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

THIRD SECTION

DECISION

Application no. 34176/10
METALEX DOO
against Serbia

The European Court of Human Rights (Third Section), sitting on 3 May 2016 as a Committee composed of:

Pere Pastor Vilanova, *President,*
Branko Lubarda,
Georgios A. Serghides, *judges,*
and Stephen Phillips, *Section Registrar,*

Having regard to the above application lodged on 18 April 2013,
Having regard to the comments submitted by the parties,
Having deliberated, decides as follows:

THE FACTS

1. The applicant, Metalex DOO, is a limited liability company based in Serbia. It was represented before the Court by Mr M. Parish, a lawyer practising in Geneva.

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

A. The facts of the case as submitted by the parties

3. The applicant had a long term business relationship with *Sartid AD*, a State/socially owned company (the debtor).

4. On 30 July 2002 the Belgrade Commercial Court opened the insolvency proceedings against the debtor. In its decision II-St-7035/2002 of 25 December 2002, the court recognised the applicant's claim against the debtor in the amount of 102,875,291.09 Serbian dinars (RSD).

5. The Government submitted that this decision had been partially enforced by decision 10-St-151/10 of 23 November 2012 and that the applicant received the sum of RSD 5,460,553.93. The remainder of the decision remains unenforced.

6. The Government further submitted that the applicant waived its right to an appeal against the decision of 23 November 2012.

7. Finally, the Government submitted that insolvency proceedings were initiated against the applicant by decision of the Belgrade Commercial Court 10-St-361/11 of 11 March 2011. According to this decision, the appointed insolvency administrator was authorised to represent the interests of the applicant company.

B. Relevant domestic law and practice

8. The relevant domestic law concerning the status of socially owned companies, as well as the enforcement and insolvency proceedings is outlined in the cases of *R. Kačapor and Others v. Serbia*, nos. 2269/06 *et al*., §§ 57-64 and §§ 71-76, 15 January 2008 and *Jovičić and Others v. Serbia* (dec.), no. 37270/11, §§ 88-93, 15 October 2013. Furthermore, the case-law of the Constitutional Court in respect of socially owned companies, together with the relevant provisions concerning constitutional appeals and the privatisation of socially owned companies, are outlined in the admissibility decision in *Marinković v. Serbia* (dec.), no. 5353/11, §§ 26-29 and §§ 31-44, 29 January 2013; and the judgment in *Marinković v. Serbia*, no. 5353/11, §§ 29-32, 22 October 2013.

COMPLAINTS

9. The applicant complained of the respondent State's failure to enforce a final court decision rendered in its favour against the debtor and of the lack of an effective remedy in that connection.

THE LAW

10. The relevant provisions of Articles 6 § 1 and 13 of the Convention, as well as Article 1 of Protocol No. 1 to the Convention, read as follows:

Article 6 § 1

"In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

Article 1 of Protocol No. 1

"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."

Article 13

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

11. The Government argued, among other things, that the applicant's failure to disclose the information about the partial enforcement of the relevant decision as well as the information about the initiation of insolvency proceedings against it constituted an abuse of the right of individual application.

12. The applicant made no comments in this respect. However, in its submission of 2 June 2016, it maintained that the Government should pay the entire sum awarded to it by the Commercial Court decision of 25 December 2002.

13. 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 individual 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).

14. Turning to the present case, the Court firstly notes that the applicant's sole complaint in the present case concerns the non-enforcement of the decision of 25 December 2002. It is self-evident that any information about the enforcement of this decision concerns the very core of the case at hand. The applicant did not only fail to disclose the information about the partial enforcement of the above decision, but it also failed to offer any explanation for such an omission. On the contrary, it continued to claim compensation equivalent to the full amount awarded to it by the relevant decision.

15. Given the significance of the omitted information for the proper determination of the present case, the Court finds that the applicant's failure to disclose such information and his conduct after this information had been disclosed to the Court by the Government was contrary to the purpose of the right of individual petition, as provided for in Article 34 of the Convention (see, *mutatis mutandis*, *Veselinović v. Serbia* (dec.), no. 15767/12, 7 July 2015).

16. It follows that the application must be rejected as a whole as an abuse of the right to application 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 26 May 2016.

Stephen Phillips
Registrar

Pere Pastor Vilanova
President