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

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Legislation introduced in Slovenia in the 1990s obliging a director to pay his company's debts was justified

In today's **Grand Chamber** judgment[1] in the case of Lekić v. Slovenia (application no. 36480/07) the European Court of Human Rights held, by 15 votes to two, that there had been:

no violation of Article 1 of Protocol No. 1 (protection of property) of the European Convention on Human Rights.

The case concerned striking a company off a court register and the subsequent liability of its managing director for its debts. The strike off procedure was used against the applicant's company under new legislation introduced in 1999, which gave courts the power to strike off dormant companies without having to wind them up. It resulted in him having to pay 32,795 euros to one of the company's creditors, the Railway Company of Slovenia.

The Court found in particular that making the applicant liable for his company's debt had not been disproportionate, bearing in mind that he had been actively involved in running the company. The amount of debt he had had to pay was relatively modest, as he had not been the only focus of the Railway Company's claims. He had not therefore been made to assume an excessive and individual burden.

The Court took into account the public interest in having the legislation and the national context, which was the need to ensure financial stability during the transition from a socialist to a free-market economy. Thousands of companies created under the former Socialist Federal Republic of Yugoslavia were dormant in the 1990s and "lifting the corporate veil" to make their members liable for the companies' debts was intended to avoid the courts being inundated with years of winding-up proceedings.

Principal facts

The applicant, Ljubomir Lekić, is a Slovenian national who was born in 1956 and lives in Ljubljana.

During the 1990s, Mr Lekić was a member of the company L.E., holding an 11.11% share. He also became an employee and eventually the managing director. Following the death or serious injury of four key members and managers in 1993, the company experienced financial difficulties. It faced a civil claim for 5,000,000 Slovenian tolars (approximately 20,000 euros) from the Railway Company of Slovenia for unpaid bills for transport services. By 1995 the company was no longer liquid or solvent and it eventually became dormant.

In 1997 the company's remaining members applied for bankruptcy. However, the competent court rejected the application as there had been no advance payment of costs. The members then decided to wait for the court to decide of its own motion to liquidate L.E., which was possible under the law at the time.

Slovenian company legislation was changed in 1999. The power of the courts to wind up and liquidate companies of their own motion was repealed, and they were instead granted the power to strike dormant companies off the court register without them being wound up. That allowed

1. Grand Chamber judgments are final (Article 44 of the Convention).
All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

companies to be dissolved without their assets being collected and used to pay creditors. The members of struck-off companies would assume joint and several liability for companies' debts.

In 2001, the new procedure was used on L.E., however, the strike-off decision could not be served on the company as it was no longer at its registered address, or any other. According to Mr Lekić, he had learned of the strike-off only in December 2004.

In the meantime, in 2000, the Railway Company had obtained a judgment for L.E. to pay it the outstanding sum. The Railway Company subsequently applied for an enforcement order against the seven members of L.E. for the judgment debt of about 20,000 euros with statutory interest. It was granted an order to seize Mr Lekić's personal possessions, which was served on him in December 2004.

Mr Lekić lodged an objection in court and applied for a stay. He argued that he had not been an active member of L.E., which exonerated him from the debt. The Ljubljana Local Court found that he had failed to prove his argument. With his 11.11% share in the company, the applicant had enjoyed the rights of a minority member and, moreover, had been involved in the company's management since 1993. The court therefore upheld the order and refused to grant a stay of enforcement.

Appeals by Mr Lekić were rejected. In particular, the Constitutional Court of Slovenia held that the measure of "lifting the corporate veil" in the case had been consistent with the Constitution.

In 2010 part of Mr Lekić's monthly salary payments were seized to pay off the debt. He reached a settlement with the Railway Company the following year. In total, he paid EUR 32,795 to his creditor.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 4 August 2007.

Relying in particular on Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights, Mr Lekić complained, among other things, that the striking-off of the company and his ensuing liability had interfered with his property rights and had amounted to an unlawful deprivation of property. He argued that the lifting of the corporate veil under the strike-off procedure had violated the principle of legal certainty, had lacked any legitimate aim, and had not been justified.

In its Chamber judgment of 14 February 2017, the European Court of Human Rights held, unanimously, that there had been no violation of Article 1 of Protocol No. 1. It considered in particular that the national courts' finding that Mr Lekić was an active member of the company and thus liable for the payment of its debts was reasonable.

On 18 September 2017 the Grand Chamber Panel accepted Mr Lekić's request that the case be referred to the Grand Chamber.

The following organisations were granted leave to intervene in the written proceedings as third parties: the Civil Initiative of Forcefully Erased Companies and the Malta Institute of Management.

A Grand Chamber hearing was held in Strasbourg on 14 March 2018.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Guido **Raimondi** (Italy), *President*,
Angelika **Nußberger** (Germany),
Linos-Alexandre **Sicilianos** (Greece),
Ganna **Yudkivska** (Ukraine),
Robert **Spano** (Iceland),
Ledi **Bianku** (Albania),
Helen **Keller** (Switzerland),

Paul **Lemmens** (Belgium),
Valeriu **Griţco** (the Republic of Moldova),
Faris **Vehabović** (Bosnia and Herzegovina),
Ksenija **Turković** (Croatia),
Jon Fridrik **Kjølbro** (Denmark),
Stéphanie **Mourou-Vikström** (Monaco),
Georges **Ravarani** (Luxembourg),
Jovan **Ilievski** ("the former Yugoslav Republic of Macedonia"),
Péter **Paczolay** (Hungary) and,
Boštjan **Zalar** (Slovenia)*, ad hoc Judge*,

and also Søren **Prebensen**, *Deputy Grand Chamber Registrar.*

Decision of the Court

First, there was no dispute that the decision to hold Mr Lekić personally liable for a debt owed by L.E. had amounted to an interference with the peaceful enjoyment of his possessions.

The Court found that that interference had been lawful within the meaning of Article 1 of Protocol No. 1. It had been based on the new legislation introduced in 1999, which was accessible, precise and foreseeable in its application.

In particular, the legislation, made public in the Official Gazette in July 1999, had to have made it clear to Mr Lekić that his company ran the risk of being struck off and that he himself faced being held liable for its debts. As a minority member of L.E. and its former managing director, he must have been well aware of his company's status and the proceedings brought against it by its creditor, as well as the pertaining domestic law, particularly with regard to insolvent companies.

He could therefore have been expected to address any outstanding issues facing the company, and also ensured some basic management such as collecting any letters addressed to it. The Court thus dismissed his complaint about the failure to serve personally on him the decisions handed down in the strike-off proceedings, and considered that their service on L.E., together with notification in the court register or in the Official Gazette, was an adequate method.

Moreover, the Court found that the main purpose of interfering with Mr Lekić's rights had been in the public interest, namely to ensure stability in the commercial market and financial discipline in the period of transition from a socialist to a free-market economy. By the end of the 1990s no less than 6,500 companies created under the legislation of the former Socialist Federal Republic of Yugoslavia existed only on paper, had large debts and no assets. Lifting the corporate veil so as to make members of dormant companies liable for the companies' debts had been intended to avoid the courts being inundated with years of winding-up proceedings under the former legislation, with significant financial implications for the State. Such liability was confined to those members who were able to actively influence the operation of a company.

As concerned the applicant himself and the proceedings against him, the Court saw no cause to disagree with the domestic courts' reasoning concluding that he had been actively involved in the running of the company and was therefore liable under the new legislation. Indeed, an amendment to the legislation in 2002 had led to clear and consistent domestic case-law that members of struck-off companies holding at least a 10% share in a company, such as Mr Lekić, were personally liable for their companies' debts.

Furthermore, under the 1999 legislation L.E. and its members had had ample time – one year – before the relevant law entered into force to institute proceedings to have the company dissolved, which would have avoided the strike off and personal liability for the companies' debts. Instead, they had perpetuated the company's existence even though it was unable to pay its debts or

perform the activities for which it had been established. The Court set this conduct against the considerable adverse affects on the company's creditor, Slovenian Railways, of being in a prolonged state of uncertainty as to whether the debt to it would be paid.

Lastly, the Court found that the amount of debt paid by the applicant had been relatively modest, Slovenian Railways having pursued claims against other members of L.E. as well as against the applicant. In any event he had not argued or provided any substantiation that he had suffered any serious consequences because of it. If he considered that he had paid more than other active members of L.E., he could have lodged a civil action against them seeking to be reimbursed.

Finding Mr Lekić liable for his company's debt had not therefore been disproportionate and he had not suffered an individual and excessive burden.

There had therefore been no violation of Article 1 of Protocol No. 1.

Separate opinions

Judges Raimondi, Nussberger, Lemmens, Ravarani, Paczolay and Zalar_expressed a joint concurring opinion, and Judges Turković and Mourou-Vikström a joint dissenting opinion. These opinions are annexed to the judgment.

The judgment is available in English and French.

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