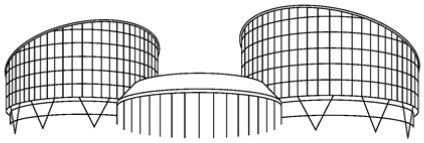

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF MIVES DOO v. SERBIA

(Application no. 48966/09)

JUDGMENT

STRASBOURG

10 January 2017

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

In the case of Mives DOO v. Serbia,

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

Pere Pastor Vilanova, *President,*
Branko Lubarda,
Georgios A. Serghides, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 6 December 2016,

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

PROCEDURE

1. The case originated in an application (no. 48966/09) against Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by *Mives DOO,* a limited liability company based in Serbia ("the applicant"), on 31 August 2009.

2. The applicant was represented by Mr D. Simić, a lawyer practising in Novi Sad. 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

5. On 24 April 1997 and 3 September 1998 respectively, the Pančevo Commercial Court ordered *DD Lola Utva Vazduhoplovna industrija,* a socially-owned company based in Pančevo (hereinafter "the debtor") to pay the applicant specified amounts on account of damages for the airplane it bought from the debtor, but which had never been delivered to the applicant, plus the costs of the civil proceedings. These judgments became final by 4 June 1998 and 25 September 1998 respectively.

6. On 5 June 2002, upon the applicant's request to that effect, the Pančevo Commercial Court ordered the enforcement of the said judgments and further ordered the debtor to pay the applicant the enforcement costs.

7. On 11 February 2008 the Commercial Court noted that on 29 January 2008 the Privatisation Agency had ordered the restructuring of the debtor and stayed the enforcement proceedings until the conclusion of this process.

8. According to the information on the status of the debtor obtained from the website of the Serbian Business Registers Agency, the debtor is an active company, predominantly comprised of State-owned capital (see http://apr.gov.rs, accessed on 24 October 2016).

II. RELEVANT DOMESTIC LAW AND PRACTICE

9. 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 TO THE CONVENTION

10. The applicant complained of the respondent State's failure to enforce final court judgments 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

11. The Government argued that the debtor was legally and financially independent from the State and the fact that the debtor was undergoing restructuring 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. The Government, however, did not exclude its possible liability for the length of the enforcement proceedings.

12. The applicant reaffirmed its complaints.

13. 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 8 above). The Court sees no reason to depart from that jurisprudence in the present case. Consequently, the Government's objection must be rejected.

14. Since the applicants' 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

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

16. 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).

17. 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.

18. 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

19. 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

20. The applicant requested that the State be ordered to pay it, from its own funds the judgment debt, plus the costs of the enforcement proceedings. The applicant further requested that the State be ordered to pay EUR 41,708.60 on account of its inability to use the airplane which it had bought from the debtor.

21. In respect of non-pecuniary damages, the applicant claimed EUR 10,000.

22. Finally, for the costs and expenses incurred before domestic courts and the Court, the applicant claimed EUR 8,204.22.

23. The Government contested these claims.

24. 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 judgments 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.

25. With regard to the remainder of the applicant's request for pecuniary damages, the Court finds that there is no causal link between the alleged damage and the violation found. Moreover, the applicant did not raise this claim before the domestic courts. The Court, therefore, rejects this part of the applicant's claim for pecuniary damage.

26. 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

27. 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 judgments 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 applicant, 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 10 January 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Pere Pastor Vilanova
President