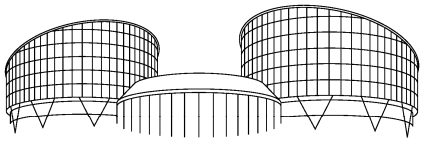

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF BILIĆ v. SERBIA

(Application no. 24923/15)

JUDGMENT

STRASBOURG

17 October 2017

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

In the case of Bilić 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 an application (no. 24923/15) against Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Serbian national, Mr Jovan Bilić ("the applicant"), on 10 June 2014.

2. The applicant was represented by Ms T. Petrović, a lawyer practising in Belgrade. The Serbian Government ("the Government") were initially represented by their former Agent, Ms V. Rodić, who was subsequently substituted by their current Agent, Ms N. Plavšić.

3. On 1 September 2015 the application was 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. Civil proceedings brought by the applicant

5. The applicant was employed by *HK Komgrap and Komgrap-Makiš doo*, a company based in Belgrade (hereinafter "the debtor"). At the relevant time, the company was predominantly socially-owned (*see Stoković and Others v. Serbia, nos. 75879/14 and seq.* §§ 10-14, *8 March 2016)*

6. Since the debtor had failed to fulfil its obligations towards its employees, the applicant brought a civil claim seeking payment of salary arrears and various social security contributions.

7. On 23 June 2003 the Belgrade Second Municipal Court (*Drugi opštinski sud u Beogradu*) ordered the debtor to pay to the applicant certain sums in respect of salary arrears and the various social security contributions. This judgment became final and enforceable on 25 July 2005.

8. On 26 September 2005 the applicant applied to the Belgrade Fourth Municipal Court (*Četvrti opštinski sud u Beogradu*) for enforcement of the judgment of 23 June 2003.

9. On 18 January 2006 the said court ordered the enforcement of the judgment and awarded the applicant the costs incurred in the enforcement proceedings.

B. Constitutional Court proceedings

10. On 27 October 2010 the applicant lodged a constitutional appeal, seeking redress for the non-enforcement of the judgment in question.

11. On 27 November 2013 the Constitutional Court held that the applicant had suffered a breach of the "right to a trial within a reasonable time" with regard to the enforcement proceedings. The court ordered the acceleration of these proceedings and declared that the applicant was entitled to compensation for the non-pecuniary damage suffered in the amount of 800 euros (EUR) converted into the national currency at the rate applicable at the date of settlement.

12. The Constitutional Court held that since the enforcement proceedings in question had not yet been completed, the constitutional appeals were premature in so far as they concerned the pecuniary damage, and dismissed the appeal in that regard.

II. RELEVANT DOMESTIC LAW AND PRACTICE

13. The relevant domestic law concerning the status of socially-owned companies, enforcement proceedings is outlined in the case of *R. Kačapor and Others v. Serbia* (nos. 2269/06 *et al.*, §§ 57-64 and §§ 71-76, 15 January 2008). Furthermore, the case-law of the Constitutional Court in respect of socially-owned companies, together with the relevant provisions concerning constitutional appeals and the privatisation of socially-owned companies, 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, §§ 29-32, 22 October 2013); and the judgment in *Ferizović v. Serbia* ((dec.), no. 65713/13, 26 November 2013).

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLES 6 AND 13 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1

14. The applicant complained of the respondent State's failure to enforce the final court decision rendered in his favour. The case falls to be examined under Articles 6 and 13 of the Convention and 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 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

15. The Government argued that the application should be declared inadmissible, because the Constitutional Court had awarded the applicant a certain amount of money as compensation for the non-pecuniary damage suffered.

16. The applicant maintained that his complaints remained admissible.

17. The Court notes that the Constitutional Court had indeed held that the applicant had suffered a breach of his constitutional rights and had awarded him a certain sum as compensation for non-pecuniary damage. However, unlike in other such cases, the Constitutional Court failed to order the State to pay from its own funds the sums awarded in the domestic judgment in question (see, for example, *Ferizović v. Serbia*, cited above, § 14). Also, having regard to its case-law the Court reiterates that the sum which the Constitutional Court had awarded to the applicant for non-

pecuniary damage suffered cannot either be considered as sufficient redress (*Stošić v. Serbia*, no. 64931/10, §§ 66-68, 1 October 2013).

18. In the view of the above, the applicant must still be considered as a victim within the meaning of Article 34 of the Convention.

19. Since the applicant's 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 be declared admissible.

B. Merits

20. The Court notes that the domestic judgment at issue in the present case has remained unenforced to date.

21. It further observes that it has frequently found violations of Article 6 of the Convention and/or Article 1 of Protocol No. 1 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).

22. 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.

23. 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).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. 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

25. The applicant requested that the Respondent State be ordered to pay, from its own funds: (i) the sums awarded by the final judgment rendered in his favour on 23 June 2003 as well as the established costs of the enforcement proceedings; (ii) EUR 3,722 in respect of non-pecuniary damage; and (iii) amount in respect of the cost and expenses to be determined by the Court itself.

26. The Government made no comments in this regard.

27. Having regard to the violations found in the present case and its own case-law (see *R. Kačapor and Others,* cited above, §§ 123-126, and *Crnišanin and Others*, cited above, § 139), the Court considers that the applicant's claims for pecuniary damage concerning the payment of the outstanding judgment debt must be accepted. The Government shall therefore pay the applicant the sums awarded in the final domestic judgment adopted on 23 June 2003, as well as the established costs of the enforcement proceedings, less any amounts which may have already been paid in respect of the said judgment.

28. As regards non-pecuniary damage, the Court considers that the applicant sustained some non-pecuniary loss arising from the breaches of the Convention found in this case. Having regard to its case-law (*Stošić v. Serbia*, no. 64931/10, §§ 66-68, 1 October 2013), the Court awards EUR 2,000 to the applicant, less any amounts which may have already been paid in that regard at the domestic level. This sum is to cover non-pecuniary damage, costs and expenses.

B. Default interest

29. 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. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1;

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

4. *Holds*
   (a) that the respondent State is to pay the applicant, from its own funds and within three months, the sums awarded in the court judgment rendered in his favour on 23 June 2003, as well as the established costs of the enforcement proceedings, less any amounts which may have already been paid in this regard;
   (b) that the respondent State is to pay the applicant, within the same period, EUR 2,000 (two thousand euros), 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 applicant, 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;

5. *Dismisses* the remainder of the applicant's 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