

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

THIRD SECTION

DECISION

Application no. 13259/09
Dragoljub KOSTIĆ
against Serbia

The European Court of Human Rights (Second Section), sitting on 6 May 2014 as a Chamber composed of:

Josep Casadevall, *President,*
Alvina Gyulumyan,
Ján Šikuta,
Dragoljub Popović,
Kristina Pardalos,
Johannes Silvis,
Iulia Antoanella Motoc, *judges,*
and Santiago Quesada, *Section Registrar,*

Having regard to the above application lodged on 12 December 2009,

Having regard to the declaration submitted by the respondent Government on 19 August 2013 and the applicant's reply to that declaration,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

1. The applicant, Mr Dragoljub Kostić, was a Serbian national, who was born in 1948 and lived in Kraljevo. He was represented before the Court by Ms D. Todorović, a lawyer practising in Kraljevo.

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

3. The applicant was employed by "*Koncern Fabrika Vagona AD u restruktuiranju*", which was, at the relevant time, a company predominantly consisting of socially-owned capital ("hereinafter – "the debtor").

4. On 12 September 2003 the Kraljevo Municipal Court adopted a judgment in the applicant's favour according to which the debtor was ordered to pay him certain sums.

5. On 14 January 2005 and 25 January 2008, the applicant lodged applications for the enforcement of the above judgment with the Kraljevo Municipal Court.

6. On 21 January 2005 and 4 February 2008, the court allowed the applications and issued enforcement's orders.

7. On the basis of a friendly settlement reached between the applicant's representative and the Government, on 14 February 2012 the Court decided to strike the application out its list of cases.

8. By a letter of 15 June 2012 the Government notified the Court that the applicant had died on 15 February 2010 that is before the applicant's representative had signed the declaration on friendly settlement on 30 November 2011.

9. On 9 October 2012 the Court decided to restore the application to its list of cases.

10. On 26 October 2012 the applicant's representative informed the Court that in the framework of inheritance proceedings Ms Magdalena Jevtić, Mr Ljubiša Kostić, Mr Slavoljub Kostić, and Ms Jasmina Jović, the applicant's siblings, had been declared as the applicant's heirs. The applicant's representative, further, informed the Court that the applicant's heirs wished to further pursue the application lodged by their brother.

THE LAW

11. Without invoking any Article of the Convention the applicant copmplained about the respondent State's failure to enforce final domestic decision rendered against socially/State-owned company.

12. The Court must first examine whether Ms Magdalena Jevtić, Mr Ljubiša Kostić, Mr Slavoljub Kostić, and Ms Jasmina Jović, have standing to pursue the application originally lodged by the applicant, who died in the course of the proceedings before the Court.

13. In various cases in which an applicant has died in the course of the proceedings the Court has taken into account the statements of the applicant's heirs or of close members of his family who have expressed the wish to pursue the proceedings before the Court (see, for example, *Deweer v. Belgium*, 27 February 1980, §§ 37-38, Series A no. 35; and *Kovačić and Others v. Slovenia* [GC], nos. 44574/98, 45133/98 and 48316/99, §§ 189-192, 3 October 2008).

14. Regard being had to the fact that Ms Magdalena Jevtić, Mr Ljubiša Kostić, Mr Slavoljub Kostić, and Ms Jasmina Jović, as the applicant's

siblings, are his lawful heirs under national law, the Court finds that they have a standing to proceed in the applicant's stead.

15. After the failure of attempts to reach a friendly settlement, by a letter of 19 August 2013 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by the application.

16. The declaration provided as follows:

> "I declare that the Government of the Republic of Serbia is ready to accept that there had been a violation of the applicants' right under Article 6 paragraph 1 of the Convention and offer to pay jointly Mr Dragoljub Kostić's heirs, Mr Slavoljub Kostić, Ms Magdalena Jevtić, Mr Ljubiša Kostić, and Ms Jasmina Jović, the amount of EUR 1,800 in respect of the application registered under no. 13259/09 before the European Court of Human Rights.
>
> This sum which covers any and all non-pecuniary damage as well as any and all costs shall be paid in dinar counter-value, free of any taxes that may be applicable and to account named by the applicant. This sum, shall be payable within three months from the date of delivery of the decision of the Court.
>
> I further declare that within the same three-month period the Government offer to pay to the applicant's heirs, from their own funds, the sums awarded in the domestic decision(s) under consideration in this case, less any amounts which may have already been paid on the basis of the said decision(s), plus costs of enforcement proceedings.
>
> These payments will constitute the final resolution of the case.
>
> The Government regret the occurrence of the actions which have led to the bringing of the present application. "

17. By a letter of 2 October 2013, the applicant's representative indicated that the applicant's heirs were not satisfied with the terms of the unilateral declaration.

18. The Court recalls that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified, under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

> "for any other reason established by the Court, it is no longer justified to continue the examination of the application".

19. It also recalls that in certain circumstances, it may strike out an application under Article 37 § 1(c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued.

20. To this end, the Court will examine carefully the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (*Tahsin Acar v. Turkey*, [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI); *WAZA Spółka z o.o. v. Poland* (dec.) no. 11602/02, 26 June 2007; and *Sulwińska v. Poland* (dec.) no. 28953/03).

21. The Court has established in a number of cases, including those brought against Serbia, its practice concerning complaints about the non-enforcement of final domestic decision rendered against socially/State–owned companies (see, for example, *R. Kačapor and Others v. Serbia, nos. 2269/06, 3041/06, 3042/06, 3043/06, 3045/06 and 3046/06, 15 January 2008; Crnišanin and Others v. Serbia, nos. 35835/05, 43548/05, 43569/05 and 36986/06, 13 January 2009; Rašković and Milunović v. Serbia, nos. 1789/07 and 28058/07, 31 May 2011; Milunović and Čekrlić v. Serbia (dec.), nos. 3716/09 and 38051/09, 17 May 2011;* and *Stošić v. Serbia*, no. 64931/1, 1 October 2013).

22. Having regard to the nature of the admissions contained in the Government's declaration, as well as the amount of compensation proposed, the Court considers that it is no longer justified to continue the examination of the application (Article 37 § 1(c)).

23. Moreover, in light of the above considerations, and in particular given the clear and extensive case-law on the topic, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the application (Article 37 § 1 *in fine*).

24. In the event of failure to settle within the three-month period indicated in the Government's declaration, simple interest shall be payable on the amount in question at a rate equal to the marginal lending rate of the European Central Bank plus three percentage points.

25. Finally, the Court emphasises that, should the Government fail to comply with the terms of their unilateral declaration, the application could be restored to the list in accordance with Article 37 § 2 of the Convention (*Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

For these reasons, the Court unanimously

Takes note of the terms of the respondent Government's declaration under Article 6 § 1 of the Convention and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention.

Santiago Quesada
Registrar

Josep Casadevall
President