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

SECOND SECTION

**CASE OF MARČIĆ AND 16 OTHERS v. SERBIA**

*(Application no. 17556/05)*

JUDGMENT

STRASBOURG

30 October 2007

*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 Marčić and 16 others v. Serbia,

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

Mrs F. TULKENS, *President,*
Mr A.B. BAKA,
Mr G. BONELLO,
Mr I. CABRAL BARRETO,
Mr M. UGREKHELIDZE,
Mrs A. MULARONI,
Mr D. POPOVIĆ, *judges,*

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 9 October 2007,

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

# PROCEDURE

1. The case originated in an application (no. 17556/05) against the State Union of Serbia and Montenegro, succeeded by Serbia on 3 June 2006 (see paragraph 34 below), lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Mr Srbislav Marčić and 16 others ("the applicants"; see paragraph 4 below), on 5 May 2005.

2. The applicants were represented before the Court by Mr D. Vidosavljević, a lawyer practising in Leskovac. The Government of the State Union of Serbia and Montenegro and, subsequently, the Government of Serbia ("the Government") were represented by their Agent, Mr S. Carić.

3. On 12 January 2006 the Court decided to communicate the application to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

# THE FACTS

4. The applicants, Mr Srbislav Marčić (the "first applicant"), Mr Stevan Kostić (the "second applicant"), Mr Slavko Pešić (the "third applicant"), Mr Radoslav Pesić (the "fourth applicant"), Mr Časlav Stošić (the "fifth applicant"), Mr Sreten Stojanović (the "sixth applicant"), Mr Budimir Stajić (the "seventh applicant"), Mr Petar Pesić (the "eighth applicant"), Mr Slađan Stanisavljević (the "ninth applicant"), Mr Branko Dinić (the "tenth applicant"), Mr Saćip Demić (the "eleventh applicant"), Mr Dragan

Živković (the "twelfth applicant"), Mr Dragan Nikolić (the "thirteenth applicant"), Mr Zoran Stanojević (the "fourteenth applicant"), Mr Mile Milenković (the "fifteenth applicant"), Ms Branka Mirčić (the "sixteenth applicant") and Ms Ljiljana Petrović (the "seventeenth applicant") were all, at the relevant time, citizens of the State Union of Serbia and Montenegro who lived in Vladičin Han, Surdulica, Relince, Suva Morava, Suva Morava, Prekodolce, Prekodolce, Vranje, Vladičin Han, Žitorađe, Prekodolce, Vladičin Han, Ravna Reka, Suva Morava, Surdulica, Vladičin Han and Vladičin Han, respectively.

## I. THE CIRCUMSTANCES OF THE CASE

### A. The civil and insolvency proceedings

5. In the 1980s all the applicants, except for the twelfth, sixteenth and seventeenth, were employed with "Mehanizacija", an organisational unit (*osnovna organizacija udruženog rada*) of a State-owned company called "Erozija", based in Vladičin Han, Serbia.

6. The father of the twelfth applicant and that of both the sixteenth and seventeenth applicants also worked for the same employer but they died in 1994 and 2001 respectively.

7. On an unspecified date the aforementioned employees issued civil proceedings against "Mehanizacija" before the Labour Court (*Osnovni sud udruženog rada*) in Vranje, seeking the payment of salaries which they had earned while working on a project in Iraq.

8. On 10 March 1988 the Commercial Court (*Okružni privredni sud*) in Leskovac opened insolvency proceedings (*stečajni postupak*) in respect of "Mehanizacija" ("the debtor"), its decision being published in the Official Gazette of the Socialist Federal Republic of Yugoslavia dated 8 April 1988.

9. Several days prior to this date, the same court appears to have instituted separate insolvency proceedings in respect of "Erozija".

10. On 20 October 1988 the Labour Court informed the Commercial Court about the plaintiffs' claims which had been specified in US Dollars ("USD").

11. On 15 October 1990 the Commercial Court recognised these claims as follows: USD 5,240.80 in respect of the first applicant; USD 4,980.80 in respect of the second applicant; USD 2,269.30 in respect of the third applicant; USD 3,244.95 in respect of the fourth applicant; USD 4,935.55 in respect of the fifth applicant; USD 839 in respect of the sixth applicant; USD 4,872.95 in respect of the seventh applicant; USD 4,181.20 in respect of the eighth applicant; USD 5,055.85 in respect of the ninth applicant; USD 5,003.55 in respect of the tenth applicant; USD 2,838.10 in respect of the eleventh applicant; USD 5,173.25 in respect of the twelfth applicant's

father; USD 4,186.80 in respect of the thirteenth applicant; USD 4,768.40 in respect of the fourteenth applicant; USD 4,800.00 in respect of the fifteenth applicant; and USD 3,447.50 in respect of the father of the sixteenth and the seventeenth applicants.

12. On 27 December 1990, taking into account the currency exchange rate and the available assets converted into cash (*deo unovčene stečajne mase za raspodelu*), the Commercial Court adopted a formal decision specifying the exact amounts to be paid by the debtor in Yugoslav Dinars ("YUD"): YUD 2,139 to the first applicant; YUD 2,031 to the second applicant; YUD 925 to the third applicant; YUD 1,323 to the fourth applicant; YUD 2,013 to the fifth applicant; YUD 342 to the sixth applicant; YUD 1,988 to the seventh applicant; YUD 1,705 to the eight applicant; YUD 2,062 to the ninth applicant; YUD 2,041 to the tenth applicant; YUD 1,157 to the eleventh applicant; YUD 2,110 to the twelfth applicant's father; YUD 1,708 to the thirteenth applicant; YUD 1,945 to the fourteenth applicant; YUD 1,956 to the fifteenth applicant; YUD 1,406 to the father of the sixteenth and the seventeenth applicants. All sums were to be paid within fifteen days of the date when the decision of the Commercial Court became final.

13. On 12 February 1991 the Commercial Court's decision was upheld by the High Commercial Court (*Viši privredni sud Srbije*) and it thereby became final.

14. The claimants appear to have subsequently informed the Commercial Court that they would be willing to accept 40% of their claims in USD (see paragraph 11 above).

15. On 13 March 1996 and 28 August 2001, respectively, the Municipal Court (*Opštinski sud*) in Vladičin Han declared the twelfth, sixteenth and seventeenth applicants to be their fathers' legal heirs.

16. On 13 December 2004 the applicants sent a letter to the Commercial Court seeking access to the case file, a copy of the formal decision concluding the insolvency proceedings, proof that such a decision, if issued, was published in the Official Gazette and an additional copy of the "cover page" of the case file specifically indicating that the proceedings had ended.

17. In response, they received only a certified copy of the "cover page" without the prescribed indication that the proceedings in question had been concluded.

18. On 7 March 2005 and 1 April 2005 the applicants complained to the Commercial Court and the President of the High Commercial Court. They requested that the proceedings be expedited and noted that the case had been pending for more than 16 years but that they were yet to receive the amounts awarded.

19. It would appear that all the other creditors in the insolvency proceedings had their claims met by the debtor.

### B. Other relevant facts

20. The Government provided a copy of a form issued by the Registry of the Commercial Court, containing, *inter alia*, the date "27 December 1990" next to the standard printed rubric entitled "on completion of all business arising from the insolvency proceedings".

## II. RELEVANT DOMESTIC LAW

### A. Rules on the internal organisation of the courts

#### 1. *Rules of Court 1993 (Pravilnik o unutrašnjem poslovanju sudova; published in the Official Gazette of the Republic of Serbia - OG RS - nos. 91/93, 27/95 and 29/00)*

21. Articles 209 and 210, *inter alia*, stated that special symbols had to be placed next to the registered number of a case, indicating that the proceedings had been concluded.

#### 2. *Rules of Court 2003 (Sudski poslovnik; published in OG RS nos. 65/03 and 115/05)*

22. The 2003 Rules repealed the 1993 Rules in July 2003.

23. Articles 236 and 237 of the 2003 Rules correspond, in the relevant part, to the aforementioned text of Articles 209 and 210 of the 1993 Rules.

### B. Relevant provisions concerning insolvency proceedings

24. In accordance with Article 146 of the Composition, Insolvency and Liquidation Act 1989 (*Zakon o prinudnom poravnanju, stečaju i likvidaciji*; published in the Official Gazette of the Socialist Federal Republic of Yugoslavia - OG SFRY - no. 84/89, as well as in the Official Gazette of the Federal Republic of Yugoslavia - OG FRY - nos. 37/93 and 28/96) and Article 120 of the subsequent Insolvency Procedure Act 2004 (*Zakon o stečajom postupku*; published in OG RS no. 84/04), the insolvency court has to pay the creditors *ex officio* within fifteen days of/immediately after the decision on the division of the debtor's assets becomes final.

25. Under Article 99 of the 1989 Act and Article 73 of the 2004 Act, starting with the date of institution of the insolvency proceedings, no separate enforcement proceedings in respect of the creditors' main claims can be brought against the same debtor, while any such proceedings which might still be ongoing must be discontinued.

26. In accordance with Articles 149 and 151 of the 1989 Act, as well as Article 125 of the 2004 Act, the insolvency court shall adopt a formal decision upon the "conclusion" (*zaključenje*) of the insolvency proceedings. This decision shall then be published in the Official Gazette and forwarded to the State's competent "registration" body.

### C. Property Act (Zakon o osnovama svojinskopravnih odnosa; published in OG SFRY nos. 6/80 and 36/90; OG FRY no. 29/96 and OG RS no. 115/05)

27. Article 20 provides that property can be acquired *ex lege*, through a legal transaction, by means of inheritance, or on the basis of a decision issued by the State in accordance with the law.

28. Article 36 provides that the deceased's property shall be transferred *ex lege* to the legal heirs, at the moment of death.

### D. Relevant provision of inheritance law

29. Article 130 of the Inheritance Act 1974 (*Zakon o nasleđivanju*, published in the Official Gazette of the Socialist Republic of Serbia - OG SRS nos. *52/74, 1/80 and 25/82*) and Article 212 § 1 of the subsequent Inheritance Act 1995 (*Zakon o nasleđivanju*, published in OG RS no. 46/95) both provide that the deceased's estate shall be transferred *ex lege* to the legal heirs at the moment of death.

### E. Obligations Act (Zakon o obligacionim odnosima; published in OG SFRY nos. 29/78, 39/85, 45/89 and 57/89, as well as OG FRY no. 31/93)

30. Article 371 provides that all claims shall become time-barred (*zastarevaju*) within ten years, unless this Act states otherwise.

31. Article 379 § 1 provides, *inter alia*, that all claims recognised by a final court decision shall become time-barred within ten years, including those claims which would otherwise have become time-barred within a shorter period of time.

32. Article 360 § 3 provides that courts shall not take into account whether a given claim is time-barred unless and until there is a specific objection by the debtor to this effect.

### F. Relevant provisions of the Judges Act

33. The relevant provisions of this Act are set out in the *V.A.M. v. Serbia* judgment (no. 39177/05, § 70, 13 March 2007).

### G. The Court of Serbia and Montenegro and the succession of the State Union of Serbia and Montenegro

34. The relevant provisions concerning the Court of Serbia and Montenegro and the succession of the State Union of Serbia and Montenegro are set out in the *Matijašević v. Serbia* judgment (no. 23037/04, §§ 12, 13 and 16-25, 19 September 2006).

## THE LAW

### I. THE FIRST APPLICANT'S DEATH

35. On 31 March 2006 the first applicant died.

36. On 10 May 2006 the Municipal Court (*Opštinski sud*) in Vladičin Han declared the first applicant's wife, Mrs Marica Marčić, to be his sole legal heir.

37. On 30 May 2006 Mrs Marčić informed the Court that she wished to maintain the proceedings lodged by her husband.

38. The Government contested this request.

39. Given the relevant domestic legislation (see paragraph 29 above), as well as the fact that she has a "definite pecuniary interest" in the insolvency proceedings at issue (see, *mutatis mutandis*, *Ahmet Sadık v. Greece*, judgment of 15 November 1996, *Reports of Judgments and Decisions* 1996-V, § 26), the Court finds, without prejudice to the Government's other preliminary objections, that Mrs Marčić has standing to proceed in her husband's stead.

40. Mrs Marčić shall, therefore, herself be referred to as "the first applicant" hereinafter.

### II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1

41. The applicants complained, under Article 1 of Protocol No. 1, about the inability to enforce their claims, payments having been ordered by the Commercial Court's final decision of 27 December 1990.

Article 1 of Protocol No. 1 reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his [or her] possessions. No one shall be deprived of his [or her] 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."

## A. Admissibility

### *1. Ratione temporis*

42. The Government submitted that the insolvency proceedings had ended on 27 December 1990 (see paragraph 20 above) and noted that the respondent State had ratified Protocol No. 1 on 3 March 2004. They also acknowledged that there was no evidence that the decision to terminate the insolvency proceedings had been published in the Official Gazette, but then went on to point out that, in any event, the applicants' right to have the Commercial Court's decision enforced had become time-barred by 12 February 2001, in accordance with Article 371 of the Obligations Act (see paragraphs 30, 31, 12 and 13 above, respectively). The application as a whole was therefore incompatible *ratione temporis* with the Convention.

43. The applicants contested these submissions.

44. The Court notes that, as conceded by the Government, no decision to conclude the insolvency proceedings has ever been published in the Official Gazette, notwithstanding the explicit domestic requirements (see paragraph 26 above). Secondly, there is no evidence that the Commercial Court had even adopted a decision of this sort. Thirdly, there are no entries in the Commercial Court's case file indicating that the proceedings in question had ended (see paragraphs 16-17 and 21-23 above). Fourthly, the standard printed rubric and the date referred to by the Government in paragraph 20 above are insufficiently clear to shed any additional light, particularly given the fact that the Commercial Court's decision of 27 December 1990 had itself only become final on 12 February 1991. The Court concludes, therefore, that the impugned insolvency proceedings must be deemed to be still ongoing.

45. Finally, the Court considers that the applicants' requests to have the Commercial Court's decision enforced are not time-barred. In particular, the said court was and still is under an *ex officio* obligation to enforce its own decisions (see paragraph 24 above) and, in any event, it could only have accepted this objection had it been specifically raised by the debtor (see paragraph 32 above).

46. The applicants' complaints cannot therefore be declared incompatible *ratione temporis* under Article 35 § 3 of the Convention. Accordingly, the Government's objections in this respect must be dismissed.

*2. Ratione personae*

47. The Government noted that the first, twelfth, sixteenth and seventeenth applicants were not recognised as creditors within the insolvency proceedings. The application in respect of those persons was thus incompatible *ratione personae*.

48. These four applicants contested the Government's submissions and, in so doing, referred to Article 36 of the Property Act.

49. The Court notes that the applicants in question have indeed not been formally recognised as creditors within the said proceedings. It also observes, however, that the relevant domestic legislation provides that a deceased's estate shall be transferred *ex lege* to the heirs at the moment of death, and considers that the Government's objection under Article 1 of Protocol No. 1 must therefore be dismissed (see paragraph 28 above; see also, *mutatis mutandis*, *Kuljanin v. Croatia* (dec.), no. 77627/01, 3 June 2004).

*3. Exhaustion of domestic remedies*

50. The Government submitted that the applicants had not exhausted all effective domestic remedies. In particular, they did not seek enforcement of the Commercial Court's final decision in accordance with Enforcement Procedure Act. Further, the applicants had not complained about the delay in question to the Supreme Court's Supervisory Board or lodged a separate complaint to the Court of Serbia and Montenegro (see paragraphs 33-34 above). Finally, they had failed to specifically invoke Article 1 of Protocol No. 1 before the domestic authorities.

51. The applicants contested the effectiveness of these remedies and recalled the principle of "*iura novit curia*".

52. The Court has already held that complaints to the Supreme Court's Supervisory Board and the Court of Serbia and Montenegro could not be deemed effective within the meaning of its established case-law under Article 35 § 1 of the Convention (see, *mutatis mutandis*, *V.A.M. v. Serbia*, cited above, §§ 85-88 and 119, 13 March 2007). It sees no reason to depart from those findings in the present case. The Court also considers that the Enforcement Procedure Act was irrelevant, given that it was solely up to the Commercial Court to enforce its own decision of 27 December 1990 (see paragraphs 24 and 25 above). Finally, there being no effective remedies at the applicants' disposal, the Court notes that their alleged failure to specifically rely on Article 1 of Protocol No. 1 before the domestic courts has become moot. In view of the above, the Court considers that the Government's objection must be rejected.

*4. Conclusion*

53. The Court considers that the applicants' complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and finds no other ground to declare them inadmissible. The complaints must therefore be declared admissible.

## B. Merits

*1. Arguments of the parties*

54. The Government argued that there had been no violation of Article 1 of Protocol No. 1. In particular, the impugned non-enforcement has been within the Court's competence *ratione temporis* for some three years only. During this time and after fourteen years of prior inaction, the applicants filed only three complaints with the domestic judicial authorities. The insolvency proceedings were also very complex, given the number of creditors and the difficulties in establishing the accurate amounts of their respective claims. Finally, even assuming that the applicants had "possessions" within the meaning of Article 1 of Protocol No. 1, they could not be considered to have been subsequently "deprived" of them as the alleged deprivation was itself "not definitive".

55. The applicants noted that they were not obliged to submit repeated complaints about the delay in question since there was an *ex officio* obligation on the part of the Commercial Court to enforce its own final decision. Further, the said court did not take adequate steps to bring the impugned proceedings to a successful and speedy conclusion. Lastly, the applicants referred to Article 20 of the Property Act (see paragraph 27 above) and stressed that they have been deprived of their possessions as of February 1991, which is when the Commercial Court's decision of 27 December 1990 had become final.

*2. Relevant principles*

56. The Court notes 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 (see *Burdov v. Russia*, no. 59498/00, § 40, ECHR 2002-III). It further recalls that it is the Sate's responsibility to make use of all available legal means at its disposal in order to enforce a final court decision, even in cases involving litigation between private parties (see, *mutatis mutandis*, *Fuklev v. Ukraine*, no. 71186/01, §§ 89-91, 7 June 2005; *Sovtransavto Holding v. Ukraine*, no. 48553/99, § 96, ECHR 2002-VII). Finally, the Court reiterates that the State must make sure that the procedures provided for in the relevant domestic legislation are fully complied with (see *Fuklev v. Ukraine*, cited above, § 91), without undue

delay, and that the overall enforcement system is effective both in law and in practice.

*3. The Court's assessment*

57. The Court notes that the Commercial Court's decision of 27 December 1990, although final and enforceable as of February 1991, has yet to be executed. Moreover, the impugned situation has continued for more than three years and seven months since the respondent State's ratification of Protocol No. 1 on 3 March 2004, until the date of adoption of the present judgment, being the period which falls within this Court's competence *ratione temporis*.

58. The Court further observes that, in order to determine the reasonableness of the delay in question, regard must be had to the state of the case on the date of ratification (see, *mutatis mutandis*, *Styranowski v. Poland*, judgment of 30 October 1998, *Reports* 1998-VIII), and notes that on 3 March 2004 the non-enforcement complained of had already been pending for almost thirteen years.

59. Finally, the Court takes notice of the fact that there have been no attempts to enforce the Commercial Court's decision throughout this period, even though there is no evidence that this delay could be attributed to the debtor's lack of means which, had it existed, should by now have resulted in the conclusion of the insolvency proceedings as well as the termination of the debtor as a legal entity (see paragraph 26 above). Finally, there is nothing to suggest that the impugned proceedings have been particularly complex or that the applicants' right to have the said decision enforced has become time-barred (see paragraph 45 above).

60. In such circumstances and irrespective of whether the debtor is still a State-owned company, the Court considers that the Serbian judicial authorities have failed to secure the enforcement of the Commercial Court's decision of 27 December 1990. It therefore finds that the respondent State has prevented the applicants from receiving the money which they had legitimately expected to receive. There has accordingly been a violation of Article 1 of Protocol No. 1.

## III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

61. Having regard to its finding in respect of Article 1 of Protocol No. 1, the Court declares the applicants' identical complaints made under Article 6 § 1 admissible, but does not find it necessary to examine them separately under this provision on the merits (see, *mutatis mutandis*, *Davidescu v. Romania*, no. 2252/02, § 57, 16 November 2006).

## IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

62. 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."

63. The applicants claimed just satisfaction in their application introduced on 5 May 2005, but have failed to comply with Rule 60 of the Rules of Court, as well as Article 5 of the related Practice Direction, thereafter. Accordingly, the Court considers that there is no call to award them any sum on that account (see *Apostol v. Georgia*, no. 40765/02, § 70, ECHR 2006).

64. It must, however, be noted that a judgment in which the Court finds a violation of the Convention or of its Protocols imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in its domestic legal order to put an end to the violation found (ibid., § 71).

65. Having regard to its finding in the instant case, the Court considers that the respondent State must secure, by appropriate means, the enforcement of the Commercial Court's final decision of 27 December 1990 (ibid., §§ 72 and 73).

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

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

3. *Holds* that it is not necessary to examine separately the complaint under Article 6 § 1 of the Convention;

4. *Holds* that the respondent State shall, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, secure, by appropriate means, the enforcement of the Commercial Court's decision of 27 December 1990.

Done in English, and notified in writing on 30 October 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

F. TULKENS
President