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

THIRD SECTION

DECISION

Application no. 57776/16
Ruža MLAĐENOVIĆ
against Serbia

The European Court of Human Rights (Third Section), sitting on 13 May 2025 as a Committee composed of:

Darian Pavli*, President*,
Úna Ní Raifeartaigh,
Mateja Đurović*, judges*,

and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 57776/16) against the Republic of Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 17 September 2016 by a Serbian national, Ms Ruža Mlađenović ("the applicant"), who was born in 1946, lives in Belgrade and was represented by Ms V. Kočić-Mitaček, a lawyer practising in Belgrade;

the decision to give notice of the application to the Serbian Government ("the Government"), represented by their Agent, Ms Z. Jadrijević Mladar;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

A. Construction permit

1. On an unspecified date private investors applied for a construction permit in respect of a plot of land adjacent to the applicant's property. According to the Government, on 15 January 2008 the applicant asked to study the relevant case file. She did not make any submissions or ask to join the proceedings as an interested party.

2. On 7 February 2008 the Secretariat for Urban Planning and Construction ("the Secretariat") issued the construction permit to the investors.

3. On 22 July 2008 the applicant challenged the Secretariat's decision of 7 February 2008. On 7 August 2008 her complaint was dismissed on the basis that it was out of time. According to the Government, the Secretariat was unable to deliver that decision to the applicant's address and published it on its bulletin board.

4. In 2009 the applicant complained to the Administrative Court (*Управни Суд*) about the Secretariat's failure to consider her complaint against the decision of 7 February 2008.

5. On 23 July 2011 the Administrative Court ruled in the applicant's favour, ordering the Ministry of Environmental Protection, Mining and Spatial Planning to examine her appeal.

6. On 1 November 2011 the Secretariat again dismissed the applicant's complaint on the basis that it was out of time. The applicant appealed.

7. On 2 December 2014 the Ministry of Construction, Transport and Infrastructure ordered the Secretariat to examine the applicant's appeal.

8. In response to an additional inquiry concerning the applicant's appeal, she explained that her appeal should be construed as a request to reopen the proceedings.

9. On 28 May 2015 the Secretariat held a hearing. The applicant and her lawyer were present and made submissions.

10. On 25 March 2016 the Secretariat refused to reopen the proceedings. The applicant appealed.

11. On an unspecified date the Ministry of Construction, Transport and Infrastructure quashed the decision of 25 March 2016 and remitted the matter to the Secretariat for fresh consideration. According to the Government, the proceedings are still pending.

B. Supervision of the construction project by the authorities

12. In response to the applicant's complaints, on 8 and 11 August 2008 a construction inspector reviewed the documentation relating to the construction project and visited the construction site. The inspector found no violations or irregularities.

13. Following subsequent inspections, on 5 and 8 December 2008 the inspector ordered the investors and the contractor to suspend work on the project pending a new construction permit, in view of irregularities which had been identified.

14. On 26 December 2008 the investors agreed to demands made by the applicant concerning the height of the security fencing and scaffolding on the site.

15. On 13 February 2009 the inspector noted that the investors had failed to comply with his earlier decision, and ordered the demolition of parts of the building that had been erected in contravention of the construction permit.

16. On 24 February 2009 the Secretariat for Property and Legal Affairs and Construction Inspection ordered the execution of the decision of 13 February 2009. The investors appealed to the Ministry of Construction, Transport and Infrastructure.

17. On 1 September 2016 the Ministry of Construction, Transport and Infrastructure annulled the decision of 24 February 2009 and remitted the matter to the Secretariat for Property and Legal Affairs and Construction Inspection for fresh consideration.

18. On 21 September 2016 the construction inspector visited the construction site. Referring to the issuance of a new construction permit and the fact that the building had been commissioned (see paragraphs 19-21 below), she discontinued the proceedings.

C. Post-factum approval of the construction project

19. On 5 March 2010 the investors applied for approval of the part of the construction project which did not comply with the original construction permit. According to the Government, the applicant did not submit a request to participate in the proceedings.

20. On 26 July 2011 the Secretariat for the Legalisation of Buildings issued a new (modified) construction permit.

21. On 16 November 2011 the Secretariat for the Legalisation of Buildings authorised the use of the building.

22. The applicant lodged a constitutional appeal against the decision of 26 July 2011.

23. On 3 March 2016 the Constitutional Court dismissed the applicant's appeal because she had failed to exhaust existing remedies prior to lodging that appeal with the Constitutional Court. In particular, it was incumbent on the applicant to appeal against the decision of 26 July 2011 to the Ministry of Environmental Protection and Spatial Planning.

D. Litigation with investors

24. On 22 June 2012 the applicant brought a civil action against the investors, alleging that the construction work carried out on the plot of land adjacent to her property had resulted in damage to her house.

25. On 28 February 2020 the Belgrade First Municipal Court dismissed the applicant's claims for damages as unsubstantiated.

26. On 2 December 2020 the Belgrade Court of Appeal upheld part of the judgment of 28 February 2020 concerning damages sought by the applicant, quashed part of the judgment concerning the reimbursement of experts' fees

and remitted the matter for fresh consideration. The proceedings are still pending.

27. According to the applicant, she lodged an application for review of the judgments in her case. The proceedings before the Supreme Court of Cassation are still pending.

E. Complaints

28. The applicant complained under Article 6 of the Convention that she had been unable to obtain State protection of her rights. Her numerous complaints had been to no avail. The decisions taken by State authorities had been contradictory and inconsistent.

29. Referring to Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention, the applicant complained that acts and omissions on the part of State authorities had resulted in damage to her property and a reduction in its value. A residential building had been unlawfully constructed three metres away from her property, blocking daylight and the view, and depriving her family of any privacy. Lastly, she alleged a violation of Article 13 of the Convention.

THE COURT'S ASSESSMENT

A. The Government's preliminary objection

30. The Government suggested that the Court should reject the application as an abuse of the right of individual application because the applicant had failed to inform the Court of the proceedings she had instituted against the private investors.

31. The applicant asserted her good faith.

32. The Court does not consider it necessary to address the objection raised by the Government as regards abuse of the right of individual application, because the application is in any event inadmissible for the following reasons.

B. Complaint under Article 6 of the Convention

33. The Government submitted that the complaints under Article 6 of the Convention should be dismissed because the applicant had failed to exhaust effective domestic remedies.

34. The applicant maintained her complaints. She submitted that she had been unable to effectively defend her rights owing to the frequent reorganisation of the regulatory agencies in charge of supervising urban construction, and the excessive complexity and lack of clarity of the applicable domestic regulations.

35. The Court cannot accept the arguments submitted by the applicant because they have not been substantiated. It further takes note of the findings of the Constitutional Court (see paragraph 23 above) that the applicant did not properly exhaust domestic remedies as regards challenging the issuance of a new construction permit to the investors. It also accepts that, in so far as the applicant referred to the proceedings she had instituted to challenge the original construction permit, which were still pending before domestic authorities (see paragraph 11 above), the complaint should be dismissed because she failed to raise the issue before the Constitutional Court (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 72, 25 March 2014).

36. Accordingly, the Court considers that this part of the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies. The Government's objection is upheld.

C. Complaints under Article 8 of the Convention and Article 1 of Protocol No. 1

37. In the Government's opinion, the complaints under Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention should be rejected by the Court as manifestly ill-founded.

38. The applicant maintained her complaints.

1. Article 8 of the Convention

39. The general principles concerning the application of Article 8 of the Convention are well established in the Court's case-law (see, among other authorities, *Moreno Gómez v. Spain*, no. 4143/02, §§ 53-56, ECHR 2004-X). The Court also reiterates that for Article 8 of the Convention to apply, a breach complained of must attain a level of severity resulting in significant impairment of the applicant's ability to enjoy his or her home or private or family life (see *Denisov v. Ukraine* [GC], no. 76639/11, §§ 11 and 116-17, 25 September 2018). Convincing evidence showing that the threshold of severity was attained has to be submitted by the applicant (ibid., § 114).

40. Having examined the material submitted, the Court cannot conclude that the applicant has provided it with convincing evidence showing that the required minimum threshold of severity was met. She has not demonstrated in practice that the alleged restricted access to daylight and/or lack of privacy and obstructed view resulting from the proximity of a newly erected residential building adversely affected, to a sufficient extent, her enjoyment of the amenities of her home and the quality of her private and family life. Nor has she shown that there were any effects on her physical or mental health. The mere fact that the construction carried out by private investors was found to be unlawful at a certain point is not sufficient for asserting that the applicant's rights under Article 8 have been interfered with (compare

Cherkun v. Ukraine (dec.), no. 59184/09, § 77, 12 March 2019). The investors successfully applied for a new construction permit and their project was subsequently approved and commissioned by the authorities. It was open to the applicant to challenge the authorities' decisions if she considered it necessary.

41. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

2. Article 1 of Protocol No. 1

42. The above findings are also relevant as far as the complaint under Article 1 of Protocol No. 1 is concerned. The applicant has not submitted any evidence to show that any act or omission on the part of the authorities resulted in damage to her property. On the contrary, while examining the applicant's claims lodged against private investors, the domestic courts found her claims in this respect unsubstantiated (see paragraphs 24-27 above). Having considered the material before it, the Court discerns no reason to depart from those findings. Nor was the applicant's argument that the construction on the adjacent plot of land had affected the value of her property supported by any evidence (compare *Ivan Atanasov v. Bulgaria*, no. 12853/03, § 83, 2 December 2010).

43. Accordingly, this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

D. Complaint under Article 13 of the Convention

44. In so far as the applicant relied on Article 13 of the Convention, in the absence of an arguable claim under the substantive Convention provisions (see *Maurice v. France* [GC], no. 11810/03, § 106, ECHR 2005-IX), the Court considers that this complaint is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention).

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 5 June 2025.

Olga Chernishova
Deputy Registrar

Darian Pavli
President