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

SECOND SECTION

DECISION

Application no. 30859/10
Aleksandar SOKOLOV against Serbia
and 6 other applications
(see list appended)

The European Court of Human Rights (Second Section), sitting on 14 January 2014 as a Chamber composed of:

Guido Raimondi, *President,*
Dragoljub Popović,
András Sajó,
Nebojša Vučinić,
Paulo Pinto de Albuquerque,
Helen Keller,
Egidijus Kūris, *judges,*
and Stanley Naismith, *Section Registrar,*

Having regard to the applications listed in the Appendix thereto and lodged on the dates indicated therein,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

1. The applicants are all Serbian nationals, and their further personal details are set out in the Annex to this judgment.

2. They were all represented before the Court by the same attorney, Mr. D. Vidosavljević, a lawyer practising in Leskovac, who was subsequently, replaced by Ms. J. Spasić, a lawyer practising in Vlasotince.

3. The Serbian Government ("the Government") were represented by their Agent, Mr S. Carić.

A. The circumstances of the case

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

1. Introduction

5. All the applicants were at the time employed by "*Fabrika ventila za pneumatike" d.o.o., Bor*, a "socially/State-owned" company based in Bor.

6. Since the employer had failed to fulfill its obligations towards its employees, the applicants brought numerous separate civil claims, seeking payment of salary arrears and various social security contributions.

7. On the dates specified in the Annex, the applicants obtained final court decisions ordering the same company (hereinafter: "the debtor") to pay them certain sums on account of salary arrears and costs and expenses.

2. The insolvency proceedings

8. On 14 October 2005 the Commercial Court in Zaječar opened insolvency proceedings in respect of the debtor (St. 28/05).

9. The applicants duly submitted their respective claims based on the above court decisions (see paragraph 7 above).

10. On 31 May 2006 the Commercial Court recognised the applicants' claims.

11. On 19 March and 27 November 2007 the Commercial Court adopted the decision on main distribution of the company's insolvency assets, classifying the applicants into the second and fourth sequences of payment. Pursuant to this decision, the applicants' claims in the second sequence of payment were fully enforced, while those in the fourth sequence of payment were executed in the amount of 1.33%.

12. On 3 June 2008 the Commercial Court terminated the insolvency proceedings and ordered the debtor's liquidation as the latter had gone bankrupt. This decision was published in the Official Gazette of the Republic of Serbia on 20 June 2008 (no. 61/08), registered ("*zabeležba*") in the relevant public registries concerning the status of all companies and became final on 3 July 2008.

13. Following a request filed by the applicants' lawyer, on 15 April 2010 the Commercial Court's decision of 3 June 2008 was served on him.

14. On 29 April 2010 the applicants filed their respective appeals with the Constitutional Court.

15. On 2 October 2012 the Constitutional Court dismissed the applicants' constitutional appeals.

16. The final court judgments in the applicants' favour remain only partly enforced to the present day.

3. The legal status of the debtor

17. The debtor was registered as a predominantly socially owned company in the relevant public registries before and throughout the insolvency proceedings.

18. On 14 July 2008 the debtor was liquidated without having any legal successor and struck from the relevant public registries.

B. Relevant domestic law

19. The domestic law concerning the status of socially/State-owned companies (hereinafter the "SOC"), the enforcement and insolvency proceedings, as well as the case-law of the Constitutional Court in respect of SOCs, are outlined in the cases of *R. Kačapor and Others v. Serbia*, nos. 2269/06 *et al*., 15 January 2008, §§ 57-82; *Vlahović v. Serbia*, no. 42619/04, §§37-47, 16 December 2008; *Crnišanin and Others v. Serbia*, nos. 35835/05 et seq., §§100-104, 13 January 2009; *EVT Company v. Serbia*, no. 3102/05, §§ 26-7, 21 June 2007; *Marčić and Others v. Serbia*, no. 17556/05, § 29, 30 October 2007; *Adamović v. Serbia*, no. 41703/06, §§ 17-21, 2 October 2012; *Marinković v. Serbia* (dec.), no. 5353/11, 29 January 2013, §§ 26-9 and §§ 31-44, and *Jovičić and Others v. Serbia* (dec.), nos. 37270/11, §§ 88-93, 15 October 2013.

20. In addition, in accordance with Article 125 § 2 of the Insolvency Procedure Act 2004 (*Zakon o stečajom postupku*; published in the Official Gazette of the Republic of Serbia, nos. 84/04 and 85/05), the insolvency court shall adopt a formal decision upon the "termination" (*zaključenje*) of the insolvency proceedings. This decision shall then be published in the Official Gazette and forwarded to the State's competent "registration" body. The debtor company is liquidated following termination of the bankruptcy proceedings, struck from the relevant public registries and can no longer be held responsible for any of its outstanding debts.

COMPLAINTS

21. The applicants complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 that the respondent State had failed to fully enforce the final court decisions rendered in their favour.

22. The applicants further complained, under Article 13 of the Convention, of the absence of an effective domestic remedy in this regard.

THE LAW

23. The Court considers that, in accordance, with Rule 42 § 1 of the Rules of the Court, the applications should be joined, given their common factual and legal background.

24. As noted above, the applicants complained about the non-enforcement of final court decisions rendered in their favour.

25. The relevant provisions of Articles 6 § 1 and 13 of the Convention, as well as Article 1 of Protocol No. 1 read as follows:

Article 6 § 1

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

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.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

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."

26. The Government submitted, *inter alia*, that the applicants' complaints should be rejected for non-observance of the six-month rule. According to the Government, in the circumstances of the present case, this time-limit had started to run when the termination of the insolvency proceedings against the debtor company had been published in the Official Gazette and/or became final.

27. The applicants stated that they lodged their applications within six months from the date on which the Commercial Court's decision of 3 June 2008 had been served on them, namely 15 April 2010 (see paragraph 16 above).

28. The Court reiterates that the six-month time-limit provided for by Article 35 § 1 has a number of aims. Its primary purpose is to maintain legal certainty by ensuring that cases raising issues under the Convention are dealt with in a reasonable time and to prevent the authorities and other persons concerned from being kept in a state of uncertainty for a long period of time (see *Sabri Güneş v. Turkey* [GC], no. 27396/06, §§ 48-9, 29 June 2012, and *P.M. v. the United Kingdom* (dec.), no. 6638/03, 24 August

2004). It marks out the temporal limits of supervision carried out by the Court and signals to both individuals and State authorities the period beyond which such supervision is no longer possible (see, amongst other authorities, *Walker v. the United Kingdom* (dec.), no. 34979/97, ECHR 2000-I). The existence of such a time-limit is justified by the wish of the High Contracting Parties to prevent past judgments being constantly called into question and constitutes a legitimate concern for order, stability and peace (see *De Becker v. Belgium* (dec.), no. 214/56, 9 June 1958).

29. The Court recalls that in cases where the alleged violation constitutes a continuing situation against which no domestic remedy is available, the six-month period starts to run from the end of the situation in question (see, among many authorities, *Iatridis v. Greece* [GC], no. 31107/96, § 50, ECHR 1999-II, and *Jovičić and Others v. Serbia* (dec.), cited above, § 105). Also, in cases involving the execution of a final court decision, a continuing situation ends, in principle, on the date of the enforcement of the relevant decision or when an "objective impossibility" to enforce such decision is duly acknowledged (see, for example, *Tripcovici v. Romania* (dec.), no. 21489/03, 22 September 2009; *Kravchenko v. Russia*, no. 34615/02, § 34, 2 April 2009, and *Babich and Azhogin v. Russia* (dec.), no. 9457/09, §§ 48-9, 15 October 2013).

30. The Court observes that, unlike in cases concerning the execution of a final court decision rendered against private actors, when it comes to the execution of final court decisions rendered against a SOC, or equivalent entities that also do not enjoy "sufficient institutional and operational independence from the State", the State is directly liable for their debts and it is not open to the State to cite either the lack of its own funds or the indigence of the debtor as an excuse for the non-enforcement of those decisions (see, among many authorities, *R. Kačapor and Others v. Serbia*, cited above, § 114; *Jovičić and Others v. Serbia* (dec.), nos. 37270/11, §§ 105-6, 15 October 2013; *Shlepkin v. Russia*, no. 3046/03, § 25, 1 February 2007; *Cone v. Romania*, cited above, § 27, 24 June 2008, and *Tarverdiyev v. Azerbaijan*, no. 33343/03, §§ 50-2, 26 July 2007; compare and contrast to cases where the debtors were private actors, *Omerović v. Croatia*, no. 36071/03, § 35, 1 June 2006; *Necheporenko and Others v. Ukraine* [Committee], nos. 72631/10 et seq., §§13-4, 24 October 2013 and *Shtabovenko and Others v. Ukraine* [Committee], no. 22722/07, 25 April 2013, §§15-6). There is nothing in the Government's arguments to suggest that the SOC in question (see paragraph 17 above), despite the fact that it was formally a separate legal entity, enjoyed sufficient institutional and operational independence from the State to absolve the latter from responsibility under the Convention (see *R. Kačapor and Others v. Serbia,* cited above, § 98, and *Adamović v. Serbia,* cited above, § 31). Given that the present judgments in the applicants' favour remain unenforced in their

entirety to the present day, the situation complained of is therefore still continuing.

31. Nevertheless, the Court recalls that the continuing situation may not postpone the application of the six-month rule indefinitely. The Court has, for example, imposed a duty of diligence and initiative on applicants wishing to complain about the continuing failure of the State to comply with its obligations in the context of ongoing disappearances or the right to property or home (see, for example, *Varnava and Others v. Turkey* [GC], nos. 16064/90 et seq., §§ 159-172, ECHR 2009, and *Sargsyan v. Azerbaijan* [GC] (dec.), no. 40167/06, §§ 124-148, 14 December 2011). While there are, admittedly, obvious distinctions as regards different continuing violations, the Court considers that the applicants must, in any event, introduce their complaints "without undue delay", once it is apparent that there is no realistic prospect of a favourable outcome or progress for their complaints domestically (see, for example, *Sargsyan v. Azerbaijan* [GC] (dec.), cited above, § 140).

32. Having regard to the general considerations of legal certainty, the Court considers that, in the context of the non-enforcement of pecuniary debts of a SOC, the applicants' obligation to introduce their complaints before the Court with reasonable expedition should be directly linked to the progress of the execution of the relevant judgments at the domestic level.

33. Turning to the present case, the Court observes that the enforcement of the final judgments in the applicants' favour was the responsibility of the authorities, including, if necessary, the taking of such measures as insolvency proceedings (see *Khachatryan v. Armenia*, no. 31761/04, § 60, 1 December 2009). Consequently, the applicants may have had a realistic hope of a favourable outcome or progress for their claims at the domestic level as long as the insolvency proceedings were ongoing (see, *inter alia*, *R. Kačapor and Others v. Serbia*, cited above, § 115, and *Jovičić and Others v. Serbia* (dec.), cited above, § 106). However, according to domestic law, following the termination of the insolvency proceedings the debtor company was no longer held responsible for any debts, nor was the State liable for such debts, even where the debtor was a SOC (see paragraph 20 above; see also, *mutatis mutandis*, *Adamović v. Serbia*, cited above, § 21). Therefore, once the applicants learned, or ought to have learned that the insolvency proceedings had been terminated and/or the debtor company liquidated without any legal successor and without any remaining bankruptcy estate, it should have become apparent to them that there was no available legal avenue domestically whereby they could obtain the enforcement of the relevant judgments in their favour against the debtor in question or the State itself.

34. As to when the applicants knew, or ought to have learned, that the enforcement of the judgments in their favour was no longer possible, the Court considers that the applicants should have acted diligently to lodge

their applications within six months as of when the Commercial Court's decision on the termination of the insolvency proceedings had been published in the respondent State's Official Gazette or, at the latest, when that decision had become final, i.e. on 3 July 2008 (see, *mutatis mutandis*, *Vinčić and Others v. Serbia*, nos. 44698/06 et seq., § 51, 1 December 2009). The applicants pleaded in the present cases that the Commercial Court's decision had not been served on them before 15 April 2010 and that they could not therefore have introduced their applications earlier. However, the Court notes that such an obligation on the part of the Commercial Court was not prescribed by domestic law and that a copy of the Commercial Court's decision was served on the applicants only upon their request. The Court considers that it was thus incumbent on the applicants, who had been the debtor's employees and had claims against it, to show interest in the debtor's status.

35. The Court therefore agrees with the Government's position that the applications were introduced outside the six-month time-limit set out in Article 35 § 1 of the Convention. As a matter of clarification, the Court would further recall that the applicants' failure to comply with that duty does not lead to the extinguishment of the State's general liability for the debts of the SOC. The applicants have, however, lost their right to have the merits of their applications examined before the Court for reasons of legal certainty (see, *mutatis mutandis*, *Sargsyan v. Azerbaijan* [GC] (dec.), cited above, § 134).

36. It follows that the applications were introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention, there being no need for the Court to examine the remainder of the Government's admissibility objections.

For these reasons, the Court unanimously

Decides to join the applications;

Declares the applications inadmissible.

Stanley Naismith
Registrar

Guido Raimondi
President

APPENDIX

No.	Application no.	Lodged on	Applicant name date of birth place of residence	Final domestic decision (issuing authority / case no., adopted on)	Enforcement order (enforcement authority, case no. date of order)
1.	30859/10	20/05/2010	**Aleksandar SOKOLOV** 04/02/1959 Bor	Municipal Court in Bor P1. 883/05 of 5 September 2005	Commercial Court in Zaječar St. 28/05 Enforcement requested in the insolvency proceedings (*potraživanje prijavljeno u stečajnom postupku*) on 12/12/2005
2.	54078/10	20/05/2010	**Igor ĐORĐEVIĆ** 31/08/1981 Bor	Municipal Court in Bor P1. 857/05 of 5 September 2005	Commercial Court in Zaječar St. 28/05 Enforcement requested in the insolvency proceedings (*potraživanje prijavljeno u stečajnom postupku*) on 16/12/2005
3.	54105/10	20/05/2010	**Milovan RAKIĆ** 26/06/1950 Bor	Municipal Court in Bor P1. 1392/02 of 9 April 2003	Commercial Court in Zaječar St. 28/05 Enforcement requested in the insolvency proceedings (*potraživanje prijavljeno u stečajnom postupku*) on 15/12/2005
4.	54106/10	20/05/2010	**Jordan ČORBOLOKOVIĆ** 23/11/1959 Bor	Municipal Court in Bor P1. 860/05 of 22 July 2005 P. 1399/02 of 9 April 2003	Commercial Court in Zaječar St. 28/05 Enforcement requested in the insolvency proceedings (*potraživanje prijavljeno u stečajnom postupku*) on 19/12/2005
5.	54110/10	20/05/2010	**Miodrag BARZILOVIĆ** 12/04/1958 Zlot	Municipal Court in Bor P1. 377/03 of 03 June 2003 P1. 870/05 of 05 September 2005	Commercial Court in Zaječar St. 28/05 Enforcement requested in the insolvency proceedings (*potraživanje prijavljeno u stečajnom postupku*) on 20/12/2005
6.	54116/10	20/05/2010	**Živojinka ŽIVKOVIĆ** 12/04/1953 Bor	Municipal Court in Bor P1. 1060/02 of 23 April 2003	Commercial Court in Zaječar St. 28/05 Enforcement requested in the insolvency proceedings (*potraživanje prijavljeno u stečajnom postupku*) on 16/12/2005
7.	54118/10	20/05/2010	**Danica PETROVIĆ** 18/12/1960 Bor	Municipal Court in Bor P1. 881/05 of 5 September 2005 P1. 1381/02 of 14 April 2003	Commercial Court in Zaječar St. 28/05 Enforcement requested in the insolvency proceedings (*potraživanje prijavljeno u stečajnom postupku*) on 14/12/2005