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

THIRD SECTION

DECISION

Application no. 57744/15
Dragan BUDIMIROVIĆ
against Serbia

The European Court of Human Rights (Third Section), sitting on 12 September 2017 as a Committee composed of:

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

Having regard to the above application lodged on 5 November 2015,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Dragan Budimirović, is a Serbian national, who was born in 1956 and lives in Vršac. He was represented before the Court by Ms M. Mihaj, a lawyer practising in Vršac.

The Serbian Government ("the Government") were represented by their Agent, Ms N. Plavšić.

On 25 June 2001 and 5 December 2008 respectively, the Vršac Municipal Court ordered a socially-owned company *DP Alfa Protein* (hereinafter "the debtor company") based in Vršac, to pay the applicant a specified amount on account of damages and on account of salary arrears and social insurance contributions, plus the costs of the civil proceedings. Those judgments became final on unspecified dates.

On 22 July 2008 and 1 June 2009 respectively, upon the applicant's request to that effect, the Vršac Municipal Court ordered the enforcement of the said judgments.

On 17 July 2009 the applicant was paid certain amount on the basis of the judgments in question. However, the Municipal Court asked the applicant to return that sum to the court's deposit, since it had been paid to him before the decision ordering the payment became final. The applicant returned the money.

On 16 September 2009 the Pančevo Commercial Court opened insolvency proceedings in respect of the debtor company (St. 24/2010). As a result, the ongoing enforcement proceedings against the debtor company were stayed.

On 28 December 2010 the applicant initiated civil proceedings for damages against the Respondent State, seeking the amount which had been paid to him and which he had returned to the court's deposit.

On 20 June 2012 the Vršac Municipal Court ruled against him.

On 23 November 2012 the Novi Sad Appeals Court upheld that judgment.

The applicant lodged a constitutional appeal on 31 December 2012. He alleged in his appeal that he complained against the Appeals Court's decision of 23 November 2010. He further stated chronologically the judgments and enforcement orders, as well as other events which preceded the civil proceedings concerning damages and that the judgments of 25 June 2001 and 5 December 2008 remained unenforced. Finally, the applicant asked the Constitutional Court to reverse the Appeals Court's judgment of 23 November 2012 and the Municipal Court's judgment of 20 June 2012 and rule in his favour.

On 21 May 2015 the Constitutional Court dismissed the applicant's appeal.

The insolvency proceedings against the debtor company are still ongoing.

COMPLAINTS

The applicant essentially complained about the non-enforcement of the final judgments rendered in his favour. These complaints fall to be examined under Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1.

THE LAW

The Government asked the Court to declare the application inadmissible for failure to exhaust domestic remedies. They argued that the applicant had lodged a constitutional appeal against the Appeals Court's judgment of

23 November 2012 only and that he asked the Constitutional Court to reverse that judgment, as well as the Municipal Court's judgment of 20 June 2012. The Government further relied on the Court's case-law, namely on the case of *Vučković and Others v. Serbia* (preliminary objection [GC], nos. 17153/11 and 29 others, §§ 69-78, 25 March 2014) and concluded that the applicant had failed to seize the Constitutional Court in a proper manner.

The applicant disagreed and stated that he had properly exhausted all domestic remedies.

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 other authorities*, Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 71, 25 March 2014).

As regards Serbia in particular, the Court held that a constitutional appeal should, in principle, be considered as an effective domestic remedy within the meaning of Article 35 § 1 of the Convention in respect of all applications introduced as of 7 August 2008 (see *Vinčić and Others v. Serbia*, nos. 44698/06, and others, § 51, 1 December 2009). Concerning the non-enforcement of judgments rendered against socially/State owned companies, however, the Court established that the constitutional appeal was to be deemed as an effective domestic remedy starting with 22 June 2012 and 4 October 2013, respectively depending on the specific status of the debtor (see *Marinković v. Serbia* (dec.), no. 5353/11, § 59, 29 January 2013 and *Ferizović v. Serbia* (dec.), no. 65713/13, 26 November 2013).

The Court further reiterates that exhaustion rule must be applied with some degree of flexibility and without excessive formalism. However, the Article 35 § 1 requires that the complaints intended to be made subsequently to the Court should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law (see *Vučković and Others*, cited above, § 72, with further references).

Turning to the present case, the Court observes that the applicant did state in his constitutional appeal that the non-enforced judgments and the way the enforcement proceedings were conducted were the cause of his later civil suit for damages. However, the applicant lodged his appeal against the Appeals Court's judgment of 23 November 2012 only and asked the Constitutional Court to reverse that judgment, as well as the Municipal Court's judgment. He did not complain even in substance, about the non-enforcement of the judgments of 25 June 2001 and 5 December 2008 nor did he ask the Constitutional Court to order the Respondent State to enforce the said judgments.

In view of the above and having regard to the subsidiary character of the Convention machinery, the Court does not find that there were any special reasons for dispensing the applicant from the requirement to exhaust domestic remedies in accordance with the applicable rules and procedure of domestic law. On the contrary, had the applicant complied with this requirement, it would have given the Constitutional Court that opportunity which the rule of exhaustion of domestic remedies is designed to afford States, namely to determine the issue of compatibility of the impugned national measures, or omissions to act, with the Convention and, should the applicant nonetheless have pursued his complaint before the European Court of Human Rights, this Court would have had the benefit of the views of the Constitutional Court (see *Vučković and Others,* cited above, § 90 and the authorities cited therein).

Accordingly, the Court agrees with the Government's position that the applicant should have made use of the constitutional appeal avenue in appropriate manner before addressing the Court and rejects the application pursuant to Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 5 October 2017.

Fatoş Aracı
Deputy Registrar

Pere Pastor Vilanova
President