



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

FOURTH SECTION

CASE OF DENĆAN AND OTHERS v. SERBIA

(Application no. 21758/22 and 2 others – see appended list)

JUDGMENT

STRASBOURG

1 December 2022

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

In the case of Denćan and Others v. Serbia,

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

Armen Harutyunyan, *President*,

Anja Seibert-Fohr,

Ana Maria Guerra Martins, *judges*,

and Viktoriya Maradudina, *Acting Deputy Section Registrar*,

Having deliberated in private on 10 November 2022,

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

PROCEDURE

1. The case originated in applications against Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on the various dates indicated in the appended table.

2. The applicants were represented by Mr R. Kojić, a lawyer practising in Belgrade

3. The Serbian Government (“the Government”) were given notice of the applications.

THE FACTS

4. The list of applicants and the relevant details of the applications are set out in the appended table.

5. The applicants complained of the delayed enforcement of domestic decisions given against socially/State-owned companies.

THE LAW

I. JOINDER OF THE APPLICATIONS

6. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL No. 1

7. The applicants complained of the delayed enforcement of domestic decisions given in their favour. They relied, expressly or in substance, on Article 6 § 1 of the Convention and on Article 1 of Protocol No. 1, which read as follows:

Article 6 § 1

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

Article 1 of Protocol No. 1

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

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

9. The Court further notes that the decisions in the present applications ordered specific action to be taken. The Court therefore considers that the decisions in question constitute “possessions” within the meaning of Article 1 of Protocol No. 1.

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

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

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

13. 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.”

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

15. The Court further 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. *Decides* to join the applications;
2. *Declares* the applications admissible;
3. *Holds* that these applications disclose a breach of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 concerning the delayed enforcement of domestic decisions given against socially/State-owned companies;
4. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months, the amounts indicated in the appended table, to be converted into the currency of the respondent State;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 1 December 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Viktoriya Maradudina
Acting Deputy Registrar

Armen Harutyunyan
President

APPENDIX

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

No.	Application no. Date of introduction	Applicant's name Year of birth	Relevant domestic decision	Start date of non-enforcement period	End date of non-enforcement period Length of enforcement proceedings	Amount awarded for non-pecuniary damage per applicant (in euros) ^{1 2}	Amount awarded for costs and expenses per application (in euros) ³
1.	21758/22 26/04/2022	Nada DENĆAN 1954	Commercial Court in Belgrade, 02/12/2011	02/12/2011	26/07/2022 10 year(s) and 7 month(s) and 25 day(s)	1,000	250
2.	21790/22 21/04/2022	Vera BORODENKO 1951	Commercial Court in Belgrade, 02/12/2011	02/12/2011	26/07/2022 10 year(s) and 7 month(s) and 25 day(s)	1,000	250
3.	21795/22 21/04/2022	Sladana SERAFIMOVIĆ 1956	Commercial Court in Belgrade, 02/12/2011	02/12/2011	26/07/2022 10 year(s) and 7 month(s) and 25 day(s)	1,000	250

¹ Plus any tax that may be chargeable to the applicants.

² Less any amounts which may have already been paid in that regard at the domestic level.

³ Plus any tax that may be chargeable to the applicants.