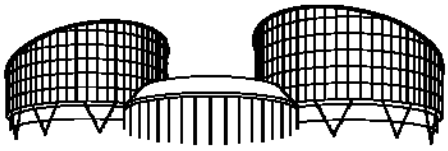

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF STOŠIĆ v. SERBIA

(Application no. 64931/10)

JUDGMENT

STRASBOURG

1 October 2013

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case ofStošić v. Serbia,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Guido Raimondi, *President,*
Danutė Jočienė,
Dragoljub Popović,
András Sajó,
Işıl Karakaş,
Paulo Pinto de Albuquerque,
Helen Keller, *judges,*
andStanley Naismith, *Section Registrar,*

Having deliberated in private on 10 September 2013,

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

PROCEDURE

1. The case originated in an application (no. 64931/10) 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 Mr Gojko Stošić ("the applicant"), on 29 September 2010.

2. The applicant was represented by Mr M. Marjanović and Ms M. Dedović-Marjanović, lawyers practising in Leskovac. The Serbian Government ("the Government") were represented by their Agent, Mr S. Carić.

3. On 30 March 2012the application was communicatedto the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

4. The applicant is a Serbian national who was born in 1943 and lives in Leskovac.

THE CIRCUMSTANCES OF THE CASE

A. Introduction

5. The applicantwasa former employee of LETEKS(*u stečaju*), a company based in Leskovac(hereinafter "the debtor"). Since the debtor had failed to fulfil its contractual obligations toward him, the applicant instituted three sets of civil proceedings against it.

B. First set of civil and enforcement proceedings

6. On 20 April 2001 the Leskovac Municipal Court ordered the debtor to pay the applicant:

(i) holiday pay for 1998 in the amount of 700 Serbiandinars (RSD), plus interest; and

(ii) RSD 1,490 for hislegal costs, plus interest.

7. On 14 May 2001 thejudgment became final.

8. On 23 August 2002the applicant filed a request for enforcement of the above judgment.

9. On 29 August 2002 the Leskovac Municipal Court accepted the applicant's request and issued an enforcement order.

10. On 25 February 2004 the enforcement proceedings were stayed because the debtor was undergoing restructuring.

11. On 20 October 2006 the applicant requested the Leskovac Municipal Court to continue with the enforcement.

12. On 11 March 2011 the enforcement proceedings were stayed again because insolvency proceedings had been opened in respect of the debtor.

C. The second set of civil and enforcement proceedings

13. On 19 June 2003 the Leskovac Municipal Court ruledin favour of the applicant and ordered the debtor to pay him:

(i) salary arrears for the period 1 July 2001 to 31 December 2002, plus interest; and

(ii) the pension, disability, health and unemployment insurance contributionsdue for the following periods: 1 January 1991 to 31 December 1992, 1 January 1994 to 31 December 1996, and 1 July 2002 to 31 December 2002.

14. On 20 July 2003thejudgment became final.

15. On 20October 2006 the applicant sought enforcement of the above judgment,proposing that it be carried out by means of an auction of the debtor's movable assets.

16. On 25October 2006 the Leskovac Municipal Court accepted the applicant's request and issued an enforcement order.

17. On 17 March 2008 the applicant filed a further request for enforcement of the judgment,this time proposing that it be carried out by means of an auction of the debtor's specific immovable assets.

18. The Leskovac Municipal Court never ruled on the applicant's request of 17 March 2008, but instead on 23 June of that year suspended the enforcement proceedings because the applicant had failed to pay a deposit of RSD 640 on account of the enforcement costs.

D. The third set of civil and enforcement proceedings

19. On 14 March 2007 the Leskovac Municipal Court ruled in favour of the applicant and ordered the debtor to pay him;

(i) salary arrearsfor 1 January 2003 to 11 October 2005, plus interest; and

(ii) the pension, disability, health and unemployment insurance contributionsdue for the period1 January 2005 to 11 October 2005.

20. On19April 2007thejudgment became final.

21. On 14 March 2008 the applicant filed a request for the enforcement of the above judgment.

22. On 12October 2009 the Leskovac Municipal Court eventuallyaccepted the applicant's request and ordered the enforcement of his pecuniary claims. The enforcement proceedingsrelating to payment of thesocial security contributions were suspended. In its decision,the courtawarded the applicant a fixed sum in respect of enforcement costs.

23. The applicant's lawyer lodged an appealwith the Leskovac High Court.

24. On 7 April 2011 the Leskovac High Court returned the file to thefirst-instance court,ordering itto stay the enforcement proceedings because insolvency proceedings had been opened in respect of the debtor.

E. Insolvency proceedings

25. On 16 April 2010 preliminary insolvency proceedings against the debtor were initiated before the Leskovac Commercial Court.

26. On 13 July 2010 the court issued an interim measure and prohibited any enforcement action being taken against the debtor.

27. On 25 January 2011 it opened insolvency proceedings in respect of the debtor.

28. In May 2011 the applicant duly registered a claim for the sums specified in the judgments of 20 April 2001, 19 June 2003 and 14 March 2007.

29. On 6 December 2011 the applicant's claims based on the above judgments were recognised in the total amount of RSD 864,838.93.

30. On 14 September 2012 some of the debtor's property was sold.

31. As at the date of this judgment, the insolvency proceedings in respect of the debtor were still ongoing.

F. The debtor's status

32. On 5 December 2006 the debtor was privatised.

33. On 8 April 2008 the contract for the sale of the debtor was annulled because the buyer in question had failed to fulfil his contractual obligations.

34. From June 2008 the debtor was comprisedof predominantly State-ownedcapital.

G. Other relevant facts

35. On 31 October 2010, the applicantlodged a joint constitutional appeal with other former employees of the debtor.

36. As at the date of this judgment, the case wasstill pending before the Constitutional Court.

II. RELEVANT DOMESTIC LAW

A. Enforcement Procedure Act 2000 (Zakon o izvršnom postupku; published in the Official Gazette of the Federal Republic of Yugoslavia- OG FY-nos. 28/00, 73/00 and 71/01)

37. Article 4 § 1 provided that all enforcement proceedings were to be conducted urgently. Articles 63-84, 134-176 and 180-188 set out details as regards enforcement by means of a bank transferoran auction of the debtor's movable and immovable assets.

B. Enforcement Procedure Act 2004 (*Zakon o izvršnom postupku*; published in the Official Gazette of the Republic of Serbia - OG RS - no. 125/04)

38. The Enforcement Procedure Act 2004 ("the 2004 Act") entered into force on 23 February 2005, thereby repealing the Enforcement Procedure Act 2000 ("the 2000 Act").Article 5 § 1 of the 2004 Act provides that all enforcement proceedings are to be conducted urgently. In accordance with Article 12 § 5, an appeal against an enforcementorderdoes not in principlesuspend enforcement.In accordance with Article 304, all enforcement proceedings instituted prior to 23 February 2005 are to be conducted pursuant to the previous 2000 Act.

C. Insolvency Act (*Zakon o stečaju*;published in OG RS no. 104/2009, 99/2011 and 71/2012)

39. This Act regulates the framework for initiating and conducting insolvency proceedings against legal persons. Article 2 provides that the aim of insolvency is to ensure the most favourable collective settlement for creditors. Article 8 states that all insolvency proceedings are to be conducted urgently. In accordance with Articles 19 § 1 and Article 22 § 1, in insolvency proceedings against socially/State-owned companies the role of the insolvency administrator is to be performed by the Privatisation Agency. Article 93 §§ 1 and 2 provide that "fromthe dateinsolvency proceedings are instituted" the debtor cannot be simultaneously subject to a separate enforcement procedure. Any ongoing enforcement proceedings arethus to be stayed, while new enforcement proceedings cannot be instituted for as long as the insolvency proceedings are still pending.

D. Other relevant domestic lawand practice

40. The relevant domestic law concerning the status of socially-owned companies is outlined in the case of *R. Kačapor and Others v. Serbia*(nos. 2269/06, 3041/06, 3042/06, 3043/06, 3045/06 and 3046/06, §§ 57-64 and §§ 71-76, 15 January 2008). Further, the relevant 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 case of*Marinković v. Serbia* ((dec.) no. 5353/11, 29 January 2013,§§ 26-29 and §§ 31-44).

THE LAW

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

41. The applicant complained about the respondent State's failure to enforce three final judgments rendered in his favour against the same socially/State-owned company. He relied on Article 6 of the Convention and Article 1 of Protocol No. 1 which, in so far as relevant, 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

1. Exhaustion of domestic remedies

42. The Government submitted that the Constitutional Court had harmonised its case-law with that of the Court in the context of the respondent State's liability for non-enforcement of final judgments rendered against socially-owned companies. They further maintained that the applicant's case was still pending before the Constitutional Court, and that his application should therefore be rejected for non-exhaustion of domestic remedies.

43. The applicant argued that a constitutional appeal could not be considered effective in the particular circumstances of his case.

44. The Court observes that it has already held in cases such as the applicant's that a constitutional appeal should indeed be considered to be an effective domestic remedy within the meaning of Article 35 § 1 of the Convention, but only in respect of applications against Serbia lodged after 21 June 2012 (see*Marinković v. Serbia,* cited above,§ 59). It sees no reason to hold otherwise in the present case, and notes that the applicant had lodged his complaints with the Court on 29 September 2010.

45. It follows that the Government's objections concerning the exhaustion of domestic remedies must be dismissed.

2. Conclusion

46. The Court finds, moreover, that the applicant's complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring them inadmissible have been established. They must therefore be declared admissible.

B. Merits

1. The arguments of the parties

47. In respect of the first set of enforcement proceedings,the Government observed that theyhad been stayed on 25 February 2004, before

the Convention had entered into force in respect of Serbia on 3 March 2004, and that the debtor had been privatised on 5 December 2006. Taking this into account, they maintained that the respondent State'sliabilitycould only be established for the period between 8 April 2008, when the privatisation of the debtor had been annulled, and 13 July 2010, when the Commercial Court had prohibited any enforcement actionbeing taken against the debtor.

48. In relation to the second set of proceedings, they argued that the State could not be considered responsible for having violated the applicant's rights because in the course of the enforcement proceedings he had not complied with the court orderrequiring him to make an advance payment of the enforcement costs.

49. Concerning the third set of proceedings, the Government noted that the judgment at issue had been adopted after the debtor had been privatised and that in this sense the respondent State could not be considered liable for allegedlyhaving violated the applicant's rights. They argued that the applicant had contributed to the length of the enforcement proceedings since he had lodged appeals against the court's decisions.

50. Lastly, the Government maintained that the respondent State's liability could only be engaged in so far as it related to the enforcement proceedings against the debtor, while the subsequent insolvency proceedings against the debtor should not be assessed in the context of a violation of the Convention rights. They also argued that the State could not be held responsible for the debtor's lack of assets.

51. The applicant disagreed and reiterated his original complaints.

2. The Court's assessment

52. The Court observes that the final judgments given in the applicant's favour were adopted on 20 April 2001, 19 June 2003 and 14 March 2007 and became final on 14 May 2001, 20 July 2003 and 19 April 2007 respectively, but that they remain unenforced.

53. The Court reiterates that irrespective of whether a debtor is a private or a State-controlled entity, it is up to the State to take all necessary steps, within its competence, to enforce a final court judgment and, in so doing, to ensure the effective participation of its entire apparatus (see, *mutatis mutandis*, *Pini and Others v. Romania*, nos.78028/01 and 78030/01, §§ 174-189, ECHR 2004-V,and,*mutatis mutandis*, *Hornsby v. Greece*, 19 March 1997, § 41, *Reports of Judgments and Decisions* 1997-II).Therefore, the fact that the debtor was privatised for a certain period of time cannot absolve the respondent State from its obligation under the Convention to take all necessary steps to secure the enforcement of the final court judgment rendered in the applicant's favour.

54. Although the enforcement proceedings in respect of the judgment of 20 April 2001 were stayed on 25 February 2004 because the debtor was undergoing restructuring, they were resumed and stayed again on 11 March

2011 because insolvency proceedings had been opened in respect of the debtor. The Government, however, did not offer any convincing argument justifying the delays in the first set of enforcement proceedings.The Court notes that the judgment of 20 April 2001, although final and enforceable as of May 2001, has yet to be executed. The impugnedsituation has thus already been pending for more than nine years and six months since the ratification of the Convention and Protocol No. 1 by the respondent State on 3 March 2004 (the period which falls within the Court's jurisdiction *ratione temporis*).

55. In the context of socially/State-owned companies a period of non-execution should not be limited to the enforcement stage only, but should also include the subsequent insolvency proceedings (see, *inter alia*, *R. Kačapor and Others*, cited above, § 115). Having regard to the fact that in the course of the insolvency proceedings the applicant duly submitted his claims based on the judgments rendered in his favour against the debtor, including claims based on the judgment of 19 June 2003, the Government's argument relyingon the applicant's failure to advance the costs of the enforcement proceedings is irrelevant in the circumstances of the case. Moreover, the Court is not persuaded that the advancement of the enforcement costs would in any event have led to the enforcement of the judgment in question in the absence of any evidence showing that at least one judgment rendered against the debtor, in cases similar to the applicant's, had been enforced.

56. While it is true that the judgment of 14 March 2007 was adopted when the debtor was private company, it is noted that the privatisation of the debtor was annulled on 8 April 2008 and that it is now owned by the State in its entirety.

57. In accordance with the domestic law, an appeal against an enforcement orderdoes not suspend enforcement (see paragraph 38 above), therefore the Government's argument that the applicant had contributed to the length of the third set of enforcement proceedings cannot be regarded as convincing.

58. It is the State's obligation to ensure that final decisions against its organs, or entities or companies owned or controlled by the State are enforced in good time and the State cannot cite lack of funds as an excuse for not honouring judgments against it or against entities or companies controlled by it (see *Yuriy Nikolayevich Ivanov v. Ukraine*, no. 40450/04, § 54, 15 October 2009).

59. The applicant sought enforcement of three final judgments rendered in his favour on 23 August 2002, 20 October 2006 and 14 March 2008, respectively.In May 2011, in the course of the insolvency proceedings, he submitted claims based on the above judgments and on 6 December 2011 the Leskovac Commercial Court recognised the applicant's claims. Hence,the periodof debt recovery in the applicant's case has so far lasted

between five years and five months and nine years and six months since the Convention entered into force in respect of Serbia on 3 March 2004.

60. 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).The Court finds no arguments in the case capable of persuading it to reach a different conclusion.

61. Therefore, the Court finds that there has been a breach of Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

62. 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

63. The applicant requested that the State be ordered to pay, from its own funds, the sums awarded by the final judgments rendered in his favourand 4,000 euros (EUR) in respect of the non-pecuniary damage suffered.The applicant also claimed EUR 1,972.11 for the legal costs incurred before the domestic courts and the Court.

64. The Government considered the claims excessive and unjustified.

65. Having regard to the violations found in the present case and its own case-law (see *R. Kačapor and Others,* cited above, §§ 123-126, and *Crnišanin and Others*, cited above, § 139), the Court considers that theapplicants' claims for pecuniary damage must be accepted. The Government shall therefore pay the applicant the sums awarded in the final domestic judgmentsadopted on 20 April 2001, 19 June 2003 and 14 March 2007 respectively, less any amounts which may have already been paid in respect of the said judgments.

66. As regards the applicant's claim for non-pecuniary damage, the Court reiterates that it is an international judicial authority contingent on the consent of the States signatory to the Convention, and that its principal task is to secure respect for human rights, rather than compensate applicants'

losses minutely and exhaustively. Unlike in national jurisdictions, the emphasis of the Court's activity is on passing public judgments that set humanrights standards across Europe.

67. For this reason, in cases involving many similarly situated victims a unified approach may be called for. This approach will ensure that the applicants remain aggregated and that no disparity in the level of the awards will have a divisive effect on the applicants (see, for instance, *Goncharova and Others and 68 other "Privileged Pensioners" cases v. Russia*, nos. 23113/08 et al., §§ 22-24, 15 October 2009). The Court notes that this case is one of many similar cases that concern the respondent State's liability for its failure to enforce final domestic judgments rendered against socially/State-owned companies.

68. In the view of above, the Court considers it reasonable and equitable to award EUR 2,000 to the applicant. This sumis to cover any non-pecuniary damage, as well as costs and expenses.

B. Default interest

69. 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 of Article 1 of Protocol No. 1 to the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, from its own funds and within three monthsfrom the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention,the sums awarded in the final domestic judgments rendered in his favour, less any amounts which may have already been paid in respect of the said judgments;
   (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 amounts 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 1 October2013, pursuant to Rule77§§2 and3 of the Rules of Court.

Stanley Naismith
Registrar

Guido Raimondi
President