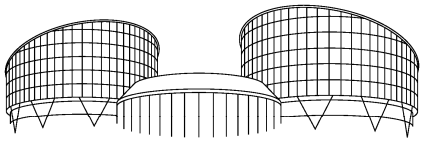

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF JOVANOVIĆ v. SERBIA

(Applications nos. 21497/13 and 21907/13)

JUDGMENT

STRASBOURG

19 July 2016

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

In the case of Jovanović v. Serbia,

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

Helena Jäderblom, *President,*
Dmitry Dedov,
Branko Lubarda, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 28 June 2016,

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

PROCEDURE

1. The case originated in two applications (nos. 21497/13 and 21907/13) against 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, Mr Radoslav Jovanović, on 13 March 2013.

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

3. On 16 September 2014 the applications were 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

A. First set of enforcement proceedings

5. The applicant was born in 1943 and lives in Niš.

6. On 28 April 2010 the applicant brought an enforcement action before the Smederevo Court of First Instance (*Osnovni sud u Smederevu*) against a socially/State-owned company "FŽV Želvoz a.d. Smederevo" (the debtor).

7. On 15 December 2010 that court ordered direct enforcement of the outstanding invoice (*izvršenje na osnovu verodostojne isprave*).

8. On 15 June 2011 the Privatisation Agency ordered the restructuring of the debtor as part of privatisation process.

9. On 25 October 2011 the enforcement proceedings were stayed because the debtor was undergoing restructuring.

10. On 3 November 2011 the applicant appealed the decision to stay the enforcement proceedings.

11. On 10 February 2012 the applicant's appeal was rejected by the enforcement court.

12. On 21 March 2013 the applicant urged the court to continue the enforcement proceedings.

13. On 7 June 2013 the court informed the applicant that the debtor was still undergoing restructuring and that therefore the enforcement proceedings could not be continued.

14. It would appear that the applicant did not appeal against this decision.

B. Second set of enforcement proceedings

15. On 11 January 2010 the applicant brought an enforcement action before the Niš Commercial Court (*Privredni sud u Nišu*) against a socially/State-owned company "Vagonka a.d. Niš" (the debtor).

16. On 29 January 2010 that court ordered direct enforcement of the outstanding invoice.

17. On 4 November 2009 the Privatisation Agency ordered the restructuring of the debtor as part of privatisation process.

18. On 4 February 2010 the enforcement proceedings were stayed because the debtor was undergoing restructuring.

19. The applicant did not appeal against this decision which became final on 17 February 2010.

20. On 20 March 2013 the applicant urged the court to continue the enforcement proceedings.

21. On 22 March 2013 the court informed the applicant that the debtor was still undergoing restructuring and that therefore the enforcement proceedings could not be continued.

II. RELEVANT DOMESTIC LAW

22. For the relevant domestic law, see *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, §§ 26-29 and §§ 31-44, 29 January 2013.

THE LAW

I. JOINDER OF THE APPLICATIONS

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

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

24. The applicant complained about the respondent State's failure to enforce final judgments rendered in his favour against the debtor. This complaint falls to be examined under 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. The six-month rule

25. The Government submitted that the enforcement proceedings had been terminated on 10 February 2012 and 17 February 2010 and that these decisions were final (see paragraphs 11 and 19 above).

26. They maintained the since the applicant had lodged his applications on 13 March 2013, his applications should be rejected as lodged out of time.

27. The Court has already considered similar arguments and rejected them (see, for example, *Petrović v. Serbia*, no. 75280/10, §§ 15-17, 18 February 2014). It sees no reason to depart from that approach in the present cases. Therefore, the Government's objection must be rejected.

2. Exhaustion of domestic remedies

28. The Government submitted that the applicant should have lodged an appeal against the decisions of the courts to stay the enforcement proceedings of 7 June 2013 and 17 February 2010 (see paragraphs 13 and 19 above).

29. The Court has already considered similar arguments and rejected them (see, for example, *Petrović v. Serbia*, no. 75280/10, § 19, 18 February 2014). It sees no reason to depart from that approach in the present cases. Therefore, the Government's objection must be rejected.

3. Conclusion

30. The Court considers that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further considers that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

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; *Crnišanin and Others,* cited above, §§ 123-124 and §§ 133-134; and *Adamović* cited above, § 41).

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.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. 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."

Damage, costs and expenses

34. In his initial applications the applicant requested the enforcement of the final court decisions in his favour and an unspecified amount in respect of non-pecuniary damage.

35. The Government contested that claim.

36. As regards the applicant's claim for just satisfaction mentioned in the application form, the Court notes that under Rule 60 of the Rules of Court an applicant has to submit a just satisfaction claim within the time-limit fixed for the submission of his or her observations on the merits. The applicant submitted his just satisfaction claim after the expiry of the time-limit fixed for that purpose by Rule 60 of the Rules of Court. Thus, the Court is not in a position to award him any amount in that respect.

37. The applicant did not claim any costs and expenses incurred. Accordingly, the Court considers that there is no call to award him any sum on that account.

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;

4. *Holds* that there is no call to award the applicant just satisfaction.

Done in English, and notified in writing on 19 July 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Helena Jäderblom
Deputy Registrar	President