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

THIRD SECTION

DECISION

Application no. 30790/13
Ivan ANASTASOV
against Serbia

The European Court of Human Rights (Third Section), sitting on 2 February 2016 as a Committee composed of:

Helena Jäderblom, *President,*
Dmitry Dedov,
Branko Lubarda, *judges,*

and Marialena Tsirli, *Deputy Section Registrar,*

Having regard to the above application lodged on 18 April 2013,

Having regard to the comments submitted by the parties,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Ivan Anastasov, is a Serbian national, who was born in 1959 and lives in Bosilegrad.

The Serbian Government ("the Government") were represented by their Agent, Ms V. Rodić.

The facts of the case, as submitted by the parties, may be summarised as follows.

The applicant is a former employee of *Autotransport AD - Bosilegrad*. At the time of his employment the company was predominantly comprised of State-owned capital (hereinafter "the debtor").

On 10 August 2006 the State sold its shares on the Belgrade Stock Exchange to a private company.

On an unspecified date the applicant initiated civil proceedings against the debtor for outstanding payments of salary arrears and social security contributions incurred in 2005.

On 22 April 2008 the Bosilegrad Municipal Court (*Opštinski sud*) awarded the applicant certain sums against the debtor. This judgment became final on 16 May 2008.

On 28 October 2009 the Bosilegrad Municipal Court ordered the enforcement of the final judgment rendered in favour of the applicant. The applicant's claim has been only partially enforced in the enforcement proceedings which are still pending.

On 13 February 2013 the applicant lodged a constitutional appeal. These proceedings are also still ongoing.

COMPLAINTS

The applicant complained, relying on Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention, about the failure of the national authorities to enforce the final court decision rendered in his favour.

THE LAW

The relevant provisions of Articles 6 § 1 and 13 of the Convention, as well as Article 1 of Protocol No. 1 to the Convention, 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."

The Government argued that the application concerns the non-enforcement of a final domestic decision rendered against a private company and that, therefore, the constitutional appeal should be regarded as an effective domestic remedy. Since the applicant's constitutional appeal is still pending before the Constitutional Court, the application should be rejected as premature.

The applicant disagreed.

The Court observes that the rule of exhaustion of domestic remedies contained in Article 35 § 1 of the Convention requires that normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged (see, among many other authorities, *Vučković and Others v. Serbia* (preliminary objection) [GC], no. 17153/11 and 29 other cases, §§ 69-77, 25 March 2014).

The Court notes that the Municipal Court judgment of 22 April 2008, the non-enforcement of which is the subject matter of the present case, became final on 16 May 2008, well after the debtor's privatisation on 10 August 2006. Under such circumstances, the case is to be distinguished from those cases concerning the non-enforcement of final domestic decisions rendered against State/socially-owned companies in that the general approach to the admissibility of a non-enforcement complaint should be followed (see *Luković v. Serbia* (dec.), no. 5224/11, 16 December 2014 and *Adžemović and Others v. Serbia* (dec.), nos. 23387-12 et al., 16 December 2014).

The Court has consistently held that a constitutional appeal should, in principle, be considered as an effective domestic remedy in respect of all applications introduced against Serbia as of 7 August 2008 (see *Vinčić and Others v. Serbia*, nos. 44698/06, 44700/06, 44722/06, 44725/06, 49388/06, 50034/06, 694/07, 757/07, 758/07, 3326/07, 3330/07, 5062/07, 8130/07, 9143/07, 9262/07, 9986/07, 11197/07, 11711/07, 13995/07, 14022/07, 20378/07, 20379/07, 20380/07, 20515/07, 23971/07, 50608/07, 50617/07, 4022/08, 4021/08, 29758/07 and 45249/07, § 51, 1 December 2009). There is no reason to depart from that jurisprudence in the present case (compare and contrast to *Milunović and Čekrlić v. Serbia* (dec.), nos. 3716/09 and 38051/09, 17 May 2011 concerning the non-enforcement of final court decisions rendered against socially/State-owned companies).

The Court notes that the applicant lodged his constitutional appeal on 13 February 2013 and that these proceedings are still pending before the Constitutional Court. In these circumstances, the Court considers that it would be premature to take a position on the substance of this application.

Thus, the Court finds that the application must be rejected as inadmissible for non-exhaustion of domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 3 March 2016.

Marialena Tsirli
Deputy Registrar

Helena Jäderblom
President