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

SECOND SECTION

CASE OF MAJS EKSPORT-IMPORT v. SERBIA

(Application no. 35327/09)

JUDGMENT

STRASBOURG

5 November 2013

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

In the case of Majs Eksport-Import 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 15 October 2013,

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

PROCEDURE

1. The case originated in an application (no. 35327/09) 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 Majs Eksport-Import ("the applicant"), a company registered in Serbia, on 11 June 2009.

2. The applicant was represented by Mr V. Božović, a lawyer practising in Belgrade. 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.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The proceedings concerning the applicant's claim

4. The applicant and *Beogradski Pamučni Kombat*, a company based in Belgrade (hereinafter: "the debtor") concluded a contract on 7 March 2000. The debtor failed to fulfil its obligations arising from the contract.

5. On 11 December 2001 the Commercial Court in Belgrade instituted insolvency proceedings against the debtor. This decision was published on the court's notice board on 19 December 2001.

6. On 12 March 2002 the applicant lodged its pecuniary claim within the insolvency proceedings.

7. As its claim had been disputed, on 11 October 2002 the applicant filed a separate civil suit before the Commercial Court in Belgrade and requested the determination of its claim.

8. On 2 September 2004 the Commercial Court in Belgrade determined one part of the applicant's claim and ordered the debtor to pay the applicant 6,686.15 euros (EUR).

9. On an unspecified date thereafter this judgment became final.

10. On 4 April 2005 the Commercial Court determined the reminder of the applicant's claim and ordered the debtor to pay the applicant EUR 11,409 as well as 80,500 Serbian dinars in respect of the costs of civil proceedings.

11. This judgment became final on 9 June 2005.

12. On 30 September 2009 the applicant lodged an application for the enforcement of the judgment of 4 April 2005 in respect of the costs awarded. On the same day the Commercial Court in Belgrade allowed the application and issued an enforcement order.

13. The judgment of 2 September 2004 and the reminder of the judgment of 4 April 2005 were to be enforced in the context of the insolvency proceedings.

B. The status of the debtor

14. Before the insolvency proceedings the debtor company was predominantly socially owned. It has remained registered as predominantly socially owned in the relevant public registries throughout the insolvency proceedings.

15. On 18 December 2009 the Commercial Court in Belgrade terminated the insolvency proceedings against the company. This decision became final on 11 January 2011. On 1 June 2011 the debtor was erased from the Companies' Register.

II. RELEVANT DOMESTIC LAW

16. The relevant domestic law is 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).

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 6 AND 13 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

17. The applicant complained about the respondent State's failure to enforce two final judgments rendered in its favour against the debtor and about the lack of an effective remedy in this connection. It relied on Articles 6 and 13 of the Convention and 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

1. The six-month rule

18. The Government submitted that the applicant had lodged the application with the Court outside the six-month time-limit. In particular, this time-limit had started to run when the opening of the insolvency proceedings against the debtor was announced on the Belgrade Commercial Court's notice board, that is, on 19 December 2001. Since the applicant must have known that it was not certain whether it would be able to settle its claim in full within the insolvency proceedings, it should have lodged the application within six months from the date of the Convention entering into force in respect to the respondent State, which is 3 March 2004. Since the

applicant had failed to do so, the Government invited the Court to reject the application as out of time.

19. The Court notes that the present case concerns the non-enforcement of the final domestic judgments in the applicant's favour. The judgments here at issue became final and enforceable in 2004 and 2005 and remain fully unenforced to the present day. At the time of the introduction of this application, there were no effective domestic remedies for this complaint in the respondent State (see *Milunović and Čekrlić v. Serbia* (dec.), nos. 3716/09 and 38051/09, 17 May 2011). The Court concludes, therefore, that the alleged violation in the present case constitutes a continuous situation and accordingly rejects the Government's objection.

2. Compatibility ratione personae

20. The Government argued that the State could not be held responsible for the debtor in the present case which was a separate legal entity not controlled by the State.

21. The Court has already held in comparable cases against Serbia that the State is liable for debts of socially-owned companies (see, for example, *R. Kačapor and Others,* cited above, §§ 97-98, *Rašković and Milunović v. Serbia*, nos. 1789/07 and 28058/07, § 71, 31 May 2011, and *Adamović v. Serbia*, cited above, § 31).The Court sees no reason to depart from that jurisprudence in the present case. Consequently, this argument must be rejected.

3. Conclusion

22. The Court considers that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and finds no other ground to declare it inadmissible. It must therefore be declared admissible.

B. Merits

23. The Court has already examined a similar situation in *Adamović v. Serbia*, cited above, and found a breach of Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention. 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 and Article 1 of Protocol No. 1 to the Convention also in this case.

24. The Court does not find it necessary in the circumstances of this case 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

25. 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."

26. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award it any sum on that account.

27. It must, however, be noted that a judgment in which the Court finds a violation of the Convention or of its Protocols imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in its domestic legal order to put an end to the violation found (see *Apostol v. Georgia*, no.40765/02, §§ 71-73, ECHR 2006, *Marčić and Others v. Serbia*, cited above, §§ 64-65, and *Pralica v. Bosnia and Herzegovina*, no. 38945/05, § 19, 27 January 2009).

28. Having regard to its finding in the instant case, and without prejudice to any other measures which may be deemed necessary, the Court considers that the respondent State must secure the enforcement of the final domestic decisions rendered in the applicant's favour by way of paying the applicant, from their own funds, the sums awarded in the said final decisions, less any amounts which may have already been paid in respect of the said decisions.

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 and of Article 1 of Protocol No. 1 to the Convention;

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

4. *Holds*

(a) that the respondent State shall, from its own funds and within three months, pay the applicant, the sums awarded in the final court decisions under consideration in the present case, less any amounts which may have already been paid on the basis of the said decisions;

(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 5 November 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Seçkin Erel	Paulo Pinto de Albuquerque
Acting Deputy Registrar	President