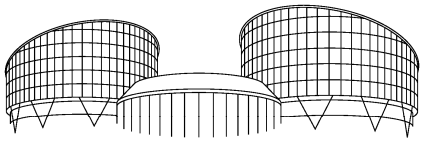

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF KRGOVIĆ v. SERBIA

(Application no. 29430/06)

JUDGMENT

STRASBOURG

13 September 2016

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 Krgović v. Serbia,

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

Luis López Guerra, *President,*
Helena Jäderblom,
Johannes Silvis,
Branko Lubarda,
Pere Pastor Vilanova,
Alena Poláčková,
Georgios A. Serghides, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 23 August 2016,

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

PROCEDURE

1. The case originated in an application (no. 29430/06) against Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Serbian national, Mr Vojkan Krgović ("the applicant"), on 7 July 2006.

2. The applicant was represented by Mr D. Burzanović, a lawyer practising in Podgorica. The Serbian Government ("the Government") were represented by their Agent at the time, Mr S. Carić.

3. The applicant complained, under Article 6 of the Convention, about the non-enforcement of a final judgment rendered in his favour in 1998.

4. On 24 July 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1967 and lives in Stari Bar, Montenegro. At the relevant time he was a professional basketball player.

A. Civil and enforcement-related proceedings

6. On 9 July 1997 the applicant brought a claim against the basketball club for which he had been playing, Vojvodina BFC (*Košarkaski klub*

Vojvodina BFC), based in Novi Sad. The club had the status of a citizens' association.

7. On 17 February 1998 the Novi Sad Municipal Court (hereinafter "the Municipal Court") ruled in favour of the applicant, ordering Vojvodina BFC (hereinafter "the debtor") to pay him, within fifteen days, the sum of 110,550 dinars (RSD – approximately 10,000 euros (EUR) at the time) and RSD 8,500 (approximately EUR 730) in costs, together with statutory interest. The judgment became final on an unspecified date in 1998.

8. Following a request by the applicant on 15 October 1998 for enforcement, on 19 October 1998 the Municipal Court issued an enforcement order.

9. On 25 December 1998 the applicant informed the court that the debtor did not have sufficient funds in its bank account and proposed that the judgment be enforced by the sale of the debtor's immovable assets situated on the premises of the Vojvodina Sports and Business Centre. On 17 March 1999 an enforcement order to that effect was issued.

10. In the meantime, a new basketball club, NIS-Vojvodina, was formed.

11. On 25 December 2002 the Central Bank in Novi Sad informed the court that the debtor's bank account had been frozen.

12. On 14 March 2003 the applicant informed the court of another bank account in the debtor's name. On 9 May 2003 he asked the court not to carry out the enforcement by sale of the debtor's immovable assets as he had asked previously, because it appeared that assets did not belong to the debtor, but to the basketball club NIS-Vojvodina.

13. On 12 May 2003 the Municipal Court ordered enforcement in accordance with the applicant's request of 14 March 2003.

14. On 25 June 2003 the Central Bank in Novi Sad informed the court that the account details the applicant had provided did not concern the debtor but the basketball club NIS-Vojvodina, and that the debtor's account was still frozen.

15. On 14 July 2003 NIS-Vojvodina appealed against the enforcement order of 12 May 2003. It claimed not to be the debtor's legal successor.

16. On 1 April 2004 a three judge panel of the Municipal Court (hereinafter "the panel") refused to hear the appeal until the enforcement judge determined the debtor's liabilities.

17. On 24 June 2004 NIS-Vojvodina filed a submission, denying any connection with the applicant's debtor.

18. On 19 October 2004 the Municipal Court asked the applicant to comment on NIS-Vojvodina's submission and propose another method of enforcement.

19. As the applicant failed to do so, on 11 January 2005 the Municipal Court suspended (*obustavio*) the enforcement against NIS-Vojvodina. The applicant appealed.

20. On 14 February 2005 the panel instructed the enforcement judge to establish if there was any relationship between the debtor and NIS-Vojvodina before transferring the file back to it again.

21. On 30 May 2005 the Ministry of Education and Sport informed the Municipal Court that the applicant's debtor had appeared on their register of sports organisations since 3 August 1999, while NIS-Vojvodina had never been registered.

22. In the proceedings that followed, the enforcement judge, relying on the Ministry's information note of 30 May 2005, found that NIS-Vojvodina was not the debtor's legal successor and transferred the case file to the panel on 1 September 2005.

23. On 16 March 2006 the panel upheld the decision of 11 January 2005, finding that there were no grounds to continue enforcement against NIS-Vojvodina.

B. Insolvency proceedings

24. On 1 September 2011 the Novi Sad Commercial Court opened insolvency proceedings in respect of the debtor and adopted the restructuring plan it had devised. According to the plan, the debtor would pay the applicant RSD 1,229,332.42 (approximately EUR 10,000) over five years, paying him one fifth of the total amount each year.

25. . On 17 September 2012 the debtor paid the applicant one fifth of the above-mentioned sum, that is to say RSD 245,866.48 (approximately EUR 2,000).

26. There is no information in the case file as to whether the applicant received any payments thereafter.

II. RELEVANT DOMESTIC LAW

A. 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)

27. Article 4 § 1 provided that all enforcement proceedings were to be conducted urgently.

28. Article 30 § 2 provided, *inter alia*, that it was for the enforcement court to choose of its own motion the most appropriate method of enforcement whenever a creditor proposed more than one, whilst taking into account the funds needed in order to cover the claims in question.

29. Articles 63-84, 134-176 and 180-188 gave details as regards enforcement by means of a bank transfer, and by the auctioning of a debtor's movable and immovable assets.

B. Enforcement Procedure Act 2004 (*Zakon o izvršnom postupku*; published in the Official Gazette of the Republic of Serbia - OG RS - no. 125/04)

30. The Enforcement Procedure Act 2004 ("the 2004 Act") entered into force on 23 February 2005, repealing the Enforcement Procedure Act 2000 ("the 2000 Act").

31. Under Article 304 of the 2004 Act, all enforcement proceedings instituted prior to 23 February 2005 are to be carried out in accordance with the 2000 Act.

C. Financial Transactions Act (*Zakon o platnom prometu*; published in OG FRY nos. 3/02 and 5/03, and OG RS nos. 43/04, 62/06, 111/09 – other act, 31/11 and 139/14 – other act)

32. Under Article 54 § 1, one of the duties of the Central Bank was to monitor the solvency of all corporate entities and initiate judicial insolvency proceedings in respect of those whose bank accounts had been "frozen" owing to outstanding debts for a period of sixty days consecutively, or for sixty days intermittently within the previous seventy-five days. That provision was repealed with effect from 1 January 2010.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

33. The applicant complained that the respondent State had failed to enforce the final judgment of 17 February 1998. He relied on Article 6 of the Convention, the relevant part of which reads as follows:

> "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."

A. Admissibility

34. Relying on the Court's findings in the case of *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 violation of the applicant's right of access to court, 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"). Specifically, the Government stated that the enforcement order had been rendered on

19 October 1998 and that the enforcement proceedings had been suspended on 11 January 2005, so the facts on which the application was based were mostly beyond the temporal jurisdiction of the Court and only partially within it. There had been no activity on the part of the applicant between 3 March 2004 and 11 January 2005 and in particular, no passive conduct or any other form of action or inaction on the part of the domestic court within that period.

35. The applicant did not comment.

36. The Court reiterates that, in accordance with the general rules of international law, the provisions of the Convention do not bind a Contracting Party in relation to any act or fact which took place or any situation which ceased to exist before the date of entry into force of the Convention with respect to that Party (see *Blečić*, cited above, § 70). Nevertheless, the State's acts and omissions must conform to the Convention and its Protocols from the ratification date onwards, meaning that all subsequent acts and omissions fall within the Court's jurisdiction, even where they are merely extensions of an already existing situation (see *Krstić v. Serbia*, no. 45394/06, § 65, 10 December 2013 and the authorities cited therein).

37. Turning to the present case, the Court notes that the enforcement order was issued on 19 October 1998 (see paragraph 8 above). It is further observed that the enforcement proceedings were suspended on 11 January 2005, after the ratification of the Convention. In addition, in 2011 the insolvency proceedings against the debtor were opened and a restructuring plan was adopted. The applicant has so far been paid one fifth of the debt in accordance with that plan. However, it would appear that the judgment in question remains partially unenforced (see paragraphs 24 and 25 above).

38. Having regard to these considerations, the Court considers that the applicant's entitlement to enforcement subsisted subsequent to the Convention's entry into force on 3 March 2004. It also observes that the impugned non-enforcement has continued to date (see, *mutatis mutandis*, *Krstić*, cited above, § 68, and *Kostić v. Serbia*, no. 41760/04, § 46, 25 November 2008).

39. The Government's objection in this regard must therefore be rejected.

40. 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. The parties' submissions

41. The applicant maintained his complaint. He submitted that to date, the respondent State had not undertaken any steps in order to enforce the 1998 decision.

42. The Government noted that protraction of the enforcement proceedings had occurred mainly as a result of the applicant's passive conduct and negligence. Specifically, they pointed out that on several occasions the applicant had not acted in accordance with the court order to pay the costs of the proceedings in advance, respond to the allegation and submissions of the third party and make further requests for enforcement, which had resulted in the proceedings being suspended on 11 January 2005.

43. The Government also submitted that the applicant had made obvious omissions concerning the debtor by specifying the immovable assets and bank account of another legal entity as a method of enforcement, and had misdirected the court.

44. In addition, they argued that it had been reasonable to expect the applicant to propose enforcement by some other method.

45. Lastly, the Government pointed out that owing to the changes to the Insolvency Act in 2011, the sports club might also be subjected to insolvency proceedings. The basketball club Vojvodina was supposed to settle debts towards its creditors thorough the restructuring plan it had adopted (see paragraphs 24 and 25 above).

2. Relevant principles

46. The Court reiterates that 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*, 19 March 1997, § 40, *Reports of Judgments and Decisions* 1997-II). A delay in execution of a judgment may be justified in particular circumstances, but it may not be such as to impair the essence of the right protected under Article 6 § 1 of the Convention (see *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 74, ECHR 1999-V).

47. In any event, irrespective of whether a debtor is private or State-controlled, it is for the State to take all necessary steps to enforce a final court judgment and in so doing, to ensure the effective participation of its entire apparatus (see, *mutatis mutandis*, *Hornsby*, cited above, § 41).

3. The Court's assessment

48. The Court notes that the period of debt recovery in the applicant's case has so far lasted more than twelve years since the Serbian ratification of the Convention on 3 March 2004 (falling within this Court's competence *ratione temporis*). Regard must also be had to the state of the case on

3 March 2004 (see, among other authorities, *Velimirović v. Montenegro*, no. 20979/07, § 42, 2 October 2012). In this connection, it is noted that the enforcement court had already taken a number of steps before the ratification date.

49. Notwithstanding the Government's submissions to the contrary, the Court observes that the applicant was active throughout the enforcement proceedings. He proposed twice other methods of enforcement and although it is true that he indicated the immovable assets and bank account of another legal entity, he appears genuinely to have believed that that entity was the legal successor to the original debtor because its name was almost identical to that of the debtor.

50. As to the Government's contention that the applicant had not acted in accordance with the court order to pay the costs of the proceedings in advance and respond to the allegation and submissions of the third party, which had resulted in the proceedings being suspended on 11 January 2005, the Court notes that the proceedings were suspended against the NIS-Vojvodina and not against the original debtor. The enforcement proceedings were therefore not suspended and, indeed, they are still pending.

51. Moreover, although the debt was restructured in the context of insolvency proceedings which were opened in 2011, the debtor has not complied with that plan it does not appear that the domestic authorities have taken any measures in this regard to date (see paragraphs 24 -26 above).

52. Finally, regardless of whether a debtor is private or State-controlled, the State should, as the possessor of public authority, act diligently in order to assist the applicant with the execution of the judgment in question (see *Fociac v. Romania*, no. 2577/02, § 70, 3 February 2005; and *Lăcătuş and Others v. Romania*, no. 12694/04, § 117, 13 November 2012), which, in this case, the State failed to do.

53. Accordingly, there has been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

54. 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

55. The applicant claimed 97,113.94 euros (EUR) in respect of pecuniary and non-pecuniary damage.

56. The Government contested that claim.

57. As regards the applicant's claim for pecuniary damage, the Court cannot find in the circumstances of the present case – which are characterised by uncertainty regarding the debtor's assets – any causal link between the violation found and the pecuniary damage alleged. The claim must therefore be dismissed. On the other hand, it awards the applicant EUR 4,700 in respect of non-pecuniary damage.

B. Costs and expenses

58. The applicant did not make a specific claim in this respect. Accordingly, the Court makes no award under this head.

C. Default interest

59. 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;

3. *Holds*
   (a) that the respondent State is to pay the applicant within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 4,700 (four thousand seven hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (b) 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 13 September 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Luis López Guerra
Deputy Registrar	President