

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

THIRD SECTION

CASE OF ŽIVKOVIĆ v. SERBIA

(Application no. 318/15)

JUDGMENT

STRASBOURG

4 April 2017

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



In the case of Živković v. Serbia,

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

Luis López Guerra, *President,*
Dmitry Dedov,
Branko Lubarda, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 14 March 2017,

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

PROCEDURE

1. The case originated in an application (no. 318/15) against 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, Ms Snežana Živković ("the applicant"), on 12 December 2014.

2. The applicant was represented by Mr M. Milošević, a lawyer practising in Belgrade. The Serbian Government ("the Government") were initially represented by their former Agent, Ms V. Rodić, who was recently substituted by their current Agent, Ms N. Plavšić.

3. On 1 September 2015 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

A. The civil, enforcement and insolvency proceedings

5. The applicant was born in 1941 and lives in Belgrade.

6. On 27 June 2001 the Obrenovac Municipal Court ordered a socially-owned company, *Holding - Prva Iskra AD Barič* (hereinafter "the debtor"), to pay the applicant specified amounts on account of compensation for expropriated real estate plus the costs of the civil proceedings.

7. On 18 March 2003, upon the applicant's request to that effect, the Obrenovac Municipal Court ordered the enforcement of the said judgment and further ordered the debtor to pay the applicant the enforcement costs.

8. On 23 April 2003 the Privatisation Agency ordered the restructuring of the applicant's debtor. As a consequence, the ongoing enforcement proceedings against the debtor would appear to have been stayed.

9. On 29 February 2016 the Belgrade Commercial Court opened insolvency proceedings in respect of the debtor. The applicant duly reported her claims based on the above-mentioned judgment to the insolvency administration.

10. The insolvency proceedings are still ongoing and the said court judgment remains unenforced to the present day.

11. According to publically available information the debtor is still, predominantly comprised of socially-owned capital (see http://pretraga2.apr.gov.rs/ObjedinjenePretrage/Search/Search, accessed on 7 February 2017).

B. The proceedings before the Constitutional Court

12. On 7 October 2011 the applicant lodged an appeal with the Constitutional Court. In terms of redress, relying on the Constitutional Court Act 2007, the applicant sought, *inter alia*, compensation for the pecuniary and non-pecuniary damage suffered due to the impugned non-enforcement.

13. On 15 May 2012 the applicant noted the adoption of the amendments to the Constitutional Court Act, and specified her compensation claims accordingly. Specifically, on account of the pecuniary damage, the applicant requested the respective amounts awarded to her by the final judgment in question, whilst as regards the non-pecuniary damage sustained she claimed 1,000,000 Serbian dinars (approximately 9,500 euros (EUR)).

14. On 21 May 2014 the Constitutional Court found, in the operative part of its ruling (*u izreci*), that the applicant had indeed suffered a violation of her right to a fair trial within a reasonable time, as well as a violation of her property rights and awarded her EUR 1,000 in respect of the non-pecuniary damage in question. However, it rejected the compensation claim regarding the pecuniary damages sought by the applicant. The Constitutional Court, lastly, ordered the speeding up of the impugned enforcement proceedings.

15. In its reasoning, the Constitutional Court stated in respect of the compensation issue that the applicant's pecuniary damage claim had been lodged out of time. In so doing, it merely referred to Article 85 § 3 of the Constitutional Court Act, as amended in 2011, requiring that such claims be brought simultaneously with the lodging of a constitutional appeal.

II. RELEVANT DOMESTIC LAW

16. 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. Lastly, relevant domestic law concerning the proceedings before the Constitutional Court is outlined in the case *Pop-Ilić and Others v. Serbia*, nos. 63398/13 and seq. § 23-30, 14 October 2014.

THE LAW

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

17. The applicant complained of the respondent State's failure to enforce the final court judgment rendered in her favour and of the lack of an effective remedy in that connection. She 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 noted that the Constitutional Court had awarded the applicant a certain amount of money as compensation for the non-pecuniary damage suffered. They also implicitly indorsed the Constitutional Court's arguments in respect of the rejection of the applicant's claim for pecuniary damages. The applicant had thus been provided with adequate redress and had lost her victim status within the meaning of Article 34 of the Convention.

19. The applicant reaffirmed her complaints.

20. The Court notes that the Constitutional Court had indeed found that the applicant had suffered a breach of her constitutional rights and had awarded her a certain sum as compensation for non-pecuniary damage. However, unlike in other similar cases (see, for example, *Ferizović v. Serbia,* cited above, § 16), the Constitutional Court failed to order the State to pay from its own funds the sums awarded in the domestic judgment in question. Namely, even though the applicant, when lodging the constitutional appeal, had sought compensation for both pecuniary and non-pecuniary damage in accordance with applicable law at that time, and had later on had itemized those claims pursuant to the amendments to the Constitutional Court Act of 2011, the Constitutional Court ultimately rejected her claims in respect of the pecuniary damage as belated. The Court observes that it has already dismissed preliminary objections in cases raising issues such as this one. It sees no reason to hold otherwise in the present case (see *Pop-Ilić and Others v. Serbia* cited above § 16). Further, having regard to its case-law the Court reiterates that the sums which the Constitutional Court had awarded to the applicant for non-pecuniary damage cannot either be considered as sufficient redress (*Stošić v. Serbia*, no. 64931/10, §§ 66-68, 1 October 2013).

21. In the view of the above, the applicant must still be considered as a victim within the meaning of Article 34 of the Convention.

22. Since the applicant's 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

23. The Court notes that the domestic judgment under consideration in the present case has remained unenforced to date.

24. The Court recalls 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 *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).

25. 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.

26. 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

27. 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

28. The applicant requested that the Respondent State be ordered to pay, from its own funds: (i) the sums awarded by the final judgment rendered in her favour on 27 June 2001 as well as the established costs of the enforcement proceedings; (ii) EUR 5,000 in respect of non-pecuniary damage; and (iii) 87,500 Serbian dinars (approximately EUR 710) for the costs and expenses incurred before the Constitutional Court and the Court itself.

29. The Government contested these claims.

30. Having regard to the violations found in the present case and its own case-law (see *R. Kačapor and Others,* cited above, §§ 123-126, and *Crnišanin and Others*, cited above, § 139), the Court considers that the applicant's claims for pecuniary damage concerning the payment of the outstanding judgment debt must be accepted. The Government shall therefore pay the applicant the sums awarded in the final domestic judgment adopted on 27 June 2001, as well as the established costs of the enforcement proceedings, less any amounts which may have already been paid in respect of the said judgments.

31. The Court, further, considers that the applicant 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 the applicant, less any amounts which may have already been paid in that regard at the domestic level. This sum is to cover non-pecuniary damage, costs and expenses.

B. Default interest

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

3. *Holds* that there is no need to examine separately 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 court judgment rendered in her favour on 27 June 2001, as well as the established costs of the enforcement proceedings, less any amounts which may have already been paid in this regard;
   (b) that the respondent State is to pay the applicant, within the same period, EUR 2,000 (two thousand euros), less any amounts which may have already been paid in that regard at the domestic level, in respect of non-pecuniary damage, costs and expenses, plus any tax that may be chargeable 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 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 4 April 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı Deputy Registrar	Luis López Guerra President