



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

THIRD SECTION

CASE OF NIKOLIĆ AND OTHERS v. SERBIA

(Application no. 9235/11)

JUDGMENT

STRASBOURG

24 January 2017

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

In the case of Nikolić 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 Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 5 January 2017,

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

PROCEDURE

1. The case originated in an application (no. 9235/11) against Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by fourteen applicants, on 15 December 2010. Their further personal details are set out in the appendix to this judgment.

2. The applicants were represented by Mr R. Savić, a lawyer practising in Bojnik. The Serbian Government (“the Government”) were initially represented by their former Agent, Ms V. Rodić, being more recently substituted by their current Agent, Ms. N. Plavšić.

3. On 11 July 2014 the application was 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. Civil proceedings brought by the applicants

5. In 1961 the applicants’ predecessors were deprived of certain land in favour of the State.

6. On 26 January 2006 the Niš Municipal Court ordered *PIK Niš* (the debtor), a company predominantly comprised of socially-owned capital, as the end user of that land, to pay the applicants specified amounts on account of the compensation for the land in question.

7. On 25 October 2006 and 1 February 2007 respectively, upon the applicants’ request to that effect, the Niš Municipal Court ordered the

enforcement of the said judgment and further ordered the debtor to pay the applicants the enforcement costs. This judgment became both, final and enforceable by 16 August 2006.

8. Only one applicant, Mr Tomislav Đorđević, never lodged an enforcement request.

B. Insolvency proceedings

9. On 3 June 2009 the Niš Commercial Court opened insolvency proceedings in respect of the debtor (St. 10/09).

10. Only one applicant, Ms Milica Nikolić Jajčević, duly submitted her claims therein.

11. These insolvency proceedings are still ongoing.

C. Proceedings before the Constitutional Court

12. On 2 March 2009, 31 August 2009 and 9 June 2010 respectively, all applicants lodged their constitutional appeals.

13. On 17 March 2011, 4 April 2012 and 23 May 2012, respectively, the Constitutional Court found a violation of the right to a hearing within a reasonable time in respect of all applicants, except Mr Tomislav Đorđević. However, the court did not award the applicants any damages, merely stating that the applicants “had not claimed non-pecuniary damages”.

14. The Constitutional Court dismissed the appeal in respect of one applicant, Mr Tomislav Đorđević, since he had failed to request enforcement of the judgment in question.

II. RELEVANT DOMESTIC LAW AND PRACTICE

15. 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. ALLEGED VIOLATIONS OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL No. 1

16. The applicants complained of the respondent State's failure to enforce a final court judgment rendered in their favour and of the lack of an effective remedy in that connection. The Court considers that this complaint falls to be examined under Articles 6 § 1 and 13 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.”

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. The parties' submissions

17. Concerning seven applicants, notably Mr Zoran Nikolić, Mr Velimir Nikolić, Ms Snežana Nikolić, Ms Marija Nikolić, Ms Jelena Nikolić, Ms Borka Milovanović and Mr Tomislav Đorđević, the Government argued that the application should be declared inadmissible due to their failure to exhaust effective domestic remedies. Specifically, these applicants had neither initiated enforcement proceedings, nor had registered their claims in the insolvency proceedings based on the judgment in question. Concerning the remaining seven applicants, the Government maintained that they had lost their victim status since the Constitutional Court had acknowledged a violation of their right to a hearing within a reasonable time. The Constitutional Court, however, could not have awarded them any

compensation for the non-pecuniary damage suffered because they had failed to lodge a request to this effect.

18. The applicants made belated comments, which, on that account, were not admitted to the file.

2. *The Court's assessment*

(a) **As regards the applicant Mr Tomislav Đorđević**

19. The Court observes that the rule of exhaustion of domestic remedies contained in Article 35 § 1 of the Convention requires that normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged (see, among other authorities, *Akdivar and Others v. Turkey*, 16 September 1996, § 65, *Reports of Judgments and Decisions* 1996-IV).

20. The Court has consistently held that when an applicant obtains a final judgment against a socially-owned company, he or she is only required to file a request for the enforcement of that judgment with the competent court or, in case of liquidation or insolvency proceedings against the debtor, to report his or her claims to the administration of the debtor (see *Lolić v. Serbia*, no. 44095/06, § 26, 22 October 2013, and *Nikolić-Krstić v. Serbia*, no. 54195/07, § 29, 14 October 2014).

21. There is no reason to depart from that jurisprudence in the present case.

22. As Mr Tomislav Đorđević failed to lodge a request for the enforcement of the above mentioned judgement to the competent court or to report his claims in the insolvency proceedings against the debtor, his complaints must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

(b) **As regards all other applicants**

23. Notwithstanding the Government's submissions to the contrary, the Court notes from the material in its possession that seven applicants, notably Mr Zoran Nikolić, Mr Velimir Nikolić, Ms Snežana Nikolić, Ms Marija Nikolić, Ms Jelena Nikolić and Ms Borka Milovanović, did in fact lodge their enforcement requests and that the Niš Municipal Court ordered the enforcement of the said judgment on 25 October 2006 (see paragraph 7 above). Consequently, the Government's objection in this respect must be rejected.

24. Concerning the victim status of the remaining seven applicants, specifically Mr Dobrivoje Nikolić, Mr Sava Nikolić, Ms Milica Jajčević Nikolić, Mr Vujadin Nikolić, Ms Jovanka Nikolić, Mr Đorđe Nikolić and Mr Nikola Nikolić, the Court recalls 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 application on 15 December 2010 were not obliged to make use of the constitutional avenue. These applicants must still be considered as victims within the meaning of Article 34 of the Convention.

25. 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

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

27. 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, and *Crnišaniin and Others v. Serbia*, nos. 35835/05, 43548/05, 43569/05 and 36986/06, §§ 123-124 and §§ 133-134, 13 January 2009).

28. 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 have, accordingly, been violations of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1.

29. Having reached this conclusion, the Court does not find it necessary to examine separately 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).

II. APPLICATION OF ARTICLES 41 AND 46 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.”

31. The relevant part of Article 46 of the Convention reads as follows:

“The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution. ...”

32. Thirteen applicants, notably Mr Zoran Nikolić, Mr Velimir Nikolić, Ms Snežana Nikolić, Ms Marija Nikolić, Ms Jelena Nikolić, Ms Borka Milovanović, Mr Dobrivoje Nikolić, Mr Sava Nikolić, Ms Milica Jajčević Nikolić, Mr Vujadin Nikolić, Ms Jovanka Nikolić, Mr Đorđe Nikolić and Mr Nikola Nikolić claimed just satisfaction in their application introduced on 15 December 2010, but have failed to comply with Rule 60 of the Rules of Court and subsequently submit those claims in a timely manner. Accordingly, the Court considers that there is no call to award them any sum on that account (see *Marčić and Others v. Serbia*, no. 17556/05, §§ 63, 30 October 2007; *Pralica v. Bosnia and Herzegovina*, no. 38945/05, § 18, 27 January 2009; and *Apostol v. Georgia*, no. 40765/02, § 70, ECHR 2006).

33. It must, however, be noted that a judgment in which the Court finds a violation of the Convention or of its Protocols imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in its domestic legal order to put an end to the violation found (see *Marčić and Others*, cited above, § 64 and *Pralica*, cited above, § 19).

34. Having regard to its finding in the instant case, the Court considers that the respondent State must secure, by appropriate means, the enforcement of the Niš Municipal Court's final judgment of 26 January 2006 by way of paying the applicants the sums awarded in that judgment, less any amounts which may have already been paid on this basis (*Pralica*, cited above, § 20).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints of Mr Tomislav Đorđević inadmissible and the remainder of the application admissible;
2. *Holds* that there have been violations of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1;
3. *Holds* that it is not necessary to examine separately the complaint under Article 13 of the Convention;
4. *Holds*
 - (a) that the respondent State is to secure the enforcement of the judgment of 26 January 2006 by way of paying the applicants, from its own funds and within three months, the sums awarded in that judgment, less any amounts which may have already been paid on this basis;

(b) 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.

Done in English, and notified in writing on 24 January 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Pere Pastor Vilanova
President

APPENDIX

No.	Applicant name	Date of birth and nationality
1.	Zoran NIKOLIĆ	20/12/1947 Serbian
2.	Velimir NIKOLIĆ	26/03/1950 Serbian
3.	Snežana NIKOLIĆ	23/05/1951 Serbian
4.	Marija NIKOLIĆ	20/03/1975 Serbian
5.	Jelena NIKOLIĆ	16/09/1976 Serbian
6.	Borka MILOVANOVIĆ	26/07/1932 Serbian
7.	Tomislav ĐORĐEVIĆ	19/01/1973 Serbian
8.	Dobrivoje NIKOLIĆ	21/10/1939 Serbian and Slovenian
9.	Sava NIKOLIĆ	10/01/1949 Serbian and Slovenian
10.	Milica NIKOLIĆ JAJČEVIĆ	18/10/1953 Serbian and German
11.	Vujadin NIKOLIĆ	30/12/1947 Serbian
12.	Jovanka NIKOLIĆ	02/04/1933 Serbian
13.	Đorđe NIKOLIĆ	12/03/1967 Serbian
14.	Nikola NIKOLIĆ	13/02/1950 Serbian