COUNCIL OF EUROPE CONSEIL DE L'EUROPE

SESSION 1

ROUND-TABLE: RECOMMENDATION (2008)2 OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON EFFICIENT DOMESTIC CAPACITY FOR RAPID EXECUTION OF JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS

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The views expressed are those of the author only.

COORDINATION MECHANISMS WITH RESPECT TO THE EXECUTION OF THE COURT'S JUDGMENTS REVEALING COMPLEX PROBLEMS

Introduction

A major problem for the Republic of Serbia before the Court, in respect of non-execution of judgements, is the problems of non-execution of final judgements adopted in relation to so-called social companies (it is estimated that over 3,000 cases before the Court relate to this matter). On one side, this problem has been caused by the economic crisis and insolvency of such companies, although, on the other hand, certain legal solutions contributed to its occurrence.

Namely, the 2005 Law on Privatization prescribed that a company whose restructuring had started before 7 June 2005, as a part of privatization in progress, could not be the subject of enforcement proceedings within the period of one year from the date concerned. The execution proceedings in progress shall be stayed and new execution shall not start before the expiration of the above mentioned terms. It was also applicable to the companies in the restructuring process, as a part of privatization, until the completion of this process.

The above mentioned provisions resulted in non-execution of many judgements adopted by domestic courts obliging companies with majority social capital to pay salaries and contributions to employees. Since this issue has not been resolved at the national level, cases of such type were forwarded to the Court. In this respect, the most frequent violations were violations of the right to a trial within reasonable time guarantee in Article 6 paragraph 1 of the Convention, violations of the right to an effective legal remedy guaranteed Article 13 of the Convention and, of course, violations of Article 1 of the Protocol no. 1 to the Convention, guaranteeing the right to peaceful enjoyment of property.

On 15 January 2008 the Court adopted a judgement in respect of six applicants that had been joined in one case (the case of *Kačapor and Others*). This judgement of the Court established a violation of the applicants' right guaranteed in Article 6 paragraph 1 (the right to a trial within reasonable time) and in Article 1 of the Protocol 1 to the Convention (the right to peaceful enjoyment of property).

The above mentioned judgement obliged the Republic of Serbia to pay to the applicants non-pecuniary damage caused by non-execution of the final judgement of the domestic court as well as the costs of proceedings incurred before the Court in Strasbourg. In addition, the Respondent State was also obliged to pay the sums awarded by the final judgements adopted against the former employer of the applicants.

After this judgement, several other judgements of this type followed, and, pursuant to Protocol 14, the Court proclaimed this type of cases to be „well-established case-law", successively proposing settlements to be made, without adopting a pilot judgement, although the conditions for such a pilot judgement had been fulfilled.

The establishment and work of the Working Group

The implementation of general measures required by the Committee of Ministers of the Council of Europe, namely determination of the amount of debt based on the final non-executed judgements against socially-owned companies and the method of payment of the same was the task of the Working Group formed by the Government in January 2011 with one year mandate. This Working group was composed of the representatives of the judiciary, Ministry of Justice, Ministry of Economy, Ministry of Finance and Agency for Privatization.

The first step of the Working Group was the adoption of the Action Plan with precisely defined framework for different measures.

In accordance with the Action Plan and measures proposed in it the Working group held the meetings every month in order to estimate the progress achieved and to propose the new measures

Now, I would like to present some of the measures that have been already initiated, taken and mentioned in the Action Plan, with regard to the acceleration of the current execution proceedings wherein the debtors are socially-owned companies.

The legal opinion of the Supreme Court of Cassation

The European Court of Human Rights, the Supreme Court of Cassation adopted legal opinion providing the continuation of procedure in cases where the Privatization Agency had adopted a decision on the company's restructuring in the procedure of the company's privatization (published on the website of the Supreme Court of Cassation).

The legal opinion of the Commercial Court of Appeals adopted finding that the initiation of liquidation procedure over a company does not prevent the initiation of forced payment procedure, if the trustees have the enforcement title. Also, there is no obligation of previous submission of a claim based on the enforcement title. This opinion is different from the provisions contained in the Law on Companies in force.

The new Law on Enforcement and Security had been adopted on 5 May 2011

The main novelty of this Law is the parallel system of execution through court and through professional bailiffs. It is important to note that this Law stipulates that the provisions of other laws that prescribe suspension of the execution proceedings, shall not be applied in the execution proceedings that have been conducted under the motion for the execution for the collection of pecuniary labour related claim. This provision has been adopted in accordance with the legal opinion of the Supreme Court of Cassation and in accordance with the suggestions of the Working Group.

The Government's measures to settle contributions for pension and disability insurance provide the linkage of working years by the payment of unsettled liabilities on the grounds of contributions for pension and disability insurance by the Ministry of Finance for certain companies having unsettled liabilities for contributions for pension and disability insurance of employees for the period from 1 January 2004 to 31 December 2010

Other measures

It is important to note that the Working Group performed its activities in accordance with the schedule set in the Action Plan.

Namely, the preliminary report on the amount of debt of socially-owned companies had been provided. The Department for Execution was informed about this by our letter of 3 June 2011.

Task force prepared the Study-Analysis of causes of violations of the Convention established in the above mentioned judgments of the European Court of Human Rights. Also, the final amount of debt of socially-owned companies had been provided and measures of the Government to cover this debt should be envisaged until the very beginning of 2012.

Conclusion

According to the 2006 Decree on Government Agent, regulating the execution of the judgments of the ECHR, the government agent "shall supervise" the execution of judgments. In practice, it means that the whole process of the execution is in hand of the government agent. However, the mentioned execution of the judgments relating to the debts of the socially-owned companies represents an example of necessary coordination of the different governmental bodies.

On the other hand, bearing in mind a large number of the cases of this type as the indicator of the existence of the systemic problem in the Republic of Serbia, it is unclear why the Court did not adopt the pilot judgment in accordance with the Rule 61. Namely, the actions taken by the state are not different from the actions taken in the execution of the pilot judgment. However, the new cases of this type have been constantly communicated to the Republic of Serbia instead of the adjournment of the examination of all similar applications pending the adoption of the remedial measures required by virtue of the operative provisions of the pilot judgment.

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