



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

THIRD SECTION

CASE OF ŠPOLJARIĆ v. SERBIA

(Application no. 36709/12)

JUDGMENT

STRASBOURG

19 September 2019

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

In the case of Špoljarić v. Serbia,

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

Dmitry Dedov, *President*,

Alena Poláčková,

Gilberto Felici, *judges*,

and Liv Tigerstedt, *Acting Deputy Section Registrar*,

Having deliberated in private on 29 August 2019,

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

PROCEDURE

1. The case originated in an application against Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 4 June 2012.

2. Notice of the application was given to the Serbian Government (“the Government”).

THE FACTS

3. The applicant’s details and information relevant to the application are set out in the appended table.

4. The applicant complained of the non-enforcement of domestic decisions given against a socially/State-owned company.

THE LAW**I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL NO. 1**

5. The applicant complained of the non-enforcement of domestic decisions given in his favour. He relied, expressly or in substance, on Article 6 § 1 of the Convention and on Article 1 of Protocol No. 1, which read as follows:

Article 6 § 1

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

Article 1 of Protocol No. 1

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. ...”

6. The Court reiterates that the execution of a judgment given by any court must be regarded as an integral part of a “hearing” for the purposes of

Article 6. It also refers to its case-law concerning the non-enforcement or delayed enforcement of final domestic judgments (see *Hornsby v. Greece*, no. 18357/91, § 40, *Reports of Judgments and Decisions* 1997-II).

7. In the leading cases of *R. Kačapor and Others v. Serbia*, nos. 2269/06 and 5 others, §§ 97-99, 106-16 and 119-20, 15 January 2008, and *Crnišaniin and Others v. Serbia*, nos. 35835/05 and 3 others, § 124, 13 January 2009, the Court already found a violation in respect of issues similar to those in the present case.

8. The Court further notes that the decisions in the present application ordered specific action to be taken. The Court therefore considers that the decisions in question constitute “possessions” within the meaning of Article 1 of Protocol No. 1.

9. Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion on the admissibility and merits of these complaints. In particular, the Court rejects the Government’s objection that the applicant had failed to make use of a constitutional appeal since the constitutional appeal became an effective domestic remedy in this type of cases only on 22 June 2012 (see *Marinković v. Serbia* (dec.), no. 5353/11, § 59, 29 January 2013). Having regard to its case-law on the subject, the Court considers that in the instant case the authorities did not deploy all necessary efforts to enforce fully and in due time the decisions in the applicant’s favour.

10. These complaints are therefore admissible and disclose a breach of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

11. 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.”

12. Regard being had to the documents in its possession and to its case-law (see, in particular, *Stošić v. Serbia*, no. 64931/10, §§ 66-68, 1 October 2013), the Court considers it reasonable to award the sum indicated in the appended table and it dismisses the remainder of the applicant’s claim for just satisfaction.

13. The Court further notes that the respondent State has an obligation to pay any outstanding judgment debt from its own funds.

14. 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 this application discloses a breach of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 concerning the non-enforcement of domestic decisions given against a socially/State-owned company;
3. *Holds* that the respondent State shall ensure, within three months, the enforcement of the pending domestic decisions referred to in the appended table by paying any outstanding judgment debt from its own funds;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months, the amount indicated in the appended table, 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;

Done in English, and notified in writing on 19 September 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt
Acting Deputy Registrar

Dmitry Dedov
President

APPENDIX

Application raising complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1
(non-enforcement or delayed enforcement of domestic decisions given against socially/State-owned companies)

Application no. Date of introduction	Applicant's name Date of birth	Relevant domestic decision	Start date of non-enforcement period	End date of non-enforcement period Length of enforcement proceedings	Amount awarded for non-pecuniary damage and costs and expenses (in euros) ^{1 2}
36709/12 04/06/2012	Nikola Špoljarić 11/08/1959	Municipal Court in Srbobran, 10/03/2009	07/10/2009	pending More than 9 year(s) and 8 month(s) and 20 day(s)	2,000
		Municipal Court in Srbobran, 03/11/2008	07/10/2009	pending More than 9 year(s) and 8 month(s) and 20 day(s)	
		Municipal Court in Srbobran, 14/11/2007, as amended on 17/04/2008	07/10/2009	pending More than 9 year(s) and 8 month(s) and 20 day(s)	
		Municipal Court in Srbobran, 26/04/2007	07/10/2009	pending More than 9 year(s) and 8 month(s) and 20 day(s)	

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1. Plus any tax that may be chargeable to the applicants.
 2. Less any amounts which may have already been paid in that regard at the domestic level.