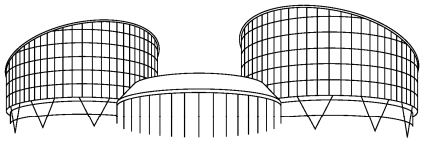

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF DRAGI PETROVIĆ v. SERBIA

(Application no. 80152/12)

JUDGMENT

STRASBOURG

20 October 2015

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Dragi Petrović v. Serbia,

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

Valeriu Griţco, *President,*
Branko Lubarda,
Mārtiņš Mits, *judges,*
and Marialena Tsirli, *Deputy Section Registrar,*

Having deliberated in private on 29 September 2015,

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

PROCEDURE

1. The case originated in an application (no. 80152/12) 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 Dragi Petrović ("the applicant"), on 10 December 2012.

2. The applicant was represented by Mr N. Antić, a lawyer practising in Vladičin Han. The Serbian Government ("the Government") were represented by their Agent, Ms V. Rodić.

3. On 28 August 2013 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 1944 and lives in Vladičin Han.

6. The applicant was employed by "*DPPK Delišes*", a socially-owned company based in Vladičin Han ("the debtor").

7. On 7 October 2003, 28 January 2004 and 21 September 2004 the Vladičin Han Municipal Court ordered the debtor to pay the applicant specified sums in respect of salary arrears, social security contributions and procedural costs.

8. These judgements became final on 6 November 2003, 15 March 2004 and 26 October 2004, respectively.

9. On 12 August 2011, 2 September 2011 and 17 August 2011, respectively, the Vladičin Han Municipal Court issued enforcement orders with regard to the said judgements.

10. On 6 March 2013 the Vranje Court of First Instance, acting now as an enforcement court instead of the Vladičin Han Municipal Court, found, with respect to the judgments of 28 January 2004 and 21 September 2004, that the debtor had no assets against which the enforcement could be carried out and requested the applicant to propose a new inventory of the debtor's assets within 45 days. The said court also warned the applicant that should he fail to do so, or if during the new inventory no assets were to be found, the court could decide to stay the enforcement proceedings.

11. The applicant did not propose a new inventory of debtor's assets and by decision of the Vranje Court of First Instance of 10 May 2013 the enforcement proceedings were stayed in respect of the judgments of 28 January 2004 and 21 September 2004.

12. The enforcement proceedings instituted on the basis of the judgment rendered by the Vladičin Han Municipal Court on 7 October 2003 continued and are still pending.

II. RELEVANT DOMESTIC LAW

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

14. 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. Exhaustion of domestic remedies

15. The Government submitted that the applicant had failed to properly exhaust the available domestic remedies in the enforcement of judgements of 28 January 2004 and 21 September 2004 as he had not proposed a new inventory of debtor's assets.

16. The applicant maintained that he had complied with the exhaustion requirement.

17. The Court notes that the applicant had judgments given in his favour which were final and enforceable and the execution of which was the responsibility of the authorities. In principle, when an applicant, such as the present one, obtains a final judgment against a State-controlled entity, he or she is only required to file a request for the enforcement of that judgment to 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). Given that the applicant in the present case did so, the Court considers that the applicant has properly exhausted regular domestic remedies that were available to him and that he did not need to exhaust any further remedies. Accordingly, the Government's objection must be rejected.

2. Abuse of the right to petition

18. The Government further argued that the applicant had abused the right to petition by failing to provide the Court with all the facts relevant to his complaint. In particular, the applicant omitted to inform the Court that he could have proposed a new inventory of the debtor's assets.

19. The applicant did not dispute that fact, but considered it to be irrelevant.

20. The Court reiterates that an application may be rejected as an abuse of the right of individual application within the meaning of Article 35 § 3 (a) of the Convention if, among other reasons, it was knowingly based on false information (see *Gross v. Switzerland* [GC], no. 67810/10, § 28, ECHR 2014; and *S.A.S. v. France* [GC], no. 43835/11, § 67, ECHR 2014) or if significant information and documents were deliberately omitted, either where they were known from the outset or where new significant developments occurred during the proceedings (see *Predescu v. Romania*, no. 21447/03, §§ 25-27, 2 December 2008; and *Tatalović and Dekić v. Serbia* (dec.), no. 15433/07, 29 May 2012). Incomplete and therefore misleading information may amount to an abuse of the right of application, especially if the information in question concerns the very core of the case and no sufficient explanation is given for the failure to disclose that information (see *Predescu*, cited above, §§ 25-26; and *Komatinović v. Serbia* (dec.), no. 75381/10, 29 January 2013).

21. Turning to the present case, the Court notes that the applicant was not required to request a new inventory of assets in the enforcement proceedings (see paragraph 17 above). Consequently, his failure to do so was not significant information that concerned the very core of his case. In such circumstances, the Court finds no grounds to conclude that the applicant has abused his right of individual petition.

3. Conclusion

22. 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

23. 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).

24. 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

25. 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

26. The applicant requested that the State be ordered to pay, from its own funds: (i) the sums awarded by the final judgments rendered in his favour; and (ii) 2,000 euros (EUR) in respect of non-pecuniary damage and the costs incurred before the Court.

27. The Government contested these claims.

28. Having regard to the violations found in the present case and its own case-law (see *R. Kačapor and Others,* cited above, §§ 123-126, and *Crnišanin and Others*, cited above, § 139), the Court considers that the applicant's claims for pecuniary damage concerning the payment of the outstanding judgment debt must be accepted. The Government shall therefore pay the applicant the sums awarded in the final domestic judgments adopted on 7 October 2003, 28 January 2004 and 21 September 2004, less any amounts which may have already been paid in respect of the said judgments.

29. 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 EUR 2,000 to the applicant. This sum is to cover non-pecuniary damage, costs and expenses.

B. Default interest

30. 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 has been a violation of Article 6 of the Convention and of Article 1 of Protocol No. 1;

3. *Holds*

(a) that the respondent State is to pay the applicant, from its own funds and within three months, the sums awarded in the final domestic judgments of 7 October 2003, 28 January 2004 and 21 September 2004, less any amounts which may have already been paid on this basis;

(b) that the respondent State is to pay the applicant, within the same period, EUR 2,000 (two thousand euros) in respect of non-pecuniary damage, costs and expenses, plus any tax that may be chargeable to the applicant, 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 amount 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 20 October 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli	Valeriu Griţco
Deputy Registrar	President