



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

THIRD SECTION

CASE OF STOKOVIĆ AND OTHERS v. SERBIA

(Applications nos. 75879/14 and 17 others – see appended list)

JUDGMENT

STRASBOURG

8 March 2016

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

In the case of Stoković and Others 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 Marialena Tsirli, *Deputy Section Registrar*,

Having deliberated in private on 9 February 2016,

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

PROCEDURE

1. The case originated in eighteen applications (see the appendix to this judgment) against Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 10 June 2014. The applicants were all Serbian nationals, and their further personal details are set out in the said appendix.

2. The applicants were represented by Ms T. Petrović and Mr P. Janković, lawyers practising in Belgrade. The Serbian Government (“the Government”) were represented by their Agent, Ms Vanja Rodić.

3. On 9 January 2015 the applications were communicated to the Government.

4. The Government objected to the proposal that the application be examined 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. The applicants were employed by *HK Komgrap ad Komgrap-Makiš doo*, a company based in Belgrade (hereinafter “the debtor”). At the relevant time, the company was predominantly socially-owned.

6. Since the debtor had failed to fulfil its obligations towards its employees, the applicants brought a civil claim seeking payment of salary arrears and various social security contributions.

7. On 23 June 2003 the Belgrade Second Municipal Court (*Drugi opštinski sud u Beogradu*) ordered the debtor to pay to the applicants certain

sums in respect of salary arrears and various social security contributions. This judgment became final and enforceable on 25 July 2005.

8. On 26 September 2005 the applicants applied to the Belgrade Fourth Municipal Court (*Četvrti opštinski sud u Beogradu*) for enforcement of the judgment of 23 June 2003.

9. On 18 January 2006 the said court ordered the enforcement of the judgment and awarded the applicants the costs incurred in the enforcement proceedings.

B. Status of the debtor

10. The Government maintained that the debtor had been sold in 2007 to a private company.

11. The applicants disagreed and claimed that it was, in fact, a different company that had been privatised in 2007.

12. The Government submitted that bankruptcy proceedings had been instituted in respect of the debtor on 22 July 2010 and had been terminated on 10 June 2013.

13. The applicants disagreed and claimed that it was, in fact, a different company that went into bankruptcy in 2013.

14. In their additional observations the Government submitted that bankruptcy proceedings had been instituted in respect of the debtor on 24 July 2013 and had been terminated on 8 November 2013 when the decision to institute bankruptcy proceedings had been quashed.

C. Constitutional Court proceedings

15. On 27 October 2010 the applicants lodged a constitutional appeal, seeking redress for the non-enforcement of the judgment in question.

1. Regarding the applicants in cases nos. 75890/14 and 76373/14

16. On 27 November 2013 the Constitutional Court held that the applicants had suffered a breach of the “right to a trial within a reasonable time” with regard to the enforcement proceedings. The court, however, did not award them compensation for non-pecuniary damage, finding that only the period after the applicants had continued the enforcement proceedings following the death of their relatives (on 9 July 2013 and 15 May 2013, respectively) could be taken into account.

2. Regarding the remaining applicants

17. On 27 November 2013 the Constitutional Court held that the applicants had suffered a breach of the “right to a trial within a reasonable time” with regard to the enforcement proceedings. The court ordered the

acceleration of the proceedings and declared that the applicants were entitled to compensation for the non-pecuniary damage suffered in the amount of EUR 800 each, converted into the national currency at the rate applicable at the date of settlement.

18. The Constitutional Court held that since the enforcement proceedings in question had not yet been completed, the constitutional appeals were premature in so far as they concerned pecuniary damage, and dismissed the appeals in that regard.

II. RELEVANT DOMESTIC LAW AND PRACTICE

19. The relevant domestic law concerning the status of socially-owned companies, enforcement and insolvency proceedings is 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, is 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, §§ 29-32, 22 October 2013); and the judgment in *Ferizović v. Serbia* ((dec.), no. 65713/13, 26 November 2013).

THE LAW

I. JOINDER OF THE APPLICATIONS

20. 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

21. The applicants complained of the respondent State's failure to enforce a final court decision 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 to the Convention, 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

1. Compatibility ratione personae of applications nos. 75890/14 and 76373/14

22. The Court notes that the Government have not pleaded inadmissibility on account of lack of jurisdiction *ratione personae* regarding these two applications. Nevertheless, the Court will examine its jurisdiction of its own motion, as the issue calls for consideration.

23. The Court observes that the Constitutional Court failed to award the applicants in these two cases compensation for non-pecuniary damage, finding that only the period in which they had continued the enforcement proceedings following the death of their relatives could be taken into consideration. However, the Court has already held that when an applicant has declared his or her intention to continue proceedings as an heir, he or she can complain of the entire length of the proceedings in question (see *M.Ö. v. Turkey*, no. 26136/95, § 25, 19 May 2005).

24. In view of the above, the Court concludes that these applications are compatible *ratione personae* with the Convention.

2. Victim status of the remaining applicants

25. The Government submitted that by virtue of the decision of the Constitutional Court of 27 November 2013, the applicants had lost their victim status. In the Government’s opinion, the finding of a violation, ordering the courts to expedite the impugned enforcement proceedings and

the awarding of compensation for the non-pecuniary damage suffered constituted sufficient redress for the breach of the applicants' right to a hearing within a reasonable time.

26. The applicants contested those claims.

27. The Court has already held that a constitutional appeal is an effective remedy within the meaning of Article 35 § 1 of the Convention with respect to complaints involving the non-enforcement of judgments against socially/State-owned companies (see *Ferizović v. Serbia*, cited above). However, since in the present case the Constitutional Court failed to order the payment by the respondent State of the sums awarded in the final domestic judgment, the Court concludes that the applicants did not lose their status as victims within the meaning of Article 34 of the Convention. The Government's objection in this regard must therefore be rejected.

3. Non-exhaustion of domestic remedies

28. The Government submitted that bankruptcy proceedings had been instituted in respect of the debtor on 22 July 2010 and had been terminated on 10 June 2013.

29. The Government argued that, as the applicants had failed to register their claims in the above-mentioned bankruptcy proceedings, their applications to the Court were inadmissible on grounds of non-exhaustion of domestic remedies.

30. The Court has already considered similar arguments and rejected them (see, for example, *Lolić v. Serbia*, no. 44095/06, § 26, 22 October 2013). It sees no reason to depart from that approach in the present cases. Therefore, the Government's objection must be rejected.

31. The Government further submitted that the applications were inadmissible because the applicants had failed to pursue a remedy with regard to the protection of the right to trial within a reasonable time, which had been available as of 22 May 2014.

32. Even assuming that the said remedy could be considered effective in the specific circumstances of these cases, the Court notes that the applicants have attempted to obtain redress before the Constitutional Court and could not in addition have reasonably been expected to make use of yet another remedy which only came into existence after the Constitutional Court had decided on their constitutional appeals. Therefore, the Government's objection in this respect must also be rejected.

33. The Court notes that the applicants' complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

34. The Government argued that the debtor had been a private company since 2007 and that the respondent State could not be held liable for the non-enforcement of judicial decisions rendered against a private company.

35. The Court notes that irrespective of whether the debtor was privatised in 2007, at the time when the final domestic judgment and the enforcement order were delivered the debtor was operating as a State-controlled entity. The State is therefore directly liable for its debts (see *Jovičić and Others v. Serbia*, no. 37270/11, et al., § 36, 13 January 2015).

36. The Court also notes that the final court decision rendered in the applicants' favour remains unenforced to the present date.

37. The Court 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, §§ 115-16 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, §§ 123-24 and §§ 133-34, 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).

38. 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 to the Convention.

39. 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

40. 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. Damages, costs and expenses

41. The applicant in application no. 76392/14, Ms. Stana Mitrović, requested that the respondent State be ordered to pay, from its own funds, the sums awarded in the final court decision rendered in her favour, as well

as the costs of the enforcement proceedings. She also claimed EUR 1,741 in respect of non-pecuniary damage and the legal costs incurred before the Court.

42. The remaining applicants requested that the respondent State be ordered to pay, from its own funds, the sums awarded in the final court decision rendered in their favour, as well as the costs of the enforcement proceedings, plus various amounts in respect of the non-pecuniary damage suffered by each of them and for the legal costs incurred in the proceedings before the Court, ranging from 2,383 euros (EUR) to EUR 5,022.

43. The Government contested those claims.

44. Having regard to the violations found in the present case and to its own case-law (see *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 decision of 23 June 2003, as well as the established costs of the enforcement proceedings, after the deduction of any amounts which may have already been paid in this regard at the domestic level.

45. 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 Court considers it reasonable to award Ms. Stana Mitrović (application no. 76392/14) EUR 1,741, and EUR 2,000 to each of the remaining applicants, covering non-pecuniary damage, as well as costs and expenses, after the deduction of any amounts which may have already been paid on this basis (see *Stošić v. Serbia*, no. 64931/10, §§ 66 and 67, 1 October 2013).

B. Default interest

46. 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;
4. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

4. *Holds* that there is no need to examine separately the applicants' complaints under Article 13 of the Convention;
6. *Holds*
- (a) that the respondent State is to pay the applicants, within three months, the sums awarded in the final domestic judgment of 23 June 2003 rendered in their favour, as well as the established costs of the enforcement proceedings, after the deduction of any amounts which may have already been paid on this basis;
 - (b) that the respondent State is to pay the applicant Ms. Stana Mitrović (application no. 76392/14), within the same period, EUR 1,741 in respect of non-pecuniary damage and 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, after the deduction of any amounts which may have already been paid on this basis;
 - (c) that the respondent State is to pay to each of the remaining applicants, within the same period, EUR 2,000 in respect of non-pecuniary damage and 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, after the deduction of any amounts which may have already been paid on this basis;
 - (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;
7. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 8 March 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli
Deputy Registrar

Helena Jäderblom
President

APPENDIX

No.	Application no.	Applicant name and date of birth
1.	75879/14	Radovan STOKOVIĆ 21/04/1949
2.	75880/14	Vladeta VULETIĆ 09/07/1961
3.	75884/14	Milena VLAISAVLJEVIĆ 19/11/1948
4.	75886/14	Predrag ŽIVANOVIĆ 25/11/1953
5.	75890/14	Jasna MILIĆEVIĆ 23/06/1962
6.	75907/14	Dragan TRIŠIĆ 27/08/1952
7.	75935/14	Havka IMER 08/11/1959
8.	75943/14	Zorka ČALOV 08/07/1948
9.	75962/14	Dragan SELIMOVIĆ 30/11/1962
10.	76020/14	Goran PAVLOVIĆ 21/07/1973
11.	76023/14	Marija ŽIVKOVIĆ 04/02/1957
12.	76029/14	Dobrosav UROŠEVIĆ 20/07/1953
13.	76071/14	Radisav GLIŠIĆ 07/03/1947
14.	76360/14	Danica TODOROVIĆ 18/06/1949

15.	76392/14	Stana MITROVIĆ 14/09/1949
16.	76395/14	Dragan NENADOVIĆ 01/06/1953
17.	76454/14	Slobodan JANJIĆ 05/02/1967
18.	76455/14	Zoran STANKOVIĆ 28/08/1950