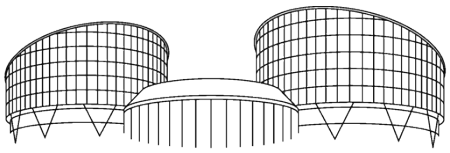

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF SEKULIĆ and KUČEVIĆ v. SERBIA

(Applications nos. 28686/06 and 50135/06)

JUDGMENT

STRASBOURG

15 October 2013

FINAL

15/01/2014

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

In the case of Sekulić and Kučević v. Serbia,

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

Guido Raimondi, *President,*
Peer Lorenzen,
Dragoljub Popović,
András Sajó,
Nebojša Vučinić,
Paulo Pinto de Albuquerque,
Helen Keller, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 24 September 2013,

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

PROCEDURE

1. The case originated in two applications (nos. 28686/06 and 50135/06) against the Republic of Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Serbian nationals, Ms Gvozdena Sekulić ("the first applicant") and Ms Sabaheta Kučević ("the second applicant"), on 20 June 2006 and 4 December 2006, respectively.

2. The first applicant was represented by Ms M. Popović and Ms Š. Dolovac, while the second applicant was represented by Ms R. Garibović, all lawyers practising in Novi Pazar. The Serbian Government ("the Government") were represented by their Agent, Mr S. Carić.

3. The applicants alleged that the State had violated their rights under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 thereto, due to its failure to enforce final domestic judgments rendered in their favour. The first applicant, in addition, alleged that she had had no effective domestic remedy at her disposal in that respect.

4. On 17 August 2009 the applications were communicated to the Government. It was also decided to rule on the admissibility and merits of the applications at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The facts of the cases, as submitted by the parties, may be summarised as follows.

6. The first and second applicants were born in 1952 and 1965 respectively, and live in Novi Pazar.

7. The first applicant was employed by Raška Holding AD – Pamučna predionica DOO ("the first debtor"), and the second applicant was employed by Raška Holding AD – Dorada tkanina DOO ("the second debtor"). The debtors are limited liability companies owned by the "Raška Holding Kompanija" ("the mother company").

8. On 14 May 1996 and 15 May 1996 respectively, the applicants were placed on compulsory paid leave until such time as normal production could be resumed and the said debtors' business performance had improved sufficiently.

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

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

A. As regards the first applicant

1. The first set of proceedings

11. On 26 February 2004 the Municipal Court ruled in favour of the first applicant and ordered her employer to pay her:

i. the monthly paid leave benefits (*garantovana zarada*) due from 15 May 1996 to 1 June 2001 (RSD 13,370 in total1; EUR 190 at the relevant time2), plus statutory interest;

ii. the monthly paid leave benefits (*minimalna zarada*) due from 1 June 2001 to 31 December 2003 (RSD 120,822 in total; EUR 1,725), plus statutory interest;

iii. the pension and disability insurance contributions (*doprinosi za penzijsko i invalidsko osiguranje*) due for the same periods; and

iii. RSD 6,800 (EUR 95) for legal costs.

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[1] The total sums specified in this judgment are given nominally, and any interest awarded domestically is to be calculated from the time each monthly payment became due.

[2] The amounts in Euro are given for reference only, based on an approximate average value at the relevant time.

12. On 15 March 2004 this judgment became final.

13. On 18 March 2004, upon the first applicant's request to that effect, the Municipal Court issued an enforcement order in respect of the paid leave benefits and costs, at the same time awarding the first applicant an additional amount of RSD 1,800 (EUR 25) for the enforcement costs. It was further specified that the judgment would be enforced by means of a bank transfer or through auctioning the first debtor's specific movable and/or immovable assets.

2. The second set of proceedings

14. On 17 June 2004 the Municipal Court ruled in favour of the first applicant and ordered her employer to pay her:

i. the monthly paid leave benefits (*minimalna zarada*) due from 1 January 2004 to 30 April 2004 (RSD 21,576 in total; EUR 300), plus statutory interest; and

ii. RSD 7,800 (EUR 110) for legal costs.

15. On 12 July 2004 this judgment became final.

16. On 14 July 2004, upon the first applicant's request to that effect, the Municipal Court issued an enforcement order, at the same time awarding the first applicant the additional amount of RSD 1,200 (EUR 15) for the enforcement costs. It was further specified that the judgment would be enforced by means of a bank transfer or through auctioning the first debtor's specific movable and/or immovable assets.

3. The third set of proceedings

17. On 1 November 2004 the Municipal Court ruled in favour of the first applicant and ordered her employer to pay her:

i. the monthly paid leave benefits (*minimalna zarada*) due for the months of May to October 2004 (RSD 35,024 in total; EUR 460), plus statutory interest;

ii. the pension and disability insurance contributions (*doprinosi za penzijsko i invalidsko osiguranje*) due for the period from 1 May 2004 to 30 October 2004; and

iii. RSD 7,800 (EUR 100) for legal costs.

18. On 23 March 2005 the part of the judgment concerning the monthly paid leave benefits and the pension and disability insurance contributions became final. The part of the judgment relating to the costs of the civil proceedings became final on an unspecified date in 2005.

19. On 23 June 2005, upon the first applicant's request to that effect, the Municipal Court issued an enforcement order in respect of the monthly paid leave benefits, and the pension and disability insurance contributions, at the same time awarding the first applicant an additional amount of RSD 1,500 (EUR 20) in respect of the enforcement costs.

20. On 24 June 2005 the Municipal Court issued an enforcement order in respect of the costs and awarded the first applicant an additional amount of RSD 2,500 (EUR 30) in respect of the enforcement costs.

21. Both enforcement orders specified that the judgment would be enforced by means of a bank transfer or through auctioning the first debtor's specific movable and/or immovable assets.

4. The fourth set of proceedings

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

i. the monthly paid leave benefits due from 1 November 2004 to 31 January 2005 (RSD 19,040 in total; EUR 235), plus statutory interest;

ii. the pension and disability insurance contributions due for the same period; and

iii. RSD 9,750 (EUR 120) for legal costs.

23. This judgment became final on 14 December 2005.

24. On 5 January 2006, upon the first applicant's request to that effect, the Municipal Court issued an enforcement order, specifying that the judgment would be enforced by means of a bank transfer or through auctioning the first debtor's specific movable and/or immovable assets. No additional enforcement costs were awarded.

5. The fifth set of proceedings

25. On 12 October 2005 the Municipal Court ruled in favour of the first applicant and ordered her employer to pay her:

i. the monthly paid leave benefits due from 1 February 2005 to 30 June 2005 (RSD 33,264 in total; EUR 390), plus statutory interest;

ii. the pension and disability insurance contributions due for the same period; and

iii. RSD 9,750 (EUR 115) for legal costs.

26. This judgment became final on 6 December 2005.

27. On 5 January 2006, upon the first applicant's request to that effect, the Municipal Court issued an enforcement order, specifying that the judgment would be enforced by means of a bank transfer or through auctioning the first debtor's specific movable and/or immovable assets. No additional enforcement costs were awarded.

6. The sixth set of proceedings

28. On 21 February 2006 the Municipal Court ruled in favour of the first applicant and ordered her employer to pay her:

i. the monthly paid leave benefits due from 1 July 2005 to 31 December 2005 (RSD 43,080 in total; EUR 495), plus statutory interest;

ii. the pension and disability insurance contributions due for the same period; and

iii. RSD 5,400 (EUR 60) for legal costs.

29. This judgment became final on 23 March 2006.

30. On 3 April 2006, upon the first applicant's request to that effect, the Municipal Court issued an enforcement order in respect of the paid leave benefits and costs. It was further specified that the judgment would be enforced by means of a bank transfer or through auctioning the first debtor's specific movable and/or immovable assets. No additional enforcement costs were awarded.

7. The seventh set of proceedings

31. On 19 October 2006 the Municipal Court ruled in favour of the first applicant and ordered her former employer to pay her:

i. the monthly paid leave benefits due for the months of January to April 2006 (RSD 31,280 in total; EUR 385), plus statutory interest;

ii. the pension and disability insurance contributions due for the period from 1 January 2006 to 1 May 2006; and

iii. RSD 11,700 (EUR 145) for legal costs.

32. This judgment became final on 13 November 2006.

33. On 27 November 2006, upon the first applicant's request to that effect, the Municipal Court issued an enforcement order in respect of the paid leave benefits and costs, specifying that the judgment would be enforced by means of a bank transfer or through auctioning the first debtor's specific movable and/or immovable assets. No additional enforcement costs were awarded.

B. As regards the second applicant

1. The first set of proceedings

34. On 19 January 2005 the Municipal Court ruled in favour of the second applicant. On 1 February 2005 the Municipal Court amended this judgment in respect of the due amounts, and ultimately ordered her employer to pay her:

i. the monthly paid leave benefits (*minimalna zarada*) due from 1 June 2004 to 18 November 2004 (RSD 37,326 in total; EUR 335), plus statutory interest;

ii. the pension and disability insurance contributions (*doprinosi za penzijsko i invalidsko osiguranje*) due for the same period; and

iii. RSD 9,750 (EUR 90) for legal costs.

35. On 21 February 2005 this judgment became final.

36. On 26 September 2005, upon the second applicant's request to that effect, the Municipal Court issued an enforcement order in respect of the

paid leave benefits and costs. It was further specified that the judgment was to be enforced by means of a bank transfer or through auctioning the second debtor's specific movable and/or immovable assets. It is unclear whether any costs were awarded in respect of the enforcement proceedings.

2. The second set of proceedings

37. On 28 September 2005 the Municipal Court ruled in favour of the second applicant and ordered her employer to pay her:

i. the monthly paid leave benefits due from 1 December 2004 to 30 June 2005 (RSD 46,178 in total; EUR 545), plus statutory interest;

ii. the monthly paid leave benefits due from 1 July 2005 to 28 September 2005 in the amount of the minimum wage, as per the official data, plus statutory interest;

iii. the pension and disability insurance contributions due for the same periods; and

iv. RSD 9,750 (EUR 115) for legal costs.

38. This judgment became final on 7 December 2005.

39. On 27 December 2005, upon the second applicant's request to that effect, the Municipal Court issued an enforcement order in respect of the paid leave benefits and costs, and awarded the applicant an additional amount of RSD 2,250 (EUR 25) in respect of the enforcement costs. In was further specified that the judgment was to be enforced by means of a bank transfer or through auctioning the second debtor's specific movable and/or immovable assets.

C. Termination of the applicants' employment

40. On 5 November 2004 the debtors' mother company (see paragraph 7 above) proposed the Redundant Employees Programme (*Program rešavanja viška zaposlenih* – hereinafter "the redundancy programme"). The redundancy programme set out the criteria for determining redundant employees and, once declared redundant, provided them with two options for benefits: (i) to receive a single redundancy payment from the employer (*jednokratna novčana naknada*); or (ii) to receive a severance payment and claim monthly unemployment benefits from the social security of the State (*otpremnina i novčana naknada*). These benefits were provided for all employees, regardless of whether they had any other outstanding claim towards the company.

41. On 7 December 2005 and 8 December 2005, the first and the second applicant, respectively, opted for the single redundancy payment.

42. On 16 October 2006 and 4 September 2006 the mother company issued decisions terminating the first and the second applicant's employment as of 11 October 2006 and 12 September 2006, respectively.

Consequently, as of that date all the rights and obligations arising from the applicants' employment were terminated.

43. On an unspecified date the first applicant, and on 12 September 2006 the second applicant signed an agreement with their employer regulating mutual outstanding debts on account of loans or other claims, and on account of due salaries and pension and disability contributions, respectively. Without specifying any amount of the outstanding debts, the agreement provided for, *inter alia*, the employer's obligation to pay its outstanding debt within six months, failing which the applicants were entitled to lodge a civil claim for compensation.

44. On 11 October 2006 and 12 October 2006 the mother company paid to the first applicant and the second applicant each RSD 299,700 (EUR 3,700) on account of the redundancy payment.

45. On 9 February 2007 and 9 October 2007 the due pension and disability contributions were paid.

D. The status of the debtors

46. On 5 November 2004 the Privatization Agency (*Agencija za privatizaciju*) initiated the restructuring of the mother company, which is still ongoing. As of July 2013, the debtors still consisted of predominantly socially-owned and State-owned capital.

II. RELEVANT DOMESTIC LAW AND PRACTICE

47. The relevant domestic law and practice is set out in the Court's judgments of *R. Kačapor and Others v. Serbia* (nos. 2269/06, 3041/06, 3042/06, 3043/06, 3045/06 and 3046/06, 15 January 2008, §§ 57-82); *Vlahović v. Serbia* (no. 42619/04, §§37-47, 16 December 2008); *Crnišanin and Others v. Serbia* (nos. 35835/05, 43548/05, 43569/05 and 36986/06, 13 January 2009, §§100-104); *Rašković and Milunović v. Serbia*, nos. 1789/07 and 28058/07, §65, 31 May 2011; and *EVT Company v. Serbia* (no. 3102/05, §§ 26 and 27, 21 June 2007).

THE LAW

I. JOINDER OF THE APPLICATIONS

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

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

49. The applicants complained that the State had infringed their right to the peaceful enjoyment of their possessions, as guaranteed by Article 1 of Protocol No. 1 to the Convention, which in its relevant part, 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."

A. Admissibility

50. The Court notes that the applications 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 grounds. They must therefore be declared admissible.

B. Merits

51. The Government submitted that there had been no violation of Article 1 of Protocol No. 1 to the Convention. Apart from the arguments which have already been discussed by the Court in similar cases (see *R. Kačapor and Others*, and *Vlahović*, both cited above), the Government also submitted that since the restructuring had been ordered in the public interest, the enforcement of the judgments had been suspended in accordance with the law, as well as with the Court's case-law, since Article 1 of Protocol No. 1 did not guarantee a right to full compensation in all circumstances (*Lithgow and Others v. the United Kingdom*, 8 July 1986, § 121, Series A no. 102). Furthermore, they maintained that by accepting the redundancy payment from the programme, the applicants in the present cases had waived the rights arising from the judgments issued in their favour, as was the case with the third applicant in the *Grišević* case (*Grišević and Others v. Serbia*, nos. 16909/06, 38989/06 and 39235/06, § 52, 21 July 2009), and thus had no pecuniary entitlement.

52. The applicants reaffirmed their complaints. In particular, they submitted that they had never waived their rights arising from the judgments, and that in accordance with the practice of the Constitutional Court, they were still entitled to enjoy the rights arising from the final judgments in their cases, even though they had been granted the rights arising from the redundancy programme.

53. Turning to the present case, the Court notes that the respondent State has consistently been held responsible for the non-enforcement of the

judgments rendered against companies predominantly comprised of socially-owned capital (see, for example, *R. Kačapor and Others*, cited above; and *Grišević and Others*, cited above), regardless of whether such companies were in the process of liquidation or reorganisation (see, for example, *Vlahović,* cited above, §§ 74-77 and 81; and *Crnišanin and Others v. Serbia*, nos. 35835/05, 43548/05, 43569/05 and 36986/06, §§ 124 and 133, 13 January 2009), it being understood that the same conclusion applies, *a fortiori*, in respect of the companies where there has been a subsequent change in their respective capital share structure resulting in the predominance of the State-owned and socially-owned capital. The Court finds no particular circumstances in the present cases to depart from this conclusion.

54. Furthermore, the Court has already considered practically identical circumstances in *Rašković and Milunović* (cited above, §§ 69-72), in which it found, *inter alia*, a violation of Article 6 of the Convention and Article 1 of Protocol No. 1. In particular, it has been held that the non-enforcement of judgments rendered against socially-owned companies, which is the subject matter of the present cases, is clearly distinguishable from that in *Lithgow and Others*, to which the Government referred (see paragraph 56 above), and which concerned compensation for nationalised property.

55. The Court considers that the applicants' participation in the redundancy programme did not deprive them of their entitlement arising from the final judgments rendered in their favour given that, contrary to the *Grišević* case, they have never waived their rights arising from the domestic judgments. The Government certainly submitted no evidence to the contrary. Therefore, the Court concludes that the final judgments rendered in the applicants' favour continue to represent a claim for the purposes of Article 1 of Protocol No. 1 to the Convention, while the prolonged failure of the Serbian authorities to enforce those judgments cannot be seen as being in accordance with the domestic law.

56. In the light of the above, the Court finds that there has been a breach of Article 1 of Protocol No. 1 to the Convention.

III. ALLEGED VIOLATION ARTICLE 6 § 1 OF THE CONVENTION

57. Both applicants also complained under Article 6 § 1 of the Convention about the respondent State's failure to enforce the final judgments rendered in their favour.

58. Article 6 § 1 of the Convention in its relevant part reads as follows:

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

A. Admissibility

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

B. Merits

60. The Government submitted that the Court should take into consideration only those parts of the applicants' respective enforcement proceedings which were pending as of 3 March 2004, which is when the Convention entered into force in respect of Serbia.

61. The Court notes that the first judgments were rendered in favour of the first and the second applicant on 26 February 2004 and 19 January 2005, while the relevant enforcement orders were issued on 18 March 2004 and 26 September 2005 respectively, which are the earliest dates from which the period of non-enforcement could be observed.

62. The Court has already held that the State is responsible for the failure to enforce final domestic judgments rendered against socially-owned companies (see *R. Kačapor and Others*, cited above, §§ 115-116; *Crnišanin and Others*, cited above, § 123; and *Grišević and Others,* cited above, §§ 68-69). It finds no reason to depart from this conclusion in the present case given that the debtors are comprised of both State and socially-owned capital (see paragraph 46 above) and the period of non-enforcement has so far lasted between eight years and nine years and six months, respectively. The Serbian authorities have thus not taken the necessary measures to enforce the judgments in question and have not provided any convincing reasons for that failure. Accordingly, there has also been a violation of Article 6 § 1 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

63. The first applicant made the same complaints under Article 13 of the Convention.

64. Having regard to its finding under Article 6 of the Convention (see paragraph 62 above) and Article 1 of Protocol No. 1 (see paragraphs 56 above), the Court considers that it is not necessary to examine separately the admissibility or the merits of the same issue under Article 13 of the Convention (see, for example, *Ilić v. Serbia*, no. 30132/04, § 106, 9 October 2007; *Kin-Štib and Majkić v. Serbia*, no. 12312/05, § 90, 20 April 2010).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

65. 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, costs and expenses

66. The applicants requested that the State be ordered to pay, from its own funds, the sums awarded by the domestic courts in respect of the monthly paid leave benefits for the period from 14 May 1996 to 1 May 2006, and from 1 June 2004 to 12 September 2006, respectively, plus the costs of the domestic civil and enforcement proceedings. The first applicant claimed EUR 300 for the costs and expenses incurred in the proceedings before this Court. The second applicant also claimed such costs, but did not specify their exact amount, leaving it to the Court's discretion.

67. The Government maintained that the payment received by the applicants through the redundancy programme should be deducted from the final award under this head. The Government further submitted that the pension and disability insurance contributions for the period of 76 months and 13 days and for the period of 108 months, due to the first and the second applicant respectively, should be deducted from the final award under this head.

68. Considering the Government's argument, and having regard to the violations found in the present case and its own case-law (see *R. Kačapor and Others*, cited above, §§ 123-126, and *Crnišanin and Others*, cited above, §§ 137-139), in particular bearing in mind the different nature of the awards established by the relevant domestic judgments and the redundancy programme (see paragraph 55 above), the Court considers that the Government must pay the applicants the sums as awarded in the domestic judgments (see paragraphs 11, 14, 17, 22, 25, 28, 31, 34 and 37), as well as the established costs of the enforcement proceedings (see paragraphs 13, 16, 19, 20 and 39 above), less any and all payments that were paid to them on those bases in the meantime (see, *mutatis mutandis, R. Kačapor and Others v. Serbia*, §§ 123-126, and *Crnišanin and Others v. Serbia*, §§ 137-139, both cited above).

69. As regards the non-pecuniary damage as well as costs and expenses incurred before this Court, the Court considers it reasonable and equitable to award EUR 2,000 to each of the applicants under these heads.

B. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 concerning the non-enforcement of the final domestic judgments admissible;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

4. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

5. *Holds* that there is no need to examine separately the admissibility or the merits of the complaint made under Article 13 of the Convention;

6. *Holds*,
   (a) that the respondent State is to pay to the applicants, from its own funds and within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the amounts awarded in the final domestic judgments as well as the enforcement costs less any and all payments that were paid to them on those bases in the meantime;
   (b) that the respondent State is to pay to each of the applicants, within the same period, EUR 2,000 (two thousand euros) in respect of non-pecuniary damage, costs and expenses, plus any tax that may be chargeable on this amount, which is to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 15 October 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	Guido Raimondi
Registrar	President