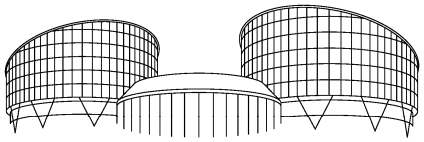

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF IGNJATOVIĆ v. SERBIA

(Application no. 49915/08)

JUDGMENT

STRASBOURG

25 April 2017

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

In the case of Ignjatović 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 28 March 2017,

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

PROCEDURE

1. The case originated in an application (no. 49915/08) 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, Mr Milan Ignjatović ("the applicant"), on 19 September 2008.

2. The applicant was represented by Mr M. Ralević, a lawyer practising in Majdanpek. The Serbian Government ("the Government") were initially represented by Mr S. Carić, their Agent at the time, and later by Ms N. Plavšić, the newly-appointed Agent.

3. On 24 July 2012 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

5. The applicant was born in 1949 and lives in Donji Milanovac.

6. He was employed by Đerdap, a company in Kladovo (*Ribarsko gazdinstvo "Đerdap"* – hereinafter "the debtor company").

7. On 28 December 1998 the applicant was reassigned to a lower post by his employer. He was subsequently dismissed on 20 January 2000. These two decisions, taken by the company's managing director, were upheld by its board of management.

A. Civil proceedings brought by the applicant

8. On 18 February 1999 the applicant filed a civil claim against the debtor company; on 26 April 2000 he filed a separate claim seeking reinstatement to a suitable position, as well as the outstanding salary payments and social benefits.

9. On 19 June 2003 the Majdanpek Municipal Court (hereinafter "the Municipal Court") ruled in favour of the applicant and ordered the debtor company to reinstate the applicant to a post which corresponded to his professional qualifications and to pay him specified amounts on account of salary arrears and social insurance contributions, plus the costs of the civil proceedings. This judgment became final on 23 October 2003.

10. On 16 February 2004, 9 March 2004, 18 and 19 October 2004, respectively upon the applicant's requests to that effect, the Municipal Court accepted the enforcement of the said judgment and further ordered the debtor to pay the applicant the enforcement costs.

11. The Municipal Court provided the National Bank of Serbia (*Narodna banka Srbije* – "the Central Bank") with the above-mentioned enforcement orders on 14 April 2004, 20 July 2004 and 11 November 2004, respectively.

12. It would appear that none of the above-mentioned enforcement orders have been enforced to date.

B. Insolvency proceedings

13. On 8 April 2010 the Central Bank informed the Zaječar Commercial Court of the suspension of the debtor company's accounts for three years.

14. On 13 April 2010 the Commercial Court opened preliminary insolvency proceedings against the debtor company.

15. On 30 June 2010 the Commercial Court opened and closed the insolvency proceedings against the debtor company and that decision became final on 10 August 2010.

16. The debtor company was ultimately struck from the relevant public register on 31 August 2010.

C. Legal status of the debtor company

17. The debtor company in the present case had been a socially owned company. In 1991 it was transformed into a limited company which remained mainly socially owned, and remained as such until it was struck off the register (see http://apr.gov.rs/, accessed on 1 December 2016).

II. RELEVANT DOMESTIC LAW AND PRACTICE

18. The relevant domestic law concerning the status of socially owned companies, as well as enforcement and insolvency proceedings, was 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 was likewise 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).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

19. Relying on Article 6 § 1 of the Convention, the applicant complained of the respondent State's failure to enforce a final court judgment rendered in his favour in respect of all monetary claims (salary payments, pension and disability insurance contributions and the costs of the civil and enforcement proceedings). The relevant part of Article 6 § 1 reads 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."

A. Admissibility

1. Compatibility ratione personae *(responsibility of the State)*

20. The Government argued that the State could not be held responsible for a socially owned company. In particular, they stated that in determining whether a particular organisation is under the control of state, the Court should not rely on the cases of *R. Kačapor and Others* (cited above) and *Mykhaylenky and Others v. Ukraine* (nos. 35091/02, 35196/02, 35201/02, 35204/02, 35945/02, 35949/02, 35953/02, 36800/02, 38296/02 and 42814/02, § 44, ECHR 2004-XII), but rather apply the principles

established in the case of *Radio France and Others v. France* ((dec.) no. 53984/00, ECHR 2003-X).

21. The applicant disagreed and stated that precisely because the debtor company had been a socially owned company, the State should be held responsible for the debts of that company.

22. The Court has already stated on numerous occasions in comparable cases against Serbia that the State is liable for honouring the debts of socially- or State-owned companies established by final domestic court judgments (see, for example, *Crnišanin and Others v. Serbia*, nos. 35835/05, 43548/05, 43569/05 and 36986/06, § 124, 13 January 2009, and *R. Kačapor and Others,* cited above*,* §§ 97-98). The Court notes that the debtor company in the present case was predominantly socially owned at the time when the judgment in question was rendered and became final (see paragraph 24 above). Since the Government did not provide any evidence to the contrary, the Court sees no reason to depart from its case-law. Consequently, the Government's objection must be dismissed.

2. Exhaustion of domestic remedies

23. The Government submitted that the applicant had not exhausted all effective domestic remedies. In particular, he could have filed a civil suit for damages for the protraction of enforcement proceeding or lodged a constitutional appeal.

24. The applicant contested the effectiveness of those remedies.

25. As regards the failure of the applicant to initiate civil proceedings for damages, the Court has already held that this remedy could not be deemed effective within the meaning of its established case-law under Article 35 § 1 of the Convention (see *R. Kačapor and Others,* cited above*,* § 87 with further references). However, as regards the failure of the applicant to lodge a constitutional appeal, the Court reiterates that in cases of non-enforcement of judgments rendered against socially owned companies a constitutional appeal could be deemed an effective domestic remedy only starting from 22 June 2012 and 4 October 2013 respectively, depending on the specific status of the debtor company (see *Marinković* (dec.), cited above, § 59, and *Ferizović*, cited above). Therefore the present applicant, who lodged his application on 19 September 2008, was not obliged to make use of the constitutional avenue. Consequently, this objection must also be dismissed.

3. Compliance with the six-month rule

26. The Government argued that the enforcement proceedings had been concluded by providing the Central Bank with the enforcement orders for enforcing payment (see paragraphs 16 and 18 above). Since the applicant had lodged his application four years later – that is to say on

19 September 2008 – the application should be declared inadmissible as lodged out of time.

27. The applicant disagreed.

28. The Court notes that the present case concerns the non-enforcement of a final domestic judgment in the applicant's favour which remains unenforced to the present day. The Court concludes, therefore, that the alleged violation constitutes a continuous situation and accordingly rejects the Government's objection

4. Compatibility ratione temporis

29. The Government submitted that the respondent State should not be responsible for delays that had occurred before the Convention had entered into force and that the Court should take into account only the period of non-enforcement after 3 March 2004.

30. The applicant did not contest those submissions.

31. The Court finds that it has jurisdiction *ratione temporis* to examine the applicants' complaints only in so far as they relate to the events which took place subsequent to the entry into force of the Convention in respect of Serbia. It may, however, have regard to the facts prior to ratification inasmuch as they could be considered to have created a situation extending beyond that date or may be relevant for the understanding of facts occurring after that date (see *Broniowski v. Poland* (dec.) [GC], no. 31443/96, §§ 74-77, ECHR 2002-X). The Court, therefore, rejects the Government's objection.

5. Conclusion

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

B. Merits

33. The Government argued that the Municipal Court had taken reasonable measures in accordance with the law and that the applicant had been passive after the enforcement orders had been issued.

34. The applicant disagreed and reaffirmed his complaint.

35. The Court notes that the final court judgment rendered in the applicant's favour remains unenforced to date.

36. The Court observes that it has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to those raised in the present case (see *R. Kačapor and Others*, cited above, §§ 115-16 and 120; *Crnišanin and Others v. Serbia,* cited above, §§ 123-24 and 133-34;

Rašković and Milunović v. Serbia, nos. 1789/07 and 28058/07, §§ 74 and 79, 31 May 2011; and *Adamović v. Serbia*, no. 41703/06, § 41, 2 October 2012).

37. 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 has, accordingly, been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

38. 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

39. The applicant requested that the State be ordered to pay him, from its own funds: (i) the amount of the judgment debt, plus the costs of the enforcement proceedings, in respect of pecuniary damage; (ii) 5,000 euros (EUR) in respect of non-pecuniary damage; and (iii) EUR 1,200 in total for the costs and expenses incurred before the Court.

40. The Government contested these claims.

41. As regards the pecuniary damage alleged, the Court observes that a judgment in which the Court finds a violation of the Convention or of its Protocols imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in its domestic legal order to put an end to the violation found (see *Apostol v. Georgia*, no. 40765/02, §§ 71-73, ECHR 2006-XIV; *Marčić and Others*, no. 17556/05, §§ 64-65, 30 October 2007; and *Pralica v. Bosnia and Herzegovina*, no. 38945/05, § 19, 27 January 2009).

42. Having regard to its findings in the instant case, the Court considers that the respondent State must secure the enforcement of the final domestic judgment under consideration in this case by way of paying the applicant, from its own funds, the sums awarded in the said final judgment, less any amounts which may have already been paid on this basis (see *Brany and Jugokoka v. Serbia* [Committee], no. 60336/08, §§ 42-46).

43. As regards non-pecuniary damage, the Court 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 (see *Stošić v Serbia*, no. 64931/10, §§ 66-68, 1 October 2013), the Court awards

him EUR 2,000. This sum is to cover non-pecuniary damage, and costs and expenses.

B. Default interest

44. 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 § 1 of the Convention;

3. *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 his favour, 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 connection at the domestic level, to cover non-pecuniary damage, costs and expenses, plus any tax that may be chargeable to the applicants, 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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 25 April 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Luis López Guerra
President