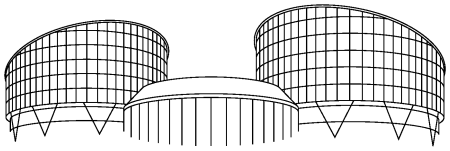

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF RAFAILOVIĆ AND STEVANOVIĆ v. SERBIA

(Applications nos. 38629/07 and 23718/08)

JUDGMENT

STRASBOURG

16 June 2015

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 Rafailović and Stevanović v. Serbia,

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

Josep Casadevall, *President,*
Luis López Guerra,
Kristina Pardalos,
Johannes Silvis,
Valeriu Griţco,
Iulia Antoanella Motoc,
Branko Lubarda, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 26 May 2015,

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

PROCEDURE

1. The case originated in two separate applications (nos. 38629/07 and 23718/08) against Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Serbian nationals, Mr Milan Rafailović ("the first applicant") and Ms Svetlana Stevanović ("the second applicant"), on 28 August 2007 and 12 May 2008 respectively.

2. The first applicant was represented before the Court by Mr R. Misojčić, a lawyer practising in Šabac. The second applicant was represented by Mr S. Miletić, a lawyer practising in Sokobanja. The Serbian Government ("the Government") were represented by their Agent, Mr S. Carić.

3. The applicants alleged that it had been impossible for them to obtain enforcement of judicial decisions rendered in their favour.

4. The applications were initially allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court).

5. On 8 June 2011, the Court decided to give notice of the applications to the Government. Applying the then Article 29 § 3 of the Convention, it also decided to rule on their admissibility and merits at the same time.

6. On 1 February 2014, the Court changed the composition of its Sections (Rule 25 § 1). The present applications were thus assigned to the newly composed Third Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The first applicant was born in 1958 and lives in Varna. The second applicant was born in 1964 and lives in Sokobanja.

8. The facts of the cases, as submitted by the parties, may be summarised as follows.

A. As regards the first applicant (application no. 38629/07)

9. The applicant ran a transport business as a sole proprietor (*samostalni preduzetnik*) from 1979 to 1995.

10. In 1990 and 1991 the applicant provided transport services to the Pocerski Metković local community (*Mesna zajednica Pocerski Metković*) in Šabac. According to the contract, the local community which had engaged his services had levied what were known as self-imposed local taxes ("SILT"; *samodoprinosi*).

11. On an unspecified date in 1994 the applicant, together with two other traders, brought an action against the local community requesting payment for services provided. The applicant's business ceased to exist in 1995 and the applicant, as its sole proprietor and manager, took over the outstanding claim as its successor.

12. The local community was represented in the proceedings by the Solicitor General (*javni pravobranilac*) of the Šabac Municipality, the latter being the founder of the Pocerski Metković local community.

13. On 11 May 2001 the Valjevo Commercial Court ordered the local community to pay the applicant 24,400 Serbian dinars (RSD) with interest. The court also ordered the local community to pay all the claimants jointly the amount of RSD 54,520 for the costs of the civil proceedings. On an unspecified date soon after, the judgment of 11 May 2001 became final and enforceable.

14. On 29 April 2003 the applicant applied to the Valjevo Commercial Court for enforcement of the said judgment, and proposed that this be carried out by bank transfer.

15. On 6 October 2003 the Valjevo Commercial Court ordered the enforcement, also awarding the applicant RSD 4,664 for the costs of the enforcement proceedings. Thereafter, the said court transmitted this enforcement order to the competent department of the Central Bank in Kragujevac (*Narodna banka Srbije*).

16. On 9 June 2006 and 8 October 2007 the applicant enquired about the enforcement. He was informed that the debtor's bank account had been frozen since 13 November 2003 and that he had been registered as the second-class priority creditor.

17. According to the Government, on 19 December 2003 the Commercial Court archived the enforcement case as terminated. The applicant, however, had apparently not received any decision to this effect, nor did the Government submit that such a decision had been adopted.

18. Pursuant to the rules of court, the enforcement court was obliged to keep the case file for five years from the date on which the enforcement proceedings had been terminated. After the enforcement court's proposal of 4 August 2010 for elimination of worthless registration material and archival holdings, the next day the Inter-Municipal Historical Archive in Valjevo destroyed the applicant's case file in accordance with the Law on Cultural Goods (published in Official Gazette of the RS, no. 71/94). According to the relevant court's statement, no minutes of the destruction or the record of any documents had been made.

19. The judgment of 11 May 2001 remains unenforced.

B. As regards the second applicant (application no. 23718/08)

20. The applicant ran an installation business "*Instalaterska radnja Sokosat*" as a sole proprietor. The business entered into a contract with the Sokobanja local community (*Mesna zajednica Sokobanja*), regarding the maintenance of the cable-satellite transmission system on the territory of that local community.

21. As the local community failed to pay for the services provided, the business brought an enforcement action before the Zaječar Commercial Court. On 9 October 2002 that court ordered direct enforcement of the outstanding invoices (*izvršenje na osnovu verodostojne isprave*).

22. On 9 December 2002, following an appeal by the local community, the court suspended the enforcement order and referred the case to civil proceedings.

23. The local community was represented in the proceedings by the Solicitor General of the Sokobanja Municipality, the latter being the founder of the Sokobanja local community.

24. On 17 April 2003 the Zaječar Commercial Court partly upheld the enforcement order, and ordered the local community to pay the business (i) the amounts of RSD 342,098.80 of debt and RSD 18,672 for the costs incurred within the enforcement proceedings, (ii) interest on the two above amounts, (iii) interest on a number of other amounts that would appear to have been previously paid but with no interest calculated, and (iv) RSD 36,172 for the costs of the civil proceedings.

25. On 25 December 2003 the High Commercial Court partly upheld the judgment of 17 April 2003, while ordering the Commercial Court to re-examine the costs of the civil proceedings.

26. On 2 February 2004, with a revision on 25 March 2004, the Zaječar Commercial Court ordered the local community to pay RSD 67,750 on account of the costs of the civil proceedings.

27. On 27 May and 2 June 2004 respectively the Zaječar Commercial Court ordered the enforcement of the judgment of 17 April 2003 and of the decisions of 2 February and 25 March 2004 (domestic enforcement cases nos. I 306/04 and I 348/04) by debtor account transfer (*plenidbom novčanih sredstava i prenosom na žiro-račun poverioca*). The applicant was also awarded the amounts of RSD 20,574 and RSD 8,275 for the costs of the enforcement proceedings.

28. On 31 January 2005 the applicant informed the Niš Commercial Court that the Sokobanja Municipality had been failing to transfer funds from its account to the debtor's or the applicant's bank accounts, and that the local community had been running its activities through the municipal bank account or a special account for collection of self-imposed local taxes in order to deceive the creditor. As there were practically no funds in the debtor's account, the applicant requested the court to change the means of enforcement by auctioning off the debtor's specified movable assets, in particular the cable-satellite transmission system.

29. On 10 February 2005, the Niš Commercial Court (i) joined the two above-mentioned set of enforcement proceedings; (ii) repealed the enforcement order by bank account transfer; (iii) declined jurisdiction in respect of auction of the assets and transferred the case to the Sokobanja Municipal Court; and (iv) refused the applicant's request for adoption of an interim measure in this respect.

30. On 9 May 2005, having established that the debtor was the owner of the cable-satellite transmission system, the Sokobanja Municipal Court ordered enforcement by assessment and auction. On 30 May 2005 the court revised the order, correctly increasing the debts.

31. On 13 March 2007 the Municipal Court suspended the enforcement proceedings (*obustavio izvršenje*) which had been instituted on the basis of the above-mentioned orders of May 2005. The court clarified that the expert engaged by the court could not establish the exact ratio of ownership between the debtor and the current distributor in respect of the cable-satellite transmission system, and stated that the citizens' interest should not be compromised by selling it, as they had financed the development of the system. The court lastly instructed the applicant to initiate a new set of proceedings to determine the debtor's exact ownership in respect of the system, as well as other movable and non-movable assets, and to settle the applicant's claim in that direction. On 12 June 2007 the panel of the same court summarily upheld that decision.

32. On 29 November 2007 the Supreme Court dismissed the applicant's request for protection of legality as unavailable in the present case.

33. The applicant did not initiate a new set of civil proceedings as instructed.

34. The judgment of 17 April 2003 and the decisions of 2 February and 25 March 2005 remain unenforced to date.

C. Other relevant facts

35. Upon the request of the respondent's State Agent before the Court, the President of the Administrative Court provided it with a succinct summary and her interpretation of the relevant domestic law. The president stated that neither the financial duties and liabilities of the local communities, nor the broader liability of the municipalities or the State for the local communities' debts, were subject to regulation by it. The president also observed that the subject matter of the unenforced contracts in both the above cases was within the competences of the local communities in question (letter of 9 August 2011, Su I-1 212/11).

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The legal status of local communities in Serbia (*pravni položaj mesnih zajednica*)

36. The legal status of local self-government and the conditions under which they operate have been set out in various legal acts, which have been amended or repealed on numerous occasions over the years. The most relevant provisions are to be found in: (i) the Constitutions of the Republic of Serbia 1990 and 2006 (*Ustavi Republike Srbije*; published in the Official Gazette of the Socialist Republic of Serbia - OG SRS - no. 1/90 and in the Official Gazette of the Republic of Serbia - OG RS - no. 98/06); (ii) the State Organs Employment Act (*Zakonom o radnim odnosima u državnim organima*, published in OG RS no. 48/91 with further amendments to the sections which regulate the State territorial and local government organisation); (iii) the Local Government Act 1999 (*Zakon o lokalnoj samoupravi*, published in OG RS nos. 49/99 and 27/01); (iv) the Local Government Act 2002 (*Zakon o lokalnoj samoupravi*, OG RS nos. 9/02, 33/04 and 135/04); (v) the Local Government Finance Act 2006 and Local Government Act 2007 (*Zakon o finansiranju lokalne samouprave,* OG RS nos. 62/06, 47/11 and 93/12, and *Zakon o lokalnoj samoupravi*, OG RS no. 129/07, which came into force on 1 January 2007 and 1 January 2008 respectively and repealed the Local Government Act 2002); and (vi) the laws concerning State-owned assets, budget systems, public income and expenditure, taxes and insolvency procedures (*Zakon o sredstvima u vlasništvu Republike Srbije*, published in OG RS no. 53/95, 3/96, 54/96,

32/97, 44/99 and 101/05; *Zakon o budžetskom sistemu*, published in OG RS nos. 9/02...86/06; *Zakon o budžetskom sistemu*, published in OG RS no. 54/09; *Zakon o javnim prihodima i javnim rashodima*, published in OG RS nos. 76/91 ... 135/04; *Zakon o poreskom postupku i poreskoj administraciji*, published in OG RS nos. 80/02 ... 2/2012; and *Zakon o stečajnom postupku*, published in OG RS no. 84/04).

37. The legal status of the local communities as relevant for the present cases will be summarised below.

38. An entire chapter of the 2006 Constitution is dedicated to the country's territorial organisation, according to which autonomous provinces and local self-government units have the status of legal entities and their assets are public property. Further, all assets acquired by the State and local governments and other entities established by the central or local governments, as well as all other assets and profits acquired by the investment of the State's capital, shall constitute assets of the State.

39. With the reinstatement of local self-government systems in the legal system in 1990 and the gradual decentralisation of governance in the early 2000s, local self-government units (municipalities, towns, and the city of Belgrade), were entrusted with certain central competences and empowered financially, as direct beneficiaries of the State budget, by shared revenues or by transfer of competence to collect their own revenues which had in the past been collected by central authorities. The domestic law provides that through local self-government citizens engage in public administration in the immediate, mutual and general interest of the local population, either directly or through elected representatives.

40. The local self-government units are empowered to further create/liquidate companies, institutions and organisations to perform public functions, as well as lower tiers of local self-government (*oblik mesne samouprave*), such as local communities, wards, neighbourhoods and counties (*mesne zajednice, kvartove, četvrti i rejone*)[1].

41. The local community is established by the founder's statute to deliver services which are of general, direct and daily interests of the local population (in the 1990s they were apparently a type of interest-based "citizens' association") and may be entrusted by its founders with certain competences of local self-government. They are incorporated as separate legal persons, although their legal terms of reference (*pravni subjektivitet*) are limited to the transferred rights and competences assigned to them by their founding acts/statutes. The competence, tasks, organisation and election of the relevant bodies, decision-making processes and other relevant matters for the operation of the local community should be set out in detail by their founding acts/statutes, which should be in accordance with

[1] There are around 3,000 local communities in Serbia, while other types of lower tiers of local self-government have not been founded so far.

the founder's statute. The managing body is the Council (and/or a secretary), whose direct election by the citizens is called for by the founder assembly's president. The Council may have a certain margin of operational independence.

42. A local community is an indirect beneficiary of the State budget, and the funds for its functioning are provided under specific budget headings set out by the founder. The local community is also entitled to finance its activities from donations and other means of collection of payment for services provided. Lastly, for a period (2002-06), local communities were entitled to levy their own revenues, known as self-imposed local taxes (SILT), and to credit the funds collected to their own accounts, if voted on and imposed exclusively on the territory of those communities. Otherwise and afterwards, the collected SILT was designed as a source of primary revenue exclusively for the local government units, and the funds collected were credited to their budgets and strictly intended for specific purposes.

43. Lastly, the local community cannot undergo an insolvency procedure. Neither the domestic law nor the Government suggest that the *de facto* insolvency of a municipal authority or local community entail any relief/recovery scheme (compare and contrast to *De Luca v. Italy*, no. 43870/04, §§ 14-29, 24 September 2013 in respect of the relevant Italian and comparative law on the insolvency of local organs).

B. The relevant domestic practice in respect of local communities

44. Disputes arising out of the levying and refund of overpaid SILT by local communities are considered to be administrative matters. The administrative municipal authorities and the Administrative Court are invested with jurisdiction in respect of related claims (for the relevant courts' practice, see *Popović and others v. Serbia* (dec.), no. 75915/12 et al., §§ 24, 31, 54 and 81, 23 September 2014).

45. When deciding in a case concerning outstanding collection of SILT by a local community, the Administrative Court considered that the municipality rather than the local community itself was the creditor in respect of the SILT for the purposes of standing to sue (see 9 U. 740/11 of 30 August 2011; see also Administrative Court Bulletin no. 3/2012).

C. The Sole Proprietor Act (*Zakon o privatnim preduzetnicima*; published in OG RS nos. 54/89, 9/90, 19/91, 46/91, 31/93, 39/93, 53/93, 67/93, 48/94, 53/95, 35/02 and 101/05)

46. Pursuant to this Act, a sole proprietor (sole trader) runs a business that is set up and owned by a natural person, aiming to make profit at his or her own expense and risk (*preduzetnik, trgovac koji osniva radnju*). The business will be set up by means of the founder's submission of an

application to the relevant municipal administrative body and shall cease to exist if the above application is withdrawn or in other circumstances defined by law. Registration does not have constitutive effect in respect of gaining a legal personality; it is only a condition for running a business venture.

47. A business does not have legal personality. The owner manages and represents the business. All rights, obligations, profit and assets made out of the business venture belong to the owner. The owner carries unlimited, exclusive and direct liability in respect of his or her own entire assets for all outstanding debts and other obligations that arise out of the business operations, just as he is entitled to all earnings/claims associated with it. In this regard he or she may appear as a party in any judicial proceedings concerning the proprietorship.

THE LAW

I. JOINDER OF THE APPLICATIONS

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

II. ALLEGED VIOLATIONS OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION AND ARTICLES 6 AND 13 OF THE CONVENTION

49. The applicants complained that the respondent State had failed to enforce the judicial decisions rendered in their favour. The first applicant also complained that he had had no effective domestic remedy in this respect. They relied on Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1, the relevant parts of which 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 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.

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. *Compatibility* ratione personae (locus standi, *the applicants' victim status)*

50. The Government disputed that the applicants could be regarded as having *locus standi* before the Court in respect of the violations which they alleged. They argued that only the applicants' proprietorships could and should have lodged the applications, given that the unenforced judgments had been rendered in their favour. The Government maintained that in the present cases there were no exceptional circumstances which would justify "the piercing of the "corporate veil" or the disregarding of a companies' legal personality to accept *locus standi* of the applicants (referring to the cases of *Agrotexim and Others v. Greece*, 24 October 1995, § 66, Series A no. 330-A, and *Vesela and Loyka v. Slovakia* (dec.), no. 54811/00, 13 December 2005).

51. The applicants stated that they had identified themselves as the applicants in the application forms and sole proprietorship as their profession. They argued that a proprietorship is not a separate legal entity, but only means for a sole proprietor to pursue his/her business activities. The applicants were hence parties to the contract and correspondingly the holders of all rights and duties.

52. The Court considers that the present applications do not fall within the principles established by the cases referred by the Government (cited above in paragraph 50). Unlike companies in referred cases that had been incorporated under company law, the businesses in question were not separate legal entities. In this type of business ownership, no legal distinction can be made between the assets of the owner and those belonging to the business - they are considered to be one and the same. In other words, the owner is obliged to discharge any outstanding debts and losses just as he is entitled to all earnings/claims associated with it.

53. Having regard to the domestic law, the Court accepts, therefore, that the applicants acquired a substantive title by the relevant judgments and have a direct personal interest in the subject matter of the applications (see *Bočvarska v. the former Yugoslav Republic of Macedonia*, no. 27865/02, 17 September 2009, where the issue of the victim status of the applicant, being the owner of a former sole proprietorship, was not raised; see, also, *mutatis mutandis*, *G.J. v. Luxembourg*, no. 21156/93, § 24, 26 October

2000, and *Camberrow MM5 AD v. Bulgaria* (dec.), no. 50357/99, 1 April 2004, where the Court accepted that the owner had had a personal interest in respect of the companies' outstanding claims).

54. The Government's objection is therefore rejected.

2. Compatibility ratione personae *(responsibility of the State)*

(a) The parties' submissions

55. The Government further argued that the respondent State should not be held responsible for the non-enforcement of the judgments in question. Specifically, the Government denied the State's liability for the debts of local communities in general, and in particular for claims that had arisen in the 1990s, such as in the present cases. According to the Government, at the relevant time the local community had been incorporated under the domestic law as a separate legal entity, whose budget had not been part of the budget of the municipal authority but had been based on self-funding (the citizens had funded the services provided from their own resources). In addition, local communities are not considered to be units of local government, but groups of citizens gathered with the aim to of interacting within their immediate area and providing public services in the interest of that community. The Council of the local community was in charge of managing the services needed, while the local community as such was in charge of administrative and financial affairs. With regard to the above-stated, the Government referred solely to a statement of the President of the Sokobanja municipality, who had also held that the financial responsibility of the local communities and liability for their debts was not regulated by the laws on local self-government, and that therefore neither the municipality nor the State could be held liable for such debts.

56. In addition, as regards the second application, the Government stated that the local community had only been an investor in a service that the citizens were paying for, so the State could not be responsible for claims arising from such an arrangement.

57. The Government therefore invited the Court to reject the present applications as incompatible ratione personae.

58. The applicants both cited the State's responsibility for the debts of local communities, and submitted that in any event the State should have ensured proper enforcement of the judgments in their favour. They maintained that local communities are established by municipalities, the latter providing expert, financial and administrative support to the former, including notably representation before the courts by municipal solicitors-general (see paragraphs 40-42, 12 and 23 above, in that order).

59. The first applicant also maintained that local communities do not own any property themselves, and that the domestic law remains silent about liability for their debts. If local communities become insolvent, which

happens often as their fiscal balance is not properly controlled the municipality-founder may not close them down, nor may the State initiate insolvency proceedings against them. Their bank accounts may be frozen as long as the relevant municipality transfers funds to their accounts, in practice as long as it suits them to do so.

60. The second applicant also alleged that the local community in question has apparently been operating since the freezing of their bank account by carrying out their activities through the municipal bank account.

(b) The Court's assessment

61. The Court reiterates at the outset that, where an applicant complains of inability to enforce a court award in his or her favour, the extent of the State's obligations under Article 6 and Article 1 of Protocol No. 1 varies depending on whether the debtor is the High Contracting Party within the meaning of Article 34 of the Convention or a private individual (see *Anokhin v. Russia* (dec.), no. 25867/02, 31 May 2007). In cases of execution of a final court decision rendered against private actors, the State's obligations to execute a judgment under Article 6 and Article 1 of Protocol No. 1 are, as a general rule, limited to providing the necessary assistance to the creditor in enforcing the relevant court awards, and cannot be interpreted as compelling the State to substitute itself for a private defendant in the event of the latter's insolvency (see, for example, *Kotov v. Russia* [GC], no. 54522/00, § 90, 3 April 2012, and *Omerović v. Croatia*, no. 36071/03, § 35, 1 June 2006). In contrast, where a judgment is against the State, its bodies, or equivalent entities that also do not enjoy "sufficient institutional and operational independence from the State", the State must take the initiative to enforce the judgment fully and in due time. The State is directly liable for their debts and cannot 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*, nos. 2269/06 *et seq.*, § 114, 15 January 2008; *Jovičić and Others v. Serbia* (dec.), nos. 37270/11, §§ 105-6, 15 October 2013; and *Cone v. Romania*, no. 35935/02, § 27, 24 June 2008).

62. The issue therefore arises in the present case of whether the Serbian local community's acts or omissions, including failure to pay its outstanding debts due to its insolvency, are attributable under the Convention to the respondent State.

63. The Court firstly reiterates that State bodies cannot be held to refer only to the Government or the central organs of the State. Where powers are distributed along decentralised lines, State bodies may be any national or local self-government authority which exercises public functions, whatever the extent of their autonomy *vis-à-vis* the central organs (see, albeit in the *locus standi* context, *Ayuntamiento de Mula v. Spain* (dec.), no. 55346/00, *Reports of Judgments and Decisions* 2001-I; *The Municipal Section of*

Antilly v. France (dec.), no. 45129/98, ECHR 1999-VIII; *Rothenthurm Commune v. Switzerland*, no. 13252/87, Commission decision of 14 December 1988, Decisions and Reports, (DR) 59; and *The Province of Bari, Sorrentino and Messeni Nemagna v. Italy*, no. 41877/98, Commission decision of 15 September 1998, Collection 20).

64. In addition, the State's liability for the debts of municipalities or other entities or companies controlled by the local authorities have already been established in a number of previous judgments against other respondent States (see *De Luca v. Italy*, cited above, §§ 54-55; *Yershova v. Russia*, no. 1387/04, §§ 71-2, 8 April 2010; *Otychenko and Fedishchenko v. Ukraine*, nos. 1755/05 and 25912/06, § 26, 12 March 2009; and *Shmalko v. Ukraine*, no. 60750/00, § 38, 20 July 2004).

65. Having regard to the characteristics of the local communities in Serbia as indicated in the available materials, as well as the intention of the national legislature simply to decentralise government, the Court cannot uphold the Government's argument that those communities do not fall within the realm of local self-governments. While the local communities are indeed not explicitly recognised as local self-government units or their bodies, the Court observes, in particular, that (a) the key elements of their organisation and scope of competence are, in principle, stipulated by the local self-government-related law and municipal regulations; (b) they are set up and funded by municipalities to carry out specific public interest services; (c) they enjoy special prerogatives: their acts are governed by administrative law and, as a result, are amenable to review in the administrative courts (see paragraphs 44 above; see also *Popović and others v. Serbia* (dec.), cited above, where the Government so argued); (d) the local communities in question were represented before the courts by the solicitors-general of the respective municipalities, it being understood that their tasks were to protect the interests of these municipalities; and (e) there are no mechanisms through which citizens control local communities, as local elections do not serve such a purpose.

66. Notwithstanding the *sui generis* nature of local communities in Serbia, the examination of the relevant domestic law and its interpretation by the domestic courts demonstrates the existence of their strong institutional links with the local authorities, which place them in the category of lower tiers of local self-government (see paragraphs 36-45 above). The Court considers that their acts and omissions should be, under the Convention, attributable to the municipal authority concerned, and therefore to the respondent State. The Government have not advanced any other fact, nor have they documented their arguments with relevant regulations or statutes from the relevant period capable of persuading the Court to conclude to the contrary or to depart from its above-mentioned well-established case-law in respect of the attribution of municipal debts to the State. Contrary to the Government's submission, the legal status of the

local communities as separate legal entities cannot be decisive on its own for the exercise of attribution (see, *mutatis mutandis, R. Kačapor and Others*, cited above, § 98; *Mykhaylenky and Others v. Ukraine*, nos. 35091/02 *et seq*., § 45, ECHR 2004-XII; *Lisyanskiy v. Ukraine*, no. 17899/02, § 19, 4 April 2006; and *Cooperativa Agricola Slobozia-Hanesei v. Moldova*, no. 39745/02, §§ 18-19, 3 April 2007). Neither can the failure of the State/local self-governments to ensure adequate mechanisms of control of the management of public services and delegated competences by the local communities, or to regulate in a sufficiently precise manner the liability for their debts, be decisive in this regard.

67. Accordingly, the Court finds that the applicants' complaints are compatible ratione personae with the provisions of the Convention, and dismisses the Government's objection in this respect.

3. The Government's other objections

68. 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 violations of the applicants' rights 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").

69. The Government further maintained that the first applicant had not availed himself properly of the ability to address the enforcement court or the Central Bank since 2003, in order to enquire about its outcome, to request a change of the means of enforcement, and/or to prevent the destruction of the case file. Further, he should have been expected to lodge his application with the Court (a) six months after the date the central Bank had had to enforce the judgment in 2003 (see paragraph 15 above); (b) six months after the ratification date; or at the latest, (c) six months after he learned, in June 2006, that the debtor's bank account had been frozen (see paragraph 16 above). However, he failed to take any of these steps. The second applicant also failed to initiate a new set of civil proceedings pursuant to the instruction of the Commercial Court (see paragraph 31 above). That being said, and arguing that the alleged violations do not constitute continuing situations, the Government invited the Court to reject the first application for non-observance of the six-month rule and/or both applications for non-exhaustion of domestic remedies available to them.

70. The applicants contested these submissions, arguing that the respondent State was and still is under an ex officio obligation to enforce its own judgments, and that there had been no effective remedy for its failure to do so.

71. The Court finds that it has jurisdiction ratione temporis to examine the applicants' complaints in so far as they relate to the events which took place subsequent to entry into force of the Convention in respect of Serbia.

It may, however, have regard to the facts 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).

72. In relation to the Government's first argument, the Court concludes, without prejudging the merits of the case, that the respondent State's ongoing failures up to the present day to comply with the judgments against the existing State entity constitute a continuing situation which did not cease. At the time of the introduction of the present applications, there were no effective domestic remedies for this complaint in the respondent State (see Vinčić and Others v. Serbia, nos. 44698/06 et al., § 51, 1 December 2009). In addition, the Court considers that, in the circumstances of the present case, the first applicant lodged his application with reasonable expedition (see, for the relevant principles as regards the calculation of the six-month period in cases involving the execution of a final court decision, Sokolov and others v. Serbia (dec.), nos. 30859/10 et al., 14 January 2014). The Court accordingly rejects the Government's objection regarding the application of the six-month rule under Article 35 § 1 of the Convention.

73. The Court further reiterates that where a final decision is delivered in favour of an individual against the State, the former should not, in principle, ever be compelled to bring separate enforcement proceedings (see, *mutatis mutandis*, *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004; *Manushaqe Puto and Others v. Albania*, nos. 604/07 et seq., § 71, 31 July 2012; and *Krstić v. Serbia*, no. 45394/06, § 84, 10 December 2013). In cases in which a final judgment is obtained against a State-controlled or socially owned company, the applicant is only required to lodge a request for the enforcement of that judgment to the competent court or, in case of liquidation or insolvency proceedings against the debtor, to report his or her claims to the administration of the debtor (see *R. Kačapor and Others,* cited above, and *Lolić v. Serbia,* no. 44095/06, § 26, 22 October 2013). The same standards are applicable to the situation arising in the present case.

74. Given that the present applicants did this, the Government's objection must be rejected.

4. Conclusion

75. 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

76. Referring to the arguments raised in respect of the State's responsibility *ratione personae*, the Government reiterated their view that the respondent State and its courts should not be held responsible for non-enforcement of the judgments in question due to the debtors' insolvency. They also pointed out that the courts took reasonable measures in accordance with law and the applicant's inactivity.

77. The applicants reaffirmed their complaints and arguments submitted above.

78. The Court reiterates that a delay in the execution of a judgment may be justified in particular circumstances, but the delay must not be such as to impair the essence of the right protected under Article 6 § 1 (see *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 74, ECHR 1999-V). In the same context, the inability of a successful litigant to have a judgment rendered in his favour 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, *Burdov v. Russia*, no. 59498/00, § 40, ECHR 2002-III). When determining whether the delay was reasonable, the Court examines how complex the enforcement proceedings were, how the applicant and the authorities behaved, and what the nature of the award was (see *Raylyan v. Russia*, no. 22000/03, § 31, 15 February 2007).

79. Turning to the present case, the Court notes that the judgments respectively rendered in the applicants' favour in 2001 and 2004 remain unenforced to date. The period after 3 March 2004, that is almost ten years, falls within the scope of the Court's jurisdiction *ratione temporis*.

80. The facts of the case show that, throughout the period under consideration, the judgments were apparently not enforced owing to the alleged lack of funds on the part of the local community debtor and further lack of municipal budgetary appropriations. The relevant municipal authorities did not consider themselves bound by the obligation to honour the judgment debts. Such a practice impedes the creditors from receiving their established claims against local communities in Serbia.

81. While insolvency may in some circumstances justify some delays in enforcement, the continuing non-enforcement of the judgments in the applicants' favour for ten years is prima facie incompatible with the Convention. In addition, the Court reiterates that, given the finding of State liability for the debts owed to the applicants in the present case, the lack of the State's own funds or the indigence of its local bodies do not constitute an "objective impossibility" which would release the respondent State from its obligation to honour the outstanding debts in a timely and appropriate

manner (see, *mutatis mutandis*, *R. Kačapor and Others*, cited above, § 114; and *Crnišanin and Others*, cited above, § 124).

82. Lastly, the Court would highlight that in this kind of case the first applicant's alleged inactivity and the destruction of the case file cannot release the respondent State from the obligation to ensure the effective participation of its entire apparatus in a timely enforcement of the judgments on its own motion, namely to have in place an efficient system of recording the payment of its debts before destroying the case files. The Court does not see any reason why the applicant should have requested updates from the enforcement court (he did from the Central Bank) in respect of the said bank transfer merely in order to fill the communication void between two branches of Government (see, *mutatis mutandis*, *R. Kačapor and Others*, cited above, §§ 113).

83. In view of the above considerations, the Court finds that by failing, for years, to comply with the enforceable judgments in the applicants' favour the domestic authorities impaired the essence of their "right to court" and prevented them from receiving the money they had legitimately expected to receive. There has been, accordingly, a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

84. 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 *Marinković v. Serbia*, no. 5353/11, § 43, 22 October 2013).

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

85. The second applicant also complained under Article 1 of Protocol No. 12 that she had been discriminated against on the basis of her property status.

86. The Court has examined this complaint as submitted by the applicant. However, having regard to all the material in its possession, it finds that it does not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this complaint must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

87. 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

1. Pecuniary damage

88. The applicants requested that the State be ordered to pay, from its own funds, the entire sums, including the costs, awarded by the final judgments and decisions rendered in their favour.

89. The Government contested this claim.

90. Having regard to the violations found in the present case and its own jurisprudence (see, *mutatis mutandis*, *Mykhaylenky and Others v. Ukraine*, cited above, §§ 67-70), the Court considers that the applicants' claims must be accepted. The Government shall, therefore, pay in respect of each applicant the sums awarded in the said final judgments, including the costs awarded in respect of civil and enforcement proceedings, as appropriate (see paragraphs 13, 15, 24, 26 and 27 above).

2. Non-pecuniary damage

91. The applicants claimed 4,800 and 15,000 euros (EUR) respectively for the non-pecuniary damage suffered as a result of the impugned non-enforcement.

92. The Government contested these claims as excessive, citing in particular inaction on the part of the first applicant.

93. The Court takes the view that the applicants have suffered some non-pecuniary damage as a result of the violations found which cannot be made good by the Court's mere finding of a violation. The particular amounts claimed, however, are excessive. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court considers it reasonable to award the applicant EUR 4,800 each plus any tax that may be chargeable in respect of non-pecuniary damage.

B. Costs and expenses

94. The first and second applicant also claimed EUR 600 and 2,900 respectively for the costs and expenses incurred before the Court. The second applicant also claimed EUR 3,450 for costs and expenses incurred in the enforcement proceedings.

95. The Government contested the claims.

96. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the applicants EUR 600 each for the costs and expenses incurred before the Court.

C. Default interest

97. 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. *Decides* to join the applications;

2. *Declares* the non-enforcement complaints under Articles 6 and 13 of the Convention and Article 1 of Protocol No.1 admissible and the remaining complaint inadmissible;

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

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

5. *Holds*
   (a) that the respondent State shall, from its own funds and within three months of the date on which this judgment becomes final, in accordance with Article 44 § 2 of the Convention, pay to each applicant by way of pecuniary damages the sums awarded in the final domestic decisions rendered in their favour;
   (b) that the respondent State is to pay each applicant, within the same period, the following amounts, to be converted into Serbian dinars at the rate applicable at the date of settlement:
      (i) EUR 4,800 (four thousand eight hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 600 (six hundred euros), plus any tax that may be chargeable to them, in respect of costs and expenses;

(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;

6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 16 June 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips	Josep Casadevall
Registrar	President