



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

SECOND SECTION

CASE OF CRNIŠANIN AND OTHERS v. SERBIA

(Applications nos. 35835/05, 43548/05, 43569/05 and 36986/06)

JUDGMENT

STRASBOURG

13 January 2009

FINAL

13/04/2009

This judgment may be subject to editorial revision.

In the case of Crnišanin and others 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 9 December 2008,

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

PROCEDURE

1. The case originated in four separate applications (nos. 35835/05, 43548/05, 43569/05 and 36986/06). The first three were lodged with the Court against the State Union of Serbia and Montenegro and the fourth was brought against Serbia, under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”), by Ms Mukadesa Crnišanin and 3 others (“the applicants”; see paragraph 6 below) on 26 September 2005, 26 November 2005 and 26 August 2006, respectively.

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 applicants were represented before the Court by Ms R. Garibović, a lawyer practising in Novi Pazar. 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 applicants complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 about the respondent State’s failure to enforce the final judgments rendered in their favour.

5. On 17 October 2006 and 30 August 2007, respectively, the Court decided to communicate the applications to the Government. Applying Article 29 § 3 of the Convention, it also decided to rule on their admissibility and merits at the same time.

THE FACTS

6. The applicants, Ms Mukadesa Crnišanin (“the first applicant”), Ms Arifa Hamidović (“the second applicant”), Ms Milodarka Kostić (“the third applicant”), and Ms Faza Paljevac (“the fourth applicant”) are all Serbian citizens who were born in 1953, 1957, 1951 and 1955, respectively, and currently live in the Municipality of Novi Pazar, Serbia.

I. THE CIRCUMSTANCES OF THE CASE

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

A. Introduction

8. On 24 March 1995 and 1 May 1996, respectively, the first and the second applicants, both employed with Raška Holding AD, on 1 August 1992, the third applicant employed with Trikotaza Raška DP (succeeded by Oktan-Pro), and on 1 January 1994 the fourth applicant employed with “Raška Holding - Raška pamučna predionica”, were all “placed” by their respective “socially-owned” employers on “compulsory” paid leave “until such time” when “normal production could be resumed” and the said companies’ business performance “improved sufficiently”.

9. Whilst on this leave, in accordance with the relevant domestic legislation, the applicants were entitled to a significantly reduced monthly income, as well as the payment of their pension, disability and other social security contributions.

10. Since the companies failed to fulfil these obligations, the applicants brought numerous separate civil claims before the Municipal Court (*Opštinski sud*) in Novi Pazar (hereinafter “the Municipal Court”).

B. As regards the first applicant

1. First set of proceedings

11. On 11 July 2002 the Municipal Court ruled in favour of the first applicant and ordered her employer to pay her the monthly “paid leave benefits” (“*naknada za vreme plaćenog odsustva*”) due from 20 June 1998 to 31 December 2001, plus statutory interest.

12. This judgment became final in 2003 or early 2004.

13. On 27 March 2003 the Municipal Court ruled in favour of the applicant and ordered her employer to pay her:

- i. the monthly paid leave benefits due from 1 January 1999 to 18 February 2003, with statutory interest; and
 - ii. 6,500 Dinars for her legal costs.
14. This judgment became final on 22 April 2003.
15. On 30 October 2003 the Municipal Court again ruled in favour of the applicant and ordered her employer to pay her:
- i. the monthly paid leave benefits due from 18 February 2003 to October 2003 (37,924 Dinars in all), together with statutory interest;
 - ii. 11,643 Dinars for her legal costs; and
 - iii. the pension and disability insurance contributions (*“doprinosi za penzijsko i invalidsko osiguranje”*) due for that period.
16. This judgment became final on 28 November 2003.
17. On 19 April 2004 the applicant filed a request for the enforcement of the above judgments, proposing that it be carried out either by means of a bank account transfer or through the auctioning of the debtor’s specified movable and/or immovable assets.
18. On 6 May 2004 the Municipal Court accepted the applicant’s request and issued an enforcement order.
19. On 21 May 2004 the Municipal Court provided the Central Bank (*Narodna banka Srbije*) with this order.

2. Second set of proceedings

20. On 30 March 2004 the Municipal Court ruled in favour of the first applicant and ordered her employer to pay her:
- i. the monthly paid leave benefits due from 1 November 2003 to 30 March 2004 (25,408 Dinars in all), together with statutory interest;
 - ii. 4,200 Dinars for her legal costs; and
 - iii. the pension, disability, health and unemployment insurance contributions due for that period.
21. This judgment became final on 18 June 2004.
22. On 21 June 2004 the applicant filed a request for the enforcement of the above judgment, proposing that it be carried out either by means of a bank account transfer or through the auctioning of the debtor’s specified movable and/or immovable assets.
23. On 8 July 2004 the Municipal Court accepted the applicant’s request and issued an enforcement order.
24. On 14 July 2004 the Municipal Court provided the Central Bank with this order.

3. Third set of proceedings

25. On 27 October 2004 the Municipal Court ruled in favour of the first applicant and ordered her employer to pay her:

- i. the monthly paid leave benefits due from April to August 2004 (22,482 Dinars in all), together with statutory interest;
- ii. 7,800 Dinars for her legal costs; and
- iii. the pension, health and unemployment insurance contributions due from 20 June 1998 to 18 February 2003 and 1 April 2004 to 31 August 2004.

26. This judgment became final on 23 December 2004.

27. On 3 December 2004 and 14 January 2005 the applicant filed two separate requests for the enforcement of the above judgment, proposing that it be carried out either by means of a bank account transfer or through the auctioning of the debtor's specified movable and/or immovable assets.

28. On 24 January 2005 and 22 February 2005, respectively, the Municipal Court accepted the applicant's requests and issued two enforcement orders.

4. Fourth set of proceedings

29. On 25 March 2005 the Municipal Court ruled in favour of the first applicant and ordered her employer to pay her:

- i. the monthly paid leave benefits due from 1 September 2004 to 1 March 2005 (37,268 Dinars in all), together with statutory interest;
- ii. 9,750 Dinars for her legal costs; and
- iii. the pension, disability, health and unemployment insurance contributions due for that period.

30. This judgment became final on 28 July 2005.

31. On 22 September 2005 the applicant filed a request for the enforcement of the above judgment (except for the costs awarded), proposing that it be carried out through the auctioning of the debtor's specified immovable assets.

32. On 28 April 2006 the Municipal Court accepted the applicant's request and issued an enforcement order.

5. Other relevant facts

33. It would appear that the first applicant's employer ultimately paid the various pension and other social insurance contributions awarded in the above judgments, but that the paid leave benefits, legal costs and statutory interest have yet to be enforced.

C. As regards the second applicant

1. First set of proceedings

34. On 18 March 1999 and 14 April 1999, respectively, the Municipal Court ruled in favour of the second applicant and ordered her employer to pay her:

- i. the monthly paid leave benefits due from May 1996 to June 1998 (4,760 Dinars in all), together with statutory interest;
- ii. the pension and disability insurance contributions due for that period; and
- iii. 600 Dinars for her legal costs.

35. On an unspecified date thereafter these judgments became final.

36. On 8 April 2003, 24 June 2003 and 28 January 2004, respectively, the Municipal Court accepted the applicant's enforcement requests and ordered that the above judgments be executed either by means of a bank account transfer or through the auctioning of the debtor's specified movable and/or immovable assets.

37. On 17 July 2008 the Municipal Court stayed the proceedings based on the relevant provisions of the Amendments and Additions to the Privatisation Act 2007 (see paragraphs 102-104 below).

2. Second set of proceedings

38. On 30 April 2003 the Municipal Court ruled in favour of the second applicant and ordered her employer to pay her the monthly paid leave benefits due from 1 July 1998 to 31 May 2001, as well as those due from 1 June 2001 to 30 April 2003 (the latter amounting to 82,971 Dinars in all), together with statutory interest and another 6,500 Dinars for her legal costs.

39. This judgment became final on 5 June 2003.

40. On 5 June 2003 the applicant filed a request for the enforcement of the above judgment, proposing that it be carried out through the auctioning of the debtor's specified movable and/or immovable assets. On 23 January 2004 the applicant requested that enforcement also be attempted by means of a bank account transfer.

41. On 24 June 2003 and 28 January 2004, respectively, the Municipal Court accepted the applicant's enforcement requests and issued two separate orders.

42. In March 2004 some of the debtor's movable assets were sold and a number of other creditors' claims were settled. The applicant, however, received nothing in view of her low ranking on the list of creditors.

43. On 17 July 2008 the Municipal Court stayed the proceedings based on the relevant provisions of the Amendments and Additions to the Privatisation Act 2007 (see paragraphs 102-104 below).

3. Third set of proceedings

44. On 6 November 2003 and 31 May 2004, respectively, the Municipal Court ruled in favour of the second applicant and ordered her employer to pay her:

- i. the monthly paid leave benefits due from May 2003 to October 2003, (27,824 Dinars in all), together with statutory interest;
- ii. the pension and disability insurance contributions due for that period; and
- iii. 7,800 Dinars for legal costs.

45. On an unspecified date thereafter these judgments became final.

46. On 4 March 2004 the applicant filed a request for the enforcement of the above judgments, proposing that it be carried out either by means of a bank account transfer or through the auctioning of the debtor's specified movable and/or immovable assets.

47. On 15 March 2004 the Municipal Court accepted the applicant's request and issued an enforcement order.

48. On 19 March 2004 the Municipal Court provided the Central Bank with this order.

49. Soon thereafter some of the debtor's movable assets were sold and a number of other creditors' claims were settled. The applicant, however, received nothing in view of her low ranking on the list of creditors.

4. Fourth set of proceedings

50. On 24 February 2005 the Municipal Court ruled in favour of the second applicant and ordered her employer to pay her:

- i. the monthly paid leave benefits due from November 2003 to February 2005 (61,973 Dinars in all), together with statutory interest;
- ii. the pension and disability insurance contributions due from 1 July 1998 to 30 April 2003 and 1 November 2003 to 24 February 2005; and
- iii. 9,750 Dinars for legal costs.

51. On an unspecified date thereafter this judgment became final.

52. On 24 April 2005 and 29 July 2005, respectively, the applicant filed two separate requests for the enforcement of the above judgment, proposing that it be carried out either by means of a bank account transfer or through the auctioning of the debtor's specified movable and/or immovable assets.

53. On 21 June 2005 and 26 September 2005 the Municipal Court accepted the applicant's successive requests and issued two separate enforcement orders.

54. On 17 November 2006 and 13 March 2006, respectively, the Municipal Court provided the Central Bank with these orders.

D. As regards the third applicant*1. First set of proceedings*

55. On 23 September 1997 the Municipal Court ruled in favour of the third applicant and ordered her employer to pay her the monthly paid leave benefits due from 1 August 1992 to 20 June 1997 (8,089 Dinars in all), together with statutory interest as of 20 June 1997, and another 350 Dinars for legal costs.

56. This judgment became final on 16 February 1998.

57. On 28 April 1998 the applicant filed a request for the enforcement of the above judgment, proposing that it be carried out by means of a bank account transfer.

58. On 30 April 1998 the Municipal Court issued an enforcement order.

59. On 29 May 1998 the Municipal Court provided the Central Bank with this order.

60. On 13 March 2003 the applicant complained about the delay to the Municipal Court and proposed alternative enforcement through the auctioning of the debtor's movable assets.

61. On 25 August 2003 the applicant urged the Municipal Court to consider her request of 13 March 2003.

2. Second set of proceedings

62. On 7 October 2004 the Municipal Court ruled partly in favour of the third applicant and ordered her employer to pay her:

i. the monthly paid leave benefits due from 5 March 2000 to 5 March 2003, together with statutory interest;

ii. the pension and disability insurance contributions due from 21 June 1997 to 5 March 2003; and

iii. 23,400 Dinars for legal costs.

63. This judgment became final on 25 November 2004.

64. On 29 November 2004 the applicant filed a request for the enforcement of the above judgment, proposing that it be carried out either by means of a bank account transfer or through the auctioning of the debtor's specified movable and/or immovable assets.

65. On 6 December 2004 the Municipal Court accepted this request and issued an enforcement order.

66. On an unspecified date thereafter the Municipal Court provided the Central Bank with this order.

67. On 17 April 2006 the latter informed the former that certain information needed for the enforcement was missing.

68. On 20 June 2006 the applicant provided the Municipal Court with the information sought and on 26 June 2006 this information was forwarded to the Central Bank.

3. Third set of proceedings

69. On 10 March 2005 the Municipal Court ruled in favour of the third applicant and ordered her employer to pay her:

- i. the monthly paid leave benefits due from 5 March 2003 to 1 March 2005 (127,889 Dinars in all), together with statutory interest;
- ii. the pension and disability insurance contributions due from 1 June 1992 to 20 June 1997 and 6 March 2003 to 18 November 2004; and
- iii. 15,000 Dinars for legal costs.

70. This judgment became final on 4 October 2005.

71. On 11 October 2005 the applicant filed a request for the enforcement of the above judgment, proposing that it be carried out either by means of a bank account transfer or through the auctioning of the debtor's specified movable and/or immovable assets.

72. On 28 December 2005 the Municipal Court accepted this request and issued an enforcement order.

73. In early March 2006 the Municipal Court provided the Central Bank with this order, but by 9 March 2006 the latter informed the former that certain information needed for the enforcement was missing.

74. On 18 July 2008 the Municipal Court terminated enforcement of the pension and disability insurance contributions since the applicant had failed to cover the anticipated costs of a financial expert.

4. Other relevant facts

75. On 18 December 2007 the applicant was declared redundant.

76. On the same date she signed an agreement with the debtor concerning her salary arrears and taxes, as well as her other labour-related benefits and/or contributions. The agreement provided, *inter alia*, that:

- i. all pension and disability insurance contributions due by 18 December 2007 shall be covered by the debtor within a period of six months;
- ii. the applicant shall renounce her right to seek judicial enforcement of any final judgments rendered in her favour before 18 December 2007; and
- iii. the applicant shall be paid 366,890 Dinars in accordance with the Government's "social programme".

77. It would appear that the applicant had received the said payment, but that the debtor has yet to cover the pension and disability insurance contributions in question.

E. As regards the fourth applicant

1. First set of proceedings

78. On 22 December 2004 the Municipal Court ruled in favour of the fourth applicant and ordered her employer to pay her:

- i. the monthly paid leave benefits (*minimalnu zaradu*) due from 1 August 2001 to 30 June 2004 (154,002 Dinars in all), plus statutory interest;
- ii. 7,800 Dinars for her legal costs; and
- iii. the social security contributions due from 1 January 1994 to 1 August 2004.

79. This judgment became final by 18 July 2005.

80. On 25 February 2005 and 29 July 2005, respectively, the applicant filed two separate requests for the enforcement of the above judgment, proposing that it be carried out either by means of a bank transfer or through the auctioning of the debtor's movable and/or immovable assets.

81. On 11 April 2005 and 26 September 2005 the Municipal Court accepted the applicant's requests and issued two separate enforcement orders.

2. *Second set of proceedings*

82. On 26 April 2005 the Municipal Court ruled in favour of the fourth applicant and ordered her employer to pay her:

- i. the monthly paid leave benefits due from 1 August 2004 to 31 March 2005 (50,512 Dinars in all), plus statutory interest;
- ii. 9,750 Dinars for her legal costs; and
- iii. the social security contributions due for that period.

83. This judgment became final by 26 May 2005.

84. On 5 October 2005 the applicant filed a request for the enforcement of the above judgment, proposing that it be carried out either by means of a bank transfer or through the auctioning of the debtor's movable and/or immovable assets.

85. On 27 December 2005 the Municipal Court accepted the applicant's request and issued an enforcement order.

3. *Third set of proceedings*

86. On 30 March 2006 the Municipal Court ruled in favour of the fourth applicant and ordered her employer to pay her:

- i. the monthly paid leave benefits due from 1 April 2005 to 31 December 2005 (64,456.60 Dinars in all), plus statutory interest; and
- ii. the social security contributions due for that period.

87. On 30 March 2006 the Municipal Court again ruled in favour of the applicant and ordered her employer to pay her 4,500 Dinars for her legal costs incurred during the above proceedings.

88. Both decisions became final by 26 April 2006.

89. On 16 May 2006 the applicant filed a request for their enforcement, proposing that it be carried out either by means of a bank transfer or through the auctioning of the debtor's specified movable and/or immovable assets.

90. On 19 May 2006 the Municipal Court accepted the applicant's request and issued an enforcement order.

4. Fourth set of proceedings

91. On 6 March 2007 the Municipal Court ruled in favour of the fourth applicant and ordered her employer to pay her:

- i. the monthly paid leave benefits due from 1 January 2006 to 1 June 2006 (38,640 Dinars in all), plus statutory interest;
- ii. 11,700 Dinars for her legal costs; and
- iii. the social security contributions due for that period.

92. This judgment became final by 23 May 2007.

93. On 29 May 2007 the applicant filed a request for the enforcement of the above judgment, proposing that it be carried out either by means of a bank transfer or through the auctioning of the debtor's movable assets.

94. On 1 June 2007 the Municipal Court accepted the applicant's request and issued an enforcement order.

F. The debtors' status

95. On 2 November 2004 the Privatisation Agency ordered the restructuring of the first, second and fourth applicants' debtors, as part of the privatisation process. On 13 December 2006 this privatisation was stayed, but on 14 March 2007 it resumed.

96. As of November 2008, the first and second applicants' debtor was still predominantly socially-owned, directly or indirectly through other companies, whilst the fourth applicant's debtor was itself solely owned by the first and second applicants' debtor. The third applicant's debtor, however, having been privatised, was predominantly comprised of private capital.

G. Other relevant facts as regards all applicants

97. On 30 November 2004 and 21 February 2005, respectively, the applicants' lawyer sent two separate letters to the Ministry of Finance, stating, *inter alia*, that the companies at issue:

- i. have, for the past ten years, deliberately avoided doing business through their official bank accounts;
- ii. have instead, apparently, engaged in cash transactions or even the use of other, "secret", bank accounts unknown to the tax authorities; and
- iii. that, as a result, judicial enforcement by means of a bank account transfer had been rendered impossible.

The applicants' lawyer concluded by requesting that urgent action be taken to secure the enforcement of the final judgments in question.

98. On 21 March 2005 the Ministry of Finance responded that the above letters had been duly considered but that, in view of the confidential nature of the information obtained, no details could be disclosed.

99. On 6 June 2005 the applicants' lawyer sent another complaint to the Ministry of Finance, stating that the situation concerning the said bank accounts had remained unchanged.

II. RELEVANT DOMESTIC LAW

A. Privatisation Act (Zakon o privatizaciji, published in the Official Gazette of the Republic of Serbia - OG RS - nos. 38/01, 18/03 and 45/05)

100. Articles 19-20^đ 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.

B. Amendments and Additions to the Privatisation Act 2005 (Izmene i dopune Zakona o privatizaciji, published in OG RS no. 45/05)

101. 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.

C. Amendments and Additions to the Privatisation Act 2007 (Izmene i dopune Zakona o privatizaciji, published in OG RS no. 123/07)

102. Articles 4 and 5 provide that the privatisation of all remaining socially-owned capital shall commence by 31 December 2008. Should this prove impossible, the companies in question shall be liquidated.

103. Article 10 provides, *inter alia*, that a company undergoing restructuring, as part of the privatisation process, cannot be subjected to an enforcement procedure until the conclusion of this process. Any ongoing enforcement proceedings shall be stayed.

104. These provisions entered into force in January 2008.

D. Other relevant provisions

105. Other relevant domestic provisions are set out in the cases of *R. Kačapor and Others v. Serbia* and *EVT Company v. Serbia* (nos. 2269/06, 3041/06, 3042/06, 3043/06, 3045/06 and 3046/06, §§ 57-76, 15 January 2008, as well as no. 3102/05, §§ 26 and 27, 21 June 2007, respectively).

THE LAW

I. JOINDER OF THE APPLICATIONS

106. The Court considers that, in accordance with Rule 42 § 1 of the Rules of Court, the applications should be joined, given their similar factual and legal background.

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

107. The applicants complained under Article 6 § 1 of the Convention about the respondent State's failure to enforce the final judgments rendered in their favour. 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. Compatibility ratione personae (responsibility of the State) as regards the first, second and fourth applicant

108. The Government maintained that the State could not be held responsible for a company partly comprised of socially-owned capital.

109. The applicants reaffirmed their complaints.

110. The Court notes that the first, second and fourth applicants' debtors are indeed predominantly comprised of socially-owned capital (see paragraph 96 above), but that, as such, they are nevertheless closely controlled by the Privatisation Agency, itself a State body, and/or the Government (see *R. Kačapor and Others v. Serbia*, cited above, §§ 92-99).

111. The Court therefore considers that the debtors, despite the fact that they are separate legal entities, do not enjoy sufficient institutional and

operational independence from the State which would absolve the latter from its responsibility under the Convention (*ibid.*).

112. Accordingly, without prejudging the merits, the Court finds that the applicants' complaints are compatible *ratione personae* with the provisions of the Convention, and dismisses the Government's objection in this regard.

2. Compatibility ratione personae (responsibility of the State) as regards the third applicant

113. The Government noted that the third applicant's debtor was a privately-owned company (see paragraph 96 above) which "engaged no State liability".

114. The Court recalls that irrespective of whether a debtor is a private or a State-controlled actor, it is up to the State, whenever it is domestically entrusted with the enforcement of its own judgements, to take all necessary steps in this respect (see *EVT Company v. Serbia*, cited above, § 48).

115. In view of the above, without prejudging the merits, the Court finds that the third applicant's complaints are compatible *ratione personae* with the provisions of the Convention, and dismisses the Government's objection in this respect.

3. Exhaustion of domestic remedies as regards all applicants

116. The Government submitted that the applicants had not exhausted all effective domestic remedies. In particular, they had omitted to complain about the delay in question to the President of the Municipal Court, the President of the District Court, and the Supreme Court's Supervisory Board, respectively. Further, the applicants had neither filed criminal complaints nor brought separate civil lawsuits based on the Obligations Act, the Serbian Constitution, or, for that matter, directly on the basis of the Convention.

117. The applicants contested the effectiveness of these remedies.

118. The Court has already held in previous cases 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, *mutatis mutandis*, *Tomić v. Serbia*, no. 25959/06, §§ 81 and 82, 26 June 2007; and *V.A.M. v. Serbia*, no. 39177/05, §§ 85 and 86, 13 March 2007). It finds no reason to depart from this ruling in the present case.

119. The Government's objection must, therefore, be dismissed.

4. Conclusion as regards all applicants

120. The Court considers that the applicants' complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and finds no other ground to declare them inadmissible. They must therefore be declared admissible.

B. Merits

1. *Arguments of the parties*

121. The Government maintained that there was no violation of Article 6 § 1 of the Convention. In particular, the non-enforcement of the judgments rendered in favour of the applicants was primarily due to their debtors' indigence, as well as the applicants' own failure to make adequate use of the various procedural tools at their disposal or provide the enforcement court with the relevant information in a timely manner. The Government further noted that the Convention had been ratified by Serbia on 3 March 2004 and observed that the stay of enforcement provided for in the privatisation laws was, where applicable, both legitimate and proportionate.

122. The applicants reaffirmed their complaints.

2. *Relevant principles*

123. 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). In addition, 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 (see *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 74, ECHR 1999-V). Finally, irrespective of whether a debtor is a private or a State-controlled actor, it is up to the State itself to take all necessary steps to enforce a final court judgment (see *EVT Company v. Serbia*, cited above, § 48).

3. *The Court's assessment*

(a) *As regards the first, second and fourth applicants*

124. The Court has already held that the State is responsible for the debts of companies predominantly comprised of social capital, (*R. Kačapor and Others v. Serbia*, cited above). It finds no reason to depart from this ruling in the present case since the first, second and fourth applicants' debtors are themselves such companies (see paragraph 96 above) and the period of debt recovery has so far lasted between one year and five months and four years and eight months as of the Serbian ratification of the Convention on 3 March 2004 (the period which falls within this Court's competence *ratione temporis*). The Serbian authorities have thus not taken the necessary measures to enforce the judgments in question and have not provided any convincing reasons for that failure (see *R. Kačapor and*

Others v. Serbia, cited above). Accordingly, there has been a violation of Article 6 § 1 of the Convention.

(b) As regards the third applicant

125. The Court notes, in the first place, that the enforcement proceedings in question had been brought by the applicant on 28 April 1998, 29 November 2004 and 11 October 2005, respectively (see paragraphs 57, 64 and 71 above). It is further observed that on 18 December 2007 the applicant had renounced all of her enforcement claims in respect of the debtor (see paragraphs 76 and 77 above) and has since been formally bound by this undertaking (unless and until a court of law decides otherwise or a new compromise is reached between the parties). The first set of proceedings had therefore continued for more than three years and nine months since the Serbian ratification of the Convention on 3 March 2004, having already lasted approximately six years before that date (see, *mutatis mutandis*, *Styranowski v. Poland*, judgment of 30 October 1998, *Reports* 1998-VIII). The second and the third set of proceedings, however, had been within the Court's competence *ratione temporis* from their outset, i.e. for some three years and one month and two years and two months, respectively.

126. Secondly, the enforcement court was obliged to proceed *ex officio* with other means of enforcement, had any one of those proposed by the applicants already proved impossible (see *R. Kačapor and Others v. Serbia*, cited above, § 110).

127. Thirdly, the relationship between the enforcement court and the Central Bank was an internal one, between two State bodies, and, as such, beyond the scope of the applicant's influence. There was also no reason why the applicant should have requested updates from the Central Bank in respect of the bank transfers in question merely in order to fill the communication void between two branches of Government (*ibid.*, §§ 111 and 113).

128. Fourthly, there is no evidence in the case file that the impugned non-enforcement could indeed be attributed to the debtor's lack of means (see *EVT Company v. Serbia*, cited above, §§ 53 and 54) or that the proceedings themselves had been particularly complex.

129. Lastly, the Court observes, concerning the second and third set of proceedings only, that the applicant cannot be blamed for the belated discovery of the missing information, given that the enforcement orders had already been issued by the competent court which had itself failed to identify an issue in this respect (see paragraphs 66-68 and 72-74 above).

130. In view of the above, the Court finds that the Serbian authorities have failed to take the necessary measures to enforce the judgments in question between 3 March 2004 and 18 December 2007. There has, accordingly, been a violation of Article 6 § 1 of the Convention.

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

131. The applicants further complained that the State had infringed their right to the peaceful enjoyment of their 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

132. The Court notes that these complaints are linked to those examined above and must, therefore, likewise be declared admissible.

B. Merits

133. The Court reiterates that the failure of the State to enforce the final judgments rendered in favour of the applicants, as of 3 March 2004 which is when Protocol No. 1 entered into force in respect of Serbia, constitutes an interference with their 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).

134. 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. There has, accordingly, been a separate violation of Article 1 of Protocol No. 1.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

135. 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

136. The Court points out that under Rule 60 of the Rules of Court any claim for just satisfaction must be itemised and submitted in writing, together with the relevant supporting documents, failing which the Court may reject the claim in whole or in part.

1. Pecuniary damage as regards the first, second and fourth applicants

137. The applicants requested that the State be ordered to pay, from its own funds, the sums awarded by the final judgments rendered in their favour.

138. The Government contested these claims.

139. Having regard to the violations found in the present case and its own jurisprudence (see *R. Kačapor and Others v. Serbia*, cited above, §§ 123-126), the Court considers that the applicants' claims must be accepted. The Government shall, therefore, pay in respect of each applicant the sums awarded in the said final judgments.

2. Pecuniary damage as regards the third applicant

140. The third applicant's claim was identical to those made by the other applicants.

141. The Government contested this claim.

142. The Court notes that on 18 December 2007 the applicant had renounced all of her enforcement claims in respect of the debtor (see paragraphs 76 and 125 above). Accordingly, her pecuniary claim must be rejected.

3. Non-pecuniary damage as regards all applicants

143. The first three applicants claimed EUR 5,000 each for the non-pecuniary damage suffered as a result of the impugned non-enforcement. The fourth applicant claimed EUR 3,000 for the non-pecuniary damage suffered.

144. The Government contested these claims.

145. The Court takes the view that the applicants have suffered some non-pecuniary damage as a result of the violations found which cannot be

made good by the Court's mere finding of a violation. The particular amounts claimed, however, are excessive. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court makes the following awards depending on the length of the periods of non-enforcement in each case:

- i. the first applicant: EUR 1,800;
- ii. the second applicant: EUR 1,800;
- iii. the third applicant: EUR 1,500; and
- iv. the fourth applicant: EUR 1,300.

B. Costs and expenses

146. Each applicant also claimed the costs and expenses incurred in the domestic civil proceedings (as recognised in the final judgments rendered in their favour). The first three applicants further sought EUR 1,006 each for the costs and expenses incurred in the course of their "Strasbourg case", whilst the fourth applicant claimed EUR 770 in this respect.

147. The Government contested these claims.

148. 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 (see, for example, *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI).

149. Regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award each applicant the sum of EUR 300 for the costs and expenses incurred in the proceedings before this Court.

150. As regards the costs and expenses incurred domestically, the Court notes that those concerning the civil proceedings are an integral part of the applicants' pecuniary claims which have already been dealt with above.

C. Default interest

151. 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. *Decides* to join the applications;
2. *Declares* the applications admissible;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds* that there has also been a violation of Article 1 of Protocol No. 1;
5. *Holds*
 - (a) that the respondent State shall, from its own funds and within three months as of the date on which this judgment becomes final, in accordance with Article 44 § 2 of the Convention, pay in respect of the first, second and fourth applicants the sums awarded in the final domestic judgments rendered in their favour;
 - (b) that the respondent State is to pay each applicant, within the same period, the following amounts:
 - (i) to the first applicant, EUR 1,800 (one thousand eight hundred euros) for non-pecuniary damage and EUR 300 (three hundred euros) for costs and expenses;
 - (ii) to the second applicant, EUR 1,800 (one thousand eight hundred euros) for non-pecuniary damage and EUR 300 (three hundred euros) for costs and expenses;
 - (iii) to the third applicant, EUR 1,500 (one thousand five hundred euros) for non-pecuniary damage and EUR 300 (three hundred euros) for costs and expenses;
 - (iv) to the fourth applicant, EUR 1,300 (one thousand three hundred euros) for non-pecuniary damage and EUR 300 (three hundred euros) for costs and expenses;
 - (c) that these amounts shall be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable to the applicants;
 - (d) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the amounts specified under (b) 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' claims for just satisfaction.

Done in English, and notified in writing on 13 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President