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

THIRD SECTION

DECISION

Application no. 42112/21
P.D.
against Serbia

The European Court of Human Rights (Third Section), sitting on 3 February 2026 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. 42112/21) 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 3 August 2021 by a Burundian national, Ms P.D ("the applicant"), who was born in 1991, lives in Austria, and was represented by the Belgrade Centre for Human Rights, a non-governmental organisation based in Belgrade, and its lawyer, Mr V. Ilić;

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

the decision not to have the applicant's name disclosed;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the measures adopted by the Serbian authorities during the COVID-19 pandemic which imposed a temporary restriction on the freedom of movement of asylum-seekers and irregular migrants accommodated in asylum and reception centres, between 15 March and 14 May 2020 (for more information on relevant legislation in Serbia during pandemic see *A.A. v. Serbia* (dec.), no. 50898/20, §§ 16-27, 14 October 2025).

A. The applicant's situation in Serbia

2. The applicant was an asylum-seeker in Serbia at the relevant time. She was accommodated in Banja Koviljača Asylum Centre between 9 March and 11 October 2020. Her asylum application was finally refused as unsubstantiated by the Asylum Commission on 2 June 2022. The applicant did not challenge that decision in judicial review proceedings.

3. The applicant complained under Articles 5 and 14 of the Convention, and Article 2 of Protocol No. 4 to the Convention about the measures referred to in paragraph 1.

B. Other relevant information

4. On 6 April 2020 the Ministry of Foreign Affairs informed the Secretary General of the Council of Europe that Serbia intended to avail itself of the right of derogation under Article 15 of the Convention.

5. On 17 September and 30 December 2020, the Constitutional Court examined initiatives submitted by several non-governmental organisations under Article 168 of the Constitution, including the applicant's representatives, for the assessment of the compliance of various pandemic-related measures with the constitutional right to liberty and security of person, prohibition of discrimination and judicial protection of human and minority rights. The right to freedom of movement, protected under Article 39 of the Constitution, was not raised. As regards asylum-seekers and irregular migrants, the Constitutional Court terminated the proceedings on the basis that the impugned measures were no longer in force and that the arguments presented in the initiatives were unfounded. The court held, in particular, that the restriction of movement had not amounted to deprivation of liberty.

6. Article 168 of the Constitution envisages the proceedings for the assessment of constitutionality and legality before the Constitutional Court, while Article 170 provides for individual constitutional appeal which may be lodged against individual decisions or actions of State bodies or organisations exercising delegated public powers which violate or deny human or minority rights and freedoms guaranteed by the Constitution, if other legal remedies for their protection have already been exhausted or have not been prescribed (for a summary of the relevant Constitutional provisions and the Constitutional Court's decisions see *A.A. v Serbia*, §§ 30-31, cited above).

THE COURT'S ASSESSMENT

7. The Government raised several objections to the admissibility of the complaints. Notably, they argued that the applicant had failed to exhaust domestic remedies as she had failed either to file a complaint before the Commissariat for Refugees and Migration of the Republic of Serbia or to file

a constitutional appeal with the Constitutional Court in relation to her complaints about the breach of rights.

8. The general principles concerning the rule of exhaustion of domestic remedies were summarised in *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014).

9. A constitutional appeal should, in principle, be considered an effective domestic remedy within the meaning of Article 35 § 1 of the Convention in respect of all applications introduced against Serbia as of 7 August 2008 (see *Vinčić and Others v. Serbia*, nos. 44698/06 and 30 others, § 51, 1 December 2009, and *Vučković and Others*, cited above, § 84).

10. The applicant argued that the constitutional appeal could not be considered effective in her case and referred to the findings of the Constitutional Court in two decisions for the assessment of constitutionality and legality of the restriction measures (see paragraph 5 above). However, those decisions were given upon the initiatives submitted under Article 168 of the Constitution by non-governmental organisations and did not in any way concern the applicant's personal circumstances (compare *Kósa v. Hungary* (dec.), no. 53461/15, §§ 59-63, 21 November 2017). In a domestic legal system where the control of constitutionality and the judicial review of compatibility with the Convention are two distinct procedures (see paragraph 6 above) the fact that the impugned statutory provisions have been declared compatible with the national Constitution does not necessarily absolve the applicant from his duty to use the latter mechanism to obtain an effective protection of her rights under the Convention (see, *mutatis mutandis*, *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* [GC], no. 21881/20, § 159, 27 November 2023, and *Association confraternelle de la Presse Judiciaire and Others v. France* (dec.), no. 49526/15, §§ 123-25, 10 December 2024).

11. Indeed, where legal systems provide constitutional protection of fundamental human rights and freedoms, it is in principle incumbent on the aggrieved individual to test the extent of that protection and allow the domestic courts to develop those rights by way of interpretation (see *Vinčić*, cited above, § 51). The existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust that avenue of redress.

12. Therefore, despite the Constitutional Court's conclusion concerning the compatibility of the restrictions measure with the right to liberty and security, it was open to the applicant to lodge a constitutional appeal under Article 170 of the Constitution and thus give the domestic court the opportunity to examine her personal circumstances and grievances which she raised in the present application. Moreover, the complaint under Article 2 of Protocol No. 4 to the Convention or its constitutional equivalent had not at all been raised before the Constitutional Court, either expressly or in

substance (see paragraph 5 above), in the proceedings for the assessment of constitutionality and legality or otherwise.

13. In view of the above considerations, the Court considers that the applicant was obliged to avail herself of a constitutional appeal for these complaints. As the Court has already held in the unprecedented and highly sensitive context of the COVID-19 pandemic, it was all the more important that the national authorities had first been given the opportunity to strike a balance between competing private and public interests or between different rights protected by the Convention, taking into consideration local needs and conditions and the public-health situation as it had existed at the relevant time (see *Communauté genevoise d'action syndicale (CGAS*), cited above, § 163, 27 November 2023). Even if she may have had certain doubts about the prospects of success of this remedy, it cannot be considered to be obviously futile, and the Court does not find that there were any special reasons for dispensing her from the requirement to make use of it. Accordingly, the Government's objection in that regard must be upheld.

14. Therefore, the application is inadmissible for non-exhaustion of domestic remedies and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

15. Lastly, the Court notes that it was Serbia's intention to derogate, under Article 15 of the Convention, from its obligations under the Convention without explicitly mentioning which Articles were to form the subject of a derogation (see paragraph 4 above). In any event, the Court's conclusion in relation to the applicant's complaints obviates any need to consider the validity of the derogation filed by Serbia with the Council of Europe (see, *mutatis mutandis*, *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 161, ECHR 2009, and *Terheş v. Romania* (dec.), no. 49933/20, § 46, 13 April 2021).

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 5 March 2026.

Olga Chernishova Deputy Registrar	Darian Pavli President