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

THIRD SECTION

DECISION

Application no. 3822/10
MINE-PROJEKT DOO
against Serbia

The European Court of Human Rights (Third Section), sitting on 5 January 2017 as a Committee composed of:

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

Having regard to the above application lodged on 30 November 2009,

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

The applicant company, Mine-Projekt DOO, is a limited liability company based in Serbia. It was represented before the Court by its director, Mr S. Ursulović from Zaječar.

The Serbian Government ("the Government") were initially represented by their former Agent, Ms V. Rodić, and more recently by their current Agent, Ms N. Plavšić.

On 27 November 2000 the Zaječar Commercial Court ordered a socially-owned company RTB Bor Rudnici bakra i nemetala Bor DOO (hereinafter "the debtor company") to pay the applicant company specified amounts in relation to a debt, plus the costs of the relevant civil proceedings. That judgment became final on an unspecified date.

On 28 November 2001, upon an application by the applicant company, the Zaječar Commercial Court ordered the enforcement of the judgment.

On 4 November 2009 the Commercial Court noted that on 15 October 2004 the Privatisation Agency had ordered the restructuring of the debtor company, and stayed the enforcement proceedings until the conclusion of that process.

On 15 April 2010 the applicant company lodged a constitutional appeal.

On 23 February 2015 the Government informed the Court that on 15 May 2012 the applicant company had concluded an agreement to defer payment of any claims that were due, in accordance with which the relevant debt had been repaid to the applicant company in full by 30 August 2012. Moreover, on 19 December 2012 the Constitutional Court had found a violation of the applicant company's right to a trial within a reasonable time, awarded the applicant company 1,100 euros (EUR) as just satisfaction for non-pecuniary damage, and ordered the Commercial Court to expedite the enforcement proceedings.

On 7 February 2013, following the Constitutional Court's decision, the enforcement proceedings had been continued and the relevant judgment had been fully enforced on 7 March 2013. The applicant company's claims against the debtor company had thus been resolved twice.

COMPLAINTS

The applicant company complained that the final judgment rendered in its favour had not been enforced. These complaints fall to be examined under Article 6 § 1 and Article 13 of the Convention and Article 1 of Protocol No. 1 to the Convention.

THE LAW

The Government argued that the applications should be declared inadmissible, since the Constitutional Court had awarded the applicant company EUR 1,100 as compensation for the non-pecuniary damage suffered, and had thereby provided it with adequate redress, depriving it of its victim status. The Government further asked the Court to declare the application inadmissible on the grounds of an abuse of the right of petition, since the applicant company had omitted to inform the Court that it had recovered the full judgment debt.

The applicant company did not contest these submissions. In response, it only maintained that the Serbian authorities remained responsible for the non-enforcement of the judgment.

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).

Turning to the present case, the Court notes that the applicant company failed to inform the Court not only about the Constitutional Court's decision and award for non-pecuniary damage, but also that it had recovered the judgment debt while the proceedings before the Court were ongoing. Moreover, it did not even comment on the Government's submissions, but continues to seek redress before the Court for the alleged non-enforcement of the judgement in question.

In the Court's view, the applicant company's complete silence on the matters detailed above cannot be interpreted as anything else but a failure to disclose information concerning the very core of the application.

Having regard to the importance of the applicant company'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 26 January 2017.

Fatoş Aracı
Deputy Registrar

Pere Pastor Vilanova
President