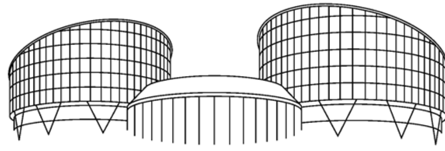

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF MASTILOVIĆ AND OTHERS v. MONTENEGRO

(Application no. 28754/10)

JUDGMENT

Art 35 § 3 (a) • *Ratione personae* • Court's inability to establish the identity of some applicants with certainty • Lack of clarity in documents submitted before the Court and names on birth certificates not corresponding to those in domestic judgments
Art 6 § 1 (civil) • Access to court • Non-enforcement of final court judgments and court-approved settlements in favour of the applicants against a predominantly State-owned company, in the meantime insolvent • Debtor company, albeit a separate legal entity, lacking sufficient institutional and operational independence from the State to absolve the latter from responsibility

STRASBOURG

24 February 2022

FINAL

24/05/2022

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Mastilović and Others v. Montenegro,

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

Síofra O'Leary, *President,*
Ganna Yudkivska,
Stéphanie Mourou-Vikström,
Lado Chanturia,
Ivana Jelić,
Arnfinn Bårdsen,
Mattias Guyomar, *judges,*
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 28754/10) against Montenegro lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by twenty-five nationals of Bosnia and Herzegovina ("the applicants"), whose details are listed in the appendix, on 10 May 2010;

the decision to give notice of the application to the Montenegrin Government ("the Government");

the parties' observations;

the fact that the Government of Bosnia and Herzegovina have not expressed a wish to intervene in the present case, after being notified under Article 36 § 1 of the Convention and Rule 44 § 1 (a) of the Rules of Court of their right to do so;

Having deliberated in private on 18 January 2022,

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

INTRODUCTION

1. The present case concerns the non-enforcement of judgments and court-approved settlements in favour of the applicants against a predominantly State-owned company, which has since become insolvent, a complaint which falls to be examined under Article 6 of the Convention.

THE FACTS

2. The applicants' dates of birth and places of residence are set out in the appendix. They were initially represented by Mr B. Simović, a lawyer practising in Podgorica. On 3 July 2018 he was excluded from acting as a representative before the Court (see paragraphs 8-21 below). The first, tenth, seventeenth and nineteenth applicants appointed Mr M. Šipovac, a lawyer practising in Nevesinje, Bosnia and Herzegovina (BIH). The eleventh, eighteenth and twenty-third applicants were granted leave to

represent themselves. The remaining applicants appointed Ms M. Simović, a lawyer practising in Podgorica.

3. The Government were represented by their Agent, Ms V. Pavličić.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. THE APPLICANTS' CLAIMS

5. On 11 September 1994 the applicants were passengers on a bus operated by a "socially-owned" company (*društveno preduzeće*) (see, *mutatis mutandis*, *R. Kačapor and Others v. Serbia*, nos. 2269/06 and 5 others, §§ 6 and 71-75, 15 January 2008). The bus was involved in an accident in which the applicants suffered various injuries.

6. Between 1996 and 2005, in civil proceedings against the bus company, the seventh, twelfth, twentieth, twenty-first, twenty-second and twenty-fifth applicants were awarded compensation in respect of non-pecuniary damage (under court judgments or court-approved settlement agreements). The remaining applicants were awarded both compensation in respect of non-pecuniary damage and the costs of the proceedings. Some of the sums were in Yugoslav dinars (YUN), some in German marks (DEM) and some in euros (EUR).

7. On 26 February 1996 the "socially-owned" debtor was transformed into a predominantly State-owned joint stock company (*dioničarsko društvo*). On 26 May 1997 the Podgorica Commercial Court (*Privredni sud*) opened insolvency proceedings against the debtor company. On 23 December 2009 the court terminated (*zaključio*) the insolvency proceedings against the debtor but continued the proceedings against the debtor's estate. This decision was upheld by the Court of Appeal (*Apelacioni sud*) on 9 April 2010. The relevant decisions issued in favour of the applicants (see paragraph 6 above) remain unenforced to date due to the insolvency proceedings in respect of the debtor company undergoing transition from a planned to a market economy (see paragraph 44 below).

II. THE APPLICANTS' NAMES, DATA AND REPRESENTATION

8. In May 2010 Mr B. Simović submitted an application form on behalf of the applicants indicating the first applicant's name and enclosing a collective authority form for all the applicants with photocopies of their alleged signatures. Neither the application form nor the authority form contained any identification data about the applicants such as dates or places of birth, addresses or telephone numbers. The names indicated for some of the applicants did not correspond to the signatures next to them. In particular, the first applicant's first name was specified as "Dragica" in the application form but typed as "Slavojka" in the collective authority form. The signature

next to it read Dragica. The first names of the second, fifth, tenth, twelfth, seventeenth and twentieth applicants also differed slightly from those in the signatures. The spelling of the second applicant's name indicated that it was a woman.

9. In September 2010 Mr B. Simović submitted separate authority forms in which some of the applicants' addresses were illegible.

10. In November 2010 he submitted certified authority forms for all the applicants, save for the tenth and twenty-fifth applicants. The signatures of at least sixteen applicants (the first, second, third, fourth, eighth, ninth, eleventh, twelfth, fourteenth, fifteenth, sixteenth, eighteenth, nineteenth, twentieth, twenty-first and twenty-third applicants) on these authority forms were different from the signatures on the authority forms submitted in September 2010. Many also differed from those on the collective authority form initially provided with the application form.

11. Some of the names also differed. In particular, the first applicant's first name was no longer Dragica or Slavojka, but Draginja. The second applicant's first name indicated that it was a man. The first names of the twelfth, nineteenth, twentieth and twenty-second applicants differed from those initially provided. The third, ninth and twentieth applicants' surnames were different. The authority forms for the ninth and twentieth applicants contained both their maiden and married names.

12. The top left part of the authority form submitted in November 2010 bore the names of Mr B. Simović and Ms M. Simović, a trainee lawyer (*advokatski pripravnik*) at his law firm at the time. The authorisation statements specified that the applicants authorised Mr B. Simović to be their representative. Ms M. Simović's name did not appear in the authorisation statements.

13. In July 2016 Mr. Simović lodged a new application with the Court on behalf of the same twenty-five applicants. Some of the applicants' dates of birth and names differed from those in the present application. The Court requested Mr Simović to submit the applicants' birth certificates.

14. In September 2016 the applicants' birth certificates (*izvod iz matične knjige rođenih*) were submitted, specifying their names, including maiden and married names where applicable.

15. It appears from the birth certificates that the first names of the first, twelfth, seventeenth, nineteenth, twentieth and twenty-second applicants differed from those indicated in the relevant domestic decisions (see Appendix).

16. The decision apparently relating to the third applicant bore a different first name and her maiden name (see Appendix). Another court writ relating to the third applicant issued in the same set of domestic proceedings bore her first name and maiden name as indicated in her birth certificate.

17. The names of the second and ninth applicants in their birth certificates corresponded to the names in the domestic decisions and the authority forms. The domestic judgment for the ninth applicant bore her maiden name.

18. In February 2018 the Court invited the parties to comment on the above inconsistencies and on the applicants' whereabouts.

19. In March 2018 the applicants' initial representative corrected the second applicant's name, which had been misspelled in the application form. He also specified the names of the other applicants as indicated in their birth certificates and submitted that the differences had been owing to clerical errors. He provided twenty new addresses, some of which still raised concerns about their veracity (for example, it would appear that at least one of the streets indicated did not actually exist). He also provided the telephone numbers of ten of the applicants.

20. The Registry attempted to contact the applicants for whom telephone numbers had been provided. It appears that some of them had never lived at the addresses indicated in the application form (the nineteenth and twenty-third applicants), one applicant had not been informed of the proceedings before the Court by Mr. B. Simović (the tenth applicant), one applicant could not be reached on the number provided (the twenty-fourth applicant) and the number provided for another applicant turned out to be non-existent (the twenty-fifth applicant).

21. On 3 July 2018 the applicants' initial representative was excluded from acting as a representative before the Court in accordance with Rule 36 § 4 (b) of the Rules of the Court. The applicants appointed other representatives or chose to represent themselves (see paragraph 2 above).

RELEVANT LEGAL FRAMEWORK

22. Section 342 of the 1977 Civil Procedure Act (*Zakon o parničnom postupku*; published in the Official Gazette of the Socialist Federal Republic of Yugoslavia, nos. 004/77, 036/77, 006/80, 036/80, 043/82, 069/82, 058/84, 074/87, 057/89, 020/90, 027/90 and 035/91, and the Official Gazette of the Federal Republic of Yugoslavia nos. 027/92, 031/93, 024/94, 012/98, 015/98 and 03/02) provided, *inter alia*, that errors in names and other obvious mistakes in spelling would be corrected by the court at any time. The corrections were made by means of a separate decision and would be inserted at the end of the original decision.

23. The 2004 Civil Procedure Act (*Zakon o parničnom postupku*; published in the Official Gazette of the Republic of Montenegro nos. 022/04, 028/05 and 076/06, and the Official Gazette of Montenegro nos. 073/10, 047/15, 048/15, 051/17, 075/17 and 062/18) entered into force on 10 July 2004 and thus replaced the 1977 Civil Procedure Act. Section 351 thereof replicates section 342 of the earlier Act.

THE LAW

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

24. The applicants complained under Articles 6 and 14 of the Convention about the non-enforcement of the final court decisions and court-approved settlements against the debtor company. The Court considers that this complaint falls to be examined under Article 6 § 1 of the Convention (see, *mutatis mutandis*, *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018; *Kravchenko v. Russia*, no. 34615/02, § 29, 2 April 2009; and *Kešelj and Others v. Montenegro* [Committee], no. 33264/11, § 16, 13 February 2018), the relevant parts of which read as follows:

Article 6 § 1

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

A. Admissibility

1. The parties' submissions

(a) The Government

25. In their response to the Court's letter (see paragraph 18 above), the Government submitted that they doubted the credibility of the documentation submitted. In particular, it had been impossible to properly identify the applicants on the basis of the documentation submitted and ascertain that they were the same as those who had been parties to the proceedings before the national courts.

26. They submitted that Mr B. Simović had taken certain steps before the Court on behalf of the applicants without their authorisation, which amounted to disrespect of the Court and abuse of the right of individual application. The initial application form had lacked the necessary details required by Rule 47 of the Rules of Court. In particular, it had collectively indicated the applicants' names without any identification data. The signatures of the first, tenth, and twelfth applicants had differed from the names indicated, and the signature for the twenty-third applicant had been a mixture of Cyrillic and Latin, and it was unclear who had signed it. The signatures of the first applicant in the authority forms provided in September and November 2010 had been in different handwriting and with different first names. The authority form for that applicant had been certified in Novi Sad, a city in Serbia, and the link between that city and the applicant was unclear, as no address had been indicated for her. There had also been other failures and

contradictions regarding the identity of some of the other applicants, such as different names, signatures, handwriting, particularly as regards the second, fifth, ninth, eleventh, twelfth, fourteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth, twenty-first, twenty-third, and twenty-fourth applicants. The signature on the fifteenth applicant's authority form had been in the same handwriting as the signature of the third, twenty-third and twenty-fourth applicants, raising doubts that the authority forms had been signed by the same person.

27. In their further observations, the Government explicitly reaffirmed the above submissions and maintained that the application should be declared inadmissible for abuse of the right of petition. They doubted the authenticity of the documentation as a whole, and that Ms M. Simović, the alleged new representative of some of the applicants, had acted in good faith. Notably, after the applicants' initial representative had been restricted from representing them before the Court owing to his conduct, certain applicants had authorised his daughter, Ms. M. Simović, to be their representative. The authority forms submitted by the applicants' previous representative had borne not only his name, but also his daughter's name, which indicated that she had been involved in all the failures and abuses from the start. At the time the application had been lodged, she had been a trainee at her father's firm, and she continued to practise law with him. If she were allowed to represent the applicants, this would *de facto* render meaningless the Court's decision to restrict her father from representing them. The Government submitted her birth certificate as proof that she was the daughter of the applicants' initial representative.

28. The Government also submitted that the names of some of the applicants as indicated in their birth certificates had not corresponded to the names indicated in the domestic judgments. They referred in particular to the first and twentieth applicants. The Government considered this important not only for the identification of the parties to the proceedings before the Court, but also for potential execution of a decision by the Court.

(b) The applicants

29. The first, tenth, seventeenth and nineteenth applicants left it to the Court to assess the representation of the other applicants. They submitted, however, that the authorisation of Ms M. Simović by the other applicants should not be to their detriment. The first applicant also maintained that her first name had been misspelled in the domestic judgment owing to an error by the domestic courts, which should not be to her detriment either.

30. The eleventh, eighteenth and twenty-third applicants, who represented themselves, made no comment in this regard.

31. The remaining applicants submitted that all the authorisations had been real and authentic, as verified by the Court. The Government's submissions about their new representative were inappropriate and incorrect,

as well as belittling and absurd. In particular, they discriminated against her on the basis of her being the daughter of their previous representative. In addition, the Government had obtained her birth certificate unlawfully, as she was the only one who could obtain it. It had been submitted without her consent, revealing her unique identification number (*jedinstveni matični broj*) and thereby breaching her right to privacy and personal data protection.

2. *The Court's assessment*

(a) Abuse of the right of petition

32. The Court has consistently held that any conduct of an applicant that is manifestly contrary to the purpose of the right of individual application as provided for in the Convention and impedes the proper functioning of the Court or the proper conduct of the proceedings before it, constitutes an abuse of the right of application (see *Miroļubovs and Others v. Latvia*, no. 798/05, §§ 62 and 65, 15 September 2009). In particular, the Court has rejected applications as abusive under Article 35 § 3 of the Convention if they were knowingly based on untrue facts or misleading information (see *Gross v. Switzerland* [GC], no. 67810/10, § 28, ECHR 2014; *Pirtskhalaishvili v. Georgia* (dec.), no. 44328/05, 29 April 2010; and *Řehák v. Czech Republic* (dec.), no. 67208/01, 18 May 2004), if they manifestly lacked any real purpose (see *Jovanović v. Serbia* (dec.), no. 40348/08, 7 March 2014), if they contained offensive language (see, for example, *Řehák*, cited above) or if the principle of confidentiality of friendly settlement proceedings had been breached (see, for example, *Popov v. Moldova (no. 1)*, no. 74153/01, § 48, 18 January 2005). However, the rejection of an application on grounds of abuse of the right of application is an exceptional measure (see *Miroļubovs and Others*, cited above, § 62) and has so far been applied only in a limited number of cases.

33. Turning to the present case, the Court notes that the Government referred to the abuse of the right of petition because some of the applicants had authorised the daughter of their initial representative to represent them further. The Court observes in this regard that her name appeared at the top of the initial authority forms. However, they clearly specified that she was a trainee lawyer at the firm at the time and, more importantly, clearly referred only to the applicants' initial representative as being authorised to represent them (see paragraph 12 above). His daughter had not been authorised to represent them at that time. While the applicants' initial representative was later restricted from acting as a representative before the Court (see paragraphs 2 and 21 above), this has never been the case with his daughter, who is currently the representative of all but seven of the applicants (see paragraph 2 above). The Court considers that the mere fact that she was working as a trainee lawyer at her father's law firm at the time cannot be taken as proof that she took part in any of her father's conduct. Lastly, as

regards the subsequent authorisations given to her, the Court sees no reason to consider them unauthentic.

34. In view of the above, the Court considers that the fact that some of the applicants authorised the initial representative's daughter to be their new representative does not amount to a circumstance such as would justify a decision to declare the application inadmissible as an abuse of the right of petition. It follows that the Government's preliminary objection in this regard must be dismissed. The Court will, however, examine below the discrepancies referenced by the respondent Government in relation to the names and surnames provided in relation to some applicants and those figuring in domestic court judgments on which those applicants and their representative rely.

(b) Compatibility *ratione personae*

(i) The first, twelfth, seventeenth, nineteenth, twentieth and twenty-second applicants

35. The Court notes that during the proceedings various names, both first names and surnames, were provided for a number of applicants. Sometimes this even amounted to a person having a different gender. The applicants' signatures differed on various occasions. Their addresses were first lacking and, when provided, some were illegible, some raised doubts as to their veracity and, for some, the applicants confirmed that they had never lived there (see paragraphs 8-11, 13, 15-16, and 19-20).

36. In view of the above, the Court will take as valid the applicants' names specified in their birth certificates. It notes that the first, twelfth, seventeenth, nineteenth, twentieth and twenty-second applicants' names as specified in their birth certificates did not correspond to the names specified in the domestic judgments (see Appendix). While this was attributed to clerical errors, the Court notes that such errors could and should have been rectified pursuant to the relevant provisions of the Civil Procedure Act (see paragraphs 22-23 above). It notes, however, that even though the applicants in question had a very simple procedural possibility to do so, none of them apparently ever attempted to do so, thus leaving open the question whether they were indeed the persons in favour of whom the judgments were issued or settlements reached. While this may well be the case, the Court cannot speculate in that regard, nor can it establish the identity of these applicants with certainty on its own. The lack of clarity in the original application combined with the conduct of the original representative led to several rounds of exchanges between the Court and the parties and the use of precious resources (see paragraphs 8-21 above). Should the errors be attributable to their initial legal representative the applicants have a possibility under domestic law to pursue any such issue. The Court also agrees with the Government's observation that there may be obstacles in enforcing decisions

and settlements when the names of those seeking their enforcement do not coincide with those indicated therein. That being so, the Court cannot but consider that the complaint of the first, twelfth, seventeenth, nineteenth, twentieth and twenty-second applicants is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

(ii) The third applicant

37. The Court notes that the relevant decision in respect of the third applicant indicated her maiden name and a different first name, the latter not corresponding to the first name specified in her birth certificate (see Appendix). It is observed, however, that another writ in the case file relating to the third applicant, issued in the course of the same set of civil proceedings, indicated both her first name and her maiden name as specified in the birth certificate (see paragraph 16 above). Even though such an error should also have been rectified domestically, the Court can accept that the third applicant has proven her identity and that she is indeed the person in favour of whom the relevant domestic decision was issued. That being so, the Court considers that the Government's objection, in so far as it is understood to also relate to the third applicant, must be rejected.

(iii) The second and ninth applicants

38. The Court notes that the second applicant's name was misspelled only in the initial application form. The error was later rectified by his initial representative (see paragraph 19 *in limine* above). The second applicant's name as specified in his birth certificate corresponded to the name on the certified authority form and the name specified in the relevant domestic judgment (see paragraph 17 above).

39. It is also observed that the judgment in favour of the ninth applicant bore her maiden name, which corresponded to her name on the authority form certified in the relevant municipality and her maiden name as specified in her birth certificate. It is also observed that her birth certificate and the certified authority form clearly also specified her married name (see paragraphs 11 *in fine* and 17 above).

40. In view of the above, the Court considers that, in respect of the second and ninth applicants, there are no doubts about their identity or errors in that regard that would need to be rectified domestically. The Court therefore considers that the Government's objection, in so far as it is understood to be also related to the second and ninth applicants, must be rejected.

3. The Court's conclusion

41. The Court notes that the complaint of the second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, thirteenth, fourteenth, fifteenth,

sixteenth, eighteenth, twenty-first, twenty-third, twenty-fourth and twenty-fifth applicants is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits (as regards the second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, thirteenth, fourteenth, fifteenth, sixteenth, eighteenth, twenty-first, twenty-third, twenty-fourth and twenty-fifth applicants)

42. The eleventh, eighteenth and twenty-third applicants made no further comments in this regard. The remaining applicants reaffirmed their complaint.

43. The Government made no comment in this regard.

44. Turning to the present case, the Court notes that the court judgments and court-approved settlements in respect of the above-mentioned applicants remain unenforced to date. The Court has frequently found violations of Article 6 of the Convention and/or Article 1 of Protocol No. 1 to the Convention in cases raising issues similar to those in the present case, particularly in cases concerning companies undergoing restructuring, privatisation and/or other forms of transition from a planned to a market economy (see *R. Kačapor and Others v. Serbia*, cited above, §§ 115-16; *Crnišanin and Others v. Serbia*, nos. 35835/05 and 3 others, §§ 123-24, 13 January 2009; *Mijanović v. Montenegro*, no. 19580/06, §§ 86-91, 17 September 2013; and *Kešelj and Others*, cited above, § 23). Such debtor companies, as explained by the Court, despite the fact that they are separate legal entities, do not enjoy "sufficient institutional and operational independence from the State" to absolve the latter from its responsibility under the Convention (see *Mijanović*, §§ 61-68, and *R. Kačapor and Others*, § 98, both cited above).

45. After examining all the material submitted to it, the Court considers that the Government have not put forward any fact or 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 (see *Kešelj and Others*, cited above, § 24). In the light of this conclusion, the Court considers that it is not necessary to examine separately the applicants' complaint under Article 1 of Protocol No. 1 to the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. 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.”

47. In respect of pecuniary damage, the second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, thirteenth, fourteenth, fifteenth, sixteenth, twenty-first, twenty-fourth and twenty-fifth applicants claimed the amounts awarded domestically. In particular, the tenth applicant requested that the amounts awarded be converted into euros. The fifth, seventh, and twenty-fifth applicants submitted that they should be paid amounts equivalent to those awarded in dinars at the time, “in accordance with the current market prices”.

48. The tenth applicant further claimed EUR 15 per month, starting as of 1 January 2001, in respect of non-pecuniary damage. She also claimed EUR 150 in respect of costs and expenses before the Court.

49. The second, third, fourth, fifth, sixth, seventh, eighth, ninth, thirteenth, fourteenth, fifteenth, sixteenth, twenty-first, twenty-fourth and twenty-fifth claimed EUR 3,000 each for non-pecuniary damage. They also claimed EUR 11,250 in respect of costs and expenses (EUR 5,250 for those incurred in the domestic proceedings and EUR 6,000 for those incurred before the Court).

50. The eleventh, eighteenth and twenty-third applicants made no claim for just satisfaction.

51. The Government contested the proposed method of recalculating the amounts awarded in dinars. They also contested all the claims in respect of the costs of the proceedings as unfounded.

52. Having regard to the violations found in the present case and its own case-law (see *Mijanović*, §§ 93-95; *R. Kačapor and Others*, §§ 123-26; and *Crnišanin and Others*, §§ 137-39, all cited above), the Court finds that the Government must pay the second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, thirteenth, fourteenth, fifteenth, sixteenth, twenty-first, twenty-fourth and twenty-fifth applicants the sums established in the final court judgments and court-approved settlements, less any amounts which may have already been paid on this basis (see *Kešelj and Others*, cited above, § 33).

53. The Court considers that the respondent State must also secure the enforcement of the relevant domestic decisions in respect of the eleventh, eighteenth and twenty-third applicants, even though they made no claim for just satisfaction, by way of paying them the amounts awarded domestically (see *Pralica v. Bosnia and Herzegovina*, no. 38945/05, §§ 19-20, 27 January 2009; and the authorities cited therein), less any amounts which may have already been paid on this basis.

54. Furthermore, the Court considers that the second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, thirteenth, fourteenth, fifteenth, sixteenth, twenty-first, twenty-fourth and twenty-fifth applicants sustained some non-pecuniary loss arising from the breaches of the Convention found in this case. The Court awards EUR 2,000 to each of them, to cover the non-pecuniary damage suffered, as well as the costs and expenses incurred before

the domestic courts and the Court, less any amounts which may have already been paid in that respect at the domestic level. The Court awards nothing in this respect to the eleventh, eighteenth and twenty-third applicants given that they made no claim in this regard.

55. 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

1. *Declares*, by a majority, the complaint of the first, twelfth, seventeenth, nineteenth, twentieth and twenty-second applicants inadmissible;

2. *Declares*, unanimously, the complaint of the second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, thirteenth, fourteenth, fifteenth, sixteenth, eighteenth, twenty-first, twenty-third, twenty-fourth and twenty-fifth applicants related to the non-enforcement of the final court judgments and court-approved settlements admissible;

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

4. *Holds*, unanimously, that it is not necessary to examine separately the complaint under Article 1 of Protocol No. 1 to the Convention;

5. *Holds*, unanimously,
   (a) that the respondent State is to pay the second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, thirteenth, fourteenth, fifteenth, sixteenth, eighteenth, twenty-first, twenty-third, twenty-fourth and twenty-fifth 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 sums awarded at the domestic level, less any amounts which may have already been paid on this basis;
   (b) that the respondent State is to pay the second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, thirteenth, fourteenth, fifteenth, sixteenth, twenty-first, twenty-fourth and twenty-fifth applicants, within the same period, EUR 2,000 (two thousand euros) each, in respect of non-pecuniary damage and costs and expenses, less any amounts which may have already been paid in that regard at the domestic level, plus any tax that may be chargeable to the applicants;
   (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;

6. *Dismisses*, by a majority, the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 24 February 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Síofra O'Leary President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Mourou-Vikström is annexed to this judgment.

S.O.L.
M.K.

DISSENTING OPINION OF JUDGE MOUROU-VIKSTRÖM

(Translation)

I am unable to concur with the majority's position in declaring inadmissible the complaints lodged with the Court by six of the applicants (listed as the first, twelfth, seventeenth, nineteenth, twentieth and twenty-second applicants).

Before considering the question of the rejection of these applicants' complaints on formal grounds, it is worth noting the background to the case.

The applicants had the misfortune to be passengers on a bus that was involved in a road accident on 11 September 1994. They sustained injuries and between 1996 and 2005 brought various sets of civil proceedings against the bus company, which was predominantly State-owned.

Some of the applicants were awarded compensation in respect of non-pecuniary damage (under court judgments or court-approved settlement agreements), while others were awarded both compensation in respect of non-pecuniary damage and the costs of the proceedings.

The decisions in question have never been enforced, and those failings were what gave rise to the applications to the Court.

The Chamber held unanimously that there had been a violation in respect of the applicants listed as the second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, thirteenth, fourteenth, fifteenth, sixteenth, eighteenth, twenty-first, twenty-third, twenty-fourth and twenty-fifth applicants.

However, it declared inadmissible the complaints brought by the other six applicants, on the grounds (see paragraph 36 of the judgment) that their names as recorded in their birth certificates did not correspond to the names specified in the domestic judgments awarding them compensation.

The Chamber found:

- that the identity of these applicants could not be established with certainty;
- that they should have applied under section 342 of the 1977 Civil Procedure Act for rectification of the errors made by the domestic courts that had given the decisions. The Chamber acknowledged in paragraph 36 of the judgment that these were simply clerical errors. At no time was there any reference to the slightest fraudulent intention on the applicants' part in seeking to deceive the Court in order to secure undue advantages by usurping another person's identity.

The Chamber displayed excessive formalism in finding that the applicants should be made to bear the burden and responsibility of rectifying clerical errors that were probably attributable to the domestic courts, and in referring to the applicants' inaction as a ground for declaring their application to the Court inadmissible.

Precise identification of these clerical errors supports the observation that an excessive requirement was imposed.

No.	Applicant's name (on birth certificate)	Name in domestic judgment
1	Draginja MASTILOVIĆ	Dragica MASTILOVIĆ
12	Dragica ILIĆ	Draga ILIĆ
17	Radislavka MUČIBABIĆ	Radislava MUČIBABIĆ
19	Veselinka PAROVIĆ	Vesna PAROVIĆ
20	Vidosava POJUŽINA (maiden name IVANIŠEVIĆ)	Vida IVANIŠEVIĆ
22	Kosa ŠIPOVAC	Kosana ŠIPOVAC

The errors thus mainly concerned forenames and not surnames.

A more detailed analysis, moreover, shows that for each of these applicants, at least three and as many as eight initial letters are the same.

The requirement imposed by the majority does not correspond to a flexible, *in concreto* approach in line with the fairness of the admissibility criteria, as could be advocated with regard to the application of Rule 47 of the Rules of Court.

APPENDIX

List of cases

No.	Applicant's Name (in birth certificate)	The names in domestic judgments or settlements	The amounts awarded domestically (compensation and costs of proceedings)	Date of birth	Place of residence
1	Draginja MASTILOVIĆ (the first applicant)	Dragica MASTILOVIĆ	- YUN 56,000 with interest; - YUN 408	04/12/1954	Nevesinje, BIH
2	Branislav AĆIMOVIĆ (the second applicant)	the same	- DEM 7,000 with interest; - DEM 729	23/02/1966	Ontario, Canada
3	Milanka AĆIMOVIĆ (maiden name STEVANOVIĆ) (the third applicant)	Jovanka STEVANOVIĆ	- DEM 3,000 (no interest); - EUR 137.38	14/05/1976	Ontario, Canada
4	Dušanka ANDRIĆ (the fourth applicant)	the same	- EUR 14,000 with interest; - EUR 904.94	06/03/1948	Nevesinje, BIH
5	Nedeljko BOTIĆ (the fifth applicant)	the same	- DEM 21,000 with interest; - YUN 8,150	14/11/1959	Nevesinje, BIH
6	Radmila BOŽIĆEVIĆ (the sixth applicant)	the same	- DEM 9,000 with interest; - DEM 903,40	05/11/1951	Nevesinje, BIH
7	Dobrila BUDALIĆ (the seventh applicant)	the same	- YUN 105,000 with interest; - no costs	28/03/1964	Nevesinje, BIH
8	Mitra ĆORIĆ (the eighth applicant)	the same	- DEM 3,750 with interest; - DEM 905,37	10/10/1953	Nevesinje, BIH
9	Radojka ĐURICA (maiden name ILIĆ) (the ninth applicant)	Radojka ILIĆ	- DEM 11,750 with interest; - DEM 1,356.95	27/08/1973	Nevesinje, BIH

No.	Applicant's Name (in birth certificate)	The names in domestic judgments or settlements	The amounts awarded domestically (compensation and costs of proceedings)	Date of birth	Place of residence
10	Koviljka GAČIĆ (the tenth applicant)	the same	- DEM 5,250 with interest; - DEM 1,204.59	02/08/1958	Nevesinje, BIH
11	Zora GLAVAŠ (the eleventh applicant)	the same	- DEM 9,000 with interest; - DEM 1,175.28	10/02/1957	Mostar, BIH
12	Dragica ILIĆ (the twelfth applicant)	Draga ILIĆ	- EUR 10,000 (no interest, no costs)	25/07/1961	Novi Sad, Serbia
13	Ljubica KNEŽEVIĆ (the thirteenth applicant)	the same	- EUR 20,000 with interest - EUR 409,25	17/10/1961	Nevesinje, BIH
14	Radislavka KRAMAR (the fourteenth applicant)	the same	- DEM 10,750 with interest; - DEM 113,63	25/05/1956	Nevesinje, BIH
15	Gordana LOJPUR (the fifteenth applicant)	the same	- DEM 21,500 with interest; - DEM 902,54	04/05/1956	Gacko, BIH
16	Anđa MAČAR (the sixteenth applicant)	the same	- DEM 7,000 with interest; - DEM 882.62	01/08/1953	Nevesinje, BIH
17	Radislavka MUČIBABIĆ (the seventeenth applicant)	Radislava MUČIBABIĆ	- EUR 2,500 with interest; - EUR 675	31/03/1953	Nevesinje, BIH
18	Marija NADAŽDIN (the eighteenth applicant)	the same	- YUN 45,000 with interest; - YUN 5,150	26/12/1939	Mostar, BIH
19	Veselinka PAROVIĆ (the nineteenth applicant)	Vesna PAROVIĆ	- DEM 7,500 with interest; - DEM 1,182.62	25/01/1958	Nevesinje, BIH

No.	Applicant's Name (in birth certificate)	The names in domestic judgments or settlements	The amounts awarded domestically (compensation and costs of proceedings)	Date of birth	Place of residence
20	Vidosava POJUŽINA (maiden name IVANIŠEVIĆ) (the twentieth applicant)	Vida IVANIŠEVIĆ	- YUN 70,000 with interest; - no costs	27/06/1960	Nevesinje, BIH
21	Ilija SAVIĆ (the twenty-first applicant)	the same	- DEM 3,000 with interest; - no costs	02/08/1950	Nevesinje, BIH
22	Kosa ŠIPOVAC (the twenty- second applicant)	Kosana ŠIPOVAC	- YUN 65,000 with interest; - no costs	29/03/1948	Nevesinje, BIH
23	Tihana SUDAR (the twenty-third applicant)	the same	- DEM 5,500 with interest; - DEM 219.35	18/05/1960	Mostar, BIH
24	Ljiljana VASILJEVIĆ (the twenty-fourth applicant)	the same	- DEM 13,750 with interest; - DEM 513,44	15/08/1958	Nevesinje, BIH
25	Anđelka VUČIĆ (the twenty-fifth applicant)	the same	- YUN 25,000 with interest; - no costs	28/08/1960	Mostar, BIH