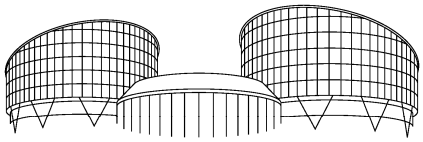

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF RAGUŽ v. SERBIA

(Application no. 8182/07)

JUDGMENT

STRASBOURG

7 April 2015

FINAL

07/07/2015

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Raguž v. Serbia,

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

Luis López Guerra, *President,*
Ján Šikuta,
Dragoljub Popović,
Kristina Pardalos,
Johannes Silvis,
Valeriu Griţco,
Iulia Antoanella Motoc, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 17 March 2015,

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

PROCEDURE

1. The case originated in an application (no. 8182/07) against the Republic of Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Croatian national, Mr Vinko Raguž ("the applicant"), on 8 February 2007.

2. The applicant was initially represented by Mr Mihailo Petrović, a lawyer practicing in Gornji Milanovac, and subsequently by Ms V. Knežević, a lawyer practising in Dubrovnik. The Serbian Government ("the Government") were represented by their Agent, Mr S. Carić.

3. The applicant complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 thereto, about the non-enforcement of the final domestic judgment rendered in his favour.

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

5. Further to the notification under Article 36 § 1 of the Convention and Rule 44 § 1 (a), the Croatian Government did not wish to exercise their right to intervene in the present case.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1940 and lives in Dubrovnik.

7. On 18 February 2003 the Municipal Court (*Opštinski sud*) in Gornji Milanovac ordered V.T. ("the debtor") to pay to the applicant 2,500 Euros ("EUR") plus statutory interest on account of debt and 187,750 Serbian dinars ("RSD"), which was approximately EUR 3,028 at the time of the delivery of the judgment, for the costs of the civil proceedings.

8. On 23 August 2003 the District Court (*Okružni sud*) in Čačak, on appeal, reduced the award in respect of costs to RSD 97,250 (approximately EUR 1,568) and upheld the first-instance judgment for the remainder.

9. The judgment of 18 February 2003, as amended on 23 August 2003, became final on 5 September 2003.

10. On 23 October 2003, at the applicant's request, the Municipal Court ordered the enforcement of the judgment by seizure and sale of the debtor's movable assets.

11. Following three failed attempts at seizure of the debtor's movable assets, on 21 December 2004 the Municipal Court informed the applicant that the enforcement by seizure and sale of the judgment debtor's property was impossible due to the debtor's indigence.

12. On 13 July 2005 the Municipal Court terminated the enforcement proceedings. This decision was quashed on appeal on 24 October 2005 by the Municipal Court.

13. Following a further attempt at seizure of the debtor's movable assets, on 11 October 2007 the Municipal Court stayed the enforcement proceedings (*prekida se postupak izvršenja*) because of the debtor's death in the meantime.

14. On 3 June 2008 the applicant proposed that the enforcement proceedings be continued by seizure and sale of the deceased debtor's movable and immovable estate. In support of his request, the applicant submitted a court decision of 2 October 2001 by which the debtor and two other persons had previously inherited a house with a plot of land. He also requested the court to appoint a temporary representative for the debtor's heirs in accordance with Article 32 of the Enforcement Procedure Act. On 20 June 2008 the Municipal Court rejected the applicant's request. This decision was quashed on appeal on 27 March 2009 by the Municipal Court.

15. On 16 April 2009 the Municipal Court invited the applicant to provide the names and the addresses of proposed debtors, indicate the debtor's heirs, propose the means of enforcement and details and proof of ownership concerning immovable assets, all within three days, failing which his request would be rejected. It was further specified that no appeal was allowed against this decision. In the reasoning, the court found that the names and the addresses of the debtor's potential heirs were available from the decision of 2 October 2001, and that therefore, there was no need for the appointment of a temporary representative. On 8 June 2009, however, the Municipal Court instructed the applicant to advance the costs for a

temporary representative within eight days. It was also specified that no appeal was allowed against this decision.

16. On 27 August 2009 the Municipal Court rejected the applicant's request for continuation of the enforcement proceedings because of his failure to abide by the orders of 16 April and 8 June 2009. This decision was upheld on appeal on 13 October 2009.

17. According to the Government, there are eight heirs of the deceased debtor, the names and addresses of which have been known.

II. RELEVANT DOMESTIC LAW

A. The relevant enforcement procedure rules

18. The relevant provisions of the Enforcement Procedure Act 2000 (*Zakon o izvršnom postupku*; published in the Official Gazette of the Federal Republic of Yugoslavia – "OG FRY" - no. 28/00, 73/00 and 71/01), the Enforcement Procedure Act 2004 (*Zakon o izvršnom postupku*; published in the Official Gazette of the Republic of Serbia – "OG RS" - no. 125/04) and the Enforcement Procedure Act 2011 (*Zakon o izvršenju i obezbeđenju*; published in OG RS nos. 31/11 and 99/11) are set out in *Bulović v. Serbia*, no. 14145/04, §§ 29-30, 1 April 2008; *Vukelić v. Montenegro*, no. 58258/09, §§ 43-45, 4 June 2013; and *Tešić v. Serbia*, nos. 4678/07 and 50591/12, § 43, 11 February 2014.

B. The relevant civil procedure rules

19. The Civil Procedure Act 2004 (*Zakon o parničnom postupku*, published in OG RS nos. 125/04 and 111/09) was in force from 22 February 2005 until 1 February 2012. Article 214 of the Act provided that the proceedings were stayed if a party died. Article 217 further provided for the continuation of the proceedings stayed because of a party's death when the heir or representative of the estate took over the proceedings or when the court invited them to do so at the request of the opposing party.

20. The Civil Procedure Act 1977 (*Zakon o parničnom postupku*, published in the OG SFRY nos. 4/77, 36/77, 6/80, 36/80, 43/82, 72/82, 69/82, 58/84, 74/87, 57/89, 20/90, 27/90 and 35/91, as well as in OG FRY nos. 27/92, 31/93, 24/94, 12/98, 15/98 and 3/02), which was in force until 22 February 2005, contained the same provisions (see Articles 212 § 1 (1) and 215 § 1 thereof).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1

21. The applicant complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 thereto, about the non-enforcement of the court judgment rendered in his favour, which became final in 2003. 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 Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Arguments of the parties

23. The Government submitted that the enforcement proceedings had been conducted with due diligence. The delays were attributable partly to the debtor's indigence and partly to the applicant, who had made a proposal that the enforcement proceedings be continued against the debtor's immovable assets only on 3 June 2008 and had failed to abide by the court's orders of 16 April and 8 June 2009. In addition, the Government argued that the present case was complex because of the death of the debtor and the fact that the applicant lived abroad.

24. The applicant reaffirmed his complaints.

2. The relevant principles

25. The Court reiterates that Article 6 § 1 of the Convention 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).

26. Further, the Court notes that the State's 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 ends (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).

27. 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).

3. Application of the above principles to the facts of the present case

28. The Court observes, in the first place, that the judgment of 18 February 2003, as modified on 23 August 2003, has remained unenforced to date. Secondly, having adopted the enforcement order, the domestic courts were under an obligation to proceed *ex officio*. Thirdly, Serbia ratified the Convention on 3 March 2004, meaning that the proceedings in question have been within the Court's competence *ratione temporis* for a period of almost eleven years. Fourthly, during this time, the domestic courts attempted four times to seize the debtor's movable assets, terminated the enforcement proceedings, which decision was quashed on appeal, and most strikingly, took no substantive steps after the proceedings were stayed on 11 October 2007. Fifthly, the Municipal Court failed to inform the deceased debtor's heirs, the names and addresses of which had been apparently known to it, about the enforcement proceedings or else, to appoint them a temporary representative, contrary to Article 32 of the Enforcement Procedure Act 2000. Lastly, the applicant cannot be

reproached for having failed to abide by contradictory instructions of the Municipal Court orders of 16 April and 8 June 2009. The Court therefore considers that the Serbian authorities did not act diligently or take sufficient steps to execute the final judgment of 18 February 2003, as modified on 23 August 2003.

29. There has accordingly been a breach of Article 6 § 1 of the Convention and a separate breach of Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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."

31. In the initial application, the applicant's former representative claimed on behalf of the applicant pecuniary damage in the sum of the amount of the judgment made in his favour on 18 February 2003 by the Municipal Court, namely EUR 2,500 with appropriate interest, plus EUR 2,000 for the costs of civil and enforcement proceedings, EUR 1,500 for non-pecuniary damage and EUR 562.50 for the costs of the proceedings before the Court. In his subsequent sixteen submissions, he requested compensation for pecuniary and non-pecuniary damages and postal expenses in line with the practice of the Court and EUR 1,000 for each of his submissions. Following transmission by the Court of the Government's initial observations, the applicant's newly appointed representative referred to those claims within the time-limit imposed.

32. The Government contested those claims. They argued, in particular, that the claims were not duly specified and should, therefore, be rejected.

A. Damage

33. The Court considers that in the circumstances of the present case the respondent State must ensure, by appropriate means, the full execution of the final Municipal Court judgment of 18 February 2003, as amended on 23 August 2003 (see, *mutatis mutandis*, *EVT Company v. Serbia*, no. 31025/05, § 60, 21 June 2007, and *Krstić v. Serbia*, no. 45394/06, § 94, 10 December 2013).

34. The Court accepts that the applicant has suffered some non-pecuniary loss arising from the breaches found, for which he should be compensated. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 1,500 in this respect, plus any tax that may be chargeable.

B. Costs and expenses

35. 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 (see for example, *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia* [GC], no. 60642/08, § 158, ECHR 2014).

36. In the present case, the Court finds that the claim for costs and expenses has not been substantiated and that no itemised bills have been presented in support of it. Consequently, the Court rejects this claim.

C. Default interest

37. 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 § 1 of the Convention and Article 1 of Protocol No. 1;

3. *Holds*
   (a) that the respondent State shall ensure, by appropriate means, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the full execution of the final Municipal Court judgment of 18 February 2003, as amended on 23 August 2003;
   (b) that the respondent State is to pay the applicant, within the same period, EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable, in 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's claim for just satisfaction.

Done in English, and notified in writing on 7 April 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Luis López Guerra
President