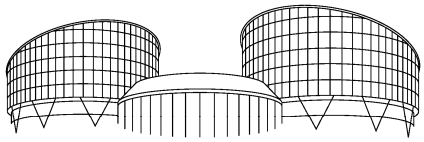

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF EVT COMPANY v. SERBIA

(Application no. 8024/08)

JUDGMENT

STRASBOURG

13 January 2015

This judgment is final but it may be subject to editorial revision.

In the case of EVT Company v. Serbia,

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

Ján Šikuta, *President,*
Dragoljub Popović,
Iulia Antoanella Motoc, *judges,*
and Marialena Tsirli, *Deputy Section Registrar*,

Having deliberated in private on 16 December 2014,

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

PROCEDURE

1. The case originated in an application (no. 8024/08) 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 EVT Company, a company based in Serbia ("the applicant company"), on 19 January 2008.

2. The applicant company was represented by Mr M. Cvetanović, a lawyer practising in Leskovac. The Serbian Government ("the Government") were represented by their Agent, Mr S. Carić.

3. On 8 March 2012 the application was communicated to the Government.

4. The Government objected to the examination of the application by a Committee. After having considered the Government's objection, the Court rejects it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

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

6. On 28 April 1995 the applicant company filed a civil suit against S.M. ("the debtor") for the payment of debt. On 2 February 2005 the Commercial Court (*Trgovinski sud*) in Leskovac ordered the debtor to pay to the applicant 6,590 Serbian dinars (RSD), which was approximately 82 euros (EUR) at the time of the delivery of the judgment, plus statutory default interest on account of the debt and RSD 92,442 (approximately EUR 1,154) for the costs of the civil proceedings. By 15 September 2005 this judgment became both final and enforceable.

7. On 24 October 2005 the applicant company filed with the Municipal Court (*Opštinski sud*) in Leskovac a request for the enforcement of the Commercial Court judgment by means of an inventory, valuation and sale of the debtor's movable assets. On 26 October 2005 the Municipal Court issued an enforcement order.On 9 December 2005 the enforcement order was upheld on appeal.

8. On 16 March 2006 the bailiff made an inventory of certain movable assets found on the debtor. On 30 March 2006 the said property was seized. On 28 April 2006 the debtor sought return of the seized property,alleging that it belonged to a third person and offeringother assets in its stead. On the same day the seized property was returned to the debtor, although no replacement assets were seized.

9. In the period from 20 July 2006 to 28 May 2007 the bailiff visited the debtor's house and business premises six times, but no further attempts were ever made to make an inventory of her movable assets.

10. In the meantime, on 6 and 20 February, 2 October and 21 November 2006 the applicant company filed complaints about the delay in the enforcement proceedings with the Presidents of the Municipal, District and Supreme Courts, the Supreme Court's Supervisory Board, the Supreme Council and the Ministry of Justice. On 25 October 2007 the Supreme Court's Supervisory Board found that the impugned enforcement proceedings were excessively long and ordered their prompt completion.

11. On 15 November 2007 the applicant company filed a request for a change of means of enforcement in view of the failure of the authorities to enforce the judgment on the debtor's movable assets. It proposed that the enforcement be carried out by means of seizure and sale of a family house registered in the name of the debtor's husband. On 13 February 2008 the Municipal Court rejected the applicant company's request and referred it to institute civil proceedings for determination of the debtor's partin the family house in question. On 18 August 2008 this decision was upheld on appeal.

12. Since the applicant company's request for a change of means of enforcement was rejected, the enforcement order of 26 October 2005 remained in force. No further steps were ever made to enforce that order.

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)

13. This Act was in force from 22 February 2005 until 17 September 2011.

14. Article 5 provided that the court had to conduct the enforcement proceedings urgently, failure of which made the judge liable for unconscientious or unprofessional conduct.

15. Article 8 provided that the court could order the enforcement by those means and on those objects proposed in the request for enforcement or in the request for change of means of enforcement.

16. Articles 23 and 24 provided that a third person who claimed to have the property rightson an asset seized from a debtor in enforcement proceedings could lodge an objection or file a civil suitseeking declaration that a particular assetcould not be subject of enforcement.

17. Under Article 58a party to enforcement proceedings could have complained to the court against illegal or irregularacts of bailiffs, which actscould then be quashed.

18. Articles 69 – 97 set out in detail the enforcement by inventory, valuation and sale of a debtor's movable assets. Article 73 § 2 specified that the debtor wasconsidered the owner of property found in his or her possession unless a third party informed the court and proved his or her property rights on it. Article73 § 5 provided that the spouses were considered owners of equal shares in all movable assets found in their house, flat, business premises or other immovable property. In addition, Article 79 provided that the court must terminate the enforcement proceedings if no assets which could be subject to enforcement were found during inventory.

19. Articles 98 – 153 set out in detail the enforcement by sale of the debtor's immovable assets. Article 100 in particular, provided that the creditor had to submit, together with the request for enforcement, a certificate from the land registry that the immovable asset was registered in the debtor's name.

B. The Enforcement Procedure Act 2011 (*Zakon o izvršenju i obezbeđenju*; published in the OG RS nos. 31/2011 and 99/2011)

20. On 17 September 2011 the new Enforcement Procedure Act came into force thereby repealing the Enforcement Procedure Act 2004. Article 358 provides that the enforcement proceedings instituted before this Act came into force will be continued pursuant to the provisions of the Enforcement Procedure Act 2011.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1 AS REGARDS NON-ENFORCEMENT OF THE JUDGMENTRENDERED IN THE APPLICANT COMPANY'S FAVOUR

21. The applicant company complained underArticle 6 § 1 of the Convention and Article 1 of Protocol No. 1, about the non-enforcement of the judgment of 2 February 2005. In so far as relevant, these Articles read as follows:

Article 6 § 1

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

Article 1 of Protocol No. 1

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions..."

A. Admissibility

22. The Government submitted that the applicant company had not exhausted all available, effective domestic remedies. In particular, ithad failed to bring a separate civil suit under Articles 199 and 200 of the Obligations Act. Further, the applicant company had not made use of a constitutional appeal. Finally, it had failed to lodge a complaint under Article 58 of the Enforcement Procedure Act 2004.

23. In relation to the Government's first argument, the Court has already held that the above remedy could not be deemed effective within the meaning of its established case-law under Article 35 § 1 of the Convention (see, *mutatis mutandis*, *V.A.M. v. Serbia*, no. 39177/05, § 86, 13 March 2007). It sees no reason to depart from those findings in the present case.

24. With regard to the Government's second argument, it is observed that this Court has already held that a constitutional appeal should, in principle, be deemed effective within the meaning of Article 35 § 1 of the Convention in respect of all applications introduced as of 7 August 2008 (see *Vinčić and Others v. Serbia*,nos. 44698/06 et seq., § 51,1 December 2009). Since the applicant company in the present case had brought its case before that date, the Court finds no reason to depart from its conclusion in *Vinčić*.

25. Finally, concerning the Government's last argument, the Court first notes that the applicant company did not complain about illegal or irregular

acts of bailiffs. Nor is this case about any single decision or measure taken by the enforcement authorities. The applicant company indeed complained about the respondent State's failure to act in enforcing the judgment rendered in its favour. The Court further notes that Article 5 of the Enforcement Procedure Act 2004 placed the responsibility for expeditious conduct of the enforcement proceedings on the courts (see paragraph 14 above).It also observes that, for its part, the applicant company had repeatedly complained about the delay in the enforcement proceedings to various State bodies to no avail (see paragraph 10 above). At all events, the Government failed to provide any examples of cases in which a complaint under Article 58 of the Enforcement Procedure Act 2004 expedited the enforcement proceedings. Therefore, a complaint against illegal or irregular acts of bailiffscannot constitute an effective remedy for the alleged violation. Accordingly, the applicant company was not required to make use of that remedy.

26. In view of the above, the Government's objections must be dismissed. The Court also considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and finds no other ground to declare it inadmissible. The complaint must therefore be declared admissible.

B. Merits

1. Period to be taken into consideration

27. The Government submitted that the enforcement proceedings lasted less than three years, namely from 24 October 2005 until 18 August 2008.

28. The Court notes that the enforcement proceedings started on24 October 2005 and have never been formally terminated, stayed or suspended or otherwise closed in accordance with the domestic law (see paragraph 18 above). Consequently, the Government's argument that the enforcement proceedings had been closed after 18 August 2008 must be rejected. The Court therefore finds that the judgment rendered in the favour of the applicant company is yet to be enforced after almost nine years.

2. Arguments of the parties

29. The Government argued that the enforcement proceedings were conducted with due diligence. The delays were attributable partly to the applicant company and partly to the debtor's indigence.

30. The applicant company maintained that the enforcement proceedings had been pending since 2005 regardless of the fact that the debtor had sufficient assets.

3. Relevant principles

31. The Court recalls that Article 6 § 1 of the Convention, *inter alia*, protects the implementation of final, binding judicial decisions, which, in States that accept the rule of law, cannot remain inoperative to the detriment of one party. Accordingly, the execution of a judicial decision cannot be prevented, invalidated or unduly delayed (see, among other authorities, *Hornsby v. Greece*, 19 March 1997, § 40, *Reports of Judgments and Decisions* 1997‑II). In terms of Article 1 of Protocol No. 1, the Court notes that a "claim" can constitute a "possession" if it is sufficiently established to be enforceable (see *Burdov v. Russia*, no. 59498/00, § 40, ECHR 2002-III) and reiterates that it is under this provision, as well as Article 6 § 1 of the Convention, that the State has a positive obligation to organise a system for enforcement of judgments that is effective both in law and in practice and ensures their enforcement without undue delay (see *Fuklev v. Ukraine*, no. 71186/01, § 84, 7 June 2005). The State must also make sure that the procedures provided for in the relevant domestic legislation are complied with (see *ibid*, § 91).

32. Further, the Court notes that the State responsibility for enforcement of a judgment against private persons extends no further than the involvement of State bodies in the enforcement procedures and that once the enforcement procedures were closed by a court in accordance with the national legislation, the responsibility of the State ended (see *Shestakov v. Russia* (dec.), no. 48757/99, 18 June 2002). Moreover, a failure to enforce a judgment because of the debtor's indigence cannot be held against the State unless and to the extent that it is imputable to the domestic authorities, for example, to their errors or delay in proceeding with the enforcement (see, *mutatis mutandis, Omasta v. Slovakia* (dec.), no. 40221/98, 10 December 2002).

33. Lastly, the Court reiterates that enforcement proceedings by their very nature need to be dealt with expeditiously (see *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 23, ECHR 2000‑IV).

4. The Court's assessment

34. The Court considers that the length of the enforcement proceedings at issue is *a priori* unreasonable and calls for a global assessment. Their overall length could be justified only under exceptional circumstances. However, the Government's arguments concerning the conduct of the parties cannot sufficiently explain such a substantial delay, which was, in the Court's view, caused mainly by the failure of the domestic courts to effectively conduct the enforcement proceedings in accordance with the procedures provided for in the relevant domestic legislation. Specifically, the property initially seized at the debtor's house had been released at her request contrary to Articles 23 and 24 of the Enforcement Procedure Act

2004 (see paragraphs16 and 18 above). Moreover, no further attempts were made to make an inventory of the debtor's movable assets (see paragraph 9 above) and to execute the enforcement order. In view of the fact that the enforcement proceedings were not terminated on the grounds of the debtor's indigence in accordance with Article 79 of the Enforcement Procedure Act 2004 (see paragraph 18 above), the Court cannot but conclude that the debtor had sufficient assets. The Government's claim to the contrary is therefore rejected.

35. The Court has frequently found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in cases raising issues similar to the one in the present case (see *EVT Company*, cited above).

36. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the Serbian authorities have impaired the essence of the applicant company's "right to a court" and prevented it from receiving the money which it had legitimately expected to receive.

37. There has accordingly been a breach of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1 as regards non-enforcement of the judgment rendered in the applicant company's favour.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AS REGARDS LENGTH OF PROCEEDINGS

38. The applicant company also complained about the length of the civil proceedings instituted in 1995that were finally completed by 15 August 2005 (see paragraph 6 above).

39. The Court observes that it did not acquire jurisdiction with respect to these proceedings until 3 March 2004 when Serbia ratified the Convention. The Court does not consider that the period falling within its competence *ratione temporis* in relation to the impugned civil proceedings lasted unreasonably long, in particular as, within this period the courts delivered two judgmentsat two levels.

40. It follows that this part of the application must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

41. 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

42. In respect of pecuniary damage, the applicant company requested that the State be ordered to pay EUR 22,000 euros. It also claimed EUR 4,000 for non-pecuniary damage.

43. The Government left the matter of pecuniary damage to the Court's discretion, whereas they contested the claim for non-pecuniary damage as excessive.

44. Concerning the pecuniary damage sought, the Court finds that there is no evidence that the debtorhas insufficient assets to fully comply with the final judgment at issue. The Court considers, therefore, that the applicant company's claim for pecuniary damage must be met by the Government ensuring that all necessary steps are taken to allow the domestic proceedings under consideration in this case to be concluded as speedily as possible, taking into account the requirements of the proper administration of justice.

45. On the other hand, the Court accepts that the applicant company has suffered some non-pecuniary damage which would not be sufficiently compensated by the finding of the violation alone (see, *mutatis mutandis, Comingersoll,*cited above, §§ 35-37; and *Teltronic-CATV v. Poland*, no. 48140/99, §§ 67, 68 and 60, 10 January 2006). Making its assessment on an equitable basis and having regard to the circumstances of the case, the Court awards the applicant company EUR 3,600 under this head.

B. Costs and expenses

46. The applicant company also claimed EUR 1,000 for the costs and expenses incurred before the Court.

47. The Government did not submit any comment in this regard.

48. 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. That is, the applicant must have paid them, or be bound to pay them, pursuant to a legal or contractual obligation, and they must have been unavoidable in order to prevent the violation found or to obtain redress. The Court requires itemised bills and invoices that are sufficiently detailed to enable it to determine to what extent the above requirements have been

met. Since no bill of costs has been submitted in the present case, the Court rejects this claim.

C. 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 COURT, UNANIMOUSLY,

1. *Declares*the complaints concerning the non-enforcement of the judgment of 2 February 2005 admissible and the remainder of the application inadmissible;

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

3. *Holds*
   (a) that the respondent State shall ensure that all necessary steps are taken to allow the domestic proceedings under consideration in this case to be concluded as speedily as possible, taking into account the requirements of the proper administration of justice;
   (b) that the respondent State is to pay the applicant company, within three months, EUR 3,600 (three thousand six hundred euros) plus any tax that may be chargeable, to be converted into the local currency, at the rate applicable at the date of settlementin respect of non-pecuniary damage;
   (c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 company's claim for just satisfaction.

Done in English, and notified in writing on 13 January 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli	Ján Šikuta
Deputy Registrar	President