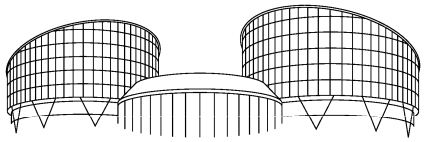

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF NIKOLIĆ-KRSTIĆ v. SERBIA

(Application no. 54195/07)

JUDGMENT

STRASBOURG

14 October 2014

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Nikolić-Krstić v. Serbia**,**

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

Josep Casadevall, *President,*
Alvina Gyulumyan,
Ján Šikuta,
Dragoljub Popović,
Luis López Guerra,
Johannes Silvis,
Iulia Antoanella Motoc, *judges,*

and Marialena Tsirli, *Deputy Section Registrar,*

Having deliberated in private on 23 September 2014,

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

PROCEDURE

1. The case originated in an application (no. 54195/07) 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 a Serbian national, Ms Olivera Nikolić-Krstić ("the applicant"), on 4 December 2007.

2. The applicant was represented by Mr D. Vidosavljević, a lawyer practising in Leskovac. The Serbian Government ("the Government") were represented by their Agent, Mr S. Carić.

3. On 29 June 2010 the President of the Second Section decided to give notice of the application to the Government.

4. On 1 February 2014 the Court changed the composition of its Sections (Rule 25 § 1). This case was thus assigned to the newly composed Third Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1957 and lives in Leskovac.

6. On 5 September 1994 the Leskovac Municipal Court ("the Municipal Court") ordered the Leskovac branch of the "JIK" Bank ("the debtor"), a predominantly socially-owned bank, to reinstate the applicant and to pay her

outstanding salary and all work-related benefits for the period following her unlawful dismissal. That judgment became final on 1 September 1995.

7. On an unspecified date, the applicant filed a request for the enforcement of the above judgment. On 17 October 1995 the Municipal Court issued a writ of execution *(rešenje o izvršenju)*.

8. On 19 December 1995 the applicant was reinstated. However, as the debtor refused to pay the outstanding judgment debt, the applicant, on an unspecified date, filed a new request for the enforcement.

9. On 18 November 1997, on the basis of a financial expert's analysis, the Municipal Court ordered the enforcement by debtor account transfer in the total amount of 72,076.55 Yugoslav dinars (YUM) in respect of salary arrears and all work-related benefits, for the period from 1 May 1992 until 31 December 1995, together with statutory interest and YUM 550 for legal costs.

10. On 29 September 1999 the applicant requested the court to change the means of enforcement as it appeared that there were no funds in the debtor's account. On 1 October 1999 the Municipal Court ordered the enforcement by auctioning of the debtor's specified movable assets.

11. On 26 July 2000 the applicant obtained a pledge *(zalog)* over certain movable assets which were seized from the debtor (two vehicles and some technical equipment).

12. On the same day, the Belgrade Commercial Court ("the Commercial Court") instituted liquidation proceedings against the debtor.

13. On 8 May 2001 the enforcement proceedings were discontinued in view of the pending liquidation proceedings. On 22 May 2001 the applicant reported her claims to the liquidation council (*likvidaciono veće*).

14. On several occasions thereafter, the applicant petitioned the court to continue with the enforcement and to schedule a public auction for the sale of the pledged assets, arguing that their value was decreasing due to the passage of time and that she had to bear the maintenance costs. On 15 January 2002 she submitted the same request to the liquidation administrator *(likvidacioni upravnik)*.

15. The Municipal Court held two hearings concerning the applicant's requests, on 10 December 2003 and 30 October 2005, but it would appear that no decision was issued.

16. In the meantime, on 11 March 2004 the Commercial Court appointed the Agency for Deposits as a liquidation administrator. On 7 April 2005 the Commercial Court terminated the liquidation proceedings and opened bankruptcy proceedings against the debtor.

17. On 18 November 2005 the Commercial Court rejected the applicant's claims against the debtor (paragraph 13 above) and instructed her to initiate a new set of civil proceedings. On 16 May 2007 the Belgrade High Commercial Court ("the High Commercial Court") upheld that decision.

18. The applicant did not initiate a new set of civil proceedings as instructed.

19. It would appear that bankruptcy proceedings are still pending and that the debtor is still predominantly socially-owned.

II. RELEVANT DOMESTIC LAW

20. The relevant domestic law is set out in the Court's judgment of *R. Kačapor and Others v. Serbia*, nos. 2269/06 *et al*., 15 January 2008.

THE LAW

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

21. The applicant complained of the non-enforcement of the Municipal Court decision of 5 September 1994. The case has been examined by the Court under Article 6 of the Convention and Article 1 of Protocol No. 1.

Article 6, in so far as relevant, provides:

> "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 to the Convention reads as follows:

> "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. Six-month rule

22. The Government submitted that the application was introduced outside the six-month time-limit as the final decision concerning the applicant's claim against the debtor in the bankruptcy proceedings was the Commercial Court's decision of 18 November 2005 (paragraph 17 above). The applicant was clearly instructed to initiate a new set of civil proceedings but instead she appealed to the High Commercial Court. The Government

submitted that in the circumstances of the present case, the applicant should have been aware that an appeal would be ineffective.

23. The applicant disputed these arguments.

24. The Court notes that the present case concerns the non-enforcement of the final domestic judgment in the applicant's favour. The judgment became final on 1 September 1995 and remains unenforced to the present day. At the time of the introduction of this application, there were no effective domestic remedies for this complaint in the respondent State (see *Vinčić and Others v. Serbia*, nos. 44698/06 *et al*., § 51, 1 December 2009). The Court concludes, therefore, that the alleged violation in the present case constitutes a continuous situation and accordingly rejects the Government's objection.

2. Compatibility ratione personae

25. The Government argued that the State could not be held responsible for the debtor in the present case which was a separate legal entity not controlled by the State.

26. The Court has already held in comparable cases against Serbia that the State is liable for debts of socially-owned companies (see, for example, *R. Kačapor and Others,* cited above*,* §§ 97-98, and *Rašković and Milunović v. Serbia*, nos. 1789/07 and 28058/07, § 71, 31 May 2011) and banks (see *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia* [GC], no. 60642/08, §§ 115-117, 16 July 2014) as they are closely controlled by a Government agency. The Court sees no reason to depart from that jurisprudence in the present case. Consequently, this argument must be rejected.

3. Exhaustion of domestic remedies

27. The Government further argued that the applicant had not exhausted all effective domestic remedies. In particular, she had not requested that the pledged property belonging to the debtor be sold. Furthermore, she had not initiated a new set of civil proceedings pursuant to the instruction of the Commercial Court.

28. The applicant disputed these arguments.

29. The Court notes that the applicant had a judgment given in her favour which was final and enforceable and whose execution was the responsibility of the authorities, including, if necessary, the taking of such measures as bankruptcy proceedings (see *Khachatryan v. Armenia*, no. 31761/04, § 60, 1 December 2009). In principle, when an applicant, such as the present one, obtains a final judgment against a State-controlled entity, he or she is only required to file a request for the enforcement of that judgment to the competent court or, in case of liquidation or bankruptcy proceedings against the debtor, to report his or her claims to the

administration of the debtor (see *R. Kačapor and Others,* cited above). Given that the present applicant did that, the Government's objection must be rejected.

4. Conclusion

30. The Court considers that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and finds no other ground to declare it inadmissible. It must therefore be declared admissible.

B. Merits

31. The Government argued that the applicant had contributed to the length of the non-enforcement because she had failed to use available procedural steps to sell the pledged property in the bankruptcy proceedings. The Government further submitted that the final judgment in the present case had ceased to be enforceable with the opening of the bankruptcy proceedings.

32. The Court notes that the domestic judgment under consideration in the present case remained unenforced more than ten years (the period before the ratification of the Convention by the respondent State on 3 March 2004, being outside the Court's jurisdiction *ratione temporis*, has not been taken into account).

33. The Court has already held that the State is responsible for the failure to enforce final domestic judgments rendered against State-controlled entities against which bankruptcy proceedings were pending (see *R. Kačapor and Others*, cited above, §§ 115-116; *Adamović v. Serbia*, no. 41703/06, §§ 40-41, 2 October 2012; and *Ališić and Others,* cited above, §§ 115-117). It finds no reason to depart from that jurisprudence in the present case. The Government have failed to demonstrate that the responsibility for the delay in the present case could be attributed to the applicant.

Accordingly, there has been a breach of Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. 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

35. In respect of pecuniary damage the applicant sought the payment of the outstanding judgment debt and, in addition, 11,250 euros (EUR) for the maintenance costs she had in respect of the pledged assets. She further claimed EUR 3,600 in respect of non-pecuniary damage and approximately EUR 940 for the costs and expenses incurred before the Court.

36. The Government considered the claims unjustified and excessive.

37. 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 v. Serbia*, nos. 35835/05 *et al*., § 139, 13 January 2009), the Court considers that the applicant's claim for pecuniary damage concerning the payment of the outstanding judgment debt must be accepted. The Government shall, therefore, pay the applicant the outstanding debt from the final judgment of 5 September 1994, less any amounts which may have already been paid on the basis of the said judgment. As regards the applicant's claim for the maintenance costs concerning the pledged assets, the Court notes that she did not demonstrate that she suffered any pecuniary damage in this connection. It therefore rejects this claim.

38. Furthemore, in view of its case-law (see *Stošić v. Serbia*, no. 64931/10, §§ 66-68, 1 October 2013), the Court considers it reasonable and equitable to award EUR 2,500 to the applicant, which sum is to cover all non-pecuniary damage as well as costs and expenses.

B. Default interest

39. 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;

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

4. *Holds*
   (a) that the respondent State is to pay the applicant, from its own funds and within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the outstanding debt owed to the applicant under the judgment of 5 September 1994 which became final on 1 September 1995, 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 applicant, within the same period, EUR 2,500 (two thousand five hundred 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 14 October 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli
Deputy Registrar

Josep Casadevall
President