SECOND SECTION

CASE OF ANĐELIĆ AND OTHERS v. SERBIA

(Applications nos. 57611/10 and 166 other applications)

JUDGMENT

STRASBOURG

28 May 2013

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

In the case of Anđelić and Others v. Serbia,

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

Paulo Pinto de Albuquerque, *President,*
Dragoljub Popović,
Helen Keller, *judges,*
and Françoise Elens-Passos, *Acting Deputy Section Registrar,*

Having deliberated in private on 7 May 2013,

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

PROCEDURE

1. The case originated in 167 applications (see the Annex to this judgment) 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"), on 29 September 2010. The applicants were all Serbian nationals, and their further personal details are set out in the said Annex.

2. The applicants were represented by Mr M. Marjanović and Ms M. Dedović-Marjanović, lawyers practising in Leskovac. The Serbian Government ("the Government") were represented by their Agent, Mr S. Carić.

3. On 3 February 2012 the applications were communicated to the Government.

4. The Government objected to the examination of the applications by a Committee. After having considered the Government's objection, the Court rejects it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The facts of the case, as submitted by the parties, may be summarised as follows.

A. Civil and enforcement proceedings

6. All applicants were former employees of "LETEKS" *u stečaju* (the debtor), which was, at the relevant time, a company predominantly comprised of socially-owned capital.

7. Since the debtor failed to fulfil its contractual obligations towards employees, on unspecified date, the applicants instituted civil proceedings against it.

8. On 18 April 2008 the Municipal Court in Leskovac ordered the debtor to pay them:

i. the salary arrears due between 1 July 2001 and 13 July 2003, plus interest; and

ii. 376,520 Serbian Dinars (RSD) for their costs and expenses.

9. On 3 October 2010 this judgment became final.

10. In the period between 17 November 2008 and 16 December 2008 each applicant filed separate requests for the enforcement of the above judgment.

11. The Municipal Court in Leskovac ultimately accepted the applicants' requests and issued the enforcement orders respectively. The essential information as to the enforcement proceedings in respect of each application are indicated in the Annex.

B. The Insolvency proceedings

12. On 25 January 2011 the Commercial Court in Leskovac opened insolvency proceedings in respect of the debtor (St. 47/2010).

13. The applicants duly submitted their respective claims.

14. On an unspecified date the applicants' claims based on the judgment of 18 April 2008 were recognised.

15. The insolvency proceedings against the debtor are still ongoing.

C. The debtor's status

16. On 5 December 2006 the debtor was privatised.

17. On 8 April 2008 the contract for the sale of the debtor was annulled because the buyer in question had failed to fulfil his contractual obligations.

18. As of June 2008 the debtor has been comprised of predominantly State-owned capital.

D. Other relevant facts

19. On 31 October 2010, the applicants filed a constitutional appeal.

20. The case is still pending before the Constitutional Court.

II. RELEVANT DOMESTIC LAW

A. The Insolvency Act (Zakon o stečaju, published in OG RS no. 104/2009, 99/2011 and 71/2012)

21. Article 93 §§ 1 and 2 provides that "as of the day of institution of the insolvency proceedings" the debtor cannot simultaneously be subjected to a separate enforcement procedure. Any ongoing enforcement proceedings shall thus be stayed, while new enforcement proceedings cannot be instituted for as long as the insolvency proceedings are pending.

B. Other relevant domestic law socially-owned companies

22. The reminder of the relevant domestic law is set out in the cases of *R. Kačapor and Others v. Serbia* (nos. 2269/06, 3041/06, 3042/06, 3043/06, 3045/06 and 3046/06, 15 January 2008, §§ 71-76) and the case of *Marinković v. Serbia* (dec.), no. 5353/11, 29 January 2013.

THE LAW

I. JOINDER OF THE APPLICATIONS

23. The Court considers that, in accordance, with Rule 42 § 1 of the Rules of the Court, the applications should be joined, given their common and factual legal background.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1

24. The applicants complained about the respondent State's failure to enforce the final judgment of 18 April 2006. They relied on Article 6 of the Convention and Article 1 of Protocol No. 1 which, in so far as relevant, read as follows:

Article 6

"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."

A. Admissibility

1. Exhaustion of domestic remedies

25. The Government submitted that the Constitutional Court had harmonised its case-law with that of the Court in the context of the respondent State's liability for non-enforcement of the final judgments rendered against socially-owned companies. They, further, maintained that the applicants' case is pending before the Constitutional Court, and that, therefore their applications should be rejected on the grounds of non-exhaustion of domestic remedies.

26. The applicants argued that a constitutional appeal could not be considered effective in the particular circumstances of their cases.

27. The Court recalls that it has already held that in cases such as the applicants' a constitutional appeal should indeed be considered as an effective domestic remedy, within the meaning of Article 35 § 1 of the Convention, but only in respect of applications introduced against Serbia as of 22 June 2012 (see *Marinković v. Serbia,* cited above § 59). It sees no reason to hold otherwise in the present case, and notes that all of the applicants had introduced their complaints before the Court on 29 September 2010.

28. It follows that the Government's objections concerning the exhaustion of domestic remedies must be dismissed.

2. Conclusion

29. The Court finds, moreover, that the applicants' complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring them inadmissible have been established. They must therefore be declared admissible.

B. Merits

30. The Government maintained that the Respondent State's liability may only be engaged in so far as it relates to the enforcement proceedings against the debtor while the subsequent insolvency proceedings against the debtor should not be assessed in the context of a violation of Article 6 of the Convention. They further argued, taking into account that the debtor was at one point a privately owned company, that the Respondent State cannot be held responsible for the failure to fulfil its obligations. They finally argued that the State cannot be held responsible for the debtor's lack of assets.

31. The applicants disagreed and reaffirmed their original complaints.

32. The Court observes that the judgement at issue concerns the debtor's liabilities incurred in the period between 1 July 2001 and 13 July 2003, when the debtor was a socially-owned company. It is further observed that the privatisation of the debtor was annulled on 8 April 2008, and that the debtor is now completely owned by the State.

33. It is further noted that the domestic judgment rendered in the applicants' favour was adopted on 18 April 2008 and became final on 3 October 2008. The applicants sought enforcement in November and December 2008 (see the appended table). However, it has not been enforced until the present day.

34. The Court has already found a breach of Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention in similar circumstances (see *R. Kačapor and Others*, cited above, §§ 115-116 and § 120; *Crnišanin and Others v. Serbia*, nos. 35835/05, 43548/05, 43569/05 and 36986/06, §§ 123-124 and §§ 133-134, 13 January 2009; and *Rašković and Milunović v. Serbia*, nos. 1789/07 and 28058/07, § 74 and § 79, 31 May 2011). It finds no reason to depart from that case-law in the present case.

35. Therefore, the Court finds that there has been a breach of Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. 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

37. The applicants requested that the State be ordered to pay, from, its own funds, the sums awarded by the final judgment rendered in their favour and EUR 4,000 each in respect of the non-pecuniary damage suffered.

38. The Government considered the claims excessive and unjustified.

39. Having regard to the violations found in the present case and its own jurisprudence (see *R. Kačapor and Others,* cited above, §§ 123-126, and *Crnišanin and Others*, cited above, § 139), the Court considers that the applicants' claims for pecuniary damage must be accepted. The Government shall, therefore, pay in respect of each applicant the sums awarded in the final judgment of 18 April 2008, less any amounts which may have already been paid on the basis of the said judgment.

40. As regards non-pecuniary damage, the Court considers that the applicants sustained some non-pecuniary loss arising from the breaches of the Convention found in this case. The particular amount claimed, however, is excessive. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards each applicant EUR 3,100 under this head.

B. Costs and expenses

41. Each applicant also claimed EUR 1,662.70 for the legal costs incurred before the domestic courts and the Court.

42. The Government contested this claim.

43. In accordance with the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum (see, for example, *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI).

44. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award each applicant the sum of EUR 130 covering costs under all heads.

C. Default interest

45. 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. *Decides* to join the applications;

2. *Declares* the applications admissible;

3. *Holds* that there has been a violation of Article 6 of the Convention and of Article 1 of Protocol No. 1 to the Convention;

4. *Holds*

   (a) that the respondent State shall, from its own funds and within three months, pay in respect of each applicant, the sums awarded in the final judgment of 18 April 2008, less any amounts which may have already been paid on the basis of the said judgment;

(b) that the respondent State is to pay the applicants, within the same period, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 3,100 (three thousand one hundred euros) each, plus any tax that may be chargeable, in respect of non-pecuniary damage; and

(ii) EUR 130 (one hundred thirty euros) each, plus any tax that may be chargeable to the applicants, in respect of costs and expenses;

(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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 28 May 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos	Paulo Pinto de Albuquerque
Acting Deputy Registrar	President