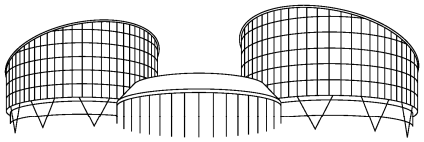

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF KOKA HYBRO KOMERC DOO BROYLER v. SERBIA

(Application no. 59341/09)

JUDGMENT

STRASBOURG

14 March 2017

This judgment is final. It may be subject to editorial revision.

In the case of Koka Hybro Komerc DOO Broyler v. Serbia,

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

Luis López Guerra, *President*,
Dmitry Dedov,
Branko Lubarda, *judges*,
and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 21 February 2017,

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

PROCEDURE

1. The case originated in an application (no. 59341/09) against Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by *Koka Hybro Komerc DOO Brojler*, a limited liability company based in Serbia ("the applicant"), on 22 October 2009.

2. The applicant was represented by Mr M. Živković, a lawyer practising in Leskovac. The Serbian Government ("the Government") were initially represented by their former Agent, Ms V. Rodić, being more recently substituted by their current Agent, Ms. N. Plavšić.

3. On 23 October 2014 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

A. Civil proceedings brought by the applicant

5. On 26 June 2006 the Leskovac Commercial Court ordered *AD Perper-Agrar,* a socially-owned company based in Bošnjace (hereinafter "the debtor") to pay the applicant specified amounts on account of damages. That judgment became final on 14 July 2006.

6. On 31 October 2006, upon the applicant's request to that effect, the Leskovac Commercial Court ordered the enforcement of the said judgment and further ordered the debtor to pay the applicant the enforcement costs.

B. Insolvency proceedings

7. On 27 May 2011 the Leskovac Commercial Court opened insolvency proceedings in respect of the debtor.

8. The applicant duly submitted his claim.

9. On 3 February 2012 the applicant's claim was formally recognised.

10. The insolvency proceedings are still ongoing.

C. Legal status of the debtor

11. On 22 April 2003, the debtor had been privatised and changed its name to *AD Perper-Agrar*.

12. On 5 May 2005 the privatisation contract had been annulled and on 8 September 2006 the debtor's name was changed to *Agrar Fruit*.

13. According to the Serbian Ministry of Economy, the debtor is still a company predominantly comprised of socially-owned capital (see http://www.priv.rs/Ministarstvo-privrede/90/AGRAR-FRUIT--u-stecaju.shtml/companyid=1238, accessed on 6 December 2016).

D. Other relevant facts

14. In their additional observations of 19 April 2016 the Government informed the Court that the applicant had transferred its judgment claims to a third person on 28 October 2015.

15. On 9 November 2016, as a response to the Government's additional observations, the applicant submitted that the contract regarding the transfer of the claims in question had been terminated by 11 December 2015.

II. RELEVANT DOMESTIC LAW AND PRACTICE

16. The relevant domestic law concerning the status of socially-owned companies, as well as enforcement and insolvency proceedings, has been outlined in the cases of *R. Kačapor and Others v. Serbia*, nos. 2269/06 *et al.*, §§ 57-64 and 71-76, 15 January 2008, and *Jovičić and Others v. Serbia* (dec.), no. 37270/11, §§ 88-93, 15 October 2013. Furthermore, the case-law of the Constitutional Court in respect of socially-owned companies, together with the relevant provisions concerning constitutional redress has likewise been outlined in the admissibility decision in *Marinković v. Serbia* (dec.), no. 5353/11, §§ 26 -29 and 31-44, 29 January 2013, the judgment in *Marinković v. Serbia*, no. 5353/11, §§ 29-31, 22 October 2013, and the decision in *Ferizović v. Serbia* (dec.), no. 65713/13, §§ 12-17, 26 November 2013).

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL No. 1

17. The applicant complained of the respondent State's failure to enforce the final court judgment rendered in its favour and of the lack of an effective remedy in that connection. The applicant relied on Articles 6 § 1 and 13 of the Convention and on Article 1 of Protocol No. 1, which, in so far as relevant, read 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."

Article 1 of Protocol No. 1

"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."

Article 13

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Admissibility

18. The Government argued that the debtor was legally and financially independent from the State and the fact that the debtor was undergoing insolvency proceedings could not be attributed to the responsibility of the State. Therefore, the Government concluded that the Respondent State could not be held liable for the debt of the company concerned in the present case, but they did not exclude their possible liability for any non-pecuniary damage suffered as a consequence of the excessive length of the enforcement proceedings. In their additional observations, the Government submitted that the applicant had lost its victim status since it had transferred its claims to a third person in the course of proceedings before the Court (see paragraph 14 above). Finally, the Government argued that the applicant

had also abused its right to lodge a petition, since it had failed to inform the Court about the said transfer.

19. The applicant maintained its complaint. It also disagreed with the Government's submission regarding its victim status. Notably, since the contract regarding the transfer of its claims had been terminated (see paragraph 15 above), it could still claim to be the victim, within the meaning of the Convention.

20. As to the State's responsibility for the debt of the company in question, the Court has already stated on numerous occasions in comparable cases against Serbia that the State is liable for honouring the debts of socially/State-owned companies established by final domestic court judgments (see, for example, *Crnišanin and Others v. Serbia*, nos. 35835/05, 43548/05, 43569/05 and 36986/06, § 124, 13 January 2009; and *R. Kačapor and Others,* cited above*,* §§ 97-98; and see also paragraph 13 above). The Court sees no reason to depart from that jurisprudence in the present case. Consequently, the Government's objection must be rejected.

21. Regarding the applicant's victim status and the alleged abuse of its right to lodge a petition, the Court notes that the applicant had indeed failed to inform the Court about the transfer of its claims to a third person. However, taken into account that this contract was terminated less than two months later and was never implemented, the Court finds that the applicant did not lose its victim status and, further, that its failure to inform the Court did note amount to an abuse of the right to lodge a petition (contrast with *Predescu v. Romania*, no. 21447/03, §§ 25-27, 2 December 2008; *Tatalović and Dekić v. Serbia* (dec.), no. 15433/07, 29 May 2012; *Hüttner v. Germany* (dec.), no. 23130/04, 9 June 2006; and *Komatinović v. Serbia* (dec.), no. 75381/10, 29 January 2013). The Court, therefore, rejects these objections raised by the Government.

22. Since the applicant's complaints are neither manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor inadmissible on any other grounds, they must be declared admissible.

B. Merits

23. The Court notes that the domestic judgments under consideration in the present case have remained unenforced to date.

24. The Court observes that it has frequently found violations of Article 6 of the Convention and/or Article 1 of Protocol No. 1 to the Convention in cases raising issues similar to those raised in the present case (see *R. Kačapor and Others*, cited above, §§ 115-116 and § 120; and *Crnišanin and Others,* cited above, §§ 123-124 and §§ 133-134).

25. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or convincing argument capable of persuading it to reach a different conclusion in the present case.

There have, accordingly, been violations of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1.

26. Having reached this conclusion, the Court does not find it necessary to examine essentially the same complaint under Article 13 of the Convention (see *mutatis mutandis*, *Kin-Stib and Majkić v. Serbia*, no. 12312/05, § 90, 20 April 2010).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. 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, costs and expenses

28. The applicant requested that the State be ordered to enforce the judgment in question or to pay it 175,748,44 euros (EUR) in case of failure to do so. As regards the non-pecuniary damage, the applicant did not claim a specific amount, but left it to the Court's discretion. Finally, the applicant requested that the State be ordered to pay EUR 5,277 for the costs and expenses incurred before domestic courts.

29. The Government did not comment on the applicant's just satisfaction claims.

30. Having regard to the violations found in the present case and its own case-law (see, for example, *R. Kačapor and Others*, cited above §§ 123-26; and *Crnišanin and Others*, cited above, § 139), the Court considers that the Government should pay to the applicant the sums awarded in the final domestic judgment in question (see paragraph 5 above), as well as the established costs of the enforcement proceedings, less any amounts which may have already been paid on this basis.

31. Furthermore, the Court considers that the applicant sustained some non-pecuniary loss arising from the breaches of the Convention found in this case. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court considers it reasonable to award EUR 2,000 to the applicant, less any amounts which may have already been paid in that regard at the domestic level, to cover the non-pecuniary damage suffered, as well as costs and expenses incurred before the Court (see *Stošić v. Serbia*, cited above, §§ 66 and 67).

B. Default interest

32. 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 have been violations of Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention;

3. *Holds* that there is no need to examine separately the complaint under Article 13 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, from its own funds and within three months, the sums awarded in the judgment rendered in its favour, less any amounts which may have already been paid on this basis;
   (b) that the respondent State is to pay the applicant, within the same period, EUR 2,000 (two thousand euros) less any amounts which may have already been paid in that regard at the domestic level, to cover non-pecuniary damage, costs and expenses, plus any tax that may be chargeable to the applicants, which is to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (c) 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;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 March 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Luis López Guerra
Deputy Registrar	President