



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

SECOND SECTION

CASE OF KIN-STIB AND MAJKIĆ v. SERBIA
(Application no. 12312/05)

JUDGMENT

STRASBOURG

20 April 2010

FINAL

04/10/2010

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

In the case of **Kin-Stib and Majkić 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 March 2010,

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

PROCEDURE

1. The case originated in an application (no. 12312/05) against the State Union of Serbia and Montenegro lodged with the Court, under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”), by Kin-Stib, a limited liability company based in the Democratic Republic of Congo (hereinafter “the first applicant”), and, at that time, a national of the State Union of Serbia and Montenegro, Mr Milorad Majkić (hereinafter “the second applicant”), on 6 April 2005.

2. Both applicants were represented by Mr C. Leon, a lawyer practising in Vienna, Austria. 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.

3. The applicants alleged that they had suffered violations of Articles 6 § 1 and 13 of the Convention, as well as a breach of Article 1 of Protocol No. 1, stemming from the partial non-enforcement of an arbitration award rendered in their favour.

4. On 4 May 2006 the Court decided to give notice of the application to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

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

A. Relevant background to the applicants' case

7. On 12 October 1989 the first applicant concluded a joint venture agreement with the “Hotel Intercontinental Belgrade”, concerning the setting-up and joint operation of a casino on its premises.

8. At that time, the said hotel was owned by “Generalexport” (hereinafter “Genex”), a major “socially-owned company” (see paragraph 70 below) with an annual turnover in excess of seven billion US Dollars (“USD”).

9. Article 12 of the joint venture agreement provided that the first applicant was entitled to collect 80% of any earnings made as part of the joint operation of the casino in question, whilst Genex had the right to collect the remaining 20% thereof. Article 19 of the agreement, however, stated that Genex would, in any event, be entitled as guaranteed minimum earnings to a payment of no less than USD 500.000 annually by the first applicant.

10. The casino opened in October 1990. By 1993, however, it closed due to various financial difficulties, and a number of disputes between the parties followed.

B. The arbitration proceedings

11. In 1995 the first applicant brought proceedings against Genex before the Foreign Trade Arbitration Court of the Yugoslav Chamber of Commerce (hereinafter the “Arbitration Court”), seeking repossession of the casino as well as compensation for breach of contract.

12. On 10 April 1996 the Arbitration Court, having resolved issues regarding the first applicant's status, ruled partly in its favour. Specifically, Genex was ordered to: (a) pay compensation in the amount of USD 1,999,992, plus 6 % interest, on account of the first applicant's inability to operate the casino in question between 1 April 1995 and 31 March 1996; (b) allow the first applicant to retake possession thereof; and (c) effectively manage its operation for five years after reopening it. The sum of USD 1,999,992, i.e. USD 166,666 monthly, was arrived at by multiplying Genex's minimum annual earnings on the basis of the agreed ratio (see paragraph 9 above).

C. The enforcement proceedings

13. On 7 June 1996 the Commercial Court in Belgrade ordered the enforcement of the arbitration award of 10 April 1996, in its entirety.

14. Following several suspensions and adjournments, on 15 October 1997 the National Bank of Yugoslavia informed the Commercial Court that USD 1,672,437.06 had been transferred to the first applicant's bank account.

15. On 4 May 1998 the Commercial Court ordered the payment of the remaining USD 618,542.23, together with the interest accrued.

16. By 6 May 1998 the debtors, Generalexport and International CG as two successor companies of the original Genex company, appear to have fully complied with this order.

17. On 22 March 2004 the first applicant requested repossession of the casino and sought to be allowed to effectively manage it for a period of five years after reopening it.

18. Following three oral hearings, on 28 May 2004 the Commercial Court accepted this request and ordered the debtors to comply therewith.

19. On 30 November 2004 the Constitutional Court of the Republic of Serbia dismissed the applicants' motion to order the full and effective enforcement of the arbitration award, stating that it did not have the competence, *ratione materiae*, to consider complaints alleging individual human rights violations.

20. On 3 December 2004 the Commercial Court fined the debtors for their failure to comply with the repossession order and mandated repossession within an additional period of thirty days. Initially, the fine imposed was 45,000 Dinars ("RSD") per debtor (approximately USD 770), but on 7 December 2004 this amount was reduced to RSD 20,000 each (approximately USD 340).

21. In 2005 the applicants filed a complaint with the Court of Serbia and Montenegro.

22. Between 25 May 2005 and 24 October 2006 the Commercial Court fined the debtors for their failure to comply with the repossession order on eight separate occasions. The fines imposed totalled RSD 320,000 (approximately USD 4,770).

23. On 24 October 2006 the Commercial Court terminated the enforcement by means of imposing fines, noting that the maximum statutory amount had been reached in accordance with the Enforcement Procedure Act.

24. On 4 December 2006 this decision was confirmed.

25. On 30 July 2007 the Commercial Court rejected the first applicant's subsequent request for it to impose additional fines on the debtors.

26. On 29 November 2007 this decision was confirmed.

27. On 10 March 2008 the Commercial Court noted that on 9 August 2007 the Privatisation Agency had ordered the restructuring of the debtors and stayed the enforcement proceedings until the conclusion of this process.

D. The annulment proceedings

28. In 1996 Genex instituted civil proceedings before the Commercial Court in Belgrade, seeking annulment of the arbitration award. Once again, it raised issues regarding the first applicant's status.

29. On 23 June 1997 the Commercial Court rejected this claim, as did the High Commercial Court on 25 May 1997 and, ultimately, the Supreme Court of Serbia on 24 December 1997, at third and final instance.

E. The attempts to reopen the annulment case

30. On 5 February 2002 Generalexport and International CG filed a request for the reopening of the annulment proceedings.

31. Following two remittals, on 4 October 2006 the Commercial Court rejected this request. In so doing, *inter alia*, it noted that the issues raised by the plaintiffs had already been considered, in one form or another, within the impugned annulment suit.

32. On 21 November 2007 the High Commercial Court confirmed this decision on appeal.

F. The first set of compensation proceedings

33. Following prior remittals, on 27 June 2001 the Commercial Court ruled partly in favour of the first applicant. Generalexport and International CG were thus ordered to pay a total of USD 4,333,333.16, plus interest, on account of the first applicant's inability to operate the casino between 1 April 1996 and 31 May 1998.

34. On 6 September 2001 the High Commercial Court upheld this judgment, and it thereby became enforceable.

35. On 30 January 2002 the Supreme Court reduced the amount awarded to USD 1,083,332, plus interest. It estimated the lost earnings only on the basis of the respondent's minimum annual profit, as stipulated in the joint venture agreement (see paragraph 9 above).

36. In the meantime, on 24 September 2001, the first applicant sought enforcement of the judgment rendered on 27 June 2001, by means of a bank account transfer.

37. On the same day the Commercial Court issued an enforcement order.

38. On 14 February 2002 the Commercial Court terminated the enforcement proceedings. In so doing, it noted that, notwithstanding the fact that the Supreme Court had subsequently reduced the compensation

awarded to USD 1,083,332, plus interest, approximately USD 700,000 in excess of this amount had already been transferred to the first applicant's bank account.

G. The second set of compensation proceedings

39. Following prior remittals, on 3 March 2005, and as rectified on 8 September 2005, the Commercial Court ruled partly in favour of the first applicant. It thus ordered Generalexport and International CG to pay a total of USD 1,426,666.60, plus interest, on account of the first applicant's inability to operate the casino between 1 June 1998 and 1 April 2001. This time, the Commercial Court also estimated the lost earnings on the basis of Genex's minimum annual profit only, as stipulated in the joint venture agreement.

40. On 21 February 2006 the High Commercial Court upheld this judgment, and it thereby became enforceable.

41. On 27 June 2007 the Supreme Court rejected the appeals on points of law (*revizije*) filed by the parties.

42. In the meantime, on 24 March 2006, the first applicant sought enforcement of the judgment rendered on 3 March 2005 by means of a bank account transfer.

43. On 27 March 2006 the Commercial Court issued an enforcement order.

44. The enforcement proceedings would appear to be still pending.

H. The criminal proceedings

45. In January 2002 the Second Public Prosecutor's Office in Belgrade charged the second applicant with forgery. In particular, it was alleged that he had made fraudulent statements regarding the first applicant's status under Congolese law, and had forged several powers of attorney in order to get involved in the above proceedings.

46. On 17 January 2002 the second applicant was placed in pre-trial detention but by 22 February 2002 he was released.

47. On 9 July 2004 the Second Municipal Court in Belgrade terminated the criminal proceedings against the second applicant. It stated that the first applicant was indeed a registered entity under Congolese law, that the impugned powers of attorney were authentic, and that there was no evidence whatsoever indicating that the second applicant had committed a crime.

48. Additional criminal proceedings, concerning related "fraud and forgery issues", were terminated on similar grounds by the District Court in Belgrade on 7 November 2003.

I. Other relevant facts

49. On an unspecified date the Hotel Intercontinental was renamed the Hotel Continental.

50. On 8 November 1994 the second applicant bought from G.J., at that time the first applicant's sole owner, "a part of the first applicant" consisting of all of its rights and pecuniary interests derived from the joint venture agreement of 12 October 1989. The second applicant thus became "the owner of this part of the company", as well as the first applicant's "Director and President" in all matters related to Generalexport.

51. On 6 April 2002 the High Court in Kinshasa confirmed that, as of 19 May 1996, the second applicant held 25% of the first applicant's shares and was its Deputy General Manager.

52. The first applicant's Articles of Association, as certified in December 2002, reaffirmed the above and noted that the second applicant was indeed the first applicant's sole representative in respect of all matters concerning the joint venture in question.

53. On 21 December 2005 the Ministry of Finance issued a statement informing the public that an exclusive gambling licence had been granted to a company called Grand Casino. The licence had been issued for a period of ten years in respect of a casino to be located in Belgrade.

54. On 27 August 2007 the first applicant informed the Privatisation Agency about its outstanding claim in respect of Generalexport and International CG.

55. On 24 March 2008 the first applicant sent another warning letter to the Privatisation Agency.

56. On 29 April 2008, however, International CG, following a public competition organised by the Privatisation Agency, sold some of its real estate to NBGP Properties. One of the buildings sold was the Hotel Continental. Article 8.1.2 of the sales contract provided, *inter alia*, that the buyer shall not, within a period of seven years, be entitled to mortgage or otherwise burden the hotel, unless it obtains prior written authorisation to this effect from the Privatisation Agency.

57. Despite the restructuring and sale of some of their assets, Generalexport and International CG are themselves still socially-owned companies.

II. RELEVANT DOMESTIC LAW

A. Enforcement Procedure Act 2000 (Zakon o izvršnom postupku; published in the Official Gazette of the Federal Republic of Yugoslavia - OG FRY - nos. 28/00, 73/00 and 71/01)

58. Article 4 § 1 provides that enforcement proceedings are urgent.

59. Articles 16 and 17 § 1 explicitly recognise arbitration awards as valid legal bases for the formal institution of enforcement proceedings.

60. Article 23 states that enforcement proceedings shall also be carried out at the request of a claimant not specifically named as the creditor in the final court decision, providing the former can prove, by means of an “official or another legally certified document”, that the entitlement in question has subsequently been transferred to it from the original creditor. This provision shall, *mutatis mutandis*, also be applied in respect of a debtor who has not been specifically named as such in the final court decision at issue.

61. Articles 202-207 regulate enforcement in situations where a debtor's compliance is required: in particular, where a debtor has been ordered to perform a certain action, desist therefrom or accede thereto. The system provides for the successive imposition of fines up to a certain maximum which, if the debtor happens to be a natural person and the fines cannot be enforced, may ultimately be converted into a number of prison days.

B. Enforcement Procedure Act 2004 (Zakon o izvršnom postupku; published in the Official Gazette of the Republic of Serbia - OG RS - no. 125/04)

62. The substance of Article 37 of this Act corresponds, in the relevant part, to that of Article 23 of the Enforcement Proceedings Act 2000 referred to above.

63. The Enforcement Procedure Act 2004 entered into force on 23 February 2005, thereby repealing the Enforcement Procedure Act 2000. In accordance with Article 304, however, all enforcement proceedings instituted prior to 23 February 2005 are to be concluded pursuant to the 2000 legislation.

C. Civil Procedure Act (Zakon o parničnom postupku; published in the Official Gazette of the Socialist Federal Republic of Yugoslavia - OG SFRY - nos. 4/77, 36/77, 6/80, 36/80, 43/82, 72/82, 69/82, 58/84, 74/87, 57/89, 20/90, 27/90, 35/91 and OG FRY nos. 27/92, 31/93, 24/94, 12/98, 15/98 and 3/02)

64. Pursuant to Article 483 § 1, an arbitration award has the force of a final judgment in respect of the parties to the proceedings, unless the arbitration agreement itself provides for an appeal to a higher instance.

65. Articles 484, 485 and 486 set out the deadlines and the specific grounds for the annulment of an arbitration award, which can only be sought through the institution of a separate civil suit before a “regular” court of law.

D. Arbitration Act (Zakon o arbitraži; published in the OG RS no. 46/06)

66. Article 64 § 1 provides that a domestic arbitration award shall have the force of a final domestic judgment and shall be enforceable.

67. This Act entered into force in June 2006 and thereby repealed the above-cited provisions of the Civil Procedure Act.

E. Privatisation Act (Zakon o privatizaciji, published in OG RS nos. 38/01, 18/03, 45/05 and 123/07)

68. Articles 19-20e 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.

69. Article 20ž provides, *inter alia*, that all enforcement proceedings instituted in respect of companies undergoing restructuring shall be stayed until the conclusion of this process.

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

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

THE LAW

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

71. The applicants complained under Article 1 of Protocol No. 1 about the partial non-enforcement of the arbitration award rendered on 10 April 1996.

Article 1 of Protocol No. 1 reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his [or her] possessions. No one shall be deprived of his [or her] 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

1. *As regards the second applicant*

72. The Government maintained that the second applicant's complaints were not compatible *ratione personae* with the provisions of the Convention or Protocol No. 1 thereto. In particular, the arbitration award conferred no entitlement on the second applicant personally, he was not formally a party to any of the proceedings and, lastly, he held less than 50% of the first applicant's shares.

73. The second applicant maintained that he was a victim within the meaning of Article 34 of the Convention.

74. The Court notes that notwithstanding the fact that the second applicant owns only 25% of the first applicant (see paragraph 51 above) and that the arbitration award has indeed been rendered in favour of the first applicant only, on 8 November 1994 the former bought from G.J., at that time the first applicant's sole owner, a stake in the first applicant consisting of all of its rights and pecuniary interests derived from the joint venture agreement of 12 October 1989 (see paragraph 50 above). It follows that, when it comes to issues related to this agreement, including the partial non-enforcement of the arbitration award adopted in this connection, the applicants are so closely identified with each other that it would be artificial to distinguish between them (see, *mutatis mutandis*, *Pine Valley Developments Ltd and Others v. Ireland*, 29 November 1991, § 42, Series A no. 222; *Eugenia Michaelidou Developments Ltd and Michael Tymvios v.*

Turkey, no. 16163/90, § 21, 31 July 2003). The Court therefore, whilst recalling the general principles outlined in the *Agrotexim* judgment (see *Agrotexim and Others v. Greece*, 24 October 1995, § 66, Series A no. 330-A), considers that, in the specific circumstances of the present case and particularly given the confounding of its contractual and corporate aspects, the second applicant's complaints are compatible *ratione personae* with the provisions of Protocol No. 1. The Government's objection hence must be rejected.

2. As regards the first applicant

(a) Compatibility *ratione personae*

75. The Government noted that the first applicant had been “fully compensated” for the partial non-enforcement of the arbitration award. It was therefore no longer a “victim”, within the meaning of Article 34 of the Convention.

76. The first applicant stated that it had never received any compensation from or acknowledgment *by the State* in respect of the violation suffered, whilst the compensation awarded against the debtors was inadequate.

77. The Court recalls that a decision or a measure favourable to the applicant is not in principle sufficient to deprive that individual of the status of victim unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for the breach of the Convention or Protocol complained of (see, for example, *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI).

78. As regards the present case and quite apart from the compensation issue, it is noted that the Government have never acknowledged the violation alleged by the first applicant. The Court therefore finds that the latter has retained its victim status and dismisses the Government's objection in this respect.

(b) Exhaustion of domestic remedies

79. The Government further argued that the first applicant had failed to exhaust effective domestic remedies within the meaning of Article 35 § 1 of the Convention. However, the Court has rejected similar arguments in many previous cases (see, for example, *V.A.M. v. Serbia*, no. 39177/05, §§ 86, 87 and 119, 13 March 2007, as well as *Cvetković v. Serbia*, no. 17271/04, § 42, 10 June 2008) and finds no particular circumstances in the present case which would require a departure from this jurisprudence.

3. Conclusion

80. The Court notes that the applicants' complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other ground. They must therefore be declared admissible.

B. Merits

81. The Government maintained that there had been no violation of Article 1 of Protocol No. 1 as the Serbian authorities did everything in their power to fully enforce the arbitration award.

82. The applicants reaffirmed their complaint and emphasised that the present case should be seen in the context of political pressure being brought to bear on the domestic judiciary, as well as the general absence of the rule of law in Serbia.

83. The Court notes that a "claim" can constitute a "possession", within the meaning of Article 1 of Protocol No. 1, if it is sufficiently established to be enforceable (see *Burdov v. Russia*, no. 59498/00, § 40, ECHR 2002-III). It further recalls that it is the State's responsibility to make use of all available legal means at its disposal in order to enforce a binding arbitration award providing it contains a sufficiently established claim amounting to a possession (see, *mutatis mutandis*, *Stran Greek Refineries and Stratis Andreadis v. Greece*, 9 December 1994, §§ 61 and 62, Series A no. 301-B). Finally, the State must make sure that the execution of such an award is carried out without undue delay and that the overall system is effective both in law and in practice (see *Marčić and Others v. Serbia*, no. 17556/05, § 56, 30 October 2007).

84. Turning to the present case, it is firstly noted that the claim established in the arbitration award undisputedly amounts to a possession within the meaning of Article 1 of Protocol No. 1. Secondly, on 7 June 1996 the Commercial Court ordered the enforcement of this award in its entirety. Thirdly, by 6 May 1998 the debtors had paid the compensation awarded. Fourthly, in an attempt to secure enforcement of the remainder of the award, by 24 October 2006 the Commercial Court had imposed the maximum amount of fines legally possible. Fifthly, it would appear that there were no attempts to fully enforce the award thereafter, the apparent reason for this being that, since the debtors themselves were corporate entities, there were simply no other legal means available whereby their compliance could be secured (see paragraph 61 above). Sixthly, on 10 March 2008 the enforcement proceedings were stayed until the conclusion of the debtors' restructuring. Lastly, Serbia ratified Protocol No. 1 on 3 March 2004, meaning that the impugned enforcement proceedings have been within the

Court's competence *ratione temporis* for a period of more than five years and ten months.

85. In view of the above, the Serbian authorities have thus clearly not taken the necessary measures to fully enforce the arbitration award in question and have not provided any convincing reasons for that failure. Accordingly, there has been a violation of Article 1 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AS REGARDS THE PARTIAL NON-ENFORCEMENT

86. Having regard to its finding above in respect of Article 1 of Protocol No. 1, the Court does not find it necessary to examine separately the same issue under Article 6 § 1 of the Convention (see, for example, *Ilić v. Serbia*, no. 30132/04, § 95, 9 October 2007; *Bijelić v. Montenegro and Serbia*, no. 11890/05, § 88, 28 April 2009).

III. OTHER ALLEGED VIOLATIONS

87. The applicants also complained, under Article 6 § 1 of the Convention, about the failure of the domestic courts in charge of the annulment suit, as well as the applicants' request to have this suit reopened, to respect the *res iudicata* effects of the arbitration award in question.

88. The Court notes that the annulment proceedings ended on 24 December 1997, when the plaintiffs' claim was rejected by the Supreme Court at third instance. Since Serbia ratified the Convention on 3 March 2004, any complaints in this respect are incompatible *ratione temporis* with the Convention, within the meaning of Article 35 § 3, and must be rejected in accordance with Article 35 § 4.

89. As regards the request for the reopening of the annulment suit, the Court recalls that Article 6 does not apply to proceedings which concern attempts to reopen a case already resolved by means of a final court judgment (see, *mutatis mutandis*, *Surmont and De Meurechy and Others v. Belgium*, nos. 13601/88 and 13602/88, Commission decision of 6 July 1989, Decisions and Reports (DR) 62, pp. 284-291). It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Convention, within the meaning of Article 35 § 3, and must likewise be rejected in accordance with Article 35 § 4.

90. Lastly, under Article 13 of the Convention, the applicants essentially rephrased their complaints about the respondent State's failure to fully enforce the arbitration award in question. Since the Court has already considered this complaint under Article 1 of Protocol No. 1 and, having regard to its findings under this latter provision, it does not find it necessary to examine separately the same issue under Article 13 of the Convention (see, *mutatis mutandis*, *Ilić v. Serbia*, cited above, § 106; *Kirilova and*

Others v. Bulgaria, nos. 42908/98, 44038/98, 44816/98 and 7319/02, §§ 125-127, 9 June 2005).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

91. 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

92. The first applicant requested the immediate and full execution of the arbitration award of 10 April 1996. Alternatively, as regards lost earnings, it claimed USD 166,666.64 monthly as of 1 April 1996 until the present day. The first applicant also argued that the compensation subsequently awarded against Generalexport and International CG in this respect was inadequate as the domestic courts did not apply the Arbitration Court's method of calculating the loss suffered (see paragraph 12 above). Finally, the first applicant claimed an additional USD 566,724.80 for the reduction of the value of its equipment invested in the casino and USD 100,000 for non-pecuniary damage.

93. The second applicant claimed pecuniary damage in the amount of USD 120,000, that being the interest which he had allegedly paid on the money borrowed to secure his family's sustenance and maintain the first applicant's liquidity. The second applicant further claimed USD 200,000 for his mental anguish.

94. The Government reaffirmed that the first applicant had been awarded compensation for the partial non-enforcement of the arbitration award, i.e. the five years of lost earnings, which is why its claim in this respect should be rejected. As regards the remainder of the applicants' claims, the Government described them as unsubstantiated or excessive.

95. The Court accepts that the applicants have suffered some non-pecuniary damage which would not be sufficiently compensated by the finding of the violation alone. Making its assessment on an equitable basis and having regard to the circumstances of the case, as well as its prior holding that the applicants are so closely identified with each other that it would be artificial to distinguish between them (see paragraph 74 above), the Court awards them jointly EUR 8.000 under this head.

96. Concerning the lost earnings sought by the first applicant, it is noted that: (a) the unenforced part of the arbitration award provides that the first applicant be allowed to retake possession of the casino in question and to

effectively manage its operation for a period of five years; (b) the enforcement thereof would either no longer be possible or would disproportionately interfere with the rights of third parties (see paragraphs 53, 56 and 61 above); (c) the final judgments in the subsequent compensation suits had indeed awarded the first applicant some damages for the lost earnings between 1 April 1996 and 1 April 2001 (see paragraphs 33-44 above); (d) this Court is not best placed to assess the amount of these damages; (e) in any event, the domestic courts' reasoning does not disclose any arbitrariness and these courts were not formally bound by the earlier method of calculating the loss employed by the Arbitration Court; and (f) Generalexport and International CG are socially-owned companies (see paragraph 57 above), meaning that the State is responsible for honouring their debts established by means of a final court judgment (see *R. Kačapor and Others v. Serbia*, cited above; see also *Crnišanić and Others v. Serbia*, nos. 35835/05, 43548/05, 43569/05 and 36986/06, 13 January 2009).

97. Having regard to these circumstances and given the violation found in the present case, as well as its holding in paragraph 74 above, the Court considers that the Government must, from their own funds, pay the applicants, jointly, the sums awarded in the final, compensation-related, judgments at issue (see paragraphs 35 and 39 above), less any and all payments received by them on those bases in the meantime (see, *mutatis mutandis*, *R. Kačapor and Others v. Serbia*, §§ 123-126, and *Crnišanić and Others v. Serbia*, §§ 137-139, both cited above).

98. As regards the remainder of the applicants' pecuniary damage claims, however, the Court notes that the arbitration award had not ordered payment of any damages concerning the alleged loss of value of the first applicant's equipment invested in the casino or, for that matter, of any compensation for the interest paid on the money borrowed by the second applicant. Furthermore, unlike the matter of the lost earnings and according to the information contained in the case file, the applicants themselves had never brought a separate civil action in either regard. Their remaining pecuniary damage claims must therefore be rejected.

B. Costs and expenses

99. The first applicant also claimed a total of USD 396,479.60 for the costs and expenses incurred domestically, as well as those incurred in connection with its Strasbourg application.

100. The Government contested these claims.

101. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were also reasonable as to their quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it

reasonable to award the first applicant the sum of EUR 30,000, covering costs under all heads.

C. Default interest

102. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Article 1 of Protocol No. 1 concerning the partial non-enforcement of the arbitration award admissible, whilst finding that there is no need to examine separately complaints made to the same effect under Articles 6 § 1 and 13 of the Convention;
2. *Declares* the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 as regards the partial non-enforcement of the arbitration award;
4. *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 the applicants jointly the sums awarded in the final, compensation-related, domestic judgments rendered after the adoption of the arbitration award, on 30 January 2002, 3 March 2005 and 8 September 2005, less any and all associated payments received by the latter in the meantime;
 - (b) that the respondent State is also, within the same period, to pay:
 - (i) the applicants jointly EUR 8,000 (eight thousand euros), plus any tax that may be chargeable, for the non-pecuniary damage suffered;
 - (ii) the first applicant only EUR 30,000 (thirty thousand euros), plus any tax that may be chargeable to it, for costs and expenses;
 - (c) that the sums specified under (b) above 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) above at a rate equal to the marginal lending rate of the

European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 20 April 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President