SECOND SECTION

CASE OF KLIKOVAC AND OTHERS v. SERBIA

(Application no. 24291/08)

JUDGMENT

STRASBOURG

5 March 2013

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

In the case of Klikovac and Others 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 Françoise Elens-Passos, *Deputy Section Registrar,*

Having deliberated in private on 12 February 2013,

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

PROCEDURE

1. The case originated in an application (no. 24291/08) 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 three Serbian nationals, Mr Branko Klikovac, Mr Milovan Bačanac and Mr Radovan Vasić ("the applicants"), on 3 May 2008.

2. All the applicants were initially represented by Mr S. Krstić, a lawyer practising in Kraljevo. On 27 September 2011 he informed the Court that he was no longer representing Mr Branko Klikovac and Mr Milovan Bačanac. The Serbian Government ("the Government") were represented by their Agent, Mr S. Carić.

3. On 29 June 2010 the President of the Second Section decided to give notice of the applications to the Government. It was also decided to rule on the admissibility and merits of the applications at the same time (Article 29 § 1).

4. The Government objected to the examination of the application by a Committee. After having considered the Government's objection, the Court rejects it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1942, 1953 and 1949 respectively and live in Kraljevo.

6. On 10 November 2004 the Kraljevo District Court ("the District Court") ordered "MAGNOHROM d.o.o." ("the debtor"), a company from Kraljevo, to pay the applicants *in solidum* 1,504,924 Serbian dinars

("RSD") together with statutory interest and legal costs. This judgment became final on 6 July 2006.

A. The enforcement proceedings

7. On 2 February 2007 the applicants filed a request for the enforcement of the above judgment proposing that it be carried out through the auctioning of the debtor's specified immovable assets.

8. On 6 February 2007 the Kraljevo Municipal Court ("the Municipal Court") issued a writ of execution *(rešenje o izvršenju)*. The debtor appealed against that decision arguing that it was going through the process of restructuring as well as that the value of the impugned immovable assets exceeded the value of the applicants' claims. On 9 March 2007 the District Court dismissed the appeal.

9. On an unspecified date 60 other enforcement claims submitted against the same debtor were joined to the applicants' case.

10. After several hearings and few unsuccessful public auctions, on 30 April 2010 the impugned assets were sold to a company from Bačka Palanka for RSD 151,663.077.

11. The final decision on division of the proceeds and the order of settlement of creditors was issued by the Municipal Court on 5 July 2011. The court ordered the partial settlement of all creditors in proportion to their claims and the amount obtained through the sale.

12. Shortly thereafter the applicants' claims were partially settled.

B. The status of the debtor

13. The debtor was privatised on 21 July 2006.

14. The sales contract was annulled on 28 December 2007 due to a buyer's failure to fulfil the contractual obligations.

15. As of January 2008, the debtor still consisted of predominantly socially/State-owned capital.

16. On 28 May 2010 the Privatisation Agency ordered the restructuring of the debtor, which is still ongoing. Nevertheless, the enforcement proceedings under consideration in the present case have never been suspended or terminated on these grounds.

II. RELEVANT DOMESTIC LAW

17. The relevant domestic law concerning the status of the socially-owned companies and the relevant provisions concerning the enforcement proceedings were outlined in the case of *R. Kačapor and Others v. Serbia*, nos. 2269/06 *et al*., 15 January 2008, §§ 57-64 and §§ 71-76. Furthermore, the relevant provisions concerning the privatisation of socially-owned

companies were outlined in the case of *Crnišanin and Others v. Serbia*, nos. 35835/05 *et al*., §§ 100-104, 13 January 2009.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

18. The applicants complained about the respondent State's failure to enforce the final judgment of 10 November 2004. They relied on Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention.

Article 6, in so far as relevant, provides:

> "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 1 of Protocol No. 1 to the Convention 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.
>
> 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

19. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

20. The Court notes that the domestic judgment in the applicants' favour was given on 10 November 2004 and it became final on 6 July 2006. The applicants sought enforcement on 2 February 2007. However, it has not been fully enforced until the present day. The Government did not advance any argument to justify this.

21. The Court has already found a breach of Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention in similar circumstances (see *R. Kačapor and Others*, cited above, §§ 115-116; *Crnišanin and*

Others, cited above, § 123; and *Rašković and Milunović v. Serbia*, nos. 1789/07 and 28058/07, § 79, 31 May 2011). It finds no reason to depart from that jurisprudence in the present.

Accordinlgy, there has been a breach of Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. 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

23. The applicants sought the payment of the outstanding judgment debt in respect of pecuniary damage and EUR 100,000 each in respect of non-pecuniary damage. The Government considered the claims excessive and unjustified.

24. Having regard to the violations found in the present case and its own jurisprudence (see *R. Kačapor and Others,* cited above, §§ 123-126, and *Crnišanin and Others*, cited above, § 139), the Court considers that the applicants' claim for pecuniary damage must be accepted. The Government shall, therefore, pay in respect of each applicant the outstanding debt from the final judgment of 10 November 2004.

25. As regards non-pecuniary damage, the Court considers that the applicants sustained some non-pecuniary loss arising from the breaches of the Convention found in this case. The particular amount claimed, however, is excessive. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards each applicant EUR 4,700 under this head.

B. Costs and expenses

26. The applicants also claimed RSD 300,000 for the costs and expenses incurred before the domestic courts and approximately EUR 2,480 for those incurred before the Court. The Government considered the amounts excessive.

27. In accordance with 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 are reasonable as to quantum (see, for example, *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI). Regard being had to the information

in its possession and the above criteria, the Court considers it reasonable to award the applicants EUR 450 under this head.

28. As regards the costs and expenses incurred domestically, the Court notes that they are an integral part of the applicants' pecuniary claims which have already been dealt with above.

C. Default interest

29. The Court considers 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 there has been a violation of Article 6 of the Convention and of Article 1 of Protocol No. 1 to the Convention;

3. *Holds*

(a) that the respondent State shall, from its own funds and within three months, pay the outstanding debt owed to the applicants under the final judgment of 10 November 2004;

(b) that the respondent State is to pay the applicants, within the same period, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 4,700 (four thousand seven hundred euros) each, plus any tax that may be chargeable, in respect of non-pecuniary damage; and

(ii) EUR 450 (four hundred fifty euros) together, plus any tax that may be chargeable to the applicant, in respect of cots and expenses;

(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;

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

Done in English, and notified in writing on 5 March 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos	Paulo Pinto de Albuquerque
Deputy Registrar	President