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

THIRD SECTION

DECISION

Application no. 48793/11
Branka JOVANOVIĆ
against Serbia

The European Court of Human Rights (Third Section), sitting on 13 June 2017 as a Committee composed of:

Pere Pastor Vilanova, *President,*
Branko Lubarda,
Georgios A. Serghides, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 24 May 2011,

Having regard to the comments submitted by the parties,

Having deliberated, decides as follows:

THE FACTS

The applicant, Ms Branka Jovanović, is a Serbian national, who was born in 1940 and lives in Svilajnac.

The Serbian Government ("the Government") were initially represented by their former Agent, Ms V. Rodić, who was subsequently substituted by their current Agent, Ms N. Plavšić.

On 14 February 1996 the applicant's mother, as a third party, joined administrative proceedings related to restitution of a certain plot of land.

On 4 December 2003, after the applicant's mother had died, the applicant, as her heir, continued the said administrative proceedings.

Following several remittals, on 2 December 2015, the proceedings in question were concluded by decision of the Ministry of Finance.

In the meantime, on 7 July 2010, the Constitutional Court found a breach of the applicant's right to a hearing within a reasonable time and ordered the speeding up of the impugned proceedings. The court, additionally, declared

that the applicant was entitled to the non-pecuniary damages sought, in accordance with Article 90 of the Constitutional Court Act.

On 23 November 2011 the applicant lodged a request with the Commission for Compensation for payment of non-pecuniary damages, but she had never received a response thereto. On 4 January 2011 the applicant thus brought a civil suit before the Despotovac First Instance Court, seeking damages in connection with the length violation already established by the Constitutional Court.

In their observations, the Government informed the Court that on 13 January 2014, the Despotovac First Instance Court had found a violation of the applicant's right to a hearing within a reasonable time and had awarded her 100.000,00 Serbian dinars (RSD) on account of non-pecuniary damages plus RSD 83.750,00 for costs. Moreover, the Government informed the Court that on 10 December 2015 the applicant had received payment of the total amount in question (RSD 208.552,75). The applicant did not contest these submissions.

COMPLAINT

The applicant complained that the length of administrative proceedings had been incompatible with the "reasonable time" requirement.

THE LAW

The Government, *inter alia*, argued that the applicant's failure to disclose the information that she had obtained compensation for the violation of her right to a trial within reasonable time constituted an abuse of the right of individual application.

The applicant made no comments in this respect. However, in her submission of 17 February 2016, she argued that she was still a victim of the said violation.

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 *Gross v. Switzerland* [GC], no. 67810/10, § 28, ECHR 2014; and *S.A.S. v. France* [GC], no. 43835/11, § 67, ECHR 2014) or if significant information and documents were deliberately omitted, either where they were known from the outset or where new significant developments occurred during the proceedings (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 *Predescu*, cited above, §§ 25-26; and *Komatinović v. Serbia* (dec.), no. 75381/10, 29 January 2013).

In the instant case the Court notes that the applicant complained about the length of the impugned administrative proceedings. However, on 13 January 2014, in the proceedings before the Despotovac First Instance Court, the said court found a violation of the applicant's right to a trial within reasonable time and awarded her RDS 100.000,00 on account of non-pecuniary damages plus RSD 83.750,00 for costs.

The applicant's complete silence on the outcome of the said proceedings cannot be interpreted, in the Court's view, as anything else but a failure to disclose information concerning the very core of the application.

Having regard to the importance of the applicant's 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 application as an abuse of the right of petition, pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 6 July 2017.

Fatoş Aracı
Deputy Registrar

Pere Pastor Vilanova
President