

February 2014

Sokolov and Others v. Serbia (dec.) - 30859/10, 54078/10, 54105/10 et al.

Decision 14.1.2014 [Section II]

Article 35

Article 35-1

Six month period

Failure to lodge timely application concerning failure of insolvent State entity to pay judgment debt: *inadmissible*

Facts – Between 2003 and 2005 the applicants obtained final court orders against their former employer, a “socially/State-owned” company, requiring it to pay them salary arrears and social security reimbursements. In 2005 insolvency proceedings were opened in respect of the company. The applicants lodged claims in the insolvency proceedings but the company’s assets were insufficient for them to be paid in full. In 2008 the commercial court terminated the insolvency proceedings and ordered the company’s liquidation. Its decision was published in the Official Gazette and recorded in the relevant public registries. In 2010 the applicants’ lawyer asked for the decision to be served on him. In the same year, the applicants filed a complaint with the Constitutional Court, which was rejected in 2012. In the proceedings before the European Court the Government raised a preliminary objection that the applicants had failed to comply with the six-month time-limit for lodging applications, arguing that time had started to run when the commercial court’s decision terminating the insolvency proceedings was published in the Official Gazette and/or became final.

Law – Article 35 § 1: In cases concerning the execution of final court decisions the State was directly liable for the debts of entities which, as here, did not enjoy “sufficient institutional and operational independence from the State”. Since the judgments in the applicants’ favour remained partly unenforced, the situation complained of had to be considered as continuing.

However, a continuing situation could not postpone the running of the six-month time-limit indefinitely. Applicants had to introduce their complaints “without undue delay” once it was apparent that there were no realistic prospects of a favourable outcome or progress domestically. In the instant case, once they had become aware or should have been aware that the insolvency proceedings had been terminated and/or the debtor company liquidated without any legal successor or remaining assets, it should have been apparent to the applicants that there was no available legal avenue under domestic law for obtaining enforcement of the judgments in their favour against the company or against the State. The applicants should therefore have lodged their applications with the Court within six months from the publication in the Official Gazette of the commercial court’s decision terminating the insolvency proceedings or, at the latest, from when that decision became final. In this regard, the Court noted that domestic law did not prescribe an obligation on the part of the commercial court to serve its decision on the applicants, who should therefore have made such a

request in due time. It followed that the applications had been introduced outside the six-month time-limit and had to be rejected. However, the Court pointed out that the applicants' failure to comply with that duty did not lead to the extinguishment of the State's general liability for the debts of the company.

Conclusion: inadmissible (out of time).

(See, among other authorities, *Marinković v. Serbia* (dec.), 5353/11, 29 January 2013, [Information Note 159](#))

© Council of Europe/European Court of Human Rights
This summary by the Registry does not bind the Court.

Click here for the [Case-Law Information Notes](#)