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

FOURTH SECTION

DECISION

Application no. 4122/15
Obrad MAGAZIN
against Serbia
(see appended table)

The European Court of Human Rights (Fourth Section), sitting on 10 November 2022 as a Committee composed of:

Armen Harutyunyan*, President*,
Anja Seibert-Fohr,
Ana Maria Guerra Martins*, judges*,
and Viktoriya Maradudina, *Acting Deputy Section Registrar,*

Having regard to the above application lodged on 30 December 2014,

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

Having deliberated, decides as follows:

FACTS AND PROCEDURE

The applicant's details are set out in the appended table.

The applicant's complaint under Article 6 § 1 of the Convention concerning the non-enforcement of final domestic decision in his favour against private individuals was communicated to the Serbian Government ("the Government").

THE LAW

In the present application, having examined all the material before it, the Court considers that for the reasons stated below, the respondent Government cannot be held liable for the non-enforcement of the impugned domestic decision.

In particular, the Court notes that the Government raised a preliminary objection concerning the applicant's loss of victim status. They therefore invited the Court to declare the application inadmissible in accordance with Article 35 §§ 3 and 4 of the Convention.

The Court notes that the applicant's status as a "victim" depends on the fact whether the domestic authorities acknowledged, either expressly or in substance, the alleged infringement of the Convention and, if necessary, provided appropriate redress in relation thereto. Only when these conditions are satisfied does the subsidiary nature of the protective mechanism of the Convention preclude examination of an application (see *Cocchiarella v. Italy* [GC], no. 64886/01, § 71, ECHR 2006-V, and *Cataldo v. Italy* (dec.), no. 45656/99, 3 June 2004). The Court further notes that factors such as the conduct of the applicant and what is at stake for him or her in the dispute together with other relevant aspects may affect in various degrees the award in respect of non-pecuniary damage (see *Apicella v. Italy*, no. 64890/01, § 26, 10 November 2004) and exceptionally, lead to no award at all (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 204, ECHR 2006-V). The domestic courts will then have to justify their decision by giving sufficient reasons (see *ibid.*, and *Šedý v. Slovakia*, no. 72237/01, §§ 90-92, 19 December 2006).

Turning to the present case, the Court notes that on 21 May 2014 the Constitutional Court in a well-reasoned decision found that the applicant's right to trial within a reasonable time had been violated and ordered the competent court to undertake all necessary steps in order to end the enforcement proceedings without delay. It did not award any non-pecuniary damage to the applicant due to his inactivity during the enforcement proceedings. The Court further notes that the applicant's passivity continued even after the adoption of the Constitutional Court's decision and, finally, led to the termination of the enforcement proceedings. Namely, on 5 July 2016 the Belgrade Court of First Instance terminated the enforcement proceedings in question as the applicant had failed to inform the court, within the statutory time-limit and as required by the Enforcement Act 2015, whether he wanted to continue with the enforcement proceedings before the court or through a bailiff service. The applicant never contested that decision, and it became final on 25 December 2017.

In view of the above, the Court is of the opinion that the applicant can no longer claim to be a "victim" within the meaning of Article 34 of the Convention of the violation complained of. Accordingly, the application is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) of the Convention and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 1 December 2022.

Viktoriya Maradudina
Acting Deputy Registrar

Armen Harutyunyan
President

APPENDIX

Application raising complaints under Article 6 § 1 of the Convention (non-enforcement or delayed enforcement of domestic decisions)

Application no. Date of introduction	Applicant's name Year of birth	Relevant domestic decision	Start date of non-enforcement period or date of entry into force of the Convention in respect of Serbia (3 March 2004)	End date of non-enforcement period Length of enforcement proceedings
4122/15 30/12/2014	**Obrad MAGAZIN** 1953	Belgrade Municipal Court, 30/04/2004	16/09/2005	Ongoing at the time of the application to the Court, final decision on termination of proceedings on 25/12/2017