex, 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 each 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. *Dismiss* 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.

Marijalena Tsirli
Deputy Registrar

Ján Šikuta
President

ANNEX

No.	Application no. and date of introduction	Applicant name date of birth	Domestic decision details	Date when the decision became final	Details of the enforcement order / claim in the insolvency proceedings
1.	5327/11 30/12/2010	Siniša TOMOVIĆ 04/02/1952	Užice 22/10/2007	25/12/2007	Užice 20/07/2010
2.	5352/11 30/12/2010	Radoje JOVANOVIĆ 17/11/1955	Užice 06/08/2007	09/09/2007	Požega 20/03/2009
3.	5364/11 30/12/2010	Stevan BRKOVIĆ 13/11/1949	Užice 02/03/2007 13/09/2007	22/03/2007 09/10/2007	Požega 04/02/2008 20/03/2009
4.	5370/11 30/12/2010	Goran MARINKOVIĆ 26/11/1960	Užice 13/09/2007	09/10/2007	Požega 24/03/2009
5.	5381/11 31/12/2010	Milun ĆITIĆ 18/11/1959	Užice 16/10/2007 31/01/2008	29/11/2007 15/02/2008	Požega 29/09/2009 03/03/2009
6.	5389/11 30/12/2010	Milenko PAŠIĆ 21/10/1979	Užice 17/09/2007	09/10/2007	Požega 20/03/2009
7.	5390/11 30/12/2010	Miloje MLADENOVIĆ 04/10/1973	Užice 13/09/2007	10/10/2007	Požega 15/04/2008
8.	13351/11 30/12/2010	Milan JOVIČIĆ 30/12/1957	Užice 16/10/2007	29/11/2007	Požega 24/09/2009
9.	13353/11 30/12/2010	Velisav KOSTIĆ 11/02/1953	Užice 24/10/2007	29/11/2007	Požega 30/09/2009
10.	17353/11 29/12/2010	Zlatko PETROVIĆ 06/01/1971	Užice 10/10/2007	29/11/2007	Kosjerić 30/04/2009
11.	17376/11 29/12/2010	Zoran BATAKOVIĆ 27/03/1965	Užice 06/08/2007	19/09/2007	Požega 20/03/2009
12.	17396/11 29/12/2010	Zoran OSTOJIĆ 12/05/1961	Užice 03/08/2007	16/09/2007	Požega 06/07/2009
13.	17399/11 29/12/2010	Milun OSTOJIĆ 06/08/1963	Užice 29/06/2007	10/10/2007	Požega 07/07/2009

14.	17404/11 29/12/2010	Dragan MARINKOVIĆ 26/11/1960	Užice 06/08/2007	11/09/2007	Požega 15/04/2009
15.	17418/11 29/12/2010	Veroljub VASILJEVIĆ 30/03/1959	Užice 27/07/2007	02/08/2007	Užice 02/08/2010
16.	17420/11 29/12/2010	Radosav PANIĆ 21/07/1959	Užice 31/07/2007	28/08/2007	Požega 11/05/2009
17.	17422/11 29/12/2010	Mitar LAZOVIĆ 08/11/1959	Užice 16/04/2008	25/05/2008	Požega 13/03/2009
18.	17427/11 29/12/2010	Dragan TOMIĆ 05/09/1955	Užice 10/04/2008	09/05/2008	Požega 09/03/2009
19.	17434/11 29/12/2010	Milan KOSTIĆ 17/02/1953	Užice 03/09/2007	10/10/2007	Požega 19/09/2008