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

THIRD SECTION

DECISION

Application no. 80727/13
Negosava GLADOVIĆ KRAJNER
against Serbia

The European Court of Human Rights (Third Section), sitting on 20 September 2016 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 4 October 2013,

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, Ms Negosava Gladović Krajner, is a Serbian national, who was born in 1951 and lives in Šabac.

On 11 November 2005 the applicant obtained a final domestic judgment in her favour from Šabac Municipal Court (*Opštinski sud u Šapcu*) according to which "*Zorka – Mineralna Đubriva AD*", a socially/State-owned company, was ordered to pay her certain sum. On 6 September 2006 the same court ordered the enforcement of the said judgment. The said judgment has not yet been fully enforced.

COMPLAINT/COMPLAINTS

The applicant essentially complains about the failure by the national authorities to enforce a final judgment in her favour. This complaint falls to

be examined under Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention.

THE LAW

The relevant provisions of Articles 6 § 1 and 13 of the Convention, as well as Article 1 of Protocol No. 1 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 asked the Court to declare the application inadmissible for failure to exhaust domestic remedies. In particular, since the applicant lodged her application before the Court on 4 October 2013, at the time when the constitutional appeal was considered an effective domestic remedy, the applicant could, and should have lodged a constitutional appeal.

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*, Akdivar and Others v. Turkey*, 16 September 1996, § 65, *Reports of Judgments and Decisions* 1996-IV).

The Court has already held that a constitutional appeal should, in principle, be considered an effective domestic remedy within the meaning of Article 35 § 1 of the Convention in respect of all applications lodged from 4 October 2013 onwards regarding the socially-owned companies (see

Ferizović v. Serbia (dec.) no. 65713/13, §§ 21-30). There is no reason to depart from that jurisprudence in the present case.

As the applicant failed to lodge a constitutional appeal, the application must be rejected under 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 13 October 2016.

Fatoş Aracı
Deputy Registrar

Pere Pastor Vilanova
President