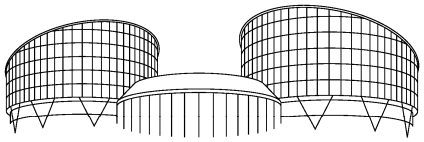

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF VUKOSAVLJEVIĆ v. SERBIA

(Application no. 23496/13)

JUDGMENT

STRASBOURG

27 September 2016

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

In the case of Vukosavljević 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 6 September 2016,

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

PROCEDURE

1. The case originated in an application (no. 23496/13) 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 Mile Vukosavljević ("the applicant"), on 30 March 2013.

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

3. On 23 October 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

5. The applicant was born in 1962 and lives in Velika Reka.

6. He was employed by *Holding Kompanija "Komgrap" – DD "Komgrap gradnja"*, a socially-owned company based in Belgrade (hereinafter "the debtor").

A. Civil proceedings brought by the applicant

7. On 3 February 2006, the First Belgrade Municipal Court ordered the debtor to pay the applicant specified amounts on account of salary arrears and social insurance contributions, plus the costs of the civil proceedings. This judgment became final on 31 July 2006.

8. On 23 October 2006, upon the applicant's request to that effect, the Fourth Belgrade Municipal Court accepted the enforcement of the said judgment and further ordered the debtor to pay the applicant the enforcement costs.

B. Insolvency proceedings

9. On 24 December 2010 the Belgrade Commercial Court opened insolvency proceedings in respect of the debtor (St. 4372/2010).

10. On 22 June 2011 the applicant submitted his respective claims.

11. On 31 October 2010 the Belgrade Commercial Court dismissed these claims as out of time. The Commercial Appeals Court upheld that decision on 26 June 2012.

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

C. Other relevant facts

13. On 23 April 2010 the applicant lodged a constitutional appeal.

14. The Constitutional Court dismissed his appeal on 14 July 2011.

15. On 13 March 2012 the applicant lodged a new constitutional appeal.

16. On 26 January 2012 the Constitutional Court dismissed again his appeal. On 28 December 2012 that decision was delivered to the applicant.

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

18. The applicant complained of the respondent State's failure to enforce final court judgment rendered in his favour and of the lack of an effective remedy in that connection. He relied on 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

19. The Government submitted that the application should be declared inadmissible due to the applicant's failure to exhaust effective domestic remedies. Specifically, they argued that the applicant should have submitted his claims within the insolvency proceedings in a timely manner.

20. The applicant reasserted his complaint.

21. 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).

22. The Court finds no reasons to depart from this rule and considers that the applicant had indeed had no obligation to submit his claims also in the course of the insolvency proceedings, since he had already lodged a request for the enforcement of the said judgment with the competent court. The Court, therefore, rejects the Government's objection in this regard.

23. Since the applicant's 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

24. The Court notes that the final court judgment rendered in the applicant's favour remains unenforced to date.

25. The Court observes that it has frequently found violations of Article 6 § 1 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 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).

26. 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.

27. 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).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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

29. The applicant did not claim a specific amount in respect of pecuniary damages. Instead, he referred to what he had requested in his original application which was that the judgment in question should be enforced. In respect of non-pecuniary damages, the applicant requested that the State be ordered to pay him 2,000 euros (EUR).

30. The Government contested these claims.

31. As regards the pecuniary damage, it is observed 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 *Apostol v. Georgia*, no. 40765/02, §§ 71-73, ECHR 2006-XIV, *Marčić and Others*, no. 17556/05, §§ 64-65, 30 October 2007; and *Pralica v. Bosnia and Herzegovina*, no. 38945/05, § 19, 27 January 2009).

32. Having regard to its findings in the instant case, the Court considers that the respondent State must secure the enforcement of the final domestic judgment under consideration in this case by way of paying the applicant, from its own funds, the sums awarded in the said final judgment, less any amounts which may have already been paid on this basis (see *Radovanović v. Serbia*, no. 9302/11, §§ 37-38).

33. As regards non-pecuniary damage, the Court considers that the applicant sustained some non-pecuniary loss arising from the breaches of the Convention found in this case. Having regard to its case-law (*Stošić v Serbia*, no. 64931/10, §§ 66-68, 1 October 2013), the Court awards him EUR 2,000. This sum is to cover non-pecuniary damage, costs and expenses.

B. Default interest

34. 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 have been violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention;

3. *Holds* that there is no need to examine separately the complaint under Article 13 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, from its own funds and within three months, the sums awarded in the court judgment rendered in his favour, less any amounts which may have already been paid in this regard;
   (b) that the respondent State is to pay the applicant, 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;

Done in English, and notified in writing on 27 September 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Pere Pastor Vilanova
President