



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

THIRD SECTION

CASE OF RADOVANOVIĆ AND OTHERS v. SERBIA

(Applications nos. 55003/16 and 11 others - see appended list)

JUDGMENT

STRASBOURG

27 August 2019

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

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

In the case of Radovanović and Others v. Serbia,

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

Georgios A. Serghides, *President*,

Branko Lubarda,

Erik Wennerström, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 9 July 2019,

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

PROCEDURE

1. The case originated in twelve applications (nos. 55003/16, 55165/16, 55199/16, 58368/16, 14938/17, 20906/17, 22606/17, 25312/17, 61028/17, 61340/17, 77837/17 and 77858/17) 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”). The applicants’ personal details are set out in the appendix to this judgment.

2. The applicants were represented by lawyers indicated in the appendix to this judgment. The Serbian Government (“the Government”) were represented by their Agent, Ms N. Plavšić.

3. On 13 July 2018 the applicants’ complaints concerning the delayed enforcement of final judgments in their favour and the existence of an effective remedy in that regard were communicated to the Government and the remainder of their applications was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

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

5. The applicants were employed by *Fabrika reznog alata*, a socially/State-owned company based in Čačak (hereinafter – “the debtor”).

6. The applicants obtained final court decisions ordering the debtor to pay them their salaries plus default interest and costs and expenses. The essential information as to the domestic proceedings in respect of each application is indicated in the appendix to this judgment.

7. Between 22 December 2014 and 4 December 2015 the Kragujevac Court of Appeal (*Apelacioni sud u Kragujevcu*) and the Čačak High Court (*Viši sud u Čačku*) found that the applicants’ right to a trial within a reasonable time had been violated and awarded them between 100 and 400 euros (EUR) each in respect of non-pecuniary damage (see the

appendix to this judgment). They further ordered the Čačak Court of First Instance (*Osnovni sud u Čačku*) to speed up the enforcement proceedings.

8. All the applicants complained to the Supreme Court of Cassation about the amount of the awards. The Supreme Court of Cassation rejected their appeals.

9. Between 12 May 2016 and 6 July 2017 the Constitutional Court found a violation of the applicants' right to the peaceful enjoyment of possessions and ordered that the sums awarded in the domestic decisions mentioned in paragraph 6 above be paid directly by the State. Furthermore, it held that the sums awarded in respect of non-pecuniary damage were reasonable.

10. The impugned judgments were enforced shortly thereafter.

THE LAW

I. JOINDER OF THE APPLICATIONS

11. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

12. The applicants complained of the delayed enforcement of final judgments in their favour. They relied on Article 6 § 1 of the Convention, which, in the relevant part, provides:

“1. In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ...”

A. Admissibility

1. *The parties' submissions*

13. The Government submitted that the applicants could no longer claim to be victims within the meaning of Article 34 of the Convention since the judgments in issue had been enforced, domestic courts had acknowledged the alleged breach and awarded appropriate and sufficient redress (see paragraphs 7-10 above). They added that in view of a dire economic situation in Serbia it could not be expected of domestic courts to award higher amounts in this regard.

14. The applicants disagreed.

2. *The Court's assessment*

15. According to the Court's settled case-law, a decision or measure favourable to the applicant, such as the enforcement of a judgment after substantial delay, is not in principle sufficient to deprive him of his status as

a victim unless the national authorities have acknowledged the breach (at least in substance) and afforded redress for it (see *Burdov v. Russia (no. 2)*, no. 33509/04, § 56, 15 January 2009). It is further recalled that redress afforded by the national authorities must be appropriate and sufficient, failing which a party can continue to claim to be a victim of the violation (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 181, ECHR 2006-V, and *Cocchiarella v. Italy* [GC], no. 64886/01, § 72, ECHR 2006-V).

16. In the present case, the domestic courts expressly acknowledged the alleged breach, thereby effectively satisfying the first condition laid down in the Court's case law.

17. With regard to the second condition, the Court has already held in length-of-proceedings cases that one of the characteristics of such redress, which may remove a litigant's victim status, relates to the amount awarded (see *Cocchiarella*, cited above, § 93). The principles developed in the context of length-of-proceedings cases are also applicable in the situation where applicants complain of the delayed enforcement of final judgments in their favour, as in the present case (see *Kudić v. Bosnia and Herzegovina*, no. 28971/05, § 17, 9 December 2008). States which, like Serbia, have opted for a remedy designed both to expedite proceedings and afford compensation are free to award amounts which - while being lower than those awarded by the Court - are still not unreasonable (see *Cocchiarella*, cited above, § 97).

18. In cases against Serbia, when a final judgment rendered in a labour dispute has remained unenforced for more than five years, as in the present case, the Court normally awards EUR 4,700 in respect of non-pecuniary damage (see *Adamović v. Serbia*, no. 41703/06, § 51, 2 October 2012, and *Klikovac and Others v. Serbia*, no. 24291/08, § 25, 5 March 2013). In view of a very large number of non-enforced domestic decisions against socially/State-owned companies, the Court reduced that amount to EUR 2,000 (see *Stošić v. Serbia*, no. 64931/10, § 67, 1 October 2013). In doing so, it took into consideration also the economic situation in Serbia to which the Government referred. Since that amount is already much lower than what the Court would have normally awarded in such cases, any lower amount awarded at the domestic level is considered to be unreasonable. It should be added, however, that the Court could accept a lower domestic award, if the respondent State opts for a comprehensive solution and transfer the liability for all non-enforced domestic decisions against socially/State-owned companies to the State by virtue of law (see *Knežević v. Bosnia and Herzegovina (dec.)*, no. 15663/12, §§ 11-15, 14 March 2017, accepting a domestic award of EUR 50 in respect of non-pecuniary damage).

19. Since the applicants received less than EUR 2,000 in this respect, they did not lose their status as victims within the meaning of Article 34 of the Convention and the Government's objection must be dismissed.

20. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and is not inadmissible on any other grounds. It must, therefore, be declared admissible.

B. Merits

21. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising similar issues (see, among many other cases, *R. Kačapor and Others v. Serbia*, nos. 2269/06 and 5 others, 15 January 2008, and *Crnišaniin and Others v. Serbia*, nos. 35835/05 and 3 others, 13 January 2009). There is no reason to depart from that jurisprudence.

22. There has accordingly been a violation of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

23. The applicants also relied on Article 13 of the Convention without going into any details. Article 13 provides:

“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.”

24. Having regard to its findings under Article 6 of the Convention, the Court does not consider it necessary to examine this complaint separately.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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

26. The applicants claimed EUR 3,000 each in respect of non-pecuniary damage and EUR 2,000 each for the costs and expenses incurred before the Court.

27. The Government considered the sums requested to be excessive.

28. In view of its case-law (see *Stošić*, cited above), the Court awards the applicants EUR 2,000 each, less any amounts which may have already been paid in that regard at the domestic level, in respect of non-pecuniary damage, costs and expenses, and dismisses the remainder of the applicants’ claims for just satisfaction.

B. Default interest

29. 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 § 1 of the Convention;
4. *Holds* that it is not necessary to examine separately the complaint under Article 13 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months EUR 2,000 (two thousand euros) each, less any amounts which may have already been paid in that regard at the domestic level, in respect of non-pecuniary damage, costs and expenses, plus any tax that may be chargeable, which is to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
 - (b) 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;
6. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 27 August 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Georgios A. Serghides
President

RADOVANOVIĆ AND OTHERS v. SERBIA JUDGMENT

No.	Application no. and date of introduction	Applicant's name date of birth place of residence nationality	Represented by	Final domestic decision (trial court, case no., date of decision)	Enforcement order (enforcement court, case no., date of order)	Final domestic decision concerning the length of proceedings (trial court, case no., date of decision)	Amounts awarded domestically for non-pecuniary damage	Constitutional Court decision details
1.	55003/16 10/09/2016	Marko RADOVANOVIĆ 10/05/1968 Čačak Serbian	Dragana JANKOVIĆ	Čačak Municipal Court P1.br. 37/2003 13/10/2008	Čačak Municipal Court I.br. 841/09 12/06/2009	Kragujevac Court of Appeal R4-r-161/14 27/04/2015	400 euros	Už-6142/2015 12/05/2016
2.	55165/16 10/09/2016	Milun STEVANOVIĆ 26/07/1959 Petnica, Čačak Serbian	Dragana JANKOVIĆ	Čačak Municipal Court P1.br.222/2009 26/05/2009	Čačak Municipal Court I.br. 1454/09 19/10/2009	Čačak High Court R4.I. br. 167/14 15/01/2015t	200 euros	Už-5426/2015 12/05/2016
3.	55199/16 10/09/2016	Milivoje KUJUNDŽIĆ 07/10/1950 Miokovci, Čačak Serbian	Dragana JANKOVIĆ	Čačak Municipal Court P1.37/2003 13/10/2008	Čačak Municipal Court I.br. 841/09 12/06/2009	Kragujevac Court of Appeal R4-r-161/14 27/04/2015	400 euros	Už-6142/2015 12/05/2016
4.	58368/16 23/09/2016	Miljan ČUKANOVIĆ 15/12/1949 Kukići, Čačak Serbian	Dragana JANKOVIĆ	Čačak Municipal Court P1.br. 1196/2002 29/05/2008	Čačak Municipal Court I.br. 1070/08 04/08/2008	Čačak High Court R4-I. br. 252/14 03/02/2015	100 euros	Už-5578/2015 (Už-4540/2014) 26/05/2016
5.	14938/17 14/02/2017	Andelija ŠIPETIĆ 26/04/1954 Grab, Čačak Serbian	Ivana KRUNIĆ	Čačak Municipal Court P1.br. 890/04 17/03/2008	Čačak Municipal Court I.br. 159/09 05/02/2009	Čačak High Court R4-I. br. 205/14 14/04/2015	150 euros	Už-7199/2015 (Už-4599/2014) 20/10/2016
6.	20906/17 06/03/2017	Milan MIRKOVIĆ 17/04/1952 Čačak Serbian	Ivana KRUNIĆ	Čačak Municipal Court P1.br. 729/03 10/06/2008 Čačak Municipal Court P1.br. 142/2009 18/05/2009	Čačak Municipal Court I.br. 1240/09 18/09/2009	Čačak High Court R4.I. br. 206/14 29/12/2014	200 euros	Už-1130/2016 (Už-4296/2014) 09/11/2016

RADOVANOVIĆ AND OTHERS v. SERBIA JUDGMENT

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7.	22606/17 15/03/2017	Milutin BOJOVIĆ 21/09/1949 Čačak Serbian	Dragana JANKOVIĆ	Čačak Municipal Court P1.br. 710/2007 31/01/2008 Čačak Municipal Court P1.br. 474/08 18/06/2009	Čačak Municipal Court I.br. 1603/08 01/12/2008 Čačak Municipal Court I.br. 10302/10 26/03/2010	Čačak High Court R4-I-256/14 30/03/2015	150 euros	Už-4357/2015 (Už-4543/2014) 17/11/2016
8.	25312/17 20/03/2017	Dragana TOMOVIĆ 08/12/1963 Čačak Serbian	Ivana KRUNIC	Čačak Municipal Court P1.br. 146/2008 10/10/2008	Čačak Municipal Court I.br. 158/09 05/02/2009	Čačak High Court R4-I. br. 260/14 02/02/2015	100 euros	Už-8232/2015 (Už-4529/2014) 24/11/2016
9.	61028/17 12/08/2017	Miroslav SIMEUNOVIĆ 15/05/1962 Čačak Serbian	Dragana JANKOVIĆ	Čačak Municipal Court P1.br. 1240/03 12/03/2008	Čačak Municipal Court I.br. 838/08 07/07/2008	Čačak High Court R4(I). br. 350/15 04/12/2015	250 euros	Už-7313/2015 13/04/2017
10.	61340/17 12/08/2017	Milojko ĐAKOVIĆ 06/12/1956 Čačak Serbian	Dragana JANKOVIĆ	Čačak Municipal Court P1.br. 1240/03 12/03/2008	Čačak Municipal Court I.br. 838/08 07/07/2008	Čačak High Court R4(I). br. 350/15 04/12/2015	250 euros	Už-7313/2015 13/04/2017
11.	77837/17 04/11/2017	Miroslav PETRIĆ 16/05/1962 Čačak Serbian	Dragana JANKOVIĆ	Čačak Municipal Court P1.br. 31/2003 28/11/2008	Čačak Municipal Court I.br. 1249/09 01/09/2009	Čačak High Court 3R4-I. br. 207/14 22/12/2014	100 euros	Už-2333/2015 (Už-4292/2014) 06/07/2017

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12.	77858/17 04/11/2017	Nebojša BIŠEVAC 03/08/1953 Čačak Serbian	Dragana JANKOVIĆ	Čačak Municipal Court P1.br. 31/2003 28/11/2008	Čačak Municipal Court I.br. 1249/09 01/09/2009	Čačak High Court 3R4-I. br. 207/14 22/12/2014	100 euros	Už-2333/2015 (Už-4292/2014) 06/07/2017