CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

CASE OF R. KAČAPOR AND OTHERS v. SERBIA

(Applications nos. 2269/06, 3041/06, 3042/06, 3043/06, 3045/06 and 3046/06)

JUDGMENT

STRASBOURG

15 January 2008

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of R. Kačapor and others v. Serbia,

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

Françoise Tulkens, *President,*
András Baka,
Rıza Türmen,
Mindia Ugrekhelidze,
Vladimiro Zagrebelsky,
Danutė Jočienė,
Dragoljub Popović, *judges,*
and Sally Dollé, *Section Registrar*.

Having deliberated in private on 11 December 2007,

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

PROCEDURE

1. The case originated in six separate applications (nos. 2269/06, 3041/06, 3042/06, 3043/06, 3045/06 and 3046/06) against the State Union of Serbia and Montenegro, lodged with the Court, under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"), by Ms Remka Kačapor and 5 others ("the applicants"; see paragraph 5 below) on 30 December 2005.

2. As of 3 June 2006, following the Montenegrin declaration of independence, Serbia remained the sole respondent in the proceedings before the Court (see paragraph 82 below).

3. The applicants were represented before the Court by Ms R. Garibović, a lawyer practising in Novi Pazar. The Government of the State Union of Serbia and Montenegro and, subsequently, the Government of Serbia ("the Government") were represented by their Agent, Mr S. Carić.

4. On 23 February 2007 the Court decided to communicate the applications to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on their admissibility and merits at the same time.

THE FACTS

5. The applicants, Ms Remka Kačapor ("the first applicant"), Ms Huljka Kačapor ("the second applicant"), Ms Aziza Elezović ("the third applicant"), Ms Senada Dolovac ("the fourth applicant"), Ms Šaha Rizović ("the fifth applicant") and Ms Muška Crnovršanin ("the sixth applicant") are all citizens of Serbia who were born in 1972, 1956, 1967, 1969, 1951 and 1950, respectively, and currently live in the Municipality of Novi Pazar.

I. THE CIRCUMSTANCES OF THE CASE

A. Introduction

6. Between 1993 and 2002 the applicants, at that time employed with a "socially-owned company" (*društveno preduzeće*; see paragraphs 71-76 below), Vojin Popović-Domaća radinost, were all "placed" by their employer on a "compulsory" paid leave scheme "until such time" when this company's business performance could be "improved sufficiently".

7. Whilst on leave, in accordance with the relevant domestic legislation, the applicants were entitled to a significantly reduced monthly income, as well as the payment by their employer of their pension, disability and other social security contributions.

8. By 11 November 2002 all applicants had been dismissed. At the same time, however, their employer apparently agreed to pay them 10,000 Dinars ("RSD") each, as well as to cover their respective social security contributions in exchange for their undertaking not to seek their monthly paid leave benefits.

9. It would appear that the applicants' employer honoured its former commitment but failed to fulfil the latter. The applicants, therefore, brought six separate civil claims before the Municipal Court (*Opštinski sud*) in Novi Pazar.

B. As regards the first applicant

10. On 16 April 2003 the Municipal Court in Novi Pazar (hereinafter "the Municipal Court") ruled in favour of the applicant and ordered her former employer to pay her:

i. the monthly paid leave benefits (*naknadu za vreme plaćenog odsustva*) due from 1 May 1993 to 16 June 1996 and 25 June 1998 to 31 May 2001, indexed in accordance with the relevant domestic regulations, plus statutory interest; and

ii. RSD 8,650 (approximately 140 euros [EUR]) for her legal costs; as well as

iii. coverage of her pension and disability insurance contributions (*doprinosi za penzijsko i invalidsko osiguranje*) due for that period.

11. This judgment became final on 23 June 2003.

12. On 5 February 2004 the applicant filed a request for the enforcement of the above judgment, proposing that it be carried out by means of a bank transfer and the auctioning of the debtor's specified movable and immovable assets.

13. On 28 April 2004 the Municipal Court accepted the applicant's request and issued an enforcement order.

C. As regards the second applicant

14. On 7 February 2005 the Municipal Court ruled in favour of the applicant and ordered her former employer to pay her:

i. the monthly paid leave benefits due from 1 April 2000 to 11 November 2002 (RSD 59,672 in all - approximately EUR 745), plus statutory interest; and

ii. RSD 20,250 (approximately EUR 252) for her legal costs.

15. This judgment became final on 10 March 2005.

16. On 9 May 2005 the applicant filed a request for the enforcement of the above judgment, proposing that it be carried out by means of a bank transfer and the auctioning of the debtor's specified movable and immovable assets.

17. On 6 September 2005 the Municipal Court accepted the applicant's request and issued an enforcement order.

D. As regards the third applicant

18. On 27 January 2005 and 26 May 2005 the Municipal Court ruled in favour of the applicant and ordered her former employer to pay her:

i. the monthly paid leave benefits due from 30 August 2001 to 1 November 2002 (RSD 49,714 in all - approximately EUR 600), plus statutory interest; and

ii. RSD 9,750 (approximately EUR 117) for her legal costs; as well as

iii. coverage of her pension and disability insurance contributions due from 1 January 1995 to 1 November 2002.

19. This judgment became final on 29 June 2005.

20. On 14 July 2005 applicant filed a request for the enforcement of the above judgment, proposing that it be carried out by means of a bank transfer and the auctioning of the debtor's specified movable and immovable assets.

21. On 26 September 2005 the Municipal Court accepted the applicant's request and issued an enforcement order.

E. As regards the fourth applicant

22. On 9 December 2004 the Municipal Court ruled in favour of the applicant and ordered her former employer to pay her:

i. the monthly paid leave benefits due from 1 June 1994 to 19 August 2002 (RSD 64,711 in all - approximately EUR 837), plus statutory interest; and

ii. RSD 7,800 (approximately EUR 100) for her legal costs; as well as

iii coverage of her pension and disability insurance contributions due from 1 June 1994 to 11 November 2002.

23. This judgment became final on 28 March 2005.

24. On 19 April 2005 the applicant filed a request for the enforcement of the above judgment, proposing that it be carried out by means of a bank transfer and the auctioning of the debtor's specified movable and immovable assets.

25. On 26 September 2005 the Municipal Court accepted the applicant's request and issued an enforcement order.

F. As regards the fifth applicant

26. On 24 September 2003 the Municipal Court ruled in favour of the applicant and ordered her former employer to pay her:

i. the monthly paid leave benefits due from 1 June 1994 to 31 May 2001, as well as those from 1 June 2001 to 11 November 2002 (RSD 101,887 in all - approximately EUR 1,625, as regards the latter period), plus statutory interest; and

ii. RSD 7,800 (approximately EUR 125) for her legal costs; as well as

iii. coverage of her pension and disability insurance contributions due for the above periods.

27. This judgment became final on 9 December 2003.

28. On 26 February 2004 the applicant filed a request for the enforcement of the above judgment, proposing that it be carried out by means of a bank transfer and the auctioning of the debtor's specified movable and immovable assets.

29. On 15 March 2004 the Municipal Court accepted the applicant's request and issued an enforcement order.

G. As regards the sixth applicant

30. On 17 May 2004 the Municipal Court ruled in favour of the applicant and ordered her former employer to pay her:

i. the monthly paid leave benefits due from 1 June 1994 to 11 November 2002 (RSD 74,850 in all - approximately EUR 1,050), plus statutory interest; and

ii. RSD 16,200 (approximately EUR 227) for her legal costs; as well as

iii. coverage of her pension and disability insurance contributions due for that period.

31. This judgment became final on 8 November 2004.

32. On 29 November 2004 the applicant filed a request for the enforcement of the above judgment, proposing that it be carried out by means of a bank transfer and the auctioning of the debtor's specified movable and immovable assets.

33. On 6 December 2004 the Municipal Court accepted the applicant's request and issued an enforcement order.

H. Other relevant facts as regards all applicants

34. On 30 November 2004 and 21 February 2005, respectively, the applicants sent two separate letters to the Ministry of Finance, stating, *inter alia*, that their former employer (hereinafter "the debtor"):

i. had, for the past ten years, deliberately avoided doing business through its official bank accounts;

ii. had instead, apparently, engaged in cash transactions or even used other "secret" bank accounts, unknown to the tax authorities; and

iii. that, as a result, judicial enforcement by means of a bank transfer had been rendered impossible.

Finally, the applicants requested that urgent action be taken to secure the enforcement of their final judgments.

35. On 23 December 2004 the Ministry of Finance (hereinafter "the Ministry") found that the debtor had failed to pay the total amount of the taxes and social security contributions due.

36. On 12 January 2005 the Ministry ordered the debtor to pay the outstanding sum.

37. On 25 January 2005 the Ministry filed a request for the formal institution of misdemeanour proceedings, stating that the debtor had failed to comply with this order.

38. On 21 March 2005 the Ministry sent a letter to the applicants, noting that their submissions had been duly considered but that, in view of the confidential nature of the information obtained, no details could be disclosed.

39. On 6 June 2005 the applicants sent another complaint to the Ministry, stating that the situation concerning the bank accounts had remained unchanged.

I. The insolvency proceedings

40. On 28 October 2005 the Commercial Court (*Trgovinski sud*) in Kraljevo (hereinafter "the CCK") opened insolvency proceedings in respect of the debtor. The effect of this was that the ongoing enforcement proceedings before the Municipal Court were stayed *ex lege*, in accordance with Article 73 of the Insolvency Procedure Act (see paragraph 70 below).

41. This decision was published in the Official Gazette of the Republic of Serbia on 28 November 2005.

42. In December 2005 the applicants duly submitted their respective claims.

43. On 22 December 2005 the insolvency proceedings conducted against the debtor were joined with the insolvency proceedings pending in respect of Vojin Popović-Holding AD, hereinafter "the VPH Company" (see paragraph 56 below).

44. On 23 March 2006 and 8 June 2006, the CCK confirmed the applicant's paid leave claims, but held that a part of their social security claims were dubious, which is why they were informed that they could bring a separate civil lawsuit in this regard.

45. On 20 July 2006 the High Commercial Court (*Viši trgovinski sud*) ordered that the insolvency case in question be transferred to the Commercial Court in Užice (hereinafter "the CCU"), the reason apparently being that the CCK had been put under increasing pressure locally.

46. On 8 September 2006 the CCU quashed the decisions adopted by the CCK on 23 March 2006 and 8 June 2006, respectively. It also disjoined the proceedings in respect of the debtor from those pending against the VPH Company.

47. On 26 January 2007, by means of a faxed note, an official involved in the insolvency proceedings informed the applicants that their claims were dubious in view of their "prior undertakings" (see paragraph 8 above).

48. On the same date the applicants informed this official that the final judgments adopted in their favour had already taken these issues into account, but had dismissed them on their merits (see paragraph 9 above).

49. Several days later, the applicants filed a request with the CCU, seeking the confirmation of their claims.

50. On 14 January 2007 the State apparently adopted a formal decision accepting to cover the applicants' social security contributions. This decision, however, has apparently yet to be served on the applicants.

51. On 20 March 2007 the CCU ordered the valuation of the debtor's assets as well as their subsequent sale.

52. On 20 April 2007, however, the CCU rejected the applicants' claims in their entirety.

53. On 14 May 2007 the applicants filed a separate civil suit with the same court, seeking confirmation of their claims as recognised in the final judgments rendered in their favour.

54. On 18 May 2007 the CCU accepted to reconsider the applicants' claims within the insolvency proceedings.

55. On 28 June 2007 the same court suspended the separate civil suit, pending the imminent re-examination of the applicants' claims within the insolvency proceedings.

J. The debtor's status

56. As of September 2007, the debtor was incorporated as a limited liability company (*društvo sa ograničenom odgovornošću*). It was, however, owned solely by the VPH Company, approximately 87% of which was itself socially-owned (*u društvenoj svojini*; see also paragraph 75 below).

II. RELEVANT DOMESTIC LAW

A. Enforcement Procedure Act 2000 (Zakon o izvršnom postupku; published in the Official Gazette of the Federal Republic of Yugoslavia - OG FRY - nos. 28/00, 73/00 and 71/01)

57. Article 4 § 1 provided that all enforcement proceedings were to be conducted urgently.

58. Article 30 § 2, *inter alia*, provided that it was up to the enforcement court, *ex officio*, to choose the appropriate means of enforcement, whenever a creditor proposed more than one avenue, whilst taking into account the funds needed in order to cover the claims in question.

59. Articles 63-84, 134-176 and 180-188 contained details as regards enforcement by means of a bank transfer, as well as through the auctioning of the debtor's movable and immovable assets. Under Article 184 § 4, in particular, the Central Bank (*Narodna banka*) was obliged to respond to a creditor's request and inform him about the priority of his bank transfer compared to any others.

B. Enforcement Procedure Act 2004 (Zakon o izvršnom postupku; published in the Official Gazette of the Republic of Serbia - OG RS - no. 125/04)

60. The Enforcement Procedure Act of 2004 ("the 2004 Act") entered into force on 23 February 2005, thereby repealing the Enforcement Procedure Act of 2000 ("the 2000 Act").

61. Article 5 § 1 of the 2004 Act provides that all enforcement proceedings are to be conducted urgently.

62. Article 8 § 2, in the relevant part, corresponds to the provisions of Article 30 § 2 of the 2000 Act. In addition, it provides that the court may choose the appropriate means of enforcement *ex officio* or at the request of the parties.

63. Articles 69-153 and 196-204 set out the relevant details as regards enforcement by means of a bank transfer as well as enforcement through the auctioning of the debtor's movable and immovable assets. Article 199, in particular, provides that the enforcement order shall be forwarded to the Central Bank which shall then instruct the debtor's bank to proceed with a wire transfer or a cash payment, as appropriate.

64. In accordance with Article 304 of the 2004 Act, all enforcement proceedings instituted prior to 23 February 2005 are to be carried out pursuant to the previous 2000 Act.

C. Relevant decisions adopted by the Central Bank (Instrukcija direktora Odeljenja za prinudnu naplatu 10, broj 3-1593 od 19. novembra 2003, te Uputstvo za sprovođenje prinudne naplate direktora glavne republičke filijale u Beogradu 40, broj 2/8-7 od 15. novembra 2004. godine)

65. These internal decisions provide that the Central Bank shall be obliged to respond to a creditor's request for an update as regards the current status of a court-ordered bank transfer.

D. Financial Transactions Act (Zakon o platnom prometu; published in OG FRY nos. 3/02 and 5/03, and OG RS nos. 43/04 and 62/06)

66. Articles 47-49 and 57, *inter alia*, regulate technical details as regards the process of enforcement by means of a bank transfer. They do not, however, specifically provide for an obligation on the part of the Central Bank to inform the enforcement court about the current status of the transfer in question.

67. Under Article 54 § 1, *inter alia*, the Central Bank shall monitor the solvency of all corporate entities and initiate judicial insolvency proceedings in respect of those whose bank accounts have been "blocked" due to outstanding debts for a period of 60 days consecutively, or for 60 days intermittently, within the last 75 days.

E. Insolvency Procedure Act (Zakon o stečajnom postupku; published in OG RS no. 84/04)

68. Article 6 provides that insolvency proceedings cannot be instituted in respect of State bodies, foundations and agencies and the Central Bank, as well as legal entities established and exclusively or predominantly funded by the State.

69. Article 19 states the conditions under which an insolvency administrator (*stečajni upravnik*) can be sued for damages in a separate civil suit.

70. Article 73 §§ 1 and 2 provides that "as of the day of institution of the insolvency proceedings" the debtor cannot simultaneously be subjected to a separate enforcement procedure. Any ongoing enforcement proceedings shall thus be stayed, while new enforcement proceedings cannot be instituted as long as the insolvency proceedings are still pending.

F. The status of socially-owned companies (pravni položaj društvenih preduzeća)

71. Socially-owned companies, hereinafter "SOC", as well as "social capital", are a relict of the former Yugoslav brand of communism and "self-management".

72. Their current legal status in Serbia is primarily defined by: (i) Articles 392-400v and Article 421a of the Corporations Act 1996 (*Zakon o preduzećima*; published in OG FRY nos. 29/96, 33/96, 29/97, 59/98, 74/99, 9/01 and 36/02); (ii) Articles 1, 3, 14 and 41b of the Privatisation Act (*Zakon o privatizaciji*; published in OG RS nos. 38/01, 18/03 and 45/05); and (iii) Article 456 of the Corporations Act 2004 (*Zakon o privrednim društvima*; published in OG RS no. 125/04).

73. Based on this legislation, SOC are only those companies which are entirely comprised of social capital (*preduzeća koja u celini posluju društvenim kapitalom*). They are also independent legal entities which are both owned and run by their own employees and can be subjected to regular insolvency proceedings (see paragraph 68 above). Social capital, however, was to be privatised by March 2007 and the funds thus obtained paid into the State's budget.

74. Once privatisation formally commences in respect of a given SOC, any and all of its decisions amounting to an obstruction of the privatisation process shall be deemed null and void. The Government shall also have the right to appoint their own representatives to sit in the governing bodies of the SOC in question, whenever the Privatisation Agency finds that such obstruction has indeed taken place (see, in particular, Article 400a of the Corporations Act 1996).

75. Further, as of 2002, companies whose capital is predominantly socially-owned (*preduzeća koja posluju većinskim društvenim kapitalom*), but which are not formally being privatised, cannot, without prior approval by the Privatisation Agency (*Agencija za privatizaciju*), itself a State body, adopt their own decisions concerning their: capital, reorganisation, restructuring and investment, the partial sale or mortgage of their assets, the settlement of their outstanding claims and the taking or giving of loans and guarantees outside the scope of their "regular business operations" (*van toka redovnog poslovanja*). Any decisions adopted in the absence of such approval shall be declared null and void by the Privatisation Agency (see, in particular, Article 398a of the Corporations Act 1996). Finally, no decisions concerning the status and organisation of such companies (*odluke o statusnim promenama i promenama oblika preduzeća*) can be adopted without the Government's prior approval (see, in particular, Article 421a of the Corporations Act 1996).

76. The above-described regime was in force until March 2007 (see Article 456 of the Corporations Act 2004 and Article 14 of the Privatisation

Act), the competent ministries having announced that its extension was imminent.

G. Special Pension and Disability Insurance Act (Zakon o uplati doprinosa za penzijsko i invalidsko osiguranje za pojedine kategorije osiguranika - zaposlenih; published in OG RS no. 85/05)

77. Under Articles 2 and 3 the State accepted to cover the minimum pension and disability insurance contributions due from 1 January 1991 to 31 December 2003 in respect of certain categories of registered workers whose employers had themselves failed to do so.

78. In accordance with Articles 4-6 the employers, as well as the workers in question, could have filed a request to this effect with the State Pension and Disability Fund (*Republički fond za penzijsko i invalidsko osiguranje zaposlenih*), the deadline for so doing having expired in January 2006.

79. Pursuant to Articles 7-9 the timing of the actual settlement of an applicant's recognised claim would depend on the "liquidity of the State's budget"

80. Under Article 12 all workers whose claims had been accepted could not seek any additional payments on the same grounds from their employers, including by means of litigation.

H. Relevant provisions of the Rules of Court and the Obligations Act

81. The relevant provisions of this legislation are set out in the *V.A.M. v. Serbia* judgment (no. 39177/05, §§ 68, 71 and 72, 13 March 2007).

I. The status of the State Union of Serbia and Montenegro

82. The relevant provisions concerning the status of the State Union of Serbia and Montenegro are set out in the *Matijašević v. Serbia* judgment (no. 23037/04, §§ 22-25, 19 September 2006).

THE LAW

I. JOINDER OF THE APPLICATIONS

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

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

84. The applicants complained under Article 6 § 1 of the Convention about the respondent State's failure to enforce the final judgments rendered in their favour.

Article 6 § 1 of the Convention, in the relevant part, reads as follows:

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

A. Admissibility

1. Exhaustion of domestic remedies

85. The Government referred to the Court's decision in the *Mota* case (see *Tomé Mota v. Portugal* (dec.), no. 32082/96, ECHR 1999-IX) and submitted that the applicants had not exhausted all effective domestic remedies. In particular, they had failed to complain about the impugned delay to the presidents of the courts in question, and had not made use of the possibility to bring a separate civil lawsuit under Articles 154, 172, 199 and 200 of the Obligations Act or Article 19 of the Insolvency Procedure Act (see paragraphs 69 and 81 above).

86. The applicant contested the effectiveness of those remedies.

87. The Court has already held that the above remedies could not be deemed effective within the meaning of its established case-law under Article 35 § 1 of the Convention (see *V.A.M. v. Serbia*, cited above, §§ 85-86, 13 March 2007; see also *Horvat v. Croatia*, no. 51585/99, §§ 47 and 48, ECHR 2001-VIII). It sees no reason to depart from those findings in the present case and concludes, therefore, that the Government's objection must be rejected.

2. Compatibility ratione personae (the applicants' "victim status")

88. The Government noted that the State had accepted to cover the applicants' social security contributions in accordance with the Special

Pension and Disability Insurance Act (hereinafter "the SPDIA"; see paragraphs 77-80 above). The applicants were therefore no longer "victims", within the meaning of Article 34 of the Convention.

89. The applicant stated that the SPDIA was meant to tackle pension entitlements primarily, which is why the pension and disability insurance contributions would not be settled prior to their retirement. In any event, this legislation did not envisage any compensation for the lack of the applicants' past social coverage.

90. Since the impugned non-enforcement concerns monthly paid leave benefits, as well as the said social security contributions, and given the fact that both have apparently yet to be settled, it is clear that the applicants have not obtained any meaningful redress or, indeed, even a comprehensive acknowledgment of the violations allegedly suffered (see *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI).

91. The Court therefore finds that the applicants have retained their victim status and dismisses the Government's objection in this regard.

3. Compatibility ratione personae (responsibility of the State)

92. The Government argued that the State could not be held responsible for a socially-owned company. In particular, the debtor was neither State-owned nor State-controlled. Its insolvency was also not caused by the State and the State itself was not entitled to a share of its profits nor obliged to cover its losses.

93. Further, the debtor was not in the process of being privatised, which was why some of the most significant potential restrictions of its operational independence were irrelevant (see paragraph 74 above).

94. Lastly, the Government acknowledged that any funds obtained through the privatisation of the debtor would have been transferred to the State budget, but maintained that this was not decisive as the entire process was merely a means to transform one "type of property" into another.

95. The applicants submitted that the debtor was a socially-owned entity and, as such, fully controlled by the State.

96. The issue arises therefore whether the State is liable for the outstanding obligations of the debtor, in particular whether it can be held responsible for the non-enforcement of the final judgments rendered in favour of the applicants.

97. The Court notes, in this respect, that the debtor is currently owned by a holding company predominantly comprised of social capital (see paragraph 56 above) and that, as such, it is closely controlled by the Privatisation Agency, itself a State body, as well as the Government (see paragraph 75 above), irrespective of whether any formal privatisation had been attempted in the past.

98. The Court therefore considers that the debtor, despite the fact that it is a separate legal entity, does not enjoy "sufficient institutional and

operational independence from the State" to absolve the latter from its responsibility under the Convention (see, *mutatis mutandis*, *Mykhaylenky and Others v. Ukraine*, nos. 35091/02, 35196/02, 35201/02, 35204/02, 35945/02, 35949/02, 35953/02, 36800/02, 38296/02 and 42814/02, § 44, ECHR 2004-XII).

99. Accordingly, the Court finds that the applicants' complaints are compatible *ratione personae* with the provisions of the Convention, and dismisses the Government's objection in this respect.

4. Conclusion

100. The Court considers that the applicants' complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and finds no other ground to declare them inadmissible. The application must therefore be declared admissible.

B. Merits

1. Arguments of the parties

101. The Government pointed out that the applicants had requested enforcement by means of a bank transfer and the auctioning of the debtor's movable and immovable assets. The auction, however, could not be held until it became clear that a bank transfer was no longer possible.

102. The Government further noted that the applicants themselves did nothing to inform the Municipal Court that there was no money on the debtor's account, even though they could have asked the Central Bank to provide them with information of this sort.

103. The Government observed that the Central Bank itself had no obligation under domestic law to inform the Municipal Court about the current status of the attempted bank transfer, that the debtor was also not prohibited from partly conducting its business in cash, and that the applicants themselves had not requested that the enforcement by means of a bank transfer be discontinued and an auction be held instead.

104. Finally, the Government noted that the failure to enforce the judgments in question was primarily due to the debtor's indigence and emphasised that the subsequent insolvency proceedings were of particular complexity.

105. The applicants disagreed and reaffirmed their original complaints. In addition, they argued that that it was up to the domestic authorities to provide them with the relevant information concerning the enforcement sought, as well as to proceed *ex officio* given that several means of enforcement were proposed simultaneously.

2. Relevant principles

106. The Court recalls that the execution of a judgment given by a court must be regarded as an integral part of the "trial" for the purposes of Article 6 (see *Hornsby v. Greece*, judgment of 19 March 1997, *Reports of Judgments and Decisions* 1997-II, p. 510, § 40).

107. Further, a delay in the execution of a judgment may be justified in particular circumstances. It may not, however, be such as to impair the essence of the right protected under Article 6 § 1 of the Convention (see *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 74, ECHR 1999-V).

108. Finally, irrespective of whether a debtor is a private or a State-controlled actor, it is up to the State to take all necessary steps to enforce a final court judgment, as well as to, in so doing, ensure the effective participation of its entire apparatus (see, *mutatis mutandis*, *Pini and Others v. Romania*, nos. 78028/01 and 78030/01, §§ 174-189, ECHR 2004-V (extracts); see also *mutatis mutandis*, *Hornsby*, cited above, p. 511, § 41).

3. The Court's assessment

109. The Court first notes that the final judgments given in favour of the applicants remain unenforced in full or to large extent (see paragraphs 88-91 above).

110. Secondly, notwithstanding the Governments submissions to the contrary, the enforcement court was obliged to proceed *ex officio* with other means of enforcement, had any one of those proposed by the applicants already proved impossible (see paragraphs 58 and 62 above).

111. Thirdly, the relationship between the enforcement court and the Central Bank was an internal one, between two Government bodies, and, as such, beyond the scope of the applicants' influence who, in any event, did everything in their power to expedite the impugned proceedings (see paragraphs 34-39 above).

112. Fourthly, while the Central Bank may not have had an obligation under domestic law to inform the enforcement court about the status of the bank transfer in question, it clearly could have requested the opening of the insolvency proceedings much earlier (see paragraphs 66 and 67 above).

113. Fifthly, there was no reason why the applicants should have requested updates from the Central Bank in respect of the said bank transfer merely in order to fill the communication void between two branches of Government.

114. Sixthly, given the finding of State liability for the debts owed to the applicants in the present case, it is noted that the State cannot cite either the lack of its own funds or the indigence of the debtor as an excuse for the non-enforcement in question.

115. Finally, the period of non-execution should not be limited to the enforcement stage only, but should also include the subsequent insolvency

proceedings (see *Mykhaylenky and Others v. Ukraine*, cited above, § 53). Consequently, the period of debt recovery in the applicants' cases has so far lasted between two years and four months and three years and eight months since the Serbian ratification of the Convention on 3 March 2004 (the period which falls within this Court's competence *ratione temporis*).

116. In view of the above, the Court finds that the Serbian authorities have failed to take necessary measures in order to enforce the judgments in question. There has, accordingly, been a violation of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1

117. The applicants further complained that the State had infringed their right to the peaceful enjoyment of their possessions, as guaranteed by Article 1 of Protocol No. 1, which provides 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

118. The Court notes that these complaints are linked to those examined above and must, therefore, likewise be declared admissible.

B. Merits

119. The Court reiterates that the failure of the State to enforce the final judgments rendered in favour of the applicants constitutes an interference with their right to the peaceful enjoyment of possessions, as provided in the first sentence of the first paragraph of Article 1 of Protocol No. 1 (see, among many other authorities, *Burdov v. Russia*, no. 59498/00, § 40, ECHR 2002-III).

120. For the reasons set out above in respect of Article 6, the Court considers that the said interference was not justified in the specific circumstances of the present case. There has, accordingly, been a separate violation of Article 1 of Protocol No. 1.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

121. 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

122. The Court points out that under Rule 60 of the Rules of Court any claim for just satisfaction must be itemised and submitted in writing, together with the relevant supporting documents, failing which the Court may reject the claim in whole or in part.

1. Pecuniary damage

123. The applicants requested that the State be ordered to pay, from its own funds, the sums awarded by the final judgments rendered in their favour.

124. The Government maintained that the State should not bear responsibility for the debts of a socially-owned company.

125. The Court reaffirms its rejection of this preliminary objection (see paragraphs 92-99 above) and, for same reasons, rejects this argument under Article 41.

126. Having regard to the violations found in the present case and its own jurisprudence (see, *mutatis mutandis*, *Mykhaylenky and Others v. Ukraine*, cited above, §§ 67-70), the Court considers that the applicants' claims must be accepted. The Government shall, therefore, pay in respect of each applicant the sums awarded in the said final judgments (see paragraphs 10, 14, 18, 22, 26 and 30 above).

2. Non-pecuniary damage

127. The applicants claimed EUR 5,000 each for the non-pecuniary damage suffered as a result of the impugned non-enforcement.

128. The Government contested these claims.

129. The Court takes the view that the applicants have suffered some non-pecuniary damage as a result of the violations found which cannot be made good by the Court's mere finding of a violation. The particular amounts claimed, however, are excessive. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court makes the following awards depending on the length of the periods of non-enforcement in each case, which varied from approximately two years and four months to three years and eight months:

i. the first applicant: EUR 1,600;
ii. the second applicant: EUR 1,000;
iii. the third applicant: EUR 800;
iv. the fourth applicant: EUR 1,000;
v. the fifth applicant: EUR 1,600; and
vi. the sixth applicant: EUR 1,000.

B. Costs and expenses

130. Each applicant also claimed the costs and expenses incurred in the domestic civil proceedings (as recognised in the final judgments rendered in their favour), an unspecified amount for the costs incurred in the subsequent insolvency procedure, as well as EUR 919 each for those incurred in the course of their "Strasbourg case".

131. The Government contested these claims.

132. According to 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 were also reasonable as to their quantum (see, for example, *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI).

133. Regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award each applicant the sum of EUR 300 for the costs and expenses incurred in the proceedings before this Court.

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

135. Finally, the Court finds that the costs and expenses allegedly incurred in connection with the subsequent insolvency proceedings are unsubstantiated and do not, as such, merit recovery.

C. Default interest

136. The Court considers it appropriate that the default interest 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. *Decides* to join the applications;

2. *Declares* the applications admissible;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

4. *Holds* that there has also been a violation of Article 1 of Protocol No. 1;

5. *Holds*

(a) that the respondent State shall, from its own funds and within three months as of the date on which this judgment becomes final, in accordance with Article 44 § 2 of the Convention, pay in respect of each applicant the sums awarded in the final domestic judgments rendered in their favour;
(b) that the respondent State is to pay each applicant, within the same period, the following amounts:
(i) to the first applicant, EUR 1,600 (one thousand six hundred euros) for non-pecuniary damage and EUR 300 (three hundred euros) for costs and expenses;
(ii) to the second applicant, EUR 1,000 (one thousand euros) for non-pecuniary damage, and EUR 300 (three hundred euros) for costs and expenses;
(iii) to the third applicant, EUR 800 (eight hundred euros) for non-pecuniary damage and EUR 300 (three hundred euros) for costs and expenses;
(iv) to the fourth applicant, EUR 1,000 (one thousand euros) for non-pecuniary damage and EUR 300 (three hundred euros) for costs and expenses;
(v) to the fifth applicant, EUR 1,600 (one thousand six hundred euros) for non-pecuniary damage and EUR 300 (three hundred euros) for costs and expenses;
(vi) to the sixth applicant, EUR 1,000 (one thousand euros) for non-pecuniary damage and EUR 300 (three hundred euros) for costs and expenses;
(c) that the above amounts shall be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
(d) 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* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 15 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé Registrar	Françoise Tulkens President