dirittifondamentali.it

La Corte Edu sulla violazione del diritto al ricorso individuale
(CEDU, sez. IV, sent. 5 marzo 2024, ric. n. 37364/10)

Il caso sottoposto al giudizio della Corte verte sulla mancata esecuzione di una decisione definitiva nei confronti di una società per azioni e sul presunto impedimento opposto dallo Stato convenuto all'esercizio del diritto di ricorso individuale da parte del ricorrente, il quale era stato minacciato di licenziamento qualora avesse deciso di presentare un ricorso innanzi alla Corte di Strasburgo nei confronti della società datrice di lavoro. In particolare, la questione concerne la responsabilità dello Stato per gli atti compiuti dall'amministratore delegato di un Ente parco, qualificato dalla Corte alla stregua di una organizzazione governativa.
Ciò premesso, i giudici ricordano che è della massima importanza per l'efficace funzionamento del sistema di ricorso individuale istituito dall'articolo 34 che i ricorrenti o potenziali ricorrenti possano comunicare liberamente con la Corte senza essere soggetti ad alcuna forma di pressione da parte delle autorità di ritirare o modificare le loro doglianze. In questo contesto, la "pressione" include non solo la coercizione diretta e gli atti flagranti di intimidazione, ma anche altri atti o contatti indiretti impropri volti a dissuadere o scoraggiare i ricorrenti dal perseguire un ricorso previsto dalla Convenzione.
Così come riconosciuto dalla Corte, simile pressione è stata esercitata nei confronti del ricorrente il quale era stato minacciato di licenziamento per avere espresso la volontà di adire la Corte e al quale era stato imposto di consegnare copia di tutta la corrispondenza intrattenuta con la Corte.
Tale situazione non può che essere considerata una indebita pressione rispetto all'esercizio del diritto al ricorso individuale di cui all'art. 34 della Convenzione.

***

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

FOURTH SECTION

CASE OF XXX v. SERBIA
(Application no. 15122/17)

JUDGMENT
STRASBOURG

5 March 2024

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of XXX v. Serbia,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:
Gabriele Kucsko-Stadlmayer, *President*,
Tim Eicke,
Branko Lubarda,
Armen Harutyunyan,
Ana Maria Guerra Martins,
Anne Louise Bormann,
Sebastian Răduleţu, *judges*,
and Andrea Tamietti, *Section Registrar*,
Having regard to:
the application (no. 37364/10) 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 a Serbian national, "*omissis*" ("the applicant"), on 8 June 2010;
the decision to give notice to the Serbian Government ("the Government") of that application;
the decision to grant the applicant leave to represent himself before the Court (Rule 36 § 2 *in fine* of the Rules of Court) and to use Serbian in the written proceedings (Rule 34 § 3 (a));
the parties' observations;
Having deliberated in private on 13 February 2024,
Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns, under Articles 6 § 1 and 34 of the Convention, the non-enforcement of a final domestic court decision against a statutory corporation (*javno preduzeće*) and the respondent State's alleged hindrance of the effective exercise of the applicant's right of individual application.

THE FACTS

2. The applicant was born in "*omissis*" and lives in "*omissis*".
3. The Government were represented by their Agent, most recently Ms Z. Jadrijević Mladar.
4. The facts of the case may be summarised as follows.

I. THE DOMESTIC PROCEEDINGS

5. The applicant was employed as a driver with a statutory corporation, the Šar Mountains National Park (*Javno preduzeće "Nacionalni park Šar planina"*) until he retired in 2017.
6. On 24 January 2000 and 17 July 2003 respectively, the Serbian government adopted two decisions whereby, *inter alia*, all its employees who resided and worked in Kosovo were to be paid double wages – referred to as the "Kosovo allowance". This included the applicant.

7. On 24 February 2005, 11 January 2007, 27 December 2007, 25 December 2008 and 26 August 2010 respectively, the government amended the levels of remuneration.

8. On 30 May 2005 the applicant filed a civil claim against his employer and the Serbian Ministry of Science and Environmental Protection ("the Ministry"). He sought payment of the difference between the salary he received and the one that should have been paid taking into account the "Kosovo allowance" and an order for both respondents to be held jointly liable and to continue paying him the increased salary as provided for by the above-mentioned government decisions.

9. On 21 November 2007 the Uroševac Municipal Court (*Opštinski sud*) ("the Municipal Court"), displaced from Uroševac to Leskovac (see paragraph 40 below), ruled in favour of the applicant and ordered his employer and the Ministry:

(i) to pay him jointly 385,444 Serbian dinars ((RSD) – approximately 4,800 euros (EUR) at the relevant time) in respect of the difference between the wages he had received from 1 June 2006 to 30 September 2007 and those granted by the government, plus statutory interest accrued in the meantime on a monthly basis;

(ii) to continue paying the increased wages for as long there was a legal basis to do so; and

(iii) to pay him jointly RSD 72,068 (approximately EUR 900) for his legal costs.

10. The applicant's employer and the Ministry appealed against that judgment.

11. On 21 January 2009 the Priština District Court (*Okružni sud*), displaced from Priština to Niš (see paragraph 40 below), partly upheld and partly reversed that judgment. In particular, it upheld the rulings under (i) and (iii) in respect of the applicant's employer only (hereinafter "the debtor") as severally liable and rejected the remainder of the ruling. In doing so, the District Court held, *inter alia*, that the government could not be held liable for the debt, given that its responsibility was limited to the approval of the corporation's annual business plans, the financing of programmes concerning development, and the protection of the national park, rather than the financing of employees' salaries.

12. On 12 May 2009 the Municipal Court issued a writ of enforcement in respect of the judgment, which had become final.

13. It would appear that during an unspecified period the debtor's bank account was blocked by the Central Bank of Serbia owing to other pending enforcement orders, and its employees stopped receiving their salaries.

14. All the debtor's employees in the same position as the applicant received an offer from the debtor to sign individual (mutual) binding agreements, whereby the employees would withdraw their respective applications for enforcement, while the debtor was to pay the outstanding debts once its account had been unblocked, or, at the latest, within fifteen days from the date it received the necessary funds from the Ministry's Environmental Protection Fund.

15. On 16 April 2010 the Constitutional Court delivered a decision in which it held, *inter alia*, that the part of the Serbian government's decision of 17 July 2003 (see paragraph 6 above) prescribing that all of its employees who resided and worked in Kosovo were to be paid double wages ceased to be valid as of the date of the publication of its decision.

16. On 20 May 2010 the applicant complained to the debtor's management that he was being forced to sign the above-mentioned agreement (see paragraph 14 above) in order to receive the outstanding wages owed to him from July 2009. He argued that he would never have considered

signing such an agreement if he were not in such a desperate financial situation, which had been caused by the debtor. Lastly, he stated that, if he signed the offer, the waiver of his rights would be against his will.

17. On 21 May 2010 the applicant concluded an "Agreement on the Method of Implementation of a Court Judgment" ("the agreement") with the debtor as regards the execution of the judgment of 21 January 2009 (see paragraph 11 above) and as provided for by the debtor's offer explained in paragraph 14 above.

18. On 25 May 2010 the applicant withdrew his application for enforcement and on 28 May 2010 the enforcement court delivered a decision terminating the enforcement proceedings.

19. On 9 July 2010, a little over a month after the applicant had lodged the present application with the Court, he was given notice, signed by the debtor's managing director acting as its representative and certified with the official seal, that he had breached his employment duties and thus fulfilled the conditions for dismissal. In particular, he was reproached for, *inter alia*, "complaining to the Court about the corporation's business, analysing problems and looking for someone to blame among members of the government, and doing so without consulting the director". He was also reproached for "refusing, on grounds of privacy, to disclose a copy of the documents which he had submitted to the Court". The applicant was warned that, should he continue in the same manner, he would be dismissed without further notice and without disciplinary proceedings being conducted.

20. On 18 June 2013 the applicant lodged a constitutional appeal against the agreement (see paragraph 17 above). On 3 June 2014 the Constitutional Court rejected by means of a decision the applicant's appeal pursuant to Article 36 § 1 (7) of the Constitutional Court Act, finding that the agreement had been a private-law contract between the parties and not an individual act within the meaning of Article 170 of the Constitution which could be challenged before it.

II. THE DEBTOR'S STATUS

21. The debtor in the present case is a statutory corporation founded under section 23 of the National Parks Act (*Zakon o nacionalnim parkovima*), enacted on 26 May 1993 and published in the Official Gazette of the Republic of Serbia ("OG RS" – nos. 39/93, 44/93, 53/93, 67/93, 48/94 and 101/05[2]) to administer the Šar Mountains National Park. The establishment of the debtor was registered in the court register of the Commercial Court in Priština on 10 November 1993 and transferred afterwards to the Serbian Business Registers Agency, by a decision of 30 June 2005.

22. Pursuant to the above-mentioned Act (section 23(2)), the debtor's assets belong to the State. The debtor cannot be subject to insolvency proceedings (section 8(4)). The government has the power to appoint and dismiss the managing director and the members of the Managing and Supervisory Board (section 17). The debtor's employees are represented on those boards in the manner prescribed by the corporation's articles of association.

23. In accordance with the available information, it would appear that as of 7 October 2015 the debtor is no longer in possession of premises in Štrpce, which are instead occupied by Kosovo institutions. However, it continues to operate as an active Serbian statutory corporation and, according to the applicant's version (not challenged, on this point, by the Government), Serbia continues to pay wages to the debtor's employees from its budget. In addition, at the date of the

latest information available to the Court (30 January 2024), the current accounts of the debtor were no longer blocked.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. THE CONSTITUTION OF THE REPUBLIC OF SERBIA (*USTAV REPUBLIKE SRBIJE*; PUBLISEHD IN THE OFFICIAL GAZETTE OF THE REPUBLIC OF SERBIA – OG RS - NO. 98/06)

24. Article 170 provides that "a constitutional appeal may be lodged against individual decisions or actions of State bodies or organisations exercising delegated public powers which violate or deny human or minority rights and freedoms guaranteed by the Constitution, if other legal remedies for their protection have already been exhausted or have not been prescribed".

II. THE CONSTITUTIONAL COURT ACT (ZAKON O USTAVNOM SUDU; PUBLISHED IN OG RS NOS. 109/07, 99/11 AND 18/13)

25. Article 36 § 1 (7) of the Constitutional Court Act provides that the Constitutional Court shall reject a written submission aimed at the institution of proceedings before it whenever "other preconditions", required by law, for the conduct of those proceedings or the adjudication of the complaint in question have not been satisfied.

III. ENFORCEMENT PROCEDURE ACT 2004 (*ZAKON O IZVRŠNOM POSTUPKU*; PUBLISHED IN OG RS NO. 125/04)

26. Sections 2 and 5 of this Act provide that enforcement proceedings are instituted upon the application of a creditor and are to be conducted urgently.

27. Section 6 provides that insolvency proceedings cannot be instituted in respect of State bodies, foundations, agencies or the Central Bank, or in respect of legal entities established, and exclusively or predominantly funded, by the State.

28. In accordance with sections 42 and 49, an application for enforcement should specify the creditor and the debtor, the enforcement title, the obligations of the debtor, the means and subject of enforcement, as well as any other information necessary for enforcement. There are several means of enforcing a monetary claim, such as the sale of movable or immovable property, the transfer of a monetary claim, the transfer of a claim for the delivery of movable or immovable property, the liquidation of other property rights, the transfer of funds kept in a bank account, or the sale of shares in companies.

29. In accordance with section 51, enforcement proceedings can be terminated without the enforcement debtor's consent if the enforcement creditor withdraws the application for enforcement in full or in part. A decision to terminate proceedings has the effect of revoking all the enforcement actions that have already been taken, if doing so does not affect the rights of third parties.

IV. OBLIGATIONS ACT (*ZAKON O OBLIGACIONIM ODNOSIMA*; PUBLISHED IN OG SFRY NOS. 29/78, 39/85, 45/89, 57/89 AND OG FRY NO. 31/93)

30. Sections 111 to 117 of this Act set down the conditions for the annulment of a contract, owing to an act or acts of bad faith by one or more of the contracting parties. The right to request annulment in such circumstances expires one year after the requesting party becomes aware of the grounds for annulment. In any event, that right expires three years from the date of the conclusion of the contract. A contracting party whose bad faith has resulted in the annulment of the contract shall be liable to the other contracting party for loss sustained as a result of the annulment, if the

latter party was not aware or could not have been aware of the existence of the grounds for annulment.

V.STATUS OF STATUTORY CORPORATIONS

31. The legal status of statutory corporations in Serbia is primarily defined by: (i) the Statutory Corporations Act 2016 (*Zakon o javnim preduzećima*, published in OG RS nos. 15/2016 and 88/2019); (ii) the Statutory Corporations Act 2000 (*Zakon o javnim preduzećima i obavljanju delatnosti od opšteg interesa*, published in OG RS nos. 25/00, 107/02, 108/02 and 123/07); (iii) the Public Property Act (*Zakon o javnoj svojini*, published in OG RS nos. 72/2011, 88/2013, 105/2014, 104/2016, 108/2016, 113/2017, 95/2018 and 153/2020); (iv) the State Administration Act (*Zakon o državnoj upravi*, published in OG RS nos. 79/05, 101/07, 95/10, 99/2014, 47/2018 and 30/2018); (v) the Communal Services Act 1997 (*Zakon o komunalnim delatnostima*, published in OG RS nos. 16/97 and 42/98); (vi) the Communal Services Act 2011 (*Zakon o komunalnim delatnostima*, published in OG RS nos. 88/2011, 104/2016 i 95/2018); (vii) the Corporations Act 1996 (*Zakon o preduzećima*, published in OG FRY nos. 29/96, 33/96, 29/97, 59/98, 74/99, 9/01 and 36/02); (viii) the Corporations Act 2004 (*Zakon o privrednim društvima*, published in OG RS no. 125/04); (ix) the Corporations Act 2011 (*Zakon o privrednim društvima*, published in OG RS nos. 36/11, 99/11 99/2011, 83/2014, 5/2015, 44/2018, 95/2018, 91/2019 and 109/2021); (x) the Insolvency Act 2009 (published in OG RS nos. 104/09, 99/2011, 71/2012); and, in exceptional cases, (xi) sections 6 and 33(2) of the Insolvency Procedure Act 2004 (*Zakon o stečajnom postupku*, published in OG RS nos. 84/04 and 85/05). The latter was repealed by the Insolvency Act 2009, which entered into force on 24 December 2009. However, in accordance with section 207(1) of the Insolvency Act 2009, the former Act is applicable to all insolvency proceedings instituted prior to 24 December 2009.

32. On the basis of this legislation, statutory corporations are independent legal entities distinct from their founders, which may be the State's central government or local government bodies ("the founder(s)"). The purpose of the incorporation of a statutory corporation and the aim of its work is, *inter alia*, to provide public-interest services[3] and to make a profit.

33. State-owned capital comprises capital initially or subsequently invested by the State and the right to use State-owned assets and rights. Statutory corporations are liable for their commitments in respect of all of their assets. Investors acquire stocks or shares equivalent to their capital investment and that investment becomes the corporation's property.

34. Section 33(2) of the repealed Insolvency Procedure Act 2004 (see paragraph 31 above) provided that statutory corporations could be the subject of ordinary insolvency proceedings, unless otherwise provided for by law. The Insolvency Act 2009 does not contain any explicit provisions on insolvency proceedings in respect of statutory corporations. However, section 14(1) does provide that insolvency proceedings may not be conducted against, *inter alia*, legal entities which have been incorporated by a central or local government founder and are exclusively or mostly financed from the public income allocated to them or from the founder's budget. Section 14(3) further provides that the founders/owners of a legal entity which is exempted from being the subject of insolvency proceedings are to be held jointly liable, with the entity's members/shareholders, for the debts of that legal entity.

35. In accordance with sections 11 to 15 of the Statutory Corporations Act 2000, as in force at the time of the events, a statutory corporation's founder had the power to appoint and dismiss the

managing director and the members of the Managing and Supervisory Boards, which were the main organs of such corporations. The corporation's employees were represented on the boards in the manner prescribed by its articles of association. In accordance with sections 21 and 27 of the Act, the following important decisions were not able to be adopted without the founder's prior approval: the distribution of profits, the adoption and amendment of articles of association (*statut*), changes to the legal structure of the statutory corporation, the organisation of the corporation, investments in other corporations, the setting of tariffs and general conditions for the delivery of services and products. The founder also approved the corporation's annual business plan. Finally, a statutory corporation was obliged to transfer a portion of its profit to the founder. The Statutory Corporations Act 2016, currently in force, contains substantially the same provisions, with an exception concerning the Managing Board, as this organ is no longer considered to be the main organ of statutory corporations (see sections 17, 24-26, 58, 59(7) and 69).

36. The directors of a statutory corporation are treated as officials who perform a public function. They represent the company, organise and manage the work process and are responsible for the legality of the company's work (see sections 25-26 of the Statutory Corporations Act 2016).

VI. STATUS OF THE STATUTORY CORPORATIONS IN CHARGE OF NATIONAL PARKS

37. The legal status of statutory corporations in charge of national parks in Serbia in general is primarily defined by: (i) the National Parks Act 1993 (*Zakon o nacionalnim parkovima*, published in OG RS nos. 39/93, 44/93, 53/93, 67/93, 48/94, 101/05 and 36/09); (ii) the National Parks Act 2015 (*Zakon o nacionalnim parkovima*, published in OG RS nos. 84/2015 and 95/2018); and (iii) the Nature Preservation Act (*Zakon o zaštiti prirode*, published in OG RS nos. 36/2009, 88/2010, 91/2010, 14/2016, 95/2018 and 71/2021). The Decision on the Harmonisation of the Operations of the Šar Mountains National Park Statutory Corporation with the Statutory Corporations Act also defines the legal status of the debtor.

38. In accordance with the aforementioned legislation, the protection, development and management of national parks are activities of general interest. Only statutory corporations can manage national parks. Financing for national parks is provided, *inter alia*, from budgetary funds, funds from the Environment Protection Fund, fees obtained from the use of the protected area, income generated from the performance of activities and the management of the protected area. The debtor is the only statutory corporation managing the Šar Mountains National Park.

VII. CASE-LAW OF THE CONSTITUTIONAL COURT

39. The Government submitted several decisions of the Constitutional Court, including decisions Už. no. 143/2007 of 16 July 2009 and Už.no. 144/2007 of 24 February 2010. In the first decision, the Constitutional Court decided in favour of the claimant and found violations of her right to work and of her right to a fair trial. In that case, the claimant had initiated civil proceedings against her ex-employer, seeking payment of the minimum wage, but her claim had been rejected at two levels of jurisdiction as unfounded, as the civil courts had determined that she had waived her right to seek the aforementioned payment when concluding an agreement on mutual rights and obligations with her employer. The Constitutional Court found that the domestic courts had violated her right to fair compensation for her work by not allowing her claim, since an employer was obliged to pay an employee all accrued wages, contributions and other income in the event of

the termination of his or her employment, in accordance with the Labour Act. In decision Už. no. 144/2007 of 24 February 2010, the Constitutional Court reached a similar conclusion.

VIII. THE SUPREME COURT'S ACT ON COURTS DISPLACED FROM KOSOVO

40. On 21 March 2000 the Supreme Court issued an act, no. ISu 69/00, by which it was established that the courts from the territory of Kosovo, as a part of the judicial system of Serbia, would continue to operate in new circumstances by being displaced in other cities (see paragraphs 9 and 11 above).

THE LAW

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

41. Relying on Article 6 § 1 of the Convention, the applicant complained about the non-enforcement of the final domestic decision given in his favour by the Priština District Court (see paragraph 11 above). In particular, he claimed that he had signed the agreement described in paragraph 17 above against his will and that, as a result, he had been obliged to withdraw his application for enforcement (see paragraph 18 above). He further claimed that the respondent State was liable for the debtor's acts since the debtor was a "governmental organisation".

42. In so far as relevant, Article 6 § 1 of the Convention reads as follows:

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

A. Arguments by the parties

1. The Government

43. The Government raised several objections as to the admissibility of the applicant's complaint. In particular, they submitted that the acts of the debtor could not be attributed to the State and that the State could not be held responsible for the non-enforcement of decisions against statutory corporations. They further argued that the applicant had not exhausted all effective domestic remedies. In particular, they contended that the enforcement proceedings had not been terminated on the initiative of the authorities, but at the applicant's request following the conclusion of the agreement. Thus, according to the Government, it was not possible for him to raise the issue of the validity of the termination of the enforcement proceedings without prior examination of the validity of the agreement which had served as the ground for the termination. In that connection, the Government noted that the applicant had never contested the validity of that agreement before the domestic courts. In the Government's submission, he could have initiated civil proceedings in the appropriate courts seeking the annulment of the agreement, which he had failed to do. Moreover, if he had initiated such proceedings, the applicant would have had the opportunity to lodge a constitutional appeal in the event that the civil court decided to reject or dismiss his application for the annulment of the agreement. Additionally, they argued that a constitutional appeal would have been an effective legal remedy and submitted various decisions in which the Constitutional Court had examined cases sufficiently similar to the applicant's in respect of their factual and legal background (see paragraph 39 above).

44. The Government also submitted that the applicant could have refused to conclude the agreement and that no sanctions or other measures could have been imposed on him in that event.

Consequently, in the event that he was unable to obtain the full enforcement of the final domestic decision given in his favour, as a result of the debtor's blocked accounts, he could have challenged the non-enforcement of his pecuniary claim before the Constitutional Court. However, in the Government's submission, the applicant was now precluded from doing so, as he had opted for the agreement instead of challenging the non-enforcement and receiving the agreed amount of payment.

45. Lastly, the Government submitted that the debtor's bank accounts were active and that the compulsory payment procedure was available. Additionally, other means of enforcement against the debtor were equally possible, such as the sale of its property.

2. The applicant

46. The applicant argued that the validity of the agreement could not have been contested before the domestic courts. He further noted that he had lodged a constitutional appeal against the agreement, which had been rejected (see paragraph 20 above).

B. The Court's assessment

47. The Court would normally have to first examine whether the facts fell within the jurisdiction of the respondent State. However, in the particular circumstances of the present case, where the Government did not raise any objection as regards Serbia's territorial jurisdiction, it considers it unnecessary to determine that issue, since the complaint must in any event be declared inadmissible, for the reasons stated below.

48. The Court refers to the general principles enumerated, *inter alia*, in *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014), and *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* ([GC], no. 21881/20, §§ 138-145, 27 November 2023). In particular, States are exempted from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system. Those who wish to invoke the supervisory jurisdiction of the Court as concerns complaints against a State are thus obliged to use first the remedies provided by the national legal system (ibid., § 70).

49. The obligation to exhaust domestic remedies therefore requires an applicant to make normal use of remedies which are available and sufficient in respect of his or her Convention grievances. The existence of the remedies in question must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (ibid., § 71).

50. Article 35 § 1 also requires that complaints intended to be made subsequently under the Convention should have been made to the appropriate domestic body – at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law (ibid., § 72).

51. To be effective, a remedy must be capable of remedying directly the impugned state of affairs and must offer reasonable prospects of success. However, the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust that avenue of redress (ibid., § 74).

52. Turning to the present case, the Court observes that the applicant argued that the agreement was by itself null and void and that it was neither possible nor necessary to bring separate proceedings seeking its annulment. The Court considers that the applicant could have initiated

civil proceedings seeking annulment of the agreement before the competent courts (see paragraph 30 above). However, the applicant did not use that remedy. There is no indication, nor did the applicant argue, that the remedy in question would not have been effective, or that there were special circumstances exempting him from the requirement to use it (see, *mutatis mutandis*, *Kecojević v. Montenegro* (dec.), no. 14336/09, §§ 22-25, 2 February 2016).

53. Moreover, the Court notes that if the applicant had unsuccessfully initiated such proceedings, he would have had the possibility of lodging a constitutional appeal against the civil court's decision rejecting or dismissing his application for the annulment of the agreement. The applicant instead brought an appeal against the agreement directly before the Constitutional Court (see paragraph 20 above). That appeal was rejected because the agreement was not an individual act amenable to constitutional appeal in accordance with Article 170 of the Constitution (see paragraph 24 above). This finding of the Constitutional Court did not involve any assessment of the merits of the applicant's complaint, i.e. the validity of the agreement, but was focused merely on the procedural preconditions concerning that court's competence to examine the case (see paragraph 25 above). However, as stated above, had the applicant challenged the agreement before the civil courts, he would have had the possibility to lodge a constitutional appeal against the civil courts' decisions, those decisions being "individual acts" within the meaning of Article 170 of the Constitution. The applicant's complaint must therefore be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

54. In view of the foregoing it is not necessary to examine the remaining objections raised by the Government.

II. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

55. The applicant complained that, by giving him notice that by approaching the Court, he had fulfilled the conditions for dismissal from his job (see paragraph 19 above), the respondent State had hindered his right of individual application as provided in Article 34 of the Convention, which reads as follows:

"The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

A. Admissibility

1. Arguments by the parties

(a) The Government

56. The Government, relying, *inter alia*, on *Radio France and Others v. France* ((dec.) no. 53984/00, ECHR 2003-X (extracts)) and *Islamic Republic of Iran Shipping Lines v. Turkey* (no. 40998/98, ECHR 2007-V), argued that the acts of statutory corporations should not be attributable to the State, nor could the State be held responsible for the acts of a director of a statutory corporation. They argued that the mere fact that the State had initially established a corporate entity was not a sufficient basis for the attribution of the subsequent conduct of that entity to the State. Furthermore, they contended that in addition to performing activities for the purposes of the protection and improvement of the natural assets of the Šar Mountains National Park, the statutory corporation had the right to provide certain services in order to generate income (see paragraph 38 above).

Additionally, they submitted that a managing director did not have any public powers and that his or her role was to manage the company in its everyday activities. Lastly, the Government added that the applicant himself was a member of the debtor's management structure, being a member of the Supervisory Board.

(b) The applicant

57. The applicant contested the Government's arguments and argued that the State should be responsible for the acts of statutory corporations. He further added that the debtor was financed by the government, which continued to pay salaries to all of the debtor's employees.

2. The Court's assessment

58. In the present case, the Court has to determine whether the acts of the managing director of the Šar Mountains National Park statutory corporation described in paragraph 19 above may be attributed to the respondent Government and thus engage their responsibility under the Convention. For doing so, the Court will have regard, *mutatis mutandis*, to the case-law concerning the notion of "non-governmental organisation" contained in Article 34 of the Convention, and, by implication, the opposite notion of "governmental organisation". In this respect, it reiterates that the category of "governmental organisations" includes legal entities which participate in the exercise of governmental powers or run a public service under government control. In order to determine whether any given legal person other than a territorial authority falls within that category, account must be taken of its legal status and, where appropriate, the rights that status gives it, the nature of the activity it carries out and the context in which it is carried out, and the degree of its independence from the political authorities (see *Radio France and Others*, decision cited above, § 26).

59. The present case must be distinguished from *R. Kačapor and Others v. Serbia* (nos. 2269/06 and 5 others, 15 January 2008), and thousands of other cases concerning the State's liability for the non-enforcement of final domestic decisions against socially owned companies, where the Court held that socially owned companies, at different stages of the privatisation process, did not enjoy "sufficient institutional and operational independence from the State" to absolve the latter from its responsibility under the Convention (see *R. Kačapor and Others*, cited above, § 98, and as concerns the status of socially owned companies in Serbia, §§ 71-76, and, contrast, *Croatian Radio-Television v. Croatia*, nos. 52132/19 and 19 others, § 105 *in fine*, 2 March 2023). The present case concerns the State's liability for the acts of a statutory corporation falling under a different legal regime.

60. The Court notes that the debtor was founded to administer the Šar Mountains National Park (see paragraph 21 above). The main objective of the debtor is to act in the public interest, as reflected in the preservation of the natural resources of the Šar Mountains and the surrounding area. The administration of a national park is a matter of general importance and to date, only statutory corporations have been vested with the power to manage them. The debtor is the only statutory corporation managing this national park. Its annual business plan is approved by the government. Furthermore, the tariffs set by the debtor required the consent of the government (see paragraphs 35 and 38 above). Thus, on the one hand the present case is similar to *JKP Vodovod Kraljevo v. Serbia* ((dec.), nos. 57691/09 and 19719/10, §§ 24-28, 16 October 2018), where the Court found that a statutory utility company could not be regarded as a "non-governmental

organisation" since it provided a public service and had a monopoly over that service (see, also, the general principles summarized in *Slovenia v. Croatia* (dec.) [GC], no. 54155/16, §§ 76-78, 18 November 2020). On the other hand, the present case is not comparable to *Islamic Republic of Iran Shipping Lines* (cited above, §§ 78-82), in which the Court's primary focus was to determine whether the application was lodged by a State which was not a party to the Convention. It should further be distinguished from *Radio France and Others* (decision cited above, § 26), in which the Court held that the applicant company was a "non-governmental organisation" within the meaning of Article 34, although it was wholly owned by the French State and performed "public-service missions in the general interest", because, *inter alia*, it did not hold a monopoly over radio broadcasting and there was little difference between Radio France and the companies operating "private" radio stations, which were themselves also subject to various legal and regulatory constraints (see, also, *Croatian Radio-Television*, cited above, § 105 *in fine*).

61. Additionally, the Court notes that the warning notice the applicant received from the debtor was signed by the debtor's managing director acting as its representative and was certified with the official seal (see paragraph 19 above). Moreover, the Court takes note of the fact that under the Statutory Corporations Act 2016, which is currently in force, the managing director is an official who performs a public function (see paragraph 36 above).

62. In view of the above, the Court is of the opinion that the debtor cannot be considered a "non-governmental organisation" and that the respondent government should be considered responsible under the Convention for the acts of its managing director. It follows that this complaint cannot be regarded as being incompatible *ratione personae* with the provisions of the Convention, neither is it manifestly ill-founded or inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. Arguments by the parties

63. The applicant argued that by giving him notice that he had fulfilled the conditions for dismissal from his job, the State had hindered his right of individual application.

64. The Government submitted that the applicant had not experienced any negative consequences. In particular, no disciplinary proceedings had been initiated against him, he had not been dismissed from his position as a member of the Supervisory Board, nor had he been put in a disadvantageous position in any other way as a result of his lodging an application with the Court. The notice had not reached a sufficient level of severity to be considered a form of "pressure", "intimidation" or "harassment" which might have induced the applicant to withdraw or modify his application. They further argued that he had been able to lodge an application with the Court without any difficulties. The Government also added that the applicant must have known that under domestic law, "an employee's application to an international court" could not be a ground for the termination of an employment contract. Even if a decision to terminate the employment contract had been taken, it could have been contested before the domestic courts.

2. The Court's assessment

65. The Court reiterates that it is of the utmost importance for the effective operation of the system of individual petition instituted by Article 34 that applicants or potential applicants be able to communicate freely with the Court without being subjected to any form of pressure from the

authorities to withdraw or modify their complaints (see *Ergi v. Turkey*, 28 July 1998, § 105, *Reports of Judgments and Decisions* 1998-IV, and *Shtukaturov v. Russia*, no. 44009/05, § 138, ECHR 2008). In this context, "pressure" includes not only direct coercion and flagrant acts of intimidation, but also other improper indirect acts or contacts designed to dissuade or discourage applicants from pursuing a Convention remedy. Whether or not contacts between the authorities and an applicant are tantamount to unacceptable practices from the standpoint of Article 34 must be determined in the light of the particular circumstances of the case (see *Kurt v. Turkey*, 25 May 1998, § 160, *Reports* 1998-III). In this connection, regard must be had to the vulnerability of the complainant and his or her susceptibility to influence exerted by the authorities (see, for example, *Petra v. Romania*, 23 September 1998, § 43, *Reports* 1998-VII; *Assenov and Others v. Bulgaria*, 28 October 1998, § 170, *Reports* 1998-VIII; and *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 130, ECHR 1999-IV).

66. The Court notes that the applicant was directly told that the conditions for his dismissal had been met as a result of his applying to the Court and that he would be dismissed from his job without any further notice or disciplinary proceedings if he failed to submit copies of all relevant correspondence with the Court (see paragraph 19 above). In such a situation, where the applicant was clearly and directly threatened, the Court cannot but conclude that this type of communication constituted "pressure" and "intimidation", notwithstanding the fact that the applicant continued his correspondence with the Court and was eventually not dismissed from his job.

67. There has accordingly been a violation of Article 34 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

68. 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."

69. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning the hindrance of the effective exercise of the applicant's right of individual application admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 34 of the Convention.

Done in English, and notified in writing on 5 March 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti Registrar
Gabriele Kucsko-Stadlmayer President