



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

THIRD SECTION

CASE OF JOVIČIĆ AND OTHERS v. SERBIA

*(Applications nos. 37270/11, 37278/11, 47705/11, 47712/11, 47725/11,
56203/11, 56238/11 and 75689/11)*

JUDGMENT

STRASBOURG

13 January 2015

FINAL

13/04/2015

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

In the case of Jovičić and Others v. Serbia,

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

Josep Casadevall, *President*,

Luis López Guerra,

Ján Šikuta,

Dragoljub Popović,

Kristina Pardalos,

Valeriu Grițco,

Iulia Antoanella Motoc, *judges*,

and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 2 December 2014,

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

PROCEDURE

1. The case originated in eight separate applications (nos. 37270/11, 37278/11, 47705/11, 47712/11, 47725/11, 56203/11, 56238/11 and 75689/11) 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”). The applicants are all Serbian nationals, and their further personal details are set out in the appendix to this judgment.

2. The applicants were all represented before the Court by Ms R. Garibović, a lawyer practicing in Novi Pazar.

3. The Serbian Government (“the Government”) were initially represented by their former Agent, Mr S. Carić, and subsequently by their current Agent, Ms Vanja Rodić.

4. By a decision of 15 October 2013, the Court declared the applications admissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Civil proceedings brought by the applicants

5. All the applicants were employed by *Raketa-Putnički Saobraćaj AD*, a company based in Užice (hereinafter – “the debtor”).

6. Since the debtor had failed to fulfil its obligations toward its employees, the applicants brought numerous separate civil claims, seeking payment of salary arrears and various social security contributions.

7. The applicants obtained final court decisions ordering the debtor to pay them certain sums. The essential information as to the domestic proceedings in respect of each application is indicated in the appended table.

B. Insolvency proceedings

8. On 12 July 2010 the Užice Commercial Court opened insolvency proceedings in respect of the debtor. As a result, all of the ongoing enforcement proceedings against the debtor were stayed.

9. That decision was posted on the Užice Commercial Court's notice board on the same date. It was also published in the Official Gazette of the Republic of Serbia on 4 August 2010.

10. The applicants duly reported their respective claims based on the above-mentioned court decisions to the insolvency administration.

11. The court examined the reported claims at hearings held on 30 September 2010, 30 November 2010, 31 January 2011, 16 March 2011, 28 April 2011 and 8 June 2011.

12. On 8 June 2011 the court partially accepted the applicants' claims.

13. On 17 April 2012 some of the debtor's property was sold. The remaining assets were advertised for sale in the newspapers and a public auction was scheduled for 29 June 2012. It is not known whether any assets were sold at that auction.

14. The insolvency proceedings in respect of the debtor are still ongoing.

C. The debtor's status

15. On 30 December 2002 the debtor was privatised.

16. On 17 July 2007 the privatisation was annulled because the buyer in question had failed to fulfil his contractual obligations.

17. Following the annulment of the debtor's privatisation the State owned 58.18% of shares in the debtor.

18. On 11 December 2008 the State sold its shares to a private company.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Insolvency Act (*Zakon o stečaju*, published in Official Gazette nos. 104/2009, 99/2011 and 71/2012)

19. The Act regulates the institution and conduct of insolvency proceedings against legal persons. Article 2 of the Act provides that the aim

of insolvency is to ensure the most favourable collective settlement for creditors.

20. Article 8 of the Act provides that all insolvency proceedings must be conducted urgently.

21. In accordance with Articles 19 § 1 and 22 § 1, in insolvency proceedings against State-owned companies the role of an insolvency administrator will be performed by the Privatisation Agency.

22. Article 71 §§ 2 and 3 provides that an announcement on the opening of insolvency proceedings will be drafted by the insolvency judge immediately after the rendering of the decision to institute insolvency proceedings. The announcement must be posted on the court's notice board and published in one prominent daily newspaper, and in the Official Gazette of the Republic of Serbia.

23. Article 73 § 1 stipulates that the legal consequences of the opening of insolvency proceedings will take effect on the date on which the announcement of the institution of the insolvency proceedings is posted on the court's notice board.

24. Article 93 §§ 1 and 2 provides that once insolvency proceedings have been instituted, the debtor cannot simultaneously be subjected to separate enforcement proceedings. Any ongoing enforcement proceedings are thus stayed by virtue of the law, and new enforcement proceedings cannot be instituted so long as the insolvency proceedings are pending.

B. Other relevant domestic law and practice

25. The relevant domestic law concerning the status of socially-owned companies and enforcement proceedings are outlined in the case of *R. Kačapor and Others v. Serbia*, nos. 2269/06 *et al.*, §§ 57-64 and §§ 71-76, 15 January 2008. Furthermore, the case-law of the Constitutional Court in respect of socially-owned companies, together with the relevant provisions concerning constitutional appeals and the privatisation of socially-owned companies, are outlined in the cases of *Marinković v. Serbia* (dec.), no. 5353/11, §§ 26-29 and §§ 31-44, 29 January 2013; *Marinković v. Serbia*, no. 5353/11, §§ 29-32, 22 October 2013; and *Ferizović v. Serbia* (dec.), no. 65713/11, §§ 12-17, 26 November 2013.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

26. In their additional observations the Government submitted that in the case of the fifth applicant, the enforcement order of 4 January 2007

concerned a court decision of 22 September 2006 (domestic case no. P-1. 659/06), which in fact had been rendered in favour of a third person. They also submitted a copy of the impugned court decision. They argued that the domestic court had allowed the fifth applicant's application for the enforcement of that decision by mistake. The Government asked the Court not to take that court decision into consideration.

27. The applicant's representative made no comments in that connection.

28. The Court reiterates that Article 35 § 4 of the Convention *in fine* enables it to dismiss an application it considers inadmissible "at any stage of the proceedings". Thus, even at the merits stage the Court may reconsider a decision to declare an application admissible if it concludes that it should be declared inadmissible for one of the reasons given in the first three paragraphs of Article 35 of the Convention (see, for example, *Kovačić and Others v. Slovenia* [GC], nos. 44574/98, 45133/98 and 48316/99, § 262, 3 October 2008; *Družstevní Záložna Pria and Others v. the Czech Republic*, no. 72034/01, § 101, 31 July 2008; and *Jenisová v. Slovakia*, no. 58764/00, § 51, 3 November 2009).

29. The Court observes that the court decision of 22 September 2006 (domestic case no. P-1. 659/06) indeed refers to a third person and not to the fifth applicant. It follows that the fifth applicant's complaint about the non-enforcement of that court decision is incompatible *ratione personae* with the provisions of the Convention and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLES 6 AND 13 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

30. The applicants complained of the respondent State's failure to enforce final court decisions rendered in their favour against the debtor and of the lack of an effective remedy in that connection. They relied on Articles 6 and 13 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.”

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. The parties’ submissions

31. The Government argued that the State could not be held directly responsible for the debts of the debtor company, which was privately owned. Only two court decisions under consideration in this case – the court decision of 17 April 2008 in favour of the third applicant and the court decision of 11 January 2008 in favour of the fifth applicant – had been rendered during the period when the debtor was under State control. They further argued that the fact that the State had been a major shareholder for a certain period was not sufficient to establish its liability for the debts of the company at issue.

32. The applicants’ representative disagreed and reiterated their original complaints.

B. The Court’s assessment

1. General principles

33. The Court reiterates that the execution of a decision 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). While a delay in the execution of a judgment may be justified in particular circumstances, the delay may not be such as to impair the essence of the right protected under Article 6 § 1 (see *Burdov v. Russia*, no. 59498/00, § 35, ECHR 2002-III, § 35, and *Teteriny v. Russia*, no. 11931/03, § 41, 30 June 2005).

34. In addition, in the context of property-related matters, if an applicant is unable to obtain the execution of a judgment in his or her favour in due time, this constitutes an interference with the right to the peaceful enjoyment of possessions, as set out in the first sentence of the first paragraph of Article 1 of Protocol No. 1 to the Convention. Irrespective of whether a debtor is a private or a State-controlled entity, it is up to 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*, *Pini and Others v. Romania*, nos. 78028/01 and 78030/01,

§§ 174-189, ECHR 2004-V; *Hornsby*, cited above, § 41; and *R. Kačapor and Others v. Serbia*, cited above, § 108). In the context of socially-owned companies, a period of non-execution should not be limited to the enforcement stage only, but should also include the subsequent insolvency proceedings (see, *inter alia*, *R. Kačapor and Others*, cited above, § 115).

35. In the event of the execution of a final court decision rendered against a private entity, the State is not, as a general rule, directly liable for the debts of private entities. Its obligations under Article 6 of the Convention and Article 1 of Protocol No. 1 are limited to providing the necessary assistance to the creditor in the enforcement of the respective court awards, for example, through enforcement proceedings or bankruptcy procedures (see, *mutatis mutandis*, *Kotov v. Russia* [GC], no. 54522/00, § 90, 3 April 2012). When the authorities are obliged to act in order to enforce a final court decision and they fail to do so, their inactivity may, in certain circumstances, engage the State's responsibility under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 (see *Scollo v. Italy*, judgment of 28 September 1995, Series A no. 315-C, § 44, and *Fuklev v. Ukraine*, no. 71186/01, § 84, 7 June 2005). The Court's task in such cases is to examine whether the measures applied by the authorities were adequate and sufficient and whether they acted diligently in order to assist a creditor in the execution of a judgment (see *Fociac v. Romania*, no. 2577/02, § 70, 3 February 2005).

36. When it comes to the execution of final court decisions rendered against the State or entities that do not enjoy "sufficient institutional and operational independence from the State", it is not open to the State to cite either the lack of its own funds or the indigence of the debtor as an excuse for the non-enforcement of those decisions (see, *R. Kačapor and Others*, cited above, § 114). Furthermore, "the fact that the State sold a large part of its share in the company it owned to a private person could not release the State from its obligation to honour a judgment debt which had arisen before the shares were sold. If the State transfers such an obligation to a new owner of the shares ... the State must ensure that the new owner complies with the requirements, inherent in Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, that a final, binding judicial decision does not remain inoperative to the detriment of a party" (see *Solovyev v. Ukraine*, no. 4878/04, § 21, 14 December 2006). In other words, the State is directly liable for the debts of State-controlled companies even after their privatisation, on condition that the court decision at issue became final when the company operated as a State-controlled entity (see *Marinković*, cited above, § 39). The State is directly liable for the debts of State-controlled companies, even if the company was operating as a private entity when the non-enforced court decision became final if the privatisation at issue had subsequently been annulled (*ibid*).

2. *Application of the general principles to the present case*

(a) Domestic court decisions which became final before 11 December 2008

37. Turning to the instant case, in view of the Court's case-law cited above, the Court finds that the respondent State is directly liable for the debtor's debt arising out of the court decisions rendered in the applicants' favour which became final before the date of the debtor's final privatisation on 11 December 2008 (see the annexed table).

38. 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, §§ 115-16 and § 120; *Marčić and Others v. Serbia*, no. 17556/05, § 60, 30 October 2007; *Crnišanić and Others v. Serbia*, nos. 35835/05 *et al.*, §§ 123-24 and §§ 133-34, 13 January 2009; *Rašković and Milunović v. Serbia*, nos. 1789/07 and 28058/07, § 74 and § 79, 31 May 2011; and *Adamović v. Serbia*, no. 41703/06, § 41, 2 October 2012).

39. Having examined all the material submitted to it, the Court 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.

40. The Court does not find it necessary in the circumstances of this case 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, and *Solovyev*, cited above, § 25).

(b) Domestic decisions which became final after 11 December 2008

41. The Court's role is limited to ascertaining whether the measures applied by the authorities were adequate and whether they acted diligently in order to assist the applicants in the execution of the court decisions rendered in their favour after 11 December 2008 (see the appended table).

42. The Court observes that the insolvency proceedings against the debtor were opened approximately one year after the impugned court decisions had become final. In the course of the insolvency proceedings the applicants' claims based on those court decisions were recognised on 8 June 2011. On 17 April 2012 some of the debtor's property was sold. The remaining assets were advertised for sale and an auction was scheduled for 29 June 2012. The Court has not been informed whether any assets were sold at that auction.

43. The Court further observes that the State cannot be held liable for a situation in which the debtor has no means of paying his debt or for the impossibility of selling the debtor's property at public auctions (see *Omerović v. Croatia*, no. 36071/03, § 35, 1 June 2006).

44. Having examined all the material submitted to it, the Court considers that the applicants have not put forward any fact or argument capable of persuading it to conclude that the State authorities failed to do what could reasonably have been expected of them in order to enforce the impugned court decisions.

45. There has, accordingly, been no violation of Articles 6 and 13 of the Convention or of Article 1 of Protocol No. 1 to the Convention with regard to the domestic court decisions which became final after 11 December 2008.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. 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

47. The applicants requested that the State be ordered to pay, from its own funds, the sums awarded by the final court decisions rendered in their favour, plus 5,000 euros (EUR) in respect of non-pecuniary damage to each of them. The applicants also claimed EUR 1,400 for the legal costs incurred before the Court.

48. The Government considered the claims excessive and unjustified.

49. Having regard to the violations found in the present case and its own case-law (*R. Kačapor and Others*, cited above, §§ 123-26, and *Crnišanić and Others*, cited above, § 139), the Court finds that the Government should pay the applicants the sums awarded in the court decisions rendered in their favour, which became final before 11 December 2008, less any amounts which may have already been paid in this regard.

50. As regards non-pecuniary damage, the Court considers that the applicants sustained some non-pecuniary loss arising from the breaches of the Convention found in this case. The particular amount claimed, however, is excessive. The Court awards EUR 2,000 to each applicant. This sum is to cover non-pecuniary damage, costs and expenses.

B. Default interest

51. 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* inadmissible the fifth applicant's complaint about the non-enforcement of the court decision of 22 September 2006;
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 with regard to the court decisions which became final before 11 December 2008;
3. *Holds* that there is no need to examine the complaint under Article 13 of the Convention with regard to those decisions;
4. *Holds* that there has been no violation of Articles 6 and 13 of the Convention or of Article 1 of Protocol No. 1 to the Convention with regard to the court decisions which became final after 11 December 2008;
5. *Holds*
 - (a) that the respondent State is to pay the applicants, from its own funds and within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the sums awarded in the court decisions rendered in their favour, which became final before 11 December 2008, less any amounts which may have already been paid in this regard;
 - (b) that the respondent State is to pay the applicants, within the same period, EUR 2,000 (two thousand euros) each in respect of non-pecuniary damage, costs and expenses, plus any tax that may be chargeable to the applicants, 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;
6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 13 January 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Josep Casadevall
President

APPENDIX

No.	Application no.	Lodged on	Applicant's name, date of birth and place of residence	Final domestic decision (issuing authority/case no., adopted on ...)	Enforcement order (enforcement authority, case no., date of order)
1.	37270/11	27/04/2011	Milorad JOVIČIĆ 16/06/1954 Požega	1. <u>Municipal Court in Požega</u> P1. 380/06 of 16 June 2006 2. <u>Municipal Court in Požega</u> P1. 733/06 of 22 September 2006	1. <u>Municipal Court in Požega</u> I. 501/06 of 17/08/2006 2. <u>Municipal Court in Požega</u> I. 651/06 of 17/10/2006
2.	37278/11	27/04/2011	Milijan ĐORĐEVIĆ 18/09/1957 Požega	1. <u>Municipal Court in Požega</u> P1. 430/06 of 16 June 2006 2. <u>Municipal Court in Požega</u> P1. 727/06 of 22 September 2006	1. <u>Municipal Court in Požega</u> I. 425/06 of 16/08/2006 2. <u>Municipal Court in Požega</u> I. 669/06 of 17/10/2006
3.	47705/11	10/05/2011	Zoran MIJAILOVIĆ 13/08/1956 Požega	1. <u>Municipal Court in Požega</u> P1. 508/06 of 14 June 2006 2. <u>Municipal Court in Požega</u> P1. 679/06 of 22 September 2006 3. <u>Municipal Court in Užice</u> P1. 119/08 of 17 April 2008 4. <u>Municipal Court in Požega</u> P1. 125/2009 of 12 March 2009	1. <u>Municipal Court in Požega</u> I. 441/06 of 16/08/2006 2. <u>Municipal Court in Požega</u> I. 688/06 of 17/10/2006 3 and 4. Enforcement requested in the insolvency proceedings (<i>potraživanje prijavljeno u stečajnom postupku</i>) <u>Commercial Court in Užice</u> (I St. 55/10)
4.	47712/11	10/05/2011	Željko RNJAKOVIĆ 13/04/1971 Požega	1. <u>Municipal Court in Požega</u> P1. 497/06 of 26 June 2006 2. <u>Municipal Court in Požega</u> P1. 710/06 of 21 September 2006	1. <u>Municipal Court in Požega</u> I. 457/06 of 15/08/2006 2. <u>Municipal Court in Požega</u> I. 636/06 of 17/10/2006
5.	47725/11	10/05/2011	Dragan IVANOVIĆ 07/09/1955 Požega	1. <u>Municipal Court in Požega</u> P1. 528/06 of 14 June 2006 2. <u>Municipal Court in Požega</u> P1. 659/06 of 22 September 2006 3. <u>Municipal Court in Požega</u> P1. 544/07 of 11 January 2008 4. <u>Municipal Court in Požega</u> P1. 7/2009 of 10 February 2009	1. <u>Municipal Court in Požega</u> I. 426/06 of 16/08/2006 2. <u>Municipal Court in Požega</u> I. 617/06 of 4/01/2007 3. <u>Municipal Court in Požega</u> I. 150/08 of 24/09/2009 4. <u>Municipal Court in Požega</u> I. 127/09 of 11/05/2009
6.	56203/11	27/04/2011	Milijan SEKULIĆ 30/10/1958 Požega	1. <u>Municipal Court in Požega</u> P1. 434/06 of 19 June 2006 2. <u>Municipal Court in Požega</u> P1. 722/06 of 21 September 2006	1. <u>Municipal Court in Požega</u> I. 500/06 of 17/08/2006 2. <u>Municipal Court in Požega</u> I. 631/06 of 17/10/2006
7.	56238/11	27/04/2011	Petar MILOVANOVIĆ 03/07/1961 Požega	1. <u>Municipal Court in Požega</u> P1. 419/06 of 12 June 2006 2. <u>Municipal Court in Požega</u> P1. 667/2006 of 22 September 2006	1. <u>Municipal Court in Požega</u> I. 422/06 of 16/08/2006 2. <u>Municipal Court in Požega</u> I. 663/06 of 17/10/2006
8.	75689/11	10/05/2011	Miodrag KOVAČEVIĆ 02/12/1955 Požega	1. <u>Municipal Court in Požega</u> P1. 382/06 of 16 June 2006 2. <u>Municipal Court in Požega</u> P1. 739/06 of 22 September 2006 3. <u>Municipal Court in Požega</u> P1. 126/09 of 27 February 2009	1. <u>Municipal Court in Požega</u> I. 524/06 of 22/08/2006 2. <u>Municipal Court in Požega</u> I. 643/06 of 17/10/2006 3. Enforcement requested in the insolvency proceedings (<i>potraživanje prijavljeno u stečajnom postupku</i>) <u>Commercial Court in Užice</u> (I St. 55/10)