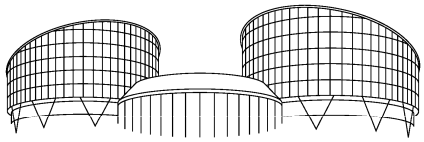

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF POP-ILIĆ AND OTHERS v. SERBIA

(Application nos. 63398/13, 76869/13, 76879/13, 76886/13 and 76890/13)

JUDGMENT

STRASBOURG

14 October 2014

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 Pop-Ilić and Others v. Serbia,

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

Josep Casadevall, *President,*
Alvina Gyulumyan,
Ján Šikuta,
Dragoljub Popović,
Luis López Guerra,
Valeriu Griţco,
Iulia Antoanella Motoc, *judges,*
and Marialena Tsirli, *Deputy Section Registrar*,

Having deliberated in private on 23 September 2014,

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

PROCEDURE

1. The case originated in five separate applications against Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention").

2. The applicants were all Serbian nationals. Additional personal details, the dates of introduction of their complaints before the Court, and information regarding their legal counsel, respectively, are set out in the Annex to this judgment.

3. The Serbian Government ("the Government") were represented by their Agent, Ms Vanja Rodić.

4. The applicants complained, under Article 6 § 1 of the Convention and Article 1 of Protocol No.1 about the respondent State's failure to enforce the final judgment rendered in their favour. They further submitted that the Constitutional Court did not consider their compensation claims even though they had been formulated in accordance with the relevant national legislation.

5. On 20 January 2014 the applications were communicated to the Government. On 1 February 2014 the Court changed the composition of its Sections (Rule 25 § 1). This case was thus assigned to the newly composed Third Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The civil, enforcement and insolvency proceedings

6. On 13 April 2006 the Vlasotince Municipal Court ruled in favour of the applicants. The respondent, *AD Retex*, a privately owned company as of 2003, was ordered to: (a) reinstate them to their former jobs; (b) pay their salary arrears; (c) pay the relevant social insurance contributions due for the same period; and (d) pay the their legal costs.

7. By 11 July 2007 this judgment, as amended on appeal in respect of the legal costs, became final.

8. On 27 July 2007 the applicants filed a request for the enforcement of the said judgment.

9. On 6 August 2007 the Vlasotince Municipal Court accepted the applicants' request and issued an enforcement order.

10. On 3 December 2007 the Leskovac District Court upheld this decision on appeal.

11. In January 2008 the Vlasotince Municipal Court carried out an assessment of the debtor's movable assets.

12. On 21 April 2008, in response to a third party's request, the Vlasotince Municipal Court excluded certain movable assets from the enforcement proceedings.

13. On 26 May 2008 the Vlasotince Municipal Court obtained an additional report regarding the value of the debtor's movable assets.

14. On 22 April 2010 the Leskovac High Court ordered the re-examination of the third party's exclusion request lodged in respect of the debtor's assets.

15. On 21 January 2011 the Leskovac Commercial Court opened insolvency proceedings (*stečajni postupak*) in respect of *AD Retex*and on 3 June 2011 the applicants' claims were confirmed in their entirety. The applicants themselves were classified as third-class creditors.

16. On 16 June 2011 the debtor's assets were sold as part of the insolvency proceedings.

17. On 12 June 2013 the enforcement proceedings were stayed.

18. The insolvency proceedings before the Leskovac Commercial Court arestill pending, and the applicants have yet to be paid apparently as a consequence of two related civil suits brought by other creditors.

B. The proceedings before the Constitutional Court

19. On 26 April 2010 the applicants lodged an appeal with the Constitutional Court, maintaining that they had suffered a breach of the right to a fair trial within a reasonable time and a violation of their property rights. In terms of redress, the applicants sought recognition of these violations, an order from the Constitutional Court for the expedition of the impugned enforcement proceedings, and the "removal of all adverse consequences" suffered in this connection (including through the payment of their outstanding pecuniary claims).

20. On 4 April 2012the applicants noted the adoption of the amendments to the Constitutional Court Act, and specified their compensation claims accordingly. Specifically, on account of the pecuniary damage suffered, the applicants requested the respective amounts awarded to them by the final judgment in question, whilst as regards the non-pecuniary damage sustained they claimed 2,200 euros each (see paragraphs 27-30below).

21. On 27 March 2013 the Constitutional Court found, in the operative part of its ruling (*u izreci*), that the applicants had indeed suffered a violation of their right to a fair trial within a reasonable time, as well as a violation of their property rights, but rejected the compensation claims regarding the non-pecuniary damages sought by the applicants. The Constitutional Court, lastly, ordered that the impugned enforcement proceedings be terminated in accordance with the applicable legislation (see paragraph 31 below).

22. In its reasoning the Constitutional Court established that the courts in question had not acted promptly between 27 July 2007 and 21 January 2011. Concerning the compensation issue, the Constitutional Court stated that the applicants' pecuniary and non-pecuniary damage claims had been filed out of time. In so doing, it merely referred to Articles 36 § 1 (2) and 85 § 3 of the Constitutional Court Act, as amended in 2011, and Article 40 § 1 of the amendments themselves (see paragraphs 27-30below).

II. RELEVANT DOMESTIC LAW

A. The Constitution of the Republic of Serbia (*Ustav Republike Srbije*; published in the Official Gazette of the Republic of Serbia – OG RS – no. 98/06)

23. Article 170 provides that a "constitutional appeal may be lodged against individual decisions oractions of State bodies or organisations exercising delegated public powers which violate or deny human or minority rights and freedoms guaranteed by the Constitution, if other legal remedies for their protection have already been exhausted or have not been prescribed".

B. The Constitutional Court Act 2007 (*Zakon o Ustavnom sudu*; published in OG RS no. 109/07)

24. Article 84 § 1 provides that a "constitutional appeal may be lodged within thirty days of receipt of the individual decision or the date of commission of the actions" in question.

25. Article 85 § 1 refers to the necessary information which must be contained in the constitutional appeal. This information includes: (a) the appellant's personal data; (b) information concerning his or her legal counsel; (c) the particulars of the decision being challenged; (d) an indication of the relevant provisions of the Constitution; (e) the description of the violations alleged; (f) the redress sought by the appellant; and (g) the appellant's personal signature.

26. Article 89 § 2 provides that "[w]hen the Constitutional Court finds that an ... individual decision or action has violated or denied a human or minority right or a freedom guaranteed by the Constitution, it shall annul the ... decision in question or ban the continuation of such action or order the implementation of other specific measures as well as the removal of all adverse consequences within a specified period of time."

C. The Amendments to the Constitutional Court Act2011 (*Izmene i dopune Zakona o ustavnom sudu*; published in OG RS no. 99/11)

27. Article 32 of this Act amended Article 85 § 1 of the Constitutional Court Act 2007 in so far as it removed the general reference to the need for the appellant to state the kind of redress deemed necessary (see at paragraph 25 above, under (f)). Article 85 § 1, as amended, now requires that a constitutional appeal must contain a specific indication of the amount and basis for any pecuniary and/or non-pecuniary damages sought by the appellant.

28. Article 32 of the Amendments to the Constitutional Court Act 2011, *inter alia*, also added paragraph 3 to Article 85 of the Constitutional Court Act 2007. This new provision states that a compensation claim may only be made "simultaneously with the lodging of a constitutional appeal".

29. Article 36 § 1 (2) of the Constitutional Court Act 2007, as amended, provides that the Constitutional Court shall reject any and all submissions aimed at instituting any proceedings before it if the submissions in question have been lodged after the expiration of a given time-limit.

30. According to Articles 40 § 1 and 42 of the Amendments to the Constitutional Court Act 2011, which entered into force on 4 January 2012, all cases still pending before the Constitutional Court are to be concluded pursuant to the amendments enacted in 2011.

D. The Insolvency Proceedings Act (*Zakon o stečaju*; published in OG RS no. 104/09)

31. Article 93 §§ 1 and 2 provides, *inter alia*, that any pending enforcement proceedings shall be terminated upon the opening of insolvency proceedings in respect of the same debtor.

THE LAW

I. JOINDER OF THE APPLICATIONS

32. 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 VIOLATION OF ARTICLE 6§ 1 OF THE CONVENTION

33. The applicants complained, under Article 6 § 1 of the Convention, about the respondent State's failure to enforce the final judgment rendered in their favour.

34. Article 6 § 1, in so far as relevant, reads as follows:

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

A. Admissibility

1. The parties' submissions

35. The Government maintained that the applicants had failed to properly request compensation from the Constitutional Court for any pecuniary and/or non-pecuniary damage suffered as a consequence of the impugned non-enforcement. In particular, they should have specified their compensation claims within a period of thirty days as of the date of entry into force of the Amendments to the Constitutional Court Act,i.e. by 3 February 2012.Since the applicants only did so on 4 April 2012,the complaints at issue shouldbe rejected on the basis of their failure to make proper use of constitutional remedies. The Government further argued that,in these circumstances and in view of the substance of the Constitutional Court's ruling of 27 March 2013, the applicants had ultimately also lost their victim status (see paragraphs 21 and 22 above).

36. The applicants submitted that they had complied with the exhaustion requirement, within the meaning of Article 35 § 1 of the Convention, and have retained their victim status.

2. The relevant principles

37. The Court recalls that, under Article 35 § 1 of the Convention, it may only deal with an application after all domestic remedies have been exhausted. The purpose of Article 35 is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court (see, for example, *Mifsud v. France* (dec.) [GC], no. 57220/00, § 15, ECHR 2002-VIII; and *Vučković and Others v. Serbia* [GC], no. 17153/11, § 70, 25March 2014). The obligation to exhaust domestic remedies therefore requires an applicant to make normal use of remedies which are effective, sufficient and accessible in respect of his or her Convention grievances.The applicants must further comply with the applicable rules and procedures of domestic law, including time-limits, failing which their application is likely to fall foul of the condition laid down in Article 35 § 1 (see, for example, *Cardot v. France*, 19 March 1991, § 34, Series A no. 200; *Akdivar and Others v. Turkey*, 16 September 1996, § 66, *Reports of Judgments and Decisions* 1996-IV; and *Vučković*, cited above, § 72). The Courthas, however, also frequently underlined the need to apply the exhaustion rule with some degree of flexibility and without excessive formalism (see *Akdivar*, cited above, § 69; and *Vučković*, cited above, § 76).

38. In terms of the burden of proof, it is up to the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time (see, *inter alia*,*McFarlane v. Ireland* [GC], no. 31333/06, § 107, 10 September 2010; and *Vučković*, cited above, § 77). Once this burden has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted, or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from this requirement (see *Dankevich v. Ukraine*, no. 40679/98, § 107, 29 April 2003; *Akdivar*, cited above, § 68; and *Vučković*, cited above, § 77).

39. Finally, the Court reiterates that an applicant's status as a "victim" within the meaning of Article 34 of the Convention depends on the fact whether the domestic authorities have acknowledged, either expressly or in substance, the alleged infringement of the Convention and, if necessary, provided appropriate redress in relation thereto. Only when these conditions are satisfied does the subsidiary nature of the protective mechanism of the Convention preclude the examination of an application (see *Cocchiarella v. Italy* [GC], no. 64886/01, § 71, ECHR 2006-V; and *Cataldo v. Italy* (dec.), no. 45656/99, 3 June 2004).

3. The application of these principles to the present case

(a) As regards the exhaustion of domestic remedies

40. In *Vinčić* the Court held that "a constitutional appeal should, in principle, be considered as an effective domestic remedy within the meaning of Article 35 § 1 of the Convention in respect of all applications introduced [against Serbia] as of 7 August 2008" (see *Vinčić and Others v. Serbia*, no. 44698/06 and others, § 51, 1 December 2009). Of course, this includes complaints about length/non-enforcement in general, in which respect the Constitutional Court has routinely awarded compensation for any non-pecuniary damage suffered (see, among many other domestic rulings, Už. nos. 391/08, 143/09, 1387/09, 5466/10, 1063/12, 5660/12 of 9 April 2009, 17 March 2010, 17 February 2011, 20 December 2012, 30 May 2012 and 7 February 2013, respectively; see also *Vidaković v. Serbia* (dec.), no. 16231/07, 24 May 2011).

41. The Court notes that the applicants in the present case, when they lodged their constitutional appeal and relying on Article 89 § 2 of the Constitutional Court Act 2007, sought "removal of all adverse consequences" suffered due to the impugned non-enforcement and requested payment of their "outstanding pecuniary claims" (see paragraphs 19 and 26 above). Approximately three months after the entry into force of the Amendments to the Constitutional Court Act of 2011 and once such a possibility had been specifically envisaged, the applicants itemised their compensation claims with respect to the pecuniary and non-pecuniary damage allegedly sustained (see paragraphs 20 and 27-30 above). The Constitutional Court, however, ultimately rejected these claims as belated, referring, *inter alia*, to Article 85 § 3 of the Constitutional Court Act, as amended in 2011, requiring that such claims be "brought simultaneously with the lodging of a constitutional appeal" (see paragraphs 22 and 27 above). In those circumstances, the Constitutional Court would appear to have implicitly required from the applicants, who had lodged their constitutional appeal on 26 April 2010, the impossible – that is to retroactively comply with the provisions of the amendments which had entered into force on 4 January 2012 (see paragraphs 24-30 above).

42. As regards the Government's arguments to the effect that the applicants should have specified their compensation claims within a period of thirtydays as of the date of entry into force of the Amendments to the Constitutional Court Act, i.e. by 3 February 2012, the Court notes that there is nothing in the applicable national legislation or, indeed, in the Constitutional Court's own reasoning that might give any credence to this particular interpretation. The Government havealso offered no other constitutional case-law on the matter (see paragraph 38 above).

43. In view of the above, the Court rejects the Government's objection to the effect that the applicants'had failed to properly exhaustdomestic remedies.

(b) As regards the applicants' victim status

44. The Court notes that the Constitutional Court acknowledged that the applicants had suffered a violation of their constitutional rights equivalent to those guaranteed under Article 6 § 1 of the Convention. The Constitutional Court also ordered that the impugned enforcement proceedings be "terminated in accordance with the applicable legislation". The said order, however, clearly amounted to no redress at all since it merely referred to a provision of the Insolvency Proceedings Act stating that any pending enforcement proceedings shall be terminated upon the opening of insolvency proceedings in respect of the same debtor.The applicants were, lastly, never paid compensation for the pecuniary and/or non-pecuniary damage sustained in connection with the impugned non-enforcement and, moreover, their pecuniary damage claims were not even formally adjudicated in the operative part of the Constitutional Court's ruling (see paragraphs 21 and 22 above).

45. It follows that the Government's objection concerning the applicants' victim status must also be rejected.

(c) Conclusion

46. The Court notes that the applicants'complaintsare not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other ground. They must therefore be declared admissible.

B. Merits

47. The applicantsreaffirmed their complaints.

48. The Government made no comments.

49. The Court recalls 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*, judgment of 19 March 1997, § 40, *Reports* 1997-II). A delay in the execution of a judgment may be justified in particular circumstances. It may not, however, 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).

50. In view of the above and turning to the present case, the Court notes that the Serbian authorities have advanced no reasons for their failure to take all necessary measures in order to enforce the judgment in question between 27 July 2007 and 21 January 2011, those being the date of the applicants' submission of their enforcement request and the date of

institution of the insolvency proceedings respectively (see paragraphs 8-15 above; see also the Constitutional Court's own ruling described at paragraph 21 above).

51. Accordingly, the applicants have suffered a violation of their rights guaranteed under Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

52. The applicantsalso complained that the respondent State's failure to enforce the final judgment rendered in their favour amounted to an additional violation of Article 1 of Protocol No. 1, which 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."

53. The Government submitted that it should not be held responsible for the debts of a privately owned company in the absence of any specific misconduct "on the part of the insolvency administrator or the commercial court" in question. Indeed, according to the Government, the applicants themselves only complained of "the delays" in general and the respondent State's ultimate failure to enforce the judgment debt.

54. As the Court has repeatedly held, when the debtor is a private actorthe State is not, as a general rule, directly liable for debts of such actors and its obligations are limited to providing the necessary assistance to the creditor in the execution of the respective court awards, including through any insolvency procedures (see, for example, *Shestakov v. Russia* (dec.), no. 48757/99, 18 June 2002; *Krivonogova v. Russia* (dec.), no. 74694/01, 1 April 2004; and *Kesyan v. Russia*, no. 36496/02, 19 October 2006; see also *Scollo v. Italy*, 28 September 1995, § 44, Series A no. 315-C; *Fuklev v. Ukraine*, no. 71186/01, § 84, 7 June 2005; and *Kotov v. Russia* [GC], no. 54522/00, § 90, 3 April 2012).

55. The debtor in the present caseis a privately owned company, with an apparently long-standing lack of assets. Further, there are no documentedacts or omissionson the part of the respondent State's judicial authorities which could havegenerated the impossibility to enforce the judgment debt (compare and contrast to, for example, *Kotov*, cited above, § 90). Finally, it is understood in this connection that the Constitutional Court in its ruling of 27 March 2013, when it found a violation of the applicants' property rights, only did so on the basis of the impugned delay,without establishing a causal relationship between the delay in

question and the debtor's inability to honour its judgment debt towards the applicants (see paragraph 22 above).

56. In view of the above, the Court cannot but reject the applicants' complaints as manifestly ill-foundedin accordance with Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

57. 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

58. The applicants requested that the State be ordered to pay, from its own funds, the sums awarded by the final judgment rendered in their favour. In particular, a total of 8,678.37, 1,1361.96, 9,601.09, 8,809.82, and 8,447.56 euros (EUR) in respect of Ms Svetlana Pop-Ilić, Ms Gordana Ilić, Ms Jasmina Blagojević, Ms Ljubinka Kocić and Ms Jasmina Davinić respectively.

59. The applicants further claimed EUR 3,100 each for the non-pecuniary damage suffered as a result of the impugned non-enforcement.

60. The Government contested these claims.

61. The Court does not discern any causal link between the violation found and the pecuniary damage alleged (see also paragraph 55 above); it therefore rejects this claim. At the same time, making its assessment on an equitable basis, it awards each applicantEUR 2,700in respect of the non-pecuniary damage suffered.

B. Costs and expenses

62. The applicantslastly claimed EUR 200 each for the costs and expenses incurred in the course of the domestic enforcement and the insolvency proceedings, as well as EUR 2,600 jointly incurred in connection with the proceedings before the Constitutional Court.

63. The Government contested these claims.

64. 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 their quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to

award the applicants jointly the sum of EUR 1,700 for the costs and expenses incurred in the domestic proceedings.

C. Default interest

65. 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 complaintsunder Article 6 § 1 of the Convention admissible and the remaining complaints inadmissible;

3. *Holds*that there has been a violation of Article 6 § 1 of the Convention;

4. *Holds*,

(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Serbian dinars at the rate applicable at the date of settlement:

(i) EUR 2,700 (two thousand and seven hundred euros)to each applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,700 (one thousand and seven hundred euros) to the applicants jointly, plus any tax that may be chargeable to them, in respect of costs and expenses;

(b) 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;

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

Done in English, and notified in writing on 14 October 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli Deputy Registrar	Josep Casadevall President

APPENDIX

No.	App. nos.	Lodged on	Applicant's name Date of birth Place of residence	Represented by Practising in
1.	63398/13	28/06/2013	**Svetlana POP-ILIĆ** 02/08/1953 Vlasotince	Jasmina SPASIĆ Vlasotince
2.	76869/13	28/06/2013	**Gordana ILIĆ** 10/06/1957 Vlasotince	Jasmina SPASIĆ Vlasotince
3.	76879/13	28/06/2013	**Jasmina BLAGOJEVIĆ** 13/09/1955 Vlasotince	Jasmina SPASIĆ Vlasotince
4.	76886/13	28/06/2013	**Ljubinka KOCIĆ** 03/03/1961 Vlasotince	Jasmina SPASIĆ Vlasotince
5.	76890/13	28/06/2013	**Jasmina DAVINIĆ** 24/06/1955 Vlasotince	Jasmina SPASIĆ Vlasotince