



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

1959 · 50 · 2009

SECOND SECTION

CASE OF GRIŠEVIĆ AND OTHERS v. SERBIA

(Applications nos. 16909/06, 38989/06 and 39235/06)

JUDGMENT

STRASBOURG

21 July 2009

FINAL

21/10/2009

This judgment may be subject to editorial revision.

In the case of Grišević 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 30 June 2009,

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

PROCEDURE

1. The case originated in three separate applications (nos. 16909/06, 38989/06 and 39235/06). The first application was lodged with the Court against the State Union of Serbia and Montenegro and the other two were brought against Serbia, under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”), by Ms Safa Grišević and 2 others (“the applicants”; see paragraph 5 below), on 14 April 2006 and 23 September 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 first applicant was represented by Ms R. Paljevac-Emrović, while the other two were represented by Ms R. Garibović. Both representatives are lawyers 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. On 17 October 2006 and 13 November 2006 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

5. The applicants, Ms Safa Grišević (“the first applicant”), Mr Dragoš Vranić (“the second applicant”) and Ms Mladomirka Vučićević (“the

third applicant”) are all Serbian citizens who were born in 1962, 1954 and 1965, respectively, and currently live in the Municipality of Novi Pazar, Serbia.

I. THE CIRCUMSTANCES OF THE CASE

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

A. Introduction

7. On 1 February 1995 the first applicant employed with Raška Holding AD, on 1 January 1998 the second applicant employed with Raška Holding AD – Tkačnica DOO, and on 17 November 1995 the third applicant employed with DP Savremena Konfekcija Raška, 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 had improved sufficiently.

8. 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.

9. 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

10. On 30 March 2004 the Municipal Court ruled in favour of the applicant and ordered her employer to pay her:

- i. the “paid leave benefits” (“*naknadu za vreme plaćenog odsustva*”) due from 1 February 1995 to 19 January 2004, amounting to 80% of the salary which she would otherwise have earned, plus statutory interest;
- ii. 7,800.00 Dinars [RSD] (approximately 99 euros [EUR]) for her legal costs; and
- iii. the pension and disability insurance contributions (“*doprinosi za penzijsko i invalidsko osiguranje*”) due for that period.

11. By 20 April 2004 this judgment became final.

12. On 14 May 2004 the applicant requested the Municipal Court to enforce the said judgment and proposed that this be carried out either by means of a bank account transfer, for which purpose she produced her employer’s relevant bank details, or through the auctioning of the debtor’s movable and/or immovable assets.

13. On 10 June 2004 the Municipal Court accepted the applicant's request and ordered the enforcement sought.
14. Thereafter, the Municipal Court transmitted this order to the Central Bank (*Narodna banka Srbije*).
15. On 1 December 2005 the applicant filed a written submission with the Municipal Court, stating, *inter alia*, that:
 - i. the debtor had, in the meantime, publicly leased out its real estate to third parties and must have thereby obtained sufficient funds for the purposes of enforcement; and
 - ii. it was unclear whether these funds were being paid to the debtor in cash or through a bank account transfer, which is why the enforcement at issue should instead be attempted through the auctioning of the debtor's movable and specified immovable property.
16. On 17 November 2006 the Central Bank informed the Municipal Court that certain information was missing.
17. On 24 November 2006 the Municipal Court requested the applicant to complete the information.
18. On 4 December 2006 the applicant provided the Municipal Court with the information sought and on 6 December 2006 the latter adopted a new enforcement order.
19. On 14 December 2006 the Municipal Court transmitted this order to the Central Bank.
20. It would appear that the enforcement proceedings are still pending.

C. As regards the second applicant

1. First set of proceedings

21. On 10 March 2004 the Municipal Court in Novi Pazar ruled in favour of the applicant and ordered his employer to pay him:
 - i. the monthly paid leave benefits due from 1 March 1998 to 31 May 2001 (RSD 9,410 in all; approximately EUR 119), indexed in accordance with the relevant regulations, as well as the same benefits due from 1 June 2001 to 10 March 2004 (RSD 133,059 in all; approximately EUR 1,683), together with statutory interest;
 - ii. RSD 7,800 (approximately EUR 99) for his legal costs; and
 - iii. the pension and disability insurance contributions ("*doprinosi za penzijsko i invalidsko osiguranje*") due from 1 January 1999 to 10 March 2004.
22. By 29 March 2004 this judgment became final.
23. On 30 March 2004 the applicant filed a request for its enforcement, proposing that it be carried out either by means of a bank transfer or

through auctioning the debtor's specified movable and/or immovable assets.

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

25. On 26 April 2004 the Municipal Court transmitted this order to the Central Bank.

2. Second set of proceedings

26. On 20 October 2004 the Municipal Court ruled in favour of the applicant and ordered his employer to pay him:

i. the monthly paid leave benefits due from 11 March 2004 to 20 October 2004, together with statutory interest; and

ii. the pension and disability insurance contributions due for that period.

27. By 15 November 2004 this judgment became final.

28. On 18 November 2004 the applicant filed a request for its enforcement, proposing that it be carried out either by means of a bank transfer or through auctioning the debtor's specified movable and/or immovable assets.

29. On 26 November 2004 the Municipal Court accepted the applicant's request and issued an enforcement order.

30. On 13 December 2004 the Municipal Court transmitted this order to the Central Bank.

3. Third set of proceedings

31. On 4 November 2005 the Municipal Court ruled in favour of the applicant and ordered his employer to pay him RSD 7,800 (approximately EUR 99) for the legal costs incurred in the above proceedings.

32. By 10 November 2005 this decision became final.

33. On 28 November 2005 the applicant filed a request for its enforcement, proposing that it be carried out either by means of a bank transfer or through auctioning the debtor's specified movable and/or immovable assets.

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

35. On 7 March 2006 the Municipal Court transmitted this order to the Central Bank.

4. Fourth set of proceedings

36. On 24 August 2005 the applicant filed another labour-related civil claim with the Municipal Court.

37. On 30 December 2005 the Municipal Court ruled in his favour and ordered his employer to pay him:

- i. the monthly paid leave benefits due from 20 October 2004 to 30 December 2005, together with statutory interest;
 - ii. the pension and disability insurance contributions due for the same period; and
 - iii. RSD 4,500 (approximately EUR 53) for his legal costs.
38. By 27 September 2006 this judgment became final.
39. It would appear that the applicant has not filed a request for the enforcement of the above decision.

D. As regards the third applicant

1. First set of proceedings

40. On 14 September 2004 the Municipal Court ruled in favour of the applicant and ordered her employer to pay her:
- i. the monthly paid leave benefits due from 16 September 2000 to 16 September 2003, together with statutory interest;
 - ii. RSD 8,100 (approximately EUR 102 EUR) for her legal costs; and
 - iii. the pension and disability insurance contributions due from 1 August 1998 to 16 September 2003.
41. By 7 October 2004 this judgment became final.
42. On 21 October 2004 the applicant filed a request for its enforcement, proposing that it be carried out either by means of a bank transfer or through auctioning the debtor's specified movable and/or immovable assets.
43. On 29 October 2004 the Municipal Court accepted the applicant's request and issued an enforcement order.
44. On 2 November 2004 the Municipal Court transmitted this order to the Central Bank.

2. Second set of proceedings

45. On 24 November 2004 the Municipal Court ruled in favour of the applicant and ordered her employer to pay her:
- i. the monthly paid leave benefits due from 17 September 2003 to 31 May 2004 (RSD 41,422.25 in all; approximately EUR 524), together with statutory interest;
 - ii. RSD 7,800 (approximately EUR 99) for her legal costs; and
 - iii. the pension and disability insurance contributions due for that period.
46. By 6 January 2005 this judgment became final.
47. On 11 January 2005 the applicant filed a request for its enforcement, proposing that it be carried out either by means of a bank transfer or through auctioning the debtor's specified movable and/or immovable assets.

48. On 8 February 2005 the Municipal Court accepted the applicant's request and issued an enforcement order.

49. On 12 February 2005 the Municipal Court transmitted this order to the Central Bank, but on an unspecified date the latter informed the former that certain information needed for the enforcement was missing.

50. Following the applicant's request of 30 June 2006, on 5 July 2006 the Municipal Court terminated the proceedings as regards the enforcement of the pension and disability insurance contributions only.

3. *Other relevant facts*

51. On 15 December 2006 the applicant was declared redundant.

52. On the same date she signed an agreement with the debtor concerning her salary arrears with interest, as well as her other labour-related benefits and/or contributions. The agreement provided, *inter alia*, that the applicant shall be paid a certain amount in accordance with the Government's "social programme", in return for which the applicant would renounce her right to seek judicial enforcement of any final judgments rendered in her favour before 15 December 2006.

53. It would appear that the applicant received payment.

54. Relying on the debtor's request of 5 May 2005 and the above-mentioned agreement, on 6 May 2008 and 7 May 2008, respectively, the Municipal Court terminated the enforcement ordered on 29 October 2004 and 8 February 2005, respectively.

55. The District Court upheld these decisions on 4 July and 21 July 2008, respectively.

E. Other relevant facts as regards the second and third applicants

56. On 30 November 2004 and 21 February 2005, 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 of this, judicial enforcement by means of a bank transfer has been rendered impossible.

57. Finally, the applicants' lawyer requested that urgent action be taken to secure the enforcement of the final judgments in question.

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

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

F. The debtors' status

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

61. As of April 2009, the first and second applicants' debtors were still predominantly socially-owned, whilst the third applicant's debtor, having been privatised, was predominantly comprised of private capital.

II. RELEVANT DOMESTIC LAW

62. The relevant domestic law is set out in the Court's judgments of *R. Kačapor and Others v. Serbia* (nos. 2269/06, 3041/06, 3042/06, 3043/06, 3045/06 and 3046/06, 15 January 2008, §§ 57-82), *Crnišanin and Others v. Serbia* (nos. 35835/05, 43548/05, 43569/05 and 36986/06, 13 January 2009, §§100-104) and *EVT Company v. Serbia* (no. 3102/05, §§ 26 and 27, 21 June 2007).

THE LAW

I. JOINDER OF THE APPLICATIONS

63. 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 VIOLATIONS IN RESPECT OF THE NON-ENFORCEMENT OF THE FINAL JUDGMENTS

64. All 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.

65. The Government raised various objections to the admissibility of these matters. However, the Court has rejected similar objections in several previous cases (see, for example, *mutatis mutandis*, *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; *R. Kačapor and Others v. Serbia*, cited above, §§ 92 – 99 and 118; *Crnišanić and Others v. Serbia*, cited above, §§ 108-115 and 132) and finds no reason not to do so on this occasion. The complaints are therefore declared admissible.

66. The Government further contended that there had been no violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention.

67. The applicants reaffirmed their complaints.

68. As regards the first and second applicants, 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; *Crnišanić and Others v. Serbia*, cited above). It finds no reason to depart from this ruling in the present case since the first and second applicants' debtors are themselves such companies (see paragraph 61 above) and the period of debt recovery has so far lasted between three years and nine months and five years and three months in all. 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 (*R. Kačapor and Others v. Serbia*, cited above; *Crnišanić and Others v. Serbia*, cited above). Accordingly, there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

69. As regards the third applicant, the Court has already considered practically identical circumstances in *Crnišanić and Others v. Serbia* (cited above, §§ 125-130 and 133-134) in which it found, *inter alia*, a violation of Article 6 of the Convention and Article 1 of Protocol No. 1. The Court notes that the enforcement proceedings in the present case had been brought by the applicant on 21 October 2004 and 11 January 2005, respectively (see paragraphs 42 and 47 above), whilst on 15 December 2006 the applicant had renounced all of her enforcement claims in respect of the debtor (see paragraphs 52 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). Considering the length of the period of non-enforcement of the judgments prior to the litigants' agreement (the enforcement proceedings having lasted for more than two years and one month and one year and eleven months, respectively), and having examined all relevant circumstances, the Court does not see any reason to depart from its previous case-law. There has accordingly been a breach of Article 6 of the Convention and Article 1 of Protocol 1 in respect of the third applicant as well.

III. THE SECOND APPLICANT'S COMPLAINT CONCERNING THE LENGTH OF A SEPARATE LAWSUIT

70. The second applicant also complained about the length his fourth set of proceedings (see paragraphs 36-39 above).

71. The court observes that these proceedings were initiated on 24 August 2005, when the applicant lodged his claim with the Municipal Court in Novi Pazar, and were concluded by 27 September 2006, when the judgment issued by that court on 30 December 2005 had become final. Accordingly, the period to be considered is one year and one month.

72. In the light of the above, the Court finds that the overall length of the proceedings in question has not exceeded the "reasonable time" requirement of Article 6 § 1 of the Convention.

73. It follows that this complaint is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

A. Damage

1. *Pecuniary damage*

74. 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.

75. The Government contested these claims.

76. 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 and *Crnišanić and Others v. Serbia*, cited above, §§ 137-139), the Court considers that the first and second applicants' claims must be accepted. The Government shall, therefore, pay in respect of these two applicants the sums awarded in the said final judgments. As regards the third applicant's claim, however, the Court notes that on 15 December 2006 she renounced her entitlement to enforcement in respect of the debtor (see paragraphs 52 and 69 above). Accordingly, the third applicant's pecuniary claim must be rejected.

2. *Non-pecuniary damage*

77. The first applicant claimed EUR 10,000, while the second and the third applicants claimed EUR 5,000 each for the non-pecuniary damage suffered as a result of the impugned non-enforcement.

78. The Government contested these claims.

79. 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 2,100;
- ii. the second applicant: EUR 2,100; and
- iii. the third applicant: EUR 1,800.

B. Costs and expenses

80. 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 second and the third applicants further sought EUR 992 each for the costs and expenses incurred in the course of their "Strasbourg case", whilst the first applicant requested such costs but did not specify the amount.

81. The Government contested these claims.

82. 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).

83. Regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the second and the third applicants the sum of EUR 300 for the costs and expenses incurred in the proceedings before this Court. The Court, however, rejects, as unsubstantiated, the first applicant's claim under this head.

84. 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

85. 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 second applicant's complaint concerning the length of proceedings inadmissible and the remainder of 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 and second 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 2,100 (two thousand one hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) to the second applicant, EUR 2,100 (two thousand one hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (iii) to the third applicant, EUR 1,800 (one thousand eight hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (iv) to the second and third applicant each, EUR 300 (three hundred euros), plus any tax that may be chargeable to them, for costs and expenses;
 - (c) that the amounts specified under (b) shall be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
 - (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' claim for just satisfaction.

Done in English, and notified in writing on 21 July 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉF. TULKENS
Registrar

President