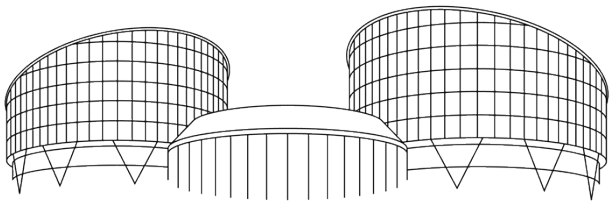

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

DECISION

Application no. 24922/12
ZASTAVA IT TURS
against Serbia

The European Court of Human Rights (Second Section), sitting on 9 April 2013 as a Chamber composed of:
Guido Raimondi, *President,*
Danutė Jočienė,
Peer Lorenzen,
Dragoljub Popović,
Işıl Karakaş,
Nebojša Vučinić,
Paulo Pinto de Albuquerque, *judges,*
and Stanley Naismith, *Section Registrar,*
Having regard to the above application lodged on 4 April 2012,
Having deliberated, decides as follows:

THE FACTS

1. The applicant, *ZASTAVA IT TURS*, is a company based in Kragujevac. It was represented before the Court by Mr D. Joksimović, a lawyer practising in the same town. The facts of the case, as submitted by the applicant, may be summarised as follows.

A. The circumstances of the case

2. On an unspecified date the applicant company instituted civil proceedings before the Kragujevac Commercial Court against *GRUPA*

ZASTAVA VOZILA A.D. Kragujevac u restrukturiranju (the debtor), seeking, *inter alia*, declaratory redress in the property context.

3. On 2 March 2010 the Commercial Court ruled in favour of the applicant company and, further, ordered the debtor to pay it 650,000 Serbian Dinars for legal costs.

4. This judgment became final on 3 August 2011.

5. On 19 August 2011 the applicant company filed a request for the enforcement of the above judgment in respect of the costs awarded, proposing that it be carried out by means of bank transfer.

6. On 23 August 2011 the Commercial Court rejected this request given that the debtor was "being restructured" (see paragraph 14 below).

7. On 16 September 2011 this decision was upheld at second instance.

8. On 2 November 2011 the applicant filed a constitutional appeal.

9. The case is currently pending before the Constitutional Court.

B. The applicant company's and the debtor's status

10. The applicant company and the debtor were companies predominantly consisting of socially-owned capital.

11. On 16 November 2006 the Privatisation Agency ordered the restructuring of the debtor, which process is still ongoing.

C. Relevant domestic law

1. *Enforcement Procedure Act 2004 (Zakon o izvršnom postupku; published in the Official Gazette of the Republic of Serbia - OG RS - no. 125/04)*

12. Article 5 § 1 of this Act provides that all enforcement proceedings are to be conducted urgently.

13. Articles 69-153 set out the relevant details as regards enforcement by means of a bank account.

2. *The Privatisation Act (Zakon o privatizaciji; published in OG RS nos. 38/01, 18/03, 45/05, 123/07, 30/10, 93/12 and 119/12)*

14. Articles 19-20đ set out the details as regards the restructuring of companies about to be privatised. This restructuring, however, is optional and a company may be sold without having been restructured if the Privatisation Agency so decides. Article 20ž provides that companies undergoing restructuring cannot be subjected to an enforcement procedure until the end of restructuring process but no later than 30 June 2014.

3. Relevant provisions concerning socially-owned companies

15. These provisions are set out in the case of *R. Kačapor and Others v. Serbia* (nos. 2269/06, 3041/06, 3042/06, 3043/06, 3045/06 and 3046/06, 15 January 2008, §§ 71-76).

COMPLAINTS

16. The applicant company complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 about the non-enforcement of the final judgment of 2 March 2010.

THE LAW

17. As noted above the applicant company complained about the non-enforcement of the final judgment rendered in its favour. In so doing, it relied on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

18. The relevant provisions of these Articles read as follows:

Article 6 § 1

"In the determination of his civil rights and obligations .., everyone is entitled to a fair ... hearing within a reasonable time by [a] ... tribunal ..."

Article 1 of Protocol No. 1

"Every natural or legal person is entitled to the peaceful enjoyment of his [or her] possessions. No one shall be deprived of his [or her] possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

19. The Court, however, considers that it is necessary to examine first whether the applicant company is entitled to make an application under Article 34 of the Convention (see *Municipal Section of Antilly v. France* (dec.), no. 45129/98, ECHR 1999-VIII).

20. It is noted in this respect that under the terms of the Article 34, the Court may receive individual applications only from "any person, non-governmental organisation or a group of individuals".

21. In the instant case the applicant company is a company predominantly comprised of socially-owned capital and, as such, is closely controlled by the Privatisation Agency, itself a State body, and/or the Government (see *R. Kačapor and Others v. Serbia*, cited above, §§ 97).

22. The Court therefore considers that the applicant company, despite the fact that it is a separate legal entity, does not enjoy sufficient institutional and operational independence from the State, (see, *mutatis mutandis*, *R. Kačapor and Others v. Serbia*, cited above, §§ 92-99), and must, for the purposes of Article 34 of the Convention be classified as a governmental organisation.

23. Therefore the present application is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4 thereof (see, *mutatis mutandis*, *Municipal Section of Antilly v. France,* cited above).

For these reasons, the Court unanimously

Declares the application inadmissible.

Stanley Naismith
Registrar

Guido Raimondi
President