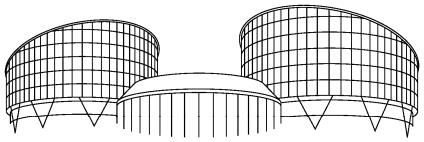

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF RAKIĆ AND SARVAN v. SERBIA

(Applications nos. 47939/11 and 56192/11)

JUDGMENT

STRASBOURG

20 October 2015

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

In the case of Rakić and Sarvan 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. 47939/11 and 56192/11) against Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Serbian nationals, Mr Branko Rakić ("the first applicant") and Mr Dragan Sarvan ("the second applicant"), on 10 May 2011 and 27 April 2011 respectively.

2. The applicants were represented by Ms R. Garibović, a lawyer practising in Novi Pazar. 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 applications 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 1976 and 1948 respectively and live in Požega.

6. They were employed by *Raketa-Putnički Saobraćaj AD*, a socially-owned company based in Užice (hereinafter "the debtor").

A. As regards the first applicant (Mr Branko Rakić)

1. The first set of proceedings

7. On 26 June 2006 the Požega Municipal Court ordered the debtor to pay the first applicant specified amounts on account of salary arrears and social insurance contributions, plus the costs of the civil proceedings. This judgment became final on 7 July 2006.

8. On 15 August 2006 upon the first applicant's request to that effect, the Požega Municipal Court ordered the enforcement of the said judgment and further ordered the debtor to pay the first applicant the enforcement costs.

2. The second set of proceedings

9. On 22 September 2006 the Požega Municipal Court ordered the debtor to pay the first applicant specified amounts on account of salary arrears and social insurance contributions, plus the costs of the civil proceedings. This judgment became final on 8 October 2006.

10. On 19 October 2006 upon the first applicant's request to that effect, the Požega Municipal Court ordered the enforcement of the said judgment and further ordered the debtor to pay the first applicant the enforcement costs.

3. The third set of proceedings

11. On 22 January 2008 the Požega Municipal Court ordered the debtor to pay the first applicant specified amounts on account of salary arrears and social insurance contributions, plus the costs of the civil proceedings. This judgment became final by 2009.

12. On 24 September 2009 upon the first applicant's request to that effect, the Požega Municipal Court ordered the enforcement of the said judgment and further ordered the debtor to pay the first applicant the enforcement costs.

B. As regards the second applicant (Mr Dragan Sarvan)

1. The first set of proceedings

13. On 19 June 2006 the Požega Municipal Court ordered the debtor to pay the second applicant specified amounts on account of salary arrears and social insurance contributions, plus the costs of the civil proceedings. This judgment became final on 5 July 2006.

14. On 21 August 2006 upon the second applicant's request to that effect, the Požega Municipal Cour ordered the enforcement of the said judgment and further ordered the debtor to pay the second applicant the enforcement costs.

2. The second set of proceedings

15. On 21 September 2006 the Požega Municipal Court ordered the debtor to pay the second applicant specified amounts on account of salary arrears and social insurance contributions, plus the costs of the civil proceedings. This judgment became final on 6 October 2006.

16. On 17 October 2006 upon the second applicant's request to that effect, the Požega 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 as regards both applicants

17. The debtor, which operated as a socially-owned company, was privatised on 27 December 2002.

18. On 17 July 2007 the privatisation was annulled because the buyer in question had failed to fulfil his contractual obligations.

19. Following the annulment of the debtor's privatisation the State owned 58.18% of shares in the company.

20. On 11 December 2008 the State sold its shares to a private company.

21. On 12 July 2010 the Užice Commercial Court opened insolvency proceedings in respect of the debtor. As a result, all of the ongoing enforcement proceedings against the debtor were stayed.

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

23. On 8 June 2011 the Commercial Court recognized a part of the applicants' claims.

24. In March 2014 and July 2014 some of the judgments at issue had been partially enforced in the insolvency proceedings.

25. The insolvency proceedings are still ongoing.

II. RELEVANT DOMESTIC LAW AND PRACTICE

26. 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 and the privatisation of socially-owned companies, are 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, the judgment in *Jovičić and Others v. Serbia*,

nos. 37270/11 et al., §§ 19-24, 13 January 2015, and the decision in *Ferizović v. Serbia* (dec.), no. 65713/13, §§ 12-17, 26 November 2013.

THE LAW

I. JOINDER OF THE APPLICATIONS

27. 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

28. The applicants complained of the respondent State's failure to enforce final court decisions 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

29. The Government argued that the applications were incompatible *ratione personae* with the provisions of the Convention since the State could not be held directly responsible for the debts of the debtor company, which was privately owned. Only one court decision under consideration in this case – the court decision of 22 January 2008 in favour of the first applicant – had been rendered during the period when the debtor was under State control.

30. The applicants disagreed.

31. The Court recalls that it has already considered similar arguments and rejected them (see, for example, *Jovičić and Others*, cited above, §§ 36-45). It finds no reason to depart from this approach in the present case. The Court, therefore, decides to reject the Government's objection in this regard.

32. Since the applications 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

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

34. 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).

35. 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.

36. 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

37. 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

38. 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; (ii) 2,000 euros (EUR) in respect of non-pecuniary damage; and (iii) 45,000 Serbian Dinars (approximately EUR 450) for costs and expenses incurred before the Court.

39. The Government considered EUR 2,000 in respect of non-pecuniary damage, also including the costs of proceedings before the Court, to be sufficient compensation for each applicant.

40. 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.

41. As regards non-pecuniary damage, the Court considers that the applicants have suffered some non-pecuniary damage as a result of the violations 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

42. 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 decisions 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;

6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

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