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

SECOND SECTION

DECISION

Application no. 5158/12
Janko JAKOVLJEVIĆ
against Serbia

The European Court of Human Rights (Second Section), sitting on 13 October 2020 as a Chamber composed of:

Jon Fridrik Kjølbro, *President,*
Aleš Pejchal,
Valeriu Griţco,
Egidijus Kūris,
Branko Lubarda,
Carlo Ranzoni,
Pauliine Koskelo, *judges,*

and Hasan Bakırcı, *Deputy Section Registrar,*

Having regard to the above application lodged on 13 September 2011,

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

1. The applicant, Mr Janko Jakovljević, is a Serbian national who was born in 1953 and lives in Šabac. He was represented before the Court by Mr P. Savić, a lawyer practising in Belgrade.

2. The Serbian Government ("the Government") were represented by their Agent at the time, Ms N. Plavšić.

A. The circumstances of the case

3. The facts of the case, as submitted by the parties, may be summarised as follows.

1. Background to the case

4. The applicant's son, D.J., who was a private in the elite Guard Unit of the Army of Serbia and Montenegro (*Gardijska jedinica Vojske Srbije i Crne Gore*), and another private, D.M., died on 5 October 2004 while performing guard duties at Topčider Military Barracks in Belgrade. The applicant's son died on the spot, whereas the other private died later at the Military Medical Academy in Belgrade. They were both 21 years old. On the same day the Military Investigating Judge V.T. ("the military investigating judge") performed an investigation on the spot.

5. On 7 October 2004 the findings of the initial investigation were presented at a press conference by the military investigating judge, who concluded that the deaths of the privates had been the result of wounding by gunfire from their rifles, that no third person had participated in the incident, and that the motive for the shooting was to be determined in the course of the investigation.

6. On 15 October 2004 the High Defence Council of Serbia and Montenegro (*Visoki savet odbrane Srbije i Crne Gore*) adopted a decision to form a commission for investigation into the deaths of the soldiers at Topčider Military Barracks ("the State commission"), on account of the many inconsistencies in the findings of the military investigation and the public controversy that the case had caused.

7. On 29 November 2004 the initial investigation proceedings (see paragraphs 4 and 5 above) were closed, following the conclusion of the military investigating judge that D.J. had killed D.M. and then committed suicide, and also rejecting the criminal complaint against the former because of the impossibility of criminal prosecution.

8. On 1 December 2004 the State commission presented its conclusions in which it ruled out the possibility that either of the two soldiers had committed suicide or that they had killed each other in an exchange of fire, concluding therefore that the soldiers must have been killed by a third person. It recommended a full criminal investigation by civilian judicial institutions.

9. On 31 January 2013 the Constitutional Court found a violation of the applicant's rights under Article 2 of the Convention on the account of the inefficiency of the criminal investigation into the death of his son. It ordered the competent authorities to take all measures necessary to bring to an end the investigation into the incident.

10. According to the latest information provided by the applicant on 27 May 2016, at that date the order of the Constitutional Court in respect of the criminal investigation had not been implemented.

2. Statements by the military investigating judge

11. In the period between October and December 2004 the death of the applicant's son and the other private attracted a lot of media attention in

Serbia. During that time, shortly after the State commission had declared the military investigation to be inadequate and recommended the reopening of the investigation before civilian judicial institutions (see paragraph 8 above), V.T., the military investigating judge who was in charge of the military case, made a number of appearances in the Serbian media, defending the findings of the military investigation.

12. On 15 December 2004, he presented the findings of the investigation – that the applicant's son had killed the other soldier and then committed suicide – on the popular political television show *Klopka*. He also stated that "one of the soldiers was a 'second-grade soldier'" of "average physical and mental abilities", which meant that the soldier in question had not fulfilled the criteria to be a member of the elite unit, in which only "first-grade soldiers" could serve. He did not specify to which of the two soldiers he was referring.

13. On 17 December 2004, *Večernje novosti*, one of the largest Serbian daily newspapers, published an interview with V.T., in which he defended the findings of the military investigation and criticised the work of the State commission. Among other things, he stated the following:

> "There are witness statements, which the psychologist did not take into account, according to which the soldier [D.J.] had a nervous breakdown which manifested itself in his failure to communicate with others. He stared at one spot after getting up; the day before the incident he could not assemble his mobile phone and put the SIM card in it because his hands were trembling. When he was asked whether he was sick, he simply replied 'I am just a bit tired'. I am saying all of this for the sake of the truth. I know that I am hurting the family of the deceased soldier. However, we all have families and honour, and we have all been hurt by the things surrounding this case. The truth must be known."

3. Criminal proceedings in respect of the statements of the military investigating judge

14. On 24 January 2005 the applicant initiated criminal proceedings by means of a private prosecution of V.T. for defamation in relation to the statements described in paragraphs 12 and 13 above. The applicant did not bring a civil claim for damages in these criminal proceedings, limiting himself to a purely criminal action.

15. On 5 November 2007 the First Municipal Court of Belgrade found that it was beyond reasonable doubt that V.T. had made the statements which were the subject of the prosecution. It further found that V.T. had released actual facts from the criminal case file. It established that V.T. could not have made the statements in his official capacity as a military investigating judge, considering that it was not part of his judicial function to release personal information about people involved in a case before him to the media. The court changed the legal classification of the charges to releasing of personal and family information and found V.T. guilty of that criminal offence with regard to the interview published on 17 December 2004 in the newspaper

Večernje novosti (see paragraph 13 above). It gave V.T. an official judicial warning. However, the court held that the statements made by V.T. during the television show broadcast on 15 December 2004 (see paragraph 12 above) could not be classified as a criminal offence. The court's reasoning was that V.T. had not singled out the applicant's son as a "second-grade soldier of average physical and mental abilities", but that he had only referred to "one of the soldiers". It did not accept the applicant's argument that the identity of the soldier was apparent from the context.

16. Both the applicant and V.T. appealed against the first-instance judgment.

17. On 29 September 2008 the Belgrade District Court quashed that decision and acquitted V.T. of the charges. The District Court first found that the lower court had properly established the facts. It then went on to find that V.T. had acted in an official capacity when making the impugned statements. It ruled that the statements had been made at the request of the president of the military court and that they had been made for the purpose of "protecting the justified interests of the military judiciary and the military as a whole, with a view to informing the public about the facts and circumstances surrounding the death of the soldiers" (see Article 9 of the Rules of Military Courts, cited in paragraph 25 below). Since the statements V.T. had made were true, and since they had been made for the protection of justifiable public interest, the District Court found that the statements could not constitute a criminal offence, as provided for by Article 172 § 4 of the Criminal Code (see paragraph 21 below).

4. Proceedings before the Constitutional Court

18. On 29 November 2008 the applicant lodged a constitutional appeal. He complained that the criminal proceedings described in paragraphs 14 to 17 above had been unfair and that there had thus been a violation of the right to dignity and free development of personality, the right to an effective legal remedy and the right to the protection of personal information.

19. On 3 March 2011 the Constitutional Court rejected the applicant's constitutional appeal. It found that the applicant's complaints concerning the fairness of the criminal proceedings were inadmissible *ratione materiae*, since the Constitution did not guarantee the right to a fair trial to a prosecutor in criminal proceedings. Moreover, it held that his complaints in respect of violation of his right to dignity and free development of personality were inadmissible for the same reason, as they were principally based on the fact that the criminal proceedings he had initiated had not resulted in a guilty verdict. With regard to the applicant's complaint concerning the right to the protection of personal data, the Constitutional Court considered that the "arguments of the applicant in respect of the alleged violation of the right to protection of personal data guaranteed by Article 42 of the Constitution could

not be brought in connection with such a guaranteed right", and thus rejected it "for the lack of conditions for the conduct of the proceedings and decision".

B. Relevant domestic law

1. Constitution

20. The Constitution, published in the Official Gazette of the Republic of Serbia (hereinafter "the Official Gazette") no. 98/06, came into force on 8 November 2006 and provides, in so far as relevant to the present case:

International relations
Article 16 § 2

"... [R]atified international treaties are an integral part of the [Serbian] legal system ... and shall be directly applicable ..."

Direct implementation of guaranteed rights
Article 18

"Human and minority rights guaranteed by the Constitution shall be implemented directly.

The Constitution shall guarantee ... the direct implementation of human and minority rights secured by the generally accepted rules of international law ... [and] ... ratified international treaties ... Legislation may prescribe the manner of exercising these rights only if so explicitly stated in the Constitution or if necessary for the enjoyment of a specific right owing to its nature, it being understood that such legislation may not under any circumstances influence the substance of the guaranteed right in question.

Provisions on human and minority rights shall be interpreted ... in accordance with valid international standards on human and minority rights, as well as the practice of international institutions which supervise their implementation."

Dignity and free development of personality
Article 23

"Human dignity is inviolable and everyone shall be obliged to respect and protect it. Everyone shall have the right to the free development of his or her personality if this does not violate the rights of others guaranteed by the Constitution."

Protection of personal data
Article 42

"The protection of personal data shall be guaranteed.

Collecting, keeping, processing and using personal data shall be regulated by law.

The use of personal data for any purpose other than that for which they were collected shall be prohibited and punishable in accordance with the law, unless necessary to conduct criminal proceedings or to protect the safety of the Republic of Serbia, in a manner provided for by the law.

Everyone shall have the right to be informed about any personal data collected about him, in accordance with the law, and the right to the protection of a court in cases of abuse of data."

2. Criminal Code

21. The Criminal Code, published in the Official Gazette nos. 85/05, 88/05, 107/05, 72/09, 111/09, 121/12, 104/13, 108/14, 94/16 and 35/19 came into force on 1 January 2006, but was applied in the criminal proceedings against V.T. as the more lenient law for the accused. The relevant Articles read as follows:

Dissemination of information on personal and family life

Article 172

"(1) Anyone who makes statements or disseminates information about someone's personal or family life that may harm that person's honour or reputation shall be punished with a fine or imprisonment for up to six months.

(2) If the offence specified in paragraph 1 of this Article has been committed through the press, radio, television or other media or at a public gathering, the offender shall be punished with a fine or imprisonment for up to one year.

(3) If what has been stated or disseminated has resulted, or could have resulted, in serious consequences for the injured party, the offender shall be punished with imprisonment for up to three years.

(4) The offender shall not be punished for making statements or disseminating information about someone's personal or family life in the discharge of an official duty, or the profession of journalist, when defending some right, or defending a justifiable public interest if he or she proves the truth of his or her allegations or if he or she proves that he or she had reasonable grounds for believing that the allegations he or she made or disseminated were true.

(5) The truth or falsehood of information stated or disseminated about the personal or family life of a person may not be subject to the scrutiny of a court, except in the circumstances set out in paragraph 4 of this Article."

Violation of the confidentiality of proceedings

Article 337

"(1) Anyone who discloses without authorisation what he or she has learned in court, in a minor-offence, administrative or other proceedings provided for by law, when the law specifies that such information may not be made public, or if it has been declared secret by a decision of the court or other relevant body, shall be punished by a fine or imprisonment for up to one year."

3. Code of Criminal Procedure

22. The relevant part of the Code of Criminal Procedure, published in the Official Gazette of the Federal Republic of Yugoslavia (hereinafter – "OG FRY") nos. 70/01 and 68/02, as well as in the OG RS nos. 58/04, 85/05 and 115/05, reads as follows:

Article 261

"If the interests of morals, public order, national security, the interests of minors or of the private life of participants in proceedings so require, or when such a necessity arises from specific circumstances in which public knowledge could jeopardise the interests

of justice, an official who is conducting an investigation shall order the persons he or she interviews or questions, or who are present during the performance of a particular investigative act or who review the investigation file, to keep secret certain facts or information of which they become aware during the investigation, and shall warn them that the disclosure of such secrets is a criminal offence. This order shall be set down in the record of the investigation, or shall be noted on the files which have been reviewed, together with the signature of the person so warned."

4. Obligations Act

23. The relevant provisions of the Obligations Act, published in the Official Gazette of the Socialist Federal Republic of Yugoslavia nos. 29/78, 39/85, 45/89, 57/89 and the OG FRY no. 31/93, read as follows:

Demand to Cease with Violation of Individual Rights

Article 157

"(1) Everyone shall be entitled to demand that the court or other competent agency order the cessation of an action violating the integrity of human person, personal and family life, and other rights pertaining to his or her person.

(2) The court or other competent agency may order the cessation of the action by threatening the payment of a certain amount of money, determined as a lump sum or per time unit, to the benefit of a person suffering damage."

Liability of a Legal Person for Loss Caused by its Body

Article 172

"(1) A legal person shall be liable for damage caused by its members or branches to a third person in performing or in connection to performing its functions."

Making Public Sentence or Correction

Article 199

"In the event of a violation of an individual right, the court may order that, at the expense of the tortfeasor, the sentence, namely the correction, be made public, or it may order that the tortfeasor take back the statement causing the violation, or order something else which would reach the purpose, otherwise apt to be achieved by indemnity."

Money Indemnity

Article 200

"(1) For physical pain suffered, for mental anguish suffered owing to reduction of life activities, for disfigurement, for offended reputation, honour, freedom or rights of personality, for the death of a close person, as well as for the fear suffered, the court shall – after finding that the circumstances of the case and particularly the intensity of pain and fear, and their duration, provide a corresponding ground thereof – award equitable damages, independently of redressing the property damage, even if the latter is not awarded.

(2) In deciding on the request for the redress of non-material loss, as well as on the amount of such damages, the court shall take into account the significance of the

violated good and the purpose to be achieved by such redress, but also that it does not favour ends otherwise incompatible with its nature and social purpose."

5. Military Courts Act

24. The relevant provisions of the Military Courts Act (OG FRY, nos. 11/95, 1/96 and 74/99), read as follows:

Article 49

" ...

The rules of military courts are adopted by the federal Minister of Defence, after obtaining the opinion of the general session of the Supreme Military Court.

The rules of military courts are published in the [Official Military Gazette]."

Article 52

"The provisions of the Code of Criminal Procedure are applied in criminal proceedings before the military courts, if this law does not provide for the contrary."

Article 60

"The investigation is conducted by the military investigating judge."

6. Rules of Military Courts

25. The relevant provision of the Rules of Military Courts, published in Official Military Gazette no. 4/95, reads as follows:

Article 9

"Information to the public concerning the activities of military courts in certain cases shall be given by a judge under approval of the president of the court, if the matter concerned is not considered a military or official secret or if giving such information is not strictly prohibited by the law."

7. Relevant domestic case-law

26. The relevant domestic case-law concerning the use of civil-law legal remedies in respect of private life-related issues is outlined in the case of *Lakatoš and Others v. Serbia* (no. 3363/08, §§ 43-44 and 51-52, 7 January 2014).

COMPLAINTS

27. The applicant complained, relying on Articles 6 and 8 of the Convention, of the disclosure of personal information about his late son, gathered during the criminal investigation, which affected the reputation of his son and of his whole family, and about the failure of the domestic courts to sanction this disclosure.

THE LAW

28. The applicant complained under Articles 6 and 8 of the Convention that the military investigating judge had released personal information about his late son from the criminal case file, which affected the reputation of his late son and of his whole family, and that the authorities had failed to sanction this disclosure. The Court, being the master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018), will examine this complaint under Article 8 of the Convention alone, which, in so far as relevant, reads as follows:

> "1. Everyone has the right to respect for his private and family life ...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. The applicant's victim status and *locus standi* in respect of his son

29. The Court notes that the Government have not raised an objection in connection with the applicant's *locus standi*, but since it concerns a matter which goes to the Court's jurisdiction, the Court is not prevented from examining it of its own motion (see, *mutatis mutandis*, *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, §§ 89 and 93, 27 June 2017). The Court notes further that the applicant's complaint is twofold (see paragraph 28 above). In so far as the applicant can be understood to be complaining of a violation of the Convention rights of his late son, the Court will first examine the applicant's *locus standi* in that connection.

30. The Court reiterates that in a number of cases it has confirmed the principle that Article 8 rights were non-transferable (see *Dzhugashvili v. Russia* (dec.), no. 41123/10, §§ 22-23, 9 December 2014, and the cases cited therein). It does not find sufficient reasons to depart from its established case-law in the instant case. Even assuming that his son has a right under Article 8 of the Convention (see *John Anthony Mizzi v. Malta*, no. 17320/10, § 39, 22 November 2011), it follows that the applicant does not have legal standing to rely on his son's rights, and that this part of the complaint is to be rejected under Article 34 as being incompatible *ratione personae* with the provisions of the Convention.

31. As to whether the applicant's own right to respect for his private and family life are at stake in the instant case, the Court notes that it has accepted that the reputation of a deceased member of a person's family may, in certain circumstances, affect that person's private life and identity, and thus come

within the scope of Article 8 (see *Perinçek v. Switzerland* [GC], no. 27510/08, §§ 201-03, ECHR 2015 (extracts), and cases cited therein).

32. Turning to the facts of the present case the Court notes at the outset that at least one of the impugned statements (see paragraph 13 above) related directly to the applicant's son. Unlike the *Dzhugashvili* case (cited above), the present case has not focused on the reputation of a world-famed public figure, but rather dealt with the reputation of a twenty-one-year-old military army private who died while on duty (see paragraph 4 above). Therefore, in distinguishing between defamatory attacks on private persons, whose reputation as part and parcel of their families' reputation remains within the scope of Article 8, and legitimate criticism of public figures who, by taking up leadership roles, expose themselves to outside scrutiny (see *Dzhugashvili*, cited above, § 30), the Court considers that the present case falls within the first category.

33. The Court will, therefore, examine this complaint in so far as it relates to the applicant's rights under Article 8 of the Convention.

B. The Government's objection of non-exhaustion of domestic remedies

1. The Government's objection

34. The Government submitted that the applicant had not exhausted all available and effective domestic remedies. Specifically, he had not brought a civil action in accordance with Articles 157, 172, 199 and 200 of the Obligations Act (see paragraph 23 above). They relied on the Court's judgment in the case *Lakatoš and Others v. Serbia* (no. 3363/08, 7 January 2014).

35. The applicant made no comment in that connection.

2. The Court's assessment

(a) General Principles

36. The general principles concerning the rule of exhaustion of domestic remedies were restated in *Vučković and Others v. Serbia* ([GC] (preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014). In particular, the Court reiterates that the States are dispensed from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system. Those who wish to invoke the supervisory jurisdiction of the Court as concerns complaints against a State are thus obliged to use first the remedies provided by the national legal system (see, among many other authorities, *Akdivar and Others v. Turkey*, 16 September 1996, § 65, *Reports of Judgments and Decisions* 1996-IV, and *Vučković and Others*, cited above, § 70).

37. The obligation to exhaust domestic remedies therefore requires an applicant to make normal use of remedies which are available and sufficient in respect of his or her Convention grievances. The existence of the remedies in question must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see *Akdivar and Others*, § 66, and *Vučković and Others*, § 71, both cited above).

38. Article 35 § 1 also requires that the complaints intended to be made subsequently in Strasbourg should have been made to the appropriate domestic body, at least in substance (see *Fressoz and Roire v. France* [GC], no. 29183/95, § 37, ECHR 1999-I) and in compliance with the formal requirements and time-limits laid down in domestic law (see *Akdivar and Others*, § 66, and *Vučković and Others*, § 72, both cited above).

39. To be effective, a remedy must be capable of remedying directly the impugned state of affairs and must offer reasonable prospects of success (see *Balogh v. Hungary*, no. 47940/99, § 30, 20 July 2004, and *Sejdovic v. Italy* [GC], no. 56581/00, § 46, ECHR 2006-II). However, 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 (see *Akdivar and Others*, cited above, § 71; *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 70, 17 September 2009; and *Vučković and Others*, cited above, § 74).

40. As regards the burden of proof, it is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, and was available in theory and in practice at the relevant time. Once this burden has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted, or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from this requirement (see *Akdivar and Others*, cited above, § 68; *McFarlane v. Ireland* [GC], no. 31333/06, § 107, 10 September 2010; and *Vučković and Others*, cited above, § 77).

(b) Application of these principles to the present case

41. Being mindful of the above and turning to the present case, the Court notes that the applicant only initiated criminal proceedings by means of a private prosecution of V.T. Moreover, he did not lodge a civil claim in the context of those criminal proceedings (see paragraph 14 above), limiting himself to a purely criminal action (see, *mutatis mutandis, Tordaj v. Serbia* (dec.), no. 19728/08, §§ 21-22, 19 September 2017). The Court notes, however, that the Criminal Code expressly excluded criminal responsibility in certain circumstances for the offence in question, and that the Belgrade District Court found that those circumstances obtained in the applicant's case (Article 172(4) of the Criminal Code - see paragraphs 17 and 21 above). That conclusion does not appear arbitrary or manifestly unreasonable.

Furthermore, his constitutional appeal, insofar as it was found to be properly substantiated, was likewise principally based on the fact that those criminal proceedings were not successful (see paragraph 19 above). The Court notes in this connection that in respect of acts such as those alleged by the applicant (see, *a contrario*, *X and Y v. the Netherlands*, 26 March 1985, §§ 23-24 and 27, Series A no. 91, and *M.C. v. Bulgaria*, no. 39272/98, § 150, ECHR 2003-XII), the obligation of the State under Article 8 to maintain and apply in practice an adequate legal framework affording protection does not always require that an efficient criminal-law provision covering the specific act be in place. The legal framework could also consist of civil-law remedies capable of affording sufficient protection (see *Söderman v. Sweden* [GC], no. 5786/08, § 85, ECHR 2013). In the present case such a remedy existed, but the applicant did not have recourse to it.

42. The Court notes that Articles 157, 199 and 200 of the Obligations Act (see paragraph 23 above), taken together, provide, *inter alia*, that anyone who has suffered fear, physical pain or mental anguish due to a breach of his or her reputation, personal integrity, liberty or of his other "personal rights" shall be entitled to seek injunctive relief, sue for financial compensation and request other forms of redress which might be capable of affording adequate non-pecuniary satisfaction. Moreover, Article 172 § 1 provides that a legal entity, which includes the State, shall be liable for any damage caused by one of "its bodies" to a "third person". As the Court has already observed in *Lakatoš and Others* (cited above, §§ 43-44 and 51-52), the domestic civil courts have applied those provisions in favour of claimants in a number of different contexts.

43. The Court further notes that 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 (see paragraph 19 above). There is also domestic case-law to this effect, in particular civil court judgments recognising, *inter alia*, alleged breaches of Article 8 of the Convention in the context of "private life", including but not limited to the unlawful taking of photographs, and awarding compensation to the plaintiffs where appropriate (see *Lakatoš and Others*, cited above, §§ 51 and 52).

44. The Court finally observes that in *Kostić v. Serbia* ((dec.), no 40410/07, § 57, 17 September 2013) it considered the complaint under Article 8 that the military officials and military investigating authorities had disseminated offensive and inaccurate information about the personal and family life of that applicant's late son, and it rejected it as inadmissible for the non-exhaustion of domestic remedies (ibid., § 60), namely those under the Obligations Act (see paragraph 41. above). The applicant has not explained why such a remedy would be inadequate and ineffective in the particular circumstances of his case, or shown that there existed special

circumstances absolving him from this requirement (see the case-law cited in paragraph 40 above).

45. In view of the above, the Court is of the opinion that the applicant should have brought a civil action, based on the Obligations Act (see, *mutatis mutandis*, *Hajnal v. Serbia*, no. 36937/06, § 142, 19 June 2012; *Lakatoš and Others*, cited above, § 114; and *Kostić v. Serbia*, decision cited above, § 60).

46. In view of the foregoing, the applicant's complaint must be rejected under 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 5 November 2020.

Hasan Bakırcı
Deputy Registrar

Jon Fridrik Kjølbro
President