



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

FOURTH SECTION

CASE OF VELIMIROVIĆ v. MONTENEGRO

(Application no. 20979/07)

JUDGMENT

STRASBOURG

2 October 2012

FINAL

02/01/2013

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Velimirović v. Montenegro,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Lech Garlicki, *President*,

David Thór Björgvinsson,

Päivi Hirvelä,

Ledi Bianku,

Zdravka Kalaydjieva,

Nebojša Vučinić,

Vincent A. De Gaetano, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 11 September 2012,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 20979/07) against Montenegro lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Montenegrin national, Mr Milutin Velimirović (“the applicant”), on 10 May 2007.

2. The applicant was represented by Mr N. Batrićević, a lawyer practising in Podgorica. The Montenegrin Government (“the Government”) were represented by their Agent, Mr Z. Pažin.

3. The applicant complained, under Article 6 of the Convention, about the non-enforcement of a final domestic judgment concerning flat-allocation.

4. On 12 July 2010 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1940 and lives in Danilovgrad.

A. The enforcement proceedings

6. On 25 March 1988 the applicant's employer published a competition for an allocation of certain number of flats to its employees. The applicant was among those who applied. However, he was not provided with housing.

7. On 20 February 1991, upon the applicant's claim, the Labour Court of First Instance (*Osnovni sud udruženog rada*) in Podgorica ordered that the employer, which was a respondent party in the domestic proceedings ("the debtor"), and which, at that time, would appear to have been a socially-owned company (*društveno preduzeće*), re-allocate a certain number of flats. On 28 April 1992 the High Court upheld this judgment, which thereby became final.

8. On 27 October 1992, at the applicant's request, the Court of First Instance (*Osnovni sud*) issued an enforcement order (*rješenje o izvršenju*). By 16 April 1993 the debtor's objection (*prigovor*) and an appeal (*žalba*) in this regard were rejected.

9. On 1 February 2000 the debtor's Flat-Allocation Commission ("the Commission") issued another decision. On 15 March 2000, pursuant to Article 31 of the debtor's Statute, the debtor's Steering Committee (*Upravni odbor*) annulled this decision and ordered the Commission to conduct a new flat-allocation procedure.

10. On 6 February 2001 the Court of First Instance ordered the debtor to pay a fine and to comply with the enforcement order within 30 days. On 12 May 2001 the debtor's objection was rejected.

11. On 1 March 2001 the Commission issued another decision on flat allocation. However, the applicant was not among the persons to be provided with housing. The decision specified that an objection could be lodged against it with the debtor's Steering Committee.

12. On 2 October 2001 the Court of First Instance ordered the debtor to pay another fine and to comply with the enforcement order within 15 days.

13. On 23 October 2001 the Court of First Instance quashed the previous decision and all the enforcement activities which had been carried out on the grounds that the debtor had rendered a decision on flat-allocation and thus had enforced the 1992 judgment. On 3 November 2001 the applicant's objection in this regard was rejected.

14. On 25 January 2002 the applicant and one of his colleagues filed an objection against the Commission's decision on the flat-allocation (see paragraph 11 above).

15. On 9 April 2002, having received no response in respect of their objection, the applicant and his colleague filed a separate claim with the Court of First Instance seeking annulment of the debtor's decision of 1 March 2001.

16. On 3 June 2004 the Court of First Instance stayed the proceedings (*postupak se prekida*) until the debtor had decided on the said objection.

17. On 15 October 2004 the High Court (*Viši sud*) in Podgorica quashed the previous decision and ordered a re-trial.

18. On 15 April 2005 the Court of First Instance rejected the claim (*odbacuje se tužba*) on the grounds that it could be filed only against a final decision, and “there was no doubt that a final decision had not been rendered on the flat-allocation at issue” (*u postupku predmetne raspodjele stanova nesumnjivo nije donijeta konačna odluka*). The applicant and his colleague were also ordered to pay 1,450 euros (EUR) to the debtor and the interveners for legal costs.

19. On 9 June 2006 the High Court upheld this decision.

20. On 13 November 2006 the Supreme Court (*Vrhovni sud*) dismissed the applicant’s appeal on points of law (*revizija*).

21. It would appear from the case file that the debtor has never ruled on the applicant’s objection and thus no final decision on flat allocation has ever been rendered.

B. Other relevant facts

22. It transpires from the case file that as from 10 January 1997, which is when the insolvency proceedings in respect of the debtor were terminated (*obustavljen*), the debtor was organised as a joint-stock company (*akcionarsko društvo*). It is unclear who owned the controlling share of stocks at the time. On 27 January 2011 the applicant submitted that the debtor had been liquidated in the meantime, and that its legal successors were the Assembly of Municipality of Podgorica, and the respondent State.

II. RELEVANT DOMESTIC LAW

A. Enforcement Procedure Act 2000 (Zakon o izvršnom postupku; published in the Official Gazette of the Federal Republic of Yugoslavia nos. 28/00, 73/00 and 71/01)

23. Section 4 § 1 provided that enforcement proceedings were urgent.

24. Section 204 set out details with regard to enforcement in situations where the debtor’s positive action was required.

25. Section 262 provided that this Act would be applied to all the enforcement proceedings initiated before the Act entered into force.

B. Enforcement Procedure Act 2004 (Zakon o izvršnom postupku; published in the Official Gazette of the Republic of Montenegro no. 23/04)

26. Section 286 provided that all the enforcement proceedings, which had been initiated before this Act entered into force, would be terminated in accordance with the Enforcement Procedure Act 2000.

C. Enforcement Act 2011 (Zakon o izvršenju i obezbjeđenju; published in the Official Gazette of Montenegro no. 36/11)

27. Sections 6 § 1 and 230 of this Act correspond, in substance, to sections 4 § 1 and 204 of the Enforcement Procedure Act 2000.

28. Section 292 § 1 provides that all the enforcements (*postupci izvršenja*) would be terminated in accordance with this Act.

29. This Act entered into force on 25 September 2011 and thereby repealed the Enforcement Procedure Act 2004.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

30. The applicant complained, under Article 6 § 1 of the Convention, about the non-enforcement of the judgment which became final in 1992, ordering the debtor in the domestic proceedings to issue a decision on flat allocation.

31. The relevant part of this Article reads as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ...”.

A. Admissibility

32. The Government submitted that the applicant's complaint was incompatible *ratione temporis* given that the enforcement proceedings had been terminated on 23 October 2001 (see paragraph 13 above), which was before the Convention entered into force in respect of Montenegro.

33. The applicant contested this claim.

34. The Court recalls that, in accordance with the general rules of international law, the provisions of the Convention do not bind a Contracting Party in relation to any act or fact which took place or any

situation which ceased to exist before the date of the entry into force of the Convention with respect to that Party (see, for example, *Kadiķis v. Latvia* (dec.), no. 47634/99, 29 June 2000). In order to establish the Court's temporal jurisdiction it is, therefore, essential to identify, in each specific case, the exact time of the alleged interference. In doing so the Court must take into account both the facts of which the applicant complains and the scope of the Convention right alleged to have been violated (see *Blečić v. Croatia* [GC], no. 59532/00, § 82, ECHR 2006-III).

35. Turning to the present case, the Court notes that the judgment at issue had become final by 28 April 1992, and that it had to be enforced by 16 April 1993 (see paragraphs 7 and 8 above). It is further observed that the enforcement proceedings had officially ended in 2001, which was before the Convention entered into force in respect of the respondent State on 3 March 2004. The said proceedings were terminated on the grounds that the debtor had issued a decision on flat allocation on 1 March 2001. However, the Court notes that this decision was not yet final at the time when the Convention entered into force in respect of Montenegro, as the debtor clearly had not decided on the applicant's objection in that regard. Such a situation continued well after the ratification, as observed by the domestic courts themselves, which pronounced on this issue between 15 April 2005 and 13 November 2006, clearly stating that the debtor had not rendered a final decision on flat allocation by then (see paragraphs 18-20 above).

36. In view of the above, the Court considers, without prejudging the merits of the case, that the impugned non-enforcement is within the Court's competence *ratione temporis* within the meaning of Article 35 § 3 (a) of the Convention. A different conclusion would lead to a situation in which a State could avoid its responsibility for enforcements simply by officially terminating the enforcement proceedings without having enforced an impugned decision beforehand, thus allowing a final, enforceable judicial decision to remain inoperative to the detriment of one party (see, *mutatis mutandis*, *Hornsby v. Greece*, 19 March 1997, § 40, *Reports of Judgments and Decisions* 1997-II). The Government's objection in this regard must, therefore, be dismissed.

37. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds (see, *mutatis mutandis*, *Nesovski v. "the former Yugoslav Republic of Macedonia"*, no. 14438/03, § 18, 24 April 2008). It must therefore be declared admissible.

B. Merits

38. The applicant re-affirmed his complaint. He also submitted that the debtor had been liquidated in the meantime, its legal successors being the Assembly of Municipality of Podgorica, and the respondent State.

39. The Government made no comments in this regard.

40. The Court notes that Article 6 § 1 of the Convention secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal; in this way it embodies the “right to a court”, of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect. However, that right would be illusory if a Contracting State’s domestic legal system allowed a final, enforceable judicial decision to remain inoperative to the detriment of one party. Execution of a judgment given by any court must therefore be regarded as an integral part of the “trial” for the purposes of Article 6 (see *Hornsby v. Greece*, cited above, § 40).

41. Turning to the present case, the Court notes that the judgment at issue had not been enforced by 13 November 2006 and would appear to remain unenforced to date, as the debtor has apparently never rendered a final decision on the flat allocation and thus has never complied with the 1992 judgment (see paragraphs 20 and 21 above). The Government neither contested this nor provided any evidence to the contrary (see paragraph 39 above).

42. While the period to be taken into account began on 3 March 2004, which is when the Convention entered into force in respect of Montenegro, in order to determine the reasonableness of the length of proceedings regard must also be had to the state of the case on 3 March 2004 (see, among other authorities, *Mikulić v. Croatia*, no. 53176/99, § 37, ECHR 2002-I, *Styrkowski v. Poland*, 30 October 1998, § 46, *Reports of Judgments and Decisions* 1998-VIII). The impugned non-enforcement has thus been within the Court’s competence *ratione temporis* for a period of eight years and two months, another eleven years having already elapsed before that date. The Court considers that there has accordingly been a violation of Article 6 § 1 of the Convention (see, *mutatis mutandis*, *Nesovski v. “the former Yugoslav Republic of Macedonia”*, cited above, §§ 22-25).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

44. The applicant claimed EUR 144,000 in respect of pecuniary damage (EUR 78,000 on account of the flat he expected to get from the debtor, and

EUR 66,000 on account of the rent he had to pay instead) and EUR 5,000 in respect of non-pecuniary damage.

45. The Government contested this claim.

46. The Court is of the view that it has not been duly substantiated that the applicant sustained pecuniary damage as a result of the violation of Article 6 § 1 on account of the length of the non-enforcement at issue. However, the Court accepts that the applicant has suffered some non-pecuniary damage which cannot be sufficiently compensated by the sole finding of a violation. Making its assessment on an equitable basis, the Court therefore awards the applicant EUR 3,600 under this head.

B. Costs and expenses

47. The applicant also claimed EUR 725 for the costs and expenses incurred before the domestic courts. It would appear that he did not claim anything in respect of the costs and expenses before the Court.

48. The Government contested this claim as unsubstantiated and contrary to the case-law of the Court.

49. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession, in particular the ruling of the domestic courts on legal costs (see paragraph 18 above), the Court considers it reasonable to award the applicant the entire sum claimed.

C. Default interest

50. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

- (i) EUR 3,600 (three thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
- (ii) EUR 725 (seven hundred and twenty five euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 2 October 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Lech Garlicki
President