



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

THIRD SECTION

CASE OF KNEŽEVIĆ AND OTHERS v. SERBIA

(Applications nos. 54787/16 and 6 others – see appended list)

JUDGMENT

STRASBOURG

9 October 2018

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

In the case of Knežević and Others v. Serbia,

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

Pere Pastor Vilanova, *President*,

Branko Lubarda,

Georgios A. Serghides, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 18 September 2018,

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

PROCEDURE

1. The case originated in seven separate applications (nos. 54787/16, 55000/16, 55009/16, 55034/16, 55203/16, 58557/16, and 60159/16) against Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”).

2. The applicants are all Serbian nationals. Additional personal information and other relevant details, as well as the dates of introduction of their complaints before the Court, are set out in the appendix to this judgment.

3. The applicants were all represented by Ms D. Janković, a lawyer practising in Čačak. The Serbian Government (“the Government”) were represented by their Agent, Ms N. Plavšić.

4. On 27 April 2017 the applicants’ complaints concerning the length of the enforcement proceedings were communicated to the Government and the remainders of their applications were declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

5. The Government objected to the examination of the applications by a Committee. After having considered the Government’s objection, the Court rejects it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. Under Article 6 § 1 of the Convention the applicants complained of the excessive length of enforcement proceedings.

7. The circumstances of the cases as presented by the parties may be summarized as follows.

A. Proceedings before the civil courts

1. *As regards the first, second, third and fourth applicant*

8. Between 18 December 2000 and 16 April 2003, the first, second, third and fourth applicants lodged separate civil complaints with the Čačak Municipal Court (*Opštinski sud u Čačku*) against the same socially owned-company, *Akcionarsko društvo Fabrika reznog alata Čačak*, requesting the payment of salary related damages.

9. On 26 December 2007, the Čačak Municipal Court ruled in favour of the applicants.

10. On 30 July 2008 Čačak District Court (*Okružni sud u Čačku*) upheld this judgment on appeal.

11. On 31 March 2009 the applicants lodged a joined enforcement request which was accepted by Čačak Municipal Court on 2 April 2009.

2. *As regards the fifth applicant*

12. On 22 June 2005 the fifth applicant lodged her civil complaint with the Čačak Municipal Court against *Akcionarsko društvo Fabrika reznog alata Čačak* requesting the payment of an allowance.

13. On 21 April 2008 the Čačak Municipal Court ruled in favour of the fifth applicant. In the absence of an appeal, this judgment subsequently became final.

14. On 27 October 2009 the fifth applicant lodged an enforcement request which was accepted by Čačak Municipal Court on 28 October 2009.

3. *As regards the sixth applicant*

15. On 27 August 2003 the sixth applicant lodged her civil complaint with the Čačak Municipal Court against *Akcionarsko društvo Fabrika reznog alata Čačak* requesting the payment of salary related damages.

16. On 24 April 2008 the Čačak Municipal Court ruled in favour of the sixth applicant.

17. On 29 October 2008 the Čačak District Court upheld this judgment on appeal.

18. On 31 December 2008 the sixth applicant lodged an enforcement request which was accepted by Čačak Municipal Court on 08 January 2009.

4. *As regards the seventh applicant*

19. On 22 April 2003 the seventh applicant lodged his civil complaint with the Čačak Municipal Court against *Akcionarsko društvo Fabrika reznog alata Čačak* requesting the payment of salary related damages.

20. On 11 November 2008 the Čačak Municipal Court ruled in favour of the seventh applicant. In the absence of an appeal, this judgment subsequently became final.

21. On 9 April 2009 the seventh applicant lodged an enforcement request which was accepted by Čačak Municipal Court on 4 February 2010.

B. First set of proceedings before the Constitutional Court

22. Since the judgment rendered in favour of the applicants remained unenforced, on 24 February 2014, the sixth and the seventh applicants and on 19 May 2014, the first, second, third, fourth and fifth applicants, lodged their appeals with the Constitutional Court.

23. In so doing, the applicants complained about the length of enforcement proceedings in question and the ultimate non-enforcement.

24. Pursuant to the Amendments to Court Organization Act (*Zakon o izmenama i dopunama Zakona o uređenju sudova*; published in the Official Gazette of the Republic of Serbia, no. 101/13) the complaint concerning the length of proceedings was transmitted to the Kragujevac Court of Appeal which then itself forwarded the matter to the Čačak High Court (*Viši sud u Čačku*), i.e. the former Čačak District Court.

C. Proceedings concerning the complaints about the excessive length of enforcement proceedings

1. As regards the first, second, third and fourth applicants

25. On 27 January 2015 the Čačak High Court found that the first, second, third and fourth applicants' right to a trial within a reasonable time had been violated and awarded them 200 euros (EUR) each in respect of the non-pecuniary damage suffered due to the length of the enforcement proceedings.

It, further, ordered the Čačak Court of First Instance (*Osnovni sud u Čačku*), i.e. the former Čačak Municipal Court, to speed up the enforcement proceedings and enforce the judgment rendered in the applicants' favour.

26. On 11 February 2015 the applicants complained to the Supreme Court of Cassation claiming that the compensation awarded was too low and, accordingly, inadequate for the violation found. On 26 March 2015 the Supreme Court of Cassation rejected the applicants' appeals.

2. As regards the fifth applicant

27. On 14 January 2015 the Čačak High Court found that the fifth applicant's right to a trial within a reasonable time had been violated and awarded her EUR 100 in respect of the non-pecuniary damage suffered due to the length of the enforcement proceedings. It also ordered to the Čačak Court of First Instance to speed up the proceedings and enforce the judgment.

28. On 2 February 2015 the fifth applicant complained to the Supreme Court of Cassation of the insufficient redress. Her appeal, however, was rejected on 22 April 2015.

3. As regards the sixth applicant

29. On 2 December 2014 the Čačak High Court found that the sixth applicant's right to a trial within a reasonable time had been violated and awarded her EUR 300 in respect of the non-pecuniary damage suffered due to the length of the enforcement proceedings. Her appeal to the Supreme Court of Cassation concerning the amount of the compensation awarded was rejected on 6 May 2015.

4. As regards the seventh applicant

30. On 20 February 2015 the Čačak High Court found that the seventh applicant's right to a trial within a reasonable time had been violated and awarded him EUR 80 in respect of the non-pecuniary damage suffered due to the length of the enforcement proceedings. His appeal to the Supreme Court of Cassation concerning the amount of the compensation awarded was rejected on 19 May 2015.

D. Second set of proceeding before the Constitutional Court

31. Between 3 August 2015 and 30 December 2015 all applicants lodged new appeals with the Constitutional Court.

32. They complained, *inter alia*, about the failure of domestic authorities to enforce the final judgments rendered in their favour, and that the amount of compensation awarded by the competent courts in respect of the breach of their right to a trial within a reasonable time had been too low.

33. Between 12 May 2016 and 9 June 2016 the Constitutional Court found that due to the failure of domestic authorities to enforce the judgments rendered in the applicants' favour their right to the peaceful enjoyment of possessions had, indeed, also been violated. The Constitutional Court, accordingly, awarded the applicants with pecuniary damages in the amounts granted by the judgments that had remained unenforced.

34. However, the Constitutional Court rejected the applicants' complaints concerning the insufficient redress as regards the violation of their right to a hearing within a reasonable time since it considered the awards given by the domestic courts as reasonable compensation for the violations found.

35. The Constitutional Court lastly emphasized that, in any event and due to the changes in legislation, it could not have assessed the specific reasons for the amounts awarded by other courts in this respect.

II. RELEVANT DOMESTIC LAW

36. The Amendments to the Court Organization Act (*Zakon o izmenama i dopunama Zakona o uređenju sudova*; published in the Official Gazette of the Republic of Serbia no. 101/13), being an Act relevant to the present case, had been in force between 1 January 2014 and 1 January 2016 when the entirely new Trial within a Reasonable Time Act (*Zakon o zaštiti prava na suđenje u razumnom roku*, published in Official Gazette of the Republic of Serbia, no. 40/2015) entered into force.

In accordance with the said Amendments, competence to deal with the alleged breaches of the right to a trial within a reasonable time in cases where the impugned proceedings were still ongoing was given directly to higher courts. Where a violation of a right to a trial within a reasonable time was found, these higher courts could award compensation for the non-pecuniary damage suffered and order lower courts to expedite and bring to a conclusion the impugned proceedings within a certain period of time. These decisions could be appealed before the Supreme Court of Cassation.

The Constitutional Court was, in accordance with the Amendments, left with the competence to deal with the alleged violations of the right to a trial within a reasonable time in cases where the proceedings before regular courts had already ended.

THE LAW

I. JOINDER OF THE APPLICATIONS

37. 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 § 1 OF THE CONVENTION

38. The applicants complained that the length of the enforcement proceedings had been incompatible with the “reasonable time” requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

“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*

39. Relying on the case of *Vidaković v. Serbia* (dec.) (no. 16231/07, 24 May 2011) the Government maintained that the applicants could no longer claim to be victims within the meaning of Article 34 of the Convention given that the redress afforded by domestic courts had been adequate and sufficient. In the alternative, they claimed that in view of the grave socio-economic situation of the country and the limited budgetary resources it could not have been expected of domestic courts to award the applicants with higher sums than they did in respect of the non-pecuniary damage suffered.

40. In this connection, the Government further noted the changes in legislation (see paragraph 36 above) which precluded the Constitutional Court from re-examining the amounts of compensation awarded to the applicants.

41. The applicants contested these arguments and claimed that they are still victims within the meaning of Article 34 of the Convention.

2. *The Court assessment*

42. The Court considers that the above objections raised by the Government fall to be examined under the issue of the applicants' victim status (see, *mutatis mutandis*, *Vidaković v. Serbia* (dec.), cited above).

43. Having said that, the Court recalls that an applicant's status as a "victim" within the meaning of Article 34 of the Convention depends on the fact whether the domestic authorities acknowledged, either expressly or in substance, the alleged infringement of the Convention and, if necessary, provided appropriate redress in relation thereto. Only when these conditions are satisfied does the subsidiary nature of the protective mechanism of the Convention preclude examination of an application (see *Cocchiarella v. Italy* [GC], no. 64886/01, § 71, ECHR 2006-V; and *Cataldo v. Italy* (dec.), no. 45656/99, 3 June 2004).

44. The Court, in this respect, notes that the domestic authorities expressly acknowledged the breach of applicants' right to obtain the enforcement of final domestic court's decisions rendered in their favour within a reasonable time (see paragraphs 25 - 30 above). Accordingly, the first condition laid down in the Court's case law is satisfied.

45. The applicants' victim status then depends on whether the redress afforded in respect of the breach found was adequate and sufficient having regard to just satisfaction as provided for under Article 41 of the Convention (see *Dubjaková v. Slovakia* (dec.), no. 67299/01, 19 October 2004).

46. In this connection, the Court recalls that for a person to lose the victim status compensation has to be sufficient and reasonable in comparison with the awards made by the Court in similar cases.

47. The Court notes that compensations offered by domestic authorities in the present cases are significantly lower compared with the sums awarded for the non-enforcement of judgments rendered against companies predominantly comprised of socially-owned capital (see, for example, *Stošić v. Serbia*, no. 64931/10, §§ 66 and 67, 1 October 2013, and *Ridić and Others v. Serbia*, nos. 53736/08 and 5 others, § 84, 1 July 2014).

48. In the light of the material in the files and having regard to the particular circumstances of the cases, the Court considers that the sums offered to the applicants cannot be considered sufficient and therefore amount to appropriate redress for the violations suffered.

49. The Court therefore concludes that the applicants did not lose their status as victims within the meaning of Article 34 of the Convention. The Government's objection in this regard must therefore be rejected.

50. The Court otherwise considers that the applicants' complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

51. The applicants reaffirmed their complaints, while the Government made no comment.

52. The Court recalls that the execution of a judgment given by a court must be regarded as an integral part of the "trial" for the purposes of Article 6 (see *Hornsby v. Greece*, judgment of 19 March 1997, Reports of Judgments and Decisions 1997-II, p. 510, § 40). A delay in the execution of a judgment may be justified in particular circumstances. It may not, however, be such as to impair the essence of the right protected under Article 6 § 1 (see *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 74, ECHR 1999-V).

53. The Court has also already held that the respondent State is responsible for the debts of companies predominantly comprised of socially/State owned capital, which is why neither the lack of its own funds nor the indigence of the debtor can be cited as a valid excuse for any excessive delays in this particular enforcement context (see, among many other authorities, *R. Kačapor and Others v. Serbia*, nos. 2269/06 and 5 others, § 114, 15 January 2008; and *Crnišanić and Others v. Serbia*, nos. 35835/05 and 3 others, § 124, 13 January 2009).

54. Besides, the Court notes that the Serbian authorities have advanced no reasons for their failure to take all necessary measures in order to enforce

the judgments at issue (see, *mutatis mutandis*, *Riđić and Others v. Serbia*, cited above, §§ 78 and 79) where a final judgment rendered against a socially owned company had been enforced following a five to seven years delay.

55. In view of the above and in particular the Court's finding regarding the victim status of the applicants (see paragraph 49 above), the Court concludes that in the present case the length of the enforcement proceedings in question was excessive and failed to meet the "reasonable time" requirement.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

57. 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

58. The applicants claimed 2,000 euros (EUR) each in respect of the non-pecuniary damages suffered. They also claimed EUR 2,000 jointly for the costs and expenses incurred before the Court.

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

60. In view of its case-law (see *Stošić v. Serbia*, cited above, and *Riđić and Others v. Serbia*, cited above), the Court considers it reasonable and equitable to award EUR 2,000 to each applicant, less any amount which may have already been paid in that regard at the national level, which sum is to cover all non-pecuniary damage as well as costs and expenses.

B. Default interest

61. 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*
 - (a) that the respondent State is to pay each applicant, within three months, EUR 2,000 (two thousand euros), less any amount which may have already been paid in that regard at the national level, in respect of non-pecuniary damage, costs and expenses, plus any tax that may be chargeable on this amount, 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 amounts 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 9 October 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Pere Pastor Vilanova
President

APPENDIX

No.	Application number and date of introduction	Applicant name date of birth place of residence nationality	Represented by	Final domestic decision (issuing authority / case no., adopted on)	Enforcement order (enforcement authority, case no., date of order)	Constitutional Court decision details	Amounts awarded domestically for non-pecuniary damage and costs and expenses per applicant in euros
1.	54787/16 10/09/2016	Vinko KNEŽEVIĆ 01/01/1955 Čačak Serbian	Dragana JANKOVIĆ	Municipal Court in Čačak P1.br.1232/2002 26 December 2007	Municipal Court in Čačak I.br. 468/09 2 April 2009	Už-5478/2015 (Už-4544/2014) 12 May 2016	200 euros
2.	55000/16 10/09/2016	Srećko JOVIČIĆ 01/11/1963 Čačak Serbian	Dragana JANKOVIĆ	Municipal Court in Čačak P1.br.1232/2002 26 December 2007	Municipal Court in Čačak I.br. 468/09 2 April 2009	Už-5478/2015 (Už-4544/2014) 12 May 2016	200 euros
3.	55009/16 10/09/2016	Dragutin STANČIĆ 25/1 1/1952 Čačak Serbian	Dragana JANKOVIĆ	Municipal Court in Čačak P1.br.1232/2002 26 December 2007	Municipal Court in Čačak I.br. 468/09 2 April 2009	Už-5478/2015 (Už-4544/2014) 12 May 2016	200 euros
4.	55034/16 10/09/2016	Svetlana MILOJEVIĆ 13/08/1960 Čačak Serbian	Dragana JANKOVIĆ	Municipal Court in Čačak P1.br.1232/2002 26 December 2007	Municipal Court in Čačak I.br. 468/09 2 April 2009	Už-5478/2015 (Už-4544/2014) 12 May 2016	200 euros

No.	Application number and date of introduction	Applicant name date of birth place of residence nationality	Represented by	Final domestic decision (issuing authority / case no., adopted on)	Enforcement order (enforcement authority, case no., date of order)	Constitutional Court decision details	Amounts awarded domestically for non-pecuniary damage and costs and expenses per applicant in euros
5.	55203/16 16/09/2016	Zagorka ŠKILJEVIĆ 05/10/1958 Čačak Serbian	Dragana JANKOVIĆ	Municipal Court in Čačak P1.br.858/05 21 April 2008	Municipal Court in Čačak I.br. 1438/08 28 October 2008	Už-4358/2015 (Už-4535/2014) 19 May 2016	100 euros
6.	58557/16 23/09/2016	Vera KOTLAJIĆ 03/03/1951 Čačak Serbian	Dragana JANKOVIĆ	Municipal Court in Čačak P1.br.1534/03 24 April 2008	Municipal Court in Čačak I.br.1820/08 8 January 2009	Už-4356/2015 (Už-1683/2014) 26 May 2016	300 euros
7.	60159/16 07/10/2016	Prvoslav RAKOVIĆ 07/02/1946 Čačak Serbian	Dragana JANKOVIĆ	Municipal Court in Čačak P1.br.886/05 11 November 2008	Municipal Court in Čačak I.br. 9441/10 4 February 2010	Už-7856/2015 (Už-1682/2014) 9 June 2016	80 euros