



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

THIRD SECTION

DECISION

Application no. 33104/16
Miodrag MATOVIĆ
against Serbia

The European Court of Human Rights (Third Section), sitting on 25 September 2018 as a Committee composed of:

Pere Pastor Vilanova, *President*,

Branko Lubarda,

Georgios A. Serghides, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having regard to the above application lodged on 5 May 2016,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Miodrag Matović, is a Serbian national, who was born in 1954 and lives in Kragujevac. He was represented before the Court by Ms B. Rakonjac, a lawyer practising in Kragujevac.

The Serbian Government (“the Government”) were represented by their Agent, Ms N. Plavšić.

A. The circumstances of the case

1. *The facts as submitted by the Applicant*

1. The applicant is a former employee of *DGP Kazimir Veljković*, a socially-owned company. On 28 September 2004 he obtained a decision on settlement ordering his former employer to pay him certain sums on account of the minimal salary and social insurance contributions.

2. On 8 November 2004 the applicant obtained an enforcement order of the decision of 28 September 2004.

3. On 2 March 2011 the bankruptcy proceedings over the applicant's former employer company were opened and the applicant reported his claim on basis of the decision of 28 September 2004.

4. On 17 May 2012 the applicant lodged a constitutional appeal with the Constitutional Court complaining about the non-enforcement of the decision of 28 September 2004.

5. On 31 December 2012 the applicant reported his claim with the Privatisation Agency, as well.

6. On 2 July 2015 the applicant's constitutional appeal was rejected.

7. On 5 May 2016 the applicant complained before the Court under Articles 6 and 13 about the non-enforcement of the decision of 28 September 2004.

8. On 30 August 2017 the applicant's complaint concerning non-enforcement was communicated to the Government.

2. The facts as submitted by the Government

9. In their observations the Government informed the Court that in fact the applicant had withdrawn his motion for enforcement on 26 June 2009 and that for those reasons the enforcement proceedings had been terminated on 30 November 2009. In support, the Government submitted the copy of the Minutes on Inventory and Assessment of 26 June 2009 in which it was established that the applicant had withdrawn his motion for enforcement. The Government also noted that the applicant had failed to report this fact both in his constitutional appeal and his application.

COMPLAINT

The applicant complained under Articles 6 and 13 of the Convention about the non-enforcement of final domestic court decision rendered in his favour against socially-owned company.

THE LAW

In view of the aforementioned the Government asked the Court to declare the applicant's complaint inadmissible for an abuse of the right to petition. The Government relied on the decision in the case *Milanka Matović and 18 Others v. Serbia* ((dec.), no. 80131/12, ECHR, 3 February 2015), in which the Court, in view of very similar circumstances, rejected the applicants' submissions for an abuse of the right to petition.

The applicant contested the Government's submissions stating that he had no knowledge that his attorney had withdrawn the motion for enforcement. In any case, the applicant maintained, both the enforcement and bankruptcy proceedings were excessively long, and his complaint was still founded.

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).

The Court notes that the present applicant complained that final court decision rendered in his favour against a socially-owned company had not been enforced. However, he withdrew his motion for enforcement, which led to the final termination of the enforcement proceedings.

The applicant's complete silence on the termination of the enforcement proceedings while upholding his allegation that the judgment had not been enforced due to the debtor undergoing bankruptcy 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, and *Milanka Matović*, cited above).

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 18 October 2018.

Fatoş Aracı
Deputy Registrar

Pere Pastor Vilanova
President