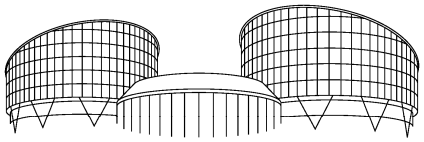

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF TEHNOGRADNJA DOO v. SERBIA

(Applications nos. 35081/10 and 68117/13)

JUDGMENT

STRASBOURG

14 March 2017

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

In the case of Tehnogradnja DOO 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 two applications (nos. 35081/10 and 68117/13) against Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("theConvention") by Tehnogradnja DOO, a limited liability company based in Serbia ("the applicant company"), on 20 May 2010.

2. The applicant company was represented by Mr G. Nalić and D. Ignjatović, lawyers practising in Belgrade. The Serbian Government ("the Government") were initially represented by their former Agent, Ms V. Rodić, and more recently their current Agent, Ms N. Plavšić.

3. On 11 July 2014 and 16 September 2014 the applications were communicated to the Government.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. First set of civil proceedings

5. On 25 March 2004 the applicant company concluded a contract with Univerzal Banka AD (hereinafter "the bank"), a private institution based in Belgrade. Under the terms of this contract, the applicant company acquired a debt belonging to the bank resulting from a final court judgment of 28 December 1999. That judgment was rendered against a socially-owned company called Mehanizacija (hereinafter "the debtor company") with its seat in Vladičin Han. On 29 August 2000, upon the bank's application to

that effect, the Leskovac Commercial Court ordered the enforcement of the said judgment and the debtor company subsequently paid a part of the judgment debt.

6. On 14 April 2005, upon the applicant company's application to that effect, the Leskovac Commercial Court again ordered the full enforcement of the judgment in question.

7. On 26 July 2005 the applicant company concluded a settlement with the debtor company, which was later annulled following an application by the debtor company by a decision of the Leskovac Commercial Court of 22 January 2009. That decision became final on 3 March 2010.

B. Second set of civil proceedings

8. On 24 December 2001 the Leskovac Commercial Court ordered the debtor company to pay the applicant company specified amounts.

9. On 2 February 2005, upon the applicant company's application to that effect, the Leskovac Commercial Court ordered the enforcement of the said judgment.

C. Insolvency proceedings

10. On 1 March 2010 the Leskovac Commercial Court opened insolvency proceedings in respect of the debtor company. As a result, all of the other ongoing enforcement proceedings against the debtor company were stayed.

11. The applicant company duly reported its claims based on the above-mentioned judgments.

12. On 15 October 2010 the Leskovac Commercial Court recognised a part of the applicant company's claims and instructed the applicant company to initiate civil proceedings in respect of the remainder.

13. On 29 May 2012 the Leskovac Commercial Court ruled partly in favour of the applicant company and dismissed the remainder of its claims. That decision was upheld by the Commercial Appeals Court on 25 October 2013. The domestic courts found that the contract which the applicant company had concluded with the bank (see paragraph 5 above) entitled it only to the recovery of the amount paid for the transfer of the debt owed to the bank in question, not the judgment debt itself.

14. The insolvency proceedings are still ongoing.

II. RELEVANT DOMESTIC LAW AND PRACTICE

15. 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. JOINDER OF THE APPLICATIONS

16. The Court considers that, in accordance with Rule 42 § 1 of the Rules of Court, the applications should be joined, given their common factual and legal background.

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

17. The applicant company complained of the respondent State's failure to enforce the two final court judgments concerned and of the lack of an effective remedy in that connection. The applicant company, in so doing, 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 Court 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

19. The Government maintained that the debtor company had been both legally and financially independent from the State and that its insolvency could not be attributed to it. The Government further submitted that, in any event, their liability could not be extended to any other amounts apart from the ones established in the Commercial Court's decisions of 15 October 2010 and 29 May 2012 (see paragraphs 12 and 13 above).

20. The applicant company disagreed. It argued that the amounts established by the final court's judgments of 28 December 1999 and 24 December 2001 could not be disputed in the subsequent insolvency proceedings, as was done by the Commercial Court decisions of 15 October 2010 and 29 May 2012.

21. 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-owned or 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). The Court sees no reason to depart from that reasoning in the present case. However, the Court has still to determine which are the exact decisions that would engage the respondent State's liability.

22. The Court reiterates at the outset 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 (see, among many authorities, *Brualla Gómez de la Torre v. Spain*, 19 December 1997, § 31, *Reports of Judgments and Decisions* 1997-VIII). That being so, the Court will not question the interpretation of domestic law by the national courts, save in the event of evident

arbitrariness (see, *mutatis mutandis*, *García Ruiz v. Spain* [GC], no. 30544/96, §§ 28-29, ECHR 1999-I).

23. Turning to the present case, the Court notes that the first decisions which were rendered in the applicant company's name concerning the claims established by the judgment of 28 December 1999 were the decisions of the Commercial Court of 15 October 2010 and 29 May 2012.

24. Furthermore, according to domestic law, the debtor company cannot simultaneously be subjected to insolvency and an enforcement procedure. Any ongoing enforcement proceedings must thus be stayed, while new enforcement proceedings cannot be instituted as long as the insolvency proceedings are still pending. Therefore, the only decisions relevant for the applicant company should be the ones rendered in the course of insolvency proceedings.

25. In addition, the domestic courts found that the contract which the applicant company had concluded with the bank entitled it only to the recovery of the amount paid for the transfer of the bank's claims in question, not the judgment debt itself (see paragraph 13 above).

26. Taking into account that the Court has no general competence to substitute its own assessment of the facts or application of the law for that of national courts and that the decisions of the Commercial Court of 15 October 2010 and 29 May 2012 do not disclose any arbitrariness or unfairness, the Court cannot but accept the Government argument to the effect that its liability should only be limited to the amounts established in those decisions.

27. Having established the scope of the Government's liability, the Court lastly notes that the domestic decisions of 15 October 2010 and 29 May 2012 remain unenforced.

28. The Court observes that it has frequently found violations of Article 6 of the Convention and/or Article 1 of Protocol No. 1 in cases raising issues similar to those raised in the present case (see, *mutatis mutandis*, *R. Kačapor and Others*, cited above, §§ 115-16 and § 120, and *Crnišanin and Others,* cited above, §§ 123-24 and §§ 133-34).

29. 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 in respect of the non-enforcement of the Commercial Court's decisions of 15 October 2010 and of 29 May 2012.

30. 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).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. 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

32. The applicant company requested that the State be ordered to pay it, from its own funds: (i) the debt established by the judgments of 28 December 1999 and 24 December 2001, plus the costs of the enforcement proceedings; (ii) 1,502,190.51 Serbian dinars for the costs and expenses incurred before domestic courts; and (iii) 3,950 euros (EUR), in total, for the costs and expenses incurred before the Court. The applicant company explicitly stated that it did not seek compensation for non-pecuniary damage.

33. The Government contested these claims.

34. 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 company the sums awarded in the final domestic decisions of 15 October 2010 and 29 May 2012 (see paragraphs 5 and 26 above), less any amounts which may have already been paid on that basis.

35. Since the applicant company did not ask for non-pecuniary damages, the Court considers that there is no call to award it any sum on that account.

36. 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 have been actually and necessarily incurred and are reasonable as to quantum. That is, the applicant must have paid them, or be bound to pay them, pursuant to a legal or contractual obligation, and they must have been unavoidable in order to prevent the violation found or to obtain redress. The Court requires itemised bills and invoices that are sufficiently detailed to enable it to determine to what extent the above requirements have been met. In the present case, regard being had that the applicant company submitted only the invoices in respect to costs and expenses incurred before the Court and the above criteria, the Court considers it reasonable to award the sum of EUR 500, plus any tax that may be chargeable to the applicant company, covering costs incurred before the Court.

B. Default interest

37. 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. *Decides* to join the applications;

2. *Declares* the applications admissible;

3. *Holds* that there has been a violation of Articles 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention;

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

5. *Holds*
   (a) that the respondent State is to pay the applicant company, from its own funds and within three months, the sums awarded in the Commercial Court's decisions of 15 October 2010 and 29 May 2012 rendered in its favour, less any amounts which may have already been paid on that basis;
   (b) that the respondent State is to pay the applicant company, within the same period, EUR 500 (five hundred euros) to cover costs and expenses incurred before the Court, plus any tax that may be chargeable to the applicant company, 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;

6. *Dismisses* the remainder of the applicant company'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
Deputy Registrar

Luis López Guerra
President