

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

THIRD SECTION

CASE OF McINNES v. SERBIA

(Application no. 7159/12)

JUDGMENT

STRASBOURG

17 May 2016

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



In the case of McInnes v. Serbia,

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

Helena Jäderblom, *President,*
Dmitry Dedov,
Branko Lubarda, *judges,*

and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 26 April 2016,

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

PROCEDURE

1. The case originated in an application (no. 7159/12) 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 an Australian national, Mr James John McInnes ("the applicant"), on 30 December 2011.

2. The applicant was represented by Mr D. Ninković, a lawyer practising in Belgrade. The Serbian Government ("the Government") were represented by Ms V. Rodić, their Agent at the time.

3. On 18 November 2014 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1963 and lives in Cres Salisbury East, Australia.

5. On 19 March 1985 the applicant sustained injuries in a traffic accident caused by the vehicles owned by the *Danilo Bošković A.D. - Grdelica* and *Srbijatrans – Niš*, both State/socially-owned companies (the debtors).

6. On 23 November 2001 and 1 July 2008 the First Municipal Court in Belgrade rendered two separate judgments ordering the debtors to pay the applicant certain sums as compensation for the sustained damages.

7. Due to the debtors' failure to fulfil their obligations from these decisions, the applicant submitted enforcement requests. On 7 October 2005 and 18 October 2010, respectively, the First Municipal Court in Belgrade issued enforcement orders to that effect. The enforcement proceedings are still pending and the above decisions remain unenforced.

II. RELEVANT DOMESTIC LAW AND PRACTICE

8. 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 appeals 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; and the judgment in *Marinković v. Serbia*, no. 5353/11, §§ 29-32, 22 October 2013.

THE LAW

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

9. The applicant complained of the respondent State's failure to enforce final court judgments rendered in his favour against the debtor and of the lack of an effective remedy in that connection. The relevant provisions of Articles 6 § 1 and 13 of the Convention, as well as of 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 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

10. The Government submitted that the applicant's constitutional appeal, which was lodged on 17 September 2010, had been rejected as out of time by the Constitutional Court on 8 July 2011. The applicant, therefore, failed to exhaust the available domestic remedies.

11. The applicant disagreed.

12. The Court notes at the outset that it has already held that the constitutional appeal cannot be regarded as an effective remedy in cases concerning the non-enforcement of the final court decisions rendered against State/socially-owned companies in respect of the applications lodged with the Court prior to 22 June 2012 (see *Marinković v. Serbia* (dec.), no. 5353/11, § 59, 29 January 2013). Since the application in the present case was lodged prior to that date, the Court rejects the Government's objection.

13. The Court further notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It is also not inadmissible on any other grounds. The application must therefore be declared admissible.

B. Merits

14. The Court notes that the final court judgments rendered in the applicant's favour remain unenforced to the present date.

15. The Court 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; *Marčić and Others v. Serbia,* no. 17556/05, § 60, 30 October 2007*; 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).

16. 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.

17. 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

18. 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

19. The applicant requested that the State be ordered to pay, from its own funds, the sums awarded by the final court judgments rendered in his favour. The applicant further claimed 36,500 euros (EUR) in respect of damages and costs and expenses incurred before the domestic courts and those incurred before the Court.

20. The Government deemed the applicant's request regarding the compensation for damages and the costs and expenses as excessive.

21. Having regard to the violations found in the present case and its own case-law (see, for example, *Kačapor and Others,* §§ 123-26, *Crnišanin and Others*, § 139, *Marinković v. Serbia*, § 47, *Jovičić and Others v. Serbia*, § 49 and *Adamović v. Serbia*, § 47*,* all cited above), the Court finds that the Government should pay the applicant the sums awarded in the court decisions of 23 November 2001 and 1 July 2008, less any amounts which may have already been paid in this regard.

22. The Court further considers it reasonable and equitable to award EUR 2,000 to the applicant, which sum is to cover all non-pecuniary damage as well as costs and expenses.

B. Default interest

23. 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, within three months, the sums awarded in the final domestic decisions of 23 November 2001 and 1 July 2008 rendered in his favour, 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 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.

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

Done in English, and notified in writing on 17 May 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips Registrar	Helena Jäderblom President