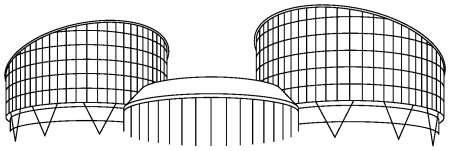

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF MAKSOVIĆ v. SERBIA

(Application no. 54770/15)

JUDGMENT

STRASBOURG

17 October 2017

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

In the case of Maksović 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. 54770/15) 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 Radosav Maksović ("the applicant"), on 21 October 2015.

2. The applicant was represented by Ms J. Bošković, a lawyer practising in Čačak. The Serbian Government ("the Government") were represented by their Agent, Ms N. Plavšić.

3. On 5 July 2016 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

5. The applicant was born in 1955 and lives in Kraljevo.

6. Between June 2003 and December 2004 the applicant, as an entrepreneur, was providing heating installation services to *AD Fabrika za proizvodnju konfekcije i trikotaže Raška,* a socially-owned company based in Novi Pazar (hereinafter "the debtor company").

A. Insolvency proceedings

7. On 2 December 2010 the Kraljevo Commercial Court opened insolvency proceedings in respect of the debtor company (St. 31/2010).

8. The applicant duly submitted his claim.

9. On 15 March 2011 the Commercial Court rejected his claim and instructed him to initiate a regular civil suit and request determination of his claim. The applicant lodged a separate civil claim.

10. On 1 December 2011 the Commercial Court ruled in favour of the applicant by recognizing his claim and ordered the debtor company to pay the applicant the costs of the civil proceedings.

11. On an unspecified date thereafter, the said judgment having become final, was acknowledged within the insolvency proceedings.

12. On 22 July 2013 the Commercial Court issued a decision ordering payment of approximately 10 % of the total debt to the applicant. The applicant received this payment on an unspecified date.

13. The debtor company was ultimately struck from the relevant public register on 9 July 2014.

B. The proceedings before the Constitutional Court

14. On 16 December 2013 the applicant lodged a constitutional appeal complaining against the Commercial Court's decision of 22 July 2013 and that his right to work and right to compensation for work and providing services were infringed, because he received only 10 % of the total debt. He asked further the Constitutional Court to order the payment of the rest of the debt.

15. On 2 March 2015 the Constitutional Court dismissed the applicant's appeal finding that it is not vested with the power to order such a payment. That decision was delivered to the applicant after 24 April 2015.

II. RELEVANT DOMESTIC LAW

16. 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. ALLEGED VIOLATION OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL No. 1

17. The applicant complained of the respondent State's failure to enforce a final court judgment rendered in his favour. The Court considers that this complaint falls 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

18. The Government submitted that the applicant had lodged his application with the Court outside the six-month time-limit. In particular, this time-limit had started to run when the insolvency proceedings had been opened against the debtor company, since he should be aware at that moment that he could no longer receive a total amount the debtor company owed him and that the constitutional appeal in his case would be ineffective remedy. The Government further submitted that the applicant failed to raise his complaint before the Constitutional Court in a proper manner. Specifically, they argued that he did not raise the same complaint which he raised in his application, but complained about violation of his right to work and right to compensation for work. Therefore, the application was also inadmissible on the non-exhaustion grounds.

19. The applicant disagreed.

20. As regards the six-month time-limit, the Court recalls that in the context of the non-enforcement of domestic court decisions against insolvent socially-owned companies, the applicants should lodge their applications, at the latest, within six months as of the date when the decision on the termination of the insolvency proceedings had become final (see *Sokolov and Others v. Serbia* (dec.), nos. 30859/10, § 34, 14 January 2014). The Court further recalls 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 v. Serbia* (dec.), cited above, § 59).

21. Turning to the present case, the Court firstly notes that the applicant had lodged his constitutional appeal on 16 December 2013 (see paragraph 14 above) when the insolvency proceedings against the debtor company were still pending and after the Court had ruled that the constitutional appeal should be considered as an effective remedy in cases concerning the non-enforcement of final judgments rendered against socially-owned companies undergoing insolvency proceedings. Since the Constitutional Court's decision had been delivered to the applicant after 24 April 2015 (see paragraph 15 above) and he had lodged his application with the Court on 21 October 2015, the Court finds that the applicant acted diligently for the purposes of the six-month rule and, therefore, rejects the Government's objection in this regard.

22. As regards the failure of the applicant to raise his complaint before the Constitutional Court in a proper manner, the Court reiterates that exhaustion rule must be applied with some degree of flexibility and without excessive formalism and that Article 35 § 1 requires that the complaints intended to be made subsequently in Strasbourg should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law (see, among other authorities, *Akdivar and Others v. Turkey*, 16 September 1996, §§ 66 and 69, *Reports of Judgments and Decisions* 1996-IV).

23. The Court observes that the applicant indeed complained before the Constitutional Court about violation of his right to work and right to compensation for work and providing services. However, he further explained that those violations occurred because he had received only 10 % of the total debt and asked the Constitutional Court to order the payment of the rest of the debt. Even though the applicant's constitutional complaint could have been somewhat more specific, the Court cannot but conclude that he had in fact expressed his grievances in a manner which leaves no doubt that it was the same complaint which was subsequently submitted to

the Court itself. Therefore, the Government's objection in this respect must also be rejected.

24. 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

25. The Court notes that the final court judgment rendered in the applicant's favour remains unenforced in large part to date.

26. The Court observes that it has frequently found violations of Article 6 § 1 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, 43548/05, 43569/05 and 36986/06, §§ 123-124 and 133-134, 13 January 2009*; Rašković and Milunović v. Serbia*, nos. 1789/07 and 28058/07, §§ 74 and 79, 31 May 2011*;* and *Adamović v. Serbia*, no. 41703/06, § 41, 2 October 2012).

27. 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.

28. 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

29. 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

30. The applicant requested that the State be ordered to pay, from its own funds: (i) the judgment debt, plus the costs of the enforcement proceedings, less the amount which had already been paid to him on this basis; (ii) 2,000 euros (EUR) in respect of non-pecuniary damage; and (iii) 90,000 Serbian Dinars (approximately EUR 900) for the costs and expenses incurred before the Court.

31. The Government contested these claims.

32. 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), the Court considers that the Government should pay to the applicant the sum awarded in the final domestic judgment of 1 December 2011 (see paragraph 10 above), as well as the established costs of the enforcement proceedings, less any amounts which may have already been paid on this basis.

33. Furthermore, the Court considers that the applicant 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 and equitable to award the applicant EUR 2,000, less any amounts which may have already been paid in that regard at the domestic level, to cover any non-pecuniary damage, as well as costs and expenses incurred before the Court (see *Stošić v. Serbia*, no. 64931/10, §§ 66 and 67, 1 October 2013).

B. Default interest

34. 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 have been violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention;

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 sum awarded in the court judgment rendered in his favour, 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