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

FOURTH SECTION

DECISION

Application no. 12543/18
Branko GALIĆ
against Serbia

The European Court of Human Rights (Fourth Section), sitting on 10 September 2024 as a Committee composed of:

Anne Louise Bormann*, President*,
Branko Lubarda,
Sebastian Răduleţu*, judges*,
and Simeon Petrovski, *Deputy Section Registrar,*

Having regard to:

the application (no. 12543/18) 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") on 6 March 2018 by a Serbian national, Mr Branko Galić ("the applicant"), who was born in 1959, lives in Zrenjanin and was represented by Mr K. Rankov, a lawyer practising in Zrenjanin;

the decision to give notice of the complaints under Article 6 concerning the right to a fair hearing and under Article 1 of Protocol No. 1, concerning the applicant's peaceful enjoyment of possessions, to the Serbian Government ("the Government"), represented by their Agent, Ms Z. Jadrijević Mladar, Representative of Serbia to the European Court of Human Rights and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns an alleged breach of the applicant's rights under Article 6 and Article 1 of Protocol No. 1 to the Convention in insolvency proceedings conducted in respect of a company, of which he was the sole proprietor, under statutory provisions that were subsequently declared unconstitutional by the Constitutional Court.

2. In January 1991 the applicant founded a private company "Grand Export – Import" ("the company"), which was engaged in the production of and trade in goods and the provision of services in the agricultural and poultry sector.

3. As the company's account had been frozen for more than three years for an amount exceeding 25,000,000 Serbian dinars (RSD), the National Bank of Serbia notified the Zrenjanin Commercial Court, which opened preliminary insolvency proceedings and set a deadline for depositing an advance payment to cover the costs of those proceedings.

4. On 16 June 2010 the Commercial Court opened insolvency proceedings against the company and, after it had concluded that neither the creditors nor the debtors had an interest to proceed, it terminated them and declared the company liquidated.

5. On 24 August 2010 the company was erased from the register of trade companies and its remaining assets were transferred to the State by virtue of sections 150-154 of the Insolvency Act.

6. On 25 July 2012 the "Official Gazette of the Republic of Serbia" published a decision by the Constitutional Court declaring certain provisions of the Insolvency Act, including sections 150-154 thereof governing the transfer of dissolved companies' assets to the State, as unconstitutional.

7. On 22 April 2014, relying on Article 61 of the Constitutional Court Act entitling persons whose rights were violated by a final individual act adopted on the basis of a general act to ask the competent authority, within the set-time limits, to amend that individual act, the applicant asked the Zrenjanin Commercial Court to revise its judgment of 16 June 2010.

8. On 28 April 2014 the Zrenjanin Commercial Court dismissed the applicant's request as having been lodged out of the six-month time-limit that had started running from the date of publication of the Constitutional Court's decision in the Official Gazette.

9. The applicant complained under Article 6 § 1 of the Convention and Article 1 of Protocol No.1 that the insolvency proceedings had not been fair, in that the final judgment had been based on the provisions of the Insolvency Act which the Constitutional Court had subsequently declared unconstitutional.

THE COURT'S ASSESSMENT

10. The Government objected to the applicant's victim status arguing that the insolvency proceedings did not affect him, but only the company.

11. Whereas the Court agrees that the present case concerns the company's insolvency and the transfer of its assets to the State, it notes that after the insolvency proceedings had terminated, the company had been erased from the register of trade companies and it was, accordingly, impossible for it, as a legal person, to apply to the Court. Furthermore, the

Court takes into account the uncontested fact that the applicant was the company's founder and sole shareholder. Accordingly, it finds that the applicant may claim to be a victim of the alleged violation of the Convention affecting the company's rights (compare *G.J. v. Luxembourg*, no. 21156/93, §§ 23 and 24, 26 October 2000). The Government's objection in this regard must therefore be dismissed.

12. The Government also maintained that the applicant had not properly exhausted the effective domestic remedies given his failure to request, in a timely manner, that the impugned decision be amended under Article 61 of the Constitutional Court Act. They submitted seventeen decisions of the domestic commercial courts, rendered in 2012 and 2013, in which the final decisions of commercial courts on the opening and closing of bankruptcy proceedings were amended and the debtor companies resumed operation.

13. The applicant contested the Government's non-exhaustion plea.

14. The Court notes that Article 61 of the Constitutional Court Act provides for the possibility of amending, within prescribed time-limits, a final individual decision that was adopted on the basis of an unconstitutional law (see paragraph 7 above). The case-law submitted by the Government is in support of the effectiveness in practice of that remedy (see paragraph 12 above).

15. The remedy referred to by the Government that was capable to vindicate the applicant's rights under the invoked Articles was available to him. However, the applicant did not use this remedy in compliance with the procedural requirements set forth under the Constitutional Court Act; his application for amendment of the judgment was dismissed as belated (see *Gäfgen v. Germany* [GC], no. 22978/05, § 143, ECHR 2010). That decision was not arbitrary or manifestly unreasonable.

Accordingly, the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 3 October 2024.

Simeon Petrovski Deputy Registrar	Anne Louise Bormann President