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

THIRD SECTION

DECISION

Application no. 24898/10
Iso MEDIĆ
against Serbia

The European Court of Human Rights (Third Section), sitting on 6 December 2016 as a Committee composed of:

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

Having regard to the above application lodged on 20 April 2010,

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 Iso Medić, is a Serbian national, who was born in 1946 and lives in Bečej. He was represented before the Court by Mr S. Momčilović, a lawyer practising in the same town.

The Serbian Government ("the Government") were initially represented by their former Agent, Ms V. Rodić, being more recently substituted by their current Agent, Ms. N. Plavšić.

The applicant was a representative of the Bečej-Srbobran Football Association (hereinafter "the debtor"), since its registration as a citizens' association on 21 January 2003. The founders of the debtor were four football clubs. The experts mostly offered their services on a voluntary basis. Some, however, were retained based on a special contract.

On 31 December 2003 the applicant concluded an employment contract with the debtor.

On 8 July 2004 the debtor dismissed the applicant due to the lack of financial resources, and the applicant lodged a civil suit with the Bečej Municipal Court.

On 14 September 2006 the Bečej Municipal Court ordered the debtor to pay the applicant a specified amount on account of salary arrears. By March 2008 this judgment became both final and enforceable.

On 19 March 2008, upon the applicant's request to that effect of 14 March 2008, the Bečej Municipal Court ordered the enforcement of the said judgment.

The applicant never lodged a constitutional appeal.

On 21 January 2010 the debtor was struck from the respondent State's Register of Sporting Organizations.

COMPLAINTS

The applicant complained about the non-enforcement of the final judgment 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 debtor was not a company predominantly comprised of State or socially-owned capital (hereinafter "a socially/State-owned company") which is why the applicant should have first made use of a constitutional appeal before lodging his application with the Court.

The applicant did not provide any comment on the status of the debtor. In response, he only maintained that the Serbian authorities remained responsible for the non-enforcement of the judgment in question.

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).

Turning to the present case, the Court notes, in the first place, that the status of the debtor is unclear. The Government stated that the debtor was not a socially/State-owned company and the applicant did not provide any information about the debtor's status, even in his original application.

Having regard to all the material in its possessions, the Court cannot, therefore, conclude with certainty that the debtor was indeed a socially/State-owned company.

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, as set out in *Vinčić*. 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 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 12 January 2017.

Fatoş Aracı
Deputy Registrar

Pere Pastor Vilanova
President