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

THIRD SECTION

DECISION

Application no. 50586/07
Dobrila BOGIĆEVIĆ-RISTIĆ
against Serbia

The European Court of Human Rights (Third Section), sitting on 2 October 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 9 November 2007,

Having regard to the observations submitted by the parties,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Ms Dobrila Bogićević-Ristić, is a Serbian national who was born in 1932 and lives in Belgrade. She was represented before the Court until February 2018 by Mr Z. Lazarević, a lawyer practising in Belgrade.

2. The Serbian Government ("the Government") were initially represented by their former Agent, Mr S. Carić, who was ultimately substituted by their current Agent, Ms. N. Plavšić.

3. By a letter of 21 September 2018 the Government objected to the examination of the application by a Committee. After having considered the Government's objection, the Court rejects it.

A. The circumstances of the case

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

5. The applicant is one of several persons enjoying a right of use (*sukorisnik*) in respect of a construction property in Belgrade where a certain S.S. erected a building without a building permit. On 5 March 1993, of its own motion, the Municipal Department for Spatial Planning, Urban Development and Housing (*Opštinsko odeljenje za urbanizam, komunalno-građevinske i stambene poslove* – "the Municipality") ordered S.S. to demolish the building, failing which the building would be demolished by the Municipality.

6. On 15 September 1993, after S.S. and the Municipality had failed to comply with the above decision, the Belgrade District Court accepted the applicant's request and ordered the Municipality to enforce its own decision of 5 March 1993 within thirty days, failing which enforcement would be carried out by the Belgrade Fourth Municipal Court ("the Municipal Court").

7. On 15 April 1994 the applicant lodged a request for enforcement of the District Court's decision with the Municipal Court. On 2 November 1994 the Municipal Court issued a writ of execution. After the case had been remitted, on 12 July 1996 the Municipal Court ordered the Municipality to advance the costs of the enforcement, and at the same time ordered the applicant to effectively enforce the decision by engaging competent third parties to demolish the building within thirty days of the advance being paid. Since neither the applicant nor the Municipality lodged an appeal against that decision, it became final on 18 December 1996.

8. On 11 February 1997 and 13 February 1997 the Municipality deposited the advance costs of the enforcement with the Municipal Court. On 23 April 1997 the Municipal Court informed the applicant of this.

9. On 2 July 1997 the applicant requested the payment of additional costs of the enforcement on the basis of new specification of costs for demolition. On 10 November 1997 the Municipal Court rejected the applicant's request. The applicant did not lodge an appeal against that decision.

10. On 16 June 2010 the Belgrade Court of First Instance (formerly the Municipal Court) accepted the applicant's request to change the means of enforcement, and ordered the Municipality to demolish the building in question within eight days, at its own expense, or face a fine.

11. It appears that in the meantime S.S. had begun proceedings to legalise the disputed building, proceedings which are still pending.

12. On 2 October 2013, at the Municipality's request, the Belgrade Court of First Instance revoked (*staviti van snage*) its decision of 16 June 2010. In its reasoning, it stated that there were no grounds for allowing the applicant's request to change the means of enforcement, since the Municipality had already deposited the advance costs of the disputed enforcement with the Municipal Court, in compliance with the enforcement order of 12 July 1996.

13. On 4 November 2013 the applicant lodged a constitutional appeal against that decision.

14. On 21 December 2015 the Constitutional Court rejected the applicant's appeal, stating that owing to an error the decision of 2 October 2013 did not contain an information notice (*pouka o pravnom leku*), and therefore the applicant had the right to lodge an objection against the impugned decision within five days of the Constitutional Court's decision being served on her.

15. In accordance with the Constitutional Court's instructions, on 29 December 2015 the applicant lodged an objection against the decision of 2 October 2013.

16. According to the documents submitted by the Government, on 9 November 2016 the Belgrade Second Court of First Instance (*Drugi osnovi sud u Beogradu* – the court which had jurisdiction *ratione materiae* in respect of the impugned enforcement proceedings at the material time) issued a decision dismissing the applicant's objection and upholding the decision of 2 October 2013. The relevant decision was acknowledged and stamped by the applicant's representative on 25 January 2017.

17. On 23 December 2016, by a decision of the Belgrade Second Court of First Instance, the impugned enforcement proceedings were suspended because of the applicant's failure to fulfil her obligation under the enforcement order of 12 July 1996 to engage competent third parties to demolish the building by a certain date.

18. On 30 January 2017 the applicant's representative appealed against the above-mentioned decision.

19. On 12 June 2017, in the appeal proceedings, the Belgrade Second Court of First Instance upheld the decision of 23 December 2016.

20. On 31 August 2017, at the Court's request, the applicant's representative informed the Court that the applicant had not been served with a decision concerning the above-mentioned objection.

COMPLAINTS

21. Relying on Articles 6 and 13 of the Convention, the applicant complained about the non-enforcement of the final decision rendered in her favour and of the absence of an effective domestic remedy for the procedural delay in the enforcement proceedings.

THE LAW

22. As noted above, the applicant complained about the non-enforcement of final decision and lack of effective domestic remedy in that respect. She relied on Articles 6 and 13 of the Convention. Of its own motion, the Court

also communicated this complaint under Article 1 of Protocol No. 1. The relevant parts of these Articles read as follows:

Article 6 § 1

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

Article 13

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

Article 1 of Protocol No. 1

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. The parties' submissions

23. The Government submitted that the applicant's complaint was incompatible *ratione temporis*, given that the enforcement proceedings had been completed in 1997, before the Convention had entered into force in respect of Serbia (the Convention was ratified in respect of Serbia in March 2003). They further maintained that the applicant could not be considered a victim of the alleged violations, because the enforcement proceedings had been completed by the advance costs of enforcement being deposited by the Municipality.

24. The applicant disagreed.

B. The Court's assessment

25. The Court notes the Government's objections relating to compatibility *ratione temporis* and the applicant's victim status, but it does not consider it necessary to examine them, as it finds the present case inadmissible in any event for the following reasons.

26. 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 *Gross v. Switzerland* [GC], no. 67810/10, § 28, ECHR 2014, and *S.A.S. v. France* [GC], no. 43835/11, § 67, ECHR 2014). An application may also be rejected on the same grounds if significant information and

documents were deliberately omitted, either where they were known from the outset or where new significant developments occurred during the proceedings (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).

27. Turning to the present case, the Court notes that on 31 August 2017, in reply to a question posed by the Court, the applicant's representative stated in writing that the applicant had not been served with a decision in respect of her objection to the decision of 2 October 2013, and thus the domestic authorities had unlawfully prolonged the impugned enforcement proceedings. However, from the facts disclosed by the Government it transpires that the applicant was actually served with that decision on 25 January 2017 (see paragraph 16 above), which leads to the conclusion that the applicant's representative submitted false information. In addition, the Court also learned from the documents submitted by the Government that the impugned enforcement proceedings had been suspended because of the applicant's failure to fulfil her obligation under the enforcement order of 12 July 1996. Subsequently, following the applicant's appeal of 30 January 2017, the Belgrade Second Court of First Instance upheld the decision of 23 December 2016 to suspend the enforcement proceedings. The applicant failed to inform the Court of any of these developments.

28. The Government did not raise the question of the applicant's abuse of her right of petition. However, in that connection, the Court notes that the absence of an initial objection by the Government as regards the abuse of the right of petition does not preclude it from examining the matter *proprio motu*. Indeed, it is for the Court itself and not the respondent Government to monitor compliance with the procedural obligations imposed on the applicant party by the Convention and its Rules (see *Miroļubovs and Others v. Latvia*, no. 798/05, § 70, 15 September 2009). The Court therefore has both a right and an obligation to monitor such compliance, taking into account all relevant information, whether it happens to be provided by the parties themselves or otherwise publicly available (see *Zarubica v. Serbia* (dec.), no. 35044/07 and 2 others, § 30, 18 June 2015).

29. Therefore, in the light of the new developments brought to its attention, and given the importance of the information in issue for the proper determination of the present case, particularly with regard to the essence of the complaints raised by the applicant, the Court considers that it is appropriate to reject the application as a whole as contrary to the purpose of the right of individual petition provided for in Article 34 of the Convention (see *Margaryan v. Armenia* (dec.), no. 72733/10, § 34, 4 June 2013), and pursuant to Article 35 §§ 3 and 4 of the Convention (see *Milošević v. Serbia* (dec.), no. 20037/07, § 43, 5 July 2011, and *Tatalović and Đekić v. Serbia* (dec.), no. 15433/07, 29 May 2012).

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 25 October 2018.

Fatoş Aracı
Deputy Registrar

Pere Pastor Vilanova
President