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

SECOND SECTION

CASE OF KRSTIĆ v. SERBIA

(Application no. 45394/06)

JUDGMENT

STRASBOURG

10 December 2013

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 Krstić v. Serbia,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Guido Raimondi, *President,*
Peer Lorenzen,
Dragoljub Popović,
Nebojša Vučinić,
Paulo Pinto de Albuquerque,
Helen Keller,
Egidijus Kūris, *judges,*

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 19 November 2013,

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

PROCEDURE

1. The case originated in an application (no. 45394/06) 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, Mr Branimir Krstić ("the applicant"), on 1 November 2006.

2. The applicant was represented by Mr T. Tošić, a lawyer practising in Pirot. The Serbian Government ("the Government") were represented by their Agent, Mr S. Carić.

3. The applicant alleged a violation of Article 6 § 1 and Article 13 of the Convention, and of Article 1 of Protocol No. 1 to the Convention, on account of the authorities' prolonged failure to enforce a final and enforceable administrative decision ordering the payment of a supplementary pension to the applicant.

4. On 30 June 2011 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1939 and currently lives in Pirot.

6. The facts of the case, as submitted by the parties, may be summarised as follows.

1. The pension-related administrative proceedings

7. On 14 September 1990 the applicant was granted an old-age pension as from 1 September 1990 by the Pirot branch (*Filijala Pirot*) of the Serbian Pensions and Disability Insurance Fund (*Republički fond za penzijsko i invalidsko osiguranje zaposlenih* – hereinafter "the Fund").

8. Following a successful claim for unpaid wages against his former employer, on 8 December 1993 the applicant asked the Fund to amend its decision of 14 September 1990. In particular, he asked the Fund to apply a more favourable period for the calculation of his base pension and to increase his pension on account of the additional income that he had earned in the period before retirement (during 1989-90) which had not initially been taken into account (*da se utvrdi nov penzioni osnov i izvrši obračun razlike u plaćanju*).

9. Following a remittal, on 16 May 1994 the Fund issued an amended decision (hereinafter "the 1994 decision"): (i) establishing a new increased pension (14,015.66 old dinars (YUD)); (ii) establishing an increased "base pension" (*penzijski osnov*) to be applied from 1 September 1990, applying an adjustment rate of 45.30% as from 1 January 1991 and another adjustment of 28.13% as from 1 April 1994; (iii) determining that a supplementary pension should be paid on the basis of the difference between the pension received for the prior period starting on 1 September 1990 and the new pension granted retroactively by this decision; and (iv) noting that the calculations for the pension were attached to the decision and formed an integral part of it. In addition, the reasoning in the 1994 decision contained an exact figure to be used as the base pension and determined that the applicant's pension should be 85% of that amount.

10. The decision of 16 May 1994 became final on 22 July 1994.

2. Enforcement of the administrative decision of 16 May 1994

11. On 31 December 2003 the applicant lodged a motion with the Pirot Municipal Court ("the Municipal Court") for the enforcement of the part of the 1994 decision concerning the outstanding supplementary pension, and also sought payment of statutory interest from 25 January 1994 on the amounts due. The applicant supplied, together with his request for enforcement, an expert's calculation determining the exact amount due.

12. On 20 January 2005 the Municipal Court issued the enforcement order as requested.

13. On 3 February 2006 the Municipal Court quashed that enforcement order following the Fund's objection (*prigovor*) that there was no proof that the 1994 decision was enforceable.

14. On 16 February 2006 the Municipal Court requested that the Fund provide it with a reissued copy of the 1994 decision containing an enforceability clause (*klauzula izvršnosti*) within three days.

On 22 February 2006 both the Fund and the applicant supplied the court with reissued copies of the 1994 decision containing an enforceability clause.

15. On 15 March 2006 the Municipal Court rejected the applicant's fresh enforcement request. The Municipal Court firstly noted that the 1994 decision had established the applicant's entitlement to a pension, his base pension and the date on which the applicant had acquired his right to a pension. The court found, however, that the decision in question was not "liable to enforcement" as it had not set the exact, total amount to be paid, which rather had been subject to recalculations depending on statistical data. It concluded that the outstanding debt should be therefore established only in special administrative proceedings conducted by the Fund's accounting department - apparently the so-called "*likvidatura*".

16. On 23 March 2006 the applicant lodged an objection against the decision of 15 March 2006, claiming that the enforcement request had contained all the figures and information necessary to calculate the amount due, also supplying an expert opinion to that effect.

17. On 26 June 2006 the Municipal Court upheld the decision of 15 March 2006. The competent panel, in particular, (i) noted, without making reference to the applicable domestic law, that the applicant should have asked for the mandatory enforcement of the 1994 decision in the administrative proceedings (*prinudno izvršenje u administrativno-upravnom postupku* (sic.)); and (ii) summarised the Supreme Court's reasoning in the preceding civil proceedings concerning the application of the principle of monetary nominalism and revaluation of the claim (see paragraph 24 below).

3. The applicant's civil suit and the related enforcement proceedings

18. In the meantime, as the Fund had failed to pay the supplementary pension to the applicant, on 25 January 1996 he filed a civil claim with the Municipal Court for the determination and payment of the outstanding supplementary pension as from 1 September 1990, and also sought statutory default interest and damages to compensate him for the effects of inflation (*naknada inflatorne štete*) and maladministration on the part of the Fund.

19. During the proceedings, on 26 May 1997, a court-appointed financial expert determined the nominal amount of the supplementary pension for the period between 1 September 1990 and 24 January 1994. The expert utilised a method of revalorisation of the pecuniary claims (*metod valorizacije novčanih potraživanja*).

20. On 8 April 2001 the court obtained an additional expert report on the statutory default interest accrued as from 17 May 1994 to that date.

21. Following two remittals, on 12 June 2001 the Municipal Court, noting the pension payment slips issued between 1990 and 1994, as well as the exact amounts of the new pension and the base pension as determined

by the 1994 decision, awarded the applicant the outstanding difference in the pension actually paid and the applicant's pension entitlement, plus statutory interest accrued, as well as costs.

22. On 4 December 2002 the Pirot District Court upheld the judgment of 12 June 2001. It clarified, as regards the Fund's appeal, that the impugned dispute could not be the subject of administrative proceedings, as the applicant had not challenged the lawfulness of the 1994 decision, but rather had sought the payment of the pension debt and damages.

23. Following a remittal in the enforcement proceedings, on 6 March 2003 the Municipal Court ordered the enforcement of the judgment of 12 June 2001. On 24 July 2003 the awarded amount, including the accrued statutory interest, was transferred from the debtor's account to that of the applicant.

24. Acting upon the Fund's subsequent appeal on points of law, on 19 June 2003 the Supreme Court overturned the lower courts' judgments. It stated that (i) in accordance with the law of obligations (the principle of monetary nominalism), the applicant was not entitled to damages to compensate him for the effects of inflation or any damages whatsoever in disputes of a public-law nature (such as the one in question); (ii) pension rights could only be established or enforced through administrative proceedings ("*administrativno-upravni postupak"*); (iii) even assuming that the Fund's debt was to be considered as a statutory obligation, the applicant could not be awarded statutory interest in the civil proceedings (being a condition for a revaluation of the nominal claim), as the administrative enforcement of the 1994 decision had not been sought; (iv) the applicant could arguably seek such an award in enforcement proceedings; and (v) each party should cover its own costs and expenses. Lastly, the Supreme Court appears not to have addressed the nominal debt in its judgment.

25. On 7 August 2003 the Fund filed a motion for recovery of the entire sum paid to the applicant on 24 July 2003 (see paragraph 23 above) in view of the decision of the Supreme Court of 19 June 2003.

26. On 19 September 2003 the Municipal Court issued an enforcement order whereby half of the applicant's pension was to be transferred to the Fund's account each month until the sum had been repaid in full. It would appear that for the purpose of securing the debt the Municipal Court blocked the applicant's access to his entire pension for a certain period of time.

27. By 30 August 2010 the applicant had repaid the total amount that he was required to pay in accordance with the above order.

4. The letter of 30 August 2001 by the Fund's Pirot Branch sent to the Government's Agent

28. The Pirot Branch of the Fund informed the Government that it was undisputed that it had failed to pay the difference between its past payment and the applicant's pension entitlement for the period between 1 September

1990 and 31 December 1993. In that regard, the Fund explained that it had been unable to calculate and pay its debts that arose during the period of high inflation in Serbia to all beneficiaries of the pension insurance system, including the applicant, due to limitations in its computer software (*iz tehničkih i programskih razloga*).

5. Additional relevant information

29. The pension system in Serbia is a "pay as you go" system. The Fund is a State administrative body which is tasked with awarding and administering pensions and disability insurance payments. It is a legal entity authorised to levy compulsory social insurance contributions, in accordance with the rights and obligations determined by applicable law and its internal regulations. All pension and disability insurance contributions are transferred to the Fund's accounts, together with the funds paid by the central government of the respondent State. The State guarantees the Fund's obligations.

30. In the period between 1984 and 1994, the domestic currency heavily depreciated on several occasions, resulting in its redenomination on a number of occasions. In 1993 the annual inflation rate was calculated at more than 1.5 billion per cent, while the average daily rate of inflation was nearly 100 per cent. In October 1993 the Government created a new currency unit. One new dinar was worth one million of the "old" dinars. On 24 January 1994 the government introduced the "super" dinar, equal to 10 million new dinars.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The General Administrative Proceedings Act (Zakon o opštem upravnom postupku; published in the Official Gazette of the Federal Republic of Yugoslavia – "OG FRY" - nos. 33/97, 31/01 and 30/10)

31. The Act came into force on 19 July 1997 and thereby repealed the General Administrative Proceedings Act 1956 (Official Gazette of the Federal National Republic of Yugoslavia, no. 52/56; Official Gazette of the Socialistic Federal Republic of Yugoslavia, nos. 10/65, 18/65, 4/77, 11/78, 32/78, 9/86 and 47/86; and OG FRY, no. 24/94). Article 290 of the 1997 Act establishes that it is applicable to all proceedings brought before the date it came into force which have not been concluded.

32. Articles 257 § 3 and 258 provide that an administrative decision whose enforcement is impossible (*rešenje čije izvršenje nije moguće*) shall be declared null and void, in whole or in part, either by the relevant authority itself or at the request of a party or a state/public prosecutor.

33. Articles 261-278 set out the procedure to be followed concerning the enforcement of final administrative decisions.

34. Article 261 § 2 provides that an administrative decision shall be executed once it becomes enforceable (kada postane izvršna). Article 261 § 3(1) provides that a first-instance administrative decision shall become enforceable upon expiry of the period in which an appeal against it may be filed, if no appeal has been filed. Pursuant to Article 261 § 5, the statutory fifteen-day voluntary enforcement period, used by default if the decision does not set out any other enforcement period, starts running from the date on which the decision becomes enforceable.

35. The manner of enforcement depends on the type of obligations covered (pecuniary or non-pecuniary) in the relevant administrative decision.

36. Article 266 § 1 provides that the enforcement of non-pecuniary obligations is to be carried out by administrative bodies. In the event of administrative enforcement, the applicable procedure is set out in Articles 261-272. Article 267 § 1 states that such enforcement is to be conducted by the administrative authority which had ruled at first instance, unless otherwise provided by law. Article 268 § 1 provides, inter alia, that the authority in charge of the enforcement of an administrative decision shall, on its own motion or at the request of a party, issue an enforcement order (zaključak o dozvoli izvršenja).

37. On the other hand, Article 266 § 2 states that the enforcement of monetary obligations rendered by an administrative decision is to be carried out by the courts. Pursuant to Article 273 § 1, if an administrative decision is to be executed by judicial enforcement, the authority which adopted that decision should provide a copy of the decision containing an enforceability clause (potvrda izvršnosti) (see Article 268 § 3) and transfer it to the court competent to execute it. An administrative decision containing an enforceability clause should, under Article 273 § 1, be considered as an enforcement instrument (osnov za sudsko izvršenje). Judicial enforcement is thus carried out through the application of the provisions of the applicable enforcement act and the provisions of other acts pertinent to judicial enforcement.

B. The Enforcement Proceedings Act 2000 (*Zakon o izvršnom postupku*; published in OG FRY nos. 28/00, 73/00 and 71/01)

38. Article 1 provided that the Act was applicable to mandatory enforcement of a decision rendered in the course of administrative proceedings, if it had established a monetary obligation.

39. Article 4 prescribed that the court handling the enforcement proceedings was obliged to proceed urgently with the enforcement of a decision securing an established obligation. According to Article 10 § 1, the

competent court should decide on an enforcement request within three days from the date the request had been filed, while an appellate court should decide on an objection (*prigovor*) within fifteen days of the date it had been filed.

40. According to Article 16 § 2(2), an administrative decision establishing a monetary obligation fell to be considered as an enforcement instrument (*izvršna isprava*).

41. Article 18 §§ 1 and 2 stated that a decision adopted in administrative proceedings would become enforceable when it had become final and after the period for voluntary compliance with the obligation had expired.

42. Pursuant to Article 20 § 1, a decision is liable for enforcement (*podobna za izvršenje*) if it identifies the debtor and creditor, the subject matter, the type of obligation to be enforced, the amount due (*obim*) and the deadline for enforcement. Should the period for voluntary compliance have been omitted, it should be determined by the enforcement request.

43. According to Article 37, when administrative enforcement was to be carried out by a civil court which had not adopted the decision whose enforcement was requested, a copy of the decision containing an enforceability clause should be supplied by the body which had adjudicated at first instance together with a request for enforcement.

44. Article 39 § 4 provided that a decision to reject an enforcement request in full or in part should be fully reasoned (*obrazloženo*).

C. The Enforcement Proceedings Act 2004 (published in the Official Gazette of the Republic of Serbia – "OG RS" - no. 125/04)

45. The Enforcement Proceedings Act 2000, which was in force at the commencement of the enforcement proceedings in this case, was repealed by the Enforcement Proceedings Act 2004, which came into force on 23 February 2005. In accordance with Article 304 of the 2004 Act, all enforcement proceedings instituted prior to 23 February 2005 were to be concluded pursuant to the 2000 Act.

D. The Practice Direction adopted by the Supreme Court's Civil Division on 15 November 2005 (published in Case-law Bulletin of the Supreme Court nos. 3/05 and 1/11; ***Pravno shvatanje Građanskog odeljenja Vrhovnog sud Srbije, sa obrazloženjem, utvrdjeno na sednici od 15. novembra 2005. godine***)

46. The Supreme Court of Serbia adopted the Practice Direction, in response to the suspensions of pension payments in Kosovo, in order to set out the general principles as regards the restrictions/suspensions of pension rights, and to give guidance as to which domestic authorities, judicial or

administrative, are invested with jurisdiction in different types of pension-related matters.

47. The Practice Direction states that administrative proceedings (*upravni postupak*) before the Fund and, if need be, judicial review proceedings (*upravni spor*) would be the appropriate avenue to challenge the legality of the Fund's decisions establishing one's pension rights or the amount of pension to be paid, or those restricting and terminating one's pension rights.

48. It further explains that the enforcement of final decisions of the Fund shall be carried out by the civil courts in the course of enforcement proceedings, which are to be governed by the provisions of the Enforcement Proceedings Act.

49. Lastly, the Practice Direction also notes that the civil courts are, in this regard, competent to adjudicate cases involving claims of maladministration (*nezakonit i nepravilan rad*) on the part of the Fund.

E. The relevant case-law of the Administrative Court of Serbia declaring judicial review proceedings an inappropriate legal avenue as regards the non-enforcement of the Fund's decisions (U 19497/10 (2005); 25 August 2010)

50. The claimant had initiated an administrative dispute concerning the Fund first-instance and appellate bodies' failure to issue a decision upon his request for payment of outstanding pension as established by a 1999 decision of the Fund. The Administrative Court rejected his claim brought before it. Specifically, the Administrative Court declared that the two Fund's bodies lacked jurisdiction *ratione materiae* to consider the claimant's request. Relying on Article 266 § 2 of the General Administrative Act, the Administrative Court directed the claimant to file an enforcement request with the competent civil court, rather than have recourse to the administrative dispute procedure.

F. The relevant practice of the Serbian courts as to whether an act is liable to enforcement

51. In the interpretation of the legislation concerning enforcement matters, the Serbian courts have frequently outlined the circumstances in which a decision is liable to enforcement, as it is not considered sufficient for a claimant to simply have an enforceable decision in his or her favour (High Commercial Court, Pž. 2720/82 and 3763/83).

52. The courts have found enforcement requests to be well founded even if the obligation of the debtor has not been precisely determined (Kragujevac District Court, Gž. 293/95). In addition, the precise details of the obligation do not necessarily have to be contained in the operative

provisions of the decision, the courts handling enforcement matters being obliged to enforce a debt if the reasoning in the decision gives sufficient details to determine the total obligation of the debtor. Should that be the case, the courts are to instruct the creditor to supplement his enforcement request in accordance with such reasoning (Supreme Court, Gž. 108/86, in the context of the surface and boundaries of a plot of land). A decision in criminal proceedings which awards undetermined costs to a party, but leaves it to the accounting department of a State authority to determine the relevant amount, is also considered as a decision liable to enforcement (Supreme Court, decision no. 2319/02 of 4 September 2002).

G. The Organisation of the Courts Act 2001 (*Zakon o uređenju sudova*; published in OG RS nos. 63/01, 42/02, 27/03, 29/04, 101/05 and 46/06)

53. Article 4 provides that a court of law cannot refuse to consider a claim in respect of which its jurisdiction has been established by law or the Constitution.

H. The Statutory Interest Act (*Zakon o visini stope zatezne kamate*; published in OG FRY no. 9/01 and OG RS no. 31/11)

54. Article 1 provides that statutory interest shall be paid as from the date of maturity of a recognised monetary claim until the date of its settlement. Article 2 states that such interest shall be calculated on the basis of the official consumer price index plus another 0.5% monthly.

I. The 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)

55. Article 394 provides for the principle of monetary nominalism. According to this principle, when an obligation concerns a sum of money, the debtor is bound to pay the number of monetary units in which the obligation is expressed (that is, its nominal value), unless the law provides otherwise.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION AND ARTICLES 6 AND 13 OF THE CONVENTION

56. The applicant complained under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention that the respondent State had failed to enforce a final and enforceable decision of 16 May 1994 rendered in his favour and that he had been unable to obtain payment of the difference between the pension actually paid to him and the pension for the period between September 1990 and December 1993 as awarded to him by that decision. The applicant also complained under Article 13 that he had had no effective domestic remedy by which he could have had the 1994 decision enforced.

57. These provisions provide, in their relevant parts, as follows:

Article 6

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

Article 13

"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."

Article 1 of Protocol No. 1

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law."

A. Admissibility

1. Compatibility ratione personae (the applicant's "victim status") and/or abuse of the right of petition

58. The Government submitted that the applicant had ceased to be a victim of the alleged violations of the Convention, within the meaning of Article 34 of the Convention, by virtue of the fact that he had collected his entire claim for supplementary and indexed-linked pension, together with statutory interest and damages (see paragraph 23 above). Alternatively, the Government argued that the applicant had abused his right of petition given that he had failed to inform the Court of this fact, which was critical for the outcome of the proceedings before it.

59. The applicant claimed that he had not considered the events in question to be relevant to the Court's examination, given that he had eventually had to return the entire amount awarded in the civil proceedings.

60. As to the applicant's victim status, the Court reiterates that a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see, for example, *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI). Quite apart from the issues of meaningful redress for or a comprehensive acknowledgment of the violations allegedly suffered, the Court notes that, in any event, the applicant had to pay back the entire amount awarded (see paragraphs 25-27 above) and that he has continued to be affected by the non-enforcement of the 1994 decision. The Court therefore finds that the applicant has retained his victim status for the purposes of Article 34 of the Convention and dismisses the Government's objection in this regard.

61. Regarding the second objection, although the applicant could clearly have been more specific in his application about the outcome of the enforcement proceedings, information which was known to him from the outset (see *Kerechashvili v. Georgia* (dec.), no. 5667/02, 2 May 2006, and contrast with *Al-Nashif v. Bulgaria*, no. 50963/99, § 89, June 20, 2002; see also, in general, *Miroļubovs and Others v. Latvia*, no. 798/05, §§ 62 and 65, 15 September 2009), the Court notes that the applicant supplied to the Court, together with the application form, copies of all relevant judgments in the relevant civil proceedings. In these circumstances, accepting the importance of that information, the Court considers that the applicant did not try to deliberately mislead the Court in his pleadings (see paragraph 59 above; see also *Hüttner v. Germany* (dec.), no. 23130/04, 9 June 2006, and *Predescu*, no. 21447/03, §§ 25-26, 2 December 2008).

62. It follows that the Government's objections as regards compatibility *ratione personae* and abuse of the right of petition must be dismissed.

2. *Compatibility* ratione temporis *as regards the complaint of lack of access to court*

63. Relying on the Court's findings in the case of *Blečić v. Croatia* (*Blečić v. Croatia* [GC], no. 59532/00, §§ 63-69, ECHR 2006-III), the Government submitted that the Court lacked temporal jurisdiction to deal with the alleged violation of the applicant's right of access to court, which related to events that had taken place before 3 March 2004, the date on which the Convention had entered into force in respect of Serbia ("the ratification date"). Specifically, the applicant's complaint concerned the outstanding supplementary pension for the period between 1990 and 1993 and, further, the allegedly ineffective and inadequate civil proceedings for damages, which the applicant submitted had deprived him of access to

court, had been terminated in 2003 (see paragraph 24 above). The Government also submitted, albeit in another context, that on 24 January 1996 the Fund had informed the applicant by letter that it had not paid the supplementary pension for the period between 1 September 1990 and 31 December 1993. In doing so, the Fund had explained that, as Serbia had been affected by hyperinflation during the said period for which the difference in pension was to be calculated, it had been impossible for it to calculate the exact amount to be paid in new dinars by converting that debt (*konverzija obračunate razlike za navedeni period*). The Court was not provided with a copy of that letter.

64. The applicant did not comment.

65. It is beyond dispute that, in accordance with the general rules of international law, the provisions of the Convention do not bind a Contracting Party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the Convention with respect to that Party (see *Blečić v. Croatia* [GC], cited above, § 70). In this respect, the Convention imposes no specific obligation on the Contracting States to provide redress for wrongs or damage caused prior to that date (see *Kopecký v. Slovakia* [GC], no. 44912/98, § 38, ECHR 2004-IX). From the ratification date onwards, however, the State's acts and omissions must conform to the Convention and its Protocols, meaning that all subsequent acts and omissions fall within the Court's jurisdiction even where they are merely extensions of an already existing situation (see, for example, *Yağcı and Sargın v. Turkey*, 8 June 1995, § 40, Series A no. 319-A, and *Almeida Garrett, Mascarenhas Falcão and Others v. Portugal*, nos. 29813/96 and 30229/96, § 43, ECHR 2000-I).

66. The Court observes from the outset that the applicant did not complain before it about the loss of value of the supplementary pension awarded as a result of inflationary processes, nor did he complain of his unsuccessful litigation before the Supreme Court in respect of damages to compensate him for the effects of inflation (see, in that regard, *Todorov v. Bulgaria*, no. 39832/98, 18 January 2005; *Mancheva v. Bulgaria*, no. 39609/98, 30 September 2004; *Rudzinska v. Poland* (dec.), no. 45223/99, ECHR 1999-VI; G*ayduk and Others v. Ukraine* (dec.), nos. 45526/99 et seq., ECHR 2002-VI; *Ryabykh v. Russia*, no. 52854/99, ECHR 2003-IX; and *Čular v. Croatia*, no. 55213/07, 22 April 2010). The applicant's complaint under Article 6 § 1 of the Convention instead concerned the partial non-enforcement of the final 1994 decision, in conjunction with the authorities' continued failure to bring mandatory enforcement proceedings in respect of this decision.

67. While certain of the Fund's debts which originated from the period of hyperinflation and enormous depreciation of the domestic currency may have ceased to exist, such circumstances fall to be raised and examined prior to a final domestic judicial determination of a case (see, in respect of

final judicial decisions, *Jeličić v. Bosnia and Herzegovina*, no. 41183/02, § 44, ECHR 2006-XII; see also *Brumărescu v. Romania* [GC], no. 28342/95, § 61, ECHR 1999-VII). In the instant case, the Fund, the competent administrative authority empowered to order the payment of a pension, acknowledged its debts following the last devaluation of the domestic currency and the conversion to the new currency, by a decision that has not been appealed, amended or invalidated (revoked) by any subsequent administrative or judicial decision on the basis that it is impossible for the decision to be enforced (see paragraphs 9, 10 and 32 above). Moreover, the Fund provided a copy of the decision containing an enforceability clause in 2006, that is to say following the ratification date (see paragraph 14 above). Further, the Supreme Court stated that the applicant had no right to damages to compensate him for the effects of inflation during the relevant period, but did not exclude his entitlement to a supplementary pension in the original amount claimed, together with statutory interest (see paragraph 24 above). Lastly, the Government repeated on several occasions that the applicant is still entitled to the original amount claimed, plus statutory interest, and did not attempt to justify the non-enforcement by the extinguishment of the debt or any inability to enforce the decision.

68. Having regard to these considerations, the Court considers that the applicant's entitlement to enforcement subsisted subsequent to the Convention's entry into force on 3 March 2004 and observes that the impugned non-enforcement has continued to date (see, *mutatis mutandis*, *Kostić v. Serbia*, no. 41760/04, § 46, 25 November 2008). Against this background, the Court is competent to examine events from 3 March 2004 onwards, the date of ratification of the Convention and Protocol No. 1 by Serbia. It may, however, have regard to facts occurring prior to ratification inasmuch as they could be considered to have created a situation extending beyond that date or may be relevant for the understanding of facts occurring after that date (see *Broniowski v. Poland* (dec.) [GC], no. 31443/96, §§ 74-77, ECHR 2002-X).

69. The Government's plea of inadmissibility on the ground of lack of jurisdiction *ratione temporis* must accordingly be rejected.

3. Exhaustion of domestic remedies

70. Finally, the Government submitted that the applicant had not exhausted domestic remedies. They argued, in particular, that the applicant had not availed himself properly of the ability to seek administrative enforcement of the impugned decision or, to institute, if needed, an administrative law claim before the Administrative Court. As regards the latter avenue, the Government relied on the Administrative Court's decision of 25 August 2010 (see paragraph 50 above) and the Court's finding in the cases of *Juhas Đurić v. Serbia,* no. 48155/06, 7 June 2011, *Jovičić v. Serbia*

(dec.), no. 42716/11, 12 February 2013, and *Mihailović v. Serbia* (dec.), no. 39275/12, 12 February 2013.

71. The rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention requires applicants to first use the remedies provided by the national legal system, thus dispensing States from answering before the Court for their acts before they have had an opportunity to put matters right through their own legal system. The only remedies which an applicant is required to avail himself of are those that relate to the breaches alleged and which are at the same time available and sufficient. The burden of proof is on the Government claiming non-exhaustion to satisfy the Court that an effective remedy was available in theory and in practice at the relevant time; that is to say that the remedy was accessible, capable of providing redress in respect of the applicant's complaints, and offered reasonable prospects of success (see, among other authorities, *Akdivar and Others v. Turkey*, 16 September 1996, § 68, *Reports of Judgments and Decisions* 1996-IV, and *Lukenda v. Slovenia*, no. 23032/02, § 44, 6 October 2005).

72. In the Court's view, the questions of which domestic authority is invested with jurisdiction as regards the enforcement of the Fund's pension-related decisions establishing that it has a pecuniary obligation vis-à-vis individuals and whether the applicant exhausted all available and effective domestic remedies inevitably intertwine with the substance of his complaints under Article 6 of the Convention and Article 1 of Protocol No. 1. Hence, to avoid prejudging the latter issue, both questions should be examined together. Accordingly, the Court joins the question of non-exhaustion of domestic remedies to the merits and reserves it for later consideration.

4. Conclusion

73. The Court further notes that the applicant's complaints under the provisions relied on are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. They are not inadmissible on any other grounds and must therefore be declared admissible.

A. Merits

1. Alleged violation of Article 1 of Protocol No. 1

(a) The parties' submissions

74. The applicant reaffirmed his complaint. Although he asserted that the decision of the Supreme Court to reject his civil claim had been politically motivated and legally incorrect, he maintained that, in any event, even the Supreme Court had acknowledged his entitlement to the original debt together with statutory interest, had the enforcement of the final

decision of 1994 in his favour been sought at the material time. In the meantime, he had indeed sought enforcement of the decision, but to no avail. The respondent State had not undertaken any steps in order to enforce the 1994 decision to date.

75. The Government stated that the Fund's decision "had not constituted an enforcement instrument which would be suitable for execution before the Municipal Court because it had not contained a precise sum". While the existence of the claim against the Fund based on its 1994 decision was not disputed, they: (a) maintained that by virtue of the principle of monetary nominalism, the applicant's claim had only corresponded to the original amount determined by that decision, and thus should not comprise a contemporary value as suggested by an expert report provided by the applicant; and (b) reiterated that the applicant had not yet received the supplementary pension because he had failed to make use of the appropriate administrative remedies.

(b) The Court's assessment

76. The Court reiterates that a "claim" can constitute a "possession" within the meaning of Article 1 of Protocol No. 1 if it is sufficiently established to be enforceable – for example by virtue of a court judgment, an arbitration award or an administrative decision (see *Burdov v. Russia*, no. 59498/00, § 28, ECHR 2002-III; *Stran Greek Refineries and Stratis Andreadis v. Greece*, 9 December 1994, § 59, Series A no. 301-B; and *Moskal v. Poland*, no. 10373/05, § 45, 15 September 2009).

77. As the Court has held in a number of previous cases, the inability for a successful litigant to have a judgment or a final administrative decision rendered in his favour fully enforced, if that situation persists for a relatively long period of time, may constitute an interference with his right to the peaceful enjoyment of his possessions, in the sense of the first sentence of the first paragraph of Article 1 of Protocol No. 1 (see, among many authorities, *Pridatchenko and Others v. Russia*, nos. 2191/03, 3104/03, 16094/03 and 24486/03, § 50, 21 June 2007; *Burdov v. Russia*, cited above, § 40; *Ramadhi and Others v. Albania*, no. 38222/02, §§ 76-77, 13 November 2007; and *Viasu v. Roumania*, no. 75951/01, § 60, 9 December 2008). Any such interference by a public authority should be lawful (see *The Former King of Greece and Others v. Greece* [GC], no. 25701/94, §§ 79 and 82, ECHR 2000-XII), should pursue a legitimate aim "in the public interest" and must also be reasonably proportionate to the aim sought to be realised. As regards lawfulness, the States are under a positive obligation to ensure that the procedures enshrined in legislation governing the enforcement of final judgments are complied with (see *Fuklev v. Ukraine*, no. 71186/01, § 91, 7 June 2005).

78. Also, the principle of "good governance" requires that where an issue in the general interest is at stake it is incumbent on the public

authorities to act in good time, in an appropriate manner and with the utmost consistency (see *Beyeler v. Italy* [GC], no. 33202/96, § 10, ECHR 2000-I, and *Megadat.com S.r.l. v. Moldova*, no. 21151/04, § 72, 8 April 2008).

79. Turning to the present case, the Court observes that the applicant had acquired an entitlement to receive a supplementary pension by the administrative decision of 16 May 1994, which decision took final effect on 22 July 1994 (see paragraphs 9-10 above). Following the failure of the Fund to pay its debt in due time, the applicant attempted to obtain payment of the outstanding supplementary pension in civil and enforcement proceedings (see paragraphs 11-27 above), but to no avail.

80. The Court further observes that the 1994 decision, when reissued with the enforceability clause, qualified as an enforcement instrument (*osnov za sudsko izvršenje*; see paragraphs 37, 40 and 41 above). On the other hand, according to domestic law, an enforcement instrument does not necessarily equate to a decision liable to enforcement if certain crucial elements are missing (see paragraph 42 above). In view of the foregoing, as well as the Government's pleadings (see paragraph 75 above), the Court must firstly ascertain whether the Fund's monetary obligations established by the relevant part of the 1994 decision gave rise to a debt in the applicant's favour that was sufficiently established to be enforceable (see *Unistar Ventures GmbH v. Moldova*, no. 19245/03, § 88, 9 December 2008), and, secondly, identify the appropriate enforcement mechanism as regards the 1994 decision.

81. The Court firstly observes that the applicant had acquired the right to a pension by the 1990 decision, while in view of the outcome of the proceedings concerning wages owed to him, the 1994 decision only adjusted the pension and "base pension", indicating their exact amounts, and awarded a supplementary pension by applying the adjustments retroactively (see paragraphs 7 and 9, and contrast with paragraph 15 above).

82. Furthermore, the Court observes that the obligation liable to enforcement does necessarily have to be exactly determined, as the courts handling enforcement matters are obliged to enforce a debt when the reasoning in the decision gives sufficient detail to determine the total obligation of the debtor (see paragraph 52 above). The calculation parameters provided by the 1994 decision appear to have provided sufficient basis for the expert engaged by the applicant in the enforcement proceedings to calculate the outstanding debt (see paragraph 21 above). The 1994 decision was based on specific criteria/parameters for further calculations of the supplementary pension, in regard to which the Fund had no discretion (see, *mutatis mutandis*, *Bulgakova v. Russia*, no. 69524/01, §§ 29 and 31, 18 January 2007, and contrast with *Kiryanov v. Russia* (dec.), no. 42212/02, 9 December 2004). This means that the outstanding debt was readily ascertainable.

83. The Court finds that the applicant may be regarded as having had a substantive interest, sufficiently established and due to be paid, which equated to a "possession". The mere fact that a property right established by an administrative decision is subject to revocation in certain circumstances does not prevent it from being a "possession" within the meaning of Article 1 of Protocol No. 1, at least until it is revoked (see *Beyeler*, cited above, § 105; *Moskal v. Poland*, cited above, § 40; and *Jasiūnienė v. Lithuania*, no. 41510/98, 6 March 2003). The guarantees of that provision therefore apply to the present case.

84. As regards the appropriate avenue for the enforcement of the Fund's monetary obligation vis-à-vis the applicant, the Court firstly reiterates that where a final decision is delivered in favour of an individual against the State, the former should not, in principle, even be compelled to bring separate enforcement proceedings (see, *mutatis mutandis*, *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004, and *Manushaqe Puto and Others v. Albania*, nos. 604/07 et seq., § 71, 31 July 2012). It is understood that the State's functions were delegated to the Fund and their exercise has been controlled by the State (see paragraph 29 above). The Court cannot endorse the submissions about the applicant's failure to request "administrative enforcement" before the administrative bodies. The applicable administrative and enforcement legislation, as well as the Supreme Court and the Administrative Court's interpretation of the law, had all designated the civil courts as the competent authorities for the execution of an administrative decision establishing a monetary obligation (see paragraphs 37, 38, 40, 48 and 50). That was the case with the Fund's decision in the present case.

85. By failing to fully comply with the 1994 decision to date, almost nineteen years following its adoption (of which more than ten years fall within the Court's competence *ratione temporis*), the national authorities have prevented the applicant, who did everything in his capacity to obtain enforcement of the decision, from receiving the supplementary pension he reasonably expected to receive. There was apparently legal uncertainty as to whether the administrative or judicial authorities were invested with jurisdiction *ratione materiae* in cases such as that of the applicant (see paragraph 46 above). The non-enforcement of the 1994 decision was due, to an extent, to the fact that the Fund had failed to indicate the exact amount to be paid to the applicant by way of supplementary pension. The debt established by the 1994 decision was the liability of the Fund, in charge of administering pensions, which omitted to pay the debt and strikingly claimed to lack the appropriate software to calculate the amount due in view of hyperinflation. In addition, the competent enforcement court was empowered to obtain expert reports in complex cases and was provided with sufficient calculation parameters to identify the amount due. However, the competent court did not even attempt to arrive at a final calculation, nor did

it make any reference to the expert report supplied by the applicant. The manner in which the domestic court conducted these lengthy enforcement proceedings (see paragraphs 11-17 above) and the reasons given to decline jurisdiction in favour of the "administrative authorities" appear to be arbitrary. They did not comply with the procedures enshrined in the relevant legislation for the enforcement of final administrative decisions establishing obligations of a monetary nature (see paragraphs 37-40, 44, 48, 50 and 53 above).

86. The interference with the applicant's right to the peaceful enjoyment of his possessions was therefore unlawful (see *Fuklev v. Ukraine*, cited above). Such a conclusion makes it unnecessary to determine whether a fair balance was struck between the demands of the general interest of the community and the requirements of the protection of individual rights (see *Iatridis c. Greece* [GC], no 31107/96, § 58 and 62, ECHR 1999-II; *Ambruosi v. Italy*, no. 31227/96, §§ 28-34, 19 October 2000; and *Ilić v. Serbia*, no. 30132/04, § 75, 9 October 2007).

87. Accordingly, the Court considers that the Government's objection of non-exhaustion of domestic remedies (see paragraph 72 above) should be dismissed, and finds that there has been a violation of Article 1 of Protocol No. 1 to the Convention.

2. Alleged violations of Articles 6 and 13 of the Convention

88. Since the issues complained of under these Articles are essentially the same as those already examined under Article 1 of Protocol No. 1 to the Convention, the Court does not consider it necessary to examine these complaints separately (see, *mutatis mutandis*, *Davidescu v. Romania*, no. 2252/02, § 57, 16 November 2006, and *Unistar Ventures GmbH v. Moldova*, cited above, § 99).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

89. 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

90. The applicant claimed RSD 11,516,828.14 (approximately 115,000 EUR) in respect of pecuniary damage sustained due to the failure of the domestic authorities to fully enforce the final decision rendered in his favour. This amount was claimed to correspond to the Fund's debt as determined by a qualified expert, whose report was attached to the claim.

91. The Government contested the pecuniary claim as excessive and suggested that it be reassessed by qualified experts.

92. The Court reiterates that a judgment in which it finds a breach imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 32, ECHR 2000-XI, and *Metaxas v. Greece*, cited above, § 35).

93. As regards the present case, the Court has found a violation of Article 1 of Protocol No. 1 on account of the respondent State's failure to comply with the Fund's decision of 16 May 1994 to date, and also considered it unnecessary to rule on the merits of the applicant's complaints under Articles 6 and 13 of the Convention (see paragraphs 97-98 above). Concerning the pecuniary damage sought, the Court considers, in the circumstances of this case, that the full execution of the Fund's decision would place the applicant as far as possible in a situation equivalent to that in which he would have found himself had the requirements of Article 1 of Protocol No. 1 to the Convention not been breached (see *Niţescu v. Romania*, no. 26004/03, § 48, 24 March 2009).

94. In this respect, the Court considers that the Government shall secure, by appropriate means, the full execution of the final decision of the Fund of 16 May 1994, together with payment of the statutory interest accrued (see, *mutatis mutandis*, *Mužević v. Croatia*, no. 39299/02, § 91, 16 November 2006, and *EVT Company v. Serbia*, no. 3102/05, § 60, 21 June 2007). Particular importance should be given to the fact that the applicant has been awaiting the payment of the supplementary pension he was awarded for over nineteen years.

95. Given that the applicant did not submit a claim for non-pecuniary damage, the Court considers that there is no call to award him any sum on that account.

B. Costs and expenses

96. The applicant further sought RSD 212,515.42 on account of his costs incurred up to 2003 in connection with the civil proceedings for damages, plus statutory interest (see paragraph 14 above).

97. The Government submitted that this claim was belated, had not been submitted in the manner required by Rule 60 of the Rules of Court and that, in any event, the applicant was not entitled to such costs in view of the Supreme Court's judgment of 19 June 2003 (see paragraph 24 above).

98. According to the jurisprudence of the Court, an applicant is entitled to reimbursement of his costs and expenses only in so far as they are found to have been actually and necessarily incurred and to be reasonable as to quantum. To this end, Rule 60 §§ 2 and 3 of the Rules of Court stipulate

that applicants must enclose with their claims for just satisfaction "any relevant supporting documents", failing which the Court "may reject the claims in whole or in part". Although, according to the Court's case-law, the applicant should not even have been compelled to bring separate enforcement proceedings (see *Metaxas v. Greece*, cited above, § 19, and *Manushaqe Puto and Others*, cited above, § 71), the Court observes that he instituted separate civil and enforcement proceedings in order to seek payment of the supplementary pension and in fact did everything in his capacity to prevent the violation. As regards the applicant's claim, which it considers to be in time and which was limited to the costs incurred in connection with the civil proceedings for damages, the Court considers that, although the Supreme Court held that this avenue was inappropriate, the applicant's decision to pursue court proceedings does not appear to have been an unreasonable choice in view of the Supreme Court's 2005 Practice Direction (see paragraph 49 above). His efforts certainly resulted in him incurring costs. However, given that the applicant failed to substantiate the difference in costs awarded by the domestic courts and his current claim, the Court decides to award the applicant EUR 1,000 in respect of the costs incurred domestically.

C. Default interest

99. Lastly, 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. *Joins* to the merits the Government's preliminary objection of non-exhaustion of domestic remedies and *dismisses* it;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 1 of Protocol No. 1;

4. *Holds* that there is no need to examine the complaint under Articles 6 and 13 of the Convention;

5. *Holds*

(a) that the respondent State shall ensure by appropriate means, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the full execution of the final

decision of the Fund of 16 May 1994, together with payment of the statutory interest accrued;

(b) that the respondent State is to pay the applicant, within the same three month period, EUR 1,000 (one thousand euros) for the costs incurred domestically, which sum is to be converted into the national currency of the respondent State at the rate applicable on the date of settlement, plus any tax that may be chargeable;

(c) 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.

Done in English, and notified in writing on 10 December 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Guido Raimondi
President