



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

THIRD SECTION

**CASE OF ŠERIFOVIĆ AND OTHERS v. SERBIA**

*(Applications nos. 5928/13, 32514/13 and 68065/13)*

JUDGMENT

STRASBOURG

20 October 2015

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



**In the case of Šerifović and Others v. Serbia,**

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

Valeriu Grițco, *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 three applications (nos. 5928/13, 32514/13 and 68065/13) against Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by three Serbian nationals, Ms Fifa Šerifović (“the first applicant”), Ms Muradija Seferović (“the second applicant”) and Ms Derviša Zukorlić (“the third applicant”), on 8 January 2013, 5 April 2013 and 5 April 2013 respectively.

2. The applicants were represented by Mr N. Ejupović and Ms Š. Dolovac, lawyers 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 1961, 1960 and 1949, respectively, and live in Novi Pazar.

6. They were employed by DP “*Raška Holding Kompanija*” AD, a socially-owned company based in Novi Pazar (hereinafter “the debtor”).

#### **A. Civil proceedings brought by the first applicant (Ms Fifa Šerifović)**

7. On 27 March 2003, 11 December 2003 and 3 October 2005 respectively, the Novi Pazar 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. These judgments became final on 22 April 2003, 16 January 2004 and 1 January 2006 respectively.

8. On 23 May 2003, 25 February 2004 and 20 April 2006 respectively, upon the first applicant's request to that effect, the Novi Pazar Municipal Court ordered the enforcement of the said judgments and further ordered the debtor to pay the first applicant the enforcement costs.

**B. Civil proceedings brought by the second applicant (Ms Muradija Seferović)**

9. On 5 November 2007, the Tutin 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 20 November 2007.

10. On 19 October 2012, upon the second applicant's request to that effect, the Tutin Municipal Court ordered the enforcement of the said judgment and further ordered the debtor to pay the second applicant the enforcement costs.

**C. Civil proceedings brought by the third applicant (Ms Derviša Zukorlić)**

11. On 12 May 2008, the Novi Pazar Municipal Court ordered the debtor to pay the third applicant specified amounts on account of salary arrears, plus the costs of the civil proceedings. This judgment became final on 22 July 2008.

12. On 13 June 2011, upon the third applicant's request to that effect, the Novi Pazar Municipal Court ordered the enforcement of the said judgment and further ordered the debtor to pay the third applicant the enforcement costs.

**D. Other relevant facts**

13. On 5 January 2004 the Privatisation Agency ordered the restructuring of the debtor.

14. On 11 September 2013 the Kraljevo Commercial Court opened insolvency proceedings in respect of the debtor.

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

16. The insolvency proceedings are still ongoing.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

17. 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 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, §§ 29-31, 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

18. 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

19. 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

20. The Government submitted that the applications should be declared inadmissible due to the applicant’s failure to exhaust effective domestic 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.

21. The applicants disagreed.

22. The Court has already 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).

23. Turning to the present case, the Court notes that the applicants had lodged their applications with the Court between 8 January 2013 and 5 April 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.

24. 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.

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 final court judgments rendered in the applicants' favour remain unenforced to the present date.

27. 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; *Crnišaniin 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).

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 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

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.”

### A. Damage, costs and expenses

31. The first applicant did not claim a specific amount in respect of just satisfaction but left it to the Court's discretion. The second and the third applicant each requested that the State be ordered to pay, from its own funds: (i) the judgment debt, plus the costs of the enforcement proceedings; (ii) 2,000 euros (EUR) in respect of non-pecuniary damage; and (iii) 90,000 Serbian Dinars (approximately EUR 900) for the costs and expenses incurred before the Court.

32. The Government contested these claims.

33. As regards the first applicant, 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*, cited above, §§ 64-65; and *Pralica v. Bosnia and Herzegovina*, no. 38945/05, § 19, 27 January 2009).

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

35. The Court further takes the view that the applicants have suffered some non-pecuniary damage as a result of the violations found which cannot be made good by the Court's finding of a violation alone (see *Radovanović*, cited above, § 39). 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**

36. 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 court judgments

rendered in their favour respectively, less any amounts which may have already been paid in this regard;

(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  
Deputy Registrar

Valeriu Grițco  
President