

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

SECOND SECTION

DECISION

Application no. 15433/07
Darinka TATALOVIĆ and Rajko DEKIĆ
against Serbia

The European Court of Human Rights (Second Section), sitting on 29 May 2012 as a Chamber composed of:

Françoise Tulkens, *President,*
Danutė Jočienė,
Dragoljub Popović,
Isabelle Berro-Lefèvre,
András Sajó,
Işıl Karakaş,
Guido Raimondi, *judges,*

and Stanley Naismith, *Section Registrar,*

Having regard to the above application lodged on 4 April 2007,

Having regard to the partial decision of 23 November 2010,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

The applicants, Ms Darinka Tatalović and Mr Rajko Đekić, are Serbian citizens who were born in 1935 and 1932, respectively, and live in Belgrade. They were represented before the Court by Mr B. Mitrovski and Mr S. Jakovljević, lawyers practising in Belgrade.

The Serbian Government ("the Government") were represented by their Agent, Mr Slavoljub Carić.

A. The circumstances of the case as presented by the applicants

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

In 1948 the property which is at issue in this case was nationalised pursuant to the Nationalisation of Private Entities Act 1948, which provided for the nationalisation of all property belonging to foreign nationals.

On 2 July 1992 the applicants filed a property claim with the Belgrade Second Municipal Court against the local authorities. The applicants claimed that their predecessor had bought the disputed property in 1939 from B.B., a Czech citizen, and that therefore that property could not have been nationalised. The disputed fact in the case was the actual existence of the purchase contract, as it had allegedly been destroyed.

In the claim form, they assessed the monetary value of their claim at 6,000,000 “old dinars” (YUR - approximately 37,500 German marks (DEM) at the time)[1].

On 30 March 1998 the court ruled in favour of the applicants. That decision was upheld by the Belgrade District Court on 31 March 1999.

At the request of the Attorney General of Serbia, on 6 December 2000 the Supreme Court of Serbia ("the Supreme Court") quashed the judgments of 30 March 1998 and 31 March 1999 and remitted the case for a retrial.

On 9 March 2001 the applicants extended their claim to the State.

On 18 November 2003 the Belgrade Second Municipal Court ruled against the applicants. That decision was upheld by the Belgrade District Court on 10 November 2004.

On 28 September 2006 the Supreme Court rejected the applicants’ appeal on points of law on the ground that they had failed to assess the monetary value of their claim in the claim form.

B. The circumstances of the case as presented by the Government

The Government did not dispute the facts submitted by the applicants. However, they provided additional information concerning the proceedings before the Supreme Court, as follows.

On 3 January 2007 the applicants applied for the reopening of the proceedings before the Supreme Court.

On 5 November 2009 the Supreme Court accepted their application and quashed its decision of 28 September 2006. At the same time, it decided on the merits of the applicants’ appeal on points of law and dismissed it as manifestly ill-founded.

The applicants’ representative was served with the Supreme Court’s decision on 2 March 2010.

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[1] According to the exchange rates fixed by the then National Bank of Yugoslavia

COMPLAINT

The applicants complained, under Article 6 § 1 of the Convention, that they had been denied access to the Supreme Court in the determination of their civil rights and obligations.

THE LAW

The Government argued that the applicants had failed to provide all the facts relevant to their complaint. In particular, they had omitted to inform the Court about their application for the reopening of the proceedings before the Supreme Court and about the judgment of 5 November 2009. The Government suggested, therefore, that the applicants had abused their right of petition, and that as such, their application should be rejected pursuant to Article 35 § 3 of the Convention.

Furthermore, the Government submitted that the application was manifestly ill-founded in any event, because the fact that the applicants had no success before the domestic courts could not be a reason to find a violation of the right to a court under Article 6 § 1 of the Convention.

The applicants argued that they had indeed failed to submit the information relied on by the Government; however, they had not considered it relevant for the outcome of their case.

The Court recalls that according to Rule 47 § 6 of the Rules of Court applicants shall keep the Court informed of all circumstances relevant to the application. It further recalls that an application may be rejected as abusive under Article 35 § 3 of the Convention, among other reasons, if it was knowingly based on untrue facts (see *Varbanov v. Bulgaria* no. 31365/96, § 36, ECHR 2000-X; *Řehák v. Czech Republic* (dec.), no. 67208/01, 18 May 2004; *Popov v. Moldova (no. 1)* no. 74153/01, § 48, 18 January 2005; and *Kérétchachvili v. Georgia* (dec.), no. 5667/02, 2 May 2006). Incomplete and therefore misleading information may also amount to abuse of the right of application, especially if the information 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 v. Germany* (dec.), no. 25101/05, 3 July 2007; and *Predescu v. Romania*, no. 21447/03, §§ 25-26, 2 December 2008).

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. However, any such failure would not necessarily have to

mean that there has been an abuse of the right to petition (see, for example, *Al-Nashif v. Bulgaria*, no. 50963/99, §§ 88-89, 20 June 2002).

Turning to the present case, the Court notes that in their application lodged on 4 April 2007 the applicants complained of the violation of their right to a court because the Supreme Court had rejected their appeal on points of law on the ground that they had failed to assess the monetary value of their claim in the claim form. On 23 November 2010 the Court communicated the applicants' complaint concerning access to court to the respondent Government.

The Court learned about the reopening of the proceedings before the Supreme Court only in the Government's observations. Contrary to the applicants' argument, the Court considers that this information concerns the very essence of their complaint. In particular, as a result of their application for the reopening of the proceedings, the Supreme Court dealt with the merits of their appeal on points of law, albeit dismissing it as manifestly ill-founded, thereby allowing them access to court in the determination of their civil rights and obligations. Therefore, having regard to the importance of the applicants' failure 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.

It follows that this part of the application must be rejected as an abuse of the right of application pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares inadmissible the remainder of the application.

Stanley Naismith
Registrar

Françoise Tulkens
President