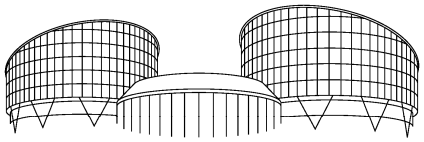

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF RADULOVIĆ v. SERBIA

(Application no. 24465/11)

JUDGMENT

STRASBOURG

3 October 2017

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

In the case of Radulović 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 12 September 2017,

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

PROCEDURE

1. The case originated in an application (no. 24465/11) against the 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, Ms Ljiljana Radulović ("the applicant"), on 16 March 2011.

2. 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

5. The applicant was born in 1951 and lives in Bor.

6. The applicant was employed by the bank called *Borska banka AD,* ("the debtor"). It would appear that at the relevant time the debtor was predominantly comprised of socially-owned capital.

7. On 13 February 2004 the Zaječar Commercial Court opened insolvency proceedings in respect of the debtor.

8. On 8 February 2005, upon a submission to that effect, the Zaječar Commercial Court recognised the applicant's claims concerning salary arrears.

9. On an unspecified date the applicant was paid 8,533 Serbian dinars (RSD) on account of the debt in question. The remainder of the debt has not been paid until the present day.

10. The insolvency proceedings are still pending.

11. On 14 December 2006 the applicant applied to the Zaječar Commercial Court for enforcement of the court's decision of 8 February 2005, by which the applicant's claims were recognised. The Zaječar Commercial Court, however, declined its jurisdiction *ratione materiae* and transferred the case file to the Bor Municipal Court.

12. On 7 May 2007 the Bor Municipal Court dismissed the applicant's enforcement request. In its reasoning, the Court stated that the Commercial Court's decision of 8 February 2005 was not suitable for execution.

13. On 23 November 2007 the Zaječar District Court upheld the first instance court's decision, stating that the debtor had been subject to the pending insolvency proceedings.

14. On 18 March 2008 the applicant lodged a constitutional appeal against the Zaječar District Court's decision.

15. On 4 November 2010 the Constitutional Court rejected the applicant's constitutional appeal. It found that the applicant had failed to properly seize the Constitutional Court, having lodged her appeal against "the wrong" decision.

II. RELEVANT DOMESTIC LAW

16. The relevant domestic law concerning the status of socially-owned entities, as well as 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.

THE LAW

I. ALLEGED VIOLATIONS 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 the final court decision rendered in her favour and of the lack of an effective remedy in that connection. She relied on 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 maintained that the application was premature given that the insolvency proceedings were still pending at the relevant time. Moreover, according to the Government, the applicant had failed to properly raise her complaint before the Constitutional Court.

19. The applicant offered no comments in response.

20. 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.

21. Further, under Article 35 § 1 of the Convention, the Court may only deal with an application after all domestic remedies have been exhausted. The purpose of Article 35 is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to it (see, for example, *Mifsud v. France* (dec.) [GC], no. 57220/00, § 15, ECHR 2002-VIII). The obligation to exhaust domestic remedies requires an applicant to make normal use of remedies which are effective, sufficient and accessible in respect of his or her Convention grievances. To be effective, a remedy must be capable of remedying directly the impugned state of affairs (see *Balogh v. Hungary*, no. 47940/99, § 30, 20 July 2004).

22. In the Serbian context, specifically, the Court has also held that a constitutional appeal should, in principle, be considered as an effective domestic remedy in respect of applications introduced as of 7 August 2008 (see *Vinčić and Others v. Serbia*, nos. 44698/06 and others, § 51, 1 December 2009).

23. However, in *Milunović and Čekrlić* (see *Milunović and Čekrlić* v. *Serbia* (dec.), nos. 3716/09 and 38051/09, 17 May 2011), the Court found that a constitutional appeal "cannot be deemed effective" as regards the non-enforcement of judgments rendered in respect of socially/State owned companies since in cases of this sort "comprehensive constitutional redress, in addition to a finding of a violation where warranted, would have to include compensation for both the pecuniary and the non-pecuniary damage sustained". The Court explained that on a number of occasions, the Constitutional Court had only established a violation and awarded compensation for the non-pecuniary damage suffered, but had not ordered the State to pay the appellant the pecuniary damages, i.e. the specified sums awarded by the final judgments in question (ibid.; the first among those decisions having been adopted by the Constitutional Court on 16 July 2009).

24. In view of the above, it is understood that the Court in case *Milunović and Čekrlić* had only confirmed *the continuing ineffectiveness* of the constitutional appeal in the context of socially-owned companies. Therefore, turning to the present case, it is irrelevant whether the applicant had lodged the application with the Court two months before the decision in the case of *Milunović and Čekrlić* had been adopted, since, in view of the Constitutional Court's case-law referred to in that case (see § 23 above) the constitutional appeal had already been ineffective at the relevant time. Accordingly, it rejects the Government's objection as to the non-exhaustion of domestic remedies.

25. The Court further notes that 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

26. The Court notes that the applicant obtained only a certain part of the amount specified in final court decision of 8 February 2005. The remainder of this decision has remained unenforced to date.

27. The Court has already held that the State is responsible for the failure to enforce final domestic decisions rendered against State-controlled entities, including banks, where insolvency proceedings were still ongoing (see *R. Kačapor and Others*, cited above, §§ 115-116; *Adamović v. Serbia*,

no. 41703/06, §§ 40-41, 2 October 2012; *Ališić and Others*, cited above, §§ 115-117 and *Nikolić-Krstić v. Serbia*, no. 54195/07, 14 October 2014).

28. 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 in the present case.

29. 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

30. 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

31. The applicant requested that the Respondent State be ordered to pay, from its own funds: (i) the sums awarded by the final decision rendered in her favour on 8 February 2005; (ii) 5,000 euros (EUR) in respect of non-pecuniary damage; and (iii) EUR 432.80 for the costs and expenses incurred before the domestic courts and the Court itself.

32. The Government contested these claims.

33. 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 decision debt must be accepted. The Government shall therefore pay the applicant the sums awarded in the final domestic decision adopted on 8 February 2005, less any amounts which may have already been paid in that respect.

34. The Court, further, 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

35. 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 of 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 decision rendered in her favour on 8 February 2005, 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 3 October 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Pere Pastor Vilanova
President