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

THIRD SECTION

DECISION

Application no. 47372/13
Drago LAZIĆ
against Serbia

The European Court of Human Rights (Third Section), sitting on 9 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 14 June 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, Mr Drago Lazić, is a Serbian national, who was born in 1949 and lives in Dobrinci.

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.

On 14 October 2003 the Municipal Court (*Opštinski sud*) in Ruma awarded the applicant certain sums against *DP AD Nova Guma Ruma*, at that time a company predominantly comprised of socially/State-owned capital (hereinafter "the debtor"). This judgment became final on the same date.

On 16 February 2005 the Commercial Court (*Trgovinski sud*) in Sremska Mitrovica awarded the applicant certain sums against the debtor. This judgment became final on 15 July 2005.

On 3 October 2006 the Commercial Court in Sremska Mitrovica, acting as an enforcement court, ordered the enforcement of the judgments of 14 October 2003 and 16 February 2005.

On 11 May 2009 the Municipal Court in Ruma awarded the applicant certain sums against the debtor. This judgment became final on 11 June 2009.

On 10 September 2009 the Municipal Court in Ruma, acting as an enforcement court, ordered the enforcement of the judgment of 11 May 2009.

On 17 June 2010 the Commercial Court in Sremska Mitrivica opened insolvency proceedings in respect of the debtor. The applicant duly reported his claim from the above judgments to the insolvency administration. The applicant's claims have only been partially enforced in the insolvency proceedings.

On 20 July 2012 the debtor was sold to a private company.

COMPLAINT

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

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 his application before the Court on 14 June 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 22 June 2012 onwards regarding the socially-owned companies undergoing insolvency proceedings and/or those which have ceased to exist (see *Marinković v. Serbia*, (dec.), no. 5353/11, § 59, 29 January 2013). 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 10 March 2016.

Marialena Tsirli	Helena Jäderblom
Deputy Registrar	President