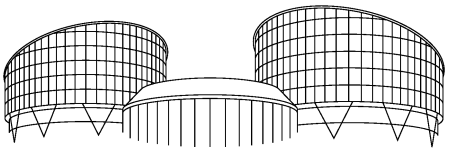

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF JANKOVIĆ v. SERBIA

(Application no. 21518/09)

JUDGMENT

STRASBOURG

18 November 2014

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

In the case of Janković v. Serbia,

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

Ján Šikuta, *President,*
Dragoljub Popović,
Iulia Antoanella Motoc, *judges,*
and Marialena Tsirli, *Deputy Section Registrar,*

Having deliberated in private on 21 October 2014,

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

PROCEDURE

1. The case originated in an application (no. 21518/09) against the Republic of 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 Novica Janković ("the applicant"), on 18 March 2009.

2. The Serbian Government ("the Government") were represented by their Agent, Mr S. Carić.

3. On 20 December 2012 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 applicantwas born in 1947 and lives in Kragujevac.

6. The applicant was employed by "*Društveno preduzeće Industrija mesa 'Crvena zvezda'*" Kragujevac (hereinafter "the debtor"), which was, at the relevant time, a company predominantly comprised of socially-owned capital.

7. On 15 October 2002 the Commercial Court (*Trgovinski sud*) in Kragujevac opened insolvency proceedings in respect of the debtor (St. 1079/02).

8. The applicant duly submitted his claims for the payment of due salary arrears and related employment benefits.

9. On 25 August 2003 and 11 October 2004 the Commercial Court accepted some of the applicant's claims. Those decisions became final on an unspecified date.

10. On 20 February 2009 the Commercial Court terminated the insolvency proceedings. That decision was published in the Official Gazette of the Republic of Serbia on 27 March 2009 (no. 21/09) and became final on 16 July 2009.

11. On 26 February 2010 the debtor ceased to exist.

12. The court decisions rendered in the applicants' favour on 25 August 2003 and 11 October 2004 remain only partly enforced to the present day.

II. RELEVANT DOMESTIC LAW

13. The domestic law concerning the status of socially/State-owned companies and insolvency proceedings is outlined in the cases of *Marčić and Others v. Serbia*, no. 17556/05, § 29, 30 October 2007; *R. Kačapor and Others v. Serbia*, nos. 2269/06 et al.,§§ 68-76, 15 January 2008; *Adamović v. Serbia*, no. 41703/06, §§ 17‑21, 2 October 2012; and *Sokolov and Others v. Serbia* (dec.), nos. 30859/10, § 20, 14 January 2014.

THE LAW

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

14. The applicant complained about the non-enforcement of the final court decisions rendered in his favour. The relevant provisions of Articles 6 § 1 and 13 of the Convention, as well as Article 1 of Protocol No. 1 read as follows:

Article 6 § 1

"In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing within a reasonable time by [a] ... tribunal ..."

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

15. The Government argued that the State could not be held responsible for debts of insolvent socially-owned companies.

16. The Court has already stated on numerous occasions in comparable cases against Serbia that the State is liable for honouring the debts of socially-owned companies established by final domestic court decisions (see, for example, *R. Kačapor and Others,* cited above, §§ 97-98;and *Adamović v. Serbia*, cited above, § 31). The Court sees no reason to depart from that jurisprudence in the present case. Consequently, the Government's objection must be rejected.

17. As the application is neither manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor inadmissible on any other grounds, it must be declared admissible.

B. Merits

18. The Court notes that the applicant obtained only a part of the amount specified in the final court decisions of 25 August 2003 and 11 October 2004. The remainder of the court decisions still remains unenforced.

19. 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 *Marčić and Others*, cited above, § 60; *R. Kačapor and Others*, cited above, §§ 115-116 and § 120; *Crnišanin and Others v. Serbia*, nos. 35835/05 et seq., §§ 123-124 and §§ 133-134, 13 January 2009; and *Adamović*,cited above, § 41).

20. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present circumstances. Accordingly, there has been a breach of Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention also in the case under consideration.

21. 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

22. 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

23. In respect of pecuniary damage, the applicant in essence requested that the State be ordered to pay, from its own funds, the sums awarded by the final court decisions rendered in his favour.

24. The applicant further claimed 5,000 euros (EUR) in respect of the non-pecuniary damage suffered.

25. Lastly, he claimed EUR 500 for the legal costs incurred before the domestic courts and the Court.

26. The Government considered the claims excessive and unjustified.

27. Having regard to the violations found in the present case and its own case-law (see, for example, *R. Kačapor and Others*, §§ 123-26; and *Crnišanin and Others*, cited above, § 139), the Court considers that the Government should pay the applicant the sums awarded in the final domestic decisions of 25 August 2003 and 11 October 2004, less any amounts which may have already been paid on this basis.

28. Furthermore, the Court considers that the applicant sustained some non-pecuniary loss arising from the breaches of the Convention found in this case. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court considers it reasonable and equitable to award EUR 2,000 to the applicant to cover any non-pecuniary damage, as well as costs and expenses.

B. Default interest

29. 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 to the Convention;

3. *Holds* that there is no need to examine 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 final domestic decisions rendered in his favour on 25 August 2003 and 11 October 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 on this amount, 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;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 18 November 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli	Ján Šikuta
Deputy Registrar	President