



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

THIRD SECTION

DECISION

Application no. 34929/16
Muzafera BIHORAC HAJDARAGIĆ
against Serbia

The European Court of Human Rights (Third Section), sitting on 6 November 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 6 June 2016,

Having deliberated, decides as follows:

THE FACTS

The applicant, Ms Muzafera Bihorac Hajdaragić, is a Serbian national, who was born in 1958 and lives in Novi Pazar. She was represented before the Court by Mr E. Ejupović, residing in Novi Pazar.

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

The applicant is a former employee of Raška Holding Kompanija AD, a socially-owned company. On 19 December 2006 she obtained a decision of the Novi Pazar Municipal Court ordering his former employer to pay her certain sums on account of the minimal salary.

On 19 March 2007 the applicant obtained an enforcement order of the decision of 19 December 2006.

On 17 May 2012 the applicant lodged a constitutional appeal with the Constitutional Court complaining about the non-enforcement of the decision of 19 December 2006.

On 2 July 2015 the applicant's constitutional appeal was rejected as out of time.

On 6 June 2016 the applicant complained before the Court, under Articles 6 and 13, about the non-enforcement of the decision of 19 December 2006.

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

2. The facts as submitted by the Government

In their observations the Government informed the Court that on 25 October 2013 the bankruptcy proceedings over the applicant's former employer were opened, but that the applicant failed to state that fact in her application. According to the Government the applicant also failed to inform the Court that she had reported her claim, on the basis of the decision of the 19 December 2016, and that on 30 June 2017 she was paid out 313,828.50 RSD (53,85% of the total claim). In support the Government enclosed (i) the copy of the statement of the bankruptcy administrator of 6 December 2017, in which he informed the Government that the applicant was paid out the amount indicated above; (ii) the decision of the 5 June 2017, rendered by the Kraljevo Commercial Court, about the distribution of the bankruptcy estate, which included the applicant's claim; and (iii) request of the bankruptcy administrator of 30 June 2017, to the domestic bank in charge of payments, to pay out the applicant her share.

COMPLAINT

The applicant complained under Articles 6 and Article 1 of Protocol No. 1 to the Convention about the non-enforcement of final domestic court decision rendered in her 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 *Komatinović v. Serbia* ((dec.), no. 75381/10, ECHR, 29 January 2013), in which the Court, in view

of similar circumstances, rejected the applicants' submissions for an abuse of the right to petition.

The applicant failed to comment on the Government's submission.

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 *Zoran Komatinović v. Serbia* (dec.), no. 75381/10, 29 January 2013).

The Court notes that the present applicant complained that final court decision rendered in her favour against a socially-owned company had not been enforced. However, the Court notices that the applicant failed to inform it that she had been paid out of more than a half of the awarded sum in the bankruptcy proceedings.

The applicant's complete silence on this new significant development, which had occurred during the proceedings before the Court, 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 *Zoran Komatinović*, 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 29 November 2018.

Fatoş Aracı
Deputy Registrar

Pere Pastor Vilanova
President