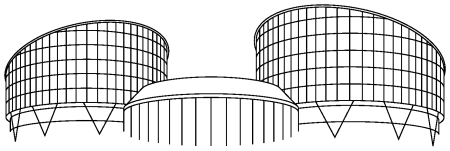

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF BATIĆ AND OTHERS v. SERBIA

(Applications nos. 2866/16 and 2 others – see appended list)

JUDGMENT

STRASBOURG

17 October 2017

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

In the case of Batić and Others v. Serbia,

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

Pere Pastor Vilanova, *President,*
Branko Lubarda,
Georgios A. Serghides, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 26 September 2017,

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

PROCEDURE

1. The case originated in three applications (nos. 2866/16, 6789/16 and 13143/16) against Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by three Serbian nationals, Mr Zoran Batić ("the first applicant"), Mr Slobodan Dimitrijević ("the second applicant") and Mr Dragan Đorđević ("the third applicant"), on 29 December 2015, 16 January 2016 and 1 March 2016 respectively.

2. The third applicant was represented by Mr N. Čolović, a lawyer practising in Kragujevac. The Serbian Government ("the Government") were represented by their Agent, Ms N. Plavšić.

3. On 5 July 2016 the applications were communicated to the Government.

4. The Government objected to the examination of the application by a Committee. After having considered the Government's objection, the Court rejects it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. As regards the first applicant

5. The first applicant was born in 1958 and lives in Vranje.

1. Civil proceedings brought by the first applicant

6. On 19 January 2004 the Vladičin Han Municipal Court ordered a socially-owned company *DP PK Delišes* (hereinafter "the debtor company"), based in Vladičin Han, to pay the first applicant specified

amounts on account of debt, plus the costs of the civil proceedings. This judgment became final on 15 March 2004.

7. On 27 May 2004, upon the first applicant's request to that effect, the Vladičin Han Municipal Court ordered the enforcement of the said judgment and further ordered the debtor company to pay the first applicant the enforcement costs.

2. Insolvency proceedings

8. On 30 January 2014 the Leskovac Commercial Court opened insolvency proceedings in respect of the debtor company (St. 1/14).

9. As a result, the ongoing enforcement proceedings against the debtor company were stayed by the Municipal Court's decision of 12 March 2014.

10. The first applicant duly submitted his respective claim.

11. The insolvency proceedings against the debtor company are still ongoing.

3. The proceedings before the Constitutional Court

12. On 23 January 2013 the first applicant lodged a constitutional appeal.

13. On 28 May 2015 the Constitutional Court found a violation of the first applicant's right to a hearing within a reasonable time. It further awarded him 500 euros (EUR) as just satisfaction for non-pecuniary damage. The Constitutional Court dismissed the first applicant's complaint concerning his right to the peaceful enjoyment of his possessions as well as his request for pecuniary damages, since the insolvency proceedings were still pending. That decision was delivered to the first applicant on 13 July 2015.

B. As regards the second applicant

14. The second applicant was born in 1956 and lives in Niš.

15. He was employed by *DOO EI-7 Oktobar*, a socially-owned company based in Niš (hereinafter "the debtor company").

1. The first set of civil proceedings

16. On 22 December 2005 the second applicant concluded the settlement with the debtor company before the Niš Municipal Court, by which the debtor company was obliged to pay the second applicant specified amounts on account of salary arrears and social insurance contributions, plus the costs of the civil proceedings. This settlement became final on an unspecified date.

17. On 17 December 2010, upon the second applicant's request to that effect, the Niš Municipal Court ordered the enforcement of the said

settlement and further ordered the debtor company to pay the second applicant the enforcement costs.

2. The second set of civil proceedings

18. On 5 September 2008 the Niš Municipal Court ordered the debtor company to pay the second applicant specified amounts on account of salary arrears and social insurance contributions, plus the costs of the civil proceedings. This judgment became final by 23 December 2008.

19. On 28 December 2010, upon the second applicant's request to that effect, the Niš Municipal Court ordered the enforcement of the said judgment and further ordered the debtor company to pay the second applicant the enforcement costs.

3. The proceedings before the Republic Agency for Peaceful Settlement of Labour Disputes

20. On 30 June 2007 and 15 October 2007 respectively, the Republic Agency for Peaceful Settlement of Labour Disputes ordered the debtor company to pay the second applicant specified amounts on account of salary arrears and social insurance contributions. These decisions became final on unspecified dates.

21. On 27 December 2010 and 28 December 2010 respectively, upon the second applicant's request to that effect, the Niš Municipal Court ordered the enforcement of the said decisions and further ordered the debtor company to pay the second applicant the enforcement costs.

4. Insolvency proceedings

22. On 23 May 2012 the Niš Commercial Court opened insolvency proceedings in respect of the debtor company (St. 115/12). As a result, the ongoing enforcement proceedings against the debtor company were stayed.

23. The second applicant duly submitted his respective claims.

24. On 24 December 2015 the second applicant's claims were formally recognised.

25. The insolvency proceedings against the debtor company are still ongoing.

5. The proceedings before the Constitutional Court

26. On 11 February 2013 the second applicant lodged a constitutional appeal.

27. On 18 June 2015 the Constitutional Court dismissed his appeal as lodged out of time. It found that the second applicant failed to lodge his appeal within thirty days as of the date when the decisions on the staying of the enforcement proceedings as a result of opening of the insolvency

proceedings had been delivered to him. That decision was delivered to the second applicant after 16 July 2015.

C. As regards the third applicant

28. The third applicant was born in 1953 and lives in Kragujevac.

29. He was employed by *DP Industrija Filip Kljajić*, a socially-owned company based in Kragujevac (hereinafter "the debtor company").

1. Civil proceedings brought by the third applicant

30. On 13 May 2002 the third applicant concluded the settlement with the debtor company before the Kragujevac Municipal Court, by which the debtor company was obliged to pay the third applicant specified amounts on account of salary arrears, plus the costs of the civil proceedings. This settlement became final on an unspecified date.

31. On 27 August 2002, upon the third applicant's request to that effect, the Kragujevac Municipal Court ordered the enforcement of the said settlement and further ordered the debtor company to pay the third applicant the enforcement costs.

2. Insolvency proceedings

32. On 5 March 2010 the Kragujevac Commercial Court opened insolvency proceedings in respect of the debtor company (St. 45/10).

33. The third applicant duly submitted his respective claim.

34. On 25 October 2010 the third applicant's claim was formally recognised.

35. On 2 August 2012 the third applicant was paid 13.12 % of his recognized claim.

36. The insolvency proceedings against the debtor company are still ongoing.

3. The proceedings before the Constitutional Court

37. On 10 May 2013 the third applicant lodged a constitutional appeal.

38. On 28 December 2015 the Constitutional Court dismissed his appeal as lodged out of time. It found that the third applicant failed to lodge his appeal within thirty days as of the date when the decision on opening of the insolvency proceedings had been rendered or as of the date when he had submitted his claim in the insolvency proceedings. That decision was delivered to the third applicant on 29 January 2016.

II. RELEVANT DOMESTIC LAW

39. The relevant domestic law concerning the status of socially-owned companies, as well as the enforcement and insolvency proceedings, is outlined in the cases of *R. Kačapor and Others v. Serbia*, nos. 2269/06 *et al*., §§ 57-64 and 71-76, 15 January 2008 and *Jovičić and Others v. Serbia* (dec.), no. 37270/11, §§ 88-93, 15 October 2013. Furthermore, the case-law of the Constitutional Court in respect of socially-owned companies, together with the relevant provisions concerning constitutional redress is outlined in the admissibility decision in *Marinković v. Serbia* (dec.), no. 5353/11, §§ 26-29 and 31-44, 29 January 2013, the judgment in *Marinković v. Serbia*, no. 5353/11, §§ 29-31, 22 October 2013, and the decision in *Ferizović v. Serbia* (dec.), no. 65713/13, §§ 12-17, 26 November 2013. Lastly, relevant domestic law concerning the proceedings before the Constitutional Court is outlined in the case *Pop-Ilić and Others v. Serbia*, nos. 63398/13 and seq. § 23-30, 14 October 2014.

THE LAW

I. JOINDER OF THE APPLICATIONS

40. 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 ARTICLES 6 § 1 AND 13 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL No. 1

41. The applicants complained of the respondent State's failure to enforce final domestic decisions rendered in their favour. The Court considers that these complaints fall to be examined under Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1, which, in so far as relevant, read as follows::

Article 6 § 1

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

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."

Article 13

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Admissibility

42. As regards the first applicant, the Government submitted that his complaint concerning the pecuniary damages was premature, since the insolvency proceedings against the debtor company were still pending and that he could still receive the compensation. The Government further argued that the application was lodged out of time. Specifically, they submitted that when the first applicant had lodged a constitutional appeal, that remedy had not been still considered as an effective one in cases concerning the non-enforcement of final judgments rendered against socially-owned companies undergoing restructuring, which was confirmed by the Court's decision in case of *Marinković* (cited above). Therefore, the first applicant should, if not earlier, lodged his application with the Court at the latest within six month as of date when the said decision had been rendered.

43. As regards the second and the third applicant, the Government submitted that the applications were lodged out of time. Relying on *Marinković* case, the Government argued that the applicants could lodge application with the Court until 22 June 2012 directly, without previously lodging a constitutional appeal, but failed to do so. They further submitted that the application was also inadmissible on non-exhaustion grounds, since the applicants failed to seize the Constitutional Court in a proper manner by lodging their appeals out of thirty-day time-limit (see paragraphs 27 and 38 above) and failure to complain also about the length of the insolvency proceedings.

44. The applicants disagreed.

45. The Court firstly rejects the Government's objection suggesting that the applicant's complains are premature. Namely, the Court has already considered similar arguments and has consistently rejected them (see, for example, *DOO Brojler Donje Sinkovce, v. Serbia*, no. 48499/08, §§ 45-47, 26 November 2013). It sees no reason to depart from that approach in the present case.

46. In respect of the six-month and non-exhaustion issues, the Court has already ruled that as regards the non-enforcement of final judgments

rendered against socially-owned companies undergoing insolvency proceedings and/or those which have ceased to exist, a constitutional appeal should, in principle, be considered as an effective remedy in respect of all applications lodged from 22 June 2012 onwards (see *Marinković*, cited above, § 59). Further, as regards the non-enforcement of final judgments rendered against socially-owned companies undergoing restructuring a constitutional appeal has been considered as an effective remedy in respect of all applications introduced from 4 October 2013 onwards (see *Ferizović,* cited above, §§ 24-25).

47. Moreover, the Court recalls that issue of whether domestic remedies have been exhausted is normally determined by reference to the date when the application was lodged (see *Baumann v. France*, no. 33592/96, § 47, ECHR 2001-V and *Vinčić and Others v. Serbia*, nos. 44698/06, 44700/06, 44722/06, 44725/06 and others, § 51, 1 December 2009). Since all the applications were lodged in 2015 and 2016, within the six-month time-limit as of the date when the Constitutional Court's decisions were delivered to them (see paragraphs 13, 27, 38) the Court finds no reasons to depart from this rule and considers that the applicants acted diligently for the purposes of the six-month and exhaustion of domestic remedies rule. The Court, therefore, rejects the Government's objections in this regard.

48. Finally, the Court notes that the applicants' complaints are neither manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

49. The Court notes that the domestic decisions under consideration in the present case have remained unenforced or partly unenforced to date.

50. The Court observes that it 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 raised in the present case (see *R. Kačapor and Others*, cited above, §§ 115-116 and § 120; *Crnišanin and Others v. Serbia*, nos. 35835/05 et seq., §§ 123-124 and §§ 133-134, 13 January 2009).

51. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or convincing argument capable of persuading it to reach a different conclusion in the present case. There have, accordingly, been violations of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1.

52. Having reached this conclusion, the Court does not find it necessary to examine essentially the same complaint under Article 13 of the Convention (see *mutatis mutandis*, *Kin-Stib and Majkić v. Serbia*, no. 12312/05, § 90, 20 April 2010).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. 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, costs and expenses

54. All the applicants requested that the State be ordered to pay them, from its own funds the decisions debts, plus the costs of the enforcement proceedings, less the amounts which have already been paid on this basis. The first applicant further requested that the State be ordered to pay him EUR 31,263.77 on account of his inability to return a bank loan and 7,710,456 Serbian dinars (RSD) for certain construction works preformed on one of the first applicant's commercial premises.

55. In respect of non-pecuniary damages, the first applicant claimed EUR 5,000, the second applicant claimed EUR 2,800 and the third applicant claimed EUR 3,000.

56. The first applicant also claimed RSD 70,500 for the costs and expenses incurred before domestic courts and the third applicant claimed EUR 624 for the costs and expenses incurred before the Court. The second applicant included his claim in that respect into the claim for non-pecuniary damages.

57. The Government contested these claims.

58. Having regard to the violations found in the present case and its own case-law (see, for example, *R. Kačapor and Others*, cited above §§ 123-26; and *Crnišanin and Others*, cited above, § 139), the Court considers that the Government should pay to the applicants the sums awarded in the final domestic decisions in question (see paragraphs 6, 16, 18, 20 and 30 above), as well as the established costs of the enforcement proceedings, less any amounts which may have already been paid on this basis.

59. With regard to the remainder of the first applicant's request for pecuniary damages, the Court finds that there is no causal link between the alleged damage and the violation found. It, therefore, rejects this part of the second applicant's claim for pecuniary damage.

60. Furthermore, the Court considers that the applicants sustained some non-pecuniary loss arising from the breaches of the Convention found in this case. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court considers it reasonable to award EUR 2,000 to each applicant, less any amounts which may have already been paid in that regard at the domestic level, to cover the non-pecuniary

damage suffered, as well as costs and expenses incurred before the Court (see *Stošić v. Serbia*, cited above, §§ 66 and 67).

B. Default interest

61. 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, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the applications admissible;

3. *Holds* that there have been violations of Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention;

4. *Holds* that there is no need to examine separately the complaint under Article 13 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay the applicants, from its own funds and within three months, the sums awarded in the decisions rendered in their favour, less any amounts which may have already been paid on this basis;
   (b) that the respondent State is to pay the applicants, within the same period, EUR 2,000 (two thousand euros) each, less any amounts which may have already been paid in that regard at the domestic level, in respect of non-pecuniary damage, costs and expenses, plus any tax that may be chargeable to the applicants, which is to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (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* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 17 October 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı Deputy Registrar	Pere Pastor Vilanova President

APPENDIX

List of applications

1. 2866/16 Batić v. Serbia
2. 6789/16 Dimitrijević v. Serbia
3. 13143/16 Đorđević v. Serbia