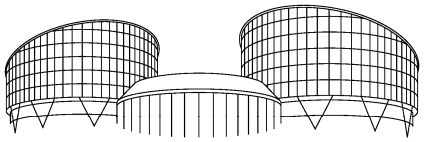

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF ŠMIGIĆ v. SERBIA

(Application no. 41501/08)

JUDGMENT

STRASBOURG

11 October 2016

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

In the case of Šmigić v. Serbia,

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

Pere Pastor Vilanova, *President,*
Branko Lubarda,
Georgios A. Serghides, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 20 September 2016,

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

PROCEDURE

1. The case originated in an application (no. 41501/08) 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 a Serbian national, Mr Radivoje Šmigić ("the applicant"), on 30 July 2008.

2. The applicant was represented by Mr B. Đukanović, a lawyer practising in Belgrade. The Serbian Government ("the Government") were initially represented by their former Agent, Ms V. Rodić, and subsequently by their current Agent, Ms N. Plavšić.

3. On 1 September 2015 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 applicant was born in 1955 and lives in Beograd.

6. On 19 September 1996 certain A.N. (hereinafter "the debtor") was sentenced for fraud in criminal proceedings and ordered to pay 18, 425 Serbian dinars (RSD) to PP Reprek, a company based in Serbia and owned by the applicant.

7. On 17 December 1998 the said company filed with the District Court in Belgrade a request for enforcement based on the judgment in said criminal proceedings. Following an order to specify a motion for enforcement, the decision on enforcement was adopted on 29 April 1999.

8. On 15 October 1999 the enforcement court ordered the Ministry of Interior to provide the exact address of the debtor.

9. On 7 February 2000 the bailiff noted that the debtor had moved away to an unknown address.

10. On 27 October 2000 the case was adjourned.

11. On 7 May 2005 the applicant requested the continuation of the enforcement proceedings on behalf of his company.

12. On 4 October 2005 the enforcement court again ordered the Ministry of Interior to provide the exact address of the debtor.

13. By letter of 21 October 2005, the Ministry informed the enforcement court of the debtor's address.

14. On 18 November 2005 the bailiff went to the address provided by the said Ministry and established that the debtor was no longer living there and that he had moved away to an unknown address.

15. On 20 January 2006 the enforcement Court requested the Ministry of Interior to provide the exact address of the debtor and his latest known place of residence.

16. On 24 October 2006 the enforcement court informed the applicant that the Ministry did not establish the exact address of the debtor nor did it initiate misdemeanour proceedings against the debtor in accordance with Article 25 of the Domicile and Temporary Residence Act (see paragraph 22).

17. On 31 May 2007 the insolvency proceedings against the applicant's company "Reprek" were completed. The said company ceased to exist and all its assets were transferred to the applicant.

18. The enforcement court adjourned the case on 31 March 2010.

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)

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

20. 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.

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

21. 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.

C. Domicile and Temporary Residence Act (Zakon o prebivalištu i boravištu građana; published in the Official Gazette of the Socialist Republic of Serbia - OG SRS - nos. 42/77, 24/85 and 6/89, as well as OG RS nos. 25/89, 53/93, 67/93, 48/94 and 101/05)

22. Article 25 provided that failure to inform the police of the change in domicile or residence is punishable by a fine up to RSD 30,000 in misdemeanor proceedings.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 AND ARTICLE 13 OF THE CONVENTION

23. The applicant complained under Article 6 § 1 and Article 13 of the Convention about the non-enforcement of the judgment of 19 September 1996. 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 ... hearing within a reasonable time by [a] ... tribunal ..."

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

24. The Government submitted that the enforcement proceedings had been adjourned in 2000 and that in 2006 the applicant was informed of the inability to locate the debtor. They maintained that since the applicant had

lodged his application on 30 July 2008 his application should be rejected as lodged out of time.

25. The Court observes that the judgment at issue became final in 1996 and remains unenforced to the present day. It is further noted that while the enforcement proceedings were indeed adjourned in 2000, they continued in 2005 upon the applicant's motion to that effect when the enforcement court attempted to locate the debtor. Finally, the Court notes that the enforcement proceeding against the debtor were never formally terminated. The Court therefore rejects the Government's objection.

26. The Court also 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

27. The Court reiterates that an unreasonably long delay in the enforcement of a binding judgment may breach the Convention (see *Burdov v. Russia*, no. 59498/00, ECHR 2002-III). It further 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).

28. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see, mutatis mutandis, *EVT Company v. Serbia*, no. 3102/05, § 52-54, 21 June 2007, and *Bormotov v. Russia*, no. 24435/04, §§ 17 and 19, 31 July 2008).

29. 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 applicants "rights to a court".

30. There has accordingly been a breach of Article 6 § 1 of the Convention.

31. 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

32. 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

33. The applicant claimed 9,212 euros (EUR) in respect of pecuniary and EUR 5,000 in respect of non-pecuniary damage.

34. The Government considered the sums requested to be excessive

35. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 3,600 in respect of non-pecuniary damage.

B. Costs and expenses

36. The applicant did not claim costs and expenses; the Court therefore makes no award.

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;

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

4. *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, 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 settlement 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;

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

Done in English, and notified in writing on 11 October 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Pere Pastor Vilanova
President