

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

THIRD SECTION

DECISION

Application no. 11789/21
Božidar SAVIĆ
against Serbia

The European Court of Human Rights (Third Section), sitting on 1 April 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. 11789/21) 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 1 March 2021 by a Serbian national, Mr Božidar Savić ("the applicant"), who was born in 1956, lives in Belgrade and was represented by *A11 Inicijativa za ekonomska i socijalna prava*, a non-governmental organisation from Belgrade;

the decision to give notice of the application to the Serbian Government ("the Government"), represented by their Agent, Ms Z. Jadrijević Mladar, Representative of Serbia to the European Court of Human Rights;

the decision to give priority to the application (Rule 41 of the Rules of Court);

the decision to indicate an interim measure to the respondent Government under Rule 39 of the Rules of Court;

the observations submitted by the respondent Government and the observations in reply submitted by the applicant;

the comments submitted by the Roma Rights Centre, which was granted leave to intervene as a third party by the President of the Section;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The applicant died on 25 January 2024, and his son P.S. expressed a wish to pursue the application. The applicant was a blind person with 100% physical disability rating. In 2008 he was given a social flat in Belgrade, for him and his family, consisting of the applicant, his wife and three children. The family stopped paying rent and utility bills in 2011 when the applicant's wife lost her job. In 2013 the applicant's wife died, and two of the children left the household. The applicant and his adult son, P.S., born in 1995, remained in the flat.

A. Administrative proceedings

2. On 10 October 2012 the Belgrade City Secretariat for Social Affairs terminated the lease for a social dwelling because of the applicant's failure to pay rent and utility bills for several months.

3. The applicant's first request of 7 November 2012 that the enforcement of the above-mentioned decision be adjourned was declared inadmissible by the Administrative Court on 15 November 2012.

4. On 4 December 2012 the Deputy Mayor upheld the decision of 10 October 2012.

5. The applicant then lodged a constitutional complaint against the Deputy Mayor's decision, claiming a violation of his rights to a fair trial and to respect for his private and family life. On 25 March 2013 the Constitutional Court declared the constitutional complaint inadmissible for non-exhaustion of prior remedies. It instructed the applicant to lodge a claim against the administrative decisions with the Administrative Court, and gave him thirty days to do so.

6. On 19 June 2013 the applicant brought a claim with the Administrative Court against the administrative decisions. He also submitted a second request that the enforcement of these decisions be adjourned.

7. On 26 June 2013 the Administrative Court declared inadmissible the applicant's second request that the enforcement of the decisions be adjourned.

8. The applicant again lodged a constitutional complaint against that decision and on 29 September 2016 the Constitutional Court declared the complaint inadmissible because the proceedings concerning the merits of the decisions of the administrative bodies were still pending before the Administrative Court.

9. On 29 May 2015 the Administrative Court quashed the administrative decisions on the grounds that they were not adequately reasoned, and because the applicant had not been heard before the first instance administrative body. The case was remitted to that body for fresh examination. No further decision has been adopted in these proceedings.

B. Civil proceedings

10. Upon a claim brought by the City of Belgrade, on 16 June 2014 the Third Basic Court in Belgrade ordered the applicant's eviction. That judgment was upheld by the Belgrade Appeal Court on 8 June 2017, and thus became final. That decision was not enforced until the applicant's death.

THE COURT'S ASSESSMENT

A. Articles 3, 6 and 8 of the Convention and Article 1 of Protocol No. 1

11. The applicant complained that his eviction would render him homeless contrary to Articles 3 and 8 of the Convention. He also alleged violation of his right to peaceful enjoyment of his possessions, guaranteed under Article 1 of Protocol No. 1 to the Convention. Under Article 6 of the Convention, he complained that in the administrative proceedings he had not have a fair trial.

12. The Government contested the applicant's son's intention to pursue the application.

13. The Government further argued that the applicant had not properly exhausted domestic remedies because in the administrative proceedings no final decision had been adopted. As regards the civil proceedings, the applicant did not lodge a constitutional complaint against the appeal court's judgment.

14. The applicant argued that he had submitted two constitutional complaints, and that another constitutional complaint was not an effective remedy in his case.

15. The Court does not have to address the Government's objection as to the applicant's son's intention to pursue the application, since, in any event, the application is inadmissible on the following grounds.

16. The Court has summarised the general principles on exhaustion of domestic remedies in *Vučković and Others v. Serbia* ([GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014, and *Gherghina v. Romania* ((dec.) [GC], no. 42219/07, §§ 83-89, 9 July 2015). The Court has held in particular that the purpose of Article 35 is to afford the Contracting States the opportunity of preventing or putting right violations alleged against them before those allegations are submitted to the Court (see *Mifsud v. France* (dec.) [GC], no. 57220/00, § 15, ECHR 2002-VII). Thus, a complaint submitted to the Court should first have been made to the appropriate national courts, at least in substance, in accordance with the formal requirements of domestic law and within the prescribed time-limits (*Vučković*, cited above, § 72).

17. 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). Moreover, Article 18 of the Constitution provides for the "direct implementation" of human rights secured by ratified international treaties, and sets forth that provisions relating to human rights shall be interpreted in accordance with, *inter alia*, "the practice of international institutions" entrusted with their implementation.

1. Administrative Proceedings

18. The Court notes that the administrative decisions terminating the applicant's lease on the flat at issue have never been enforced, and indeed were quashed by the Administrative Court on 29 May 2015 (see paragraph 9 above). The case was remitted to the first instance administrative body.

19. If follows that any complaints related to these proceedings are premature since in these proceedings no final decisions has been adopted.

2. Civil proceedings

20. The Court notes that the applicant did not lodge a constitutional complaint against the judgment of the appeal court adopted on 8 June 2017.

21. Even though the administrative and civil proceedings arguably concerned the same issues, the fact that the applicant lodged two constitutional complaints against the decisions adopted in the administrative proceedings could not have absolved him from lodging a constitutional complaint in the civil proceedings for the following reasons.

22. The Court notes that the applicant's first constitutional complaint was lodged directly against the second instance decision adopted by the administrative bodies. However, rules of exhaustion of prior remedies require that in the context of administrative proceedings applicants firstly exhaust administrative claim before the Administrative Court, in order to lodge their constitutional complaints.

23. The applicant's second constitutional complaint was also lodged before a claim before the Administrative Court had been exhausted, since the proceedings before the Administrative Court were still pending. The decision of the Administrative Court of 26 June 2013 (see paragraph 7 above) against which the applicant lodged his second constitutional complaint did not concern the merits of the case, but only the applicant's request that the enforcement of the administrative decisions be adjourned.

24. In these circumstances, the Constitutional Court did not have a chance to examine the merits of the decisions terminating the applicant's lease on the flat at issue.

25. Had the applicant lodged a constitutional complaint against the judgments adopted in the civil proceedings at issue, he would have given the Constitutional Court the opportunity which the rule of exhaustion of domestic

remedies is designed to afford States, namely to determine the issue of compatibility of the impugned judgments courts with the Convention and, should the applicant nonetheless have pursued his complaint before the Court, it would have had the benefit of the views of the Constitutional Court, as the highest court in Serbia (see *Vučković and Others*, cited above, § 90, and compare *Ferizović v. Serbia* (dec.), no. 65713/13, § 25, 26 November 2013; see also *Budimir v. Croatia* (dec.), no. 14303/11, §§ 51-57, 5 January 2016).

3. Conclusion

26. Against the above considerations, all complaints related to the administrative and civil proceedings at issue must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

27. The interim measure previously indicated in this application therefore ceases to have any basis.

B. Article 13 of the Convention

28. The applicant complained under Article 13 of the Convention that he did not have at his disposal an effective domestic remedy for his complaints.

29. Given that the applicant's complaints under Articles 3, 6 and 8 of the Convention, and Article 1 of Protocol No. 1 to the Convention have been rejected for non-exhaustion of domestic remedies, the related complaint under Article 13 is manifestly ill-founded and must be rejected in accordance with 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 9 May 2025.

Olga Chernishova Deputy Registrar	Darian Pavli President