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

SECOND SECTION

DECISION

Application no. 847/17
Boris ŽIGON and Miran KEBER
against Slovenia

The European Court of Human Rights (Second Section), sitting on 3 November 2020 as a Committee composed of:

Valeriu Griţco, *President,*
Branko Lubarda,
Pauliine Koskelo, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar*,

Having regard to the above application lodged on 23 December 2016,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

1. The applicants, Mr Boris Žigon and Mr Miran Keber, are Slovenian nationals. Mr Žigon was born in 1953 and lives in Renče. Mr Keber was born in 1954 and lives in Volčja Draga. They were represented before the Court by Ms M. Djurković, a lawyer practising in Koper.

2. The Slovenian Government ("the Government") were represented by their Agent, Ms A. Vran, State Attorney.

A. The circumstances of the case

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. The applicants are the sole shareholders of E.S., a limited liability company operating under Slovenian law. Both applicants paid 12,241 euros (EUR) in capital contribution, giving them 50% of the company's share capital each. Mr Žigon was also the company's managing director.

5. The company's main activity was building construction, and its most significant investment was a large commercial and residential building in Koper, which was intended for market sale ("the Koper investment building"). To carry out this construction project, the company obtained loans from two banks which were secured with a mortgage on the above-mentioned building. According to the applicants, its construction was delayed owing to complications linked to the financial difficulties of the company's contractors, but it was eventually completed and made ready for sale (except for the ground floor) in December 2013.

1. Bankruptcy proceedings

(a) Bankruptcy application and debtor's objection

6. On 16 October 2014 M.B. lodged an application to open bankruptcy proceedings against the E.S. company (*predlog za začetek stečajnega postopka* – "the bankruptcy application"). She submitted that she was an employee of E.S. and that it had not paid her wages, taxes and contributions for more than three months. She alleged that the company had had its accounts blocked for a substantial period of time and was unable to settle its overdue obligations. She also submitted a document issued by the tax authorities indicating that the company had not paid her wages, taxes and contributions between January 2013 and July 2014.

7. On 29 October 2014 the Nova Gorica District Court notified the E.S. company (as the debtor) of the bankruptcy application (see paragraph 6 above). It informed the company of its right to lodge an objection and argue that it was not insolvent or that the alleged creditor's claim did not exist. In the event that the company had already adopted measures for financial restructuring, the court invited it to submit a request for the decision on the creditor's bankruptcy application to be deferred ("a deferral request"). If the debtor did not object or request a deferral, the court would apply the presumption of insolvency set out in section 235(3) of the Financial Operations, Insolvency Proceedings, and Compulsory Dissolution Act ("the Insolvency Act", see paragraph 23 below) and open bankruptcy proceedings without examining any evidence regarding the debtor's insolvency.

8. On 11 November 2014 Bank Asset Management Company (*Družba za upravljanje terjatev bank* – "BAMC"), which was handling the claims of the banks that had financed the Koper investment building project (see paragraph 5 above), lodged an application to open bankruptcy proceedings against the E.S. company in respect of unsettled claims amounting to EUR 40,301,833. On 5 December 2014 it indicated its wish to take part in the preliminary bankruptcy proceedings regarding M.B.'s bankruptcy application (see paragraph 6 above).

9. On 14 November 2014 the E.S. company lodged an objection against M.B.'s bankruptcy application (see paragraph 6 above), arguing that she was not listed in the company's personnel records.

10. On 22 December 2014 the Nova Gorica District Court held a hearing. The E.S. company, represented by its managing director (Mr Žigon), maintained that it intended to sell its property and repay its debts. In its view, BAMC's bankruptcy application was premature, as they had been in talks on how to resolve E.S.'s financial situation and repay its debts. The company allegedly had a buyer for the Koper investment building. It therefore needed an additional two months to settle all its claims. At the same hearing, M.B. insisted that E.S. should be declared bankrupt. As regards the argument concerning the forthcoming sale of the company's property, she submitted that it had already been made, but to no avail. She also submitted an updated document of the tax authorities and the Pension Institute as regards her employment status at the company. BAMC's representative also insisted that the E.S. company should be declared bankrupt, noting that the conversation with the debtor on the resolution of its financial matters had not been successful.

(b) Decision to open bankruptcy proceedings

11. On 29 December 2014 the Nova Gorica District Court decided to open bankruptcy proceedings against E.S. It held that M.B. had submitted evidence issued by the Pension Institute proving that she had been working for the company since April 2006. The debtor, on the other hand, had not submitted any evidence to challenge her employment status with the company. Moreover, M.B. had submitted documentary evidence issued by the tax authorities showing that the debtor had not paid her wages and contributions from January 2013 to September 2014 (see paragraph 6 above). The debtor, for its part, had neither argued nor demonstrated that it had paid anything to M.B. since she had lodged the bankruptcy application or since the documents proving the unpaid wages and contributions had been issued. Furthermore, the court reiterated that the debtor's inability to settle its outstanding debt for an extended period of time – a situation of prolonged illiquidity – was one of the grounds for establishing a debtor's insolvency. M.B. had lodged the bankruptcy application on the basis of section 14(4) of the Insolvency Act (see paragraph 23 below), which set out an irrebuttable presumption of prolonged illiquidity. Having examined the evidence, the court found that M.B. had been employed by the debtor at the time she had lodged the bankruptcy application and that the contributions to be levied or paid together with her wages had not been paid for more than two months. Noting that M.B. had maintained her bankruptcy application and that she had proved her active standing, the court considered that the grounds for declaring the debtor bankrupt had been clearly established.

12. The court rejected the debtor's statements made at the hearing in respect of the intended sale of the Koper investment building. In particular, it noted that the debtor had asked for that hearing to be rescheduled, arguing that a preliminary contract to sell the Koper investment building would be signed on 22 December 2014. However, at the hearing, which took place on the same date, the debtor had asked for additional time to sell the property and had not referred to the above preliminary contract. As regards the debtor's argument that BAMC had agreed to such an arrangement, the court noted that BAMC itself had lodged a bankruptcy application and had insisted that the company be declared bankrupt (see paragraph 10 above).

13. On 24 January 2015 the liquidator appointed in the insolvency proceedings against E.S. terminated M.B.'s employment contract.

(c) Appeal proceedings

14. On 30 January 2015 the E.S. company and the applicants as its shareholders lodged an identical appeal against the first-instance court's decision to open bankruptcy proceedings. They disputed M.B.'s entitlement to a salary, arguing that she had set up her own company and had been its managing director since July 2013. In their opinion, the presumption of prolonged illiquidity should not have applied because M.B. had been a former employee and the alleged outstanding debt had fallen due long before she had lodged the bankruptcy application. Moreover, they argued that liquidation of a company with significant assets was a disproportionate measure. The court should have examined the debtor's complete financial situation, in particular the submissions made in respect of the Koper investment building and the fact that its bank deposits exceeded EUR 1,400,000, in order to assess the debtor's ability to repay the amounts that had fallen due. In their view, M.B. had not proved that the company's debt could not be settled using its assets. Moreover, she should have enforced her claim in enforcement proceedings.

15. On 5 March 2015 M.B., in the bankruptcy proceedings, submitted claims in the amount of EUR 35,372 arising from her employment contract.

16. On 1 April 2015 the Ljubljana Higher Court rejected the applicants' appeal as out of time and dismissed the company's appeal on the merits, reiterating the arguments of the first-instance court. It noted, *inter alia*, that the company could have lodged a deferral request within a fifteen-day time-limit. Having failed to do so, it was precluded on appeal from making any statements relating to the value of its assets.

17. The applicants and the company lodged a constitutional complaint against the Higher Court's decision, arguing that the opening of bankruptcy proceedings had violated the principle of proportionality. The applicants also complained of a violation of their right to a legal remedy.

18. On 22 June 2015 the Constitutional Court accepted for consideration the applicants' constitutional complaint against the Higher Court's rejection

decision. It did not accept the company's constitutional complaint for consideration. On 12 May 2016 the Constitutional Court quashed the Higher Court's rejection decision and remitted the case to the Ljubljana Higher Court for reconsideration of the applicants' appeal.

19. On 1 June 2016 the Ljubljana Higher Court dismissed the applicants' appeal and upheld the decision of the first-instance court. It reiterated that M.B. had proved her standing for lodging a bankruptcy application under section 231 of the Insolvency Act (see paragraph 23 below) as the debtor's employee and creditor. She had submitted evidence supporting her employment status and entitlement to wages and contributions, which had not been challenged by the debtor. The applicants' statements regarding M.B.'s own company were irrelevant in respect of her employment status. Moreover, she had proved that the debtor had not paid her mandatory social contributions and wages between January 2013 and September 2014. Neither the applicants nor the debtor had challenged the facts on the basis of which the presumption of prolonged illiquidity under section 14(4) of the Insolvency Act had applied and the company had thus been considered insolvent. Their submissions on the value of the debtor's assets were found to be irrelevant in respect of the established situation of the company's insolvency. They should have demonstrated that the debtor had several employees and had paid its minimum wages, taxes and contributions without a two-month delay. Furthermore, according to the relevant case-law, the presumption of insolvency would not apply if the debtor had several employees and had been late in paying wages or contributions to only one of them, who was, moreover, a former employee. Regard being had to the arguments put forward in the objection and the appeal, the courts had no reason to find that the company had several employees and that payment of their wages and contributions had not been delayed for more than two months.

20. On 9 July 2016 the applicants lodged a constitutional complaint, arguing that the decision to open bankruptcy proceedings against the E.S. company had violated the principle of proportionality.

21. On 6 September 2016 the Constitutional Court decided not to accept a constitutional complaint lodged by the applicants for consideration.

22. On 20 September 2017 the Nova Gorica District Court dismissed BAMC's bankruptcy application (see paragraph 8 above) for lack of legal interest, finding that the bankruptcy proceedings against E.S. had already been opened on 29 December 2014 (see paragraph 11 above).

B. Relevant domestic law and practice

23. The relevant provisions of the Insolvency Act (Official Gazette no. 13/14 with relevant amendments) read as follows:

Section 14 – Insolvency

"(1) Insolvency is a situation where the debtor:

1. within an extended period of time is not able to settle all its obligations that fall due in that period (hereinafter, 'prolonged illiquidity'), or

2. becomes long-term insolvent.

...

(3) Unless proved otherwise, the debtor is considered to have become long-term insolvent:

1. if the value of its assets is less than the sum of its obligations (over-indebtedness),

...

(4) It cannot be challenged by evidence to the contrary that a legal person ... is in a situation of prolonged illiquidity if it is more than two months late in

1. paying workers' minimum wages, or

2. paying taxes and contributions, which have to be paid together with the workers' wages

and such situation persists on the day before lodging an application to open bankruptcy proceedings."

Section 231 – Standing to lodge an application

"An application to open bankruptcy proceedings may be lodged by:

...

3. a creditor, who demonstrates the probability that:

– he/she/it has a claim against a debtor against whom the bankruptcy application has been lodged, and

– the debtor is more than two months late in paying that claim,

..."

Section 234 – Procedure when bankruptcy application is lodged by a debtor

"...

(4) A shareholder of the debtor ... may rebut the presumption of insolvency ... by means of an appeal against the decision to open bankruptcy proceedings, supplemented by evidence demonstrating that the debtor was not insolvent."

Section 235 – Procedure when bankruptcy application is lodged by a creditor

"...

(2) Within fifteen days from receipt of the creditor's bankruptcy application, the debtor may lodge an objection, asserting that it is not insolvent or that the creditor's claim does not exist.

(3) If the debtor agrees with the creditor's bankruptcy application, or within fifteen days ... does not lodge an objection under subsection (2) of this section or a request

under section 236(1) of this Act, the debtor is considered, unless proved otherwise, to be insolvent.

(4) To rebut the presumption of insolvency in subsection (3) of this section, subsections (3) and (4) of section 234 of this Act shall apply as appropriate."

Section 236 – Deferral request

"(1) A debtor may ... request that the court defer the decision-making process on the creditor's bankruptcy application because it will undertake financial restructuring measures and resolve its insolvency ..."

Section 239 – Decision-making process on opening of bankruptcy proceedings

"...

(2) If the debtor lodges an objection ... the court shall schedule a hearing ...

..."

Section 242 – Decision to open bankruptcy proceedings

"...

(2) If the court issues a decision to open bankruptcy proceedings upon a creditor's bankruptcy application, an appeal against such a decision may also be lodged by a shareholder of the debtor in bankruptcy.

..."

COMPLAINT

24. The applicants complained under Article 1 of Protocol No. 1 that the decision to open bankruptcy proceedings against the E.S. company had been a disproportionate measure because the debt in question had amounted to only EUR 7,000, whereas the company had significant assets.

THE LAW

25. The applicants complained that the decision to open bankruptcy proceedings against E.S. had amounted to a violation of Article 1 of Protocol No. 1, which reads as follows:

"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."

A. Victim status

26. The Government objected to the applicants' victim status. They submitted that E.S. had its own legal personality and was the exclusive owner of its assets. The bankruptcy proceedings had been opened against the company as a legal person, which had been directly affected by the measure complained of by the applicants. The piercing of the company's corporate veil had not been justified because the company itself could have lodged an application with the Court after the Constitutional Court had decided not to accept its constitutional complaint for consideration (see paragraph 18 above; compare and contrast *Vujović and Lipa D.O.O. v. Montenegro*, no. 18912/15, 20 February 2018) and there had been no direct interference with the applicants' equity contributions, nor had they alleged that their rights arising from their equity holdings had been interfered with.

27. The applicants maintained that they had lodged the application with the Court in their own name as the company's shareholders. As such, they had been entitled to a share of the company's profit and to the remainder of its property if the company was dissolved. They submitted that they had lost the property in which they had invested. The company's assets had been sold at a discount in the bankruptcy proceedings. The applicants, who had used their personal property as security for the company's payments, risked losing their savings, income and houses.

28. The Court notes that the applicants complained in essence about the opening of bankruptcy proceedings against a company with a separate legal personality. The question thus arises whether the applicants, as the company's shareholders, may themselves claim to be directly affected by the decision in issue and thus "victims" within the meaning of Article 34 of the Convention (see *Eckle v. Germany*, 15 July 1982, § 66, Series A no. 51).

29. The Court observes that the applicants held 100% of the company's shares (see paragraph 4 above) and were thus the "sole" owners of the company in question (see *Ankarcrona v. Sweden* (dec.), no. 35178/97, ECHR 2000-VI, and *Glas Nadezhda EOOD and Anatoliy Elenkov v. Bulgaria*, no. 14134/02, § 40, ECHR 2007). Consequently, and contrary to the situation in, for example, *Agrotexim and Others v. Greece* (24 October 1995, § 65, Series A no. 330-A), where the applicant companies owned only about half of the shares in the company in question, there is no risk of differences of opinion among shareholders as to the reality of an infringement of the right to the peaceful enjoyment of possessions or as to the most appropriate way of reacting to such an infringement. The Court further observes that the applicants were entitled to pursue remedies in respect of the decision to open bankruptcy proceedings against the company before the domestic courts (see paragraphs 14 and 20 above), which recognised their standing as the company's shareholders (see

paragraphs 12 and 21 above). Therefore, in the Court's opinion, the applicants may reasonably claim to be victims within the meaning of Article 34 of the Convention, in so far as the impugned measures taken with regard to their company are concerned.

B. Non-compliance with the six-month rule and non-exhaustion of domestic remedies

30. The Government submitted that the part of the application concerning the alleged interference with the company's assets had been lodged out of time because the first Constitutional Court decision on the matter (see paragraph 18 above) had been the final domestic decision. Furthermore, they argued that – given the lack of relevant arguments put forward in the objection and appeals against the decision to open bankruptcy proceedings – neither the applicants nor the company had properly exhausted in substance the domestic remedies.

31. The applicants argued that they had exhausted all domestic remedies, including that of a constitutional complaint.

32. The Court notes that the Constitutional Court's decision on the applicants' constitutional complaint against the decision to open bankruptcy proceedings was adopted on 6 September 2016 (see paragraph 21 above). The present application was lodged with the Court on 23 December 2016, less than six months after the final domestic decision had been delivered. The Government's objection in this regard must therefore be dismissed. Moreover, the Court observes that in the proceedings before the domestic courts the applicants argued, *inter alia*, that the decision to open bankruptcy proceedings against E.S. had been disproportionate in relation to the value of the company's assets (see paragraphs 14 and 20 above). It therefore dismisses the Government's objection of failure to exhaust domestic remedies.

C. Abuse of the right of individual application

33. The Government submitted that – by presenting the facts in a biased, incomplete and misleading manner – the applicants had abused the right of application. In particular, they had withheld important facts relating to the company's poor financial situation, including the fact that all the company's assets had been under lien and that its bank accounts had been blocked. Moreover, M.B.'s claim against the company amounted to EUR 35,372, not EUR 7,000 as alleged by the applicants.

34. The applicants maintained that they had based their submissions on M.B.'s bankruptcy application. In any event, they considered her claim to be disproportionately small in relation to the company's assets.

35. The Court notes that, except in extraordinary cases, an application will be rejected as an abuse of the right of application if it was knowingly based on untrue facts (see *Gross v. Switzerland* [GC], no. 67810/10, § 28, ECHR 2014). The Court considers that although the applicants' submissions in their initial application to the Court concerning the bankruptcy proceedings against E.S. and that company's financial situation could have been more exhaustive, they do not give rise to circumstances justifying a decision to declare the application inadmissible as an abuse of the right of individual application.

D. Manifestly ill-founded

1. The parties' submissions

(a) The Government

36. The Government submitted that the decision to open bankruptcy proceedings had not interfered with the applicants' possessions. The company's assets had been insufficient to settle all the creditors' claims and the economic value of their equity holding was zero. The company's opening balance sheet of 29 December 2014 prepared by the liquidator had showed a loss of more than EUR 23,000,000. According to the company's 2013 annual report, E.S. had been operating at a loss for a year before the bankruptcy proceedings had been opened. The majority of the company's assets had existed in the form of liabilities to its creditors, including the applicants' equity contributions, which had been under lien. The company's bank accounts had been mostly blocked from September 2012 until the bankruptcy proceedings had started. Therefore, M.B. could not have obtained the repayment of her claim in enforcement proceedings.

37. Assuming there had been an interference, the Government argued that it had been proportionate to the aim pursued, that of the protection of the creditors. The irrebuttable legal presumption of prolonged illiquidity which had applied in the present case had been introduced in 2009 in reaction to the economic situation in the country. It had been clearly defined in law and had had foreseeable consequences. It had pursued the aim of easing the burden of proof imposed in bankruptcy proceedings on workers as creditors, whose subsistence was put at risk by their insolvent employers. Moreover, the legal framework had pursued the public interest, as the payment of taxes and contributions had been necessary to guarantee public services and social protection.

38. In the Government's submission, the alleged interference had not imposed an excessive burden on the applicants. The company had been illiquid for an extended period of time and had had its transaction accounts blocked. M.B. had been only one of the creditors; BAMC had also lodged a bankruptcy application and seventy-six creditors had submitted their claims

in the bankruptcy proceedings. The company had failed to indicate any financial restructuring measures it had taken to overcome the difficulties resulting from its illiquidity over an extended period of time and had not requested a deferral. The applicants could have influenced the management of the company's operations. Moreover, in accordance with the Law on rescue and restructuring aid for companies in difficulty, the State provided assets to companies in financial difficulties to facilitate their survival.

(b) The applicants

39. In their application form, the applicants maintained that the company had not been obliged to pay M.B.'s wages because she had been employed by her own company. In their observations to the Court, they submitted that the company had had many other employees who had all known that the delayed payments would be settled once the Koper investment building was sold on the market. They also submitted that M.B. could have left the company. Moreover, she should have attempted to enforce her debt in enforcement proceedings. In this connection, they submitted that the Koper investment building had been valued at EUR 42,500,000 by a court expert in construction matters in September 2012. In the bankruptcy proceedings, that same building had been sold for around EUR 20,000,000 to BAMC, the company's largest creditor. Moreover, the company's bank deposits had amounted to more than EUR 1,400,000. The total value of the company's assets before the bankruptcy proceedings were opened had been EUR 47,638,848, thereby exceeding the amount of the claims which had later been recognised in the bankruptcy proceedings (EUR 46,005,257).

40. In their observations to the Court, the applicants acknowledged that at the time the bankruptcy proceedings had been opened, the company had not had any liquid assets to settle M.B.'s claim, nor had it been able to undertake restructuring measures. It had not been able to provide any evidence to avoid the bankruptcy proceedings. All the company's assets had been tied up in the Koper investment building, which had been completed and ready for sale. They maintained that the debtor had needed a few months to sell its property and repay the debts. Nonetheless, having regard to the value of M.B.'s claim on the one hand and the value of the company's assets on the other, the courts should have rejected her bankruptcy application in accordance with the principle of proportionality.

2. The Court's assessment

41. The Court reiterates that any interference with the peaceful enjoyment of possessions must strike a fair balance between the demands of the general interests of the community and the requirements of the protection of the individual's fundamental rights. The concern to achieve this balance is reflected in the structure of Article 1 of Protocol No. 1 as a

whole. The requisite balance will not be found if the person concerned has had to bear an individual and excessive burden (see *Sporrong and Lönnroth v. Sweden*, 23 September 1982, §§ 69 and 73, Series A no. 52). In other words, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see *James and Others v. the United Kingdom*, 21 February 1986, § 50, Series A no. 98).

42. Turning to the present case, the Court observes, firstly, that the decision to open bankruptcy proceedings deprived the E.S. company of the right to administer and deal with its possessions and that, regardless of whether or not it led to the discounted sale of the company's assets, it therefore amounted to control of the use of property within the meaning of the second paragraph of Article 1 of Protocol No. 1 (see *Albertsson v. Sweden* (dec.), no. 41102/07, 7 February 2012).

43. The Court further notes that the decision to open bankruptcy proceedings against the company was taken by the Nova Gorica District Court and upheld by the Ljubljana Higher Court in accordance with the provisions of the Insolvency Act (see paragraph 23 above). Thus, the interference with the company's possessions was based on law. The impugned decision was, moreover, intended to secure payment to the company's creditors. The interference therefore pursued a legitimate aim that was in accordance with the general interest, namely the protection of the rights of others (see, among others, *Luordo v. Italy*, no. 32190/96, § 68, ECHR 2003-IX). The Court must now determine whether it struck a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights.

44. The Court observes that the essence of the applicants' complaint is that the domestic courts should have rejected M.B.'s bankruptcy application because the debt in question was insignificant compared to the significant assets of the company. It finds the following considerations to be of particular importance.

45. Firstly, the decision to open bankruptcy proceedings was taken in adversarial proceedings, during which the company and the applicants had the opportunity to submit evidence and arguments to challenge the presumption of illiquidity before the domestic courts, but they apparently failed to do so (see paragraphs 7 and 10 above). The impugned District Court decision was well reasoned and the applicants were entitled to a full review by an appellate court (see paragraphs 11-19 above). Thus, the Court considers that the proceedings viewed as a whole afforded them a reasonable opportunity of putting their case to the competent authorities with a view to establishing a fair balance between the conflicting interests at stake.

46. Secondly, as regards the merits of M.B.'s claim, the Court notes that the domestic courts based their findings relating to M.B.'s employment status and the existence of her outstanding claim against the company on the

documentary evidence issued by the competent authorities (see paragraph 11 above). In the domestic proceedings, the applicants argued that M.B.'s claim did not exist and that she was not employed by the company. However, they did not provide any evidence in support of their allegations, which therefore remained unsubstantiated. Moreover, nothing in the case file suggests that the domestic courts erred in their findings. In the light of this, the Court accepts that at the relevant time M.B. was employed by the company, which had failed to pay her wages and contributions between January 2013 and September 2014.

47. Lastly, as regards the question whether – given the company's situation – it was justified to open the bankruptcy proceedings, the Court notes that the domestic courts established the company's insolvency on the basis of the irrebuttable presumption of prolonged illiquidity under section 14(4) of the Insolvency Act (see paragraph 23 above) and not on the basis of the value of the company's assets. However, the Court cannot ignore the fact that, according to the company's opening balance sheet of 29 December 2014, the company's liabilities far exceeded its assets. Moreover, the company had been operating at a loss the year before the bankruptcy proceedings had been opened. Its bank accounts were blocked and its main investment project was under lien. There is nothing in the case file to suggest that M.B. could have successfully obtained the payment of her debt in enforcement proceedings or that she could have availed herself of another potentially suitable and effective measure (compare and contrast *Vaskrsić v. Slovenia*, no. 31371/12, §§ 81 and 83-86, 25 April 2017).

48. The Court also cannot overlook the fact that the applicants themselves acknowledged that, at the relevant time, the company had not been able to settle M.B.'s claim (see paragraph 40 above) and that M.B. was not the only one lodging a bankruptcy application: a major creditor (BAMC), whose claims had not been settled, did the same only a short time after her (see paragraph 8 above). Moreover, the Court notes that neither the company nor the applicants made use of the opportunities available to them with a view to avoiding the opening of bankruptcy proceedings, in particular a deferral request, despite being served with the relevant decisions and being invited to avail themselves of such opportunities (see paragraph 7 above). In this connection, the Court notes that the submissions made before the Nova Gorica District Court with respect to the value of the company's assets and financial measures were made belatedly and, in any event, rejected as unfounded (see paragraphs 10-12 above). The applicants' argument that the value of the company's assets far exceeded its debts and that the impugned measure was disproportionate is therefore unfounded.

49. Having regard to all of the above and reiterating that the national authorities enjoy a wide margin of appreciation in the field of economic policies (see, *mutatis mutandis*, *Acar and Others v. Turkey* (dec.), nos. 26878/07 and 32446/07, § 33, 12 December 2017), the Court finds that

the decision to open bankruptcy proceedings against the E.S. company did not impose an individual and excessive burden on the applicants. The courts cannot therefore be said to have failed in their duty to strike a fair balance between the applicants' proprietary interest and the general interests of the community.

It follows that this application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 26 November 2020.

Hasan Bakırcı Deputy Registrar	Valeriu Griţco President