



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

## THIRD SECTION

### DECISION

Application no. 57771/10  
Dragoljub MARINKOVIĆ  
against Serbia

The European Court of Human Rights (Third Section), sitting on 10 June 2014 as a Committee composed of:

Ján Šikuta, *President*,

Dragoljub Popović,

Iulia Antoanella Motoc, *judges*,

and Marialena Tsirli, *Deputy Section Registrar*,

Having regard to the above application lodged on 14 September 2010,

Having regard to the observations submitted by the parties,

Having deliberated, decides as follows:

## THE FACTS

The applicant, Mr Dragoljub Marinković, is a Serbian national, who was born in 1961 and lives in Majdanpek. He was represented before the Court by Mr D. Vasiljević, a lawyer practising in Majdanpek.

The Serbian Government (“the Government”) were represented by their Agent, Mr S. Carić.

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

### *1. Facts initially submitted by the applicant*

On 25 November 1999 the Municipal Court (*Opštinski sud*) in Majdanpek found in favour of the applicant and ordered *Rudnik Bakra Majdanpek* (“RBM”), at that time a socially-owned company, to pay to the applicant 2,198.84 Yugoslav dinars (YUM) on account of salary due for the months of March and April 1999 and YUM 4,384 for legal costs, plus statutory interest.

On 18 October 2000, upon the applicant's request to that effect, the Municipal Court issued an enforcement order and awarded the applicant an additional amount of YUM 700 in respect of the enforcement costs. It was further specified that the judgment was to be enforced by means of a bank transfer.

### *2. Facts submitted by the Government*

The Government informed the Court that on 14 June 2002 the applicant had signed an agreement of settlement of mutual claims with RBM and certain other persons, according to which the applicant's judgment claim against RBM together with his claims for salaries due from 1 April 1999 to 1 October 2000, in the total amount of YUM 144,299.07, were offset against RBM's claim against another person in the amount of YUM 394,111.03.

## COMPLAINTS

The applicant complained under Article 6 § 1 of the Convention about the non-enforcement of the judgment rendered in his favour.

## 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 failed to provide the Court with all the facts relevant to his complaint. In particular, in his application to the Court, the applicant had omitted to inform the Court about the settlement reached in respect of his judgment claim.

The applicant did not dispute signing the settlement agreement, but argued that it 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 *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, in the present case, the applicant in his application to the Court lodged on 14 September 2010 complained that the Municipal Court judgment of 25 November 1999 had not been enforced. The Court observes that on 14 June 2002 the applicant had signed a settlement agreement offsetting, *inter alia*, his judgment claim against his debtor's claim against a third person. The applicant had not submitted any evidence that the settlement agreement was rescinded or amended in any way. The applicant's judgment claim was thereby enforced.

However, the applicant's complete silence on the settlement agreement and his statement that the judgment had not been enforced 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.

In view of the above, it is appropriate to reject the application as a whole 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.

Marialena Tsirli  
Deputy Registrar

Ján Šikuta  
President