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

SECOND SECTION

DECISION

Application no.65713/13
VasvijaFERIZOVIĆ
against Serbia

The European Court of Human Rights (Second Section), sitting on 26 November 2013 as a Chamber composed of:

Guido Raimondi, *President,*
Peer Lorenzen,
Dragoljub Popović,
Nebojša Vučinić,
Paulo Pinto de Albuquerque,
Helen Keller,
Egidijus Kūris, *judges,*

and StanleyNaismith, *Section Registrar,*

Having regard to the above application lodged on 4 October 2013,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, MsVasvijaFerizović, is a Serbian national, who was born in 1950 and lives in Novi Pazar. She was represented before the Court by MrR.Marinković, a lawyer practising in Novi Pazar.

A. The circumstances of the case

1. Introduction

2. The facts of the case, as submitted by the applicant, may be summarised as follows.

3. The applicant was employed by "*Raška Holding Kompanija A.D. u restrukturiranju*", a company based in Novi Pazar (hereinafter – "the debtor").

4. Since the debtor had failed to fulfil its contractual obligations toward her, the applicant instituted civil proceedings against it.

2. The applicant's proceedings

5. On 7 February 2008 the Novi Pazar Municipal Court ordered the debtor to pay the applicant certain sums in respect of salary arrears, holiday pay and costs of proceedings.

6. On 20 August 2008 the judgment became final.

7. On 29 June 2011 the applicant lodged an application for the enforcement of the above court decision with the Novi Pazar Court of First Instance.

8. On 30 June 2011 the court allowed the application and issued an enforcement order.

3. The debtor's status

9. On 26 May 2006 the Privatisation Agency ordered the restructuring of the debtor as part of the privatisation process.

10. On 11 September 2013 preliminary insolvency proceedings were opened against the debtor.

11. On 18 October 2013 the restructuring of the debtor was terminated.

B. Relevant domestic law and practice

1. The Constitutional Court's decision of 21 March 2013 (odluka Ustavnog suda Už 1712/2010)

12. On 26 March 2010 the claimant in the case in question lodged an appeal with the Constitutional Court, seeking redress for the non-enforcement of a final judgment rendered against a socially/State-owned company undergoing restructuring.

13. The claimant argued, in particular, that the State was responsible for failing to enforce the judgment in her favour, and requested, *inter alia*, that it be ordered to pay her the specified sums awarded in the judgment in question.

14. On 21 March 2013 the Constitutional Court held that the claimant had indeed suffered a violation of her "right to a trial within a reasonable time", as well as a breach of her "right to peaceful enjoyment of possessions", and ordered the State to pay the claimant 400 Euros in respect of non-pecuniary damage which would be converted into Serbian dinars at the rate applicable on the date of payment. In addition, the Constitutional Court ordered the State to pay the claimant from its own funds the sums specified in the domestic decision.

15. In doing so, the Constitutional Court noted the Court's findings in a number of cases involving the Serbian authorities' liability for the

non-enforcement of judgments rendered against companies predominantly comprised of socially/State-owned capital (see, among others, *Marinković v. Serbia (dec.) no. 5353/11, 29 January 2013*).

16. The Constitutional Court's decision was published in the Official Gazette of 4 October 2013 (OG RS no. 87/2013).

2. The Constitutional Court's other decisions rendered in the context of socially/State-owned companies undergoing restructuring

17. In addition to the above-mentioned decision of 21 March 2013, the Constitutional Court, in matters concerning the non-enforcement of final domestic judgments rendered against socially/State-owned companies undergoing restructuring, adopted two more decisions to the same effect on 7 March 2013 (Už 1645/2010) and 9 May 2012 (Už 1705/2010).

3. Other relevant domestic law and practices

18. Other relevant domestic law and practice was set out in the Court's judgments of *EVT Company v. Serbia* (no. 3102/05, §§ 26 and 27, 21 June 2007); *Marčić and Others v. Serbia* (no. 17556/05, § 29, 30 October 2007); *R. Kačapor and Others v. Serbia* (nos. 2269/06, 3041/06, 3042/06, 3043/06, 3045/06 and 3046/06, 15 January 2008, §§ 57-82); *Vlahović v. Serbia* (no. 42619/04, §§37-47, 16 December 2008); *Crnišanin and Others v. Serbia* (nos. 35835/05, 43548/05, 43569/05 and 36986/06, 13 January 2009, §§ 100-104); *Adamović v. Serbia,* (no. 41703/06, §§ 17-22, 2 October 2012); and *Marinković,* cited above, §§ 26-29 and §§ 31-44).

COMPLAINTS

19. The applicant complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 about the respondent State's failure to enforce the final judgment at issue.

20. The applicant further complained, under Article 13 of the Convention, about the absence of an effective domestic remedy in respect of the impugned non-enforcement.

THE LAW

A. The applicant's complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1

1. As noted above, the applicant complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention about the non-enforcement of the final judgment rendered in her favour.

2. The relevant provisions of these Articles 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 [or her] possessions. No one shall be deprived of his [or her] possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

3. The Court held in *Marinković*, cited above, that:

" (...) in matters concerning the non-enforcement of judgments rendered against socially-owned companies *undergoing insolvency proceedings* and/or that *had ceased to exist*, in addition to finding a violation of the relevant constitutional rights, the Constitutional Court was prepared to award compensation for non-pecuniary damage as well as pecuniarydamage, that is to say, it was willing to order the State to pay from its own funds the specified sums awarded in domestic judgments.

Conversely, in cases where the debtor company was still *undergoing a process of restructuring*, the Constitutional Court, in addition to finding a violation of the relevant constitutional rights, was only willing to award compensation for non-pecuniary damage. In other words, it was unwilling to order the State to pay, from its own funds, the sums awarded in the final judgments in question as required by the Court's relevant case-law (see paragraph 51 above).

58. Consequently, a constitutional appeal still cannot be considered effective in cases involving the respondent State's liability for the non-enforcement of judgments against socially-owned companies *undergoing restructuring*. However, the Court might, in future cases, reconsider its position if there is clear evidence that the Constitutional Court has subsequently fully harmonised its approach with the Court's relevant case-law. Indeed, the Court has, in its relevant case-law, consistently held the respondent State responsible *ratione personae* for the non-enforcement of final judgments rendered against socially/State-owned companies, irrespective of the status of the company in question (see, for example, *R. Kačapor and Others*, cited above; *Crnišanin and Others v. Serbia*, nos. 35835/05, 43548/05, 43569/05 and 36986/06, 13 January 2009; and *Rašković and Milunović*, nos. 1789/07 and 28058/07, 31 May 2011)."

4. The Court observes that the Constitutional Court of Serbia has recently fully harmonised its approach towards the non-enforcement of judgments against socially/State-owned companies undergoing restructuring with the Court's case-law (see §§ 12-17 above).

5. Since the first such Constitutional Court's decision was published in the Official Gazette on 4 October 2013, the Court considers a constitutional appeal to be an effective remedy within the meaning of Article 35 § 1 of the Convention for that last category of cases concerning the non-enforcement of judgments against socially/State-owned companies as of that date (see paragraph 16above, see also *Vinčić and Others v. Serbia*, cited above, § 51).

6. In the present case, the applicant did not file a constitutional appeal but instead, she lodged her application with the Court on 4 October 2013.

7. Therefore, this complaint must be rejected for non-exhaustion of domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention.

B. The applicant's complaints under Article 13 of the Convention

8. Finally, the applicant complained, under Article 13 of the Convention, about the absence of an effective domestic remedy as regards the non-enforcement in question.

9. Article 13 reads as follows:

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."

10. Given that the applicant's complaints under Article 6 of the Convention and Article 1 of the Protocol No. 1 to the Convention have been rejected for non-exhaustion of domestic remedies, the related complaint under Article 13 is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3(a) and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Stanley Naismith
Registrar

Guido Raimondi
President