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

SECOND SECTION

DECISION

Application no. 40825/15
Ljubiša ALEKSIĆ
against Serbia

The European Court of Human Rights (Second Section), sitting on 8 November 2022 as a Chamber composed of:

Jon Fridrik Kjølbro, *President*,
Carlo Ranzoni,
Branko Lubarda,
Pauliine Koskelo,
Jovan Ilievski,
Gilberto Felici,
Diana Sârcu, *judges*,
and Hasan Bakırcı, *Section Registrar*,

Having regard to the above application lodged on 31 July 2015,

Having regard to the observations submitted by the Serbian Government ("the Government") and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Ljubiša Aleksić, is a Serbian national who was born in 1958 and lives in Novi Sad. He was represented before the Court by Mr A. Vorgić, a lawyer practising in the same city.

2. The Government were represented by their Agent, Ms Z. Jadrijević Mladar.

A. The circumstances of the case

3. The facts of the case may be summarised as follows.

1. The situation in the office as described by the applicant

4. In the summer of 2009 a work-related incident between the applicant and one of his colleagues, a certain Mr A, took place on the premises of their employer, the respondent State's statistics office (*Republički zavod za statistitku*, hereinafter "the RZS") in Novi Sad. The incident involved a loud argument and a disagreement about the attribution of credit for the work done and included insulting language addressed to the applicant.

5. The applicant subsequently reported the incident to the management of the RZS and sought the institution of disciplinary proceedings against Mr A.

6. His request was ignored, so the applicant sent a letter to a close friend and colleague of his who was also employed by the RZS but worked in its headquarters in Belgrade.

7. In that correspondence the applicant described the situation in the Novi Sad office in general and made an informal reference to a certain Mr B, who was an "invented character", merely in order to better explain, "satirically" and "jokingly", the "negative developments" in the office itself. The communication also contained information relating to the applicant and his son, specifically the financial difficulties they faced in their daily lives.

8. The applicant subsequently forwarded the above-mentioned letter, together with other private notes, via his official email address to three of his other colleagues in the Novi Sad office at their request. All of them and many other colleagues agreed that there were many problems in the office in terms of the distribution of assignments and the insensitivity of the management, as well as with respect to corruption and promotion practices. No one ever mentioned Mr A personally.

9. On 20 August 2009, on Mr A's initiative, the deputy head of the RZS office in Novi Sad obtained from the RZS IT administrator all of the applicant's electronic correspondence with attachments (hereinafter "the emails") which had been sent from his official email account between 21 July and 20 August 2009. Those emails were then read to another colleague, printed out and given to Mr A, who then interpreted them as concerning himself and his own situation in the workplace. The applicant only found out about these developments upon being served with the notice of a civil claim subsequently lodged against him by Mr A (see paragraphs 15-20 below).

10. As a consequence of the argument with Mr A, the applicant suffered adverse consequences at work in terms of how he was perceived by others and regarding his career and promotion prospects.

2. Criminal complaint lodged by the applicant

11. On 30 October 2010 the applicant lodged a criminal complaint against Mr A, the person in charge of the RZS office in Novi Sad and an unidentified IT administrator, maintaining that all three had unlawfully breached his right to privacy of his correspondence.

12. On 9 November 2010 the Novi Sad public prosecutor's office (*Osnovno javno tužilastvo u Novom Sadu*) dismissed his complaint, stating that the criminal offence in question was not one which was subject to public prosecution. However, the applicant could instead have brought his own private criminal action (*privatnu krivičnu tužbu*) in the relevant courts directly.

13. According to the Government, on 15 November 2010 a letter prepared and signed by the Novi Sad public prosecutor's office informing the applicant of the dismissal of his complaint had been delivered to the applicant.

14. The applicant maintained that he had only been informed of the dismissal upon receipt of the Government's observations in the present case (see paragraph 56 below).

3. Civil proceedings brought by Mr A

15. On 13 May 2011 the Novi Sad Court of First Instance (*Osnovni sud u Novom Sadu* – "the Court of First Instance") ruled in favour of Mr A. In so doing, it ordered the applicant to pay him 100,000 Serbian dinars (RSD) (approximately 1,000 euros (EUR) at that time), plus statutory interest, as compensation for the mental anguish suffered by Mr A on account of the damage to his honour and reputation, as well as another RSD 43,050 (approximately EUR 430 at the material time) for legal costs (see paragraph 44 below).

16. In its judgment the court referred to the incident described above (see paragraphs 4-10 above) and established the facts on the basis of witness testimony and documentary evidence as follows.

17. In July and August 2009 a total of seven emails had been sent by the applicant from his official email account to the official email accounts of a total of five of his colleagues, both inside and outside of the Novi Sad office of the RZS. Those persons had then forwarded those emails from their own official email accounts to those of other colleagues.

18. The emails had consisted of demeaning and untrue work- and career-related statements as regards Mr A and had referred to him by means of his widely recognised nickname (Mr B). The emails had also contained drawings depicting Mr A in various belittling ways.

19. The court noted, *inter alia*, that some of the emails in question had been provided to the court by Mr A personally, who had obtained them from the RZS after having heard gossip about himself in the office and having been ridiculed by a number of colleagues. Other emails with very similar content had also been obtained from the RZS in the course of the civil proceedings themselves, on the basis of a court order. All of the emails had also been sent from official email accounts during working hours, meaning that no privacy protections had been applicable.

20. On 23 August 2012 the Novi Sad Court of Appeal (*Apelacioni sud u Novom Sadu* – "the Court of Appeal") upheld the judgment given by the Court

of First Instance and it thereby became final. In so doing, the appellate court pointed out, *inter alia*, that the right to privacy of the applicant's correspondence had not been breached, for the same reasons already given in the judgment at first instance. In addition, the Court of Appeal held that since the messages had been forwarded amongst colleagues, they had become accessible to an "indeterminate number of persons" in "the wider office environment". The emails had also been talked about among colleagues and their content had thus become public.

4. Constitutional proceedings brought by the applicant

21. On 8 October 2012 the applicant lodged an appeal with the Constitutional Court (*Ustavni sud*) against the judgments given by the Court of First Instance and the Court of Appeal of 13 May 2011 and 23 August 2012 respectively, as well as the "inaction" of the public prosecution service in response to his criminal complaint of 30 October 2010 (see paragraphs 11-14, 15 and 20 above).

22. In his appeal the applicant referred to the incident in question, as well as to the subsequent civil and criminal proceedings, and alleged that he had suffered a violation of: (i) the right to the privacy of his correspondence; (ii) his personal data protection rights; (iii) the right to a fair trial; and (iv) the right to the equal protection of his rights by the national courts.

23. The applicant's appeal was supplemented with further written pleadings on 26 February and 25 March 2013. The applicant, however, did not provide the Court with copies of the two supplementary submissions.

24. On 5 February 2015 the Constitutional Court noted that the emails in question, which had been sent from an official email account, had been used as evidence in a defamation case brought against the applicant. The court then dismissed the applicant's appeal, stating that he had, in any event, failed to bring a separate civil action for damages against the RZS for any non-pecuniary damage suffered on account of the alleged violation of his privacy. Lastly, the Constitutional Court held that the criminal complaint itself was not, as such, something that could be challenged before it.

5. Civil proceedings brought by the applicant

25. In a separate civil suit, following a remittal of the case, on 18 May 2015 the Court of First Instance ruled in favour of the applicant and ordered Mr A to pay him RSD 50,000 (approximately EUR 410 at that time), plus statutory interest, on account of the mental anguish suffered in connection with the breach of his honour and reputation which had taken place in the course of and after his argument with Mr A in the summer of 2009 (see paragraph 4 above), as well as another RSD 151,600 (approximately EUR 1,250 at the material time) for legal costs (see paragraph 44 below).

26. On 26 October 2016 the Novi Sad High Court (*Viši sud u Novom Sadu*) upheld that judgment and it thereby became final.

6. Other relevant facts

27. The RZS is a specialised government body tasked with collecting, processing and disseminating official statistics of relevance for the Republic of Serbia.

28. At the hearing held on 1 June 2010 in the course of the civil case brought by Mr A (see paragraphs 15-20 above), his lawyer proposed, *inter alia*, that the court obtain from the RZS information as regards the exchange of the emails "which were to be subsequently specified". On the same occasion, the lawyer representing the applicant "agreed with [that] proposal".

29. On 30 June 2009 the RZS IT administrator sent a circular email to all employees, including the applicant, entitled "Rules for the use of computers and other resources in the workplace". This message stated, *inter alia*, that "computers and other resources [could] only be used for work-related purposes".

30. According to documentation obtained by the civil court from the RZS, the emails in question were sent or forwarded to a total of more than thirty email accounts, both inside and outside the RZS (see paragraph 28 above).

31. In an email sent to a colleague on 20 July 2009, the applicant attached one of the texts in question, referring to Mr A by means of his widely recognised nickname (Mr B), and further stated that "this story [was] not too intimate, so [the colleague could] share it with persons close to [him] if [he felt] the need" to do so, since one should "make people happy in these stupid times".

32. In the text attached to the above email the applicant noted, *inter alia*, that given the situation in the office, he had already told his child that there would be no pocket money available or even dinner, should their expenses exceed their means.

33. The applicant maintained throughout that time that the confidentiality of his correspondence had been breached unlawfully since there had never been a decision given by a court of law in a criminal context ordering the disclosure of his correspondence and, furthermore, that there had never been any suggestion that "the protection of the safety of the Republic of Serbia" had been involved (see paragraph 36 below).

34. In 2012 Mr A sought enforcement of the final civil judgment delivered against the applicant (see paragraph 20 above).

B. Relevant legal framework and case-law

1. *The Constitution of the Republic of Serbia* (Ustav Republike Srbije, *published in the Official Gazette of the Republic of Serbia*, *OG RS no. 98/06*)

35. Article 18 provides, *inter alia*, that "the Constitution shall guarantee ... the direct implementation of human ... rights secured by the generally accepted rules of international law [and] ratified international treaties". It further provides that "provisions on human ... rights shall be interpreted ... in accordance with valid international standards on human ... rights, as well as the practice of international institutions which supervise their implementation".

36. Article 41 provides that "confidentiality of letters and other means of communication shall be inviolable" and that any derogation from this principle shall only be allowed "for a specified period of time and based on a decision of a court of law", should this be necessary for the "conduct of criminal proceedings or the protection of the safety of the Republic of Serbia, in a manner regulated by law".

37. Article 170 provides that "a constitutional appeal 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".

38. In 2021 the Constitution was amended but not in respect of the above-mentioned provisions.

2. *The Constitutional Court Act* (Zakon o Ustavnom sudu, *published in OG RS nos. 109/07, 99/11 and 18/13*)

39. Article 85 § 1 provides the necessary information which must be contained in a constitutional appeal. This information includes: (i) the appellant's personal data; (ii) information concerning his or her legal counsel; (iii) the particulars of the decision being challenged; (iv) an indication of the relevant provisions of the Constitution; (v) a description of the violations alleged; (vi) any redress, including damages, sought by the appellant; and (vii) the appellant's personal signature or that of his or her authorised legal representative.

40. This Act was subsequently amended on two occasions, in May and December 2015.

3. *The Constitutional Court's general opinions (made public on its website)*

41. According to the Constitutional Court's general opinions (*stavovi*) of 30 October 2008 and 2 April 2009, it is "bound" (*vezan*) by the request

formulated in a constitutional appeal when examining whether there has been a breach of a right or freedom guaranteed by the Constitution. The Constitutional Court may only consider the appeal within the limits of the request as formulated.

4. *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 and 57/89, as well as in the Official Gazette of the Federal Republic of Yugoslavia no. 31/93*)

42. Article 157 provides, *inter alia*, that everyone shall be entitled to request from a court of law the cessation of an action in breach of one's integrity, one's personal and family life, or indeed other rights pertaining to one's person.

43. Article 172 § 1 provides that a legal entity is liable for any damage caused by one of "its own bodies".

44. Articles 199 and 200 provide, *inter alia*, that anyone who has suffered fear, physical pain or mental anguish as a consequence of a breach of personal rights is entitled, depending on the duration and intensity of the suffering, to sue for financial compensation in the civil courts and, in addition, to request other forms of redress "which might be capable" of affording adequate non-pecuniary satisfaction.

5. *The Civil Procedure Act* (Zakon o parničnom postupku, *published in OG RS no. 125/04*)

45. Article 13, as in force at the material time, provided that if a victim of a criminal offence had brought a civil action for damages against the offender, the civil court was bound by a final decision, if any, of the criminal court finding the offender guilty. However, the civil courts have consistently interpreted that provision so that a criminal conviction was not a precondition for an award of damages since the rules for criminal and civil liability were different (see, for example, the relevant domestic case-law referred to in *Đekić and Others v. Serbia*, no. 32277/07, § 19, 29 April 2014).

46. In December 2009 this Act was amended and in 2012 a new Civil Procedure Act entered into force, thus repealing and replacing it.

6. *Domestic case-law referred to by the Government in the present case*

47. The Government provided the Court with case-law showing, *inter alia*, that claimants complaining about privacy-related and human dignity issues in the employment context had been able to obtain redress before the civil courts, i.e. a finding of a violation of the Obligations Act (see paragraph 44 above) and/or of the Convention and awarding compensation to the plaintiffs. One of those cases concerned the confiscation of the claimant's personal notes, letters and photographs (see judgment Pbr. 2605/12 of 13 June

2015, rendered by the Belgrade Court of First Instance) while the other involved the abuse and harassment of the claimant by his direct supervisor (see judgment Pbr. 4539/14 of 13 May 2014, also rendered by the same court). Both judgments subsequently became final and enforceable, the former having been slightly amended at second instance in terms of the exact amount of the compensation awarded.

COMPLAINTS

48. The applicant complained, under Articles 8 and 10 of the Convention, that his employer, the RZS, had accessed and read his emails in breach of his right to privacy and his freedom of expression. He furthermore submitted that the respondent State's courts had ultimately provided him with no redress in this connection and had thus only reaffirmed this violation.

THE LAW

A. The applicant's complaints

49. The applicant complained, as described above, about the breach of his right to privacy and freedom of expression contrary to the guarantees contained in Articles 8 and 10 of the Convention, respectively, which provisions read as follows:

Article 8

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

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."

Article 10

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

B. The parties' submissions

1. *The Government*

(a) As regards the complaint under Article 8 of the Convention

50. The Government maintained that the applicant had failed to make use of a number of effective domestic remedies. In particular, those provided for in the relevant legislation on personal data protection as well as a separate civil claim for the alleged breach of his privacy (see paragraphs 43 and 44 above). In respect of the latter they offered copies of a number of final judgments adopted by the national courts in the employment context (see paragraph 47 above).

51. Furthermore, the Government submitted that, in the particular circumstances of the present case, the applicant could not have had a reasonable expectation that his correspondence would remain private. By implication, Article 8 of the Convention could not be deemed applicable.

(b) As regards the complaint under Article 10 of the Convention

52. The Government argued that the applicant had not made proper use of the constitutional appeal procedure in so far as he had failed to raise his Article 10 complaint, either formally or in substance, in the proceedings before the Constitutional Court.

53. In any event, according to the Government, the facts of the case disclosed no violation of Article 10 of the Convention even when considered on the merits of the applicant's complaint.

2. *The applicant*

54. The applicant reaffirmed his complaints and contested the Government's arguments.

55. In particular, he maintained that he had complied with the exhaustion requirement as regards both of his complaints, having made use of all available and relevant civil and constitutional remedies. The complaint under Article 10 of the Convention, interconnected as it was with his complaint under Article 8, had also been properly raised before the Constitutional Court.

56. The applicant likewise submitted that he had attempted to make use of the criminal avenue of redress but to no avail. Moreover, he had never been served with the decision dismissing his criminal complaint and the Government themselves had offered no evidence to the contrary. In any event and in the absence of a criminal conviction, the applicant could not have lodged a separate civil claim for the mental anguish which he had suffered as a consequence of the violation of his privacy.

57. The applicant added that the existing rules on the use of office computers (see paragraph 29 above) did not mean that the RZS had the right to read its employees' private correspondence since those rules could not

supersede the guarantees contained in Article 41 of the Constitution (see paragraph 36 above).

58. The applicant argued that, as he had sent only a small number of email messages to his colleagues within the RZS, which had employed more than 500 persons at the time, he had had a reasonable expectation of privacy under the Convention, particularly since the emails had not subsequently been forwarded to many other persons.

59. Lastly, the applicant stated that, on account of the incident, he had suffered adverse consequences with respect to his career prospects and his health. He had furthermore been ridiculed by his colleagues and had suffered financially in this connection.

C. The Court's assessment

1. Relevant principles on exhaustion of domestic remedies

60. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 of the Convention obliges those seeking to bring a case against a State before the Court to firstly use the remedies provided by the national legal system. Consequently, States are dispensed from answering for their acts before an international body before they have had an opportunity to put matters right domestically (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 70, 25 March 2014).

61. The obligation to exhaust domestic remedies 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 *Vučković and Others*, cited above, § 71).

62. 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 *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 70, 17 September 2009, and *Vučković and Others*, cited above, § 74).

63. It is not necessary for the Convention right to be explicitly raised in domestic proceedings provided that the complaint is raised at least in substance (see *Castells v. Spain*, 23 April 1992, § 32, Series A no. 236; *Ahmet Sadık v. Greece*, 15 November 1996, § 33, *Reports of Judgments and Decisions* 1996-V; and *Vučković and Others*, cited above, § 72).

64. The applicants must nevertheless comply with the applicable rules and procedures of domestic law, failing which their application is likely to fall

foul of the condition laid down in Article 35 § 1 (see, for example, *Cardot v. France*, 19 March 1991, § 34, Series A no. 200, and *Vučković and Others*, cited above, § 72).

65. The Court reiterates that Contracting States are afforded some discretion as to the manner in which they conform to their obligation to provide a domestic remedy that would allow the competent national authority both to deal with the substance of the relevant Convention complaint and to grant appropriate relief (see the discussion regarding Article 13 in *Nada v. Switzerland* [GC], no. 10593/08, § 207, ECHR 2012). This discretion reflects the freedom of choice attaching to the primary obligation of the Contracting States under Article 1 of the Convention to secure the rights and freedoms guaranteed under the Convention (see, *Popovski v. "The Former Yugoslav Republic of Macedonia"* no. 12316/07, § 79, 31 October 2013).

66. The Court has also frequently underlined the need to apply the exhaustion rule with some degree of flexibility and without excessive formalism (see *Vučković and Others*, cited above, § 76, and *Gherghina v. Romania* (dec.) [GC], no. 42219/07, § 87, 9 July 2015). For example, where more than one potentially effective remedy is available, the applicant is only required to use one remedy of his or her own choosing (see, among many other authorities, *Micallef v. Malta* [GC], no. 17056/06, § 58, ECHR 2009; *Nada*, cited above, § 142; *Göthlin v. Sweden*, no. 8307/11, § 45, 16 October 2014; and *O'Keeffe v. Ireland* [GC], no. 35810/09, §§ 109-111, ECHR 2014 (extracts)).

67. As regards legal systems which provide constitutional protection for fundamental human rights and freedoms, such as the one in Serbia, it is incumbent on the aggrieved individual to test the extent of that protection (see, *inter alia*, *Vinčić and Others v. Serbia*, nos. 44698/06 and 30 others, § 51, 1 December 2009). Indeed, the Court has repeatedly held that a constitutional appeal should, in principle, be considered effective within the meaning of Article 35 § 1 of the Convention in respect of all applications lodged against Serbia as of 7 August 2008 (see, for example, *Vučković and Others*, cited above, § 84).

68. Lastly, 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, for example, *McFarlane v. Ireland* [GC], no. 31333/06, § 107, 10 September 2010, and *Vučković and Others*, cited above, § 77).

2. Application of these principles to the present case

(a) As regards the complaint under Article 8 of the Convention

69. The Court considers that there is no need for it to examine the Government's objection with respect to this complaint's compatibility *ratione materiae* with the provisions of the Convention (see paragraph 50 above) since it is, in any event, inadmissible due to the applicant's failure to make use of an effective domestic remedy.

70. In particular, Articles 157, 199 and 200 of the Obligations Act, 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 (see paragraphs 42-44 above). Moreover, Article 172 § 1 of the Obligations Act 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" (see paragraphs 43 above). As the Court has already observed in *Lakatoš and Others v. Serbia* (no. 3363/08, §§ 43 and 44 and 51-52, 7 January 2014), the domestic civil courts have applied those provisions in favour of claimants in a number of very different contexts (see, also, the reference in *Jakovljević v. Serbia* (dec.), no. 5158/12, § 42, 13 October 2020).

71. 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 (see paragraph 35 above). There is likewise domestic case-law to this effect, in particular civil court judgments recognising 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 claimants where appropriate (see *Lakatoš and Others*, cited above, §§ 51 and 52, and *Jakovljević*, cited above § 43; see also, in this vein, paragraph 47 above, i.e. the domestic case-law provided by the Government in the present case concerning the confiscation of personal notes, letters and photographs in the employment context).

72. In *Kostić v. Serbia* ((dec.), no 40410/07, § 57, 17 September 2013) the Court, for example, considered the complaint under Article 8 of the Convention that the military officials and military investigating authorities had disseminated offensive and inaccurate information about the personal and family life of the applicant's late son, and it rejected it as inadmissible on the grounds of non-exhaustion of domestic remedies (ibid., § 60), namely those envisaged under the Obligations Act (see paragraphs 42-44 above). The applicant has not explained why such a remedy would not have been adequate and effective in the particular circumstances of the present case, or shown

that there existed special circumstances absolving him from this requirement (see paragraph 68 above). It is, of course, understood in this context that under Serbian law and contrary to the applicant's submissions (see paragraph 56 above, *in fine*), a criminal conviction is not a formal precondition for obtaining damages in a civil suit concerning the same events (see *Đekić and Others*, cited above, §§ 42 and 19, in that order, 29 April 2014, and *Tešić v. Serbia*, nos. 4678/07 and 50591/12, § 40, 11 February 2014).

73. The Court would furthermore note that the proceedings which had been brought by Mr A against the applicant himself (see paragraphs 15-20 above) cannot be deemed as having been capable of remedying directly the alleged breach of the applicant's privacy and hence as yet another avenue of potential redress (see paragraphs 62 and 66 above). The reason for this is that the RZS, as the applicant's employer, was not even a party to those proceedings, that they concerned Mr A's honour and reputation, not the applicant's privacy, and that the national courts could not therefore have afforded the applicant any protection in this context.

74. Lastly, the lawsuit brought by the applicant against Mr A personally, concerned the breach of his own honour and reputation which had taken place in the course of and after his argument with Mr A in the summer of 2009, an incident which had been separate from the subsequent developments involving the access to and the reading of the applicant's emails by the RZS (see paragraphs 25, 26 and 4 above, in that order).

75. In view of the foregoing, the Court is of the opinion that the applicant should indeed have brought a civil action against the RZS based on the Obligations Act (see, *mutatis mutandis*, *Hajnal v. Serbia*, no. 36937/06, § 142, 19 June 2012; *Lakatoš and Others*, cited above, § 114; *Kostić*, cited above, § 60; and *Jakovljević*, cited above §§ 45 and 46), as suggested by the Government in their observations and specifically highlighted by the Constitutional Court in its decision of 5 February 2015 (see paragraphs 50 and 24 above, in that order; see also paragraph 64 above with respect to the need to comply with the applicable rules and procedures of domestic law).

76. Since the applicant had not done so, his complaint under Article 8 must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

77. Given this conclusion, it is not necessary for the Court to separately examine the Government's other objection to the effect that the applicant should have also pursued the remedies provided for in the relevant national legislation on personal data protection (see paragraph 50 above).

(b) As regards the complaint under Article 10 of the Convention

78. The Court notes that on 8 October 2012 the applicant lodged an appeal with the Constitutional Court against the judgments given by the Court of First Instance and the Court of Appeal of 13 May 2011 and 23 August 2012 respectively, as well as the inaction of the public prosecution service in

response to his criminal complaint of 30 October 2010 (see paragraph 21 above). The constitutional appeal was thereafter twice supplemented with additional written pleadings in the course of 2013 (see paragraph 23 above).

79. In the appeal itself the applicant referred to the incident in question, as well as to the subsequent civil and criminal proceedings. In so doing, he alleged that he had suffered a violation of: (i) the right to the privacy of his correspondence; (ii) his personal data protection rights; (iii) the right to a fair trial; and (iv) the right to the equal protection of his rights by the national courts (see paragraph 22 above).

80. In these circumstances, the Court notes that the applicant did not raise, in his constitutional appeal, a complaint involving his freedom of expression, either expressly or in substance. It is also understandable that the Constitutional Court did not examine the matter of its own motion (see paragraphs 41 and 39 above, in that order; see also *Vučković and Others*, cited above, § 82). The applicant, lastly, did not provide the Court with copies of the two additional written pleadings filed with the Constitutional Court following the appeal, thus failing to substantiate that he had ever raised a complaint involving his freedom of expression in the proceedings before it.

81. It follows that there is no evidence that the applicant did in fact raise his complaint under Article 10 of the Convention in the proceedings before the Constitutional Court.

82. The Court therefore finds that this part of the application is also inadmissible for non-exhaustion of domestic remedies and must as such be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 1 December 2022.

Hasan Bakırcı Registrar	Jon Fridrik Kjølbro President