



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

THIRD SECTION

CASE OF BLAGOJEVIĆ AND OTHERS v. SERBIA

*(Applications nos. 61604/10, 62492/10, 62499/10, 62658/10, 62668/10,
63100/10, 63108/10, 63123/10, 63137/10, 63145/10, 63356/10, 63494/10,
63510/10, 63587/10 and 64856/10)*

JUDGMENT

STRASBOURG

24 May 2016

This judgment is final. It may be subject to editorial revision.

In the case of Blagojević and Others v. Serbia,

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

Pere Pastor Vilanova, *President*,

Branko Lubarda,

Georgios A. Serghides, *judges*,

and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 3 May 2016,

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

PROCEDURE

1. The case originated in fifteen applications (nos. 61604/10, 62492/10, 62499/10, 62658/10, 62668/10, 63100/10, 63108/10, 63123/10, 63137/10, 63145/10, 63356/10, 63494/10, 63510/10, 63587/10, and 64856/10) against Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 29 September 2010. The applicants are all Serbian nationals, and their further personal details are set out in the appendix to this judgment.

2. The applicants were all represented before the Court by Mr M. Marjanović and Ms M. Dedović-Marjanović, lawyers practicing in Leskovac. The Serbian Government (“the Government”) were represented by their Agent at the time, Ms V. Rodić.

3. On 5 June 2013 the applications were communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Civil proceedings brought by the applicants

4. All applicants were former employees of “LETEKS” *u stečaju* (the debtor), which was, at the relevant time, a company predominantly comprised of socially-owned capital.

5. Since the debtor failed to fulfil its contractual obligations towards its employees, on an unspecified date, the applicants instituted civil proceedings against it.

6. On 18 April 2008 the Leskovac Municipal Court ordered the debtor to pay the applicants specified amounts on account of salary arrears, plus the costs and expenses of the civil proceedings.

7. On 3 October 2010 the above judgment became final.

8. Between 20 November 2008 and 30 November 2009 all applicants filed separate requests for the enforcement of the above judgment.

9. The Leskovac Municipal Court ultimately accepted the applicants' requests and issued the enforcement orders, respectively. The essential information as to the enforcement proceedings in respect of each application is outlined in the Annex to this judgment.

B. Insolvency proceedings

10. On 25 January 2011 the Leskovac Commercial Court opened insolvency proceedings in respect of the debtor (St. 47/2010).

11. The applicants duly submitted their respective claims.

12. On an unspecified date the applicants' claims based on the judgment of 18 April 2008 were formally recognised.

13. The insolvency proceedings against the debtor are still ongoing.

C. Other relevant facts

14. On 31 March 2010, the applicants lodged a constitutional appeal.

15. On 8 July 2013 the Constitutional Court dismissed the appeal in respect of all applicants except the applicants Ms Jagoda Jančić (application no. 62499/10), Mr Predrag Stamenković (application no. 63100/10) and Ms Stana Stanković (application no. 63137/10).

16. On 18 September 2013 the Constitutional Court also found a violation of the right to a hearing within a reasonable time, in respect of Ms Jančić, Mr Stamenković and Ms Stanković. It further awarded each of them 500 euros (EUR) as just satisfaction for non-pecuniary damage and ordered the court in Leskovac to expedite the proceedings.

II. RELEVANT DOMESTIC LAW AND PRACTICE

17. The relevant domestic law concerning the status of socially-owned companies, as well as enforcement and insolvency proceedings, has been 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 redress has likewise been outlined in the admissibility decision in *Marinković v. Serbia* (dec.), no. 5353/11, §§ 26-29 and 31-44,

29 January 2013, the judgment in *Marinković v. Serbia*, no. 5353/11, §§ 29-31, 22 October 2013, and the decision in *Ferizović v. Serbia* (dec.), no. 65713/13, §§ 12-17, 26 November 2013.

THE LAW

I. JOINDER OF THE APPLICATIONS

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

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

19. The applicants complained about the respondent State's failure to enforce the final judgment of 18 April 2008. They relied on Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention which, in so far as relevant, read as follows:

Article 6

“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

20. Concerning applicants Ms Jagoda Jancić, Mr Predrag Stamenković and Ms Stana Stanković, the Government argued that the applications should be declared inadmissible, since the Constitutional Court awarded each applicant EUR 500 and therefore provided them with adequate redress. Concerning all other applicants, the Government submitted that their applications should be declared inadmissible since they failed to fulfil the

requirement to properly substantiate their allegations before the Constitutional Court. The Government lastly maintained that all applications in the present case should be declared inadmissible for abuse of the applicants' right to lodge a petition. Specifically, it was not clear whether the legal representatives of the applicants had indeed received specific and explicit instructions from the applicants in this case.

21. The applicants disagreed.

22. The Court observes that it has already held in cases such as the applicants' that a constitutional appeal should be considered to be an effective domestic remedy within the meaning of Article 35 § 1 of the Convention, but only in respect of applications lodged against Serbia after 21 June 2012 (see *Marinković v. Serbia*, cited above, § 59). Therefore the applicants who lodged their respective applications on 29 September 2010 were not obliged to make use of the constitutional avenue. In any event, they provided proper evidence to the Court that they had initiated enforcement proceedings concerning the final domestic judgment in question and had also submitted their respective claims in the insolvency proceedings.

23. Having regard to its case-law (*Stošić v Serbia*, no. 64931/10, §§ 66-68, 1 October 2013), the Court further reiterates that as regards applicants Ms Jagoda Jancić, Mr Predrag Stamenković and Ms Stana Stanković, in respect of whom the Constitutional Court found a violation of the right to a hearing within a reasonable time, an award of EUR 500 for non-pecuniary damage cannot be considered as sufficient redress (*Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 211-216, ECHR 2006-V). Therefore, these applicants must still be considered as victims within the meaning of Article 34 of the Convention.

24. Finally, given the general nature of the Government's argument, the Court finds no grounds whatsoever for concluding that the applicants' applications to the Court are an abuse of the right of individual application.

25. The Court, therefore, rejects all the Government's objections.

26. Since the applicants' complaints 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

27. The Court notes that the domestic judgment under consideration in the present case has remained unenforced to date.

28. 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;

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

29. 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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

31. The applicants requested that the State be ordered to pay them, from its own funds: (i) the judgment debt, plus the costs of the enforcement proceedings; (ii) EUR 4,000 each in respect of non-pecuniary damage; and (iii) EUR 30,500 in total for the costs and expenses incurred before the Court.

32. The Government contested these claims.

33. 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 to the applicants the sums awarded in the final domestic judgment of 18 April 2008 (see paragraph 6 above), as well as the established costs of the enforcement proceedings, less any amounts which may have already been paid on this basis.

34. 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 each applicant, less any amounts which may have already been paid in that regard at the domestic level, to cover any non-pecuniary damage, as well as costs and expenses incurred before the Court (see *Stošić v. Serbia*, no. 64931/10, §§ 66 and 67, 1 October 2013).

B. Default interest

35. 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 have been violations of Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicants, from its own funds and within three months, the sums awarded in the judgment rendered in their favour, less any amounts which may have already been paid on this basis;
 - (b) that the respondent State is to pay the applicants, within the same period, EUR 2,000 (two thousand euros) each in respect of non-pecuniary damage, costs and expenses, plus any tax that may be chargeable to the applicants, 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;
5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 24 May 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Pere Pastor Vilanova
President

APPENDIX

No.	Application no.	Applicant name date of birth place of residence	Final domestic decision details	Enforcement order details	Constitutional Court decision details, amount awarded as compensation for non-pecuniary damage
1.	61604/10	Živana BLAGOJEVIĆ 13/07/1955 Leskovac	Municipal Court in Leskovac P1. 1414/06, P1. 670/07, P1. 2813/07, P1. 2814/07, P1. 3305/07 of 18 April 2008	Leskovac Court of First Instance 30/11/2009 2I. 705/10 of 14/06/2010	Už-3673/2013 of 8 July 2013 Constitutional appeal dismissed
2.	62492/10	Grana ILIĆ 25/07/1962 Leskovac	Municipal Court in Leskovac P1. 1414/06, P1. 670/07, P1. 2813/07, P1. 2814/07, P1. 3305/07 of 18 April 2008	Leskovac Court of First Instance 30/11/2009 2I. 708/10 of 14/06/2010	Už-3673/2013 of 8 July 2013 Constitutional appeal dismissed
3.	62499/10	Jagoda JANČIĆ 04/12/1949 Leskovac	Municipal Court in Leskovac P1. 1414/06, P1. 670/07, P1. 2813/07, P1. 2814/07, P1. 3305/07 of 18 April 2008 (The judgment in question concerns both, the applicant's claim and the applicant's late husband's claim. The applicant is recognized as her late husband's heir by the Leskovac Municipal Court's decision no. O. 984/09 of 20 August 2009)	Leskovac Court of First Instance Municipal Court in Leskovac 20/11/2008 I. 2014/09, I 2009/09, I. 2082/09, I. 2012/09 of 12/10/2009 I. 2079/09 of 9/10/2009	Už-1795/2010 of 18 September 2013 500 Euros
4.	62658/10	Ljubiša MARKOVIĆ 21/03/1950 Leskovac	Municipal Court in Leskovac P1. 1414/06, P1. 670/07, P1. 2813/07, P1. 2814/07, P1. 3305/07 of 18 April 2008	Leskovac Court of First Instance 27/11/2009 2I. 694/10 of 15/06/2010	Už-3673/2013 of 8 July 2013 Constitutional appeal dismissed
5.	62668/10	Zoran MARKOVIĆ 27/09/1954 Leskovac	Municipal Court in Leskovac P1. 1414/06, P1. 670/07, P1. 2813/07, P1. 2814/07, P1. 3305/07 of 18 April 2008	Leskovac Court of First Instance 30/11/2009 2I. 703/10 of 14/06/2010	Už-3673/2013 of 8 July 2013 Constitutional appeal dismissed

6.	63100/10	Predrag STAMENKOVIĆ 13/01/1957 Leskovac	Municipal Court in Leskovac P1. 1414/06, P1. 670/07, P1. 2813/07, P1. 2814/07, P1. 3305/07 of 18 April 2008	Leskovac Court of First Instance 20/11/2008 The domestic court failed to issue the enforcement order. In May 2011, the applicant requested enforcement in the insolvency proceedings.	Už-1795/2010 of 18 September 2013 500 Euros
7.	63108/10	Siniša STAMENKOVIĆ 21/06/1951 Leskovac	Municipal Court in Leskovac P1. 1414/06, P1. 670/07, P1. 2813/07, P1. 2814/07, P1. 3305/07 of 18 April 2008	Leskovac Court of First Instance 27/11/2009 2I. 700/10 of 15/06/2010	Už-3673/2013 of 8 July 2013 Constitutional appeal dismissed
8.	63123/10	Jovan STANKOVIĆ 04/02/1949 Leskovac	Municipal Court in Leskovac P1. 1414/06, P1. 670/07, P1. 2813/07, P1. 2814/07, P1. 3305/07 of 18 April 2008	Leskovac Court of First Instance 27/11/2009 2I. 698/10 of 15/06/2010	Už-3673/2013 of 8 July 2013 Constitutional appeal dismissed
9.	63137/10	Stana STANKOVIĆ 30/08/1951 Leskovac	Municipal Court in Leskovac P1. 1414/06, P1. 670/07, P1. 2813/07, P1. 2814/07, P1. 3305/07 of 18 April 2008	Leskovac Court of First Instance 20/11/2008 The domestic court failed to issue the enforcement order. In May 2011, the applicant requested enforcement in the insolvency proceedings.	Už-1795/2010 of 18 September 2013 500 Euros
10.	63145/10	Ljiljana STEFANOVIĆ 21/09/1952 Leskovac	Municipal Court in Leskovac P1. 1414/06, P1. 670/07, P1. 2813/07, P1. 2814/07, P1. 3305/07 of 18 April 2008	Leskovac Court of First Instance 27/11/2009 2I. 697/10 of 15/06/2010	Už-3673/2013 of 8 July 2013 Constitutional appeal dismissed
11.	63356/10	Sladanka STOJANOVIĆ 07/04/1954 Leskovac	Municipal Court in Leskovac P1. 1414/06, P1. 670/07, P1. 2813/07, P1. 2814/07, P1. 3305/07 of 18 April 2008	Leskovac Court of First Instance 27/11/2009 2I. 696/10 of 15/06/2010	Už-3673/2013 of 8 July 2013 Constitutional appeal dismissed
12.	63494/10	Stojanka STOJANOVIĆ 28/08/1960 Leskovac	Municipal Court in Leskovac P1. 1414/06, P1. 670/07, P1. 2813/07, P1. 2814/07, P1. 3305/07 of 18 April 2008	Leskovac Court of First Instance 27/11/2009 2I. 695/10 of 15/06/2010	Už-3673/2013 of 8 July 2013 Constitutional appeal dismissed

13.	63510/10	Bratislav STOJILJKOVIĆ 24/11/1951 Leskovac	Municipal Court in Leskovac P1. 1414/06, P1. 670/07, P1. 2813/07, P1. 2814/07, P1. 3305/07 of 18 April 2008	Leskovac Court of First Instance 30/11/2009 2I. 704/10 of 14/06/2010	Už-3673/2013 of 8 July 2013 Constitutional appeal dismissed
14.	63587/10	Marina STOJILKOVIĆ 03/10/1964 Leskovac	Municipal Court in Leskovac P1. 1414/06, P1. 670/07, P1. 2813/07, P1. 2814/07, P1. 3305/07 of 18 April 2008	Leskovac Court of First Instance 30/11/2009 2I. 711/10 of 14/06/2010	Už-3673/2013 of 8 July 2013 Constitutional appeal dismissed
15.	64856/10	Mirka PAVLOVIĆ-SIMONOVIĆ 25/11/1958 Leskovac	Municipal Court in Leskovac P1. 1414/06, P1. 670/07, P1. 2813/07, P1. 2814/07, P1. 3305/07 of 18 April 2008	Leskovac Court of First Instance 30/11/2009 2I. 712/10 of 14/06/2010	Už-3673/2013 of 8 July 2013 Constitutional appeal dismissed