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

FOURTH SECTION

DECISION

Application no. 19933/17
Dragan MATOVIĆ and Dragiša MATOVIĆ
against Serbia

The European Court of Human Rights (Fourth Section), sitting on 8 November 2022 as a Chamber composed of:

Gabriele Kucsko-Stadlmayer*, President*,
Tim Eicke,
Jon Fridrik Kjølbro,
Branko Lubarda,
Armen Harutyunyan,
Anja Seibert-Fohr,
Ana Maria Guerra Martins*, judges*,

and Ilse Freiwirth, Deputy Section Registrar,

Having regard to the above application lodged on 4 March 2017,

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

Having deliberated, decides as follows:

THE FACTS

1. The applicants, Mr Dragan Matović and Mr Dragiša Matović, are Serbian nationals who were born in 1967 and 1958 respectively and live in Čačak. They were represented before the Court by Mr G. Avramović, a lawyer practising in Čačak.

2. The Serbian Government ("the Government") were represented by their Agent, Ms Z. Jadrijević Mladar.

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

A. Background to the case

4. The applicants are the owners of a family house in the village of Kulinovci, near the town of Čačak, the construction of which began in 1975 and was finished in 1980.

5. In March 2006 a heavy rainfall caused mass landslides throughout Serbia. In total, sixty-two landslides occurred in the Čačak Municipality alone, affecting 130 households. A number of houses in the village of Kulinovci sustained damage to various degrees, including the applicants' house.

6. Acting in accordance with the relevant legislation (see paragraphs 30 and 33 below), the Čačak Municipality established a commission for the assessment of the damage caused by the landslides (hereafter "the Commission") and on 23 March 2006 requested funds from the central government with a view to providing emergency assistance to the affected population.

7. The Commission visited the affected area of the Municipality to record the damage and on 27 June 2006 prepared a report containing an assessment of the damage sustained.

8. The report listed the ninety-nine residential facilities the Commission had visited, of which sixty had sustained damage to various degrees. The report indicated that nine of those sixty residential facilities were "irreparable and uninhabitable" (*objekat nije za sanaciju i stanovanje*) and that one was completely destroyed. According to the report, the damage to residential facilities amounted in total to 35,502,907 Serbian dinars (RSD – approximately 396,706 euros (EUR) at the time).

9. The report also contained a list of forty-seven non-residential facilities (*pomoćni objekti*). The total damage to those facilities was estimated at RSD 7,509,379 (approximately EUR 83,909 at the time).

10. In a report drawn up following a visit on 14 April 2006, the Commission recorded the damage to the applicants' house and a nearby well. Even though the Commission recorded the damage to the applicants' house, that fact was, due to a clerical error, mentioned only in the part of the report concerning non-residential facilities, together with the damage to the well. The damage to the well was assessed at RSD 92,000 (approximately EUR 1,130 at the time), whereas the damage to the house was not assessed.

11. Subsequently, building inspectors of the Čačak Municipality visited the houses which the Commission had indicated in its report to be "irreparable and uninhabitable" or completely destroyed (see paragraph 8 above) and issued decisions prohibiting their use as it was considered that they had been damaged to such an extent that they were unsafe to live in. Since the Commission's report did not indicate that the applicants' house was irreparable and uninhabitable, it was not visited by a building inspector at the time.

12. By the end of 2006 the central government had paid RSD 20,000,000 (approximately EUR 245,638 at the time) into the budget of the Čačak Municipality. The evidence suggests that those funds were used for the construction of ten new houses in different locations for those whose houses had been certified as unsafe by the building inspectors (see the previous paragraph). It would appear that such houses were considered "destroyed" within the meaning of the relevant legislation (see paragraphs 32 and 34 below), thus entitling their owners to new houses financed by the State.

13. On 15 February 2008 an earthquake of a magnitude of 4.5 degrees on the Richter scale struck the Čačak area and caused (further) damage. News reports suggest that the damage consisted mostly of damaged roof tiles and chimneys and of cracked walls.

14. Since the applicants claimed that their house had sustained additional damage because of the earthquake, the building inspector visited the house on 18 September 2008 and found that the house was unsafe to live in. On 29 May 2009 the inspector issued a decision ordering the applicants to make the necessary repairs within forty days. The decision specified that if the applicants failed to make the repairs within that time-limit, a new decision prohibiting the use of the house would be issued. However, no such decision was ever issued even though the applicants did not comply with the inspector's order.

B. Civil proceedings

15. On 23 February 2009 the applicants brought a civil action against the Čačak Municipality in the Čačak Court of First Instance (*Osnovni sud u Čačku*), seeking compensation for the damage to their house caused by the 2006 landslides. After the court had obtained an opinion from a construction expert (see paragraph 18 below), the applicants eventually, on 10 May 2013, set their compensation claim at RSD 3,943,354 (approximately EUR 35,427 at the time).

16. The Municipality responded that it could not be held liable for the damage and that the applicants had therefore directed their action against the wrong defendant.

17. In the course of the proceedings the court established that the Municipality had not repaired any houses in the village of Kulinovci and that the Government of Serbia had financed the construction of seven new houses in different locations for the inhabitants of the village whose houses had been destroyed by the 2006 landslides (see paragraph 12 above).

18. An opinion from a construction expert obtained by the court on 10 December 2011 suggested that the applicants' house had been damaged as a result of a landslide, that it was not safe to live in and that repairs were impossible since the house had been built on land prone to landslides. The

expert eventually assessed the total damage to the applicants' house at RSD 3,943,354 (see paragraph 15 above).

19. However, the expert could not assess to what extent the house had been damaged by the 2006 landslides and to what extent by the subsequent earthquake (see paragraph 13 above). The court therefore heard several witnesses, namely members of the Commission, the building inspector, and neighbours, and on the basis of their statements established that in the period between the 2006 landslides and the 2008 earthquake the applicants' house had not been irreparable or uninhabitable.

20. By a judgment of 2 June 2014, the first-instance court dismissed the applicants' action.

21. The court held, firstly, that the Čačak Municipality had not been liable for the damage to the applicants' house because it had never paid any compensation to the victims of the 2006 landslides or repaired their houses, the assistance having been provided by the central government (see paragraph 17 above).

22. The court further held that the applicants had not proved a causal link between the 2006 landslides and (the extent of) the damage to their house established by the expert in 2011 (see paragraph 18 above). Specifically, the court explained that in the applicants' own admission, the first landslide had occurred as long ago as 1980, and that the damage to their house established by the Commission on 14 April 2006 had been of a lesser extent than that established by the expert in the report of 2011 (see paragraphs 10 and 18 above). The latter report had been prepared after the 2008 earthquake, which had occurred after the 2006 landslides and, according to the applicants, had caused further damage to the house.

23. Lastly, the court held that the 2006 landslides constituted *vis major*, namely an event causing damage for which no one could be held responsible and for which tort liability was therefore excluded. It also expressed the view that the Čačak Municipality had complied with its obligations under the 2002 Local Government Act (see paragraph 35 below) by requesting the funds from the central government.

24. By a judgment of 18 November 2014, the Kragujevac Appeals Court (*Apelacioni sud u Kragujevcu*) dismissed an appeal by the applicants and upheld the first-instance judgment. The second-instance court endorsed the reasons given by the first-instance court.

25. The applicants then lodged a constitutional appeal, complaining, among other things, of breaches of their right to fair proceedings and the right to property, guaranteed by the Serbian Constitution.

26. By a decision of 6 October 2016, the Constitutional Court (*Ustavni sud*) declared the applicants' constitutional appeal inadmissible, holding that the case did not raise any constitutional-law issue. On 4 November 2016 the court notified the applicants' representative of its decision.

C. Legal status of the applicants' house

27. The applicants' house had been built without a building permit and an order for its demolition was issued in 2020.

28. At the date of the latest information available to the Court (1 February 2022), administrative proceedings to have the house legalised were pending before the local authorities.

29. Both the applicants and the Government agreed that the applicants had little chance of legalising their house because the relevant building legislation provided that buildings on land prone to landslides could not be legalised. According to the applicants, whose allegations on this point are not disputed by the Government, a previous request for legalisation of the house was refused.

RELEVANT LEGAL FRAMEWORK

A. Emergency assistance legislation

30. At the relevant time the types of assistance provided in the event of natural disasters were regulated by the Use of Funds for Relief and Protection from Natural Disasters Act (*Zakon o korišćenju sredstava za sanaciju i zaštitu od elementarnih nepogoda*, Official Gazette, no. 50/92), which was in force until 31 December 2015.

31. Article 2 provided that such funds were to be secured in the State budget and that the central government would decide on their use.

32. Article 3 § 1 read as follows:

> "Funds from Article 2 of this Act shall be used for:
>
> - providing assistance to municipalities in repairing large-scale damage caused by natural disasters,
>
> - participation in the implementation of a financial programme for remediation and reconstruction of areas affected by natural disasters the remediation and reconstruction of which would last for several years,
>
> - participation in the implementation of a financial programme concerning preventive protection against natural disasters which frequently recur in the same area, and which can be eliminated by preventive measures the implementation of which would last for several years,
>
> - reconstruction of residential facilities that have been destroyed by natural disasters, where the amount of damage to such facilities on the territory of a [single] municipality exceeds 10% of the planned municipal budgetary revenues for the year in which the natural disasters occurred."

33. Article 5 § 3 provided that the relief funds were to be awarded at the request of the municipality on the territory of which large-scale natural disasters had occurred, if the municipality submitted a natural disaster

damage assessment report to the central government immediately or no later than sixty days after the natural disaster had occurred.

34. Article 9 provided that the funds referred to in the last sub-paragraph of Article 3 § 1 could be awarded to citizens whose houses had been destroyed by natural disasters and who did not possess other accommodation.

B. Other relevant legislation

35. Article 18 of the 2002 Local Government Act (*Zakon o lokalnoj samoupravi*, Official Gazette, no. 09/02 with further amendments), which was in force until 31 December 2006, provided that the municipality should organise protection from fire and from natural and other large-scale disasters and create conditions for their prevention and for mitigation of their consequences. A similar provision is contained in Article 20 of the Local Government Act (*Zakon o lokalnoj samoupravi*, Official Gazette, no. 129/07 with further amendments), which is currently in force.

C. Relevant document

36. On 17 November 2011 the National Assembly of Serbia adopted the National Protection and Rescue Strategy in Emergency Situations (*Nacionalna strategija zaštite i spasavanja u vanrednim situacijama*, Official Gazette, no. 86/11). The relevant part of that document reads as follows:

> "Landslides that occur on the territory of Serbia in 70% of cases are known about and have been extensively investigated. About 25% of the territory of Serbia has been affected by landslides and landslips. There are in total 3,137 active or potential landslides on the territory of Serbia."

COMPLAINTS

37. The applicants complained under Article 1 of Protocol No. 1 to the Convention and Article 13 of the Convention that they had been victims of a violation of their property rights and that there had been no effective domestic remedy at their disposal.

THE LAW

A. Complaint under Article 1 of Protocol No. 1 to the Convention

38. The applicants complained that neither the central nor the local authorities had taken any measures to prevent the occurrence of damage to their property even though they had known before 2006 that the area in question had been prone to landslides. Moreover, once the damage occurred, the authorities had secured funds and built new houses for a number of families affected by the 2006 landslides but not for the applicants. The

applicants relied on Article 1 of Protocol No. 1 to the Convention, which reads as follows:

> "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."

1. The parties' submissions

(a) The Government

39. The Government submitted that the applicants had not properly exhausted domestic remedies because they should have brought their civil action against the State and not against the Čačak Municipality.

40. In the alternative, the Government argued that, having regard to the relevant domestic legislation (see paragraphs 30-35 above) and the findings of fact reached by the domestic courts (see, in particular, paragraphs 19 and 22 above), the applicants had not had a legitimate expectation that they would obtain compensation for the damage caused to their house by the 2006 landslides.

(b) The applicants

41. The applicants replied that they had properly exhausted domestic remedies by suing the Čačak Municipality because, under the relevant legislation (see paragraphs 30-35 above), they could not have sought compensation for the destruction of their house directly from the central government but only from the local authorities. In support of their argument, the applicants furnished a copy of another appeal court decision in a case which they considered to be similar to theirs.

42. The applicants further submitted that they had had a legitimate expectation of obtaining compensation for the damage caused by the 2006 landslides. That was because the Čačak Municipality had sought and obtained funds from the central government and had built new houses for seven other inhabitants of the village of Kulinovci (see paragraph 17 above) whose houses that had been damaged by the landslide had been located near theirs.

2. The Court's assessment

43. The Court does not find it necessary to address the Government's objection based on non-exhaustion of domestic remedies (see paragraph 39 above) or examine whether the fact that the applicants' house was built without a building permit is relevant to the admissibility of this complaint

(see paragraphs 27-29 above), because the complaint is in any event inadmissible for the reasons set out below.

44. The Court has already had an opportunity to pronounce on the State's obligations under Article 1 of Protocol No. 1 to the Convention in respect of natural disasters, including heavy rainfalls resulting in landslides (see *Budayeva and Others v. Russia*, nos. 15339/02 and 4 others, §§ 171-85, ECHR 2008 (extracts); *Hadzhiyska v. Bulgaria* (dec.), no. 20701/09, 15 May 2012; and *Vladimirov v. Bulgaria* (dec.), no. 58043/10, 25 September 2018).

45. As regards the applicants' argument that the authorities had not taken any measures to prevent the occurrence of damage to their property caused by the 2006 landslides (see paragraph 38 above), the Court reiterates that Article 1 of Protocol No. 1 does not go so far as to require the Contracting States to take preventive measures to protect private possessions in all situations and all areas prone to natural disasters. In view of the operational choices which must be made in terms of priorities and resources, any obligations arising under this provision must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities (see *Hadzhiyska*, cited above, § 16, and *Vladimirov*, cited above, § 41).

46. In the present case, the applicants have not provided the Court with sufficient information or evidence showing that the authorities' actions or omissions caused or contributed to the damage sustained by their house (see, *mutatis mutandis*, *Hadzhiyska*, cited above, § 16, and *Vladimirov*, cited above, § 41).

47. Moreover, the Court notes that when addressing the issue of damage to property resulting from landslides, the Serbian authorities opted in 2006 for a type of emergency relief where the affected population was relocated and provided with new houses (see paragraphs 12 and 17 above). However, this relief was provided only to those whose houses had been destroyed (rendered irreparable and uninhabitable), a measure reflected in the relevant legislation in force at the time (see paragraphs 32 and 34 above).

48. Given the extent of the exposure to landslides in Serbia (see paragraph 36 above), it cannot be said that by choosing this emergency measure of mitigating the damage to property the Serbian authorities went beyond the wide margin of appreciation enjoyed by States in protecting private possessions from natural hazards (for the extent of this margin see *Budayeva and Others*, cited above, § 175).

49. Therefore, in so far as this complaint concerns the State's positive obligations under Article 1 of Protocol No. 1 in respect of natural disasters, it is inadmissible under Article 35 § 3 (a) of the Convention as manifestly ill-founded and must be rejected pursuant to Article 35 § 4.

50. The applicants also complained that they had not received any compensation for the damage to their property, whereas others had (see paragraph 38 above). The applicants thus seem to argue that they were entitled to compensation under domestic law and that their claim to obtain

that compensation – which they pursued in the civil proceedings in question (see paragraphs 15-26 above) – should have been granted. Their expectations of receiving such compensation seem to be based on the fact that their house was listed in the Commission's report as property damaged by the 2006 landslides (see paragraph 10 above) and the fact that the Čačak Municipality received funds from the central government and built new houses for seven other inhabitants of the village of Kulinovci whose houses had been damaged by the landslides (see paragraphs 17 and 42 above).

51. The relevant principles as to when a claim may be regarded as an "asset" and therefore a "possession" enjoying protection under Article 1 of Protocol No. 1 are summarised in *Radomilja and Others v. Croatia* ([GC], nos. 37685/10 and 22768/12, §§ 142-43 and 149, 20 March 2018), and the cases cited therein. A claim may be so regarded when it has a sufficient basis in national law or, in other words, when it is sufficiently established as to be enforceable (ibid., § 142). In the absence of such a claim an applicant cannot argue that he or she has a "legitimate expectation" that it will be realised, that is, that he or she will obtain effective enjoyment of a property right (see *Kopecký v. Slovakia* [GC], no. 44912/98, §§ 48-49, ECHR 2004-IX).

52. Furthermore, since it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law, the Court will not call into question the way in which domestic courts have done so unless their interpretation and application of domestic law is arbitrary or manifestly unreasonable (see *Radomilja and Others*, cited above, § 149). Likewise, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts because, as a general rule, it is for those courts to assess the evidence before them. Although the Court is not bound by the findings of domestic courts, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts (ibid., § 150). It is for these reasons that, in principle, it cannot be said that an applicant has a sufficiently established claim amounting to an "asset" for the purposes of Article 1 of Protocol No. 1 where there is a dispute as to the correct interpretation and application of domestic law and where the question whether he or she complied with the statutory requirements is to be determined in judicial proceedings (ibid., § 149).

53. The Court notes that in the civil proceedings in question the domestic courts established, on the basis of the evidence taken, that the extent of the damage caused to the applicants' house by the 2006 landslides had not at the relevant time been such as to render the house irreparable and uninhabitable (see paragraphs 19 and 22 above).

54. There are no cogent elements that would lead the Court to contradict those findings of fact reached by the domestic courts, or to hold that the way they applied the relevant domestic law, providing for financial assistance only if the destruction was the consequence of natural disasters, was arbitrary or manifestly unreasonable.

55. Since the applicants' house was therefore not "destroyed", within the meaning of the relevant legislation, by the 2006 landslides (see paragraphs 32 and 34 above), they were not entitled to any compensation for the damage to the house. In other words, their compensation claim did not have a sufficient basis in national law. Consequently, even though the applicants' expectations that their claim would be granted were not without any basis at all (see paragraph 50 above), they did not amount to "legitimate expectations" within the meaning of the Court's case-law quoted in paragraph 51 above. No legitimate expectation can be said to arise where there is a dispute as to the correct interpretation and application of domestic law and the applicant's submissions are subsequently rejected by the national courts (see *Kopecký*, cited above, § 50, and paragraph 52 above).

56. It follows that this part of the applicants' complaint is inadmissible as being incompatible *ratione materiae* with the provisions of the Convention or the Protocols thereto within the meaning of Article 35 § 3 (a) and that it must be rejected pursuant to Article 35 § 4.

B. Complaint under Article 13 of the Convention

57. The applicants also complained that they had not had an effective remedy for the protection of their rights under Article 1 of Protocol No. 1 to the Convention. They relied on Article 13, which reads as follows:

> "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."

58. The Court notes that Article 13 does not contain a general guarantee of legal protection. It relates exclusively to those cases in which the applicant alleges, on arguable grounds, that one of his or her rights or freedoms set forth in the Convention has been violated (see, for example, *Gavella v. Croatia* (dec.), no. 33244/02, ECHR 2006-XII (extracts)).

59. In this connection the Court refers to its findings in paragraphs 43-56 above, according to which one part of the applicants' complaint under Article 1 of Protocol No. 1 to the Convention is inadmissible as manifestly ill-founded and the remaining part falls outside the Court's jurisdiction *ratione materiae*.

60. That being so, and having regard to its case-law on the matter (see *Gavella*, cited above, and *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 52, Series A no. 131), the Court finds that the applicants' related complaint under Article 13 is also inadmissible under Article 35 § 3 (a) as being manifestly ill-founded and incompatible *ratione materiae* with the provisions of the Convention, and that it must be rejected pursuant to Article 35 § 4.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

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

Ilse Freiwirth Deputy Registrar	Gabriele Kucsko-Stadlmayer President