

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

THIRD SECTION

CASE OF KRNDIJA AND OTHERS v. SERBIA

(Applications nos. 30723/09 and 3 others – see appended list)

JUDGMENT

STRASBOURG

27 June 2017

FINAL

27/09/2017

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.



In the case of Krndija and Others v. Serbia,

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

Helena Jäderblom, *President,*
Branko Lubarda,
Helen Keller,
Pere Pastor Vilanova,
Alena Poláčková,
Georgios A. Serghides,
Jolien Schukking, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 6 June 2017,

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

PROCEDURE

1. The case originated in four applications (nos. 30723/09, 9370/13, 32658/12 and 2632/09) against Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by four Serbian nationals, Mr Neđo Krndija ("the first applicant"), Ms Enita Mavrić ("the second applicant"), Mr Predrag Vukosavljević ("the third applicant") and Mr Bora Jovanović ("the fourth applicant"). Additional personal details, the dates of introduction of their complaints before the Court, and information regarding their legal counsel, respectively, are set out in the Annex to this judgment.

2. The Serbian Government ("the Government") were represented by their former Agent, Ms V. Rodić, who was more recently substituted by their current Agent, Ms N. Plavšić.

3. The applicants alleged that the national authorities had failed to enforce final court decisions in their favour and that they had had no effective domestic remedy in that respect.

4. On 18 April 2015 the applications were communicated to the Government. On the same date, the President of the Chamber also gave priority to the applications in accordance with Rule 41 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The specific circumstances of each applicant's case

5. The facts, as submitted by the parties, may be summarised as follows.

6. All four applicants were dismissed by their respective employers and subsequently brought separate civil claims against them, seeking reinstatement and/or pecuniary damages. They all obtained final court decisions in their favour, which remain unenforced to the present day. The debtor companies were registered as fully or predominantly socially/State-owned companies in the relevant public registers before and throughout the relevant insolvency/enforcement proceedings.

1. As regards the first applicant (application no. 30723/09)

7. On 26 May 2004 the applicant was dismissed by his employer, DP Udarnik, a transport and transshipment company based in Belgrade (currently registered as Socially-owned company Udarnik (in liquidation)). On 9 June 2004 the applicant brought a civil action challenging that decision. He withdrew the request he had made for his outstanding salary on 20 December 2006. On the same date, the Third Belgrade Municipal Court:

(a) declared the employer's decision null and void;

(b) ordered the applicant's reinstatement within eight days, and

(c) awarded the applicant RSD 49,500 on account of costs.

8. The Belgrade District Court upheld the judgment on 10 July 2008. It became enforceable on 26 December 2008.

9. In the meantime, the debtor company appears to have been subject to insolvency proceedings before the Commercial Court between 19 March and 14 May 2007. On the latter date the insolvency proceedings were stayed (*obustavljen*) and the debtor continued its business activities.

10. On 21 January 2009 the applicant filed a request for enforcement of the judgment of 20 December 2006 and the payment of the outstanding salaries till his reinstatement, submitting amendments on 6 March 2009. It would appear that the court sent the request to the debtor for comment on 2 April 2009, but it has not been served on the debtor. Throughout 2009 the applicant complained at least five times to the enforcement court about its failure to issue an enforcement order. In his complaint of 31 August 2009, the applicant submitted that the debtor was an active company and, in that respect, provided a copy of the decision on staying of insolvency proceedings of May 2007, certified by the Commercial Court.

11. On 13 October 2009 the enforcement court rejected the applicant's request, incorrectly stating that the debtor was subject to pending insolvency

proceedings (see paragraph 9 above). The applicant unsuccessfully appealed and wrote to the enforcement court again on numerous occasions.

12. In the meantime, between July 2009 and November 2011, attempts at liquidation of the debtor failed, as there were not enough assets to settle all the creditors' claims. Another set of insolvency proceedings in respect of the debtor was opened on 19 December 2011, which appears to be still pending. The applicant registered his claim for costs within the insolvency proceedings. After a division of property, he received 2.89% of his claim for costs.

2. As regards the second applicant (application no. 9370/13)

13. Between 1990 and 2007 the applicant was employed by Raška Holding AD – Pamučna predionica DOO, a company based in Novi Pazar. She was placed by her employer on compulsory paid leave until such time as normal production could be resumed and the company's business performance had improved sufficiently. Whilst on leave, in accordance with the relevant domestic legislation, the applicant was entitled to a significantly reduced monthly income and payment of her pension, disability and other social security contributions.

14. In February 2007 many employees on compulsory leave were made redundant and took part in the Government's "social programme". After enquiring about her entitlements, on 14 March 2007 the applicant was served with a decision dated 18 March 1991 concerning her dismissal.

15. On 9 July 2007 the Novi Pazar Municipal Court declared the dismissal null and void and ordered her employer to:

(i) reinstate her within eight days to a post which corresponded to her professional qualifications;

(ii) pay her the minimum salary arrears for the period 8 November 1990 to 16 March 2007, together with statutory interest;

(iii) pay her pension and disability insurance contributions for the period 1 January 1994 to 16 March 2007; and

(iv) pay RSD 11,700 for her legal costs.

16. The judgment became final on 5 September 2007 and the Municipal Court ordered its enforcement on 3 December 2007. In the meantime, on 22 October 2007 the applicant was made redundant.

17. Following a claim by the applicant, on 6 May 2008 the Municipal Court ordered her employer to pay her pension and disability insurance contributions for the period 16 March to 22 October 2007 and RSD 13,000 for her legal costs, while rejecting her claim for her outstanding salary for the same period. The judgment became final on 22 January 2009. The enforcement courts rejected a request by the applicant for enforcement. On 24 February 2011 the Supreme Court issued an instruction stating that enforcement proceedings should be initiated, and an enforcement order was adopted on 7 July 2011. The applicant was also awarded RSD 7,420 for the

enforcement costs. After a re-trial, on 18 October 2013 the Municipal Court ordered the applicant's employer to also pay her outstanding salary for 16 March to 22 October 2007 (the period during which she was on paid leave) and RSD 13,000 for her legal costs. These proceedings are pending at domestic level.

18. On 5 January 2004 the Privatisation Agency ordered the restructuring of the debtor. Raška Holding Kompanija and its subsidiary companies, including the debtor, have been in the process of being restructured since 26 May 2006. On 11 September 2013 the Kraljevo Commercial Court opened preliminary insolvency proceedings in respect of the debtor. On 18 October 2013 the restructuring of the debtor was terminated. It would appear that insolvency proceedings in respect of the debtor were opened on 25 October 2013, and that the applicant's claim was allowed by the Kraljevo Commercial Court on 26 January 2015 but has not yet been paid. The insolvency proceedings are still ongoing.

3. As regards the third applicant (application no. 32658/12)

19. On 25 June 2010 the First Belgrade Municipal Court accepted the settlement of a dispute between the applicant and his employer, Livnica Ralja AD, a company based in Ralja. The terms were as follows:

(a) the dismissal of the applicant in 2002 was to be declared null and void and the employer was to reinstate the applicant within eight days into a post which corresponded to his professional qualifications.

(b) the employer was to pay the applicant RSD 1,544,783 and RSD 484,810.65 on account of his outstanding salary arrears and corresponding social contributions for the period 11 March 2002 to 31 May 2010, as well as the required court stamp duties.

20. The court's decision became final and enforceable on the same date.

21. The Second Belgrade Municipal Court – Sopot Unit (hereinafter "the enforcement court") issued an enforcement order on 29 June 2010. The applicant asked the court to expedite the enforcement proceedings on several occasions. On 28 March and 2 June 2011 the bailiff found no available movable assets to enforce the settlement. On 23 May 2011 the court issued an enforcement order in respect of the debtor's immovable assets.

22. On 9 February 2011 the Belgrade Commercial Court opened preliminary insolvency proceedings, inviting the claimants to pay the deposit for the opening of the insolvency proceedings and register their claims. The call for the claimants was displayed on the court's notice board between 9 February and 9 April 2011. On 18 April 2011 the court opened and terminated the insolvency proceedings in respect of the debtor. The court ordered the debtor's liquidation as the latter had gone bankrupt, seemingly without having any legal successor, and none of the claimants had deposited costs of the proceedings or registered claims. The decision

became final on 23 June 2011 and was published. It said that any property of the debtor had become State assets.

23. On 28 June 2011 that decision was registered (*zabeležba*) in the relevant public registers concerning the status of all companies and the debtor was struck off the relevant public registers. The date of its publication in the Official Gazette of the Republic of Serbia is not available on these registers.

24. On 18 October 2011 the enforcement court suspended (*obustavio*) the enforcement proceedings as no available assets had been found.

25. On 25 November 2011 the enforcement court terminated (*prekinuo)* the enforcement because of the debtor's liquidation.

4. As regards the fourth applicant (application no. 2632/09)

(a) Domestic proceedings

26. On 9 December 2004 the Leskovac Municipal Court ruled in favour of the applicant and ordered his employer, DP Galpres from Leskovac, to reinstate him, to pay him his outstanding salary arrears, to pay his corresponding pension and disability insurance contributions (*doprinosi za penzijsko i invalidsko osiguranje*) and his legal costs.

27. The part of the judgment in respect of reinstatement and contributions became final on 16 February 2005 and enforceable on 19 March 2005, while the Leskovac District Court quashed the remaining part concerning his salary arrears.

28. On 13 November 2006 the Leskovac Municipality Court awarded the salary arrears for the period of 2003 to 2006, together with relating contributions and costs.

29. The enforcement courts ordered enforcement of the above judgments on 20 May 2005 and 24 April 2007 respectively.

(b) Proceedings before the Court

30. On 18 April 2015 the Court decided to give notice of the application to the Government.

31. On 7 August 2015 the Serbian Government sent their observations on the admissibility and merits. By a letter of 14 August 2015 the Government's observations were forwarded to the applicant, who was invited to submit any written comments together with any claims for just satisfaction by 25 September 2015.

32. In the absence of any response, on 15 March 2016 the Registry tried to make enquiries with the applicant about whether he was still interested in pursuing the case, but to no avail. By a registered letter dated 17 March 2016, he was notified that the periods allowed for appointment of a lawyer and for submission of his observations and claim for just satisfaction had both expired and that the Court had extended the deadline for submissions

until 28 April 2016. The Court also sent copies of the previous letters of 17 April and 14 August 2015 and enclosures. The applicant's attention was again drawn to Article 37 § 1 (a) of the Convention, which provides that the Court may strike a case out of its list of cases where the circumstances lead to the conclusion that the applicant does not intend to pursue the application. The return receipt indicated that the applicant received the letter on 23 March 2016. However, no response has been received.

II. RELEVANT DOMESTIC LAW

33. The relevant domestic law and practice concerning the status of socially/State-owned companies, enforcement and insolvency proceedings and the case-law of the Constitutional Court in that regard, are outlined in the cases of *R. Kačapor and Others v. Serbia* (nos. 2269/06 et al., §§ 57-82, 15 January 2008); *Vlahović v. Serbia* (no. 42619/04, §§ 37-47, 16 December 2008); *Crnišanin and Others v. Serbia* (nos. 35835/05 et seq., §§ 100-104, 13 January 2009); *EVT Company v. Serbia* (no. 3102/05, §§ 26-27, 21 June 2007); *Marčić and Others v. Serbia* (no. 17556/05, § 29, 30 October 2007); *Adamović v. Serbia* (no. 41703/06, §§ 17‑21, 2 October 2012); *Marinković v. Serbia* ((dec.) no. 5353/11, §§ 26-29 and §§ 31-44, 29 January 2013), *Jovičić and Others v. Serbia* ((dec.), nos. 37270/11, §§ 88-93, 15 October 2013); and *Sokolov and Others v. Serbia* ((dec.), nos. 30859/10 et al., § 20, 14 January 2014).

34. In addition, Article 63 of the Insolvency Procedure Act (*Zakon o stečajnom postupku*, published in OG RS no. 84/04) provides that the initiation of insolvency proceedings may be the reason for the termination of the contracts of employment between the debtors and their employees. The insolvency administrator (*stečajni upravnik)* shall decide on keeping a certain number of employees at work and on the termination of other contracts. It is also entitled, with the consent of the insolvency judge, to employ new employees if it is necessary to finalise the launched business or conduct the insolvency proceedings.

35. According to Article 239 § 1 of the Enforcement Procedure Act 2004 (*Zakon o izvršnom postupku*, published in OG RS no. 125/04), a creditor may, together with his or her request for reinstatement to work, also request that the debtor compensate him or her for all outstanding salaries due from the date on which the judgment became final until the date of his or her reinstatement.

THE LAW

I. APPLICATION No. 2632/09 LODGED BY THE FOURTH APPLICANT

36. Having regard to the circumstances described above (see paragraphs 30-32 above), the Court considers that the fourth applicant may be regarded as no longer wishing to pursue his application, within the meaning of Article 37 § 1 (a) of the Convention. Furthermore, in accordance with Article 37 § 1 *in fine*, the Court finds no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the continued examination of the case.

37. In view of the above, it is appropriate to strike the fourth application out of the list.

II. APPLICATION No. 32658/12 LODGED BY THE THIRD APPLICANT

38. Relying on the *Sokolov and Others* case (cited above, §§ 33-34), the Government submitted that the third applicant's complaint should be rejected for non-observance of the six-month rule. According to them, in the circumstances of his case, the time-limit had started to run when the decision terminating the insolvency proceedings against the debtor company had been published in the Official Gazette and, at the latest, from when that decision had become final.

39. The applicant stated that the enforcement court had not been diligent and that he had only learned of the debtor's liquidation upon receipt of that court's decision of 25 November 2011 terminating the enforcement proceedings (see paragraph 25 above). He considered that he had lodged his application within six months of that decision.

40. The relevant principles were recently set out in *Sokolov and Others* (cited above, §§ 28-35). The Court found that while the situation complained of had to be considered to be continuing, the continuing situation may not postpone the application of the six-month rule indefinitely. In the context of the non-enforcement of pecuniary debts of a socially-owned company, an applicant's obligation to lodge his or her complaint with the Court with reasonable expedition should be directly linked to the progress of the enforcement of the relevant judgments at domestic level. In *Sokolov and Others*, the Court stated that once the applicants had become aware or should have been aware that the insolvency proceedings had been terminated and/or the debtor company liquidated without any legal successor or remaining assets, it should have been apparent to them that there was no legal avenue available at domestic level by which they could obtain enforcement of the judgments in their favour

against the company or against the State. As to when the applicants knew, or ought to have learned, that enforcement was no longer possible, the Court stated that they should have lodged their applications with the Court within six months of the commercial court's decision terminating the insolvency proceedings being published in the Official Gazette or, at the latest, from when that decision had become final. In those cases, the applicants registered their claims within the insolvency proceedings, no enforcement proceedings having been instituted.

41. The Court considers that the same principles are applicable in cases concerning reinstatement-related claims (see, *mutatis mutandis*, *Cone v. Romania*, no. 35935/02, § 26, 24 June 2008).

42. Turning to the instant case, the Court observes that the debtor company was subject to automatic one-day insolvency proceedings on 18 April 2011 and liquidated on the same day (see paragraph 22 above). The decision became final on 23 June 2011 and was registered in the relevant public registers on 28 June 2011 (no information about its publication in the Official Gazette is available, which must have been before the date on which the decision had become final). The applicant lodged his application with the Court on 27 April 2012. Unlike the case of *Sokolov and Others*, in the present case the enforcement proceedings were pending and the enforcement court was taking steps irrespective of the debtor's liquidation until 25 November 2011, when the proceedings were ultimately terminated (see paragraphs 22, 24 and 25 above). However, that decision is irrelevant for the calculation of the six-month time-limit as it was incumbent on the applicant, who had been the debtor's employee and had both pecuniary and reinstatement-related claims against it, to show an interest in the debtor's status (see *Sokolov and Others*, cited above, § 34; see also *Cone*, cited above).

43. The Court therefore agrees with the Government's position that the application was lodged outside the six-month time-limit set out in Article 35 § 1 of the Convention.

44. It follows that the third application was lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention, there being no need for the Court to examine the remainder of the Government's admissibility objections.

III. JOINDER OF THE REMAINING APPLICATIONS

45. The Court considers that, in accordance, with Rule 42 § 1 of the Rules of the Court, the remaining applications should be joined, given their common factual and legal background.

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

46. The remaining applicants complained under various Articles that the national authorities had failed to enforce final court decisions in their favour and that they had had no effective domestic remedy in that respect.

47. The relevant provisions of Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention read as follows:

Article 6 § 1

"In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing within a reasonable time by [a] ... tribunal ..."

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."

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."

48. The Government contested the applicants' complaints.

49. They also submitted that the second applicant's complaints were somehow inconsistent. They noted that she had complained about non-enforcement of the part of the judgment of 5 September 2007 in respect of her reinstatement to work as ordered by that judgment. However, she had also requested at domestic level the payment of her outstanding salary and social insurance contributions for the period 16 March to 22 October 2007, the latter being the date she had been made redundant (see paragraphs 16-17 above). Her redundancy had therefore occurred before the judgment ordering her reinstatement had become final and enforceable (see paragraph 16 above). Moreover, she had never complained about being made redundant. It should therefore be understood that she had been reinstated and the judgment had been partially enforced in that respect.

50. The applicant argued that the part of the judgment of September 2007 in respect of her reinstatement had not been enforced. However, given that the decision of 1991 had been annulled, it could be understood that she had remained on paid leave until she had been made redundant (see

paragraphs 14 and 15 above). She clarified that in any event she had decided not to pursue at domestic level or before the Court her complaint about reinstatement in view of the latter redundancy decision, or the complaint regarding non-enforcement of the judgments of 2008 and 2013 (see paragraph 17 above), issues that she has been pursuing before the Constitutional Court. The applicant also stressed that the subject of her application was only the non-enforcement of the part of judgment of 5 September 2007 in respect of the compensation for her outstanding salary and related contributions and non-pecuniary damage for the lengthy non-enforcement.

A. Admissibility

1. *Compatibility* ratione personae

51. The Government also argued that the remaining applications were incompatible *ratione personae* with the provisions of the Convention because the State's liability could not be engaged in respect of a company which had been liquidated or organised as a company limited by shares. The applicants disagreed. The Court notes that the first and second applicants' debtors are indeed predominantly comprised of socially-owned capital, and that it has rejected the same or similar objections in several previous cases (see, *mutatis mutandis*, *R. Kačapor and Others*, cited above, §§ 92-99 and 118; *Crnišanin and Others*, cited above, §§ 108-115 and 132; and *Grišević and Others v. Serbia*, nos. 16909/06, 38989/06 and 39235/06, 21 July 2009) and finds no reason not to do so on this occasion. Accordingly, without prejudging the merits, the Court finds that the applicants' complaints are compatible *ratione personae* with the provisions of the Convention, and dismisses the Government's objection in that regard.

2. *Non-exhaustion of domestic remedies*

(a) The parties' submissions

52. The Government lastly submitted that the applicants had failed to make use of the constitutional avenue of redress. Specifically, while the *Ferizović* and *Marinković* cases were relevant in respect of the compensation for pecuniary and non-pecuniary damage, the *Vinčić and Others* case was applicable in respect of the applicants' reinstatement (*Ferizović v. Serbia* (dec.), no. 65713/13, 26 November 2013; *Marinković*, cited above, §§ 31-44; and *Vinčić and Others v. Serbia* (nos. 44698/06, 44700/06, 44722/06, 44725/06, 49388/06, 50034/06, 694/07, 757/07, 758/07, 3326/07, 3330/07, 5062/07, 8130/07, 9143/07, 9262/07, 9986/07, 11197/07, 11711/07, 13995/07, 14022/07, 20378/07, 20379/07, 20380/07, 20515/07, 23971/07, 50608/07, 50617/07, 4022/08, 4021/08, 29758/07 and

45249/07, 1 December 2009). Their complaints should therefore be rejected for non-exhaustion of domestic remedies. The applicants maintained that a constitutional appeal could not be deemed effective within the meaning of Article 35 § 1 of the Convention in their cases.

(b) The relevant principles

53. The Court reiterates that under Article 35 § 1 of the Convention, it may only deal with an application after the domestic remedies have been exhausted. 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, and *Sejdović v. Italy* [GC], no. 56581/00, § 46, ECHR 2006-II).

54. The issue of whether domestic remedies have been exhausted is normally determined by reference to the date when the application was lodged with the Court (see *Baumann v. France,* no. 33592/96, § 47, ECHR 2001-V (extracts)). That rule, however, is subject to exceptions which may be justified by the specific circumstances of each case (see, for example, *Nogolica v. Croatia* (dec.), no. 77784/01, ECHR 2002-VIII, and *Pikić v. Croatia*, no. 16552/02, §§ 30-33, 18 January 2005).

55. In terms of the burden of proof, it is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time (see, *inter alia*, *Vernillo v. France*, 20 February 1991, § 27, Series A no. 198, and *Dalia v. France*, 19 February 1998, § 38, *Reports of Judgments and Decisions* 1998-I). Furthermore, the domestic remedies must be "effective" in the sense of either preventing the alleged violation or its continuation, or of providing adequate redress for any violation that has already occurred (see *Kudła v. Poland* [GC], no. 30210/96, § 158, ECHR-XI). Once that burden has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact used, or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there were special circumstances absolving him or her from that requirement (see *Dankevich v. Ukraine,* no. 40679/98, § 107, 29 April 2003). In addition, as regards legal systems which provide constitutional protection for fundamental human rights and freedoms, the Court notes that, in principle, it is incumbent on the aggrieved individual to test the extent of that protection (see *Vinčić and Others*, cited above, § 51).

56. In the Serbian context, in *Vinčić and Others* the Court held that "a constitutional appeal should, in principle, be considered ... an effective domestic remedy within the meaning of Article 35 § 1 of the Convention in respect of all applications introduced [against Serbia] as of 7 August 2008" (ibid.). While it included complaints about the length of proceedings/non-

enforcement in general, the Court subsequently found that a constitutional appeal could not be deemed effective as regards the non-enforcement of judgments rendered in respect of socially/State-owned companies (*Milunović and Čekrlić v. Serbia* (dec.), nos. 3716/09 and 30851/09, 17 May 2011). Further, it is settled case-law that the respondent State has consistently been held responsible *ratione personae* for the non-enforcement of judgments rendered against companies predominantly comprised of socially-owned capital, including those in which there has been a subsequent change to their share capital structure resulting in the predominance of State-owned and socially-owned capital (see above, with further references). In cases of that 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 former requiring the respondent State to pay, from its own funds, the specified sums awarded in the final domestic judgments at issue (ibid.; at the time, the Constitutional Court had only established a violation and awarded compensation for the non-pecuniary damage suffered).

57. In *Marinković*, thereafter, the Court held that a constitutional appeal should, in principle, be considered an effective domestic remedy in cases involving the respondent State's liability for the non-enforcement of judgments issued against socially/State-owned companies undergoing insolvency proceedings and/or those which have ceased to exist in respect of "all applications lodged from 22 June 2012 onwards" (see *Marinković*, cited above), but not those undergoing restructuring, as in the latter context the Constitutional Court had still only been prepared to award the appellants compensation for the non-pecuniary damage sustained.

58. Eventually, in *Ferizović*, it was established that the Constitutional Court had ultimately evolved and "fully harmonised" its approach towards the non-enforcement of judgments rendered against socially/State-owned companies undergoing restructuring with the Court's relevant case-law, and that the constitutional appeal was also to be deemed effective as of 4 October 2013 (see *Ferizović*, cited above).

(c) The Court's assessment

59. Turning to the first application and without prejudging its merits, the Court observes that the first applicant sought to be reinstated to his previous job by a debtor undergoing insolvency proceedings, and claimed compensation for non-pecuniary damage for the lengthy non-enforcement. The Government failed to submit any relevant case-law of the Constitutional Court concerning the State's liability for the non-enforcement of judgments ordering reinstatement into socially/State-owned companies undergoing insolvency proceedings. Therefore, in view of the Court's previous case-law concerning socially/State-owned companies

undergoing insolvency proceedings in general (see paragraph 57 above) and the principle of foreseeability (see, for example, *Riđić and Others v. Serbia*, nos. 53736/08, 53737/08, 14271/11, 17124/11, 24452/11 and 36515/11, § 73, 1 July 2014), the Court finds no reason to depart from these rules and considers that the first applicant, who lodged his application on 2 June 2009, well before the relevant date, was under no obligation to use that particular avenue of redress before turning to the Court (see *Riđić and Others*, cited above, §§ 72-73, where the Court stated that when the State had enforced the judgments in the course of the proceedings before the Court, it would be disproportionate to require the applicants to turn to the Constitutional Court (which had become an effective avenue in the meantime) for redress for non-pecuniary damage for lengthy non-enforcement more than three and five years after they had already lodged their applications with the Court).

60. As regards the second applicant, the constitutional appeal was also not deemed effective on 5 September 2012 at the time of introduction of her application which concern non-enforcement of judgments rendered against a debtor undergoing restructuring (see paragraph 58 above).

61. The Government's objection must therefore be dismissed.

3. Conclusion

62. The Court considers that the first and second applicants' complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and finds no other grounds for declaring them inadmissible. They must therefore be declared admissible.

B. Merits

1. As regards the first applicant (reinstatement)

63. The Government submitted that the enforcement of the judgment of 20 December 2006 was not possible because of the beginning of the liquidation/insolvency of the debtor where the applicant had worked before his dismissal. They pleaded that the competent trial court could not have been aware of the forthcoming liquidation, as it otherwise would not have made the reinstatement order. Lastly, the applicant had received the pecuniary part of his claim and could not have reasonably expected to be reinstated because of the debtor's liquidation/insolvency.

64. The applicant maintained his complaints and pleaded that he had been waiting to be reinstated after his unlawful dismissal for years because of the inactivity of the courts.

65. The Court reiterates that the enforcement of a court judgment must be regarded as an integral part of the "trial" for the purposes of Article 6 (see *Hornsby v. Greece*, 19 March 1997, § 40, *Reports* 1997-II). A delay in

the enforcement of a judgment may be justified in particular circumstances. It may not, however, be such as to impair the essence of the right protected under Article 6 § 1 (see *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 74, ECHR 1999-V, and *Burdov v. Russia*, no. 59498/00, § 35, ECHR 2002-III). Furthermore, it is a continuing situation which ends, in principle, on the date of the enforcement of the relevant decision or when it is acknowledged that enforcement is objectively impossible (see, for example, *Tripcovici v. Romania* (dec.), no. 21489/03, 22 September 2009; *Kravchenko v. Russia*, no. 34615/02, § 34, 2 April 2009; and *Babich and Azhogin v. Russia* (dec.), no. 9457/09, §§ 48-49, 15 October 2013).

66. The Court observes that, unlike in cases concerning the enforcement of a final court decision rendered against private individuals, when it comes to the enforcement of final court decisions rendered against a socially/State-owned company, or equivalent entities that also do not enjoy "sufficient institutional and operational independence from the State", the State is directly liable for their debts or omissions and it is not open to it to use either a lack of funds, the indigence of the debtor or the abolition of a post in reinstatement cases as a valid excuse for any excessive delays or the non-enforcement of those decisions in the context of that particular enforcement (see, among many other authorities, *R. Kačapor and Others*, cited above, § 114; *Jovičić and Others v. Serbia* (dec.), nos. 37270/11, §§ 105-06, 15 October 2013; *Shlepkin v. Russia*, no. 3046/03, § 25, 1 February 2007; *Cone*, cited above, § 27, 24 June 2008; and *Tarverdiyev v. Azerbaijan*, no. 33343/03, §§ 50-52, 26 July 2007; compare and contrast with cases where the debtors were private individuals, *Omerović v. Croatia*, no. 36071/03, § 35, 1 June 2006; *Necheporenko and Others v. Ukraine* [Committee], nos. 72631/10 et seq., §§13-14, 24 October 2013; and *Shtabovenko and Others v. Ukraine* [Committee], no. 22722/07, 25 April 2013, §§ 15-16).

67. The Court observes that on 20 December 2006 the socially-owned company was ordered to reinstate the applicant to his former job and pay the costs of the employment-related proceedings (see paragraph 7 above). The judgment became binding on 10 July 2008, when it was upheld on appeal, and enforceable on 26 December 2008 (see paragraph 8 above). The applicant filed a request for enforcement immediately afterwards on 21 January 2009 (submitting amendments on 6 March 2009) and complained at least five further times to the enforcement court about its failure to issue an enforcement order throughout 2009 (see paragraph 10 above). Eventually, the enforcement court refused to order enforcement, claiming that the debtor was undergoing insolvency proceedings, which was incorrect information at the time (see paragraphs 9 and 11 above).

68. Reinstatement never occurred, despite the applicant's efforts in that respect. In this kind of cases, the Court needs to examine whether the non-enforcement was caused by the delay attributable to the respondent State

itself, or whether the insolvency of the debtor company could have made it objectively impossible for the respondent State to honour its obligation to enforce the judicial decision in the applicant's favour (see, for example, *Georgi v. Romania*, no. 58318/00, § 57, 24 May 2006; *Pişţireanu v. Romania*, no. 34860/02, § 37, 30 September 2008; and, *mutatis mutandis*, *Sabin Popescu v. Romania*, no. 48102/99, § 72, 2 March 2004, and *Mihai-Iulian Popescu v. Romania*, no. 2911/02, § 43, 29 September 2005).

69. The initial reason for the delay would appear to be the State's inactivity, as well as further attempts aimed at the relevant debtor's liquidation/insolvency proceedings (see paragraphs 17, 19 and 20 above). The Court has not considered so far that the abolition of the post or a relevant department/company itself in a socially/State/-owned company/public body necessarily make a judgment objectively impossible to enforce (see, in the context of public institutions/companies, *Tarverdiyev v. Azerbaijan*, no. 33343/03, 26 July 2007; *Akhundov v. Azerbaijan*, no. 39941/07, 3 February 2011; and *Efendiyeva v. Azerbaijan*, no. 31556/03, 25 October 2007), although it may be ready to accept argument that enforcement is impossible in certain circumstances (see *Bobić v. Bosnia and Herzegovina*, no. 26529/10, 3 May 2012, where the socially-owned company was privatised and the Government had been ordered to pay compensation to the applicant for every working day until reinstatement).

70. The Court notes that the present case differs from the above only in so far as the debtor in question is undergoing insolvency proceedings, which indeed may impede any chance of reinstatement. However, the Court observes that the Government have failed to offer any explanation whatsoever concerning the failure to enforce the judgment in issue or to prove that it was objectively impossible to enforce. In particular, (a) the judgment remained in force; (b) it was not quashed by way of an extraordinary procedure or otherwise set aside or amended by the domestic courts (see, for example, *Kravchenko and Others (military housing) v. Russia*, nos. 11609/05, 12516/05, 17393/05, 20214/05, 25724/05, 32953/05, 1953/06, 10908/06, 16101/06, 26696/06, 40417/06, 44437/06, 44977/06, 46544/06, 50835/06, 22635/07, 36662/07, 36951/07, 38501/07, 54307/07, 22723/08, 36406/08 and 55990/08, 16 September 2010, and *Sukhobokov v. Russia*, no. 75470/01, 13 April 2006); (c) the enforcement was refused on an inaccurate fact at the time (see paragraphs 9 and 11 above); (d) while the insolvency proceedings were still pending, the Government failed to give any details as to the type of insolvency proceedings (those leading to bankruptcy or revitalisation of the company) and why they considered non-enforcement of that particular judgment justified in the particular circumstances of the case; and (e) whereas the initiation of insolvency proceedings may be the reason for the termination of a contract of employment (see paragraph 34 above), there appears to be

no legal provision which implies an impediment to reinstatement in the course of insolvency proceedings, nor has the Government provided any judicial jurisprudence in this respect.

71. In the particular circumstances of the present case, taken cumulatively, the Court finds that the Government have not demonstrated that the opening of insolvency proceedings in respect of the applicant's former employer can be regarded as a finding that enforcement was objectively impossible (see, *mutatis mutandis*, *Vasile v. Romania*, no. 40162/02, § 55, 29 April 2008).

72. In the instant case, therefore, the applicant should not have been prevented from benefiting from the success of the litigation, which concerned the reinstatement into his job after wrongful dismissal, and for whose delay he cannot be held liable. The Court notes that, from the date of its enforceability to the date of the opening of insolvency proceedings, the judgment in issue remained unenforced for almost three years and a further five years to the present day. No reasonable justification was advanced by the Government for that delay, either before or during insolvency proceedings.

73. By failing for all those years to take the necessary measures to comply with the final judgment in the present case, the authorities deprived the provisions of Article 6 § 1 of the Convention of all useful effect (see *Burdov*, cited above, § 37). In this way, they also prevented the applicant from being paid the money he could reasonably have expected to receive. The Government have not advanced a plausible justification for that interference either (ibid. § 41).

74. There has accordingly been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention.

75. The Court does not consider it necessary to rule on essentially the same complaint under Article 13 of the Convention because Article 6 is *lex specialis* in regard to this part of the application (see, for example, *Jasiūnienė v. Lithuania*, no. 41510/98, § 32, 6 March 2003).

2. As regards the second applicant in respect of her pecuniary claims (outstanding salaries and contributions)

76. The Court notes that the final court judgment rendered in the second applicant's favour remains unenforced to date in respect of the payment of her outstanding salary arrears and related contributions. 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 application (see *R. Kačapor and Others*, cited above, §§ 115-116 and 120; *Crnišanin and Others*, cited above, §§ 123-124 and 133-134; *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).

77. 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 application. There has, accordingly, been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

78. 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).

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

79. 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. Damages, costs and expenses

1. As regards the first applicant

80. The first applicant did not claim a specific amount in respect of just satisfaction, and left it to the Court's discretion. While he requested the costs incurred before the Court, he failed to submit a power of attorney and all the relevant documents had been submitted by him personally. The Government contested the applicant's claims.

81. The Court considers that, as the non-enforced judgment of 20 December 2006 remains in force, the State's outstanding obligation to enforce it cannot be disputed. Accordingly, the applicant is still entitled to enforcement of that judgment. The Court has previously found that the most appropriate form of redress in respect of a violation of Article 6 is to ensure that the applicant, as far as possible, is put in the position he would have been in had the requirements of Article 6 not been disregarded (see *Piersack v. Belgium* (Article 50), 26 October 1984, § 12, Series A no. 85, and *Bobić*, cited above, § 38). Having regard to the violation found, the Court finds that that principle also applies in the present case. It therefore considers that the Government shall ensure, by appropriate means, enforcement of the judgment in question.

82. In that respect, the Court points out that its judgments are essentially declaratory in nature. In general, it is primarily for the State concerned to choose the means to be used in its domestic legal order to discharge its legal obligation under Article 46 of the Convention (see *Shofman v. Russia*, no. 74826/01, § 53, 24 November 2005, with further references). By finding

a violation of Article 6 § 1 and of Article 1 of Protocol No. 1 in the present case, the Court has established the Government's obligation to take appropriate measures to remedy the applicant's individual situation, that is to say to ensure compliance with his enforceable claim under the final domestic judgment of 20 December 2006 (compare with *Fadeyeva v. Russia*, no. 55723/00, § 142, ECHR 2005-IV). As regards the pecuniary part of the judgment in question (costs), the Government are to pay the applicant the sums awarded in the judgment, less any amounts which may have already been paid in respect of the judgments in the course of the insolvency proceedings. Furthermore, in the particular circumstances of the present case (notably, in the context of the reinstatement), whether such measures would involve reinstating the applicant into a job at the debtor company or, in case of difficulties in doing so, granting him reasonable compensation for non-enforcement (see paragraph 35 above), or a combination of those and other measures, is a decision that falls to the respondent State. The Court, however, emphasises that any measures adopted must be compatible with the conclusions set out in its judgment (see *Assanidze v. Georgia* [GC], no. 71503/01, § 202, ECHR 2004-II, with further references; compare and contrast with *Tarverdiyev*, cited above, §§ 65-66, and *Efendiyeva v. Azerbaijan* (just satisfaction), no. 31556/03, 11 December 2008).

83. Furthermore, the Court 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 v. Serbia*, no. 9302/11, § 39, 22 July 2014). Having regard to its case-law (see *Stošić v. Serbia*, no. 64931/10, §§ 66-68, 1 October 2013), the Court awards EUR 2,000 to the applicant.

2. As regards the second applicant

84. 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) 2,000 euros (EUR) in respect of non-pecuniary damage, and (iii) 90,000 RSD for the costs incurred before the Court.

85. The Government contested the pecuniary claims, arguing that the State should pay only the debt that would be recognised in the bankruptcy proceedings. They also considered the cost-related claims unjustified, as it was clear that the lodging of such an application was straightforward, being well-established case-law.

86. 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 are to therefore pay her the sums awarded in the final domestic judgment adopted

on 9 July 2007, less any amounts which may have already been paid in respect of these judgments in the course of the insolvency proceedings.

87. As regards non-pecuniary damage, the Court considers that the applicant sustained some non-pecuniary damage arising from the breaches of the Convention found in this case. Having regard to its case-law (see *Stošić*, cited above, §§ 66-68), the Court awards EUR 2,000 to the applicant. This sum is to cover non-pecuniary damage and the costs and expenses incurred before the Court.

B. Default interest

88. 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 strike the fourth application (no. 2632/09) out of its list of cases and *declares* the third application (no. 32658/12) inadmissible;

2. *Decides* to join the first and second applications and *declares* them admissible;

3. *Holds* that there has been a violation of Article 6 of the Convention in respect of the first and second applications;

4. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention in respect of the first and second applications;

5. *Holds* that there is no need to examine the complaints under Article 13 of the Convention;

6. *Holds*
   (a) that the respondent State is to pay the first and second applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, from its own funds and within three months, the sums awarded in the court judgments rendered in their favour respectively, less any amounts which may have already been paid in that regard;
   (b) that the respondent State is to pay, within the same period, the following amounts, to be converted into Serbian dinars at the rate applicable at the date of settlement:

(i) to the first applicant, EUR 2,000 (two thousand euros), plus any tax that may be chargeable to him, in respect of non-pecuniary damage;

(ii) to the second applicant, EUR 2,000 (two thousand euros), plus any tax that may be chargeable to her, in respect of non-pecuniary damage, costs and expenses;

(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;

7. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 27 June 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Helena Jäderblom
President

APPENDIX

	Application no.	Lodged on	Applicant Date of birth Place of residence	Represented by
1	30723/09	02/06/2009	**Neđo KRNDIJA** 10/04/1948 Barič	
2	9370/13	05/09/2012	**Enisa MAVRIĆ** 21/11/1967 Novi Pazar	Refija GARIBOVIĆ
3	32658/12	27/04/2012	**Predrag VUKOSAVLJEVIĆ** 18/11/1963 Ralja	Nada CRNJA
4	2632/09	10/01/2009	**Bora JOVANOVIĆ** 10/03/1951 Leskovac	