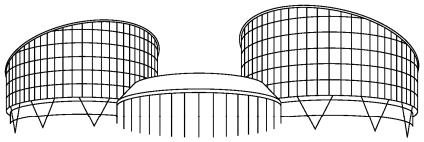

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF M.B. - MAK ČAČAK DOO AND OTHERS v. SERBIA

(Applications nos. 67856/14, 69282/14 and 70253/14)

JUDGMENT

STRASBOURG

27 September 2016

This judgment is final. It may be subject to editorial revision.

In the case of M.B. - Mak Čačak DOO 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 on6 September 2016,

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

PROCEDURE

1. The case originated in three applications (nos. 67856/14, 69282/14, and 70253/14) against Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by *M.B. - Mak Čačak DOO*, a limited liability company based in Serbia ("the first applicant"), Mr Branko Stefanović, a Serbian national ("the second applicant"), and *Plus DOO*, a limited liability company based in Serbia ("the third applicant") on 10 October 2014 and 15 October 2014 respectively.

2. The first and the third applicant were represented by Ms D. Janković, a lawyer practising in Čačak and the second applicant was represented by Mr V. Đinđić, a lawyer practising in Aleksinac. The Serbian Government ("the Government") were represented by their Agent at the time, Ms V. Rodić.

3. On 18 December 2014 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. On 29 June 2005 the Čačak Commercial Court ordered a socially-owned company *Fabrika Reznog Alata Čačak AD* (hereinafter "the debtor")

to pay the first applicant specified amounts on account of damages, plus the costs of the civil proceedings.

6. On 22 February 2006 the Belgrade High Commercial Court amended the first instance judgment by ordering the debtor to also pay the first applicant specified amounts on account of lost profits and increasing the awarded costs of proceedings. This judgment became final on an unspecified date.

7. On 26 June 2007, upon the first applicant's request to that effect, the Čačak Commercial Court ordered the enforcement of the said judgments and further ordered the debtor to pay the first applicant the enforcement costs.

8. On 17 March 2009 the debtor paid the first applicant a part of the sums specified in the said judgments.

9. On 30 March 2010 the Privatisation Agency ordered the restructuring of the first applicant's debtor. As a result, the ongoing enforcement proceedings against the debtor were stayed.

10. On 11 March 2011 the first applicant lodged a constitutional appeal.

11. On 21 May 2014 the Constitutional Court found a violation of the first applicant's right to a hearing within a reasonable time and of its right to the peaceful enjoyment of its possessions. It further awarded the first applicant 1,000 euros (EUR) as just satisfaction for non-pecuniary damage and ordered the court in Čačak to expedite the proceedings. The Constitutional Court dismissed the first applicant's request for pecuniary damages as premature, since the enforcement proceedings were still pending.

B. As regards the second applicant

12. On 11 July 2003 the Kraljevo Commercial Court established the secured property right of the applicant on certain commercial premises and ordered GP Jastrebac (hereinafter "the debtor") , a socially-owned company undergoing insolvency proceedings, to finish the construction of that property. The Commercial Court further ordered the debtor to pay the second applicant a certain amount if it failed to do so. This decision became final on an unspecified date. The debtor never finished the construction of the property in question.

13. On 9 September 2009 the debtor paid the applicant a part of the amount established by the decision.

14. On 11 May 2011 the second applicant lodged a constitutional appeal.

15. On 26 March 2014 the Constitutional Court found a violation of the second applicant's right to a hearing within a reasonable time. It further awarded him EUR 500 as just satisfaction for non-pecuniary damage and ordered the competent court to expedite the insolvency proceedings. The Constitutional Court dismissed the second 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.

C. As regards the third applicant

16. On 22 September 2003 the Belgrade Commercial Court ordered a socially-owned company, *DP Fabrika termotehničkih uređaja i montaže "CER" Čačak* (hereinafter "the debtor"), to pay the third applicant specified amounts on account of damages, plus the costs of the civil proceedings. This judgment became final by 17 October 2003.

17. On 30 October 2006, upon the third applicant's request to that effect, the Belgrade Municipal Court accepted the enforcement of the said judgment and further ordered the debtor to pay the first applicant the enforcement costs.

18. On 12 October 2011 the third applicant lodged a constitutional appeal.

19. On 17 April 2014 the Constitutional Court found a violation of the third applicant's right to a hearing within a reasonable time. It also awarded the third applicant EUR 800 as just satisfaction for non-pecuniary damage and ordered the competent court to expedite the proceedings. The Constitutional Court dismissed the third applicant's complaint concerning its right to the peaceful enjoyment of possessions and its request for pecuniary damages as premature, since the enforcement proceedings were still pending.

II. RELEVANT DOMESTIC LAW AND PRACTICE

20. The relevant domestic law concerning the status of socially-owned companies, as well as enforcement and insolvency proceedings, has been 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 has likewise been 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. JOINDER OF THE APPLICATIONS

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

22. The applicants complained of the respondent State's failure to enforce or fully enforce final court judgments rendered in their favour and of the lack of an effective remedy in that connection. They 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

23. The Government argued that the applications should be declared inadmissible, since the Constitutional Court had awarded each applicant a certain amount of money as compensation for the non-pecuniary damage suffered and therefore provided them with adequate redress. The applicants thus lost their victim status. The Government further maintained that the

companies concerned could not be considered as State-owned. In particular, their acts, as well as the acts of their managers, may not be attributed to the Respondent State. The fact that the said companies consisted mostly of social capital should not be decisive for the assessment of responsibility of the Respondent State.

24. The applicants disagreed.

25. The Court notes that the Constitutional Court indeed held that the applicants had suffered a breach of their constitutional rights and awarded them certain sums as compensation for non-pecuniary damage. However, unlike in other similar cases (see, for example, *Ferizović v. Serbia,* cited above, § 14), the Constitutional Court failed to order the State to pay from its own funds the sums awarded in the domestic judgments in question and in respect of the second and the third applicants it dismissed the complaint concerning the right to the peaceful enjoyment of their possessions. Further, having regard to its case-law (*Stošić v. Serbia*, no. 64931/10, §§ 66-68, 1 October 2013), the Court reiterates that the sums which the Constitutional Court awarded the applicants for non-pecuniary damage cannot be considered as sufficient redress (*Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 211-216, ECHR 2006-V). Therefore, these applicants must still be considered as victims within the meaning of Article 34 of the Convention.

26. Concerning the liability of the Respondent State for the debts of the companies in question, the Court has already stated on numerous occasions in comparable cases against Serbia that the State is liable for honouring the debts of socially/State-owned companies established by final domestic court judgments (see, for example, *R. Kačapor and Others,* cited above*,* §§ 97-98). Moreover, the friendly settlement was reached before the Court in several cases concerning the same companies (see *Piper and Others v. Serbia* (dec.), nos. 73409/13 *et al.*, 31 March 2015, and *Vukajlović and Others v. Serbia* (dec.), nos. 72396/12 *et al.*, 10 June 2014). The Court sees no reason to depart from that jurisprudence in the present case. Consequently, this Government's objection must be also rejected.

27. Since 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 be declared admissible.

B. Merits

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

29. 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).

30. 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.

31. 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

32. 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

33. All the applicants requested that the State be ordered to pay them, from its own funds the judgments debt, plus the costs of the enforcement proceedings, less the amounts which have already been paid on this basis. The second applicant further requested that the State be ordered to pay him EUR 25,525.60 on account of his inability to use the commercial premises in question and to allow him to enter into possession of those premises or to be paid their market value.

34. In respect of non-pecuniary damages, each applicant claimed EUR 3,000.

35. In respect of the costs and expenses incurred before the Court, the first and the third applicant claimed EUR 2,000 each and the second applicant claimed EUR 1,500.

36. The Government contested these claims.

37. 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 judgments in question (see paragraphs 5, 12 and 16 above), as well as the established costs of the enforcement proceedings, less any amounts which may have already been paid on this basis.

38. With regard to the remainder of the second 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.

39. 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

40. 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 judgments 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 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 27 September 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Pere Pastor Vilanova
President