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

SECOND SECTION

CASE OF DKD-UNION DOO v. SERBIA

(Application no. 42731/06)

JUDGMENT

STRASBOURG

10 December 2013

This judgment is final but it may be subject to editorial revision.

In the case of Dkd-Union Doo v. Serbia,

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

Paulo Pinto de Albuquerque, *President,*
Dragoljub Popović,
Helen Keller, *judges,*
and Seçkin Erel, *Acting Deputy Section Registrar,*

Having deliberated in private on 19 November 2013,

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

PROCEDURE

1. The case originated in an application (no. 42731/06) against the Republic of Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Dkd-Union Doo ("the applicant"), a company registered in Serbia, on 12 October 2006.

2. The applicant was initially represented by Mr M. Milojković and subsequentelly by Mr D. Matić, lawyers practising in Varvarin. The Serbian Government ("the Government") were represented by their Agent, Mr S. Carić.

3. On 11 October 2011 the application was communicated to the Government.

4. The Government objected to the examination of the application by a Committee. After having considered the Government's objection, the Court rejects it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant carried on business with a socially-owned company, HK "*Viskoza a.d.-Celvlakno a.d*" from Loznica (hereinafter: "the debtor"), which appeared to have failed to pay a certain invoice.

6. On 5 March 2003 the applicant filed an application for the enforcement of that invoice with the Valjevo Commercial Court.

7. On 11 March 2003 the Valjevo Commercial Court issued an enforcement order, by virtue of which the debtor was ordered to pay the

applicant 2,669,582.391 Serbian dinars (RSD), plus statutory interest as of 21 March 2001 and costs of enforcement proceedings.

8. On an unspecified day this decision became final.

9. On 24 November 2003 the enforcement proceedings were stayed, due to the restructuring of the debtor.

10. On 29 May 2009 the enforcement proceedings were continued.

11. On 11 June 2009 insolvency proceedings were initiated against the debtor and the Privatisation Agency was appointed to be the insolvency administrator. The insolvency proceedings against the debtor are still ongoing.

12. On 17 March 2010 the Valjevo Commercial Court recognised the applicant as a secured creditor (*razlučni poverilac*).

13. On 15 January 2013 the applicant was partially settled in the amount of RSD 1,178,784.52[2].

14. The remainder of the final court decision of 11 March 2003 remained unsettled.

II. RELEVANT DOMESTIC LAW

A. Enforcement Procedure Act 2000 (*Zakon o izvršnom postupku*; published in the Official Gazette of the Federal Republic of Yugoslavia nos. 28/00, 73/00 and 71/01)

15. Article 22 of this Act provides that certain legal instruments, such as invoices (*verodostojna isprave*) are to be enforced through the courts.

B. Other relevant domestic law

16. The remainder of the relevant domestic law was set out in the Court's judgments of *R. Kačapor and Others v. Serbia* (nos. 2269/06, 3041/06, 3042/06, 3043/06, 3045/06 and 3046/06, §§ 57-82, 15 January 2008); *Vlahović v. Serbia* (no. 42619/04, §§ 37-47, 16 December 2008); *Crnišanin and Others v. Serbia* (nos. 35835/05, 43548/05, 43569/05 and 36986/06, §§ 100-104, 13 January 2009); *EVT Company v. Serbia* (no. 3102/05, §§ 26 and 27, 21 June 2007); *Marčić and Others v. Serbia* (no. 17556/05, § 29, 30 October 2007); *Adamović v. Serbia,* (no. 41703/06, §§ 17-22, 2 October 2012); and *Marinković v. Serbia* ((dec.) no. 5353/11, §§ 26-29 and §§ 31-44, 29 January 2013).

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[1] Approximately 42,000 euros (EUR)

[2] Approximately EUR 10,500

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

17. The applicant complained about the respondent State's failure to fully enforce an invoice and a related enforcement order of 11 March 2003 in its favour. It relied on Article 6 of the Convention, which, in so far as relevant, reads as follows:

Article 6 § 1

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

A. Admissibility

18. In the Court's view, although the Government have not raised an objection as to the Court's competence *ratione materiae* in this case, this issue nevertheless calls for its consideration (see, *Motion Pictures Guarantors Ltd v. Serbia*, no. 28353/06, § 26, 8 June 2010).

19. The present case concerns the enforcement of an invoice. The Court has already held that Article 6 of the Convention applies not only to the enforcement of court judgements, but also to the enforcement of other legal instruments, such as notarial deeds, on condition that such instruments are to be enforced through courts (see *Estima Jorge v. Portugal,* 21 April 1998, *Reports of Judgments and Decisions* 1998-II). It sees no obstacle to apply this approach in the present case (see paragraph 15 above). The application is compatible *ratione materiae* with the Convention.

20. The Court further notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

21. The Court notes that the impugned enforcement order of 11 March 2003 has not yet been fully enforced. The Court observes that it has frequently found violations of Article 6 of the Convention in cases raising issues similar to those raised in the present case (see among many others authorities R. Kačapor and Others, cited above, §§ 115-116). Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Accordingly, there has been a breach of Article 6 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. 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

23. In respect of pecuniary damage the applicant sought the payment of the outstanding debt. The applicant did not claim any specific amount in respect of non-pecuniary damage but left it to the Court's discretion to fix an appropriate award.

24. The Government considered the claims unjustified.

25. Having regard to the violation found in the present case and its own case-law (see *R. Kačapor and Others,* cited above, §§ 123-126, and *Crnišanin and Others*, cited above, § 139), the Court considers that the applicants' claims for pecuniary damage concerning the payment of the outstanding debt must be accepted. The Government shall therefore pay the applicant sums awarded in the enforcement order of 11 March 2003, less any amounts which may have already been paid in this respect.

26. As regards non-pecuniary damage, the Court notes that the applicant failed to claim specific amount in this respect. Accordingly, the Court considers that there is no call to award it any sum on that account.

B. Costs and expenses

27. The applicant did not claim any specific amount in respect of costs and expenses but left it to the Court's discretion to fix an appropriate sum in this respect.

28. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, the applicant failed to submit any relevant supporting documents proving that it had actually incurred any costs and expenses. It follows that the applicant failed to comply with the requirements set out in Rule 60 § 2 of the Rules of Court. The Court therefore rejects it (Rule 60 § 3).

C. Default interest

29. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 of the Convention;

3. *Holds*
   (a) that the respondent State shall, from its own funds and within three months, pay the applicant, the sums awarded in the enforcement order of 11 March 2003, less any amounts which may have already been paid in this respect;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

Done in English, and notified in writing on 10 December 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Seçkin Erel	Paulo Pinto de Albuquerque
Acting Deputy Registrar	President