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

THIRD SECTION

DECISION

Application no. 12611/13
Ljubiša MIJAJLOVIĆ
against Serbia

The European Court of Human Rights (Third Section), sitting on 1 March 2016 as a Committee composed of:

George Nicolaou, *President,*
Branko Lubarda,
Pere Pastor Vilanova, *judges,*

and Marialena Tsirli, *Deputy Section Registrar,*

Having regard to the above application lodged on 13 February 2013,

Having regard to the observations submitted by the parties,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Ljubiša Mijajlović, is a Serbian national, who was born in 1969 and lives in Vladičin Han. He was represented before the Court by Mr N. Antić, a lawyer practising in Vladičin Han.

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

The applicant is a former employee of *DP PK Delišes* (the debtor), a socially-owned company. On 2 June 2003 the Vladičin Han Municipal Court ordered the debtor to pay him certain sums.

At his request to that effect, the applicant was issued an enforcement order in respect of this judgment (see the Vladičin Han Municipal Court's enforcement order of 29 September 2003).

The enforcement of the final judgement in question has never been carried out.

The Government informed the Court that on 5 May 2008 the applicant withdrew his claim for the enforcement of the judgment of 2 June 2003. As

a result, the Vladičin Han Municipal Court terminated the respective enforcement proceedings by its decision of 6 August 2008. The applicant did not lodge an appeal against this decision.

COMPLAINT

The applicant essentially complained about the non-enforcement of the judgment rendered in his favour. This complaint falls to be examined under Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention.

THE LAW

The Government asked the Court to declare the application inadmissible as an abuse of the right of petition. They pointed out that the applicant had omitted to inform the Court that the enforcement proceedings had been terminated at his request.

The applicant did not dispute having withdrawn his request for enforcement and having failed to appeal the decision on termination of the enforcement proceedings, but argued that this was irrelevant.

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 that a final court judgment rendered in his favour against a socially-owned company had not been enforced. However, he withdrew his request for enforcement of the judgment of 2 June 2003, which led to the final termination of the related enforcement proceedings.

The applicant's complete silence on the termination of the enforcement proceedings while upholding his allegations that the judgment in question had not been enforced due to the debtor's restructuring 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 24 March 2016.

Marialena Tsirli
Deputy Registrar

George Nicolaou
President