

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

THIRD SECTION

DECISION

Applications nos. 45928/08 and 57662/08
Marija ĐURĐEVIĆ
and Mihajlo ĐURĐEVIĆ against Serbia

The European Court of Human Rights (Third Section), sitting on 16 June 2015 as a Committee composed of:

Ján Šikuta, *President,*
Iulia Antoanella Motoc,
Branko Lubarda, *judges,*

and Marialena Tsirli, *Deputy Section Registrar,*

Having regard to the above applications lodged on 22 September 2008,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

The applicants, Ms Marija Đurđević and Mr Mihailo Đurđević, are Serbian nationals, who were born in 1988 and 1987 respectively and live in Kraljevo. They were represented before the Court by Ms D. Todorović, a lawyer practising in Kraljevo.

The Serbian Government ("the Government") were represented by their Agent, Ms V. Rodić.

On 23 September 2002 and 4 April 2005 the Municipal Court (*Opštinski sud*) in Kraljevo ordered the socially/State-owned companies *Holding Kompanija FVK AD "Vagonogradnja", AD "Drumska vozila", AD "Procesna oprema", AD "Livnica", AD "Termoplastika", DOO "Alatnica", DOO "Održavanje"* and *DOO FVK "Turs"* (hereinafter "the debtors) to pay the applicants certain amounts on account of a scholarship agreement which they had concluded with the debtors in 1995, for the period from March 1998 to February 2005, plus the costs of civil

proceedings. The judgments became final and enforceable on 20 August 2003 and 23 June 2005, respectively.

On 7 February 2005, 16 January 2008, 26 August 2005 and 21 January 2008, the Municipal Court in Kraljevo ordered the enforcement of those judgments.

The applicants' counsel informed the Court by her letter of 23 July 2009 that a part of the judgment of 4 April 2005 had been enforced on 11 March 2009.

COMPLAINTS

The applicants essentially complained about the non-enforcement of the judgments rendered in their favour. These complaints fall to be examined under Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1.

THE LAW

The Court considers that, in accordance with Rule 42 § 1 of the Rules of Court, the applications should be joined, given their similar factual and legal background.

The Government asked the Court to declare the applications inadmissible as an abuse of the right of petition. They pointed out that the applicants' counsel, who had represented them throughout the domestic proceedings, had failed to inform the Court that both judgments in question had in fact been fully enforced. In addition, the Government noted that it was not the first time that the same lawyer submitted incorrect data to the Court. They referred to *Šejić v. Serbia* ((dec.), no. 45599/08, 17 September 2013).

In response, the applicants maintained that the impugned judgments had not been fully enforced.

The Court reiterates that an application may be rejected as an abuse of the right of individual application within the meaning of Article 35 § 3 (a) of the Convention if, among other reasons, it was knowingly based on false information (see *Kerechashvili v. Georgia* (dec.), no. 5667/02, 2 May 2006; *Bagheri and Maliki v. the Netherlands* (dec.), no. 30164/06, 15 May 2007; *Poznanski and Others v. Germany* (dec.), no 25101/05, 3 July 2007; and *Simitzi-Papachristou and Others v. Greece* (dec.), no. 50634/11, § 36, 5 November 2013) or if significant information and documents were deliberately omitted, either where they were known from the outset (see *Kerechashvili*, cited above) or where new significant developments occurred during the procedure (see *Predescu v. Romania*, no. 21447/03,

§§ 25-27, 2 December 2008; and *Tatalović and Dekić v. Serbia* (dec.), no. 15433/07, 29 May 2012). Incomplete and therefore misleading information may amount to an abuse of the right of application, especially if the information in question concerns the very core of the case and no sufficient explanation is given for the failure to disclose that information (see *Hüttner v. Germany* (dec.), no. 23130/04, 9 June 2006; *Poznanski and Others*, cited above; *Predescu*, cited above, §§ 25-26; and *Komatinović v. Serbia* (dec.), no. 75381/10, 29 January 2013).

According to the documents submitted by the Government, by March 2009 the applicants received from the debtors in several instalments, the amounts awarded by the impugned judgments. Since the applicants did not claim, let alone substantiate, that the amounts received had been in connection with another debt, the Court concludes that the judgments in issue were fully enforced by March 2009.

Having regard to the importance of the applicants' failure to disclose this information for the proper determination of the present case, the Court finds that such conduct was contrary to the purpose of the right of individual petition, as provided for in Article 34 of the Convention (see *Gross v. Switzerland* [GC], no. 67810/10, § 28, ECHR 2014).

In view of the above, it is appropriate to reject the applications as an abuse of the right of petition, pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 9 July 2015.

Marialena Tsirli	Ján Šikuta
Deputy Registrar	President