



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

FIRST SECTION

CASE OF VUJOVIĆ AND LIPA D.O.O. v. MONTENEGRO (No. 2)

(Application no. 43050/22)

JUDGMENT

Art 6 § 1 (civil) • Fair hearing • Repeated refusal of Court of Appeal to comply with Constitutional Court's rulings concerning the wrongful opening of insolvency proceedings in respect of the applicant company • Constitutional Court's analysis comprehensive and convincing • Court of Appeal's rulings on four occasions insufficiently reasoned and arbitrary

Art 6 § 1 (civil) • Reasonable time • Excessive length of proceedings • Total length of proceedings mainly caused by the cumulative effect of the Court of Appeal failing to comply with the Constitutional Court's decisions contrary to domestic law

Art 1 P1 • Peaceful enjoyment of possessions • Sale of most of the applicant company's properties as a result of the opening of insolvency proceedings and the Court of Appeal repeatedly upholding that decision • Applicants not afforded a reasonable opportunity of putting their claims to the domestic authorities to effectively challenge the impugned interference • Length of proceedings had a direct impact on their Art 1 P1 rights • Delay imposed excessive individual burden on the applicants • Fair balance between competing interests upset • State's failure to discharge positive obligation to set up a proper forum allowing the applicants to assert their rights effectively

Prepared by the Registry. Does not bind the Court.

STRASBOURG

27 November 2025

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Vujović and Lipa D.O.O. v. Montenegro (no. 2),

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

Erik Wennerström, *President*,

Ivana Jelić,

Raffaele Sabato,

Frédéric Krenc,

Davor Derenčinović,

Artūrs Kučs,

Anna Adamska-Gallant, *judges*,

and Ilse Freiwirth, *Section Registrar*,

Having regard to:

the application (no. 43050/22) against Montenegro lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Montenegrin national, Mr Milorad Vujović (“the applicant”), and a limited liability company registered in Montenegro, Lipa D.O.O. (“the applicant company”), on 13 August 2022;

the decision to give notice to the Montenegrin Government (“the Government”) of the complaints concerning the applicants’ right to a fair trial under Article 6 of the Convention, and an alleged unlawful interference with their right to the peaceful enjoyment of their property under Article 1 of Protocol No. 1 to the Convention, and to declare the remainder of the application inadmissible;

the parties’ observations;

Having deliberated in private on 4 November 2025,

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

INTRODUCTION

1. The application concerns the fairness and the length of the insolvency proceedings in respect of the applicant company under Article 6 of the Convention, and an alleged unlawful interference with the applicants’ right to the peaceful enjoyment of their property under Article 1 of Protocol No. 1 to the Convention.

THE FACTS

2. The applicant was born in 1956 and lives in Cetinje. The applicant company was founded in Cetinje in 2002. The applicant is the founder, sole owner and executive director of the applicant company. The applicants were represented by Mr B. Radović, a lawyer practising in Cetinje.

3. The Government were represented by their Agent, Ms K. Peković.

4. The facts of the case may be summarised as follows.

I. INSOLVENCY PROCEEDINGS IN RESPECT OF THE APPLICANT COMPANY

5. On 27 December 2013 the Podgorica Commercial Court (*Privredni sud*) opened insolvency proceedings (*stečajni postupak*) in respect of the applicant company at the request of a secured creditor (*razlučni povjerilac* – see paragraph 41 below), X (a company).

6. On 23 January 2014 the applicant company appealed against that decision arguing, in substance, that X did not have legal standing to request the opening of insolvency proceedings as it was a secured creditor. It referred, *inter alia*, to sections 49(1), 50(1) and 53(4) of the Insolvency Act (see paragraphs 39-41 below).

7. On 18 March 2014 the Podgorica Court of Appeal (*Apelacioni sud*) rejected the applicant company's appeal (*žalba se odbacuje*). As a result, the insolvency proceedings against the applicant company continued.

8. On 23 July 2014 the Constitutional Court rejected a constitutional appeal lodged by the applicants.

9. On 14 April 2015 the applicants lodged an application with the Court complaining that the Court of Appeal had refused to examine their appeal on the merits. Following this Court's finding of a violation of Article 6 owing to a lack of access to a court (see *Vujović and Lipa D.O.O. v. Montenegro*, no. 18912/15, §§ 41-44, 20 February 2018), the applicant sought the re-opening of domestic proceedings concerning X's legal standing to request the opening of insolvency proceedings on 1 October 2018.

10. On 29 November 2018 the Court of Appeal re-opened those proceedings and upheld the Commercial Court's decision of 27 December 2013. The court held, in particular, that section 56(1) of the Insolvency Act in force at the time had provided that insolvency proceedings could be initiated at the request of a creditor, debtor or liquidator (see paragraph 42 below), meaning it had not excluded the right of secured creditors to make such a request.

11. On 16 January 2019 the applicants filed a constitutional appeal concerning the Court of Appeal's interpretation of the relevant provisions and maintained, in particular, that X, as a secured creditor, could not request the opening of insolvency proceedings. They also referred to the unreasonable length of the insolvency proceedings.

12. On 3 November 2020 the Constitutional Court ruled in favour of the applicants and quashed the Court of Appeal's decision (see paragraph 10 above) and referred the case back to it. It held, in substance, that the courts had had a formalistic approach when interpreting the relevant legislation. It considered that the courts' findings in the applicants' case had been constitutionally unacceptable in view of the legal nature of X's claim, which had been secured, and which had made X a secured creditor, owing to which it could not be an insolvency creditor (*stečajni povjerilac*) and therefore could

not request the opening of insolvency proceedings. The court found that the Court of Appeal had ruled in an arbitrary manner, thus violating the applicants' right to a fair trial under Article 6 of the Convention.

13. On 19 January 2021 the Court of Appeal dismissed the applicant company's appeal and upheld the Commercial Court's decision of 27 December 2013. It repeated its earlier findings (see paragraph 10 above) and held that the legal nature of the creditor's claim was irrelevant for opening insolvency proceedings, it being relevant only for how the claims would be satisfied. The court also found that section 77(2) of the Constitutional Court Act (see paragraph 38 below) did not mean that the Court of Appeal had to rule differently because of the reasons given by the Constitutional Court.

14. On 22 February 2021 the applicants lodged another constitutional appeal. The complaints concerned the alleged arbitrary reasoning of the Court of Appeal, its non-compliance with the Constitutional Court decision and the length of the proceedings. The applicants also complained of a violation of the peaceful enjoyment of their property. They submitted that the court's actions had amounted to an unlawful (*nedozvoljeno*) interference of the State with their right to property, which had caused them millions of euros in damage. They relied on Article 6 of the Convention and Article 1 of Protocol No. 1 thereto.

15. On 25 May 2021 the Constitutional Court ruled in favour of the applicants and quashed the Court of Appeal's decision of 19 January 2021 (see paragraph 13 above). It specified that it had examined the constitutional appeal under Article 6 of the Convention only. The Constitutional Court, in substance, reiterated the reasoning from its earlier decision (see paragraph 12 above), and found that the Court of Appeal had ruled in an arbitrary manner, thus violating Article 6. It also found that the Court of Appeal had failed to comply with the reasons given by the Constitutional Court and stressed the obligation to comply with and enforce the decisions of the Constitutional Court. It referred to Article 151 § 3 of the Constitution and sections 3, 52(1), and 76(1) of the Constitutional Court Act (see paragraphs 33 and 35-37 below). It also held that the enforcement of its decision did not mean merely formally delivering a new decision, as the Court of Appeal had done in the case at hand, but meant acting and deciding in accordance with the legal reasons given in the Constitutional Court decision that was to be enforced, as provided by section 77(2) of the Constitutional Court Act.

16. On 6 July 2021 the Court of Appeal dismissed the applicant company's appeal and upheld the Commercial Court's decision of 27 December 2013, repeating its earlier reasoning. It specified that the Insolvency Act in force at the relevant time, which was applicable in the applicants' case, had not provided that the insolvency proceedings could be opened at the request of an insolvency creditor, unlike the Insolvency Act as amended in 2016. It referred to sections 50 and 53(1) of the Insolvency Act (see paragraphs 40-41 below). Creditors could therefore be both unsecured

and secured, and both categories had the right to request the opening of insolvency proceedings regardless of the legal nature of their claim, given that the legislation had made no distinction between them in that regard. The court referred to the statutory amendments from 2016, which had deprived a secured creditor of his or her right to request the opening of insolvency proceedings, and to the relevant case-law from before the legislative amendments in 2016 (see paragraphs 42 and 50 below), which, it held, supported its conclusion. Notably, up to that point the insolvency proceedings had also been opened following requests from secured creditors, and acting differently in the applicants' case would have been contrary to the case-law, which would have entailed a violation of the right to a fair trial. The court also held that the Insolvency Act made a distinction between those who could request the opening of insolvency proceedings and the parties to such proceedings. The fact that section 49(1) provided that parties to the insolvency proceedings were an insolvency debtor and an insolvency creditor did not mean that they were also authorised to request the opening of insolvency proceedings; section 56(1) specified who could make that request and covered a wider range of individuals.

17. The Court of Appeal also held that section 77(2) of the Constitutional Court Act did not mean that it had to rule differently on the basis of the reasons given by the Constitutional Court or act contrary to the imperative norms of the Insolvency Act in force at the relevant time. The court held that it had taken into account the reasons given by the Constitutional Court, and that it had not merely formally delivered a new decision but had applied the provisions which had been in force at the relevant time, as explained in detail in the decisions. It had also provided reasons not only in respect of whether X could request the opening of insolvency proceedings, but also whether other statutory conditions for it had been met.

18. On 30 August 2021 the applicants lodged another constitutional appeal relying on Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention. They maintained, in substance, that the courts had continued to disregard the Constitutional Court decisions, that the proceedings had been unreasonably long and that the opening of insolvency proceedings had amounted to an unlawful interference with their right to property, which had caused them enormous pecuniary damage and costs.

19. On 22 February 2022 the Constitutional Court examined the constitutional appeal under Article 6 of the Convention only, ruled in favour of the applicants and quashed the Court of Appeal's decision (see paragraphs 16-17 above). In substance, it repeated its earlier findings and held that a secured creditor could not have the same status as an insolvency creditor and therefore could not request the opening of insolvency proceedings. The court also held that the intention of the legislature had been clear both before and after 2016 as to who could request the opening of insolvency proceedings, which the Court of Appeal had not taken into account, and thus it had

arbitrarily interpreted the relevant provisions in breach of Article 6. As for the earlier case-law referred to by the Court of Appeal, the Constitutional Court reaffirmed that it had not been bound by the legal understanding of regular courts, nor had it been within its jurisdiction to compare and assess various legal arguments, except in the context of whether there was a mechanism to harmonise inconsistent case-law, which had not been the subject of the case at hand. The Constitutional Court stressed that there was an obligation to comply with and enforce its decisions.

20. On 15 April 2022 the Court of Appeal dismissed the applicant company's appeal and upheld the Commercial Court's decision of 27 December 2013. It repeated all its earlier findings (see paragraphs 10, 13, 16 and 17 above), including that the debtor had been insolvent for some time, and referred to sections 49, 50, 53(1) and 56(1) of the Insolvency Act in force at the relevant time. It further held that even the latest 2016 amendments had not completely excluded the possibility for a secured creditor to request the opening of insolvency proceedings, as it had been possible in some special circumstances. It also referred to the principle of legal certainty, which was implicit in the Convention and was a key element of the rule of law, and held that ruling differently in identical situations would amount to a violation of the principle of legal certainty, which also guaranteed a certain level of stability and contributed to public confidence in the courts. It referred to the Court's case-law finding violations of Article 6 because of the inconsistent practice of the highest courts. It considered that depriving a person who could request an opening of the insolvency proceedings of the right to do so would entail a breach of Article 6 of the Convention, as it would be contrary to the earlier case-law in identical cases. The court also held that the Insolvency Act in force at the relevant time had been accessible, foreseeable and formulated in a sufficiently precise manner, including in respect of who had what powers.

21. On 11 July 2022 the Constitutional Court ruled in favour of the applicants and quashed the Court of Appeal's decision of 15 April 2022 (see paragraph 20 above). The applicants did not enclose the relevant Constitutional Court decision, but it is clear from the case file that the Constitutional Court held that the courts had had a too formalistic approach and that the legislature's intention had been clear both before and after the 2016 amendments as to who could request the opening of insolvency proceedings, which the Court of Appeal had not taken into account and had thus arbitrarily interpreted the relevant provisions of the Insolvency Act. Even if a secured claim could not be satisfied it did not automatically authorise a secured creditor to request the opening of insolvency proceedings without having previously carried out a relevant procedure, namely a court or out-of-court sale of mortgaged property. It further found that the interpretation of the relevant law in each case could not be the result of its arbitrary application, but it had to comply with the requirements for the right to a fair trial as provided in Article 6 of the Convention. The court reiterated

that the courts had to interpret legal provisions starting from the intention and purpose that the legislature aimed to achieve with them and apply the provision in accordance with that purpose, taking into account all the circumstances of a specific case. It also held that the Constitutional Court findings were binding.

22. On 24 November 2022 the Court of Appeal ruled in favour of the applicants, quashed the Commercial Court's decision of 27 December 2013 and ordered a re-examination of the case (*vraća na ponovni postupak*). It held that in view of the reasons given by the Constitutional Court on 11 July 2022 (see paragraph 21 above) the Commercial Court's decision had provided no reasoning on decisive facts, as a result it could not be properly examined and consequently the substantive law had not been properly applied (*izostala pravilna primjena materijalnog prava*).

23. On 29 November 2022 the Commercial Court rejected X's request (*odbacuje se kao nedozvoljen*) to open insolvency proceedings in respect of the applicant company. It found, in particular, that X had no legal standing to make such a request, as it was a secured creditor and had a mortgage on specific property belonging to the applicant company. The court held that a secured claim, even if not satisfied, did not automatically authorise such a creditor to request the opening of insolvency proceedings, without previously having attempted to sell the mortgaged property. The court further found that the legislature's intention in respect of who could request the opening of insolvency proceedings was that they could be insolvency creditors, a debtor or a liquidator. That was because the secured creditors had other mechanisms to satisfy their claims, which did not include requesting the opening of insolvency proceedings, unless they waived their privileged status as secured creditors, by which they would become unsecured creditors. The court also found that in the course of the insolvency proceedings most of the applicant company's property had been sold.

24. On 19 January 2023, following an appeal of company Y (legal successor of X), the Court of Appeal upheld the Commercial Court's decision and its reasoning.

II. OTHER RELEVANT FACTS

25. In the course of the insolvency proceedings claims of seventy creditors were established and acknowledged, amounting to more than 19,600,000 euros (EUR) in total. Six of those seventy creditors were secured creditors.

26. The total value of the property sold in the course of the insolvency proceedings was EUR 3,317,847.31.

27. On 11 September 2023 a bailiff (*javni izvršitelj*) issued an enforcement order at the request of a creditor, Z, against the applicant company in order to satisfy Z's claim of EUR 5,635,269.89 and the

accompanying statutory interest. The decision specified that the enforcement would be executed on the applicant company's funds in the banks, movable property and/or real estate.

28. On 11 December 2023 the applicant company lodged an action against the State and Y (see paragraph 24 above) and claimed damages of EUR 1,279,089.73. It maintained that during the insolvency proceedings it could not conduct its business, causing its debt to Z during that time to increase by EUR 1,279,089.73 to EUR 5,635,269.89. The applicant company specified in the action that it had ceded (*ustupio*) the claim in question to a third party, but that it had also agreed in a relevant contract (on cession of the claim) to initiate and actively participate in the proceedings, and that the third party would join the applicant in the proceedings (*prijemnik potraživanja [će se] uključiti na strani tužioca*) once they had been initiated.

29. On 6 and 12 January 2024, respectively, W (a company), on the basis of a contract by which it purchased from the applicant company a disputed right, filed two claims with the Commercial Court against the State and Y seeking compensation for: (a) the market value of the applicant company's real estate which had been sold during the insolvency proceedings; and (b) the market value of the lease (*zakupa*) of the real estate which the applicant company could not use during the insolvency proceedings.

30. In all three cases (see paragraphs 28 and 29 above) the Commercial Court declared that it lacked jurisdiction (*oglasio stvarno nenadležnim*) and transferred them to the Cetinje Court of First Instance (*Osnovni sud*).

31. In November 2024 all three civil proceedings were pending before the first-instance court.

32. By 20 January 2025 the enforcement order of 11 September 2023 had not yet been executed *via* the public bailiff in question (see paragraph 27 above).

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT LEGAL FRAMEWORK

A. Constitution of Montenegro (*Ustav Crne Gore*; published in the Official Gazette of Montenegro – OGM – nos. 001/07 and 038/13)

33. Article 151 § 3 of the Constitution provides that the decision of the Constitutional Court is binding and enforceable.

B. The Montenegro Constitutional Court Act (*Zakon o Ustavnom sudu Crne Gore*; published in the OGM nos. 011/15 and 055/19)

34. This Act entered into force on 20 March 2015.

35. Section 3 provides that all persons must comply with the decisions of the Constitutional Court. Positions expressed in the Constitutional Court decisions are binding for all State bodies, State administration bodies, local self-government bodies such as local governments, legal entities and other entities exercising public authority.

36. Section 52(1) provides that the State authorities, State administration bodies, local self-government bodies such as local governments, legal entities and other entities exercising public authority shall, within their competence, enforce the decisions of the Constitutional Court, and that their enforcement, when necessary, is ensured by the Government of Montenegro.

37. Section 76 provides that when the Constitutional Court finds that a disputed decision has breached a human right or freedom guaranteed by the Constitution, it will accept the constitutional appeal and quash that decision, in whole or in part, and remit the case for re-examination to the authority that delivered the quashed decision.

38. Section 77(2) provides that when the Constitutional Court quashes an individual decision and remits the case, the competent authority shall comply with the legal reasons given by the Constitutional Court and issue a decision in a retrial within a reasonable time.

C. Insolvency Act (*Zakon o stečaju*; published in the OGM nos. 001/11, 053/16, 032/18, 062/18 and 001/22)

39. Section 49 provided at the time that the parties to the insolvency proceedings were an insolvency debtor and insolvency creditors (*stečajni povjerioci*).

40. Section 50 provides that an insolvency creditor is a person who, on the day of the initiation of insolvency proceedings, has an unsecured claim against an insolvency debtor.

41. Section 53(1) provides that a secured creditor is a creditor who has a lien (*založno pravo*) or a right of settlement on things or rights in respect of which public books or registers are kept. Paragraph 2 provides that secured creditors have the right to satisfy their claims from the funds acquired by the sale of the secured assets (*prodajom imovine na kojoj su stekli razlučna prava*). Paragraph 4 provides that the secured creditors are not insolvency creditors. If the amount of their claim is higher than the amount obtained by the liquidation of things or rights serving as a guarantee, they are entitled to the difference in the amount as insolvency creditors.

42. Section 56(1) provided at the relevant time that insolvency proceedings were initiated at the request of a creditor, debtor or liquidator. By amendments in August 2016 this section was amended so as to provide that insolvency proceedings could be initiated at the request of an insolvency creditor, debtor or liquidator.

D. Right to a Trial within a Reasonable Time Act (*Zakon o zaštiti prava na suđenje u razumnom roku*; published in the OGM no. 11/07)

43. This Act entered into force on 21 December 2007. It provides, under certain circumstances, the possibility to have lengthy proceedings expedited by means of a request for review (*kontrolni zahtjev*), as well as an opportunity for claimants to be awarded compensation by means of an action for fair redress (*tužba za pravično zadovoljenje*).

44. Section 2 provides that a party and an intervener in civil proceedings, a party and an interested party in an administrative dispute, as well as a defendant and an injured party in criminal proceedings are entitled to judicial protection for a violation of the right to a trial within a reasonable time, if the proceedings relate to the protection of their rights within the meaning of the Convention.

45. Sections 9, 10, 14 and 16, taken together, provide, in so far as relevant, that a request for review is to be submitted to the court before which the case is pending and must contain, *inter alia*, the data and circumstances indicating that the court is unjustifiably delaying the proceedings. The president of the relevant court rules on requests for review, and he or she will dismiss a request when he or she establishes that it is clearly unfounded or that the court has not violated the right to a trial within a reasonable time.

46. Section 33 provides, *inter alia*, that an action for fair redress can be lodged by a party who has previously made use of a request for review, as well as a party who objectively could not make use of it. The action for fair redress is to be filed with the Supreme Court no later than six months after the date of receipt of the final decision rendered in the impugned proceedings.

47. Section 34 provides for compensation of between EUR 300 and EUR 5,000 in respect of non-pecuniary damage caused by a violation of the right to a trial within a reasonable time.

48. Section 43 provides that the right to compensation for pecuniary damage caused by a violation of the right to a trial within a reasonable time is exercised by filing an action in civil proceedings before a competent court, applying the general rules on compensation for damage.

E. Obligations Act (*Zakon o obligacionim odnosima*; published in OGM nos. 047/08, 004/11, and 022/17)

49. Section 166(1) provides that a legal entity is liable for any damage caused by one of its bodies while exercising its duties or related activities.

II. RELEVANT DOMESTIC PRACTICE

50. Between 27 June 2011 and 12 June 2015 the Commercial Court opened insolvency proceedings in ten cases (in respect of various debtors)

following requests submitted by various secured creditors. Between 6 May 2014 and 17 July 2015 the Court of Appeal upheld at least three of those decisions.

51. On 15 May 2019 the Court of Appeal quashed a decision of the Commercial Court opening insolvency proceedings at the request of a secured creditor. It referred to section 56(1) of the Insolvency Act, which provided that secured creditors could not request the opening of insolvency proceedings (see paragraph 42 above).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

52. The applicants complained under Article 6 of the Convention that the insolvency proceedings had been unfair and unreasonably long, in particular the repeated decisions of the Court of Appeal had been insufficiently reasoned and arbitrary, as well as contrary to the findings of the Constitutional Court.

53. The relevant part of Article 6 reads as follows:

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

A. Fairness of proceedings

1. *The parties' submissions*

(a) The Government

54. The Government submitted that even though the Court of Appeal had interpreted and applied the relevant law differently from the Constitutional Court, it had nevertheless carefully examined every time the reasons for the Constitutional Court quashing its earlier decisions and had explained in detail why it had not accepted them. Thus the Government argued that it could not be said that the Court of Appeal and Commercial Court decisions had been arbitrary or unlawful. The Government maintained that all the Court of Appeal's decisions had been examined by the Constitutional Court, and the proceedings had finally been concluded by rejecting X's request.

(b) The applicants

55. The applicants, in substance, reaffirmed their complaint. In particular, they stated that the Court of Appeal had acted arbitrarily and had not provided sufficient reasoning in its decisions in a constitutionally acceptable manner. They maintained that it was a matter of legal certainty and that in persistently failing to comply with the decisions of the Constitutional Court, the Court of Appeal had violated a constitutional order.

2. *The Court's conclusion*

(a) **Admissibility**

56. Even though the respondent Government did not raise an objection in respect of the applicants' victim status, the Court can examine the question of victim status *ex officio*, since it concerns a matter which goes to the Court's jurisdiction (see *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, § 70, 5 July 2016, and *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, § 93, 27 June 2017).

57. The Court considers that the question of whether the applicants have preserved their victim status in the present case, in view of the Constitutional Court's repeated acknowledging that the Court of Appeal had ruled in an arbitrary manner, thereby violating Article 6, is closely linked to the substance of their complaint, and will therefore examine it together with the merits of the complaint.

58. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

(b) **Merits**

59. The Court reiterates that it is not its task to take the place of the domestic courts. It is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation. The Court is not a court of appeal from the national courts and it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. 55391/13 and 2 others, § 186, 6 November 2018, with further references).

60. The Court should not act as a court of fourth instance and will not therefore question under Article 6 § 1 the national courts' assessment, unless their findings can be regarded as arbitrary or manifestly unreasonable (see *López Ribalda and Others v. Spain* [GC], nos. 1874/13 and 8567/13, § 149, 17 October 2019, with further references).

61. Turning to the present case, the Court notes that while it cannot be said that the Court of Appeal's decisions delivered between 29 November 2018 and 15 April 2022 lacked any reasoning altogether (see paragraphs 10, 13, 16-17 and 20 above) it is clear that such reasoning was considered, on four occasions, as arbitrary by the Constitutional Court and, as such, in violation of Article 6 of the Convention (see paragraphs 12, 15, 19 and 21 above). The Constitutional Court also referred on several occasions to the relevant provision of the Constitutional Court Act, providing that the Constitutional Court decisions were binding and had to be complied with (see paragraphs 15, 19 and 21 above). However, it was only after four remittals

by the Constitutional Court and after the application had been lodged with this Court that the Court of Appeal finally complied with the Constitutional Court's ruling, which ultimately led to the Commercial Court's rejection of X's request to open insolvency proceedings in respect of the applicant company, a decision which was later upheld by the Court of Appeal (see paragraphs 23-24 above).

62. The Court reiterates that it falls first to the national authorities to redress any violation of the Convention. In this regard, the question whether an applicant can claim to be the victim of the violation alleged is relevant at all stages of the proceedings under the Convention (see, *inter alia*, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 179, ECHR 2006-V, and *Kurkut and Others v. Türkiye*, nos. 58901/19 and 6 others, § 85, 25 June 2024). A decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a "victim" for the purposes of Article 34 of the Convention unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see, *inter alia*, *Eckle v. Germany*, 15 July 1982, § 66, Series A no. 51, and *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI). As to the redress which has to be afforded to an applicant in order to remedy a breach of a Convention right at national level, the Court has generally considered this to be dependent on all the circumstances of the case, having regard, in particular, to the nature of the Convention violation found. In cases in which the Convention violation has caused significant pecuniary or non-pecuniary damage to the applicant, the Court has further found it decisive for an applicant's loss of victim status that the latter had received the payment of compensation which was reasonable as to quantum (compare *Busa v. Hungary*, no. 28453/95, Commission decision of 15 January 1997, in respect of a complaint under Article 3 against excessive use of force by the police; *Murillo Saldias and Others v. Spain* (dec.), no. 76973/01, 28 November 2006, concerning a breach of the administrative authorities' positive obligations under Article 2; and *Dalban*, cited above, § 44, in respect of a conviction in breach of Article 10). The Court notes in that regard that the applicants in the present case suffered significant pecuniary damage (see paragraph 26 above; contrast *Gorizdra v. Moldova* (dec.), no. 53180/99, 2 July 2002; *Angelova v. Russia*, no. 33820/04, §§ 50-51, 13 December 2007; *Panchenko v. Ukraine* (dec.), no. 13706/02, 17 February 2009), and that they received no compensation in that respect yet (contrast *Murillo Saldias and Others*, cited above), the relevant proceedings in that regard being currently ongoing (see paragraphs 28-31 above). As no redress has been provided to the applicants, the Court considers that they have not lost their victim status.

63. In view of the above, in particular the comprehensive and convincing analysis of the Constitutional Court (see paragraphs 12, 15, 19 and 21 above), the Court sees no reason to depart from the Constitutional Court's conclusions in respect of the reasoning of the Court of Appeal's decisions

(see, *mutatis mutandis*, *Károly Nagy v. Hungary* [GC], no. 56665/09, §§ 60 and 62, 14 September 2017, and *X and Others v. Russia*, nos. 78042/16 and 66158/14, § 48, 14 January 2020). It therefore finds a violation of Article 6 of the Convention owing to the repeated insufficient and arbitrary ruling of the Court of Appeal.

B. Length of proceedings

1. Admissibility

(a) The parties' submissions

(i) The Government

64. The Government submitted that the applicants had not exhausted all effective domestic remedies. Notably, they had failed to make use of a request for review and an action for fair redress under the Right to a Trial Within a Reasonable Time Act (see paragraphs 43 and 45-46 above) before the Commercial Court and the Court of Appeal, remedies which were also available in insolvency proceedings, as those were civil proceedings too. The Government maintained that a party could make use of an action for fair redress even when they could not lodge a request for review (see paragraph 46 above). The Government also averred that the applicants could avail themselves of a claim for compensation in respect of pecuniary damage caused by a violation of the right to a trial within a reasonable time pursuant to section 43 of the same Act (see paragraph 48 above), which they had failed to do.

(ii) The applicants

65. The applicants contested the Government's submissions. In particular, the Right to a Trial Within a Reasonable Time Act only provided for two remedies: a request for review and an action for fair redress which, if successful, was limited to compensation of EUR 5,000 for non-pecuniary damage (see paragraph 47 above). That was ineffective in a case involving insolvency proceedings lasting decades during which the property of the applicant company, worth over EUR 9 million, had been significantly misappropriated or destroyed.

66. The applicants also maintained that the legal basis for a civil claim for pecuniary damages on various grounds had only started to exist after the decision to reject X's request to open insolvency proceedings had become final on 19 January 2023, which had been after the application had already been lodged with the Court on 13 August 2022.

(b) The Court's assessment

(i) The relevant principles

67. The relevant principles as regards the exhaustion of domestic remedies are set out in *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* ([GC], no. 21881/20, §§ 138-45, 27 November 2023). In particular, Article 35 § 1 requires that the complaints intended to be made subsequently in Strasbourg should have been made to the appropriate domestic body, at least in substance (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 72 *in limine*, 25 March 2014, and the authorities cited therein). To be effective, a remedy must be capable of directly redressing the impugned state of affairs and must offer reasonable prospects of success (see *Communauté genevoise d'action syndicale (CGAS)*, cited above, § 139, and the authorities cited therein). The Court has frequently underlined the need to apply the exhaustion rule with some degree of flexibility and without excessive formalism. It has further agreed that the rule on exhaustion of domestic remedies is neither absolute nor capable of being applied automatically; in reviewing whether it has been observed it is essential to have regard to the particular circumstances of each individual case (*ibid.*, § 140).

68. The Court also reiterates that although there may be exceptions justified by particular circumstances of a case, the assessment of whether domestic remedies have been exhausted is normally carried out with reference to the date on which the application was lodged with the Court (see *Baumann v. France*, no. 33592/96, § 47, ECHR 2001-V (extracts)).

(ii) The Court's assessment

69. The Court observes that at the time when the application was lodged in the present case, on 13 August 2022, the domestic proceedings were ongoing before the Court of Appeal for the fifth time (see paragraphs 21-22 above), and that the applicant's main concern at the time was to expedite the proceedings and put an end to repeated remittals.

70. The Court notes that the Right to a Trial Within a Reasonable Time Act provides, under certain circumstances, the possibility to have lengthy proceedings expedited by means of a request for review (see paragraph 43 above). It also provides that the president of the relevant court decides on requests for review in respect of the proceedings ongoing before that court (see paragraph 45 above). The Court considers that, in the specific circumstances of the present case, the use of a request for review before each court could not have expedited the overall length of the proceedings and, in any event, would not have prevented the repeated remittals of the case and the alleged consequent overall delay, which is the issue in the present case (see *Stanka Mirković and Others v. Montenegro*, nos. 33781/15 and 3 others,

§ 47 *in fine*, 7 March 2017), because of which the applicants were dispensed from the obligation to exhaust that particular remedy.

71. The Court further notes that an action for fair redress and a compensation claim pursuant to section 43 of the Right to a Trial Within a Reasonable Time Act and general rules on compensation (see paragraphs 46 and 48-49 above) are primarily aimed at claiming compensation, and that neither of the two could have expedited the proceedings and/or ended repeated remittals. It is also noted that at the time when the application was lodged with the Court the insolvency proceedings were ongoing and that a compensation claim in respect of pecuniary damage could only be filed once the insolvency proceedings had been terminated by rejecting X's request, which was on 19 January 2023 (see paragraph 24 above), that is after the application had already been lodged with the Court on 13 August 2022. That being so, the Court considers that, in the circumstances of the present case, those two remedies were not effective for the applicants' complaint at the time of lodging the application (see paragraph 68 above).

72. The Court already noted that the relevant legislation explicitly provides for the possibility of lodging a constitutional appeal in respect of complaints relating to the length of proceedings once the remedies under the Right to a Trial within a Reasonable Time Act have been exhausted or if they were for some reason ineffective and that the constitutional appeal must therefore be considered in principle an effective domestic remedy for complaints relating to the length of proceedings as well (see *Vučeljić v. Montenegro* (dec.), no. 59129/15, § 31, 18 October 2016). The Court notes in that regard that in at least two of their constitutional appeals the applicants explicitly complained about the length of the proceedings (see paragraphs 11, 14 and 18 above), which the Constitutional Court did not examine (see paragraphs 12, 15, 19 and 21 above). The Court reiterates in that regard that when one remedy has been pursued, the use of another remedy which has essentially the same objective is not required (see *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 177, 25 June 2019; see, also, the authorities cited therein).

73. In view of the above, the Court considers that the Government's objection as regards the exhaustion of domestic remedies must be dismissed.

74. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

2. Merits

(a) The parties' submissions

(i) The applicants

75. The applicants reaffirmed their complaint, notably that nearly a decade had passed before a final decision to reject X's request for the opening

of insolvency proceedings had been made. They submitted that the Government's reference to the locations of the properties and their attractiveness (see paragraph 77 below) had referred to a totally different matter.

(ii) The Government

76. The Government maintained that there had been no periods of inactivity on the part of the courts. On the contrary, the courts had delivered their decisions within a few months, sometimes even within a few days. Only one decision of the Constitutional Court had been issued after one year, nine months and eighteen days, which was a justified period for a Constitutional Court.

77. In addition the Government maintained that the length of the insolvency proceedings had mostly been affected by the fact that the insolvency debtor had properties in three municipalities; the estimation of those properties had been 740 pages long; there had been several objections to the established claims; hearings had had to be adjourned so that the list of claims could be adjusted and so that every creditor could be given an opportunity to be heard; and all the time-limits for delivering decisions on the sales of the properties had had to be complied with and there had been more than twenty such decisions. The attractiveness and the price of the properties, as well as the interest of bidders, had also affected their sales, which had all been factors over which the courts had had no influence.

78. The Government concluded that there had been no violation of Article 6.

(b) The Court's assessment

79. The reasonableness of the length of proceedings must be assessed in the light of the circumstances of the particular case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities, and what was at stake for the applicant in the dispute (see, among others, *Nicolae Virgiliu Tănase*, cited above, § 209, and *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, § 143, 29 November 2016, with further references).

80. Only delays that are attributable to the State may justify a finding of a failure to comply with the "reasonable time" requirement (see *Humen v. Poland* [GC], no. 26614/95, § 66, 15 October 1999).

81. Turning to the present case, the Court notes that the proceedings began on 27 December 2013, when the insolvency proceedings were opened at the request of X, and ended on 19 January 2023 when the Court of Appeal gave a final decision in the case. The applicants' earlier case, aimed at obtaining access to court in order to challenge X's standing to request the opening of insolvency proceedings, was pending before this Court for two years, ten

months and six days (see paragraph 9 above) which time is to be excluded from the length attributable to the domestic authorities (see, *mutatis mutandis*, *Satakunnan Markkinapörssi Oy and Satamedia Oy*, cited above, § 208, and the authorities cited therein). The proceedings therefore lasted for six years, two months and twenty-one days, during which time the domestic courts issued fifteen decisions at three levels of jurisdiction.

82. The Court further notes that the present case concerns insolvency proceedings in respect of the applicant company in which the main question was whether X had legal standing to request the opening of those proceedings or not. The Court does not consider that to be a question of such a complexity so as to justify proceedings of this length.

83. The Court agrees with the Government that the proceedings were not characterised by any particularly long period of inactivity on the part of any single court. The proceedings were pending before the domestic courts between five days before the Commercial Court (see paragraphs 22-23) and one year, nine months and eighteen days before the Constitutional Court (see paragraphs 11-12 above), with most of the proceedings lasting on average a few months at each level of jurisdiction, which cannot be considered excessive as such. Also, the overall length of the proceedings of nearly six years and three months, depending on the circumstances, does not necessarily have to be in violation of the “reasonable time” requirement (see, for example, *Nicolae Virgiliu Tănase*, cited above, §§ 208 and 213-14).

84. However, the Court reiterates that while it is not its function to analyse the manner in which the national courts interpreted and applied the domestic law, it nonetheless considers that judgments quashing previous findings and remitting the case are usually a result of errors committed by the lower courts and that the repetition of such judgments may point to a shortcoming in the justice system (see *Sfântul Vasile Polonă Greek Catholic Parish v. Romania*, no. 65965/01, § 74, 7 April 2009; and *Lupeni Greek Catholic Parish and Others*, cited above, § 147). Repeated re-examination of a single case following remittal may in itself disclose a serious deficiency in a given State’s judicial system (see *Pavlyulynets v. Ukraine*, no. 70767/01, § 51, 6 September 2005). The Court notes that the total length of the proceedings in the present case was mainly caused by the cumulative effect of the Court of Appeal failing to comply with the Constitutional Court’s decisions on four occasions, contrary to the domestic legislation requirements in that regard (see paragraph 38 above) and which was entirely attributable to the domestic authorities.

85. The Court observes that the applicants did not contribute to the length of the proceedings and, as regards what was at stake for the applicants, it is undisputed that the domestic decisions in question had direct consequences on their business activities.

86. The Court agrees with the applicants that the attractiveness of their properties and numerous creditors’ claims were not related to their complaint,

which was, in substance, the time it had taken the domestic courts to reject X's request to open insolvency proceedings in respect of the applicant company, and not how quickly their properties were sold in the course of those proceedings.

87. Having examined all the material submitted to it, the Court considers that the length of the proceedings as a whole was excessive and failed to meet the reasonable time requirement.

88. There has therefore been a breach of Article 6 § 1 of the Convention on account of the length of the proceedings.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

89. The applicants complained that the domestic courts' decisions had amounted to an unlawful interference with their right to the peaceful enjoyment of their property, as provided in Article 1 of Protocol No. 1 to the Convention, which had also been breached by the length of the insolvency proceedings.

90. The relevant Article 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. Admissibility

1. *The parties' submissions*

91. The Government submitted that the applicants' complaint was premature in view of the three ongoing proceedings for compensation (see paragraphs 28-31 above), in which the domestic courts would determine the responsibility of the respondent State for pecuniary damage allegedly caused by opening and conducting the insolvency proceedings in question.

92. The Government also maintained that the applicants had failed to submit a compensation claim under section 43 of the Right to a Trial Within a Reasonable Time Act (see paragraph 48 above) in respect of their complaint that their property rights had also been breached by the length of proceedings. The Government referred, in particular, to the principle of subsidiarity.

93. The applicants submitted that the only effective remedy they had had at their disposal had been a constitutional appeal. In those proceedings the Constitutional Court had ruled in their favour four times, but to no avail, as

the Court of Appeal had persisted in not complying with the findings of the Constitutional Court.

2. The Court's assessment

94. The Court notes that at the time when the application was lodged with the Court the insolvency proceedings were ongoing and that compensation claims in respect of pecuniary damage, including on the basis of section 43 of the Right to a Trial Within a Reasonable Time Act, could only be filed once the insolvency proceedings had been terminated by rejecting X's request, which was on 19 January 2023 (see paragraph 24 above), that is after the application had already been lodged with the Court on 13 August 2022. That being so, the Court considers that, in the circumstances of the present case, compensation claims were not effective for the applicants' complaint at the time of lodging the application (see paragraph 68 above).

95. The Court further observes that the applicants explicitly complained of a violation of their property rights in at least two of their constitutional appeals (see paragraphs 14 and 18 above). The Government did not argue that that remedy was ineffective. The Constitutional Court, for its part, limited its examination to Article 6 only (see paragraphs 15 and 19 above). The Court considers that the applicants sufficiently raised their complaint before the domestic bodies and thus availed themselves of one available effective remedy (see paragraph 72 *in fine* above).

96. In view of the above, the Court considers that the Government's objection must be dismissed.

97. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicants

98. The applicants reaffirmed their complaint and contested the Government's submissions in their entirety (see paragraphs 100-102 below). In particular, they contested that the opening of insolvency proceedings in December 2013 had been lawful, as secured creditors had not been able to request the opening of insolvency proceedings in accordance with the relevant domestic law. They submitted that it was a matter of legal uncertainty that the Court of Appeal had persistently failed to comply with four decisions of the Constitutional Court and had repeatedly issued identical decisions with a new or different legal basis.

99. The applicants maintained that the Government's submission that some other creditor would have likely requested the opening of insolvency

proceedings had X not done it had been an attempt to shift the focus from the substantive issue – X’s lack of legal standing to do so – to a matter which was not the subject of the proceedings.

(b) The Government

100. The Government did not dispute that there had been an interference with the applicants’ right to peacefully enjoy their property. They maintained, however, that the interference had been in accordance with law, that it had pursued a legitimate aim, to which it had been proportionate, and that therefore there had been no violation of Article 1 of Protocol No. 1. In particular, they submitted that the Court of Appeal had upheld the Commercial Court’s decision to open insolvency proceedings as being in accordance with section 56 of the Insolvency Act at the time and the relevant domestic case-law (see paragraphs 10, 13, 16 and 20 above), and that therefore it could not be said that the decisions of the Court of Appeal had been arbitrary or unlawful.

101. The Government further maintained that the respondent State had ensured that the property rights of the applicants had been sufficiently protected by a number of remedies. Firstly, all the impugned decisions had been delivered in adversarial proceedings during which the applicants had been able to dispute the opening and conduct of the insolvency proceedings, and which had then been examined by the Constitutional Court. Secondly, the applicant company had lodged a civil claim; during those proceedings it would be able to protect its property rights and obtain compensation if it could prove that the State, that is its bodies, had been responsible for opening and conducting the insolvency proceedings.

102. The Government also submitted that during the insolvency proceedings the claims of seventy creditors had been established and acknowledged, amounting in total to nearly EUR 20 million (see paragraph 25 above), and that at the time when the insolvency proceedings had been opened the applicant company’s account had been blocked (*bio u blokadi*) for the amount of nearly EUR 7 million, meaning that there had been a high probability that some other claimant would have sought the opening of insolvency proceedings, even if X had not had done so. They further maintained that since the secured creditors’ claims had been backed by all the properties sold during the insolvency proceedings, the applicants had not proved that the sales had caused them any loss, given that the applicant company had already been insolvent and that its properties would have been sold in any event in order to satisfy the claims of the secured creditors.

2. *The Court's assessment*

(a) **The relevant principles**

103. The Court reiterates that the essential object of Article 1 of Protocol No. 1 to the Convention is to protect a person against unjustified interference by the State of the peaceful enjoyment of his or her possessions. However, by virtue of Article 1 of the Convention, each Contracting Party “shall secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention”. The discharge of this general duty may entail positive obligations inherent in ensuring the effective exercise of the rights guaranteed by the Convention. In the context of Article 1 of Protocol No. 1, those positive obligations may require the State to take the measures necessary to protect the right of property (see *Broniowski v. Poland* [GC], no. 31443/96, § 143, ECHR 2004-V), even in cases involving litigation between individuals or companies (see *Sovtransavto Holding v. Ukraine*, no. 48553/99, § 96, ECHR 2002-VII, with further references). This means, in particular, that the States are under an obligation to afford judicial procedures that offer the necessary procedural guarantees and therefore enable the domestic courts and tribunals to adjudicate effectively and fairly any disputes between private persons (*ibid.*; see, also, *mutatis mutandis*, *Keegan v. Ireland*, 26 May 1994, § 49, Series A no. 290, and *Kroon and Others v. the Netherlands*, 27 October 1994, § 31, Series A no. 297-C).

104. Although Article 1 of Protocol No. 1 contains no explicit procedural requirements, any relevant domestic proceedings must afford the individuals concerned a reasonable opportunity of putting their claims to the responsible authorities for the purpose of effectively challenging the measures interfering with the rights guaranteed by this provision. In ascertaining whether this condition has been satisfied, a comprehensive view must be taken of the applicable procedures (see, for example, *Jokela v. Finland*, no. 28856/95, § 45, ECHR 2002-IV; see also, *mutatis mutandis*, *AGOSI v. the United Kingdom*, 24 October 1986, § 55, Series A no. 108, and *Hentrich v. France*, 22 September 1994, § 49, Series A no. 296-A).

105. The Court reiterates that the provision of a judicial forum does not automatically engage the State's responsibility under Article 1 of Protocol No. 1. Nevertheless, the State may be held responsible for losses caused by such determinations if the court decisions were not given in accordance with domestic law or if they were flawed by arbitrariness or manifest unreasonableness contrary to Article 1 of Protocol No. 1 (see *Vulakh and Others v. Russia*, no. 33468/03, § 44, 10 January 2012, and the authorities cited therein). However, the Court's jurisdiction to verify that domestic law has been correctly interpreted and applied is limited and it is not its function to take the place of the national courts. Rather, its role is to ensure that the decisions of those courts are not arbitrary or otherwise manifestly unreasonable (see, for example, *Seksimp Group SRL v. the Republic of*

Moldova, no. 30085/13, § 54 *in fine*, 15 May 2025, and *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, § 83, ECHR 2007-I).

(b) The Court's assessment

106. The Court notes that in the present case the domestic courts opened insolvency proceedings in respect of the applicant company at the request of X, which resulted in the sale of most of the applicant company's properties (see paragraph 23 *in fine* above). The Court's jurisdiction to verify that domestic law has been correctly interpreted and applied is limited and it is not its function to take the place of the national courts. Rather, its role is to ensure that the decisions of those courts are not arbitrary or otherwise manifestly unreasonable (see *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, § 83, ECHR 2007-I).

107. The Court has already noted that the Constitutional Court found on four occasions, between 3 November 2020 and 11 July 2022, that the Court of Appeal's decisions issued in the applicants' case, upholding the opening of insolvency proceedings by the Commercial Court, had been insufficiently reasoned and arbitrary (see paragraphs 12, 15, 19 and 21 above); that the Court of Appeal's findings had been constitutionally unacceptable (see paragraph 12 above); that the Court of Appeal's interpretation of domestic law had been too formalistic (see paragraphs 12 and 21 above); and that X, pursuant to the relevant domestic law, could not seek the opening of the insolvency proceedings in issue. It also found that the Court of Appeal, in not adhering to the Constitutional Court's decisions, had not been in compliance with the Constitutional Court Act (see paragraphs 15, 19 and 21 above).

108. The Court considers that the proceedings in question had to be conducted and concluded in such a way as to make it clear that the applicants indeed had an opportunity to effectively challenge the interference with their possessions. However, the very fact that it was not until the fifth re-examination of the case that the Court of Appeal finally complied with the Constitutional Court's decisions, regardless of the statutory requirement in that regard (see paragraph 38 above), and that most of the applicant company's property was sold in the meantime (see paragraph 23 *in fine* above) is ample demonstration that, in the specific circumstances of the case, they did not have that opportunity. The Court therefore considers that the applicants were clearly not afforded a reasonable opportunity of putting their claims to the responsible authorities in order to effectively challenge the interference with their rights guaranteed under Article 1 of Protocol No. 1 (see the case-law cited in paragraph 104 above; see, also, *mutatis mutandis*, *Selimi and Krasnići v. Serbia*, nos. 20641/20 and 20644/20, §§ 181-82, 3 June 2025).

109. The Court further observes that it goes without saying that the proper administration of justice takes time. However, the Court has already found that the proceedings in which the applicant disputed the opening of

insolvency proceedings lasted an unreasonably long time (see paragraph 88 above). In the Court’s view, their inordinate length also had a direct impact on the applicants’ right to peaceful enjoyment of their possessions. The Court considers, having regard to the circumstances of the present case, that this delay imposed an excessive individual burden on the applicants and therefore upset the fair balance that has to be struck between the applicants’ right to peaceful enjoyment of their possessions and the general interest involved (see, *mutatis mutandis*, *Kunić v. Croatia*, no. 22344/02, § 67, 11 January 2007).

110. In such circumstances, the Court cannot but conclude that the State has failed to discharge its positive obligation under Article 1 of Protocol No. 1 to the Convention to set up a proper forum allowing the applicants to assert their rights effectively (see, among others, *Theo National Construct S.R.L. v. the Republic of Moldova*, no. 72783/11, § 80, 11 October 2022, and *Seksimp Group SRL*, cited above, § 59). It follows that there has been a breach of Article 1 of Protocol No. 1 to the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

111. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

112. The applicants claimed 1,279,089.73 euros (EUR) as a “total claim” in respect of pecuniary damage, this being the statutory interest on Z’s main claim in respect of the applicant company, and in which regard the applicant company had lodged a compensation claim (see paragraph 28 above). They also claimed compensation in respect of non-pecuniary damage, the amount of which they left to the Court’s discretion.

113. The Government submitted that it was unclear whether the applicants claimed the said amount for each applicant or for both applicants together. In any event, they contested the claim as premature, as domestic proceedings in respect of that same amount were currently ongoing (see paragraphs 28 and 31 above).

114. Aside from the fact that the applicant company ceded the claim in question to a third party (see paragraph 28 *in fine* above) the Court considers that the ongoing civil proceedings in respect of the same claim and its examination in the light of the findings made in this judgment would be the most appropriate means of affording reparation to the injured party (see,

mutatis mutandis, *Vulakh and Others*, cited above, § 54). Accordingly, it rejects the applicants' claim in respect of pecuniary damage.

115. The Court observes that it has previously made awards in respect of non-pecuniary damage in cases where the applicants asked for such an award to be made but left the precise amount at the Court's discretion (see *Nagmetov v. Russia* [GC], no. 35589/08, § 72, 30 March 2017, and the authorities cited therein; see, also, *Ābele v. Latvia*, nos. 60429/12 and 72760/12, §§ 85-86, 5 October 2017).

116. In the present case, the Court found two violations of Article 6 of the Convention and a violation of Article 1 of Protocol No. 1 to the Convention (see paragraphs 63, 88 and 110 above). It has no reason to doubt that the applicants sustained non-pecuniary damage on account of those violations (see, *mutatis mutandis*, *Narbutas v. Lithuania*, no. 14139/21, § 343, 19 December 2023). Making its award on an equitable basis, the Court awards them EUR 4,680 jointly under this head, plus any tax that may be chargeable.

B. Costs and expenses

117. The applicants also claimed EUR 9,200 for the costs and expenses incurred before the domestic courts and before the Court.

118. The Government contested the applicants' claim as exaggerated and unfounded.

119. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 9,200 covering costs under all heads, plus any tax that may be chargeable to the applicants.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 of the Convention in respect of the fairness of the domestic proceedings;
3. *Holds* that there has been a violation of Article 6 of the Convention in respect of the length of the domestic proceedings;
4. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

5. *Holds*

- (a) that the respondent State is to pay the applicants jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 4,680 (four thousand six hundred and eighty euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 9,200 (nine thousand two hundred euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 27 November 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth
Registrar

Erik Wennerström
President