

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

SECOND SECTION

CASE OF PAJOVIĆ v. SERBIA

(Application no. 32791/20)

JUDGMENT

STRASBOURG

29 September 2022

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



In the case of Pajović v. Serbia,

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

Jovan Ilievski*, President,*
Gilberto Felici*,*
Diana Sârcu*, judges,*
and Viktoriya Maradudina, *Acting Deputy Section Registrar*,

Having deliberated in private on 8 September 2022,

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

PROCEDURE

1. The case originated in an application against Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 13 July 2020.

2. The applicant was represented by Mr R. Čakara, a lawyer practising in Novi Pazar.

3. The Serbian Government ("the Government") were given notice of the application.

THE FACTS

4. The applicant's details and information relevant to the application are set out in the appended table.

5. The applicant complained of the non-enforcement of a domestic decision given against a socially/State-owned company.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL NO. 1

6. The applicant complained of the non-enforcement of a domestic decision given in his favour. He relied, expressly or in substance, on Article 6 § 1 of the Convention and on Article 1 of Protocol No. 1, which read as follows:

Article 6 § 1

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

Article 1 of Protocol No. 1

> "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."

7. The Court reiterates that the execution of a judgment given by any court must be regarded as an integral part of a "hearing" for the purposes of Article 6. It also refers to its case-law concerning the non-enforcement or delayed enforcement of final domestic judgments (see *Hornsby v. Greece*, no. 18357/91, § 40, *Reports of Judgments and Decisions* 1997-II).

8. The Court further notes that the decision in the present application ordered specific action to be taken. It therefore considers that the decision in question constitutes "possessions" within the meaning of Article 1 of Protocol No. 1.

9. In the leading case of *R. Kačapor and Others v. Serbia,* nos. 2269/06 and 5 others, 15 January 2008, the Court already found a violation in respect of issues similar to those in the present case.

10. Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion on the admissibility and merits of these complaints. Having regard to its case-law on the subject, the Court considers that in the instant case the authorities did not deploy all necessary efforts to enforce fully and in due time the decision in the applicant's favour.

11. These complaints are therefore admissible and disclose a breach of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

12. 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."

13. Regard being had to the documents in its possession and to its case-law (see, in particular, *R. Kačapor and Others,* cited above, and *Stanković v. Serbia* (dec.), 41285/19, 19 December 2019), the Court considers it reasonable to award the sums indicated in the appended table.

14. The Court further notes that the respondent State has an outstanding obligation to enforce the decision which remains enforceable.

15. The Court finally stresses that it appropriate that the default interest rate 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 application admissible;

2. *Holds* that this application discloses a breach of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 concerning the non-enforcement of a domestic decision given against a socially/State-owned company;

3. *Holds* that the respondent State shall ensure, by appropriate means, within three months, the enforcement of the pending domestic decision referred to in the appended table;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the amounts indicated in the appended table, to be converted into the currency of the respondent State;

   (b) 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.

Done in English, and notified in writing on 29 September 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Viktoriya Maradudina	Jovan Ilievski
Acting Deputy Registrar	President

APPENDIX

Application raising complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 (non-enforcement or delayed enforcement of domestic decisions given against socially/State-owned companies)

Application no. Date of introduction	Applicant's name Year of birth	Relevant domestic decision	Start date of non-enforcement period or date of entry into force of the Convention in respect of Serbia (3 March 2004)	Length of enforcement proceedings	Amount awarded for non-pecuniary damage per applicant (in euros)[1] [2]	Amount awarded for costs and expenses per application (in euros)[3]
32791/20 13/07/2020	**Božidar PAJOVIĆ** 1963	Commercial Court in Kraljevo, 27/11/2003	03/03/2004	pending More than 18 year(s) and 4 month(s) and 4 day(s)	1,000	250

[1] Plus any tax that may be chargeable to the applicant.
[2] Less any amounts which may have already been paid in that regard at the domestic level.
[3] Plus any tax that may be chargeable to the applicant.