

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

SECOND SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 20037/07
by Miladin MILOŠEVIĆ

against Serbia

The European Court of Human Rights (Second Section), sitting on 5 July 2011 as a Chamber composed of:
Françoise Tulkens, *President,*
David Thór Björgvinsson,
Dragoljub Popović,
Giorgio Malinverni,
András Sajó,
Guido Raimondi,
Paulo Pinto de Albuquerque, *judges,*
and Françoise Elens-Passos, *Deputy Section Registrar,*
Having regard to the above application lodged on 4 April 2007,
Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,
Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Miladin Milošević, is a Serbian national. He was represented before the Court by Mr M. Veljković, a lawyer practising in Velika Plana. The Serbian Government ("the Government") were represented by their Agent, Mr S. Carić.

A. The facts as presented by the applicant

2. The facts of the case, as submitted by the applicant, may be summarised as follows.

3. The applicant was born in 1959 and lives in Velika Plana.

4. The applicant was employed by the Ministry of Internal Affairs ("the Ministry") as an inspector (*inspektor za suzbijanje opšteg kriminaliteta*) in the Police Station in Velika Plana.

5. On 24 January 2002 the Municipal Court in Velika Plana ("the Municipal Court") delivered a partial judgment, ordering the Ministry to reinstate the applicant to the position of inspector.

6. On 22 October 2002 and 1 July 2004 respectively the District Court in Smederevo ("the District Court") and the Supreme Court upheld the judgment of 24 January 2002.

7. On 5 December 2002 the Fourth Municipal Court in Belgrade ("the enforcement court") ordered the enforcement of the partial judgment of 24 January 2002.

8. On 27 March 2003, 26 January 2004, 11 February 2008, 12 October 2009 and 1 November 2010 the enforcement court ordered the Ministry to pay fines of 20,000 Serbian dinars (RSD), RSD 40,000, RSD 60,000, RSD 80,000 and RSD 100,000 respectively for the non-enforcement of the judgment of 24 January 2002.

9. Failing to comment on the circumstances which led to his dismissal, the applicant supplied a certificate dated 14 December 2005 and issued by the Department of Internal Affairs in Smederevo (*Sekretarijat unutrašnjih poslova u Smederevu*), according to which there was no record of a conviction in that Department's Criminal Registry (*Kaznena evidencija Sekretarijata*).

B. The facts as presented by the Government

10. The Government did not dispute the facts submitted by the applicant. However, they provided a broader context to the facts submitted by the applicant, which may be summarised as follows.

1. The first set of civil proceedings

11. On 17 February 1998 the applicant was suspended from his position on suspicion of releasing official information in relation to an ongoing investigation into alleged abuse of office on the part of his brother-in-law (*pašenog*), who had been the director of company J.

12. Following disciplinary proceedings, the applicant's employment was terminated from 13 November 1998.

13. On 28 January 1999 the applicant filed a lawsuit against the Republic of Serbia ("the respondent"), requesting the annulment of the disciplinary decisions and his reinstatement as inspector.

14. On 30 July 1999 the Municipal Court granted the applicant's claims in full. On 20 December 1999 the District Court upheld the judgment of 30 July 1999.

15. The respondent lodged an appeal on points of law, which could not suspend the enforcement of the judgment of 30 July 1999.

16. On 5 December 2000 the Fourth Municipal Court in Belgrade ordered the enforcement of the judgment of 30 July 1999.

17. On 21 February 2001 the Supreme Court quashed the judgments of 30 July and 20 December 1999, and ordered a retrial.

18. On 1 August 2001 the applicant was reinstated as inspector, in accordance with the judgment of 30 July 1999.

19. On 31 August 2001 the applicant was dismissed again (see paragraphs 26 and 27 below).

2. The second set of civil proceedings

20. On 31 May 2001 the applicant filed another lawsuit requesting that the court order the Ministry to pay him his salaries and other employment-related benefits for the period of his unemployment.

21. On 26 December 2001 the Municipal Court decided to join the applicant's claim for reinstatement (see paragraph 17 above) to the proceedings.

22. In these joined proceedings, on 24 January 2002 the Municipal Court delivered a partial judgment, declining to examine the applicant's claim in relation to his salaries and other benefits (see paragraph 20 above).

23. On 24 June 2003 the respondent requested that the Municipal Court reopen the proceedings regarding the applicant's dismissal, submitting that the applicant had been finally convicted in connection with identical circumstances (see paragraph 32 below).

24. Following two remittals, on 6 April 2011 the Court of First Instance (*Osnovni sud*) in Smederevo rejected the respondent's request for reopening. The Court has not been informed as to whether the respondent had filed an appeal against this decision.

25. Following two remittals, the applicant's request in respect of his salary and other benefits appears to be still pending at first instance.

3. The third set of civil proceedings

26. Following the applicant's reinstatement upon the judgment of 30 July 1999 (see paragraph 18 above), on 31 August 2001 the head of joint services at the Ministry (*Načelnik uprave za zajedničke poslove*

Ministarstva) gave a decision dismissing the applicant, as criminal proceedings had been instigated against him (see paragraph 31 below)

27. On 4 October 2001 the Assistant Minister/Head of the Public Security Department (*pomoćnik Ministra – Načelnik resora javne bezbednosti Ministarstva unutrašnjih poslova)* upheld the decision of 31 August 2001.

28. On 23 October 2001 the applicant filed another lawsuit against the respondent, requesting that the decisions of 31 August and 4 October 2001 be annulled.

29. Following a remittal, on 29 January 2002 the Municipal Court decided to stay these proceedings pending the final outcome of the first and second sets of proceedings, as joined on 26 December 2001 (see paragraph 21 above).

30. In the course of the examination of the applicant's claims the domestic courts established that since 15 January 2001 the applicant had been employed as head of security (*rukovodilac službe obezbeđenja*) at company J. (see paragraph 11 above).

4. Criminal proceedings against the applicant

31. On 23 March 1998 the Public Prosecutor in Smederevo indicted the applicant in connection with the same circumstances of releasing information to the director of company J. (see paragraph 11 above).

32. On 26 July 2002 the District Court found the applicant guilty of abuse of office (*krivično delo zloupotrebe službenog položaja*) and sentenced him to three months in prison, suspended for one year.

33. On 3 April 2003 the Supreme Court upheld the judgment of 26 July 2002.

C. Relevant domestic law

1. Internal Affairs Act (published in Official Gazette of the Republic of Serbia – OG RS nos. 44/91, 79/91, 54/96, 25/00, 8/01 and 106/03)

34. Article 34 of the Act provided that, as well as general requirements for employment in the civil service, a candidate for employment with the Ministry must have no criminal convictions or criminal proceedings pending against him or her for any abuse of office or other crime which is prosecuted *ex officio*.

2. Police Act (published in OG RS 101/05 and 63/09)

35. The Police Act entered into force on 29 November 2005, repealing the 1991 Act. Similar to the provisions of the 1991 Act, Article 110(3) of the 2005 Act envisages that a person convicted of a crime which is prosecuted *ex officio* cannot be employed by the Ministry. In addition,

Article 114 of the 2005 Act provides that should an employee of the Ministry be convicted of a crime that is prosecuted *ex officio*, the court must serve any final judgment on the Ministry, so that a decision on that employee's dismissal can be prepared.

COMPLAINT

36. The applicant complained under Article 6 § 1 of the Convention of the failure of the respondent State to enforce the partial judgment of 24 January 2002.

THE LAW

37. The Government argued that the applicant had failed to provide all the facts relevant to his complaint. Thus, they submitted that the applicant had omitted to inform the Court about the entire circumstances of his case, and in particular about his criminal conviction (see paragraphs 31 to 33 above), in order to deliberately misguide the Court and to force the success of his application. The Government suggested, therefore, that the applicant had abused his right of petition, and that as such, his application should be rejected pursuant to Article 35 § 3 of the Convention.

38. The applicant argued that he had indeed failed to submit the information relied on by the Government; however, this was not in an attempt to pervert the course of justice, but simply because he had not considered it relevant for the outcome of his case, as he saw his case to be a very simple one, concerning the enforcement of a very ordinary decision which bore no complexity. He furthermore submitted the certificate of 14 December 2005 (see paragraph 9 above).

39. The Court observes that an application may only be rejected as abusive within the meaning of Article 35 § 3 of the Convention in extraordinary circumstances, such as if an application was deliberately grounded on a description of facts omitting or distorting events of central importance (see, for example, *Akdivar and Others v. Turkey*, 16 September 1996, §§ 53-54, *Reports of Judgments and Decisions* 1996-IV; *Varbanov v. Bulgaria*, no. 31365/96, § 36, ECHR 2000-X; and *Assenov and Others v. Bulgaria*, Commission decision of 27 June 1996, Decisions and Reports (DR) 86-B, p. 54).

40. While an applicant's omission to submit all the documents which the Government, or even the Court, would find relevant for the final examination of a case should not *per se* amount to abuse of the right of petition, in the particular circumstances of the present case the Court needs

to evaluate the importance of the facts which had not been submitted by the applicant.

41. The Court notes that in his initial application the applicant submitted only the documents which related to the partial judgment of 24 January 2002, and his subsequent attempts to have it enforced. Not a single document or statement was submitted in relation to any other proceedings, civil, criminal or disciplinary, which had been conducted in the same context. Following the Government's submissions, the applicant did not seek to deny that he had been finally convicted, but only supplied a certificate according to which in 2005 one of many departments within the Ministry did not have any record that he had been criminally convicted. The applicant also failed to provide any comment in relation to the Government's submission that since 2001 he had been employed by the very company to which, according to the finding in the criminal judgments, he had revealed official information (see paragraph 11 above).

42. The Court notes therefore that the applicant, even if he did not submit any false information, tried to falsely present his case as a simple, straightforward case of non-enforcement of a final judgment. Hence, in his presentation of the facts he failed to indicate any obstacle for his reinstatement, and in particular his criminal conviction for abuse of office to which he requested to be reinstated, which was, throughout the entire period of the alleged non-enforcement, an obstacle for his or anyone else's employment with the Ministry.

43. It is far from expected from an applicant to present in his or her application all possible information on a case. It is his duty, however, to present at least those essential facts which are at his disposal and which he must be aware are of significant bearing for the Court to be able to properly assess the case. Any such failure would not necessarily have to mean that there has been an abuse of the right to petition. Thus, if none of the facts allegedly concealed concerned any offence or any wrongdoing on his part, an applicant's failure to present such facts to the Court would not be observed as the abuse of the right to petition (see, for example, *Al-Nashif and Others v. Bulgaria,* (dec.) no. 50963/99, 25 January 2001). However, having regard to the importance of the applicant's failures for the proper determination of the present case, in particular the fact that he had failed to inform the Court about a final conviction which renders it impossible for him to be employed with the Ministry, 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. It thus constitutes an abuse of the right of petition, within the meaning of Article 35 § 3 of the Convention, and the application must be rejected pursuant to paragraph 4 of that Article, there being no need for the Court to examine the remainder of the Government's admissibility objections.

For these reasons, the Court unanimously

Declares the application inadmissible.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President