



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

SECOND SECTION

CASE OF VLAHOVIĆ v. SERBIA

(Application no. 42619/04)

JUDGMENT

STRASBOURG

16 December 2008

FINAL

16/03/2009

This judgment may be subject to editorial revision.

In the case of Vlahović v. Serbia,

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Vladimiro Zagrebelsky,

Danutė Jočienė,

Dragoljub Popović,

András Sajó,

Nona Tsotsoria, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 25 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 42619/04) against the State Union of Serbia and Montenegro, lodged with the Court, under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”), by, at that time, a citizen of the State Union of Serbia and Montenegro, Mr Dragan Vlahović (“the applicant”), on 10 November 2004.

2. As of 3 June 2006, following the Montenegrin declaration of independence, Serbia remained the sole respondent in the proceedings before the Court.

3. The applicant was represented by B. Panić, a lawyer practicing in Niš. The Government of the State Union of Serbia and Montenegro and, subsequently, the Government of Serbia (“the Government”) were represented by their Agent, Mr S. Carić.

4. The applicant complained about the respondent State’s failure to enforce a final judgment rendered in his favour.

5. On 16 April 2007 the Court decided to give notice of the application to the Government. Under Article 29 § 3 of the Convention, it further decided to examine the admissibility and the merits of the application at the same time.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1955 and lives in Niš, Serbia.

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

8. On 11 May 2001 the Municipal Court in Niš (“Municipal Court”) ruled in favour of the applicant and ordered the respondent “socially-owned” company (see paragraph 46 below), “Vagonka” (“the debtor”), to pay him:

i. salary arrears in the amount of 98,001 Dinars (“RSD”, approximately 1,661 euros, “EUR”) plus statutory interest as of 27 January 2001;

ii. 267,620 RSD (approximately 4,537 EUR) in already accrued statutory interest, and

iii. 800 RSD (approximately 14 EUR) for his legal costs.

9. By 15 June 2001 this judgment became final.

10. On 22 June 2001 the applicant filed a request for the enforcement of the judgment, proposing that it be carried out through the auctioning of the debtor’s movable assets.

11. On 4 October 2001 the Municipal Court accepted the applicant’s request and issued an enforcement order (I.br. 1706/01).

12. This order subsequently became final.

13. The Municipal Court thereafter attempted several auctions but to no avail.

14. On 2 July 2002 the Municipal Court reduced the sum awarded to the applicant in the above judgment by 95,730 RSD (approximately 1,578 EUR), which amount the applicant owed the debtor based on a prior transaction within a separate set of enforcement proceedings.

15. On 28 November 2002 the applicant filed another request for the enforcement of the above judgment, this time proposing that it be carried out by means of a bank transfer and that the total sum awarded therein be reduced by 95,730 RSD.

16. On 13 December 2002 the Municipal Court accepted the applicant’s request and issued an enforcement order (I.br. 3974/02).

17. By 4 February 2003 this order became final.

18. On 25 February 2003 the Municipal Court provided the Central Bank (*Narodna banka Srbije*) with the enforcement order, as well as the debtor’s bank account details.

19. On 20 March 2003 the Municipal Court provided the Central Bank with additional specifications concerning the enforcement ordered.

20. On 6 October 2004 the applicant urged the Central Bank and the Ministry of Finance to ensure effective implementation of the Municipal Court's enforcement order dated 13 December 2002 (I.br. 3974/02).

21. On 29 November 2005 the applicant requested the Municipal Court to provide him with a complete list of the debtor's assets.

22. On 19 January 2006 the Privatisation Agency (*Agencija za privatizaciju*) published a public announcement inviting all of the debtor's creditors to report their claims, noting, however, that the private creditors were not legally obliged to do so.

23. On 16 June 2006 the same agency accepted a privatisation programme for the debtor.

24. On 29 August 2006 the applicant wrote to the Central Bank. He stated that the debtor's bank account had apparently not been blocked despite the fact that there was a binding court decision so ordering.

25. On the same date the applicant complained to the Privatisation Agency, referring to his application filed with the Court.

26. On 31 August 2006 the applicant received a letter from the Central Bank, informing him that on 10 August 2006 the above enforcement had been stayed at the initiative of the Privatisation Agency.

27. On 4 September 2006 the Privatisation Agency itself sent a letter to the applicant, explaining that the decision to privatise the debtor, by means of a public auction, had been adopted on 11 January 2006. It then, *inter alia*, referred to Article 31 of the Amendments and Additions to the Privatisation Act (see paragraph 45 below) and concluded that the enforcement proceedings at issue had to be stayed, *ex lege*, for a period of two years beginning on 11 January 2006.

28. On 12 February 2007 an unrelated final judgment, rendered in favour of a third party, was enforced against the debtor by means of a bank transfer.

29. On 21 February 2007 86.92% of the debtor's socially-owned capital was privatised.

30. On 26 February 2007 the Privatisation Agency withdrew the instruction issued to the Central Bank.

31. On 2 March 2007 the Central Bank resumed the enforcement ordered by the Municipal Court.

32. On 29 May 2007 the President of the Supreme Court (*Vrhovni sud Srbije*) confirmed that judicial enforcement proceedings could not be stayed in respect of a company undergoing privatisation without restructuring. She also noted that, in any event, it was within the sole competence of the enforcement court to rule in this regard.

33. On 4 June 2007 the Deputy President of the High Commercial Court (*Viši trgovinski sud*) confirmed that, in the absence of restructuring, no stay of enforcement was possible.

34. On 4 July 2007 the Privatisation Agency confirmed that the debtor had not been restructured as part of its privatisation process.

35. On 4 October 2007 the Central Bank carried out the enforcement ordered by the Municipal Court.

36. On 12 December 2007 the applicant filed a new claim with the Municipal Court, seeking that the debtor be ordered to pay additional statutory interest in respect of the RSD 267,620 already awarded in his favour (see paragraph 8 above). These proceedings are still pending.

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 - nos. 28/00, 73/00 and 71/01)

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

38. Under Article 59 only the court in charge of these proceedings had the right to stay them.

39. Articles 63-84 and 180-188 regulated enforcement by means of a bank transfer, as well as enforcement through the auctioning of the debtor's movable 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)

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

41. Article 304 of the 2004 Act, however, provides that all enforcement proceedings instituted prior to 23 February 2005 are to be concluded in accordance with the 2000 Act.

C. Administrative Disputes Act (Zakon o upravnim sporovima; published in OG FRY no. 46/96)

42. Articles 5 and 6 provide, *inter alia*, that judicial review proceedings may only be brought against an administrative decision issued by a competent State body.

D. Financial Transactions Act (Zakon o platnom prometu, published in OG FRY nos. 3/02 and 5/03, as well as OG RS nos. 43/04 and 62/06)

43. Under Articles 47, 48 and 57, *inter alia*, the Serbian Central Bank shall comply with a final judicial execution order providing for enforcement by means of a bank transfer and shall, in so doing, instruct the “debtor’s bank” to transfer the amount in question.

E. Privatisation Act (Zakon o privatizaciji, published in OG RS nos. 38/01, 18/03 and 45/05)

44. Articles 19-20đ set out the details as regards the restructuring of companies about to be privatised. This restructuring, however, is optional and a company may be sold without having been restructured if the Privatisation Agency so decides.

F. Amendments and Additions to the Privatisation Act (Izmene i dopune Zakona o privatizaciji, published in OG RS no. 45/05)

45. Article 31 provides that a company whose restructuring commenced prior to 7 June 2005, as part of an ongoing privatisation, cannot be “subjected to an enforcement procedure” within one year of that date. If the decision to restructure a company, however, was not adopted prior to 7 June 2005, the relevant time limit shall be two years as of the subsequent adoption of a decision to this effect. Any ongoing enforcement proceedings shall be stayed while new enforcement proceedings shall not be instituted until the expiry of the above time-limits.

G. The status of socially-owned companies (pravni položaj društvenih preduzeća)

46. The relevant provisions of this legislation are set out in the *R. Kačapor and Others v. Serbia* judgment (nos. 2269/06, 3041/06, 3042/06, 3043/06, 3045/06 and 3046/06, §§ 68-76, 15 January 2008).

H. Other relevant provisions

47. Other relevant provisions are set out in the *Cvetković v. Serbia* judgment (no. 17271/04, §§ 28-34, 10 June 2008, not yet final).

THE LAW

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

48. Under Article 6 § 1 the applicant complained about the respondent State's failure to enforce the final judgment rendered in his favour.

49. Article 6 § 1 of the Convention, in the relevant part, reads as follows:

“In the determination of his [or her] civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

A. Admissibility

1. *Exhaustion of domestic remedies*

50. The Government submitted that the applicant had not exhausted all effective domestic remedies.

51. In particular, he had omitted to complain about the delay in question to the President of the Municipal Court, the President of the District Court, the Minister of Justice and the Supreme Court's Supervisory Board, respectively.

52. Further, the applicant had not filed a criminal complaint nor lodged an appeal with the Constitutional Court.

53. Lastly, the Government maintained that the applicant had failed to bring a separate civil lawsuit on the bases of the Obligations Act and/or the Convention itself.

54. The applicant contested the effectiveness of these remedies.

55. The Court has already held that the remedies referred to by the Government could not be deemed effective within the meaning of its established case-law under Article 35 § 1 of the Convention (see *Tomić v. Serbia*, no. 25959/06, §§ 81 and 82, 26 June 2007; *V.A.M. v. Serbia*, no. 39177/05, §§ 85 and 86, 13 March 2007; *Cvetković v. Serbia*, cited above, §§ 39-43). It finds no reason to depart from this ruling in the present case.

56. It follows that the Government's objection must be dismissed in its entirety.

2. *Compatibility ratione personae (the applicant's "victim" status)*

57. The Government noted that the final judgment at issue had been fully enforced by 4 October 2007; thus the applicant was no longer a victim within the meaning of Article 34 of the Convention.

58. The applicant contested this argument.

59. The Court recalls that a decision or a measure favourable to the applicant is not in principle sufficient to deprive that individual of the status of a victim unless the national authorities have also acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention complained of (see, for example, *Bulović v. Serbia*, no. 14145/04, § 39, 1 April 2008).

60. Since the Government in the present case have failed to provide the applicant with an acknowledgment of the violations alleged or, indeed, compensation for any non-pecuniary damage suffered, the Court finds that the applicant has retained his victim status, notwithstanding the conclusion of the enforcement proceedings on 4 October 2007. It therefore dismisses the Government's objection in this regard.

3. *Compatibility ratione personae (responsibility of the State)*

61. The Government maintained that the State could not be held responsible for a socially-owned company. In addition, they pointed out that most of the debtor's socially-owned capital was subsequently privatised.

62. The applicant submitted that the debtor was a socially-owned entity which was fully controlled by the State until its privatisation on 21 February 2007. He further maintained that, even beyond this date, the State's Privatisation Agency had remained responsible for making sure that the obligations undertaken by the buyer were fulfilled.

63. The Court notes that the debtor was indeed solely comprised of social capital until 21 February 2007 (see paragraph 29 above) and that, as such, during this time, at a minimum, it was closely controlled by the Privatisation Agency, itself a State body, and/or the Government (see paragraph 46 above).

64. The Court therefore 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, between 3 March 2004, as the date of entry into force of the Convention in respect of Serbia, and its privatisation on 21 February 2007, which would absolve the latter from its responsibility under the Convention (see, *mutatis mutandis*, *R. Kačapor and Others v. Serbia*, cited above, §§ 92-99).

65. Accordingly, the Court finds that the applicant's complaint is compatible *ratione personae* with the provisions of the Convention, and dismisses the Government's objection in respect of the said period.

4. *Conclusion*

66. The Court considers that the applicant's complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and finds no other ground to declare it inadmissible. The application must therefore be declared admissible.

B. Merits

1. Arguments of the parties

67. The Government maintained that there had been no violation of Article 6 § 1.

68. In the first place, the Government contended that they could not be held liable for the debtor's lack of funds.

69. Secondly, by forwarding its enforcement order to the Central Bank, the Municipal Court did everything in its power to secure the execution of the final judgment rendered in favour of the applicant (see paragraphs 18 and 19 above).

70. Thirdly, since the applicant had failed to inform the Municipal Court of the Central Bank's subsequent decision to stay the enforcement in question, the former could not have intervened on his behalf.

71. Fourthly, the applicant himself should have sought judicial review of the instruction issued by the Privatisation Agency (see paragraphs 26 and 27 above).

72. Lastly, the Government observed that the Central Bank's stay of enforcement had only lasted between 10 August 2006 and 2 March 2007 (see paragraphs 26 and 31 above).

73. The applicant reaffirmed his complaints. He further noted that other creditors had been paid by the debtor whilst the enforcement in question had apparently been stayed (see paragraph 28 above), and pointed out that the instruction issued by the Privatisation Agency was not actionable.

2. The Court's assessment

74. The Court recalls that the 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*, judgment of 19 March 1997, *Reports of Judgments and Decisions* 1997-II, p. 510, § 40).

75. Further, 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).

76. Finally, 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); see also *mutatis mutandis*, *Hornsby*, cited above, p. 511, § 41).

77. Turning to the present case, the Court notes that:

(i) the Convention entered into force in respect of Serbia on 3 March 2004, that the debtor was privatised on 21 February 2007 and that,

ultimately, the final judgment was enforced by 4 October 2007 (see paragraphs 29 and 35 above);

(ii) the Privatisation Agency had acted clearly outside of its competence *ratione materiae* when it had ordered that the enforcement be stayed, which is why it would appear that no judicial review was possible (the Government have certainly offered no evidence to the contrary; see also paragraphs 32, 33, 34, 44, 45, 38 and 42 above, in that order);

(iii) the relationship between the Municipal Court and the Central Bank was an internal one, between two Government bodies, and, as such, beyond the scope of the applicant's influence; in any event, he did everything in his power to expedite the impugned proceedings (see, *mutatis mutandis*, *R. Kačapor and Others v. Serbia*, cited above, § 111); and

(iv) given the finding of State liability for the debt owed to the applicant in the present case (see paragraphs 63-65 above), the State cannot cite either the lack of its own funds or the indigence of the debtor as an excuse for this failure (see *R. Kačapor and Others v. Serbia*, cited above, § 114).

78. In view of the above, the Court finds that the Serbian authorities have failed to take all necessary measures in order to enforce the judgment at issue between 3 March 2004 and 21 February 2007. There has, accordingly, been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1

79. The applicant further complained that the State had infringed his right to the peaceful enjoyment of his possessions, as guaranteed by Article 1 of Protocol No. 1, which 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

80. The Court notes that this complaint is linked to the one examined above and must, therefore, likewise be declared admissible.

B. Merits

81. The Court reiterates that the failure of the State to enforce the final judgment rendered in favour of the applicant for a period of almost three years within the Court's competence *ratione temporis*, Protocol No. 1 having entered into force as regards Serbia on 3 March 2004, constitutes an interference with his 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, *mutatis mutandis*, *Sîrbu and Others v. Moldova*, nos. 73562/01, 73565/01, 73712/01, 73744/01, 73972/01 and 73973/01, § 28-33, 15 June 2004).

82. For the reasons set out above in respect of Article 6, the Court considers that the said interference was not justified in the specific circumstances of the present case (see *R. Kačapor and Others v. Serbia*, cited above, §§ 117-120). There has, accordingly, been a separate violation of Article 1 of Protocol No. 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

83. 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

84. The applicant claimed RSD 721,400.29 on account of the pecuniary damage suffered. In particular, he explained that this amount corresponded to statutory interest accrued between 27 January 2001 and 2 July 2007 in respect of the RSD 267,620 already awarded in his favour (see paragraph 8 above).

85. The applicant further sought EUR 14,000 for the mental anguish sustained as a result of the procedural delay in question.

86. The Government contested these claims.

87. The Court does not discern a causal link between the violations found and the pecuniary damage claimed since the final judgment of 11 May 2001, ultimately enforced by 4 October 2007, had not ordered the payment of the interest sought by the applicant (see paragraph 8 above). In any event, the applicant subsequently brought a separate civil suit in this respect which is still pending domestically (see paragraph 36 above). The Court cannot, therefore, but dismiss the applicant's claim. However, the Court sees no reason to doubt that the applicant has suffered distress as a result of the breach of his rights secured under Article 6 of the Convention

and Article 1 of Protocol No. 1, which is why a finding of a violation of these provisions alone would not constitute sufficient just satisfaction. Having regard to the above and on the basis of equity, as required by Article 41, the Court awards the applicant EUR 1,000 under this head.

B. Costs and expenses

88. The applicant also claimed EUR 312.40 for the costs and expenses incurred domestically, as well as EUR 1,134 for those incurred before the Court.

89. The Government contested these claims.

90. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were also reasonable as to their quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings but considers it reasonable to award the applicant the sum of EUR 700 for the proceedings before the Court.

C. Default interest

91. 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 also been a violation of Article 1 of Protocol No.1;
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 following sums, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:

- (i) EUR 1,000 (one thousand euros), plus any tax that may be chargeable, for the non-pecuniary damage suffered,
- (ii) EUR 700 (seven hundred euros), plus any tax that may be chargeable to the applicant, for costs and expenses;
- (b) 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;

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

Done in English, and notified in writing on 16 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President