



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

FIRST SECTION

CASE OF VRBICA v. CROATIA

(Application no. 32540/05)

JUDGMENT

STRASBOURG

1 April 2010

FINAL

01/07/2010

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

In the case of Vrbica v. Croatia,

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

Christos Rozakis, *President*,

Nina Vajić,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 11 March 2010,

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

PROCEDURE

1. The case originated in an application (no. 32540/05) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Montenegrin national, Mr Marko Vrbica (“the applicant”), on 26 August 2005.

2. The applicant was represented by Mr S. Rožman and Mrs M. Oredić of Law Firm Rožman & Oredić, advocates practising in Karlovac. The Croatian Government (“the Government”) were represented by their Agent, Mrs Š. Stažnik.

3. On 17 November 2007 the President of the First Section decided to communicate the complaints concerning property, fairness and an effective remedy to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

4. The Government of Montenegro, having been informed of their right to intervene (Article 36 § 1 of the Convention and Rule 44 § 2(a) of the Rules of Court), did not avail themselves of this right.

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

5. The applicant was born in 1937 and lives in Cetinje (Montenegro).

6. On 15 October 1991 the Titograd Court of First Instance (*Osnovni sud u Titogradu*) gave judgment no. P-437/87 ordering the companies C.O. and

P. – both incorporated under Croatian law and with their head offices in Croatia – to pay the applicant jointly and severally damages in the total amount of 600,000 Yugoslav dinars for injuries sustained in a road traffic accident, together with accrued statutory default interest and the costs of proceedings. The judgment became final on 6 January 1992.

A. The proceedings for recognition of a foreign judgment

7. On 16 October 2001 the applicant instituted non-contentious proceedings before the Koprivnica Municipal Court (*Općinski sud u Koprivnici*) seeking that the above foreign judgment be recognised in Croatia.

8. On 20 November 2001 the Municipal Court accepted the applicant's request and issued a decision recognising the Montenegro court's judgment.

9. On 4 March 2002 the applicant applied for rectification of that decision because it incorrectly stated that the case number of the recognised judgment was P-437/97 instead of P-437/87.

10. On 13 March 2002 the Koprivnica Municipal Court issued a decision rectifying the error. It served it on the applicant's representatives two days later.

B. The first enforcement proceedings

11. Meanwhile, on 3 December 2001 the applicant instituted enforcement proceedings before the Koprivnica Municipal Court against the companies C.O. and P. by submitting an application for enforcement of the recognised judgment.

12. On 6 February 2002 the court issued a writ of execution (*rješenje o ovrsi*) by garnishment of funds from the debtors' bank accounts.

13. The judgment debtors appealed, arguing that number P-437/97 figured in the decision on recognition as a number of the recognised judgment while the actual number of the judgment sought to be enforced was P-437/87. In his reply, the applicant submitted that the decision on recognition contained a clerical error, that he had applied for its rectification and that the proceedings instituted thereby were still pending.

14. On 16 April 2002 the Koprivnica County Court (*Županijski sud u Koprivnici*) quashed the writ of execution of 6 February 2002 and remitted the case. It held that the decision on recognition of the foreign judgment indeed contained the number P-437/97 as a number of the recognised judgment whereas the judgment sought to be enforced had the number P-437/87. The court observed that this discrepancy might have been caused by a clerical error but nevertheless quashed the writ of execution, giving precedence to the principle of strict formal legality in enforcement

proceedings. The second-instance decision was served on the applicant's representatives on 10 May 2002.

15. In the resumed proceedings, on 13 June 2002 the Koprivnica Municipal Court issued an instruction, which the applicant's representatives received four days later, inviting him to submit within fifteen days the proper enforcement title (that is, the judgment with the same number as the one stated to be the number of the recognised judgment in the decision of 20 November 2001) or a rectified decision on recognition.

16. As the applicant failed to do so, on 6 August 2002 the court declared his application for enforcement inadmissible.

17. The applicant appealed and enclosed that court's decision on rectification of 13 March 2002 (see paragraph 10 above).

18. On 17 September 2002 the Koprivnica County Court dismissed the applicant's appeal. It held that the first-instance decision to declare the application for enforcement inadmissible was justified, given that the applicant had failed to satisfy the request of the first-instance court even though he could have done so as he had been in possession of the rectified decision at the relevant time. The second-instance decision was served on the applicant's representatives on 15 October 2002.

19. The applicant then lodged a constitutional complaint against that decision, which the Constitutional Court (*Ustavni sud Republike Hrvatske*) dismissed on 17 September 2004.

C. The second enforcement proceedings and the civil proceedings for declaring the enforcement inadmissible

1. The second enforcement proceedings

20. Meanwhile, on 24 December 2002 the applicant instituted the second enforcement proceedings before the Koprivnica Municipal Court against the judgment debtors by resubmitting his application for enforcement together with the rectified decision on recognition.

21. On 7 March 2003 the court issued a writ of execution by garnishment of funds from the debtors' bank accounts.

22. The debtors appealed, arguing that the enforcement had become time-barred, given that the ten-year statutory limitation period running from the finality of the judgment sought to be enforced had elapsed on 6 January 2002. In reply, the court instructed them, pursuant to the Enforcement Act, to institute separate civil proceedings before it against the applicant with a view to declaring the enforcement inadmissible.

23. After these civil proceedings ended in the applicant's disfavour (see paragraphs 25-29 below), on 10 December 2004 the Koprivnica Municipal Court issued a decision discontinuing the enforcement proceedings.

24. The applicant appealed, but his appeal was dismissed by the Koprivnica County Court on 25 January 2005.

2. The civil proceedings for declaring the enforcement inadmissible

25. On 19 May 2003 the judgment debtors, companies C.O. and P., brought a civil action against the applicant in the Koprivnica Municipal Court, seeking to have the enforcement declared inadmissible.

26. On 8 June 2004 the Koprivnica Municipal Court gave judgment for the plaintiffs, finding that the enforcement was time-barred and thus inadmissible.

27. On 28 September 2004 the Koprivnica County Court dismissed an appeal by the applicant and upheld the first-instance judgment.

28. The courts held that the applicant's request of 16 October 2001 for recognition of a foreign judgment instituting the relevant non-contentious proceedings had not interrupted the running of the statutory limitation period within which the enforcement of the recognised judgment could have been sought. The courts held so because they considered that a judgment debtor was not a party to such proceedings and was thus unaware that a judgment creditor had undertaken steps to enforce the judgment. The courts also noted that the applicant had not used the opportunity to institute enforcement proceedings directly – a step that would certainly have interrupted the running of the statutory limitation period – in which case the recognition of the enforcement title could have been decided incidentally as a preliminary issue in those proceedings. Lastly, the courts noted that the applicant had instituted the first enforcement proceedings within the ten-year statutory limitation period but that they had ended with a decision declaring his application for enforcement inadmissible, in which case, pursuant to section 389(2) of the Obligations Act, they did not interrupt the running of the limitation period.

29. The applicant then lodged a constitutional complaint against the second-instance judgment, alleging violations of his constitutional rights to a fair hearing, equality and property. On 20 April 2005 the Constitutional Court dismissed his constitutional complaint.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Obligations Act

30. The relevant part of the Obligations Act (*Zakon o obveznim odnosima*, Official Gazette of the Socialist Federal Republic of Yugoslavia nos. 29/1978, 39/1985 and 57/1989, and Official Gazette of the Republic of Croatia no. 53/1991 with subsequent amendments) provided as follows:

Section 379 (1)**Claims determined by a final court decision or a decision of another competent authority**

“All claims determined by a final court decision or a decision of another competent authority ... lapse in ten years, even if for certain claims a statute provides for a shorter limitation period.”

Section 388**Bringing of an action**

“[Running of the] limitation [period] is interrupted by bringing of a civil action in a court or by taking any other legal action before other competent authority by the creditor against the debtor with a view to determining, securing or enforcing his or her right.”

Section 389**Abandoning, dismissing or declaring an action inadmissible**

“(1) An interruption of limitation period resulting from bringing of a civil action in a court or from taking of any other legal action before other competent authority by the creditor against the debtor with a view to determining, securing or enforcing his or her right, is considered never to have occurred if the creditor abandons the civil action or any other action undertaken.

(2) Likewise, it is considered that an interruption has never occurred if the creditor's civil action or application was dismissed or declared inadmissible, or if the measure obtained to secure or enforce the debt was set aside.”

Section 390 (1)**Declaring a civil action inadmissible for lack of jurisdiction**

“If a civil action against the debtor is declared inadmissible for lack of jurisdiction or any other reason which does not concern the merits of the case, and the creditor brings another civil action within three months following finality of the decision declaring the [first] civil action inadmissible, it is considered that the limitation period was interrupted by the first civil action.”

B. The Enforcement Act*1. Relevant provisions*

31. The relevant part of the Enforcement Act (*Ovršni zakon*, Official Gazette of the Republic of Croatia, nos. 57/1996, 29/1999, 42/2000, 173/2003, 194/2003, 151/2004, 88/2005, 121/2005 and 6720/08), as in force at the material time, provided as follows:

Section 11 (1)**Legal remedies**

“Unless otherwise provided by this Act, [the parties may lodge] an appeal against first-instance decisions.”

Section 17**Enforcement of a decision of a foreign court**

“Enforcement on the basis of a decision of a foreign court may be ordered and carried out in the Republic of Croatia only if that decision meets the requirements for its recognition and enforcement provided by a statute or an international agreement.”

Section 19 (1)**Application of provisions of other statutes**

“Unless otherwise provided by this Act or another statute, in enforcement ... proceedings the provisions of the Civil Procedure Act shall apply *mutatis mutandis*.”

Section 33 (1)**Certificate of enforceability**

“If an application for enforcement is lodged with the court which did not decide on the claim at first instance, the application shall be accompanied with the original or a copy of the enforcement title having the certificate of enforceability ...”

2. The Supreme Court's practice

In its decisions no. Gzz-22/00-2 of 5 July 2000 the Supreme Court interpreted section 33(1) of the Enforcement Act as follows:

“Section 33(1) of the Enforcement Act provides: 'If an application for enforcement is lodged with the court which did not decide on the claim at first instance, the application shall be accompanied with the original or a copy of the enforcement title having the certificate of enforceability ...' It follows by converse implication from that provision that an application for enforcement does not have to be accompanied by the enforcement title having the certificate of enforceability when the application for enforcement is [lodged with and] based on the decision of the court which decided on the claim [at first instance].”

C. The Civil Procedure Act

32. The relevant part of the Civil Procedure Act (*Zakon o parničnom postupku*, Official Gazette of the Socialist Federal Republic of Yugoslavia nos. 4/1977, 36/1977 (corrigendum), 36/1980, 69/1982, 58/1984, 74/1987, 57/1989, 20/1990, 27/1990 and 35/1991, and Official Gazette of the

Republic of Croatia nos. 53/1991, 91/1992, 58/1993, 112/1999, 88/2001, 117/2003, 88/2005, 2/2007, 84/2008 and 123/2008) as in force at the material time, provided as follows:

Section 109

“(1) ...

(2) When returning a submission to a party with a view to correcting or supplementing it, the court shall specify a time-limit for its re-submission.

(3) ...

(4) If a submission is not returned to the court within the specified time-limit, it shall be considered withdrawn. If it is returned without correction or supplement, it shall be declared inadmissible.”

Section 352 (1)

“In an appeal the parties may rely on new facts and adduce new evidence...”

Reopening of proceedings following a final judgment of the European Court of Human Rights in Strasbourg finding a violation of a fundamental human right or freedom

Section 428a

“(1) When the European Court of Human Rights has found a violation of a human right or fundamental freedom guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms or additional protocols thereto ratified by the Republic of Croatia, a party may, within thirty days of the judgment of the European Court of Human Rights becoming final, file a petition with the court in the Republic of Croatia which adjudicated in the first instance in the proceedings in which the decision violating the human right or fundamental freedom was rendered, to set aside the decision by which the human right or fundamental freedom was violated.

(2) The proceedings referred to in paragraph 1 of this section shall be conducted by applying, *mutatis mutandis*, the provisions on the reopening of proceedings.

(3) In the reopened proceedings the courts are required to respect the legal opinions expressed in the final judgment of the European Court of Human Rights finding a violation of a fundamental human right or freedom.”

D. The Conflict of Laws Act

1. Relevant provisions

33. The relevant part of the Conflict of Laws Act (*Zakon o rješavanju sukoba zakona s propisima drugih zemalja u određenim odnosima*, Official

Gazette of the Socialist Federal Republic of Yugoslavia nos. 43/1982 and 72/1982, and Official Gazette of the Republic of Croatia no. 53/1991) reads as follows:

Section 101 (5)

If no separate decision on recognition of a foreign decision has been rendered, any court may in the proceedings [before it] decide on recognition of that decision as a preliminary issue, but only with effect for those proceedings.

2. The Supreme Court's practice

34. In its decisions nos. GŽ 6/1992-2 of 19 August 1992, GŽ 2/1995-2 of 14 June 1995 and GŽ-4/1995-2 of 15 June 1995 the Supreme Court held that the lower courts had breached the principle of adversarial hearing in the non-contentious proceedings for recognition of a foreign judgment because they had not served the application for recognition to the judgment debtor nor held any hearing before reaching their decisions.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

35. The applicant complained that the refusal of the domestic courts to enforce the recognised foreign judgment of 15 October 1991 violated his right to peaceful enjoyment of his possessions. He relied on Article 1 of Protocol No. 1 to the Convention, which reads 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.”

36. The Government contested that argument.

A. Admissibility

37. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that

it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. As to whether there was an interference with the peaceful enjoyment of 'possessions'

(a) The arguments of the parties

38. The Government first submitted that the case did not disclose any interference with the applicant's property rights. They argued that when a judgment could not be enforced because the enforcement had become time-barred, this did not constitute interference within the meaning of Article 1 of Protocol No. 1 to the Convention. They explained that the right of a creditor to enforce his or her claim lapses upon the expiration of the statutory limitation period, which periods were determined by clear legal regulations, and their expiration did not depend on any actions or acts by the state authorities. Moreover, if the debtor fulfilled his or her obligation after the expiration of the limitation period, he or she could not claim back what had been given. Furthermore, the debtor must plead that the limitation period had expired, because the court could not take it into account of its own motion, but only if the debtor raised it. Therefore, the Government argued that the applicant's claim still existed, but, due to the expiration of the statutory limitation period in which he had failed to undertake necessary legal steps for its enforcement, he could no longer enforce his claim through the courts. For this reason, the Government argued that his claim had not been extinguished or limited and therefore there had been no deprivation or control of possessions by the state authorities.

39. The applicant argued that on the basis of the Koprivnica Municipal Court's decision on recognition of the final judgment of the Titograd Court of First Instance of 15 October 1991, he had acquired an undisputed and outstanding claim for damages against the companies C.O. and P., that is to say a pecuniary right. By refusing to enforce that judgment, the Croatian courts had prevented him from realising his acquired pecuniary right, thereby violating his right to peaceful enjoyment of possessions protected by Article 1 of Protocol No. 1 to the Convention.

(b) The Court's assessment

40. The Court reiterates that an applicant may allege a violation of Article 1 of Protocol No. 1 only in so far as the impugned decisions relate to his or her "possessions" within the meaning of that provision. "Possessions" can be "existing possessions" or claims that are sufficiently established to

be regarded as “assets”. A claim may be regarded as an asset only when it is sufficiently established to be enforceable (see, for example, *Stran Greek Refineries and Stratis Andreadis v. Greece*, 9 December 1994, § 59, Series A no. 301-B). As the applicant's claim in the present case had been acknowledged by the final judgment of the Titograd Court of First Instance of 15 October 1991 that was subsequently recognised in Croatia by a decision of the Koprivnica Municipal Court of 20 November 2001, the Court considers that the applicant's claim was sufficiently established to qualify as an “asset” protected by Article 1 of Protocol No. 1.

41. The Court further notes that the applicant had instituted enforcement proceedings in order to enforce the above foreign judgment rendered in his favour, but that the enforcement was eventually declared inadmissible as time-barred by the Koprivnica Municipal Court on 8 June 2004 because the ten-year time-limit for seeking enforcement had expired. In this connection, the Court reiterates that the impossibility of obtaining the execution of a final judgment in an applicant's favour 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 (see, among other authorities, *Burdov v. Russia*, no. 59498/00, § 40, ECHR 2002-III, and *Jeličić v. Bosnia and Herzegovina*, no. 41183/02, § 48, ECHR 2006-XII). In these circumstances, the Court considers that there has been an interference with the applicant's right to peaceful enjoyment of his “possessions” in the present case.

2. *As to whether the interference was “provided for by law”*

(a) The arguments of the parties

(i) The Government

42. The Government argued that the interference had been provided for by law as it had been based on sections 379(1) and 389(1) of the Obligations Act, which had provided that claims determined by a final court decision lapse in ten years, and that an interruption of the limitation period resulting from the bringing of a civil action or any other legal action was considered never to have occurred if the creditor abandoned that action. In interpreting these provisions, the domestic courts had held that lodging a request for recognition of a foreign court judgment did not constitute an action of the creditor which could interrupt the running of the statutory limitation period within the meaning of section 388 of the Obligations Act because it was neither undertaken against the debtor nor aimed at determining, securing or enforcing the claim. Accordingly, no interruption of the limitation period had occurred when the applicant had submitted his request for recognition of a foreign judgement. The limitation period could

only be interrupted by lodging an application for enforcement within that period.

43. Although the applicant's first application for enforcement had been lodged before the expiration of the limitation period that application could not have interrupted it because, pursuant to section 389(1) of the Obligations Act, the limitation period was considered not to have been interrupted if the creditor had abandoned his action. In this connection, the Government emphasised that in its instruction of 13 June 2002, the Koprivnica Municipal Court had invited the applicant to rectify his application for enforcement while warning him explicitly that otherwise it would be considered withdrawn. Since the applicant had failed to act according to that instruction, it had been considered that he had abandoned his application for enforcement. Accordingly, no interruption of the limitation period had occurred.

44. As to the applicability to the present case of section 390(1) of the Obligations Act – which provides an exemption from section 389(2) of the same Act, in which situations the running of the statutory limitation period shall be interrupted even though the creditor's action has been declared inadmissible – the Government first pointed out that it was for the domestic courts to assess whether the conditions for its application had been met. In this connection they reiterated that under the Court's case-law it was not the Court's task to assume the role of domestic courts, and that it was primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation. They further argued that this section referred primarily to situations where the creditor's action had been declared inadmissible for lack of jurisdiction (hence the title of the section). However, in the present case, in its decision of 6 August 2002, the Koprivnica Municipal Court had not declared the applicant's application for enforcement inadmissible “*for lack of jurisdiction or any other reason which does not concern the merits of the case*”, as provided in section 390(1) of the Obligations Act, but because the applicant had abandoned his application for enforcement within the meaning of section 389(1) of that Act. Therefore, the limitation period could not have been interrupted by lodging the first application for enforcement. Lastly, the Government pointed out that the applicant had never relied on section 390(1) of the Obligations Act in any of the above proceedings.

(ii) The applicant

45. The applicant argued that in the present case the “final court decision” within the meaning of section 379(1), to which the ten-year statutory limitation period applied, was not the judgment of the Titograd Court of First Instance of 15 October 1991, as the domestic courts and the Government had mistakenly held, but the Koprivnica Municipal Court's decision on recognition of that judgment of 20 November 2001. That being

so, it could not have been argued that the applicant had not sought its enforcement within the ten-year statutory limitation-period, as the domestic courts had held.

46. As regards the Government's argument that his first application for enforcement had been declared inadmissible because he had failed to observe the Koprivnica Municipal Court instruction of 13 June 2002, and submit the rectified decision on recognition, the applicant referred to the Supreme Court's practice developed in respect of section 33 of the Enforcement Act, according to which the enforcement creditor was not required to enclose an enforcement title with his application for enforcement if the enforcement title (that is, a decision to be enforced) originated from the same court before which the enforcement was being sought. Since it was the Koprivnica Municipal Court's decision on recognition and not the judgment of the Titograd Court of First Instance that, in the applicant's view, constituted the enforcement title in the present case, and given the fact that he sought the enforcement before the very same Koprivnica Municipal Court, it had been the duty of that court to obtain and correct that decision on recognition of its own motion.

47. The applicant further argued that, even assuming that it was the judgment of the Titograd Court of First Instance that constituted the enforcement title, as the Government claimed, the interference with his right to peaceful enjoyment of possessions would have nevertheless not been lawful.

48. In this connection the applicant first submitted that the domestic courts had misapplied the domestic law when they held that the institution of proceedings for recognition of a foreign judgment did not constitute an "*action of the creditor against the debtor with a view to determining, securing or enforcing his right*" within the meaning of section 388 of the Obligations Act, capable of interrupting the running of the statutory limitation period. The applicant explained that this was so because a foreign judgment could not have been enforced before it had been recognised in Croatia. Instituting proceedings for recognition of a foreign judgment was therefore a necessary precondition for its enforcement.

49. The applicant further referred to the failure of the domestic courts to apply section 390(1) of the Obligations Act even though all conditions for its application had been met in his case. In particular, his first application for enforcement had been declared inadmissible on 6 August 2002 for his alleged failure to act upon the instruction of the Koprivnica Municipal Court of 13 June 2002, that is to say, for the reason that did not concern the merits of the case. In its decision of 6 August 2002 the Koprivnica Municipal Court had not declared his application for enforcement withdrawn, as the Government suggested, which might have led to the conclusion that he had "abandoned" it, within the meaning of section 389(1) of the Obligations Act. Rather, that court expressly declared his application for enforcement

inadmissible, which was the first condition for applicability of section 390(1) of the Obligations Act. Furthermore, since he had brought his second application for enforcement on 24 December 2002, that is well within three months of 15 October 2002, the date on which the decision of 6 August 2002 declaring his first application for enforcement inadmissible had become final, the second condition for applicability of section 390(1) of the Obligations Act had also been met. It followed that the limitation period should have been interrupted on 3 December 2001 when he had lodged his first application for enforcement. That was within ten years of the finality of the judgment of the Titograd Court of First Instance of 15 October 1991, which had become final on 6 January 1992.

50. In these circumstances, the applicant argued that the interference with his right to peaceful enjoyment of possessions could not have been considered lawful.

(b) The Court's assessment

51. The Court reiterates that the first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful (see *Iatridis v. Greece* [GC], no. 31107/96, § 58, ECHR 1999-II). In this respect the Court agrees with the Government that the decisions of the domestic courts in the present case had a legal basis in domestic law as their refusal to allow the enforcement of the foreign judgment rendered in the applicant's favour was based on sections 379(1) and 389 of the Obligations Act.

52. However, the Court further reiterates that the existence of a legal basis is not in itself sufficient to satisfy the principle of lawfulness, which also presupposes that the applicable provisions of domestic law are sufficiently accessible, precise and foreseeable in their application. That principle also requires the Court to verify whether the way in which the domestic law is interpreted and applied by the domestic courts produces consequences that are consistent with the principles of the Convention (see, for example, *Apostolidi and Others v. Turkey*, no. 45628/99, § 70, 27 March 2007, and *Nacaryan and Deryan v. Turkey*, nos. 19558/02 and 27904/02, § 58, 8 January 2008).

53. In this connection, the Court first notes that the application by the domestic courts of the above provisions of the Obligations Act followed from their prior finding that instituting proceedings for recognition of a foreign judgment did not constitute a legal action of the creditor within the meaning of section 388 of the same Act capable of interrupting the running of the statutory limitation period. Therefore, the domestic courts held that the ten-year statutory limitation period provided in section 379(1) of the Obligations Act within which the enforcement of a judgment could be sought had not been interrupted when the applicant on 16 October 2001 had lodged a request for recognition of the judgment of the Titograd Court of

First Instance of 15 October 1991 with the Koprivnica Municipal Court. Having regard to section 389 of the Obligations Act, the domestic courts considered that the running of this statutory limitation period could not have been interrupted either when the applicant had lodged his first application for enforcement on 3 December 2001 because that application had eventually been declared inadmissible on account of his failure to observe the time-limit set down by the first-instance court and provide a rectified decision on recognition (see paragraph 28 above).

54. The Court further notes that the view of the domestic courts that institution of proceedings for recognition of a foreign judgment did not constitute a legal action of the creditor within the meaning of section 388 of the Obligations Act was based on their assumption that a judgment debtor was not a party to such proceedings and was thus unaware that a judgment creditor had undertaken steps to enforce the judgment. However, that supposition contradicts the established case-law of the Supreme Court according to which proceedings for recognition of a foreign judgment are not *ex parte* proceedings but adversarial proceedings where a judgment debtor has to be informed of their commencement and be allowed to participate in them (see paragraph 34 above). It is true that companies C.O. and P. as the judgment debtors indeed did not participate in the proceedings for recognition of a foreign judgment instituted by the applicant. However, this was so only because of the failure of the Koprivnica Municipal Court to notify them that the applicant had instituted those proceedings. Even though this error of the Koprivnica Municipal Court should not have had negative consequences for the applicant, the same court nevertheless used it, in the civil proceedings instituted by the companies C.O. and P. to have the enforcement against them declared inadmissible, to justify its refusal to enforce the judgment in the applicant's favour (see paragraphs 25-29 above).

55. What is more, leaving aside the domestic law considerations, the Court finds untenable the view of the domestic courts that instituting proceedings for recognition of a foreign judgment does not interrupt the running of a statutory limitation period. If this view were to be accepted, it would lead to a situation where a judgment creditor could lose the right to enforce a foreign judgment owing to possible procrastination in the proceedings for its recognition, that is to say, for reasons beyond his or her control. That situation would seriously jeopardise the principle of legal certainty and would be irreconcilable with the principle of the rule of law.

56. The foregoing considerations are sufficient for the Court to conclude that the impugned interference in the form of the Koprivnica Municipal Court's judgment of 8 June 2004 was incompatible with the principle of lawfulness and therefore contravened Article 1 of Protocol No. 1 to the Convention, because the manner in which that court interpreted and applied the relevant domestic law, in particular section 388 of the Obligations Act, was not foreseeable for the applicant, who could have reasonably expected

that instituting proceedings for recognition of a foreign judgment would interrupt the running of the statutory limitation period (see, for example and *mutatis mutandis*, *Nacaryan and Deryan*, cited above, §§ 51-60, and *Fokas v. Turkey*, no. 31206/02, §§ 42-44, 29 September 2009).

57. There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention.

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

58. The applicant further complained that the refusal of the Croatian courts to allow the enforcement of the recognised foreign judgment of 15 October 1991 had been contrary to Article 6 § 1 of the Convention, which reads as follows:

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

59. The Government contested that argument.

A. Admissibility

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

B. Merits

61. The Court reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal; in this way it embodies the “right to a court”, of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect. However, that right would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable for Article 6 § 1 to describe in detail the procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without protecting the implementation of judicial decisions. To construe Article 6 as being concerned exclusively with access to a court and the conduct of proceedings would indeed be likely to lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention. Execution of a judgment given by any court must therefore 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).

62. Turning to the circumstances of the present case, the Court observes that the domestic courts refused to enforce the final and enforceable judgment of the Titograd Court of First Instance of 15 October 1991 rendered in the applicant's favour, that was recognised in Croatia on 20 November 2001, because they considered that the ten-year statutory limitation period stipulated in section 379(1) of the Obligations Act, within which the applicant could have sought enforcement, had expired. Thus, in the Court's view, the judgment of the Koprivnica Municipal Court of 8 June 2004 to declare the enforcement of the above-mentioned Montenegro's court judgment inadmissible may be regarded as imposing a restriction on his right of access to a court. The Court must therefore examine whether the applicant's right of access to a court was unduly restricted by that decision.

63. In this connection the Court first reiterates that the right of access to a court right is not absolute, but may be subject to limitations. These are permitted by implication, since the right of access by its very nature calls for regulation by the State. In this respect, the Contracting States enjoy a certain margin of appreciation, although the final decision as to the observance of the Convention's requirements rests with the Court. However, these limitations must not restrict or reduce the access left to an individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see, for example, *Ashingdane v. the United Kingdom*, 28 May 1985, § 57, Series A no. 93, and *Stubbings and Others v. the United Kingdom*, 22 October 1996, § 50, *Reports of Judgments and Decisions* 1996-IV).

1. As to whether the restriction pursued a legitimate aim

(a) The arguments of the parties

64. The Government argued that the restriction of the applicant's right of access to a court in the present case had pursued a legitimate aim as the interests of legal certainty required that creditors with a passive attitude who did not exercise their rights within the specified time-limit should, after the expiration of the limitation period, lose their right to enforce their claim.

65. The applicant agreed.

(b) The Court's assessment

66. The Court reiterates that statutory limitation periods serve several important purposes, namely to ensure legal certainty and finality, protect potential respondents from stale claims which might be difficult to counter and prevent the injustice which might arise if courts were required to decide

upon events which took place in the distant past on the basis of evidence which might have become unreliable and incomplete because of the passage of time (see *Stubbings and Others*, cited above, § 51; and, *mutatis mutandis*, *Vo v. France* [GC], no. 53924/00, § 92, ECHR 2004-VIII; and *J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom* [GC], no. 44302/02, §§ 68-69, ECHR 2007-X). Accordingly, the existence of a limitation period *per se* is not incompatible with the Convention. What the Court needs to ascertain in a given case is whether the nature of the time-limit in question and/or the manner in which it was applied is compatible with the Convention (see, *mutatis mutandis*, *Phinikaridou v. Cyprus*, no. 23890/02, § 52, ECHR 2007-XIV (extracts)).

2. *As to whether the restriction was proportionate to the legitimate aim pursued*

(a) **The arguments of the parties**

(i) *The Government*

67. The Government emphasised that under section 379(1) of the Obligations Act the claims determined by a final judgement – like the applicant's claim in the present case – elapsed in ten years, which meant that the limitation period for such claims was longer than the general limitation period. In fact the applicant had benefited from the longest limitation period provided for by the Obligations Act. Nevertheless, the applicant had submitted his first application for enforcement only one month before the expiration of that limitation period and after that had assumed a passive attitude in these proceedings, because of which the enforcement court considered that he had abandoned his application, as a consequence of which the running of the limitation period had not been interrupted.

68. In particular, during the enforcement proceedings the court had invited the applicant to correct his application for enforcement because the reference number indicated in the decision on recognition of 20 November 2001 was incorrect, for which reason he had had to request its rectification. The enforcement court had instructed the applicant how and within what time-limit he should have corrected his application for enforcement, and had warned him of the consequences of his failure to do so. However, the applicant had failed to follow the court's order without a valid reason. He had not provided the court with the document sought within the specified time-limit nor afterwards, that is until the issuance of the decision of 6 August 2002 declaring his application for enforcement inadmissible. In this connection the Government pointed out that the applicant had been in possession of the rectified decision on recognition at the time when the enforcement court had invited him to submit it. What is more, the applicant

had himself stated in his appeal against the decision declaring his application for enforcement inadmissible that he had not submitted the rectified decision because he had considered that it had been the court's task to obtain it *ex officio*. The applicant had been represented by advocates from Croatia, who should have been aware of the consequences of someone's failure to act upon the court's order in enforcement proceedings.

69. That being so, the Government considered that no unreasonable time-limits had been imposed on the applicant, nor had he been prevented from realising his rights. Moreover, given that enforcement proceedings were strictly formal proceedings in which an enforcement court acts exclusively upon applications by enforcement creditors, which must be accompanied with all the necessary documents (a valid enforcement title is an essential prerequisite for allowing enforcement), the Government deemed that, because of his passive attitude, the applicant bore the entire responsibility for declaring inadmissible his application for enforcement.

(ii) *The applicant*

70. The applicant repeated his above arguments (see paragraphs 45-50). He also pointed out that in the first enforcement proceedings the Koprivnica Municipal Court had invited him to submit the rectified decision on recognition even though this decision had been issued by the same court in the proceedings for recognition of a foreign judgment. Therefore, instead of asking him to submit the rectified decision, the court could have simply consulted the case file concerning the proceedings for recognition of a foreign judgment. That being so, and given that the same court had made a clerical error that had required rectification, the applicant considered that declaring his application for enforcement inadmissible on account of his failure to submit the rectified decision on recognition, had been disproportionate in the circumstances.

(b) **The Court's assessment**

71. In order to satisfy itself that the very essence of the applicant's "right to a tribunal" was not impaired by declaring the enforcement inadmissible, the Court must examine whether the view of the domestic courts that the institution of the proceedings for recognition of a foreign judgment by the applicant did not interrupt the running of the ten-year statutory limitation period, and the resultant sanction for failing to respect that time-limit, infringed the proportionality principle (see, *mutatis mutandis*, *Levages Prestations Services v. France*, 23 October 1996, § 42, *Reports of Judgments and Decisions* 1996-V, and *Osu v. Italy*, no. 36534/97, § 35, 11 July 2002).

72. In this connection the Court refers to its above findings in respect of the applicant's complaint under Article 1 of Protocol No. 1 to the Convention, according to which the applicant could have reasonably

expected that instituting proceedings for recognition of a foreign judgment would interrupt the running of the statutory limitation period and that the judgment of the Koprivnica Municipal Court of 28 September 2004 to the contrary was not in line with the established case-law of the Supreme Court (see paragraphs 54-56 above). In these circumstances, the refusal of the domestic courts to allow the enforcement of the recognised foreign judgment of 15 October 1991 rendered in the applicant's favour infringed the proportionality principle and thus impaired the very essence of his right of access to a court.

73. There has accordingly been a violation of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 1 OF PROTOCOL No.1 THERETO

74. The applicant also complained that he had not had an effective remedy against the refusal of the domestic courts to enforce the recognised foreign judgment of 15 October 1991. He relied on Article 13 of the Convention, taken in conjunction with Article 1 of Protocol No. 1 thereto. Article 13 reads as follows:

“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.”

75. The Government contested that argument.

76. As already noted above (see paragraph 41), the interference with the applicant's right to peaceful enjoyment of possessions occurred when the Koprivnica Municipal Court in its judgment of 8 June 2004 declared inadmissible the enforcement of the foreign judgment in his favour because it became time-barred. The applicant appealed against that judgment and subsequently lodged a constitutional complaint.

77. The Court reiterates in this connection that the “effectiveness” of a “remedy” within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant. (see *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-X). It therefore notes that the applicant had at his disposal effective domestic remedies to complain against the violation of his Convention right to peaceful enjoyment of possessions – an appeal and a constitutional complaint – of which he availed himself. The mere fact that the outcome of the appellate proceedings and the proceedings before the Constitutional Court was not favourable to him does not render those remedies ineffective.

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

IV. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

79. The applicant also complained that he had been discriminated against, claiming that the Croatian courts had refused to enforce the recognised foreign judgment of 15 October 1991 because of his Montenegrin origin and nationality. He relied on Article 14 of the Convention, which read as follows:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

80. The Court considers this complaint unsubstantiated as the applicant provided no details whatsoever. Moreover, there is no evidence to suggest that in deciding as they did the domestic courts were guided by improper motives, such as the applicant's nationality or ethnic origin.

81. It follows that this complaint is also inadmissible under Article 35 § 3 of the Convention as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 thereof.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

82. 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.”

83. The Court reiterates that a judgment in which it finds a breach imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences. If national law does not allow – or allows only partial – reparation to be made, Article 41 empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, §§ 32-33, ECHR 2000-XI). In this connection the Court notes that the applicant can now file a petition under section 428a of the Civil Procedure Act (see paragraph 32 above) with the Koprivnica Municipal Court for the reopening of the above civil proceedings for declaring the enforcement admissible in respect of which the Court has found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 thereto.

84. Given the nature of the applicant's complaints and the reasons for which it has found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 thereto, the Court considers that in the present case the most appropriate way of redress would be to reopen the proceedings complained of in due course (see, *mutatis mutandis*, *Trgo v. Croatia*, no. 35298/04, § 75, 11 June 2009; *Lungoci v. Romania*, no. 62710/00, § 56, 26 January 2006, and *Yanakiev v. Bulgaria*, no. 40476/98, § 90, 10 August 2006).

85. Having regard to the foregoing and given that the applicant's representatives did not submit a claim for just satisfaction, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning peaceful enjoyment of possessions and access to a court admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 1 April 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Christos Rozakis
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

- (a) concurring opinion of Judge Spielmann;
- (b) concurring opinion of Judge Malinverni.

C.L.R.
A.M.W.

CONCURRING OPINION OF JUDGE SPIELMANN

(Translation)

I.

1. Like all my colleagues, I voted in favour of finding a violation of Article 1 of Protocol No. 1 and of Article 6 of the Convention.

2. However, like Judge Malinverni I have difficulty in following the reasoning that led the Court to find a violation of Article 6 of the Convention. While I too consider that there has been a violation of Article 6 in this case, this is not because the applicant's right of *access to a court* was infringed, but because, both by displaying *excessive formalism* and by interpreting the relevant statutory provisions *arbitrarily*, the judicial authorities deprived him of the *fair hearing* to which he was entitled (see paragraph 15 of the concurring opinion of Judge Malinverni).

3. In paragraph 61 of the judgment the Court rightly considers the matter from the standpoint of execution of judicial decisions by citing the *Hornsby v. Greece* judgment (19 March 1997, § 40, *Reports of Judgments and Decisions* 1997-II). It should be recalled that in *Hornsby* the Court held as follows:

“40. The Court reiterates that, according to its established case-law, Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal; in this way it embodies the 'right to a court', of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect (see the *Philis v. Greece* judgment of 27 August 1991, Series A no. 209, p. 20, § 59). However, that right would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that Article 6 § 1 should describe in detail procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without protecting the implementation of judicial decisions; to construe Article 6 as being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention (see, *mutatis mutandis*, the *Golder v. the United Kingdom* judgment of 21 February 1975, Series A no. 18, pp. 16-18, §§ 34-36). Execution of a judgment given by any court must therefore be regarded as an integral part of the 'trial' for the purposes of Article 6; moreover, the Court has already accepted this principle in cases concerning the length of proceedings (see, most recently, the *Di Pede v. Italy* and *Zappia v. Italy* judgments of 26 September 1996, *Reports of Judgments and Decisions* 1996-IV, pp. 1383-84, §§ 20-24, and pp. 1410-11, §§ 16-20 respectively.”

4. The execution of a decision *follows on* from the trial, unlike the issue of access to a court, which *precedes* the trial.

5. The Court recently extended the principle set forth in the *Hornsby* judgment to the execution of foreign decisions. In its *McDonald v. France* decision of 29 April 2008¹ it held as follows:

“The Court acknowledges that the refusal to grant authority to execute the judgments of the American court constituted interference with the applicant's right to a fair hearing.”² (translation)

6. In the present case the applicant was denied the fair hearing to which he was entitled. However, the problem arose at the final stage of the proceedings, taken as a whole. In my view, the question arising was therefore not one of access to a court.

¹ (no. 18648/04), published in *Chunet* (Journal de droit international), 2009, p. 193, commentary by Fabien Marchadier; and *Revue critique de droit international privé*, 2008, p. 830, commentary by Patrick Kinsch.

² It should be noted that the *Pellegrini v. Italy* judgment (no. 30882/96, ECHR 2001-VIII) concerned the opposite situation (restrictions imposed by the Convention on the possibility of granting authority, in accordance with domestic law, to execute foreign judgments that do not meet the European standard of a fair trial). Legal experts have commented as follows on the *McDonald* decision cited above:

“[The decision] takes an innovative approach ... on this point, by making it possible henceforth to attach the right to recognition or execution of foreign judgments directly to the right to a fair hearing. Thus, the respect due for foreign judgments as such, independently of any substantive rights that may be involved, is deemed a sufficient basis for the right to their international execution” (Patrick Kinsch, *Revue critique de droit international privé*, 2008, p. 839) (translation).

or:

“The Court accepts – for the first time (the question had been expressly left open by the *Sylvester v. Austria* (no. 2) judgment of 9 October 2003, no. 54640/00) – that a refusal to recognise a foreign judgment can be regarded as constituting interference with the right to a fair hearing” (ibid., pp. 838-39) (translation).

or:

“... Article 6 of the Convention concerns all stages of the trial, including execution of the judgment. And in that regard, no distinction should be made according to the origin of the judgment” (Fabien Marchadier, *Chunet*, 2009, p. 196) (translation).

This question has occupied the minds of legal specialists for some time (see Fabien Marchadier, *Les objectifs généraux du droit international privé à l'épreuve de la Convention européenne des droits de l'homme*, Brussels, Bruylant, 2007, nos. 272 et seq., in particular no. 275 (concerning the obligation to recognise foreign judgments *de plano*); Patrick Kinsch, “The Impact of Human Rights on the Application of Foreign Law and on the Recognition of Foreign Judgments – A Survey of the Cases Decided by the European Human Rights Institutions”, in T. Einhorn and K. Siehr, eds., *Intercontinental Cooperation Through Private International Law – Essays in Memory of Peter E. Nygh*, The Hague, 2004, pp. 197-228; Patrick Kinsch, *Droits de l'homme, droits fondamentaux et droit international privé, Recueils de cours de l'Académie de Droit International de la Haye*, vol. 318 (2005), in particular p. 94: “Le refus de la reconnaissance d'un jugement étranger en tant qu'ingérence dans des droits garantis”; and Fabien Marchadier, “La protection européenne des situations constituées à l'étranger”, *Dalloz*, 2007, p. 2700).

II.

7. Like my colleague Judge Malinverni, I would very much have liked the principle of the reopening of proceedings, on account of its importance, to have been reflected in the operative part of the judgment (see paragraph 17 of Judge Malinverni's concurring opinion and the references cited).

CONCURRING OPINION OF JUDGE MALINVERNI

(Translation)

1. I voted with all my colleagues in favour of finding a violation of Article 1 of Protocol No. 1 and of Article 6 of the Convention.

2. While I agree in all respects with the reasoning that led the Court to find a violation of Article 1 of Protocol No. 1, I have more difficulty in following the approach by which it found a violation of Article 6.

3. The Court essentially reached its finding of a violation of Article 6 on the ground that the applicant had not had *access to a court*, as this Article implicitly requires: “Thus, in the Court's view, the judgment of the Koprivnica Municipal Court of 8 June 2004 to declare the enforcement of the above-mentioned Montenegro court's judgment inadmissible may be regarded as imposing a restriction on his right of access to a court” (see paragraph 62 of the judgment). Very logically, the Court goes on to ask the question “whether the applicant's right of access to a court was unduly restricted by that decision” (ibid.).

4. I wonder whether this is the right approach.

5. After all, “on 16 October 2001 the applicant instituted non-contentious proceedings before the Koprivnica Municipal Court seeking that the ... foreign judgment be recognised in Croatia” and “on 20 November 2001 the Municipal Court accepted the applicant's request and issued a decision recognising the Montenegro court's judgment” (see paragraphs 7 and 8).

6. This suggests to me that the applicant did indeed have access to a court. The proceedings, instituted on 16 October 2001 with the application to the Koprivnica Municipal Court, ended on 8 June 2004, when the same court declared the applicant's request inadmissible. Throughout that time, the various courts did not remain inactive. Thus, when the applicant applied on 4 March 2002 for rectification of the decision because it incorrectly stated that the case number of the recognised judgment was P-437/97 instead of P-437/87, the Koprivnica Municipal Court issued a decision rectifying the error, which was served on the applicant's representatives two days later (see paragraphs 9 and 10).

7. In more general terms, can the right of access to a court be said to have been infringed simply by the fact that, with the passing of time, an action becomes time-barred? I am not sure.

8. I would also note that the competent courts bear a significant share of the responsibility for the fact that the action could not be pursued because it was time-barred.

9. Firstly, they displayed *excessive formalism*. The Koprivnica Municipal Court itself rightly corrected the clerical error concerning the case number (see paragraph 10 of the judgment). Unfortunately, on an

appeal by the judgment debtors, the appellate court – in my view, incorrectly – quashed the writ of execution of 6 February 2002 on account of the typing error in the case number. While acknowledging that the discrepancy might have been caused by a clerical error, it nevertheless quashed the writ of execution, giving precedence to the principle of strict formal legality (see paragraph 14).

10. The case was therefore remitted to the first-instance court, which required the applicant to have the case number amended in accordance with the appellate court's demand. With the passing of time as further appeals were lodged, the applicant's action became time-barred. On 28 September 2004 the Koprivnica County Court dismissed an appeal by the applicant.

11. Can it reasonably be maintained in these circumstances that the applicant did not have access to a court?

12. Besides being guilty of *excessive formalism*, the competent judicial authorities also *incorrectly interpreted and applied* the relevant provisions of domestic law. In interpreting the relevant provisions, the domestic courts held that lodging a request for recognition of a foreign court judgment did not constitute an act by a creditor which could interrupt the running of the statutory limitation period within the meaning of section 388 of the Obligations Act because it was neither directed against the debtor nor aimed at determining, securing or enforcing the claim. Accordingly, no interruption of the limitation period had occurred when the applicant had submitted his request for recognition of a foreign judgment.

13. Without a doubt, the domestic courts' interpretation to the effect that the institution of the proceedings for recognition of a foreign judgment by the applicant did not interrupt the running of the ten-year statutory limitation period was unforeseeable. An interpretation more favourable to the applicant, and to the very notion of a fair trial, would have been to hold that instituting proceedings for recognition of a foreign judgment would interrupt the running of the statutory limitation period. As the judgment indeed notes in relation to Article 1 of Protocol No. 1, it is untenable to hold the view that instituting proceedings for the recognition of a foreign judgment does not interrupt the running of a statutory limitation period (see paragraph 55).

14. In short, I consider that the domestic courts interpreted the relevant provisions of the Obligations Act very incorrectly and applied them in a manner bordering on arbitrary.

15. My conclusion is therefore that there has been a violation of Article 6 in this case, not because the applicant was deprived of his right of *access to a court*, but because, both by displaying *excessive formalism* and by interpreting the relevant statutory provisions *arbitrarily*, the competent judicial authorities deprived the applicant of the right to a *fair hearing*.

16. In paragraph 84 the judgment states that “given the nature of the applicant's complaints and the reasons for which it has found a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 thereto, the Court considers that in the present case the most appropriate way of redress would be to reopen the proceedings complained of in due course”.

17. For reasons I have explained on many occasions, either alone or together with other judges, in particular Judge Spielmann,¹ I would very much have liked this principle, on account of its importance, to have been reflected in the operative part of the judgment.

¹ See my joint concurring opinions with Judge Spielmann appended to the following judgments: *Vladimir Romanov v. Russia* (no. 41461/02, 24 July 2008); *Ilatovskiy v. Russia* (no. 6945/04, 9 July 2009); *Fakiridou and Schina v. Greece* (no. 6789/06, 14 November 2008); *Lesjak v. Croatia* (no. 25904/06, 18 February 2010); and *Prežec v. Croatia* (no. 48185/07, 15 October 2009). See also my concurring opinion joined by Judges Casadevall, Cabral Barreto, Zagrebelsky and Popović in the case of *Cudak v. Lithuania* ([GC], no. 15869/02, 23 March 2010), as well as the concurring opinion of Judges Rozakis, Spielmann, Ziemele and Lazarova Trajkovska in *Salduz v. Turkey* ([GC], no. 36391/02, ECHR 2008-...).