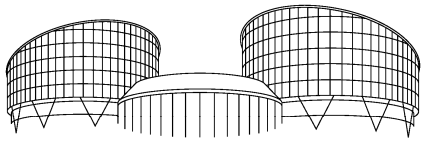

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF BUGARIĆ v. SERBIA

(Application no. 62208/13)

JUDGMENT

STRASBOURG

19 April 2016

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

In the case of Bugarić v. Serbia,

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

Helena Jäderblom, *President,*
Dmitry Dedov,
Branko Lubarda, *judges,*
and Stephen Philips, *Section Registrar,*

Having deliberated in private on 22 March 2016,

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

PROCEDURE

1. The case originated in an application (no. 62208/13) against the Republic of 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 Zorica Bugarić ("the applicant"), on 25 September 2013.

2. The applicant was represented by Mr R. Marinković, a lawyer practising in Novi Pazar. The Serbian Government ("the Government") were represented by their Agent, Ms V. Rodić.

3. On 16 September 2014 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 1957 and lives in Novi Pazar.

6. She was employed by *DP "Raška Holding Kompanija" AD*, a socially-owned company based in Novi Pazar (hereinafter "the debtor").

A. Civil proceedings brought by the applicant

7. On 30 June 2004, 25 September 2009 and 21 December 2009 respectively, the Novi Pazar Municipal Court ordered the debtor to pay the applicant certain amounts on account of salary arrears and social insurance contributions, plus the costs of the civil proceedings. These judgments

became final on 15 September 2004, 20 October 2009 and 5 October 2010 respectively.

8. On 5 October 2004 and 11 July 2011 respectively, upon the applicant's request to that effect, the Novi Pazar Municipal Court ordered the enforcement of the said judgments; it further ordered the debtor to pay the applicant the enforcement costs.

B. The debtor's status

9. On 11 September 2013 the Kraljevo Commercial Court opened preliminary insolvency proceedings against the debtor.

10. On 25 October 2013 the same court opened insolvency proceedings against the debtor.

11. The insolvency proceedings are still ongoing.

II. RELEVANT DOMESTIC LAW AND PRACTICE

12. 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 are 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.

THE LAW

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

13. The applicant complained of the respondent State's failure to enforce final court judgments 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

14. The Government submitted that the application should be declared inadmissible due to the applicant's failure to exhaust effective domestic remedies. They relied on Court's case law, namely on the case of *Marinković*, cited above, and pointed out that since the insolvency proceedings against the debtor were opened on 11 September 2013 the applicant should have lodged a constitutional appeal before bringing her application to the Court.

15. The applicant disagreed.

16. 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* (dec.), cited above, § 59).

17. In the present case, the Court notes that the applicant submitted her application on 25 September 2013, namely before the insolvency proceedings were formally opened against the debtor (see paragraph 10 above).

18. The Court considers that the applicant had indeed had no obligation to use constitutional redress before turning to the Court. The Court, therefore, rejects the Government's objection in this regard.

19. Since the applicant's complaint is neither manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor inadmissible on any other grounds, it must be declared admissible.

B. Merits

20. The Court notes that the final judgments rendered in the applicant's favour remain unenforced to the present date.

21. 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).

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 to the Convention.

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 State be ordered to pay, from its own funds: (i) the sums awarded by the final judgments rendered in her favour; (ii) 5,500 euros (EUR) in respect of non-pecuniary damage; (iii) an unspecified amount for the costs and expenses incurred before the Court.

26. The Government contested these claims.

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 judgments adopted on 30 June 2004, 25 September 2009 and 21 December 2009 as well as the costs of the enforcement proceedings, less any amounts which may have already been paid in respect of the said judgments.

28. The Court further takes the view that the applicant has suffered some non-pecuniary damage as a result of the violations found which cannot be made good by the Court's finding of a violation alone (see *Radovanović*, cited above, § 39). 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. 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 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 sums awarded in the court judgments rendered in her 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) 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 19 April 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Philips
Registrar

Helena Jäderblom
President