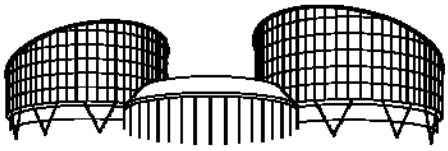

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF LOLIĆ v. SERBIA

(Application no. 44095/06)

JUDGMENT

STRASBOURG

22 October 2013

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 ofLolić v. Serbia,

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

Guido Raimondi, *President,*
Peer Lorenzen,
Dragoljub Popović,
András Sajó,
Nebojša Vučinić,
Paulo Pinto de Albuquerque,
Helen Keller, *judges*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 1 October 2013,

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

PROCEDURE

1. The case originated in an application (no. 44095/06) 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 aSerbian national, Mr Tomislav Lolić ("the applicant"), on 24 October 2006.

2. The Serbian Government ("the Government") were represented by their Agent, Mr S. Carić.

3. On 10 July 2009the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1955 and lives in Šabac.

5. In 1992 the applicant concluded a purchase contract with a socially-owned company called GDP Izgradnja-Šabac. The company was obliged to erect certain offices and hand their keys over to the applicant by November 1993.

6. On 10 February 2001 the applicant filed a civil claim with the Municipal Court in Šabac, seeking damages for the company's failure to fulfil its contractual obligation.

7. On 1 October 2002 the Municipal Court ruled in favour of the applicant. In particular, the court ordered the company to pay the applicant:

(a) the compensation for existing damages in the amount of 757,500 Serbian dinars (RSD)[1];

(b) the compensation for any future damages in the amount of RSD 7,500 (approximately EUR 113) monthly in respect of any additional delay in the construction of the offices in question;

(c) RSD 81,775 (approximately EUR 1,200) for the legal costs.

8. On 26 May 2003 the District Court in Šabac reduced the amount of damages awarded by the Municipal Court for RSD 378,000 and ordered the company pay the applicantthe compensation for existing damages in the amount of RSD 379,500[2]. The court upheld the remainder of the judgment.The appeal judgment became final on the same date.

9. On 27 July 2003 the applicant lodged an extraordinary remedy – an appeal on points of law–with the Supreme Court.

10. On 4 July 2003 the Commercial Court in Valjevo opened insolvency proceedings in respect of the company in question.

11. In August 2003 the applicant duly submitted his claim. He requested the Commercial Court to: (i) recognise him as the owner of the business premises in question, which were yet to be finished; (ii) exclude these premises, as well as the RSD 553,298.10 needed for their completion, from the total mass of the company's insolvency assets; and (iii) confirm his compensation claims as recognised in the Municipal Court's judgment of 1 October 2002.

12. On 28 January 2004 the Commercial Court accepted the applicant's requests under (i) and (ii) above. The Court accepted the applicant's compensation claimin the amount of RSD379,500 as recognised in theDistrict Court's judgment of 26 March 2006.The part of the applicant's claim in the amount of RSD 378,000 was contested and the applicant was informed that he could bring a separate civil lawsuitconcerning the contested part.

13. The applicant did not institute separate civil proceedings.

14. On an unspecified date the Supreme Court dismissed the applicant's appeal on points of law due to the opening of insolvency proceedings against the debtor.

15. On 14 April 2006 the applicant came into possession of the business premises.

16. Following several unsuccessful auctions the debtor was finally sold on 12 January 2007 to *Jovanović company* from Šabac.

17. On 18 June 2007 the Commercial Court in Valjevo adopted the decision on final distribution of the company's insolvency assets,

[1]Approximately12,437 euros (EUR)
[2]ApproximatelyEUR 5,740

classifying the applicant into the fourth sequence of payment.Pursuant to this decision the applicant received only RSD 150,683.63.

18. On 31 December 2007 the Commercial Court concluded the insolvency proceedings against the debtor.

II. RELEVANT DOMESTIC LAW

19. The relevant domestic law is set out in the Court's judgments of *EVT Company v. Serbia* (no. 3102/05, §§ 26 and 27, 21 June 2007); *Marčić and Others v. Serbia* (no. 17556/05, § 29, 30 October 2007); R. *Kačapor and Others v. Serbia* (nos. 2269/06, 3041/06, 3042/06, 3043/06, 3045/06 and 3046/06, 15 January 2008, §§ 57-82); *Vlahović v. Serbia* (no. 42619/04, §§ 37-47, 16 December 2008); *Crnišanin and Others v. Serbia* (nos. 35835/05, 43548/05, 43569/05 and 36986/06, 13 January 2009, §§ 100-104); *Adamović v. Serbia,* (no. 41703/06, §§ 17-22, 2 October 2012); and *Marinković v. Serbia* ((dec.) no. 5353/11, 29 January 2013,§§ 26-29 and §§ 31-44).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

20. The applicant complained about the respondent State's failure to fully enforce thefinal judgment rendered in his favour on 26 May 2003. He relied on Article 6 of the Convention and Article 1 of Protocol No. 1 which, in so far as relevant, 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."

A. Admissibility

1. Compatibility ratione temporis

21. The Government argued that the application is incompatible *ratione temporis* with the provision of the Convention because the final court judgment of which non-enforcement the applicant complained of as well as his status of the insolvency creditor had been determined in the course of 2003, before the Convention entered into force in respect of Serbia on 3 March 2004.

22. The applicant disagreed.

23. The Court notes that the present case concerns the non-enforcement of a final domestic judgment in the applicant's favour. The judgment remains unenforcedto the present day.The Court concludes, therefore, that the alleged violation constitutes a continuous situation and accordingly rejects the Government's objection.

2. Exhaustion of domestic remedies

24. The Government maintained that the applicant had not exhausted all effective domestic remedies. In particular, he had not lodged an application for the enforcement of the final court decision under consideration in this case. Furthermore he had not initiated a new set of civil proceedings pursuant to the instruction of the Belgrade Commercial Court.

25. The applicant disagreed.

26. The Court notes that the applicant had a judgment given in his favour which was final and enforceable and the execution of which was the responsibility of the authorities, including, if necessary, the taking of such measures as bankruptcy proceedings (see *Khachatryan v. Armenia*, no. 31761/04, § 60, 1 December 2009). In principle, when an applicant, such as the present one, obtains a final judgment against a State-controlled entity, he or she is only required to file a request for the enforcement of that judgment to the competent court or, in case of liquidation or insolvency proceedings against the debtor, to report his or her claims to the administration of the debtor (see *R. Kačapor and Others,* cited above). Given that the present applicant did that, the Government's objection must be rejected.

3. Conclusion

27. The Court considers that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and finds no other ground to declare it inadmissible. It must therefore be declared admissible.

B. Merits

28. The Court notes that upon the completion of the insolvency proceedings against the debtor the applicant obtained only a part of the amount specified in final court decision of 26 May 2003. The remainder of the judgment still remains unenforced.It further notes that a delay in the execution of a judgment may be justified in particular circumstances. However, the delay may not be such as to impair the essence of the right protected under Article 6 § 1 of the Convention (see *Burdov v. Russia,* no. 59498/00, § 35, ECHR 2002-III).

29. 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,* cited above, § 60; *Crnišanin and Others,*cited above, §§ 123-124 and §§ 133-134, *Rašković and Milunović v. Serbia*, nos. 1789/07 and 28058/07, § 74 and § 79, 31 May 2011; and *Adamović* cited above, § 41).

30. Having examined all the material submitted to it, theCourt 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.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. 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

32. In respect of pecuniary damage the applicant sought the payment of the outstanding judgment debt and, in addition, RSD 931,298.10 (approximately 8,160 euros (EUR)). The applicant further claimed RSD 1,000,000 (approximately EUR 8,760) in respect of non-pecuniary damage. The applicant also claimed RSD 100,000 (approximately EUR 8,760) for the legal costs incurred before the Court.

33. The Government considered the claims excessive and unjustified.

34. Having regard to the violations found in the present case and its own case-law (see *R. Kačapor and Others,* cited above, §§ 123-126, and *Crnišanin and Others*, cited above, § 139), the Court considers that the applicants' claims for pecuniary damage concerning the payment of the

outstanding judgment debt must be accepted.The Government shall therefore pay the applicant the sums awarded in the final domestic judgmentadopted on 26May 2003, less any amounts which may have already been paid in respect of the said judgment.As far as the applicant's additional pecuniary claim is concerned, the Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

35. 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 and equitable to award EUR 2,000 to the applicant. This sum is to cover any non-pecuniary damage, as well as costs and expenses.

B. Default interest

36. 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*
   (a) that the respondent State is to pay the applicant, from its own funds and within three monthsfrom the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the sums awarded in the final domestic judgment rendered in his favour, less any amounts which may have already been paid in respect of the said judgment;
   (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 amounts 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 22 October 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith Registrar	Guido Raimondi President