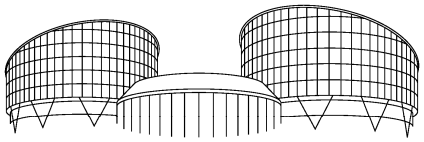

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF MILENKOVIĆ AND VELJKOVIĆ v. SERBIA

(Applications nos. 7786/13 and 47972/13)

JUDGMENT

STRASBOURG

20 October 2015

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

In the cases of Milenković and Veljković 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 two applications (nos. 7786/13 and 47972/13) against Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Serbian nationals, Ms Dobrica Milenković ("the first applicant") and Mr Miroslav Veljković ("the second applicant"), on 18 December 2012 and 5 July 2013 respectively.

2. The applicants were 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 11 July 2014 the applications were communicated to the Government.

4. The Government objected to the examination of the application by a Committee. After having considered this objection, the Court rejects it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1957 and 1966, respectively, and live in Vladičin Han.

6. They were employed by *DP "PK Delišes"*, a socially-owned company based in Vladičin Han (hereinafter "the debtor").

A. Civil proceedings brought by the first applicant (Ms Dobrica Milenković)

7. On 20 October 2003, the Vladičin Han Municipal Court ordered the debtor to pay the first applicant specified amounts on account of salary

arrears and social insurance contributions. This judgment became both final and enforceable by 31 October 2003.

8. On 31 December 2003 upon the first applicant's request to that effect, the Vladičin Han Municipal Court ordered the enforcement of the said judgment and further ordered the debtor to pay the first applicant the enforcement costs.

B. Civil proceedings brought by the second applicant (Mr Miroslav Veljković)

9. On 18 February 2004, the Vladičin Han Municipal Court ordered the debtor to pay the second applicant specified amounts on account of salary arrears and social insurance contributions. This judgment became both, final and enforceable by 11 April 2004.

10. On 4 May 2004, upon the second applicant's request to that effect, the Vladičin Han Municipal Court ordered the enforcement of the said judgment and further ordered the debtor to pay the second applicant the enforcement costs.

C. Other relevant facts

11. On 18 February 2004 the Privatisation Agency ordered the restructuring of the debtor.

12. On 30 January 2014 the Leskovac Commercial Court opened insolvency proceedings in respect of the debtor.

13. The applicants duly reported their respective claims based on the above-mentioned judgments to the insolvency administration.

14. The insolvency proceedings are still ongoing.

II. RELEVANT DOMESTIC LAW AND PRACTICE

15. The relevant domestic law concerning the status of socially-owned companies, as well as the 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 redress 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, §§ 29-31, 22 October 2013, and the decision in *Ferizović v. Serbia* (dec.), no. 65713/13, §§ 12-17, 26 November 2013.

THE LAW

I. JOINDER OF THE APPLICATIONS

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

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

17. The applicants complained of the respondent State's failure to enforce final court judgments rendered in their favour and of the lack of an effective remedy in that connection. They 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

18. The Government submitted that the applications should be declared inadmissible due to the applicants' failure to exhaust effective remedies. They relied on Court's case law, namely on *Marinković*, cited above, and pointed out that since the debtor was undergoing insolvency proceedings the

applicants should have lodged constitutional appeals before bringing their applications to the Court.

19. The applicants disagreed.

20. The Court has ruled that as regards the non-enforcement of final judgments rendered against socially-owned companies undergoing insolvency proceedings and/or those which have ceased to exist, a constitutional appeal should, in principle, be considered as an effective remedy in respect of all applications lodged from 22 June 2012 onwards (see *Marinković*, cited above, § 59). Further, as regards the non-enforcement of final judgments rendered against socially-owned companies undergoing restructuring a constitutional appeal has been considered as an effective remedy in respect of all applications introduced from 4 October 2013 onwards (see *Ferizović,* cited above, §§ 24-25).

21. Turning to the present case, the Court notes that the applicants had lodged their applications with the Court on 18 December 2012 and 5 July 2013, that is before the insolvency proceedings against the debtor were opened and while the debtor was undergoing restructuring, but prior to 4 October 2013.

22. The issue of whether domestic remedies have been exhausted is normally determined by reference to the date when the application was lodged (see *Baumann v. France*, no. 33592/96, § 47, ECHR 2001-V and *Vinčić and Others v. Serbia*, nos. 44698/06, 44700/06, 44722/06, 44725/06 and others, § 51, 1 December 2009). The Court finds no reasons to depart from this rule and considers that the applicants had indeed had no obligation to use constitutional redress before turning to the Court. The Court, therefore, rejects the Government's objection in this regard.

23. 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

24. The Court notes that the final court judgments rendered in the applicants' favour remain unenforced to the present 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 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).

III. 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 applicants each requested that the State be ordered to pay, from its own funds: (i) the sums awarded by the final judgments rendered in their favour, as well as the costs of the enforcement proceedings; and (ii) 2,000 euros (EUR) in respect of non-pecuniary damage. They did not ask for reimbursement of the costs incurred before the Court.

30. The Government argued that in respect of pecuniary damage, an applicant was entitled only to the amounts established in the course of the insolvency proceedings. They did not contest the claims concerning the non-pecuniary damage.

31. Having regard to the violations found in the present case and its own case-law (*R. Kačapor and Others,* cited above, §§ 123-26, and *Crnišanin and Others*, cited above, § 139), the Court finds that the Government should pay the applicants the sums awarded in the court judgments rendered in their favour, less any amounts which may have already been paid on this basis.

32. 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. Having regard to its case-law (*Stošić v Serbia*, no. 64931/10, §§ 66-68, 1 October 2013), the Court awards EUR 2,000 to each applicant. This sum is to cover non-pecuniary damage, costs and expenses.

B. Default interest

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

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

5. *Holds*
   (a) that the respondent State is to pay the applicants, from its own funds and within three months, the sums awarded in the judgments rendered in their favour respectively, less any amounts which may have already been paid on this basis;
   (b) that the respondent State is to pay the applicants, 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 20 October 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli	Valeriu Griţco
Deputy Registrar	President