

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

SECOND SECTION

CASE OF GLIGORIĆ v. SERBIA

(Applications nos. 75271/10 and 67112/11)

JUDGMENT

STRASBOURG

26 November 2013

This judgment is final but it may be subject to editorial revision.



In the case of Gligorić v. Serbia,

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

Paulo Pinto de Albuquerque, *President,*
Dragoljub Popović,
Helen Keller, *judges,*
and Seçkin Erel, *Acting Deputy Section Registrar,*

Having deliberated in private on 5 November 2013,

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

PROCEDURE

1. The case originated in two applications (nos. 75271/10 and 67112/11) 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, Mr Milan Gligorić ("the first applicant") and Ms Verica Gligorić ("the second applicant"), on 2 December 2010 and 2 February 2010 respectively.

2. The Serbian Government ("the Government") were represented by their Agent, Mr S. Carić.

3. On 21 November 2011 the applications were communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Introduction

4. The applicants were born in 1952 and 1954 respectively and live in Majur.

5. The applicants were employed by "7 Juli", a company based in Šabac (hereinafter – "the debtor").

B. As regards the first applicant

1. First set of proceedings

6. On 13 November 2006 the applicant and the debtor concluded a settlement before the Šabac Municipal Court, according to which the debtor

was ordered to pay the applicant certain sums in respect to salary arrears and costs of proceedings.

7. On 29 December 2009 the applicant lodged an application for the enforcement of the above court decision with the Šabac Municipal Court.

8. On 31 December 2009 the court allowed the application and issued an enforcement order.

2. Second set of proceedings

9. On 11 December 2008 the applicant and the debtor concluded a settlement before the Šabac Municipal Court, according to which the debtor was ordered to pay the applicant certain sums in respect to salary arrears and pension and disability insurance contributions.

10. On 7 July 2009 the applicant lodged an application for the enforcement of the above court decision with the Šabac Municipal Court.

11. On 9 July 2009 the court allowed the application and issued an enforcement order.

C. As regards the second applicant

12. On 21 July 2006 the applicant and the debtor concluded a settlement before the Šabac Municipal Court, according to which the debtor was ordered to pay the applicant certain sums in respect to salary arrears, pension and disability insurance contributions and costs of proceedings.

13. On 7 July 2009 the applicant lodged an application for the enforcement of the above court decision with the Šabac Municipal Court.

14. On 9 July 2009 the court allowed the application and issued an enforcement order.

D. The debtor's status

15. On 14 March 2007 the debtor was privatised.

16. On 10 June 2008 the contract for the sale of the debtor was annulled because the buyer in question had failed to fulfil his contractual obligations.

17. Following the annulment of the debtor's privatisation 70% of its shares were transferred to the State.

18. As it would appear from media reports, in November 2009 the State sold its shares to a private company.

19. On 14 April 2010 the Valjevo Commercial Court opened the preliminary insolvency proceedings against the debtor.

20. On 1 December 2010 the Commercial Court terminated the insolvency proceedings against the debtor because the creditors and the debtor failed to advance the costs of the insolvency proceedings.

21. In addition, the court ordered the transfer of the debtor's property to the State.

22. The decision became final on 14 April 2011.

II. RELEVANT DOMESTIC LAW

23. The relevant domestic law is set out in the Court's judgments of *EVT Company v. Serbia* (no. 3102/05, §§ 26 and 27, 21 June 2007); *Marčić and Others v. Serbia* (no. 17556/05, § 29, 30 October 2007); 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); *Adamović v. Serbia,* (no. 41703/06, §§ 17-22, 2 October 2012); see also *Marinković v. Serbia* ((dec.) no. 5353/11, 29 January 2013, §§ 26-29 and §§ 31-44).

THE LAW

I. JOINDER OF THE APPLICATIONS

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

II. ALLEGED VIOLATION OF ARTICLES 6 AND 13 OF THE CONVENTION

25. The applicants complained about the respondent State's failure to fully enforce the final court decisions in their favour. They relied on Articles 6 and 13 of the Convention which, in so far as relevant, read as follows:

Article 6 § 1

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

Article 13

"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."

A. Admissibility

1. Exhaustion of domestic remedies

26. The Government argued that the applicants had failed to exhaust all effective legal remedies. In particular, since the applicants must have been aware of the debtor's financial standing they had had to initiate enforcement proceedings much earlier without unnecessary protraction.

27. The applicants disagreed.

28. The Court is not persuaded that the passage of time between the date when a court decision rendered against the State-controlled entity and the date of lodging of an application for the enforcement of that decision can be regarded as the applicants' failure to exhaust all effective remedies. It therefore rejects the Government's argument.

2. Compatibility ratione personae

29. The Government argued that the State could not be held responsible for the debtor in the present case which was a separate legal entity not controlled by the State.

30. The applicants disagreed.

31. The Court has already held in comparable cases against Serbia that the State is liable for debts of socially-owned companies (see, for example, *R. Kačapor and Others,* cited above*,* §§ 97-98, *Rašković and Milunović v. Serbia*, nos. 1789/07 and 28058/07, § 71, 31 May 2011, and *Adamović v. Serbia*, cited above, § 31). The Court sees no reason to depart from that jurisprudence in the present case. Consequently, this argument must be rejected.

3. Conclusion

32. The Court considers that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and finds no other ground to declare it inadmissible. It must therefore be declared admissible.

B. Merits

33. The Court notes that the applicants sought enforcement of the final court decisions in their favour on 7 July 2009 and 29 December 2009 respectively (see paragraphs 7, 10 and 13 above). However those decisions have not been enforced yet.

34. The Court notes that a delay in the execution of a judgment may be justified in particular circumstances. However, the delay may not be such as to impair the essence of the right protected under Article 6 § 1 of the Convention (see *Burdov v. Russia,* no. 59498/00, § 35, ECHR 2002-III).

Furthermore, "the fact that the State sold a large part of its share in the company it owned to a private person could not release the State from its obligation to honour a judgment debt which had arisen before the shares were sold. If the State transfers such an obligation to a new owner of the shares...the State must ensure that the new owner complies with the requirements, inherent in Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, that a final, binding judicial decision does not remain inoperative to the detriment of a party" (see *Solovyev v. Ukraine*, no. 4878/04, § 21, 14 December 2006).

35. The Court observes that it has frequently found violations of Article 6 of the Convention in cases raising issues similar to those raised in the present case (see *R. Kačapor and Others*, cited above, §§ 115-116; *Crnišanin and Others v. Serbia*, cited above, §§ 123-124, 13 January 2009).

36. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or convincing argument capable of persuading it to reach a different conclusion in the present case. There has, accordingly, been a violation of Article 6 § 1 of the Convention.

37. The Court does not find it necessary in the circumstances of this case to examine essentially the same complaint under Article 13 of the Convention (see *mutatis mutandis, Kin-Stib and Majkić v. Serbia*, no. 12312/05, § 90, 20 April 2010 and *Slovyev v. Ukraine,* no. 4878/04, § 25, 14 December 2006).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

38. 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."

39. The applicants did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award them any sum on that account.

40. It must, however, be noted that a judgment in which the Court finds a violation of the Convention or of its Protocols imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in its domestic legal order to put an end to the violation found (see *Apostol v. Georgia*, no. 40765/02, §§ 71-73, ECHR 2006-XIV, *Marčić and Others v. Serbia*, cited above, §§ 64-65, and *Pralica v. Bosnia and Herzegovina*, no. 38945/05, § 19, 27 January 2009).

41. Having regard to its finding in the instant case, and without prejudice to any other measures which may be deemed necessary, the Court considers

that the respondent State must secure the enforcement of the final domestic decisions rendered in the applicants' favor by way of paying in respect of each applicant, from their own funds, the sums awarded in the said final decisions, less any amounts which may have already been paid in respect of the said decisions.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join applications;

2. *Declares* the applications admissible;

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

4. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;

5. *Holds*
   (a) that the respondent State shall, from its own funds and within three months, pay in respect to each applicant, the sums awarded in the final court decisions rendered in their favour, less any amounts which may have already been paid on the basis of the said decisions;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

Done in English, and notified in writing on 26 November 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Seçkin Erel	Paulo Pinto de Albuquerque
Acting Deputy Registrar	President