



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

SECOND SECTION

CASE OF MIJANOVIĆ v. MONTENEGRO

(Application no. 19580/06)

JUDGMENT

STRASBOURG

17 September 2013

FINAL

17/12/2013

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

In the case of Mijanović v. Montenegro,

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 27 August 2013,

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

PROCEDURE

1. The case originated in an application (no. 19580/06) against Montenegro lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Montenegrin national, Mr Borislav Mijanović (“the applicant”), on 4 May 2006.

2. The applicant was represented by Mr N. Pavličić, a lawyer practising in Podgorica. The Montenegrin Government (“the Government”) were represented by their Agent, Mr Z. Pažin.

3. The applicant complained about the non-enforcement of the judgment rendered in his favour and a violation of his property rights thereby.

4. On 18 January 2010 the President of the Fourth Section, to which the case had been assigned at the time, decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

5. The application was transferred to the Second Section of the Court, following the re-composition of the Court’s sections on 1 November 2012.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

6. The applicant was a Montenegrin national, born in 1930, who lived in Podgorica.

7. The facts of the case, as submitted by the parties, may be summarised as follows.

A. Civil proceedings

8. On an unspecified date the applicant filed a compensation claim against “Radoje Dakić”, a joint-stock company mostly consisting of State-owned capital (hereinafter “the debtor”; see paragraphs 27-28 below).

9. On 24 September 2003, following a remittal, the Court of First Instance (*Osnovni sud*) in Podgorica ruled in favour of the applicant, ordering the debtor to pay 159,879.33 euros (“EUR”) plus statutory interest, as well as EUR 6,216.26 for legal costs.

10. On 6 July 2004 the High Court (*Viši sud*) in Podgorica upheld this judgment, and on 27 December 2005 the Supreme Court (*Vrhovni sud*) dismissed the debtor’s appeal on points of law (*revizija*).

B. Enforcement proceedings

11. On 24 September 2004, upon the applicant’s request to that effect, the Court of First Instance issued an enforcement order (*rješenje o izvršenju*) by means of a bank account transfer.

12. On 31 October 2005 the Central Bank (*Centralna banka Crne Gore*) informed the Court of First Instance that the judgment had not been enforced due to a lack of funds in the debtor’s bank account.

13. On an unspecified date in February 2006, and in response to a prior request, the applicant was informed by the Minister of Justice that the judgment could not be enforced due to the lack of funds in the debtor’s account. At the same time, the applicant was invited to provide the courts with any other accounts used by the debtor.

14. On 9 March 2006 the applicant provided details of several such accounts.

15. On 16 March 2006 the Court of First Instance issued a decision (*zaključak*) ordering the Central Bank to block all the debtor’s bank accounts and provide data on the funds available therein (*dostave podatke o stanju sredstava na tim računima*). The Central Bank was to order the payment to the applicant, primarily from the designated bank account. If there were no sufficient funds in the said account, the Central Bank was to order the payment from another bank account in which there were funds. At the same time the court forwarded to the Central Bank the information obtained from the applicant on the debtor’s other bank accounts.

16. On 24 March 2006 the Central Bank informed the court that the debt at issue had been attached to one of the debtor’s bank accounts pursuant to section 194 of the Enforcement Act 2004 (see paragraph 35 below).

17. On 3 April 2006 and 13 April 2006 the applicant complained about the delay to the Court of First Instance. In particular, he submitted that the Central Bank had attached the debt to the account in which there were no funds available thus making the enforcement impossible.

18. On 26 April 2006 the Court of First Instance reaffirmed its decision of 16 March 2006, insisting on full compliance with the relevant legal provisions which defined the role of the Central Bank in enforcement proceedings (see paragraph 35 below).

19. On 28 April 2006 the Central Bank informed the court that the enforcement at issue had been attached to the debtor's account specified in the letter of 24 March 2006, as well as that the debtor's other accounts had been blocked.

20. It would appear that on 31 August 2006 the Court of First Instance requested once again the enforcement of the judgment at issue.

21. On 13 September 2006 the Central Bank informed the court that the enforcement was awaiting the inflow of funds in the particular account of the debtor. According to the information provided by the Central Bank there were fifteen other claims against the debtor, which had priority over the applicant's claim.

22. On 27 March 2007 the applicant would appear to have requested a change of the means of enforcement.

23. On 29 March 2007 the Court of First Instance asked the applicant to specify his enforcement request within 8 days, in default of which it would be considered withdrawn. The applicant's representative received this request on 2 April 2007.

24. On 24 April 2007 the bailiff requested that the case-file be archived as the applicant's representative had failed to amend the enforcement request which was thus considered withdrawn. At the same time it was stated that there was no reason for any further action by the court at the time as the enforcement order issued in favour of the applicant was registered (*rješenje o izvršenju unijeto u program prinudne naplate*) and was awaiting the inflow of funds in the debtor's account.

25. On 4 May 2009 the applicant filed a new enforcement request, pursuant to section 30 of the Enforcement Act (see paragraph 34 below), proposing that the judgment at issue be enforced by sale of the debtor's immovable assets. On 15 July 2009 an enforcement order to that effect was issued. There is no evidence in the case file that the domestic bodies made any attempt whatsoever to enforce this order.

26. The enforcement proceedings are still ongoing.

C. Status of the debtor

27. The Government submitted that between 3 March 2004, which is when the Convention entered into force in respect of Montenegro, and the

end of 2005, 52.196% of the debtor's stocks were owned by the State, either directly or through some of its bodies (the Government, the Employment Agency, the Pension and Disability Insurance Fund, and the Development Fund).

28. As of 2006 onwards the State and the said bodies owned 50.579% of the debtor's stocks.

D. Other relevant facts

29. The applicant maintained that: (a) the Government's Privatisation Council (*Savjet za privatizaciju*) had sold several plots of the debtor's land to a private company X and the Municipality of Podgorica for EUR 7,618,000 and EUR 1,400,000, respectively; (b) the debtor had received a grant of EUR 1,200,000 from the Government, and (c) it had made a profit of approximately EUR 2,000,000 in two and a half years, which made a total of EUR 12,218,000. He also submitted that the debtor had avoided doing business through its official bank account specified in the enforcement order, having instead opened accounts in other banks.

30. Since 7 December 2005 the applicant complained about the non-enforcement to the President of the debtor's Board of Directors, the President and the Prime Minister of Montenegro, the President of the Supreme Court, the Ombudsman, and the Central Bank's General Director.

31. On 21 April 2010 the applicant passed away. On 21 October 2010 the Court of First Instance declared Mrs Marina Mijanović Markuš, one of the applicant's daughters, his sole heir in respect of the amount owed by the debtor as established by the final judgment issued on 24 September 2003.

II. RELEVANT DOMESTIC LAW

A. Enforcement Procedure Act 2004 (*Zakon o izvršnom postupku*; published in the Official Gazette of the Republic of Montenegro - OG RM - no. 23/04)

32. Section 4 § 1 provided that the enforcement court was obliged to proceed urgently.

33. Section 14 provided that the Civil Procedure Act would apply accordingly to the enforcement proceedings unless provided otherwise by this or another Act.

34. Section 30 provided, *inter alia*, that the court would order the enforcement in a manner proposed by the creditor. If the enforcement order could not be enforced thereby the creditor could propose another means of enforcement, on which proposal the court would rule by a decision.

35. Sections 190-198 set out details as regards enforcement by means of a bank account transfer. Section 194, in particular, provided that the court would forward an enforcement order to the Central Bank, which would immediately order other banks to block all the debtor's accounts and provide data on the funds available therein. Upon receipt of these data the Central Bank would order the payment primarily from the bank account specified in the enforcement order. If there were several bank accounts specified in the enforcement order the payment would be made in the same order as specified. If there were no sufficient funds in the account specified in the enforcement order the Central Bank would order the payment from other accounts in which the debtor had funds.

36. Sections 143-187 set out details relating to enforcement in respect of the debtor's immovable assets.

B. Enforcement Act 2011 (Zakon o izvršenju i obezbjeđenju; published in the Official Gazette of Montenegro - OGM - no. 36/11)

37. This Act entered into force on 25 September 2011 and thereby repealed the Enforcement Procedure Act 2004. Section 292 § 1, in particular, provides that all enforcements (*postupci izvršenja*) will be terminated in accordance with this Act.

38. Sections 6 § 1 and 14 of this Act correspond, in substance, to sections 4 § 1 and 14 of the Enforcement Procedure Act 2004.

39. Sections 154-201 set out details relating to enforcement in respect of the debtor's immovable assets.

C. Civil Procedure Act (Zakon o parničnom postupku; published in the OG RM nos. 22/04, 28/05 and 76/06 and in the OGM no. 73/10)

40. Section 106 provides, *inter alia*, that if a request (*podnesak*) is incomprehensible or incomplete the court shall ask that it be amended or rectified within a specified time-limit which cannot be longer than eight days. If the request is not amended/rectified within the specified time it shall be considered withdrawn.

D. Inheritance Act 2008 (Zakon o nasljeđivanju; published in the OGM no. 74/08)

41. Section 130 provides that the deceased's estate (*zaostavština*) shall be transferred *ex lege* to the legal heirs at the moment of death.

E. Property Act (Zakon o svojinsko-pravnim odnosima; published in the OGM no. 19/09)

42. Section 28 provides that property can be acquired *ex lege*, through a legal transaction, by means of inheritance, or on the basis of a decision issued by the State in accordance with the law.

43. Section 91 provides that the deceased's property will be transferred *ex lege* to the legal heirs at the moment of death.

F. Corporations Privatisation Act (Zakon o privatizaciji privrede; published in the OG RM no. 23/96, 6/99, 59/00, 42/04)

44. Section 2a provided, *inter alia*, that the Government of Montenegro would establish a Privatisation Council to manage, control and supervise the process of privatisation. The Privatisation Council was responsible to the Government and was financed from the State's budget. The privatisation was to be conducted in accordance with annual plans adopted by the Government upon proposals of the Privatisation Council.

45. These provisions entered into force on 3 March 1999.

G. The Government's Privatisation Plans

46. As of 2000 the Government adopted annual Privatisation Plans setting out details about the privatisation of various companies.

47. The Privatisation Plan 2003 (*Odluka o planu privatizacije za 2003. godinu*), which entered into force on 14 March 2003, explicitly provided, *inter alia*, that the privatisation of the debtor would be run by the Privatisation Council.

48. The Privatisation Plan 2004, which entered into force on 16 April 2004, provided that the Government would adopt privatisation plans and strategies and would issue relevant decisions in that regard. The Privatisation Council was, *inter alia*, to: (a) decide on the distribution of the income obtained by the privatisation; (b) coordinate the activities of the subjects involved; (c) establish various Commissions, one of which would also examine the effects of privatisation on the social status of workers and would propose adequate measures. In cases where a privatisation contract was annulled, further privatisation was to be conducted by the Pension and Disability Insurance Fund, the Development Fund and the Employment Agency in accordance with their stake (*vlasničko učešće*). In particular, this Plan reaffirmed that the privatisation of the debtor was one of the priorities and that a decision on the most effective privatisation method would be rendered by the Privatisation Council or the Government.

49. The Privatisation Plan 2005 (*Odluka o planu privatizacije za 2005. godinu*), which entered into force on 24 February 2005, envisaged the preparation of a concrete privatisation plan for the debtor.

H. Other relevant provisions

50. For other relevant domestic law see *Boucke v. Montenegro*, no. 26945/06, §§ 38-48, 21 February 2012.

THE LAW

I. THE APPLICANT'S DEATH

51. On 21 April 2010 the applicant died.

52. On 2 July 2010 the applicant's wife and two daughters informed the Court that they wished to maintain the proceedings lodged by their late husband/father.

53. The Government contested this request.

54. On 21 October 2010 the Court of First Instance in Podgorica declared the applicant's wife and his two daughters the applicant's legal heirs. In particular, Mrs Marina Mijanović Markuš, one of the two daughters, was declared the applicant's sole heir in respect of the amount owed by the debtor as established by the final court judgment issued on 24 September 2003.

55. Given the relevant domestic legislation (see paragraphs 41-43 above), as well as the fact that Mrs Mijanović Markuš has a "definite pecuniary interest" in the proceedings at issue (see, *mutatis mutandis*, *Ahmet Sadik v. Greece*, 15 November 1996, § 26, *Reports of Judgments and Decisions* 1996-V; see, also, *Marčić and Others v. Serbia*, no. 17556/05, §§ 35-39, 30 October 2007), the Court finds, without prejudice to the Government's other preliminary objections, that she has standing to proceed in her father's stead.

56. Mrs Mijanović Markuš shall, therefore, herself be referred to as "the applicant" hereinafter.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1 THERETO

57. The applicant's father complained, in substance, about the non-enforcement of the final judgment issued in his favour on 24 September 2003, and a violation of his property rights caused thereby. The applicant submitted that she wished to pursue these complaints.

58. The Court being the “master of the characterisation” to be given in law to the facts of any case before it (see *Akdeniz v. Turkey*, no. 25165/94, § 88, 31 May 2005), it considers that these complaints fall to be examined under Article 6 of the Convention and Article 1 of Protocol No. 1 of the Convention.

59. Article 6, in so far as relevant, reads as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ...”

60. Article 1 of Protocol No. 1 provides as follows:

“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 personae (as regards the State)*

61. In the Court’s view, although the Montenegrin Government have not raised an objection as to the Court’s competence *ratione personae* in this respect, this issue nevertheless calls for its consideration (see, *mutatis mutandis*, *Blečić v. Croatia* [GC], no. 59532/00, § 67, ECHR 2006-III, and *Bijelić v. Montenegro and Serbia*, no. 11890/05, § 71, 28 April 2009).

62. It transpires from the evidence submitted by the Government, and relating to the period as of 3 March 2004 onwards, that the majority stockholder of the debtor has been indeed the State, either directly or through one of its bodies. In the course of 2006 the State and its bodies sold less than 1.62% of their stocks in the debtor (see paragraphs 27-28 above), thus still remaining the majority stockholder.

63. The applicant and her late father, for their part, maintained that the debtor was at all times owned and managed by the respondent State as well as occasionally financed thereby (see paragraph 29 above). The Government did not dispute this or offer any evidence to the contrary.

64. The Court firstly notes that the Government did not dispute that the debtor was owned and managed by the respondent State, and did not raise an objection as to the Court’s competence *ratione personae* as regards the respondent State.

65. It is further noted that the decision to privatise the debtor was made by the Government. The privatisation itself was run by the Privatisation Council, a State-body liable to the Government, which, *inter alia*, also

disposed of the income obtained through the privatisation as it saw fit (see paragraphs 44 and 48 above; see also, *mutatis mutandis*, *Lisyanskiy v. Ukraine*, no. 17899/02, § 19, 4 April 2006).

66. The Court also recalls that even when a State has sold a large part of its share in a company it owned to a private person, this could not release the State from its obligation to honour a judgment debt which had arisen before the shares were sold (see *Solovyev v. Ukraine*, no. 4878/04, § 21 *in limine*, 14 December 2006).

67. In view of the above, and without prejudice to the other objections raised by the Government or to the merits of the case, the Court considers that the debtor, despite the fact that it was a separate legal entity, did not enjoy sufficient institutional and operational independence from the State to absolve the latter from responsibility under the Convention (see, *mutatis mutandis*, *R. Kačapor and Others v. Serbia*, nos. 2269/06, 3041/06, 3042/06, 3043/06, 3045/06 and 3046/06, §§ 96-99, 15 January 2008; see also *Mykhalenko and Others v. Ukraine*, nos. 35091/02, 35196/02, 35201/02, 35204/02, 35945/02, 35949/02, 35953/02, 36800/02, 38296/02 and 42814/02, § 44, ECHR 2004-XII).

68. Accordingly, the Court finds the applicant's complaints are compatible *ratione personae* with the provisions of the Convention.

2. Exhaustion of domestic remedies

69. The Government submitted that the applicant's father had not exhausted all effective domestic remedies available to him. In particular, he had failed to lodge a request for review and an action for fair redress, which were provided by the Right to a Trial within a Reasonable Time Act (see paragraph 50 above). Lastly, after using these remedies the applicant's father could have made use of a constitutional appeal.

70. The applicant contested these submissions. In particular, she maintained that the remedies referred to by the Government had not existed at the time when the application had been lodged with the Court and that therefore there was no obligation to make use of them later.

71. The Court recently held in *Vukelić v. Montenegro* (no. 58258/09, § 85, 4 June 2013 (not yet final)) that a request for review must, in principle and whenever available in accordance with the relevant legislation, be considered an effective domestic remedy within the meaning of Article 35 § 1 of the Convention in respect of applications introduced against Montenegro after the date when the *Vukelić* judgment becomes final.

72. As the application here at issue had been lodged with the Court on 4 May 2006, that is long before the *Vukelić* judgment was rendered, and in view of the Court's earlier findings in this regard, the Court considers that the applicant in the present case did not have to exhaust this particular avenue of redress (see *Boucke v. Montenegro*, no. 26945/06, § 74,

21 February 2012). The Government's objection in this regard must, therefore, be dismissed.

73. The Court has already held that an action for fair redress is not capable of expediting proceedings while they are still pending, and that a constitutional appeal cannot be considered an effective domestic remedy in respect of length of proceedings (see *Boucke v. Montenegro*, cited above, §§ 75-79). It sees no reason to depart from its findings in the present case. The Government's objection in this regard must, therefore, also be dismissed.

3. The conclusion

74. The Court notes that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Article 6 of the Convention

(a) The parties' submissions

75. The Government submitted that the enforcement proceedings at issue were complex and that, in any event, they did not require priority or any urgent action by the domestic courts. There were no significant periods of inactivity on the part of the domestic courts and the applicant's father had contributed to the length of the enforcement proceedings.

76. In particular, the domestic court had requested on several occasions that the Central Bank act urgently in the matter. The Central Bank, in response, had attached the enforcement of the judgment at issue to a specific debtor's account, which then awaited an inflow of funds to the account.

77. Furthermore, a delay of two years and one month was attributable to the applicant's father given that he had not complied in a timely manner with the court's instruction to amend the enforcement request (see paragraphs 22-24 above). The domestic courts could not change the means of the enforcement of their own motion but were bound by a creditor's proposal in that regard.

78. Lastly, the Government submitted that there were a number of other judgments issued against the same debtor, in favour of former employees of other debtors on account of their salary arrears. Several auctions were scheduled aimed at selling the debtor's immovable assets and honouring the obligations arising from these judgments. However, all the auctions failed due to there being no investors who would buy the said assets, this being an

additional reason justifying the delay in the enforcement proceedings here at issue.

79. In view of the above, the Government concluded that there was no violation of Article 6 § 1 of the Convention.

80. The applicant contested these submissions and reaffirmed her complaint. She submitted, in particular, that the debtor had had a considerable income in the past period (see paragraph 29 above) and that it was unacceptable that the debtor could dispose of such an amount in a situation when its bank account was blocked or that the State, owning the majority of the debtor's stocks, had not known or could not have known the origin of these funds or the purpose for which they were used. She maintained that the Government should have rather submitted evidence of the transactions from and to the debtor's bank account which would clarify who had prevented the enforcement of the judgment here at issue, and how and why.

(b) The Court's assessment

81. The Court recalls that Article 6 § 1 of the Convention, *inter alia*, 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). While a delay in the execution of a judgment may be justified in particular circumstances, it may not, however, 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).

82. The State has an obligation to organise a system of enforcement of judgments that is effective both in law and in practice (see *Fuklev v. Ukraine*, no. 71186/01, § 84, 7 June 2005). Irrespective of whether a debtor is a private or a State-controlled actor, it is up to the State to take all necessary steps to enforce a final court judgment, as well as to, in so doing, ensure the effective participation of its entire apparatus (see, *mutatis mutandis*, *Pini and Others v. Romania*, nos. 78028/01 and 78030/01, §§ 174-189, ECHR 2004-V (extracts)).

83. Turning to the present case, the Court notes that, contrary to the Government's submission, the enforcement proceedings by their very nature need to be dealt with expeditiously (see paragraphs 32 and 38; see also *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 23, ECHR 2000-IV). While it can be accepted that some enforcement proceedings may be more complex than others, the Court does not consider the present case to be of such complexity as to justify the length thereof.

84. It is further observed that even though the applicant's father indeed failed to amend in a timely manner his enforcement request of 27 March 2007, his previous enforcement order remained registered and awaited the inflow of funds to the debtor's account (see paragraph 24 above). In any event, even had he done so earlier it is unclear how it would have expedited the enforcement at issue given that several other auctions aimed at selling the debtor's immovable assets had anyhow failed, as submitted by the Government (see paragraph 78 above). Therefore, the Court considers that the period between 24 April 2007 and 4 May 2009 cannot be attributed to the applicant either, in particular given that the earlier enforcement order remained continuously in force and attached to the debtor's bank account.

85. The Court also notes that the Central Bank never attempted to attach the debt in question to any of the debtor's other bank accounts in spite of the efforts of the applicant's father to that end (see paragraphs 13-14 and 17 above). In addition, as of 24 April 2007 onwards the domestic courts only issued another enforcement order (see paragraph 25 above), which they apparently never attempted to enforce and which remains unenforced to date.

86. Lastly, given the finding of State liability for the debt owed to the applicant in the present case, it is noted that the State cannot cite either the lack of its own funds or the indigence of the debtor as an excuse for the non-enforcement in question (see, *mutatis mutandis*, *R. Kačapor and Others v. Serbia*, cited above, § 114).

87. In view of the above, the Court finds that the Montenegrin authorities have failed to take the necessary measures in order to enforce the judgment in question. There has, accordingly, been a violation of Article 6 § 1 of the Convention.

2. Article 1 of Protocol No. 1 to the Convention

88. The applicant's father also complained that by the non-enforcement of the judgment at issue his property rights were violated. The applicant submitted that she wished to pursue this complaint.

89. The Government contested this claim.

90. The Court reiterates that the failure of the State to enforce the final judgment rendered in favour of the applicant's father and subsequently inherited by the applicant constitutes an interference with her right to the peaceful enjoyment of possessions, as provided in the first sentence of the first paragraph of Article 1 of Protocol No. 1 (see, among many other authorities, *Burdov v. Russia*, no. 59498/00, § 40, ECHR 2002-III).

91. For the reasons set out above in respect of Article 6, the Court considers that the said interference was not justified in the present case. There has, accordingly, been a separate violation of Article 1 of Protocol No. 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

92. 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

93. The applicant sought the payment of the judgment debt.

94. The Government contested the applicant's claim.

95. The Court reiterates that the most appropriate form of redress in respect of a violation of Article 6 is to ensure that applicants as far as possible are put in the position in which they would have been had the requirements of Article 6 not been disregarded. The Court finds that in the present case this principle applies as well, having regard to the violation found. It therefore considers that the Government should pay the applicant, in respect of pecuniary damage, the award made by the domestic courts including the statutory interest and the legal costs referred to therein (see, *mutatis mutandis*, *Pejaković and Others v. Bosnia and Herzegovina*, nos. 337/04, 36022/04 and 45219/04, §§ 31-32, 18 December 2007).

96. As the applicant made no claim in respect of non-pecuniary damage, no award is made in that regard.

B. Costs and expenses

97. Since the applicant made no claim in this respect the Court considers that there is no call to award her any sum on that account.

C. Default interest

98. The Court considers it appropriate that the default interest 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 has been a violation of Article 1 of Protocol No. 1 to the Convention;

4. *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, the award made by the domestic courts, including the statutory interest and the legal costs referred to therein, in respect of 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.

Done in English, and notified in writing on 17 September 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Guido Raimondi
President