



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

THIRD SECTION

CASE OF STEVANOVIĆ AND OTHERS v. SERBIA

(Applications nos. 43815/17 and 15 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 Stevanović 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 sixteen applications (nos. 43815/17, 43819/17, 46335/17, 46382/17, 58825/17, 72892/17, 77141/17, 77875/17, 77876/17, 77879/17, 77882/17, 78142/17, 79575/17, 83186/17, 5791/18 and 6256/18) 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 sixteen Serbian nationals. The applicants’ personal details are set out in the appendix to this judgment.

2. The applicants were represented by Ms T. Stojiljković, a lawyer practising in Leskovac. The Serbian Government (“the Government”) were represented by their Agent, Ms N. Plavšić.

3. On 25 September 2018 notice of the applications was given to the Government pursuant to Rule 54 § 2 (b) 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**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicants were employed by the following socially/State-owned companies: *Vučje*, *Inkol*, *Elektrouniverzal* and *Graditelj* (hereinafter – “the debtors”).

6. They obtained final court decisions ordering the debtors 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 April 2009 and September 2010 the Leskovac Commercial Court opened insolvency proceedings in respect of the debtors. Since all the enforcement proceedings against the debtors were stayed by operation of law (see paragraph 12 below), the applicants reported their claims based on the court decisions mentioned in paragraph 6 above to the liquidator. On

different dates the liquidator accepted their claims in the amount of the principal debt plus default interest accrued until the day of institution of the insolvency proceedings against the debtors, as provided for by domestic law (see paragraph 12 below).

8. On different dates (see the appendix to this judgment) the Commercial Court of Appeal 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 for non-pecuniary damage. No award was made in respect of the fifth and the seventh applicant. That court also ordered the Leskovac Commercial Court to speed up the insolvency proceedings against the debtors.

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

10. On different dates in 2017 the Constitutional Court found a violation of the applicants' right to the peaceful enjoyment of their possessions and ordered that the claims accepted by the liquidator (see paragraph 7 above) be paid directly by the State within four months. Furthermore, it held that the sums awarded in respect of non-pecuniary damage were reasonable.

11. Soon thereafter, those claims were indeed paid by the State.

II. RELEVANT DOMESTIC LAW

12. Pursuant to sections 85 and 93 of the Insolvency Act 2009 (*Zakon o stečajju*; Official Gazette nos. 104/09, 99/11, 71/12, 83/14, 113/17 and 44/18), as of the day of institution of insolvency proceedings against a company (both private and socially/State-owned), any ongoing enforcement proceedings against the company are stayed and default interest on any outstanding debt of the company cease to accrue. The Insolvency Act 2004 (*Zakon o stečajnom postupku*; Official Gazette nos. 84/04 and 85/05), which was in force until the entry into force of the Insolvency Act 2009, contained almost identical provisions.

THE LAW

I. JOINDER OF THE APPLICATIONS

13. 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 AND OF ARTICLE 1 OF PROTOCOL NO. 1

14. The applicants maintained that the final court decisions mentioned in paragraph 6 above had not been fully enforced. They relied on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, which, in the relevant part, 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. ...”

A. Admissibility

1. *The parties' submissions*

15. 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. In view of a dire economic situation in Serbia, it could not be expected of domestic courts to award higher amounts in this regard. The Government added that in Serbia, at the relevant time (in 2016), the average salary was less than EUR 400 and the average pension was less than EUR 200.

16. The applicants disagreed. Notably, they complained because they had not been paid default interest after institution of insolvency proceedings against the debtors. They also argued that the redress awarded in respect of non-pecuniary damage was not sufficient.

2. *The Court's assessment*

17. The Court notes that the applicants were entitled to receive, and they indeed received, the principal debt and default interest at the statutory rate until the institution of the insolvency proceedings against the debtors. They did not receive default interest after that date because they were not entitled to it (see paragraph 12 above). That being the case, the Court concludes that the domestic decisions in issue were fully enforced. In this connection, the Court agrees with the Government that although the respondent State is responsible for the judgment debts of socially/State-owned companies (see *R. Kačapor and Others v. Serbia*, nos. 2269/06 and 5 others, 15 January 2008), the general rules of domestic law still apply to any enforcement and

insolvency proceedings against such companies. Those with non-enforced judgments against socially/State-owned companies have a possibility of transferring liability for their claims to the State since 2012 (see *Marinković v. Serbia* (dec.), no. 5353/11, 29 January 2013). In the present case, there is no reason to elaborate on the rules which apply to transferred claims, since the judgments in issue were enforced soon after the transfer of liability (see paragraphs 10-11 above).

18. The Court further reiterates that the enforcement of a judgment after substantial delay is not in principle sufficient to deprive an applicant of his status as a victim unless the national authorities have acknowledged the breach (at least in substance) and afforded appropriate and sufficient redress (see *Burdov v. Russia* (no. 2), no. 33509/04, § 56, 15 January 2009).

19. 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.

20. 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 v. Italy* [GC], no. 64886/01, § 93, ECHR 2006-V). 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).

21. 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 for 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 sum 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).

22. 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. The Government's objection must therefore be dismissed. In view of the finding that the domestic decisions in issue were fully enforced (see paragraph 17 above), there is no need to examine the Government's remaining objections.

23. Since the application is neither manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor inadmissible on any other grounds, it must be declared admissible.

B. Merits

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

25. There has accordingly been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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

27. The applicants claimed EUR 2,000 each in respect of non-pecuniary damage, EUR 1,500 each for the costs and expenses incurred before the domestic courts and EUR 1,000 each for those incurred before the Court.

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

29. 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

30. 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 there has been a violation of Article 1 of Protocol No. 1;
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

STEVANOVIĆ AND OTHERS v. SERBIA JUDGMENT

No.	Application no. and date of introduction	Applicant's name and date of birth	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.	43815/17 12/06/2017	Srdan STEVANOVIĆ 06/07/1965	Leskovac Municipal Court P.br. 2663/2003 07/10/2003	Leskovac Municipal Court I.br. 1313/07 08/05/2007	Commercial Court of Appeal R4 St 251/15 13/05/2015	170 euros	Už-6940/2015 27/04/2017
2.	43819/17 12/06/2017	Goran ILIĆ 12/09/1969	Leskovac Municipal Court P.br. 2575/03 20/11/2003 P1.br. 3239/07 13/03/2008	Leskovac Municipal Court I.br. 4338/07 10/12/2007 I.br. 1316/08 03/07/2008	Commercial Court of Appeal R4 St 122/15 17/03/2016	250 euros	Už-6963/2016 (Už-2506/2014) 27/04/2017
3.	46335/17 14/06/2017	Radmila STAMENKOVIĆ 03/04/1951	Leskovac Municipal Court P.br. 1255/03 13/11/2003 P1.br. 3308/07 14/02/2008	Leskovac Municipal Court I.br. 4172/07 27/11/2007 I.br. 1812/08 18/09/2008	Commercial Court of Appeal R4 St 122/15 17/03/2016	250 euros	Už-6963/2016 (Už-2506/2014) 27/04/2017
4.	46382/17 13/06/2017	Sladanka NOVAKOVIĆ 03/02/1963	Leskovac Municipal Court P.br. 2034/03 13/06/2003 P1.br. 2797/07 01/02/2008	Leskovac Municipal Court I.br. 757/06 03/05/2006 I.br. 1602/08 30/06/2008	Commercial Court of Appeal R4 St 122/15 17/03/2016	250 euros	Už-6963/2016 (Už-2506/2014) 27/04/2017
5.	58825/17 02/08/2017	Zlata PAVLOVIĆ 23/06/1962	Leskovac Municipal Court P1.br. 1932/06 25/06/2007	-	Commercial Court of Appeal R4 St 167/15 20/08/2015	-	Už-10085/2016 22/06/2017
6.	72892/17 02/10/2017	Tamara KOSTIĆ 19/07/1961	Leskovac Municipal Court P.br. 1032/01 13/06/2001 P.br. 2651/2001 05/12/2001 P.br. 4098/2003	Leskovac Municipal Court I.br. 1328/01 17/07/2001 I.br. 1390/02 18/07/2002 I.br. 3662/03 28/11/2003	Commercial Court of Appeal R4 St. 84/2015 22/05/2015	100 euros	Už-7258/2015 (Už-1407/2014) 01/06/2017

No.	Application no. and date of introduction	Applicant's name date of birth	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
			01/08/2003 P.br. 2167/04 10/11/2004	I.br. 305/05 20/12/2006			
7.	77141/17 23/10/2017	Radmila ILIĆ 03/12/1947	Leskovac Municipal Court P1.br. 3504/07 25/02/2008	Leskovac Municipal Court I.br. 1684/08 18/09/2008	Commercial Court of Appeal R4 St 869/2014 06/04/2015	-	Už-6950/2015 20/04/2017
8.	77875/17 30/10/2017	Tomislav ĐORDEVIĆ 11/09/1948	Leskovac Municipal Court P.br. 862/03 (940/03) 04/03/2003 P1.br. 3130/07 10/01/2008	Leskovac Municipal Court I.br. 4201/07 28/11/2007 I.br. 3109/08 04/11/2008	Commercial Court of Appeal R4 St 104/15 16/06/2016	170 euros	Už-40/2017 (Už-2506/2014) 07/09/2017
9.	77876/17 30/10/2017	Dragan CVETKOVIĆ 11/10/1953	Leskovac Municipal Court P.br. 1928/03 13/06/2003	Leskovac Municipal Court I.br. 1227/08 26/03/2008	Commercial Court of Appeal R4 St 116/15 29/12/2015	170 euros	Už-4184/2016 (Už-2506/2014) 20/09/2017
10.	77879/17 30/10/2017	Sladana KRSTIĆ 16/02/1968	Leskovac Municipal Court P.br. 2467/03 20/05/2003	Leskovac Municipal Court I.br. 1525/07 28/06/2007	Commercial Court of Appeal R4 St 116/15 29/12/2015	170 euros	Už-4184/2016 (Už-2506/2014) 20/09/2017
11.	77882/17 31/10/2017	Olivera ĐORDEVIĆ 28/09/1976	Leskovac Municipal Court P.1.br. 1162/06 20/09/2006 P1.br. 469/09 24/06/2009	Leskovac Municipal Court I.br. 168/09 03/11/2009 I.br. 3412/09 07/12/2009	Commercial Court of Appeal R4 St 2840/15 15/06/2016	170 euros	Už-9747/2016 19/07/2017

STEVANOVIĆ AND OTHERS v. SERBIA JUDGMENT

No.	Application no. and date of introduction	Applicant's name date of birth	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
12.	78142/17 03/11/2017	Zlatica STEFANOVIĆ 02/02/1959	Leskovac Municipal Court P.br. 424/04 16/03/2005 P.1.br. 1912/06 05/12/2006	Leskovac Municipal Court I.br. 283/06 28/04/2006 (I.br. 413/07 23/04/2007) I.br. 598/07 08/02/2007	Commercial Court of Appeal R4 St. 498/14 14/01/2015	400 euros	Už-2924/2015 (Už-1932/2014) 18/05/2017
13.	79575/17 13/11/2017	Rade GAVRILOVIĆ 11/03/1954	Leskovac Municipal Court P.br. 902/2003 30/06/2003 P1.br. 1130/06 20/07/2006	Leskovac Municipal Court I.br. 4332/07 08/02/2008 I.br. 4317/07 21/04/2008	Commercial Court of Appeal R4 St 1931/15 20/08/2015	100 euros	Už-931/2016 28/09/2017
14.	83186/17 06/12/2017	Aca PAVLOVIĆ 24/10/1961	Leskovac Municipal Court P.br. 1310/03 20/03/2003 P1.br. 2859/07 05/02/2008	Leskovac Municipal Court I.br. 3515/07 09/10/2007 I.br. 1254/08 20/05/2008	Commercial Court of Appeal R4 St 849/14 27/05/2015 R4 St 870/14 04/062015	270 euros	Už-7341/2015 20/09/2017
15.	5791/18 22/01/2018	Sunčica JORGAČEVIĆ 19/01/1967	Leskovac Municipal Court P1.br. 3252/07 30/01/2008	Leskovac Municipal Court I.br. 2604/08 04/11/2008	Commercial Court of Appeal R4 St. 124/2015 27/05/2015	100 euros	Už-412/2016 09/11/2017
16.	6256/18 22/01/2018	Saša STANKOVIĆ 17/05/1967	Leskovac Municipal Court P1.br. 263/08 15/04/2008	Leskovac Municipal Court I.br. 2923/08 12/12/2008	Commercial Court of Appeal R4 St. 124/2015 27/05/2015	100 euros	Už-412/2016 09/11/2017