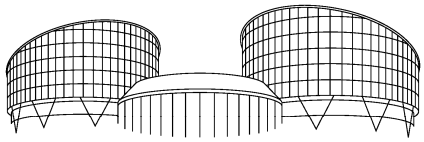

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

# CASE OF GAVOVIĆ v. SERBIA

*(Application no. 13339/11)*

JUDGMENT

STRASBOURG

24 February 2015

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

**In the case of Gavović v. Serbia,**

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

JánŠikuta, *President,*
DragoljubPopović,
Iulia AntoanellaMotoc, *judges,*
and MarialenaTsirli, *Deputy Section Registrar,*

Having deliberated in private on 3 February 2015,

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

# PROCEDURE

1. The case originated in an application (no. 13339/11) against the Republic of Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Serbian national, MrMilovanGavović ("the applicant"), on 30 December 2010.

2. The applicant was represented by MsR.Garibović, a lawyer practising in Novi Pazar. The Serbian Government ("the Government") were represented by their Agent, MsV. Rodić.

3. On 20 December 2012 the application was communicated to the Government.

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

### A. Introduction

4. The applicant was born in 1963 and lives in Čajetina.

5. He was employed by *Raketa-Putnički Saobraćaj AD*, a company based in Užice (hereinafter "the debtor").

### B. Civil proceedings brought by the applicant

6. Since the debtor had failed to fulfil its obligations toward its employees, the applicant brought a civil claim, seeking payment of salary arrears and various social security contributions.

7. On 10 July 2007 the Municipal Court (*Opštinski sud*) in Užice rendered a decision ordering the debtor to pay him certain sum. On 7 September 2007 this decision became final.

8. Due to the debtor's failure to fulfil its obligations from this decision, the applicant submitted an enforcement request. On 17 March 2009 the Municipal Court (*Opštinski sud*) in Požega issued an enforcement order to that effect.

### C. Insolvency proceedings

9. On 12 July 2010 the Commercial Court (*Privredni sud*) inUžice opened insolvency proceedings in respect of the debtor. As a result, all of the ongoing enforcement proceedings against the debtor were terminated.

10. The applicant duly reported his claim based on the above-mentioned court decision to the insolvency administration.

11. On 8 June 2011 the court accepted the applicant's claim.

12. On 31 July 2014 the applicant's representative informed the Court that the decision at issue had been partially enforced in the insolvency proceedings.

13. The insolvency proceedings in respect of the debtor are still ongoing.

### D. The debtor's status

14. The debtor, which operated as a socially-owned company, was privatised on 27 December 2002.

15. On 17 July 2007 the privatisation was annulled because the buyer in question had failed to fulfil his contractual obligations.

16. Following the annulment of the debtor's privatisation the State owned 58.18% of shares in the company.

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

## II. RELEVANT DOMESTIC LAW AND PRACTICE

18. The relevant domestic law concerning the status of socially-owned companies, enforcement and insolvency proceedings is outlined in the cases of *R. Kačapor and Others v. Serbia*, nos. 2269/06 *et al*., §§ 57-64 and §§ 71-76, 15 January 2008 and *Jovičić and Others v. Serbia* (dec.), no. 37270/11, §§ 88-93, 15 October 2013. Furthermore, the case-law of the Constitutional Court in respect of socially-owned companies, together with the relevant provisions concerning constitutional appeals and the privatisation of socially-owned companies, are outlined in the admissibility decision in *Marinković v. Serbia* (dec.), no. 5353/11, §§ 26-29 and§§ 31-44, 29 January 2013; and the judgment in *Marinković v. Serbia*, no. 5353/11, §§ 29-32, 22 October 2013.

# THE LAW

## I. ALLEGED VIOLATION OF ARTICLES 6 AND 13 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

19. The applicant complained of the respondent State's failure to enforce a final court decision rendered in his favour against the debtor and of the lack of an effective remedy in that connection. The relevant provisions of Articles 6 § 1 and 13 of the Convention, as well as Article 1 of Protocol No. 1 read as follows:

**Article 6 § 1**

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

**Article 1 of Protocol No. 1**

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

**Article 13**

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

### A. Admissibility

20. The Government argued that the application was incompatible *ratione personae* with the provisions of the Convention and/or that it was inadmissible on non-exhaustion grounds.

21. The Court recalls that it has already considered similar arguments and rejected them (see, for example, the judgments in *R. Kačapor and Others*, § 114 and *Marinković*, § 39, both cited above; andthe decisions in *Marinković*, § 59 and *Jovičić and Others*, § 102, both cited above). It sees no reason to depart from this approach in the present case. Therefore, the Court decides to reject the Government's admissibility objections.

22. As the application is neither manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor inadmissible on any other grounds, it must be declared admissible.

### B. Merits

23. The Court notes that the final court decision rendered in the applicant's favour remains unenforced to the present date.

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

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

26. Having reached this conclusion, the Court does not find it necessary 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).

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. Article 41 of the Convention provides:

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

### A. Damage, costs and expenses

28. The applicant requested that the State be ordered to pay, from its own funds, the sum awarded by the final court decision rendered in his favour,as well as the costs of the enforcement proceedings, plus 2,500 euros (EUR) in respect of non-pecuniary damage.

29. The Government considered the claims excessive and unjustified.

30. Having regard to the violations found in the present case and its own case-law (*R. Kačapor and Others,* §§ 123-26, and *Crnišanin and Others*, § 139, both cited above), the Court finds that the Government should pay the applicant the sum awarded in the court decision of 10 July 2007, less any amount which may have already been paid in this regard.

31. As regards non-pecuniary damage, the Court considers that the applicant sustained some non-pecuniary loss arising from the breaches of the Convention found in this case. The particular amount claimed, however, is excessive. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court considers it reasonable to award the applicant EUR 2,000 to cover any non-pecuniary damage, as well as costs and expenses (see *Stošić v. Serbia*, no. 64931/10, §§ 66 and 67, 1 October 2013).

### B. Default interest

32. 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 application admissible;

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

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

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months, the sum awarded in the final domestic judgmentof 10 July 2007 rendered in his favour, as well as the established costs of the enforcement proceedings, less any amounts which may have already been paid on this basis;

(b) that the respondent State is to pay the applicant, within the same period, EUR 2,000 (two thousand euros) in respect of non-pecuniary damage, costs and expenses, plus any tax that may be chargeable on this amount, which is to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

(c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 24 February 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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| MarialenaTsirli | JánŠikuta |
| Deputy Registrar | President |