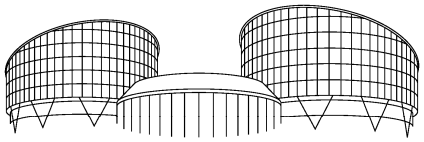

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

DECISION

Applications nos. 43987/11 and 51910/15
Dragoljub VASILJEVIĆ against Serbia
and Ljubomir DROBNJAKOVIĆ against Serbia

The European Court of Human Rights (Fourth Section), sitting on 28 January 2020 as a Chamber composed of:

Jon Fridrik Kjølbro, *President,*
Faris Vehabović,
Branko Lubarda,
Stéphanie Mourou-Vikström,
Georges Ravarani,
Jolien Schukking,
Péter Paczolay, *judges,*

and Marialena Tsirli, *Section Registrar,*

Having regard to the above applications lodged on 6 May 2011 and 1 October 2015 respectively,

Having regard to the observations submitted by the parties,

Having deliberated, decides as follows:

THE FACTS

1. The applicant in the first case, Mr Dragoljub Vasiljević ("the first applicant"), was a Serbian national who was born in 1938 and lived in Belgrade. He was represented before the Court by Mr V. Janković, a lawyer practising in Belgrade. The first applicant died on 28 July 2014. On 31 October 2016, Ms Biserka Vasiljević, his wife, informed the Court of her wish to pursue the proceedings on his behalf.

2. The applicant in the second case, Mr Ljubomir Drobnjaković ("the second applicant"), is a Serbian national who was born in 1957 and lives in Paraćin. He was represented before the Court by Mr N. Stanković, Mr D. Vukadin, Ms S. Penđer, and Ms A. Martinović, lawyers practising in Belgrade.

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

A. The circumstances of the cases

4. The facts of the case, as submitted by the applicants, may be summarised as follows.

1. Relevant background to the cases

5. Since 2001, the Serbian economy has undergone the same kind of transformation as has affected most post-communist economies. Central to that transformation was the adoption of the 2001 Privatisation Act[1] (see paragraphs 26-27 below), which provided a legal basis for State- or socially-owned companies to be sold by the State Privatisation Agency (*Agencija za privatizaciju* – "the seller") to private buyers. The sale of such companies was organised through a series of public auctions in which the highest bidder entered into a purchase contract with the seller. This has meant that companies incorporated in Serbia and previously owned and controlled by the State have been gradually transformed into privately-owned enterprises.

6. The terms of such purchase contracts appear to have been the same for all successful bidders. Among other provisions, they contained a clause under which a buyer who failed to pay the agreed purchase price lost (i) the right to a refund of the deposit paid for the right to participate in the auction in question, and (ii) the rights and claims specified in the relevant contract.

7. In 2005, the 2001 Privatisation Act was amended ("the 2005 Amendments") by the insertion of a new Article (Article 41a), which provided, *inter alia*, that there would be no reimbursement of a purchase price already paid by a buyer if a contract was terminated owing to the buyer's failure to fulfil his or her contractual obligations (see paragraph 27 below).

2. The case of the first applicant

8. On 30 December 2002 the first applicant bought 70% of the shares in 7. Juli, a socially-owned company based in the village of Mala Plana. The purchase price was fixed at 196,000,000 Serbian dinars (RSD; approximately 3,195,789 euros (EUR)), payable in six annual instalments.

9. On the same day the first applicant paid the first instalment of RSD 32,666,666 (approximately EUR 532,637). The instalment included a deposit of RSD 7,508,000 (approximately EUR 122,419) that had been paid previously for the right to participate in the relevant public auction.

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1. *Zakon o privatizaciji*, published in the Official Gazette of the Republic of Serbia no. 38/01.

10. The purchase contract contained the clause 3.2 which provided:

> "If the Buyer does not pay the purchase price, in accordance with clause 4, he loses the right to a refund of the deposit, and the rights and claims under this Contract; he shall also lose the right to participate in future auctions."

11. The first applicant failed to pay the second instalment of the purchase price, which fell due on 30 December 2003. On 4 March 2004 the seller warned the first applicant that the contract would be terminated unless he paid the second instalment of the purchase price by 10 March 2004, pursuant to the purchase contract. On 11 May 2004 the seller informed the first applicant that he had unilaterally terminated the purchase contract, as the first applicant had breached his contractual obligation relating to the payment of the purchase price.

12. On 12 April 2005 the Belgrade Commercial Court delivered a decision declaring that the contract of 30 December 2002 (see paragraph 8 above) had been terminated. That decision became final on 23 January 2006.

13. On 9 June 2005, the first applicant lodged a civil claim with the Belgrade Commercial Court demanding – in the light of the termination of the contract – the repayment of the purchase price that he had paid (see paragraph 9 above).

14. On 7 May 2007 the Belgrade Commercial Court ruled against the first applicant. The court found that the 2005 Amendments (see paragraphs 6 above and 27 below) were applicable in the applicant's case, rejecting the first applicant's argument that they could not be applied retroactively. It then dismissed the applicant's claim, citing Article 41a of the amended Act.

15. On 22 April 2010 the Belgrade Appellate Commercial Court confirmed that decision and its reasoning.

16. On 16 September 2010, the Constitutional Court dismissed a constitutional appeal lodged by the first applicant as manifestly ill-founded.

3. The case of the second applicant

17. On 28 March 2003 the second applicant bought 70% of the shares in Kompresor, a socially-owned company based in Ćuprija. The purchase price was set at RSD 13,600,000 (approximately EUR 211,904), payable in six annual instalments.

18. On the same day the second applicant paid the first instalment of RSD 4,719,310.10 (approximately EUR 73,532). The instalment included a deposit of RSD 1,737,000 (approximately EUR 27,064), which had been previously paid for the right to participate in the relevant public auction. On 28 March 2004, or around that date, the second applicant paid the second instalment of 35,066 euros (EUR). The purchase contract contained the clause 3.2 (see paragraphs 6 and 10 above).

19. The second applicant failed to pay the third instalment of the purchase price, which had fallen due on 28 March 2005. On 31 March 2005 the seller warned the second applicant that the contract would be terminated unless he paid the third instalment of the purchase price by 3 April 2005. On 21 April 2005 the seller reminded the second applicant that he had failed to pay the third instalment of the purchase price and it gave him further eight days to comply. On 11 July 2005 the seller gave the second applicant further fifteen days to comply. On 5 September 2005 the seller unilaterally terminated the purchase contract of 28 March 2003 (see paragraph 17 above) because the second applicant had breached his contractual obligation relating to the payment of the purchase price.

20. By a judgment of 8 May 2006 the Belgrade Commercial Court dismissed a claim lodged by the second applicant requesting that the contract be declared valid and that the decision of the seller on the transfer of the capital of Kompresor to the Stocks Fund (see paragraph 26 below) be annulled. After an appeal by the second applicant, that judgment was upheld by the Belgrade High Commercial Court on 5 April 2007.

21. On 16 September 2009, the second applicant lodged a civil claim with the Belgrade Commercial Court demanding the reimbursement of the instalments of the purchase price that he had paid.

22. On 18 February 2010 the Belgrade Commercial Court ruled against the second applicant, citing the same reasons as those given in the case of the first applicant (see paragraph 14 above). The court, however, also noted that clause 3.2 of the purchase contract (see paragraphs 6 and 10 above) itself limited the second applicant's right to the reimbursement of instalments of the purchase price already paid.

23. On 6 June 2012, following an appeal by the second applicant, the Appellate Commercial Court in Belgrade upheld that decision and its reasoning.

24. On 11 March 2015, the Constitutional Court dismissed as unfounded a constitutional appeal lodged by the second applicant. It agreed with the applicant that the 2005 Amendments did not have retroactive effect, citing its previous decision on this issue (see paragraph 33 below), but deemed that to be immaterial since clause 3.2 of the purchase contract constituted sufficient legal grounds for dismissing his claim for the restitution of the purchase price. The relevant part of the decision reads as follows:

> "... [T]he Constitutional Court took into consideration the special regime prescribed by the Privatisation Act regulating the rights and obligations of participants in the privatisation of socially- and State-owned capital and sanctions for failure to fulfil those obligations. The Privatisation Act provides for a contract for sale of socially- or state-owned capital, as a *sui generis* contract, which has the elements of both obligation and status contract.

The Constitutional Court holds that the second-instance court, first of all, took the position that parties to obligation agreements are free, within the limits of the mandatory principles, public order and best practice [*dobri običaji*], to regulate their relations according to their [respective] wishes, as prescribed by Article 10 of the Obligations Act ... [that] possibility was realised effectuated in the contested contract between the parties. Clause 3.2 of the contract provided that a buyer who does not pay, in accordance with clause 4, the purchase price loses the right to a refund of the [relevant] deposit and the rights and claims under the contract, as well as the right to participate in future auctions. The cited clause also provided for, *inter alia*, the payment of the purchase price in instalments, which unambiguously expresses the free will [*autonomija volje*] of the parties regarding the exclusion of the right to restitution as a consequence of the wrongful non-payment of the [relevant] purchase price. Moreover, the second-instance court determined that the contract provision under clause 3.2 is not null and void, since it does not contravene the imperative provisions [*imperativne odredbe*], but is rather in complete harmony with the provisions of Article 266 of the Obligations Act.

Clause 3 paragraph 3.2 of the concluded contract, to which the reasoning of the judgment refers, regulates the legal consequences of non-payment of the purchase price under clause 4 of the contract, which, *inter alia*, provides that the buyer of such socially-owned capital [*društveni kapital*] loses all rights and claims specified by the contract. The ruling of the second-instance court – that by concluding the impugned contract, the contracting parties had excluded the application of Article 132 paragraph 2 of the Obligations Act and had regulated differently the consequences of partial non-fulfilment and termination of contract, in accordance with the principle of free will and the self-regulating character of the provisions [contained in] Articles 10 and 20 of the Obligation Act – is constitutionally and legally acceptable.

...

The Constitutional Court finds that the court's reference to paragraph 3 of Article 41a of the Law on Amendments to the Privatisation Act could not have influenced the legality of the contested judgment, because the appellant has no right to the repayment of instalments ... under the provisions of the contract itself – namely, under paragraph 3.2 of clause 3, [which governs] the legal consequences of a failure to pay the purchase price in accordance with the terms of the contract."

B. Relevant domestic law and practice

1. Constitution

25. The relevant provisions of the Constitution, published in the Official Gazette of the Republic of Serbia ("the OG RS"), no. 98/06 – which came into force on 8 November 2006 – read as follows:

Article 32

"Everyone shall have the right to a public hearing within a reasonable time before an independent and impartial tribunal established by law, which shall pronounce judgment on their rights and obligations ..."

Article 58

"Peaceful tenure of personal property and other property rights acquired by law shall be guaranteed.

A property right may only be revoked or restricted in the public interest, as established by law, with [the payment of] compensation, which cannot amount to less than the market value.

Restrictions on the manner of using property may be established by law.

Any seizure of or restriction in respect of property in order to collect taxes and other levies or fines shall only be permitted [when such seizure or restriction is] in accordance with the law."

Article 197

"Laws and other general legal instruments may not have retroactive effect.

Exceptionally, some legal provisions may have a retroactive effect, but only if so required by the general interest, as established during the process of enacting [the statute that contains those retroactive provisions].

..."

2. Privatisation Act

26. Amendments to the 2001 Privatisation Act, published in OG RS no. 18/03, which entered into force on 8 March 2003, read as follows:

Article 41a

"If the sale price is to be paid in several instalments, and the buyer does not pay an instalment on time, the contract shall be terminated and the capital that was subject to the sale will be transferred to the Stocks Fund."

27. The 2005 Amendments, published in OG RS no. 45/05, which entered into force on 8 June 2005, in the relevant part thereof read as follows:

Article 19

"Article 41a shall be amended as follows:

...

Where a contract of sale is terminated ... owing to the failure of a buyer of capital to fulfil its contractual obligations, the buyer of [that] capital – as a party acting in bad faith [*nesavestan*] – shall not be entitled to a refund of the amount paid towards the agreed price, in order to protect the general interest."

3. Obligations Act

28. The relevant provisions of the Obligations Act (*Zakon o obligacionim odnosima*), published in the Official Gazette of the Socialist Federal Republic of Yugoslavia nos. 29/78, 39/85, 45/89, 57/89 and the Official Gazette of the Federal Republic of Yugoslavia no. 31/93, read as follows:

Article 10

"Parties to obligatory relations [*obligacioni odnosi*] shall be free, within the limits of compulsory legislation [*prinudni propis*], public policy and good faith, to arrange their relations as they please."

Article 20

"Parties may regulate their obligatory relations in a manner that is different from that specified by this Act, unless otherwise stipulated by a particular provision of the Act or unless it follows otherwise from its general meaning."

Article 132

"After a contract has been repudiated, both parties shall be released from their obligations, except for the obligation to provide compensation for any subsequent loss.

A party that fulfils a contract entirely or partially shall be entitled to the restitution of what it has given.

Should both parties be entitled to claim restitution of what has been given [by them], mutual restitution shall be undertaken under the rules governing the performance of bilateral contracts.

Each party shall owe compensation to the other for the benefits enjoyed from that which he is to restitute or pay compensation for.

A party paying back money shall [also] be obliged to pay interest [calculated] from the day of payment being received."

4. The case-law of the Supreme Court (of Cassation)

29. In Decision no. Prev. 412/07 of 8 November 2007, the Supreme Court held that the 2005 Amendments to the Privatisation Act (see paragraph 27 above) could not be applied retroactively in respect of a contract terminated before their adoption and entry into force. It held that the plaintiff's claim for the return of his deposit after the termination of the purchase contract should be dismissed on the basis of the contract alone. It found as follows:

"These contractual provisions [under clause 3.2] may appear unjust and excessively harsh for the buyer, who did not pay in full the purchase price, but they set out a contracted level of damages to be paid to the company in the event of the termination of the contract owing to the non-fulfilment of the goal and purpose of the contract – the sale of socially-owned capital. ... By concluding a contract on the sale of social capital by the method of public auction, the plaintiff ... as a buyer willingly accepted the risk [inherent in the] purchase – [that is to say] the risk of losing the capital and the paid price (deposit), but only in the event of the wrongful prevention of the realisation of the goal and purpose of the contract."

30. In Decision no. Prev. 412/08 of 14 October 2008, the Supreme Court held that clause 3.2 (see paragraph 22 above) is to be interpreted in such a manner that the termination of a contract owing to the non-payment of the relevant purchase price implies the losing of the deposit in question, as well as the part of the purchase price that may have been paid. Such

consequences were the result of the application of Article 20 of the Obligations Act, which excluded the application of Article 132 of the same Act (see paragraph 28 above).

31. In Decision no. Prev. 125/2013 Pzz1. 39/2013 of 29 May 2014, the Supreme Court reiterated that the termination of the contract under clause 3.2 also implied the losing of the relevant purchase price. Moreover, it held that the application of the 2005 Amendments had not been retroactive, as the contract had still been in force at the time of their adoption and entry into force.

32. In Decision no. Prev. 132/2013 Pzz1. 55/13 of 29 May 2014, the Supreme Court also held that the application of the amendments to the 2001 Privatisation Act had not been retroactive, as the contract had still been in force at the time of their being enacted and entry into force.

5. The Constitutional Court's case-law

33. In Decision no. IU-166/2005 of 25 December 2008, the Constitutional Court decided on the constitutionality and non-retroactive effect of Article 41a of the 2005 Amendments (see paragraph 27 above). It found, *inter alia*, as follows:

> "In relation to the claim ... that the provision of Article 41a of the Act undermines the principle of the equality of citizens, the Constitutional Court took into consideration the fact that – unlike the principle of the consent and the free will of the contracting parties, which are the foundations of general contractual relations, [which are governed by] the law [governing contractual] obligations – the statutory regulation of contractual relations during the process of privatisation [constitutes] the expression of the constitutional authority of the legislature to regulate those matters. It follows from the imperative character of the statutory provisions regulating the privatisation process that the relations regulated within the framework of that process cannot be changed by the will of any contractual party to the privatisation process, and nor is one party granted greater rights within a contractual relationship; ... rather, the whole process is regulated by statute. Thus, the contested provisions of Article 41a of the Act do not bring into question the equality of parties to a contractual relationship. ... The retention of the money paid as the purchase price during the execution of a privatisation contract constitutes the lawfully regulated consequence of the termination of that privatisation contract because of non-fulfilment, which is based on the constitutional authority of the legislature, in the event of the termination of a contract, to provide pecuniary sanctions in the form of "implied" compensation for the non-fulfilment of [that] contract by the party acting in bad faith [*nesavesna ugovorna strana*] ... The Constitutional Court holds that the contested ... paragraph 3 of Article 41 of the Privatisation Act – which provides that the party acting in bad faith ... does not have the right to be restituted the money given as the purchase price on the basis of a contract that has been terminated in accordance with the conditions provided in the statute – does not regulate the issue of the withdrawal (deprivation) or limitation of the property rights of participants in privatisation in a manner inconsistent with Article 58 of the Constitution and Article 1 of Protocol No. 1 to the European Convention. In that regard, the Constitutional Court indicates that the contested provision of the Act does not regulate the relationship between the State and a holder of a right of property as an absolute right with *erga omnes* effect, but rather

> as a contractual relationship into which the parties entered willingly, making use of their own property rights, and thus agreeing to all conditions provided in the statute – not only as regards the conclusion, but also the execution and termination of the contract on the sale of capital ...
>
> ...
>
> Also unfounded is the claim ... that the contested provision of paragraph 3 of Article 41a of the Act is inconsistent with the constitutional provisions on the prohibition of the retroactive effect of [Article 197 of Constitution] and other general legal instruments, which provide that laws and other general legal instruments cannot have retroactive effect, and that exceptionally only some of the legal provisions may have retroactive effect, if so required by the general interest, as established during the process of adopting [the relevant] law (Article 197 §§ 1 and 2). Interpreting the content of the contested provision of paragraph 3 of Article 41a of the Act, ... the Constitutional Court determined that that provision had not regulated relations in the past and that it thus did not have retroactive effect. The "general interest" mentioned in the contested provision of the [Privatisation Act] does not constitute the "general interest" within the meaning of the provision of Article 197 § 2 of the Constitution – which is established in the procedure of adopting the relevant law [and which] would have retroactive effect – but rather, the reason justifying ... the pecuniary sanctioning of the loss of money caused by the non-fulfilment of the privatisation contract."

34. In Decisions nos. IUz-1/2010 and IUz-71/2010 of 7 October 2010 and 17 October 2012 respectively, the Constitutional Court reiterated its reasoning regarding the constitutionality of Article 41a of the 2005 Amendments.

35. In Decision no. Už-2535/2009 of 19 September 2012, the Constitutional Court held that the 2005 Amendments did not have retroactive effect, but deemed that to be immaterial since clause 3.2 of the purchase contract constituted enough of a legal basis to dismiss the complainants' claim for the repayment of the purchase price paid after the termination of the contract.

36. By Decision no. Už-8549/2014 of 23 June 2016, the Constitutional Court reiterated its reasoning as to the non-retroactivity of the 2005 Amendments, and the interpretation of clause 3.2 (see paragraph 35 above).

COMPLAINTS

37. The applicants complained that they had been deprived of their property in circumstances that had been incompatible with the requirements of Article 1 of Protocol No. 1 to the Convention. The second applicant, relying on Article 6 of the Convention, also complained that the decisions of the domestic courts had been arbitrary.

THE LAW

A. Joinder of the applications

38. Having regard to the similar subject matter of the applications, the Court finds it appropriate to order their joinder (Rule 42 § 1 of the Rules of Court).

B. *Locus standi* of the first applicant's wife

39. The Court notes at the outset that the first applicant died while the application was pending before the Court. His wife, Ms Biserka Vasiljević, informed the Court that she wished to pursue the proceedings on her late husband's behalf (see paragraph 1 above). The Government argued that she could not continue the application in his stead because she did not have sufficient interest in the matter, given that neither she nor the first applicant's legal representative had declared in due time her interest in pursuing the application.

40. Where an applicant has died after the application in question has been lodged, the Court has accepted that the next of kin or heir may in principle pursue the application, provided that he or she has sufficient interest in the case (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 97, ECHR 2014). In such cases, the decisive point is not whether the rights claimed by the applicant are or are not transferable to the heirs wishing to pursue the procedure, but whether the heirs can in principle claim a legitimate interest in requesting the Court to deal with the case on the basis of the applicant's wish to exercise his or her individual and personal right to lodge an application with the Court (see *Singh and Others v. Greece*, no. 60041/13, § 26, 19 January 2017).

41. The Court furthermore notes that the first applicant's wife expressed her wish to pursue the application. Her delay in doing so cannot be taken to mean that she lost interest in the application or be seen as constituting an abuse of the right of application (see, *mutatis mutandis*, *Garbuz v. Ukraine*, no. 72681/10, § 29, 19 February 2019). The Court sees no reason to doubt that Ms Vasiljević has a legitimate interest in doing so, and holds that she has standing to continue the present proceedings in the first applicant's stead. The Government's objection in this regard should hence be dismissed.

42. For practical reasons, Mr Vasiljević will continue to be called "the first applicant" in this decision, although Mrs Vasiljević is now to be regarded as such (see *Dalban v. Romania* [GC], no. 28114/95, § 1, ECHR 1999-VI).

C. Complaint under Article 1 of Protocol No. 1 to the Convention

43. Relying on Article 1 of Protocol No. 1 to the Convention, the applicants complained that the alleged retroactive application of Article 41a of the 2005 Amendments had deprived them of a refund of the purchase prices after the purchase contracts had been terminated.

Article 1 of Protocol No. 1 reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

1. Arguments of the parties

44. The applicants reiterated their complaints. They also argued that clause 3.2 of the respective purchase contracts (see paragraph 22 above), properly interpreted, did not exclude the application of Article 132 of the Obligations Act, which guarantees the restitution of the purchase prices in the event of the termination of the contract (see paragraph 28 above). In addition, the second applicant argued that clause 3.2 could not be interpreted in the light of Articles 10 and 20 of the Obligations Act, as the contracting parties had not been equal – rather, the applicants had been in a "take it or leave it" position.

45. The Government argued that the State had not interfered with the property rights of the applicants, as they had had no right to the restitution of the instalments paid pursuant to the provisions of the contracts themselves, into which they had entered freely and which had stipulated the legal consequences of their termination in the event of partial non-fulfilment. Furthermore, they argued that even if the Court found that there had been an interference with the peaceful enjoyment of possessions, that interference had been in accordance with Article 1 of the Protocol No. 1 to the Convention.

2. The Court's assessment

46. The Court reiterates that the concept of "possessions" is not limited to "existing possessions" but may also cover assets, including claims, in respect of which the applicant can argue that he or she has at least a reasonable and legitimate expectation of obtaining the effective enjoyment of a property right (see *Depalle v. France* [GC], no. 34044/02, § 63, ECHR 2010). An "expectation" is "legitimate" if there is sufficient basis for that interest in national law – for example if it is based on either a legislative

provision or a legal act bearing on the property interest in question (see *Saghinadze and Others v. Georgia*, no. 18768/05, § 103, 27 May 2010) or where there is settled case-law of the domestic courts confirming it (see *Kopecký v. Slovakia* [GC], no. 44912/98, § 52, ECHR 2004-IX, and *Brezovec v. Croatia*, no. 13488/07, § 39, 29 March 2011). By contrast, the Court's case-law does not deem the existence of a "genuine dispute" or an "arguable claim" to constitute a criterion for determining whether there was a "legitimate expectation" protected by Article 1 of Protocol No. 1. Thus, no "legitimate expectation" can be said to arise where there is a dispute as to the correct interpretation and application of domestic law and the applicant's submissions are subsequently rejected by the national courts (see *Kopecký*, cited above, §§ 50 and 52, and *Tibet Menteş and Others v. Turkey*, nos. 57818/10 and 4 others, §§ 59-61, 24 October 2017).

47. As to the present case, the Court observes that the applicants' claim for the restitution of the respective purchase prices was based on their expectation that clause 3.2 of their purchase contracts applied only to the deposits paid, and that it did not exclude the application of Article 132 of the Obligations Act in respect of the restitution of the paid instalments of the respective purchase prices (see paragraph 28 above). The Court notes, however, that such an argument was explicitly dismissed by the national courts in the case of the second applicant. Although the first applicant's claim was dismissed solely on the basis of the application of Article 41a of the 2005 Amendments (see paragraph 27 above), the practice of the highest national court at the relevant time already excluded the application of Article 132 of the Obligations Act when determining the consequences of the termination of the purchase contract in cases of partial non-fulfilment (see paragraphs 29-30 above). The later practice of the Supreme Court of Cassation and the Constitutional Court only reiterated this interpretation of the relevant provisions (see paragraphs 31, 35 and 36 above). Therefore, it cannot be said that the applicants' claim for the restitution of the purchase price was sufficiently established in national law since the national courts, at the relevant time, had already found that by entering into the purchase contracts of their own free will, the contracting parties in privatisation contracts had regulated differently the consequences of partial non-fulfilment and termination of the respective contracts, as was their right under Articles 10 and 20 of the Obligations Act, and that clause 3.2 of the purchase contracts clearly excluded, in case of non-payment of the purchase price, the restitution of the instalments already paid. That conclusion does not appear arbitrary or manifestly unreasonable, given the circumstances of the present cases.

48. It follows that the applicants did not have the legitimate expectation of obtaining the restitution of the instalments paid and that Article 1 of Protocol No. 1 does not apply.

49. Accordingly, this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected, in accordance with Article 35 § 4.

D. Complaint under Article 6 of the Convention

50. The second applicant also complained that the proceedings in his case were unfair, alleging that the domestic courts had erroneously applied the relevant provisions of substantive law, and had arbitrarily interpreted clause 3.2 of the purchase contract.

He relied on Article 6 § 1 of the Convention, the relevant part of which reads:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

51. The Court reiterates that it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I). It is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation. The Court's role is to verify whether the effects of such interpretation are compatible with the Convention. That being so, unless their findings can be regarded as arbitrary or manifestly unreasonable, it is not the Court's role to question the interpretation of the domestic law by the national courts (see, for example, *López Ribalda and Others v. Spain* [GC], nos. 1874/13 and 8567/13, § 149, 17 October 2019).

52. The Court observes at the outset that the second applicant was able to submit his arguments in respect of the interpretation of clause 3.2 of the purchase contract at all stages of the proceedings, which complied with the requirement of an adversarial trial. It notes that the second applicant's arguments were rejected by national courts in a manner that does not appear arbitrary or manifestly unreasonable (see paragraph 47 above). As for the possible erroneous application of Article 41a of the 2005 Amendments in the decisions of the first- and second-instance courts (see paragraphs 22-23 above), the Court agrees with the Constitutional Court that the application of that provision was cited in the reasoning of the lower courts by way of serving as alternative grounds; it did not affect the outcome of the proceedings (see paragraph 24 above).

53. It follows that the second applicant's complaint under Article 6 § 1 of the Convention 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,

Decides to join the applications;

Holds that the first applicant's wife, Ms Biserka Vasiljević, has standing to continue the present proceedings in his stead;

Declares the applications inadmissible.

Done in English and notified in writing on 20 February 2020.

Marialena Tsirli
Registrar

Jon Fridrik Kjølbro
President