

**REASONABLE TIME  
AND BANKRUPTCY OF SOCIALLY-OWNED ENTERPRISES \***

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**Abstract.** *The subject matter of this paper is the bankruptcy of socially-owned enterprises. The aim is to examine the implications of bankruptcy proceedings against socially-owned enterprises on the budget of the Republic of Serbia and its taxpayers. The starting hypothesis is that the bankruptcies of socially-owned enterprises will have a significant negative impact on the budget of RS and its taxpayers. In order to test this hypothesis, we used the technique of descriptive statistics to determine the differences between the Commercial Courts in Belgrade, Niš and Kragujevac in terms of the average duration of bankruptcy proceedings, the maximum and minimum duration of cases, and the percentage of cases pending over four or three years. In addition, we provide a hypothetical calculation of the costs of the bankruptcy proceedings of all socially-owned enterprises in the three commercial courts in case the objection for the protection of the right to a trial within a reasonable time has been affirmed. The results show that there are no significant differences between the three commercial courts in the time dimension of the bankruptcy of socially-owned enterprises, given the fact that the vast majority of cases exceed the reasonable time limits and that such lengthy proceedings will significantly burden the RS budget.*

**Key words:** *reasonable time, bankruptcy, social enterprises, costs*

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## 1. INTRODUCTION

In the past few decades, bankruptcy matter in our country has been regulated by three special legislative acts: the 1989 **Compulsory Settlement, Bankruptcy, and Liquidation Act**<sup>1</sup>, the 2004 **Bankruptcy Procedure Act (BP Act)**<sup>2</sup>, and the currently valid 2009 **Bankruptcy Act (BA)**<sup>3</sup>, which was amended three times (in 2011, 2014 and 2018). The evolution of bankruptcy legislation and bankruptcy procedure followed the changes in the socio-economic and political system, in an attempt to provide the best possible answers to the existing problems in practice. At first glance, this evolution may be assessed as positive. Under the Bankruptcy Act (2009), the goal of bankruptcy procedure is to ensure *the most favorable collective settlement of bankruptcy creditors by achieving the highest possible value of the bankruptcy debtor's property* (Article 2 BA). Yet, as this goal is measurable, its important aspect refers to the issue of efficiency. Unlike the 2004 BP Act, the introductory articles of the 2009 Bankruptcy Act provide the governing principles of bankruptcy proceedings, including (*inter alia*) the **principle of efficiency** (cost-effectiveness) and the **principle of urgency** (Article 5 and Article 8 BA).

The BP Act was applied from 2 February 2005 to 23 October 2010, when the new Bankruptcy Act entered into force. As more than ten years have passed since the Bankruptcy Act became applicable, it is sufficient time to draw conclusions about the efficiency of the bankruptcy procedure in Serbia.<sup>4</sup> According to the World Bank methodology,<sup>5</sup> the efficiency of the bankruptcy procedure is most frequently operationalized through the following indicators: 1) the duration of the bankruptcy procedure, 2) the costs of the bankruptcy procedure, and 3) the settlement rate of creditors in this procedure (World Bank, 2021). The latest World Bank report (World Bank, 2020)<sup>6</sup> indicates that Serbia does not stand well in terms of these indicators compared to other countries; in terms of creditors' settlement rate and bankruptcy costs, it is below the average value of these indicators for European and Central Asian countries and significantly below OECD countries in terms of all performance indicators. It is interesting that in terms of time to complete the bankruptcy proceedings, Serbia has a better score than the countries of Europe and Central Asia (2 years as compared to 2.3 years, respectively), but a worse score as compared to OECD countries (1.7 years).

**The length of bankruptcy proceedings** in Serbia deserves special attention. Some authors<sup>7</sup> point out to numerous factors that have a decisive impact on the duration of the bankruptcy procedure.<sup>8</sup> In a nutshell, these factors are: 1) previously initiated (enforcement and litigation) proceedings; 2) the number of creditors in bankruptcy proceedings; 3) the value of company property; 4) unresolved property issues and initiated litigation proceedings during bankruptcy proceedings; 5) circumstances in the work of other related bodies, such as: the

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<sup>1</sup> Zakon o prinudnom poravnanju, stečajju i likvidaciji (Compulsory Settlement, Bankruptcy, and Liquidation Act), *Službeni list SFRJ, br. 84/89 i Službeni list SRJ, br. 37/93 i 28.*

<sup>2</sup> Zakon o stečajnom postupku (Bankruptcy Procedure Act), *Službeni glasnik RS, br. 84/04 i 85/05.* The BP Act still applies to bankruptcy proceedings opened before 2009.

<sup>3</sup> Zakon o stečajju (Bankruptcy Act), *Službeni glasnik RS, br. 104/2009, 99/2011–drugi zakon, 71/2012–odluka US, 83/2014, 113/2017, 44/2018 i 95/2018.*

<sup>4</sup> For more, see: Obućina 2019; Mojašević, Jovanović, 2021a.

<sup>5</sup> See: the World Bank (2021): *Doing Business, Resolving Insolvency Methodology*; available at <https://www.doingbusiness.org/en/methodology/resolving-insolvency> (accessed 22.2.2021.)

<sup>6</sup> World Bank (2020). *Doing Business: Serbia*, available at [https://www.doingbusiness.org/en/data/exploreconomies/serbia#DB\\_ri](https://www.doingbusiness.org/en/data/exploreconomies/serbia#DB_ri), (accessed 22.2.2021.)

<sup>7</sup> See: Radović, 2017; Mojašević, Jovanović, 2021b.

<sup>8</sup> The complexity of bankruptcy proceedings has also been confirmed in the judgments of the Supreme Court of Cassation. See, for example, the Decision of the Supreme Court of Cassation, Rž gp-22/2014 of 18.12.2014.

Republic Geodetic Authority – Real Estate Cadastre (RGA-REC), the Restitution Agency (RA), Bankruptcy Supervision Agency (BSA); and 6) other factors. However, the distinctive feature of the Serbian bankruptcy system is that these factors are most frequently (but not exclusively) related to a special form of enterprise, which still exists in our economic system – **socially-owned enterprises (SoE)**.<sup>9</sup> The bankruptcy of socially-owned enterprises is the subject matter of this research but, before explaining the research methodological framework, it is necessary to summarize the most important provisions of the 2016 **Act on the Protection of the Right to Trial within a Reasonable Time** (hereinafter: **RT Act**).<sup>10</sup> Given that this Act applies to the bankruptcy procedure, its application has generated numerous negative consequences in practice and alerted the professional public to think in the direction of amending this Act.

## 2. PROTECTION OF THE RIGHT TO TRIAL WITHIN A REASONABLE TIME IN BANKRUPTCY PROCEEDINGS

The basic provisions of the RT Act state that it “regulates the protection of the right to a trial within a reasonable time”, and that it aims “to provide judicial protection of this right and thus prevent violations of the right to a trial within a reasonable time” (Article 1, paras.1 and 2 RT Act). The RT Act also envisages legal remedies for the protection of this right:

- 1) filing an objection in order to expedite the procedure (hereinafter: *objection*),
- 2) filing an appeal, and
- 3) filing a claim for just satisfaction (Article 3 RT Act).

The procedure for protecting the right to a trial within a reasonable time begins by filing an *objection*. Article 6 of the RT Act prescribes the obligatory content of the objection. In case the objection is rejected, or in case the president of the court does not decide on it within two months from the day the objection is received, the injured party has the right to appeal. Article 14 of the RT Act stipulates the reasons for filing an *appeal*. Under Article 5 of this Act, an objection and an appeal may be filed at any time before closing the proceeding. If the objection is upheld (or if the appeal is rejected along with confirming the first instance decision upholding the objection, or if the appeal is upheld), the party acquires the right to *just satisfaction* (Article 22 RT Act). In that case, the party is entitled to: 1) monetary compensation for non-pecuniary damage caused by violation of the right to a trial within a reasonable time; 2) the right to obtain a written statement establishing a violation of the right to a trial within a reasonable time from the Public Defender’s Office and have it published; and 3) the right to have the judgment establishing a violation of the right to a trial within a reasonable time published (Article 23 RT Act).

The RT Act also envisages *the criteria* on the basis of which the court will decide whether there has been a violation of the right to a trial within a reasonable time. Article 4 stipulates that the court shall take into account all the circumstances of case at issue:

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<sup>9</sup> This especially refers to the number of creditors and the value of property although there are still unresolved property issues in the field of restitution (return of confiscated property and compensation). See: Zakon o vraćanju oduzete imovine i obeštećenju (Property Restitution and Compensation Act), *Službeni glasnik RS*, br. 72/2011, 108/2013, 142/2014, 88/2015–odluka US, 95/2018 i 153/2020.

<sup>10</sup> Zakon o zaštiti prava na suđenje u razumnom roku (Act on the Protection of the Right to Trial within a Reasonable Time), *Službeni glasnik RS*, 40/2015.

- 1) the complexity of factual and legal issues;
- 2) the overall duration of bankruptcy proceedings and the actions of the court, public prosecutor's office or other state bodies;
- 3) the nature and type of the subject matter of adjudication or investigation;
- 4) the significance of the case or investigation for the injured party;
- 5) the parties' conduct during the procedure, including respect for procedural rights and obligations; and
- 6) the court observance of the order in resolving cases, and statutory time limits in scheduling hearings and the main trial, and in drafting decisions (Article 4 RT Act).

In case a violation of the right to a trial within a reasonable time is established, the injured party is entitled to receive **pecuniary damages** (e.g. in the amount of the claim recognized in bankruptcy proceedings) and **non-pecuniary damages** (the Act provides for a range of EUR 300 to EUR 3,000 for monetary compensation).<sup>11</sup> Since the compensation for damage is pursued in civil proceedings, it may give rise to other costs, such as lawyer fees, enforcement costs, and other costs and expenses. This Act envisages that a party does not pay a court fee in proceedings involving the protection of the right to a trial within a reasonable time, and stipulates that such cases are urgent and have priority in decision-making (Article 3, para. 2, RT Act). The Republic of Serbia (defendant) is obliged to pay damages and costs in cases where the right to a trial within a reasonable time has been violated.<sup>12</sup> In cases involving a claim arising from the bankruptcy proceeding, the Republic of Serbia undertakes to pay the injured party (plaintiff) the amount of uncollected recognized claim in that proceeding, and assumes the role of the bankruptcy creditor for the amount of that claim (*subrogation*).<sup>13</sup> The subrogation is established by the decision of the competent commercial court. Monetary compensation for non-pecuniary damage and compensation for pecuniary damage are paid by the court from the budget of the Republic of Serbia, i.e. from the funds intended to cover the current court expenses, except for the expenses pertaining to employees and current maintenance of facilities and equipment (Articles 32 and 33 RT Act).

### 3. METHODOLOGICAL FRAMEWORK OF THE RESEARCH

In this paper, we explore the bankruptcy of socially-owned enterprises and the implications it generates for the budget of the Republic of Serbia. In this endeavor, we start from the following general hypothesis: *bankruptcy proceedings opened against socially-owned enterprises have or will have a significant negative impact on the RS budget and its taxpayers*. In order to put our research in a certain methodological framework, we used the technique of descriptive statistics to determine the differences between certain parameters of active bankruptcies of socially-owned enterprises in the three largest commercial courts in Serbia:

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<sup>11</sup> The RT Act allows for the payment of monetary compensation for non-pecuniary damage (Art. 23, para. 1 RT Act) in the amount of EUR 300 to EUR 3,000 (Art. 30 para. 1 RT Act), or compensation for pecuniary damage caused by a violation of the right to a trial within a reasonable time within one year from the day when the injured party acquired the right to just satisfaction (Art. 31, para. 1 RT Act).

<sup>12</sup> In both cases, the Republic of Serbia has *objective responsibility* (Art. 23, para.2 and Art. 31, para.3. RT Act).

<sup>13</sup> See: Article 300 of the Obligations Act; Zakon o obligacionim odnosima (Civil Obligations Act), *Službeni glasnik SFRJ*, br. 29/78, 39/85, 45/89–odluka USJ i 57/89; *Službeni glasnik SRJ*, br. 31/93; *Službeni glasnik SCG*, br. 1/2003–Ustavna povelja, *Službeni glasnik RS*, br. 18/2020.

the Commercial Court in Belgrade (CCBg), the Commercial Court in Niš (CCNi), and the Commercial Court in Kragujevac (CCKg). These observed parameters are as follows:

- 1) *the average duration of bankruptcy proceedings,*
- 2) *the average maximum and minimum duration of individual cases,*
- 3) *the percentage of cases pending for over four or three years.*

The reason for choosing four or three years, as a reasonable time limit, stems from the stance set out in the judgment of the Supreme Court of Cassation (SCC).<sup>14</sup> Therefore, if a bankruptcy proceeding lasts over three, and especially *four* years, its length will be considered “unreasonable”.<sup>15</sup> If the research results prove that this is true in cases involving the bankruptcy of socially-owned enterprises, which is the anticipated outcome, it raises the issue of a negative impact of lengthy bankruptcy proceedings and the excessive burden they impose on the RS budget and taxpayers. Therefore, based on the available data, we conducted a hypothetical calculation of the costs of bankruptcy proceedings of socially-owned enterprises in the three aforesaid commercial courts, in cases where the objection for the protection of the right to a trial within a reasonable time has been affirmed.

The data on bankruptcy of socially-owned enterprises under the jurisdiction of the three commercial courts (the number of cases, duration of proceedings, average number of creditors, average amount of claims) were found in the statistical data kept by the Bankruptcy Supervision Agency (BSA)<sup>16</sup> and then, for research purposes, processed by using the descriptive statistics method.<sup>17</sup>

#### 4. STATISTICS ON ACTIVE BANKRUPTCY OF SOCIALLY-OWNED ENTERPRISES

##### 4.1. Active bankruptcies of socially-owned enterprises in the Commercial Court in Kragujevac

Table 1 shows the results of descriptive statistics on active bankruptcies of socially-owned enterprises in the Commercial Court in Kragujevac. There was a total number of **49** active bankruptcies of socially-owned enterprises (active SoE bankruptcy cases; A (SoE)) initiated in the period from 2001 to 2019. Their average duration is about **seven years**. The shortest proceeding takes 22 months,<sup>18</sup> while the longest proceeding takes 232 months<sup>19</sup> (Table 1).<sup>20</sup> The findings show that the vast majority of these cases (about 82%) last longer than four years, while about 90% of cases last longer than three years (Table 2).

**Table 1** Descriptive statistics on A(SoE) cases in CCKg (2001-2019)

Sample (N)	Mean (M)	Median (Med)	Standard deviation (SD)	Standard error of the mean (SEM)	Confidence interval (CI) – 95%	Min	Max
<b>49</b>	<b>83,84</b>	67	42,09	6,01	71,75–95,93	<b>22 m.</b>	<b>232 m.</b>

<sup>14</sup> See: Decision of the Supreme Court of Cassation Rž gp-22/2014 (cited).

<sup>15</sup> Due to the complex nature of lengthy bankruptcy proceedings, this position should be taken provisionally.

<sup>16</sup> See: Agencija za licenciranje stečajnih upravnika-ALSU (Bankruptcy Supervision Agency, BSA), <https://alsu.gov.rs/stecaj/statistika-stecajnih-postupaka/> (accessed 22.2.2021.).

<sup>17</sup> The statistical program SPSS (version 25) was used for data processing.

<sup>18</sup> The case was initiated on February 26, 2019.

<sup>19</sup> The case was initiated on August 17, 2001.

<sup>20</sup> December 31, 2020 was taken as the upper limit of the duration of active SoE bankruptcy cases.

**Table 2** Time dimension of A(SoE) cases in CCKg

Total A(SoE) cases	Average duration	Over 48 months	Under 48 months	Over 36 months	Under 36 months
49	<b>83,84 m. or 6,9 years</b>	<b>40 or 81,6%</b>	<b>9 or 18,3%</b>	44 or 89,8%	5 or 10,2%

Table 3 provides an overview of active bankruptcies of socially-owned enterprises initiated under the former 2004 BP Act and the new 2009 Bankruptcy Act (BA). **The number of active bankruptcies of socially-owned enterprises initiated under the new Bankruptcy Act is significantly higher than the number of proceedings initiated under the former BP Act (43 versus 6 cases, respectively).** Table 3 also shows the average number of creditors (NC) and the average amount of claims (AC) in the observed period. Based on the available data,<sup>21</sup> the average number of creditors is **240**, while the average amount of claims is **731,807,679.43 RSD** (or **6,224,442.28 Euros**).<sup>22</sup>

**Table 3** Active SoE cases in CCKg (under BP Act, BA), with total NC and AC

Active SoE cases	BP Act (2004)	BA (2009)	Total
Number of cases	<b>6</b>	<b>43</b>	<b>49</b>
Average number of creditors (NC)	/	/	<b>240</b>
Average amount of claims (AC in dinars)	/	/	<b>731.807.679,43 RSD</b>

Source: Statistical data on active SoE cases compiled from the Commercial Court in Kragujevac (2020).

#### 4.2. Active bankruptcies of socially-owned enterprises in the Commercial Court in Niš

Table 4 shows the results of descriptive statistics on active bankruptcies of socially-owned enterprises in the Commercial Court in Niš. There was a total of **72** active SoE bankruptcy cases initiated in the period from 2009 to the end of 2020. Their average duration is about **seven years and three months**. The shortest proceeding takes 24 months,<sup>23</sup> while the longest one takes 140 months<sup>24</sup> (Table 4). The vast majority of these cases (over 90%) last longer than four or three years (Table 5).

**Table 4** Descriptive statistics on A(SoE) cases in CCNi (2009-2020)

Sample (N)	Mean (M)	Median (Med)	Standard deviation (SD)	Standard error of the mean (SEM)	Confidence interval (CI) – 95%	Min	Max
<b>72</b>	<b>87,93</b>	86	33,32	3,93	80,10–95,76	<b>24 m.</b>	<b>140 m.</b>

<sup>21</sup> Data are available for 25 cases out of a total of 49. The same applies to the amount of bankruptcy claims.

<sup>22</sup> The amount is calculated on the basis of the official Middle Exchange Rate of the National Bank of Serbia (NBS) applicable on May 28, 2021.

<sup>23</sup> The case was initiated on December 4, 2018.

<sup>24</sup> The case was initiated on April 1, 2009.

**Table 5** Time dimension of A(SoE) cases in CCNi

Total A(SoE) cases	Average duration	Over 48 months	Under 48 months	Over 36 months	Under 36 months
72	<b>87,93 m. or 7,3 y.</b>	<b>66 or 91,6%</b>	<b>6 or 8,4%</b>	66 or 91,6%	6 or 8,4%

Table 6 provides an overview of active bankruptcies of socially-owned enterprises initiated under the former 2004 BP Act and the new 2009 Bankruptcy Act (BA). **The number of active bankruptcies of socially-owned enterprises initiated under the new BA is significantly higher than the number of cases initiated under the former BP Act (63 versus 9 cases, respectively).** Table 6 also shows the **average number of creditors (NC)** and the **average amount of claims (AC)** in the observed period. Based on the available data,<sup>25</sup> the average number of creditors is **185**, while the average amount of claims is **299,334,578.49 RSD (or 2,546,011.55 Euros)**.

**Table 6** Active SoE cases in CCNi (under BP Act, BA), with NC and AC

Active SoE cases	BP Act (2004)	BA (2009)	Total
number of cases	<b>9</b>	<b>63</b>	<b>72</b>
Average number of creditors (NC)	/	/	<b>185</b>
Average amount of claims (AC in dinars)	/	/	<b>299.334.578,49</b>

*Source:* Statistical data on active SoE cases compiled from the Commercial Court in Nis (2020).

#### 4.3. Active bankruptcies of socially-owned enterprises in the Commercial Court in Belgrade

Table 7 presents the results of descriptive statistics on active bankruptcies of socially-owned enterprises in the Commercial Court in Belgrade. There was a total of **138** active bankruptcies of socially-owned enterprises initiated in the period from 2001 to the end of 2020. Their average duration is about **seven years and three months**. The shortest proceeding takes **25** months,<sup>26</sup> while the longest one takes **237** months<sup>27</sup> (Table 7). The vast majority of these cases (about 92%) last longer than four or three years (98%) (Table 8).

**Table 7** Descriptive statistics on A(SoE) cases in CCBg (2001-2020)

Sample (N)	Mean (M)	Median (Med)	Standard deviation (SD)	Standard error of the mean (SEM)	Confidence interval (CI) – 95%	Min	Max
<b>138</b>	<b>88,05</b>	66	46,04	3,92	80,30–95,80	<b>25 m.</b>	<b>237 m.</b>

**Table 8** Time dimension of A(SoE) cases in CCBG

Total A(SoE) cases	Average duration	Over 48 months	Under 48 months	Over 36 months	Under 36 months
138	<b>88,05 m. or 7,3 g.</b>	<b>127 or 92,02%</b>	<b>11 or 7,97%</b>	136 or 98,55%	2 or 1,44%

<sup>25</sup> Data are available for 63 cases out of a total of 72. The same applies to the amount of claims.

<sup>26</sup> The case was initiated on November 22, 2018.

<sup>27</sup> The case was initiated on March 13, 2001.

Table 9 provides an overview of active bankruptcies of socially-owned enterprises initiated under the former 2004 BP Act and the new 2009 Bankruptcy Act (BA). **The number of active bankruptcies of socially-owned enterprises initiated under the new BA is significantly higher than the number of cases initiated under the former BP Act (122 versus 16 cases, respectively).** Table 9 also shows the **average number of creditors (NC)** and the **average amount of claims (AC)** in the observed period. Based on the available data,<sup>28</sup> the average number of creditors is **247**, while the average amount of claims is **1,376,698,075.44 RSD** (or **11,709,603.43 Euros**).

**Table 9** Active SoE cases in CCBg (under BP Act, BA), with total NC and AC

Active SoE cases	BP Act (2004)	BA (2009)	Total
Number of cases	16	122	<b>138</b>
Average number of creditors (NC)	/	/	<b>247</b>
Average amount of claims (AC in dinars)	/	/	<b>1.376.698.075,44</b>

Source: Statistical data on active SoE cases compiled from the Commercial Court in Belgrade (2020).

#### 4.4. Comparative overview of active bankruptcies of socially-owned enterprises in the Commercial Courts in Kragujevac, Niš and Belgrade

Table 10 provides a comparative overview of the time dimension of active bankruptcies of socially-owned enterprises in the Commercial Courts in Kragujevac, Niš and Belgrade, including as follows: 1) the average duration of bankruptcy proceedings (in years); 2) the average maximum and minimum duration of individual cases (in months); and 3) the percentage of cases lasting over four or three years.

**Table 10** Comparative overview of time dimension in A(SoE) cases in CCKg, CCNi, and CCBg

Commercial Court	Average duration (in years)	Maximum duration (in months)	Minimum duration (in months)	Over 4 years (%)	Under 3 years (%)
<b>CCKg</b>	6,9	232	22	81,6	89,8
<b>CCNi</b>	7,3	140	24	91,6	91,6
<b>CCBg</b>	7,3	237	25	92,02	98,5

Regarding the average duration of bankruptcy proceedings involving socially-owned enterprises, it is obvious that there are no significant differences between the three courts as the overall average is about seven years. The situation is similar when it comes to the maximum and minimum duration of individual cases, as well as to the recorded percentages of cases lasting over four or three years. The findings indicate that ***the vast majority of cases in all three courts last beyond a reasonable time limit.*** Notably, two cases (one from the Commercial Court in Kragujevac and one from the Commercial Court in Belgrade) have been pending for over 19 years.

Table 11 provides a comparative overview of the total number of bankruptcy proceedings involving socially-owned enterprises. As anticipated, the largest number of cases were initiated in the Commercial Court in Belgrade, followed by the Commercial Court in Niš and, finally, the Commercial Court in Kragujevac. The number of active bankruptcies of socially-owned

<sup>28</sup> Data are available for 89 cases out of a total of 138. The same applies to the amount of claims.



enterprises initiated under the new BA is substantially higher than the number of cases initiated under the former BP Act: ***in all three courts there are seven times more cases initiated under the BA***. The average number of creditors (NC) is similar in the Commercial Courts in Belgrade and Kragujevac (247 and 240, respectively), while it is somewhat lower in the Commercial Court in Niš (185). The average amount of claims (AC, in Euros) is 1.8 times higher in CCBg than in CCKg, and 4.6 times higher than in CCNi.

**Table 11** Comparative overview of A(SoE) cases in CCKg, CCNi, and CCBg under the BP Act and BA, with the average NC and AC

Socially-owned enterprises (SoE)	Total number of SoE cases	Number of SoE cases (BP Act)	Number of SoE cases (BA)	Average number of creditors (NC)	Average amount of claims (AC) in EUR
<b>CCKG</b>	49	6	43	240	6.224.442
<b>CCNI</b>	72	9	63	185	2.546.011
<b>CCBG</b>	138	16	122	247	11.709.603

*Source:* Statistical data on active SoE cases compiled from CCKg, CCNi, and CCBg (2020).

## 5. BANKRUPTCY OF SOCIALLY-OWNED ENTERPRISES AND REPERCUSSIONS ON THE BUDGET OF THE REPUBLIC OF SERBIA

In order to determine the implications of upholding the objections aimed at protecting the right to a trial within a reasonable time for the (state) budget of the Republic of Serbia, we started from two possible scenarios. The first scenario entails a situation when the court awards the amount of *300 Euros*, which is designated as the minimum amount of compensation for non-pecuniary damage (Article 30, para.1 RT Act). The second scenario entails the situation when the court awards the amount of *800 Euros*.<sup>29</sup> Further on, we present the calculation of costs for the two scenarios in all three commercial courts separately, starting from the average amount of claims and the average number of creditors in bankruptcy cases involving socially-owned enterprises.

### 5.1. Cases before the Commercial Court in Niš

In the period under observation, a total of **72** bankruptcy proceedings have been instituted against socially-owned enterprises before the Commercial Court in Niš. Based on the available data (a total of **63** cases), the average amount of claims is **299,334,578 RSD** (or **2,546,011 Euros**), while the average number of creditors is **185** (Table 11).

*Scenario 1:* In case the court awards the amount of 300 Euros for compensation of non-pecuniary damage, the debt of the RS to bankruptcy creditors will be (on average):

<sup>29</sup> The amount was determined by the Serbian Constitutional Court in the case Už-277/2017, where the Court was requested to rule on the constitutional complaint for compensation of non-pecuniary damage. Under the impact of the case law of the European Court of Human Rights, the Court determined the right of the applicants to compensation for non-pecuniary damage in the amount of EUR 800. In our calculation of costs, we started from the fact that the court will award this amount as the “upper limit”.

$$185 \text{ objections} \times [\text{EUR } 2,546,011 \text{ (pecuniary damages)} + \text{EUR } 300 \text{ (non-pecuniary damages)} \\ + \text{EUR } 2,997 \text{ (attorney's fees)}^{30} + (\text{EUR } 87^{31} + \text{EUR } 3,846^{32} \text{ (enforcement costs)})] = \\ \text{EUR } 472,349,586$$

*Scenario 2:* In case the court awards the amount of 800 Euros for compensation of non-pecuniary damage, the debt of the RS to bankruptcy creditors will be (on average):

$$185 \text{ objections} \times [\text{EUR } 2,546,011 \text{ (pecuniary damages)} + \text{EUR } 800 \text{ (non-pecuniary damages)} \\ + \text{EUR } 2,997 \text{ (attorney's fees)}^{33} + (\text{EUR } 123^{34} + \text{EUR } 3,846^{35} \text{ (enforcement costs)})] = \\ \text{EUR } 472,448,745$$

**Table 12** Debt of the RS to bankruptcy creditors in all SoE cases in CCNi

All SoE cases in CCNi	<i>Scenario 1:</i> amount of compensation for non-pecuniary damages ( <b>300 Euros</b> )	<i>Scenario 2:</i> amount of compensation for non-pecuniary damages ( <b>800 Euros</b> )
Number of bankruptcy proceedings	63	63
Average number of creditors	185	185
Average amount of claims (in EUR)	2.546.011	2.546.011
<b>The RS debt to creditors (average in EUR)</b>	<b>472.349.586</b>	<b>472.448.745</b>

*Source:* Authors' calculation based on the available data compiled from CCNi (2020)

<sup>30</sup> To increase fees, a lawyer may file two separate complaints: a complaint for pecuniary damages and a complaint for non-pecuniary damages. In this case, the calculation of lawyer costs includes: a) drafting two complaints: 2 x 58,200.00 RSD = 116,400.00 RSD or 990 Euros; b) legal representation at two hearings: 2 x 59,700.00 = 119,400.00 RSD or 1,016.00 Euros; c) drafting two enforcement motions: 2 x 58,200.00 RSD = 116,400.00 RSD or 990 Euros. The total lawyer costs amount to 352,200.00 RSD or **2,997.00 Euros**.

<sup>31</sup> These are the actual enforcement costs incurred before the public enforcement officer, and calculated on the minimum amount of compensation for non-pecuniary damage (300 Euros). These costs include: a) enforcement costs for preparing, managing and archiving the case (3,621.6 RSD); b) postal delivery of submissions to the parties, participants in proceedings and the court (1,800 RSD); c) drafting an enforcement decision (658.91 RSD); d) drafting a conclusion on advance payment (658.91 RSD); e) transfer of funds from the designated account of the public enforcement officer (288.00 RSD); f) fee for efficient enforcement (3,169.63 RSD). The total amount of actual enforcement costs is 10,197.05 RSD or **87 Euros**. The calculation of costs is based on the actual case from the practice of an enforcement officer and adapted for illustration purposes, considering that the type and amount of costs may vary from case to case depending on many factors: the conduct of legal representatives, the number of necessary procedural actions, the calculation of the interest rate, etc.

<sup>32</sup> Enforcement costs incurred before the enforcement officer were calculated by simulating the costs based on the amount of 2,546,011 Euros for compensation of pecuniary damage.

<sup>33</sup> The lawyer's costs are identical as in the previous scenario.

<sup>34</sup> These are the actual enforcement costs incurred before the public enforcement officer, and calculated on the maximum amount of compensation for non-pecuniary damage (800 Euros). These costs include: 1) costs for preparing, managing and archiving the case (4,796.40 RSD); 2) postal delivery of submissions to the parties, participants in proceedings and the court (1,800 RSD); 3) drafting an enforcement decision (959.28 RSD); 4) drafting a conclusion on advance payment (959.28 dinars); 5) transfer of funds from the designated account of the public enforcement officer (288.00 RSD); 6) fee for efficient enforcement (5,637.24 RSD). In this case, the total amount of actual enforcement costs is 14,440 RSD or **123 Euros**. The calculation of costs was based on a real case from the practice of an enforcement officer, and adapted for illustration purposes.

<sup>35</sup> This costs are identical as in the previous scenario.

### 5.2. Cases before the Commercial Court in Kragujevac

In the period under observation, a total of **49** bankruptcy proceedings have been instituted against socially-owned enterprises before the Commercial Court in Kragujevac. Based on the available data (a total of **25** cases), the average amount of claims is **731,807,679 RSD** or **6,224,442 Euros**, while the average number of creditors is **240** (Table 11).

*Scenario 1:* In case the court awards the amount of 300 Euros for compensation of non-pecuniary damage, the debt of the RS to bankruptcy creditors will be (on average):

$$240 \text{ objections} \times [\text{EUR } 6,224,442 \text{ (pecuniary damages)} + \text{EUR } 300 \text{ (non-pecuniary damages)} + \text{EUR } 3,142 \text{ (attorney's fees)}^{36} + (\text{EUR } 87 + \text{EUR } 17,881^{37} \text{ (enforcement costs)})] = \text{EUR } 1,499,004,480$$

*Scenario 2:* In case the court awards the amount of 800 Euros for compensation of non-pecuniary damage, the debt of the RS to bankruptcy creditors will be (on average):

$$240 \text{ objections} \times [\text{EUR } 6,224,442 \text{ (pecuniary damages)} + \text{EUR } 800 \text{ (non-pecuniary damages)} + \text{EUR } 3,142^{38} \text{ (attorney's fees)} + (\text{EUR } 123 + \text{EUR } 17,881 \text{ (enforcement costs)})] = \text{EUR } 1,499,133,120$$

**Table 13** Debt of the RS to bankruptcy creditors in all SoE cases in CCKg

All SoE cases in CCKg	<i>Scenario 1:</i> amount of compensation for non-pecuniary damages ( <b>300 Euros</b> )	<i>Scenario 2:</i> amount of compensation for non-pecuniary damages ( <b>800 Euros</b> )
Number of bankruptcy proceedings	25	25
Average number of creditors	240	240
Average amount of claims (in EUR)	6.224.442	6.224.442
<b>The RS debt to creditors (average in EUR)</b>	<b>1.499.004.480</b>	<b>1.499.133.120</b>

*Source:* Authors' calculation based on the available data compiled from CCKg (2020).

### 5.3. Cases before the Commercial Court in Belgrade

In the period under observation, a total of **138** bankruptcy proceedings have been instituted against socially-owned enterprises before the Commercial Court in Belgrade. Based on the available data (a total of **89** cases), the average amount of claims is **1,376,698,075 RSD** or **11,709,603 Euros**, while the average number of creditors is **247** (Table 11).

<sup>36</sup> Bearing in mind that the average claim (in the example above) is over 300,000,000.00 RSD, the cost of drafting a complaint will be 61,080.00 RSD, while the cost of drafting two complaints will be 122,160.00 RSD. Provided that the scheduled hearings are not to be delayed, the lawyer will attend at least one hearing per complaint. Under the current lawyer's tariff, the appearance in a hearing costs 62,580.00 RSD, i.e. 125,160.00 RSD for two hearings. If the plaintiff wins the case, the next step is drafting a motion for enforcement of claims, which costs 61,080.00 RSD per motion (i.e. 122,160.00 RSD for two motions). In this case, the total lawyer costs (122,160.00 dinars + 125,160.00 dinars + 122,160.00 dinars) amount to 369,480.00 RSD or **3,142 Euros**.

<sup>37</sup> Enforcement costs incurred before the enforcement officer were calculated by simulating the costs based on the amount of 6,224,442 Euros for compensation of pecuniary damage.

<sup>38</sup> The lawyer's costs are identical as in the previous scenario.

*Scenario 1:* In case the court awards the amount of 300 Euros for compensation of non-pecuniary damage, the debt of the RS to bankruptcy creditors will be (on average):

$$247 \text{ objections} \times [\text{EUR } 11,709,603 \text{ (pecuniary damages)} + \text{EUR } 300 \text{ (non-pecuniary damages)} + \text{EUR } 3,363 \text{ (attorney's fees)}^{39} + (\text{EUR } 87 + \text{EUR } 17,881^{40} \text{ (enforcement costs)})] =$$

**EUR 2,897,614,789**

*Scenario 2:* In case the court awards the amount of 800 Euros for compensation of non-pecuniary damage, the debt of the RS to bankruptcy creditors will be (on average):

$$247 \text{ objections} \times [\text{EUR } 11,709,603 \text{ (pecuniary damages)} + \text{EUR } 800 \text{ (non-pecuniary damages)} + \text{EUR } 3,363 \text{ (attorney's fees)}^{41} + (\text{EUR } 123 + \text{EUR } 17,881 \text{ (enforcement costs)})] =$$

**EUR 2,897,747,190**

**Table 14** Debt of the RS to bankruptcy creditors in all SoE cases in CCBg

All SoE cases in CCBg	<i>Scenario 1</i> – amount of compensation for non-pecuniary damages ( <b>300 Euros</b> )	<i>Scenario 2</i> – amount of compensation for non-pecuniary damages ( <b>800 Euros</b> )
Number of bankruptcy proceedings	25	25
Average number of creditors	240	240
Average amount of claims (in EUR)	11.709.603	11.709.603
<b>The RS debt to creditors (average in EUR)</b>	<b>2.897.614.789</b>	<b>2.897.747.190</b>

*Source:* Authors' calculation based on the available data compiled from CCBg (2020).

## 6. CONCLUSION AND RECOMMENDATIONS

The main findings of this research can be summarized in several points. First, regarding the key parameters of the time dimension of bankruptcy proceedings: the average duration of bankruptcy proceedings and the duration of bankruptcy cases exceeding the time frame of four or three years (reasonable time limit), there are no significant differences between the Commercial Court in Belgrade, the Commercial Court in Niš and the Commercial Court in Kragujevac. ***The average length of bankruptcy proceedings involving socially-owned enterprises in all three courts is about seven years, and the vast majority of cases exceed the reasonable time limit;*** notably, two cases in the Commercial Court in Kragujevac and the Commercial Court in Belgrade have been pending for **over 19 years**. At the same time, we emphasize that these are *active bankruptcy cases*, i.e. cases that have not yet been completed

<sup>39</sup> Considering that the average claim (in the example above) is over 1,300,000,000.00 RSD, the cost of drafting a complaint will be 65,400.00 RSD (i.e. 130,800.00 RSD for drafting two complaints). Provided that the hearings are not to be delayed, the lawyer will appear at least one hearing per complaint. Under the lawyer's tariff, the appearance in a hearing costs 66,900.00 RSD (i.e. 133,800.00 RSD for two hearings). If the plaintiff wins the case, the next step is drafting a motion for enforcement of claims, which amounts to 65,400.00 RSD per motion (i.e. 130,800.00 RSD for two motions). In this case, the total lawyer costs (130,800.00 RSD + 133,800.00 RSD + 130,800.00 RSD) amount to 395,400.00 RSD or **3,363 Euros**.

<sup>40</sup> Enforcement costs incurred before the enforcement officer were calculated by simulating the costs based on the amount of 11,709,603 Euros for compensation of pecuniary damage.

<sup>41</sup> The lawyer's costs are identical as in the previous scenario.

(concluded or suspended), which additionally speaks in favor of the unreasonable duration of bankruptcy proceedings involving socially-owned enterprises in the Republic of Serbia.

Although the remaining findings shed additional light on the bankruptcy of socially-owned enterprises, they have largely been anticipated. First of all, given the territory for which the courts were established, the number of bankruptcies of socially-owned enterprises initiated before the Commercial Court in Belgrade is significantly higher than the number of such cases before the Commercial Court in Niš and the Commercial Court in Kragujevac. Notably, in all three courts, the number of active bankruptcy case involving socially-owned enterprises initiated under the new 2009 Bankruptcy Act is substantially higher than the number of cases initiated under the former 2004 Bankruptcy Procedure Act; thus, *in all three courts, there are seven times more cases initiated under the new BA.*

Finally, due to the incomplete statistical data available at the official database of the Bankruptcy Supervision Agency (BSA), the comparative findings on the average number of creditors in the commercial courts in Belgrade (247), Kragujevac (240) and Niš (185), as well as the average amount of bankruptcy claims (which are 1.8 times higher in CCBg than in CC Kg, and 4.6 times higher than in CCNi) have to be taken with some reservation. However, the lack of data was not an impediment in conducting a hypothetical calculation of costs of bankruptcy cases involving socially-owned enterprises and determining the implications for the budget of the Republic of Serbia, provided that the objections (filed by the average number of creditors) for protection of the right to trial within a reasonable time are upheld. This part of the research has yielded the most interesting findings. Thus, provided that the objections are upheld, the results unequivocally indicate that the RS budget will be significantly burdened by the RS duty to compensate the injured parties, and the fiscal position of the Republic of Serbia will be significantly “shaken”. The debt of the RS to the bankruptcy creditors of socially-owned enterprises will amount to almost *five billion Euros*.<sup>42</sup> If we include the costs of objections for the protection of the rights of bankruptcy creditors of private enterprises which have not been covered by our analysis, it clearly shows the extent of this burning problem that calls for “urgent measures”.

In that context, we make a few recommendations. First, there is **an urgent need to enact a special legislative act which would resolve the burning issue of bankruptcy of socially-owned enterprises**.<sup>43</sup> In this regard, the Republic of Serbia cannot bypass the formerly affirmed objections and established claims of bankruptcy creditors; thus, it is necessary to consider some alternative approaches to paying off the debt, for example, by **converting it into public debt and issuing government bonds**. Secondly, the problem of bankruptcy creditors of insolvent socially-owned enterprises can also be resolved through the so-called “**pilot judgments**”, which are an integral part of the case law of the European Court of Human Rights.<sup>44</sup> Pilot judgments are an instrument for solving systemic or structural problems, such as problems related to unpaid claims of employees of insolvent socially-owned enterprises.<sup>45</sup> Third, it is necessary **to reduce the frequency of filing and affirming future objections to protect the right to a trial within a reasonable time**, particularly in view of the right to file new objections envisaged in Article 13 of the Act on Protection of the Right to Trial within a Reasonable Time (RT Act). In that context, it is necessary to amend the RT Act and the “disputed” Article 13. By allowing the bankruptcy creditors to file new

<sup>42</sup> Our calculation amounts to 4,868,968,855 Euros.

<sup>43</sup> For more on this idea, see: Obućina, 2019; Mojašević, Jovanović, 2021a.

<sup>44</sup> See: *Case of Broniowski v. Poland*, Application no. 31443/96, dated 28 September 2005; *Case of Suljagic v. Bosnia and Herzegovina*, Application no. 27912/02, dated 3 November 2009.

<sup>45</sup> For more on this idea, see: Mojašević, Jovanović, 2021a.

objections, the legislator has demonstrated an intention to “meet” the creditors’ needs in terms of protecting their right to a trial within a reasonable time. Yet, the application of this article seems to have led to *unintended consequences* in terms of imposing a significant burden on commercial courts judges, the RS budget and taxpayers. Above all, the legislator seems to have neglected *the number of bankruptcy creditors of socially-owned enterprises*, who in some cases exceeds a thousand people. The legislator also seems to have neglected the *rational behavior of lawyers*, who recognized the possibility of additional earnings in their clients’ endeavour to protect their right to a fair trial within a reasonable time.

On the whole, our research shows that the existing institutional framework for exercising the right to trial within a reasonable time generates numerous negative consequences in terms of bankruptcy of socially-owned enterprises. Therefore, there is a need for a systemic change, primarily in the field of legislation, which would contribute to shifting the incentives of key actors (bankruptcy creditors and their attorneys) in this “bankruptcy game”. However, as a consequence of the shortcomings in the institutional structure, the taxpayers will not be able to avoid paying the existing debt incurred in the past years. In this paper, we have provided some recommendations which would facilitate the payment of that debt and its minimization *pro futuro*.

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## RAZUMNI ROK I STEČAJ DRUŠTVENIH PREDUZEĆA

*Predmet ovog rada jeste stečaj društvenih preduzeća. Cilj je ispitati implikacije stečajnih postupaka otvorenih nad društvenim preduzećima na budžet Republike Srbije i njene poreske obveznike. Pošli smo od toga da će stečajevi društvenih preduzeća imati značajan negativan uticaj na budžet RS i njene poreske obveznike. U svrhu provjere ove hipoteze, tehnikom deskriptivne statistike utvrdili smo razlike u pogledu prosečnog trajanja stečaja, maksimalne i minimalne dužine stečaja i procenta predmeta koji traju preko četiri, odnosno tri godine između Privrednog suda u Beogradu, Nišu i Kragujevcu. Osim toga, sproveli smo i hipotetičku kalkulaciju troškova stečajnog postupka svih društvenih preduzeća u tri privredna suda u slučaju usvajanja prigovora za zaštitu prava na suđenje u razumnom roku. Rezultati pokazuju da između tri privredna suda ne postoje značajne razlike u vremenskoj dimenziji stečaja društvenih preduzeća – ogromna većina predmeta traje preko granice razumnog roka, kao i da će njihovo dugo trajanje značajno opteretiti budžet RS.*

*Ključne reči: razumni rok, stečaj, društvena preduzeća, troškovi*

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