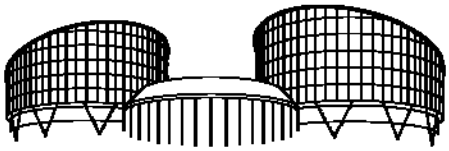

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF MARINKOVIĆ v. SERBIA

(Application no. 5353/11)

JUDGMENT

STRASBOURG

22 October 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 ofMarinković v. Serbia,

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

Guido Raimondi, *President,*
Peer Lorenzen,
Dragoljub Popović,
András Sajó,
Nebojša Vučinić,
Paulo Pinto de Albuquerque,
Helen Keller, *judges*
and Stanley Naismith, *SectionRegistrar,*

Having deliberated in private on 1 October 2013,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 5353/11) 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 Radoljub Marinković ("the applicant"), on 30 December 2010.

2. The applicant was represented by Ms R. Garibović, a lawyer practising in Novi Pazar.The Serbian Government ("the Government") were represented by their Agent, Mr S. Carić.

3. The applicant complained about the non-enforcement of the final court judgments rendered in his favour.

4. By a decision of 29 January 2013, the Court declared the application admissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1955 and lives in Užice.

6. The applicant was employed by Raketa-Putnički Saobraćaj AD, a company based in Užice (hereinafter "the debtor").

7. On 15 June 2008 the applicant was dismissed from his employment.

8. On unspecified dates the applicant instituted three separate sets of civil proceedings against the debtor, seeking payment of his salary arrears and various social security contributions.

A. First set of proceedings

9. On 2 March 2007 the Užice Municipal Court ruled in favour of the applicant and ordered the debtor to pay him:

(a) salary arrears in the amount of 8,232 Serbian dinars (RSD) for June 2006, RSD 9,408 for July 2006, and RSD 8,232 for August 2006, plus statutory interest;

(b) RSD 900 for his legal costs; and

(c) the pension, disability, health and unemployment insurance contributions due for the period June to December 2006.

10. On 22 September 2007 the judgment became final.

11. On 2 October 2007 the applicant filed a request for the enforcement of the above judgment before the Požega Municipal Court.

12. On 16 April 2008 the court accepted the applicant's request and issued an enforcement order.

B. Second set of proceedings

13. On 26 July 2007 the Užice Municipal Court ruled in favour of the applicant and ordered the debtor to pay him:

(a) salary arrears in the amount of RSD 8,800 for February 2007, RSD 9,680 for March 2007, RSD 9,240 for April 2007, and RSD 10,120 for May 2007, plus statutory interest;

(b) employee meal benefits (*naknada za ishranu na radu*) in the amount of RSD 4,385 for December 2006, RSD 4,385 for February 2007, RSD 4,385 for March 2007, and RSD 4,385 for April 2007, plus statutory interest;

(c) holiday pay (*regres za godišnji odmor*) in the amount of RSD 25,000 for 2006, plus statutory interest from 1 January 2007;

(d) RSD 1,950 for his legal costs; and

(e) the pension, disability, health and unemployment insurance contributions due for the period February to May 2007.

14. On 11 September 2007 the judgment became final.

15. On 2 October 2007 the applicant filed a request for the enforcement of the above judgment before the Požega Municipal Court.

16. On 7 February 2008 the court accepted the applicant's request and issued an enforcement order.

C. Third set of proceedings

17. On 24 August 2007 the Užice Municipal Court ruled in favour of the applicant and ordered the debtor to pay him:

(a) salary arrears in the amount of RSD 10,648 for February 2007, RSD 10,648 for March 2007, RSD 10,648 for April 2007, and RSD 10,648 for May 2007, plus statutory interest;

(b) employee meal benefits (*naknada za ishranu na radu*) in the amount of RSD 4,620 for September 2006, RSD 4,620 for December 2006, RSD 4,620 for January 2007, RSD 4,620 for February 2007, RSD 4,620 for March 2007, RSD 4,620 for April 2007, and RSD 4,620 for May 2007, plus statutory interest;

(c) holiday pay (*regres za godišnji odmor*) in the amount of RSD 35,135 for 2007, plus statutory interest from 24 June 2007;

(d) RSD 6,748.50 for his legal costs; and

(e) the pension, disability, health and unemployment insurance contributions due for period October 2006 to June 2007.

18. On 20 September 2007 that judgment became final.

19. In January 2009 the applicant filed a request for the enforcement of the above judgment before the Municipal Court in Požega.

20. On 12 May 2009 the court accepted the applicant's request and issued an enforcement order.

D. Insolvency proceedings

21. On 12 July 2010 the Užice Commercial Court opened insolvency proceedings in respect of the debtor, which led to the ongoing enforcement proceedings before the Požega Municipal Court being stayed.

22. In July 2010 the applicant duly registered a claim for the sums specified in the judgments referred to above.

23. On an unspecified date he was recognised as a secured creditor.

24. On 17 April 2012 some of the debtor's property was sold. A sale of the remaining assets was advertised in the newspapers and a public bid opening procedure was scheduled for 29 June 2012.

E. The debtor's status

25. On 30 December 2002 the debtor was privatised.

26. On 17 July 2007 the contract for the sale of the debtor was annulled because the buyer in question had failed to fulfil his contractual obligations.

27. Following the annulment of the debtor's privatisation the State owned 58.18% of the debtor's shares.

28. On 11 December 2008 the State sold its shares to a private company.

II. RELEVANT DOMESTIC LAW

A. The Enforcement Procedure Act 2004 (*Zakon o izvršnom postupku*; published in the Official Gazette of the Republic of Serbia - OG RS - no. 125/04)

29. The Enforcement Procedure Act of 2004 ("the 2004 Act") entered into force on 23 February 2005, thereby repealing the Enforcement Procedure Act of 2000 ("the 2000 Act"). Article 5 § 1 of the 2004 Act provides that all enforcement proceedings are to be conducted urgently. In accordance with Article 12 § 5 of this Act an appeal against an enforcement order, in principle, does not postpone the enforcement. In accordance with Article 304 of the 2004 Act, all enforcement proceedings instituted prior to 23 February 2005 are to be carried out pursuant to the previous 2000 Act.

B. The Insolvency Act (*Zakon o stečaju*, published in OG RS no. 104/2009, 99/2011 and 71/2012)

30. This Acts regulates the manner and conditions for initiating and conducting insolvency proceedings against legal persons. Article 2 of this Act provides that the aim of insolvency shall be to ensure the most favourable collective settlement of creditors.Article 8 of this Act states that all insolvency proceedings are to be conducted urgently.In accordance with Articles 19 § 1 and Article 22 § 1, in insolvency proceedings against socially/State-owned companies the role of the insolvency administrator is to be performed by the Privatisation Agency. Article 93 §§ 1 and 2 provides that "as of the day of institution of the insolvency proceedings" the debtor cannot simultaneously be subjected to a separate enforcement procedure. Any ongoing enforcement proceedings shall thus be stayed, while new enforcement proceedings cannot be instituted for as long as the insolvency proceedings are pending.

C. Relevant provisions concerning socially-owned companies

31. These provisions are set out in the case of *R. Kačapor and Others v. Serbia* (nos. 2269/06, 3041/06, 3042/06, 3043/06, 3045/06 and 3046/06, 15 January 2008, §§ 71-76).

D. The Privatisation Act (*Zakon o privatizaciji*; published in OG RS nos. 38/01, 18/03, 45/05, 123/07, 30/10 and 93/12)

32. The relevant provisions of the Act are set out in the case of *Milunović and Čekrlić v. Serbia* (dec.), nos. 3716/09 and 38051/09,

§§ 35-39, 17 May 2011). In addition, on 17 December 2012, amendments to this Act have been published in OG RS no. 119/12 according to which the deadline for the suspension of enforcements in respect of companies undergoing restructuring has been extended to 30 June 2014, at the latest.

THE LAW

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

33. The applicant complained about the respondent State's failure to enforce three final judgments rendered in his favour against the debtor and about the lack of an effective remedy in this connection. He relied on Articles 6and 13 of the Convention and Article 1 of Protocol No. 1 which, in so far as relevant, read as follows:

Article 6 § 1

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

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."

A. The parties' submissions

34. The Government informed the Court on 1 April 2013 that the debtor had been privatised in December 2008 and that the respondent State

therefore could not be held liable in this case. They further argued that the State could not be held directly responsible for the debtor's lack of assets.

35. The applicant disagreed and reiterated his original complaints.

B The Court's assessment

36. The Court reiterates that the execution of a judgment given by a court must be regarded as an integral part of the "trial" for the purposes of Article 6 (see *Hornsby v. Greece*, 19 March 1997, § 40, *Reports of Judgments and Decisions* 1997-II). Admittedly, a delay in the execution of a judgment may be justified in particular circumstances, but the delay may not be such as to impair the essence of the right protected under Article 6 § 1 (*Burdov v. Russia*, no. 59498/00, § 35, ECHR 2002-III, § 35, and *Teteriny v. Russia,* no. 11931/03, § 41, 30 June 2005).

37. In the same context, the impossibility for an applicant to obtain the execution of a judgment in his or her favour in due time constitutes an interference with the right to the peaceful enjoyment of possessions, as set out in the first sentence of the first paragraph of Article 1 of Protocol No. 1 to the Convention.Irrespective of whether a debtor is a private or a State-controlled actor, it is up to the State to take all necessary steps to enforce a final court judgment, as well as to, in so doing, ensure the effective participation of its entire apparatus (see, *mutatis mutandis*, *Pini and Others v. Romania*, nos. 78028/01 and 78030/01, §§ 174-189, ECHR 2004-V (extracts); see also,*mutatis mutandis*, *Hornsby*, cited above, § 41, and*R. Kačapor and Others v. Serbia*, cited above, § 108).In the context of socially/State-owned companies a period of non-execution should not be limited to the enforcement stage only, but should also include the subsequent insolvency proceedings (see, *inter alia*, *R. Kačapor and Others*, cited above, § 115).

38. In cases of the execution of a final court decision rendered against private actors,theState is not, as a general rule, directly liable for debts of private actors and its obligations under Article 6 and Article 1 of Protocol No.1 are limited to providing the necessary assistance to the creditor in the enforcement of the respective court awards, for example, through enforcement proceedings or bankruptcy procedures (see*mutatis mutandis Kotov v. Russia*[GC], no. 54522/00, § 90, 3 April 2012). When the authorities are obliged to act in order to enforce a final court decision and they fail to do so, their inactivity may, in certain circumstances, engage the State's responsibility on the ground of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 (see *Scollo v. Italy*, judgment of 28 September 1995, Series A no. 315-C, § 44, and *Fuklev v. Ukraine*, no. 71186/01, § 84, 7 June 2005). The Court's task in such cases is to examine whether measures applied by the authorities were adequate and sufficient and whether they acted diligently in order to assist a creditor in execution of a

judgment (see *Anokhin v. Russia* (dec.), no. 25867/02, *Fociac v. Romania*, no. 2577/02, § 70, 3 February 2005).

39. When it comes to the execution of final court decisions rendered against the State or entities that do not enjoy "sufficient institutional and operational independence from the State", it is not open to the State to cite either the lack of its own funds or the indigence ofthe debtor as an excuse for the non-enforcement of those decision (see, *mutatis mutandis*,*R. Kačapor and Others v. Serbia*, cited above, § 114). In other words, in such cases the State is directly liable for the debts of State-controlled companies irrespective of the fact whether the company at issue at one point operated as a private entity(see *Anđelić and Others v. Serbia*[Committee], no.57611/10and 166 other applications, § 32, 28 May 2013).Furthermore,"the fact that the State sold a large part of its share in the company it owned to a private person could not release the State from its obligation to honour a judgment debt which had arisen before the shares were sold. If the State transfers such an obligation to a new owner of the shares...the State must ensure that the new owner complies with the requirements, inherent in Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, that a final, binding judicial decision does not remain inoperative to the detriment of a party" (see *Solovyev v. Ukraine*, no. 4878/04, § 21, 14 December 2006).

40. Turning to the instant case, the Court is aware that the debtor is no longer State-controlled entity (see paragraph 28 above).What is crucial however is that the domestic judgments rendered in the applicant's favour became final in September 2007 when the debtor operated as a State-controlled entity (see paragraphs and 10, 14 and 18 above). In view of that and the Court's case law cited above, the Court finds that the respondent State is directly responsible for the enforcement of the domestic judgements under consideration in this case.

41. The Court observes that it has frequently found violations of Article 6 of the Convention and/or Article 1 of Protocol No. 1 to the Convention in cases raising issues similar to those raised in the present case (see *R. Kačapor and Others*, cited above, §§ 115-116 and §120;*Marčić and Others v. Serbia*, no. 17556/05, § 60, 30 October 2007; *Crnišanin and Others v. Serbia*, nos. 35835/05, 43548/05, 43569/05 and 36986/06, §§ 123-124 and §§ 133-134, 13 January 2009; *Rašković and Milunović v. Serbia*, nos. 1789/07 and 28058/07, § 74 and § 79, 31 May 2011; and *Adamović v. Serbia*, no. 41703/06, § 41, 2 October 2012).

42. Having examined all the material submitted to it, theCourt considers that the Government have not put forward any fact or convincing argument capable of persuading it to reach a different conclusion in the present case. There has, accordingly, been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

43. The Court does not find it necessary in the circumstances of this case to examine essentially the same complaint under Article 13 of the Convention (see *mutatis mutandis,Kin-Stib and Majkić v. Serbia*, no. 12312/05, § 90, 20 April 2010 and *Slovyev,* cited above, § 25).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage,costs and expenses

45. The applicant requested that the State be ordered to pay, from its own funds, the sums awarded by the final judgments rendered in his favour and 5,000 euros (EUR) in respect of the non-pecuniary damage suffered. The applicant also claimed EUR 1,400 for the legal costs incurred before the Court.

46. The Government considered the claims excessive and unjustified.

47. Having regard to the violations found in the present case and its own case-law (see *R. Kačapor and Others,* cited above, §§ 123-126, and *Crnišanin and Others*, cited above, § 139), the Court considers that the applicants' claims for pecuniary damage must be accepted. The Government shall therefore pay the applicant the sums awarded in the final domestic judgments adopted on 2March 2007, 26 July 2007 and 24 August 2007 respectively, less any amounts which may have already been paid in respect of the said judgments.

48. As regards non-pecuniary damage, the Court considers that the applicant sustained some non-pecuniary loss arising from the breaches of the Convention found in this case. The particular amount claimed, however, is excessive. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court considers it reasonable and equitable to award EUR 2,000 to the applicant. This sum is to cover any non-pecuniary damage, as well as costs and expenses.

B. Default interest

49. 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 COURTUNANIMOUSLY

1. *Holds*that there has been a violation of Article 6 of the Convention and of Article 1 of Protocol No. 1 to the Convention;

2. *Holds*that there is no need to examine the complaint under Article 13 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, from its own funds and within three monthsfrom the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the sums awarded in the final domestic judgments rendered in his favour, less any amounts which may have already been paid in respect of the said judgments;
   (b) that the respondent State is to pay the applicant, within the same period, EUR 2,000 (two thousand euros) in respect of non-pecuniary damage, costs and expenses, plus any tax that may be chargeable on this amount, which is to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 October 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

StanleyNaismith
Registrar

GuidoRaimondi
President