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

THIRD SECTION

DECISION

Application no. 10823/13
Vukota OBRADOVIĆ
against Serbia

The European Court of Human Rights (Third Section), sitting on 5 January 2017 as a Committee composed of:

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

Having regard to the above application lodged on 15 January 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 Vukota Obradović, is a Serbian national, who was born in 1951 and lives in Čačak. He was represented before the Court by Ms D. Obradović, a lawyer practising in the same town.

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

On 16 December 2004 the Čačak Municipal Court awarded the applicant certain sums against AD "Cer" Čačak, at that time a company predominantly comprised of socially-owned capital (hereinafter "the debtor"). By 15 October 2005 this judgment became both final and enforceable.

On 30 December 2005, upon the applicant's request to that effect, the Čačak Municipal Court ordered the enforcement of the said judgment.

On 30 January 2009 the State sold its shares in the debtor to a private company.

The said final court judgment remains unenforced to the present day.

On 28 December 2015 the applicant complained about the length of the impugned enforcement proceedings. On 30 May 2016 the Čačak High Court found a breach of the applicant's right to a hearing within a reasonable time and awarded him 31,780 Serbian dinars in respect of non-pecuniary damage suffered and for the legal costs (approximately 260 euros). The Court also ordered the speeding up the enforcement proceedings.

The applicant never lodged a constitutional appeal in this respect.

COMPLAINTS

The applicant essentially 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, since the applicant had not lodged a constitutional appeal.

The applicant reaffirmed his complaints.

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 futrher consistently held that a constitutional appeal should, in principle, be considered as an effective domestic remedy in respect of applications introduced against Serbia as of 7 August 2008 (see *Vinčić and Others v. Serbia*, nos. 44698/06, 44700/06, 44722/06, 44725/06, 49388/06, 50034/06, 694/07, 757/07, 758/07, 3326/07, 3330/07, 5062/07, 8130/07, 9143/07, 9262/07, 9986/07, 11197/07, 11711/07, 13995/07, 14022/07, 20378/07, 20379/07, 20380/07, 20515/07, 23971/07, 50608/07, 50617/07, 4022/08, 4021/08, 29758/07 and 45249/07, § 51, 1 December 2009).

More specifically, the Court established that as regards the non-enforcement of final judgments rendered against socially-owned companies

undergoing insolvency proceedings and/or those which have ceased to exist, a constitutional appeal should, in principle, be considered as an effective remedy in respect of all applications lodged from 22 June 2012 onwards (see *Marinković v. Serbia* (dec.), no. 5353/11, § 59, 29 January 2013).

In the present case, the Court notes that, at the time when the application was lodged with the Court, the debtor in question had already been privatised. It would, therefore, be inappropriate to apply the rule established in *Marinković*. It is understood that this approach does not undermine the Court's holding on the merits in cases involving socially–owned companies which were subsequently privatised (see *Jovičić and Others v. Serbia*, nos. 37270/11, 37278/11, 47705/11, 47712/11, 47725/11, 56203/11, 56238/11 and 75689/11, § 36, 13 January 2015), but is merely relevant for non-exhaustion purposes.

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 form the general 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, this Court would have had the benefit of the views of the Constitutional Court (see, *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 90, 25 March 2014 and the authorities cited therein).

Accordingly, the Court agrees with the Government's to the effect that the applicant should have exhausted the constitutional appeal avenue before addressing the Court and rejects the application in accordance with 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 26 January 2017.

Fatoş Aracı
Deputy Registrar

Pere Pastor Vilanova
President