



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

FIRST SECTION

CASE OF DOLENC v. SLOVENIA

(Application no. 20256/20)

JUDGMENT *(Just satisfaction)*

Art 41 • Just satisfaction • Award for pecuniary damage sustained as a result of recognition by Slovenian courts of judgments delivered in Israel in civil proceedings which did not comply with Art 6 § 1 • Respondent State to ensure that applicant's property not subject to further enforcement of the claim arising from the Israeli judgments and to compensate him for any sums taken by way of such enforcement without delay

Prepared by the Registry. Does not bind the Court.

STRASBOURG

22 February 2024

FINAL

22/05/2024

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

In the case of Dolenc v. Slovenia,

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

Krzysztof Wojtyczek, *Acting President*,

Marko Bošnjak,

Alena Poláčková,

Erik Wennerström,

Raffaele Sabato,

Lorraine Schembri Orland,

Davor Derenčinović, *judges*,

and Ilse Freiwirth, *Section Registrar*,

Having deliberated in private on 6 February 2024,

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

PROCEDURE

1. The case concerns recognition by the Slovenian courts of judgments issued by the Tel Aviv District Court (hereinafter “the Israeli district court’s judgments”) in civil proceedings against the applicant. In the proceedings in Israel, the applicant was found liable for damage caused to E.M. as a result of surgery performed by him. The applicant was ordered to pay E.M. a significant amount in compensation.

2. In a judgment delivered on 20 October 2022 (“the principal judgment”), the Court held that there had been a violation of Article 6 § 1 of the Convention because the Slovenian courts had failed to duly satisfy themselves, before recognising the Israeli district court’s judgments, that the trial in Israel had been fair (see *Dolenc v. Slovenia*, no. 20256/20, §§ 55-76, 20 October 2022).

3. In its principal judgment, the Court awarded the applicant 9,600 euros (EUR) in respect of non-pecuniary damage, EUR 1,500 for the costs and expenses of the domestic proceedings and EUR 4,500 for the costs and expenses of the proceedings before the Court incurred up to the adoption of the principal judgment (see the principal judgment, §§ 83 and 86). Since, as regards pecuniary damage, the question of the application of Article 41 of the Convention was not ready for decision, the Court reserved it and invited the Government and the applicant to submit, within six months from the date on which the principal judgment became final, their written observations on that issue and, in particular, to notify the Court of any agreement they might reach (*ibid.*, § 80 and point 3 of the operative provisions) .

4. As the parties did not reach an agreement, the applicant submitted his claims for pecuniary damage and the respondent Government submitted their observations in this regard.

RELEVANT FACTUAL DEVELOPMENTS SINCE THE PRINCIPAL JUDGMENT

5. Following the recognition of the Israeli district court's judgments (see paragraph 1 above) by the Slovenian courts, several sets of enforcement proceedings were instituted against the applicant's various assets. As a consequence, sums were consistently taken from his bank account in Slovenia and from his retirement pension and paid to E.M.

6. On 23 November 2022, following the Court's principal judgment, the applicant applied to the Ljubljana District Court to reopen the recognition proceedings. The respondent State intervened in the proceedings (in support of the applicant), arguing that the proceedings before the Court were pending and that the resolution of the case depended to a large extent on the possibility of discontinuing the enforcement proceedings against the applicant. E.M. objected to the reopening. The Ljubljana District Court considered that section 394 of the Civil Procedure Act, setting out the grounds for reopening the civil proceedings, might be unconstitutional because it did not allow proceedings to be reopened on the basis of the Court's finding of a violation of the Convention. On 7 April 2023 the Ljubljana District Court decided to suspend the proceedings concerning the application to reopen and requested that the constitutionality of section 394 of the Civil Procedure Act be reviewed by the Constitutional Court. This decision was upheld by the Supreme Court on 17 August 2023.

7. On 8 June 2023 the applicant lodged a request to suspend the enforcement proceedings against his assets – his bank account, his retirement pension and his movable property – until the Constitutional Court's decision (see paragraph 6 above). On 26 July 2023 the Ljubljana District Court dismissed that request, finding, *inter alia*, that there was no indication that the Constitutional Court had started to examine the request for constitutional review. The applicant subsequently appealed. On 5 December 2023 the Ljubljana Higher Court, referring to the Court's principal judgment, upheld the applicant's appeal and decided to suspend the enforcement proceedings until the Constitutional Court decided on the request for the review of constitutionality of section 394 of the Civil Procedure Act (see paragraph 6 above).

8. Until 30 November 2023, that is prior to the suspension of the enforcement proceedings (see paragraph 7 above), the applicant paid E.M. EUR 329,306 by way of enforcement of the latter's claim with attachment of the applicant's bank account and pension.

9. A separate set of enforcement proceedings against the applicant concerned his immovable property. It would appear that that set of proceedings was, at least in part, suspended because the applicant's wife had objected to the enforcement and brought a claim for a share of the immovable property. On 28 February 2023 the applicant lodged a request to suspend this

set of enforcement proceedings, referring to his application to reopen the recognition proceedings and the Court's principal judgment. E.M., on the other hand, requested that the applicant's claims against the State based on the Court's principal judgment be attached to the enforcement. On 6 July 2023 the Ljubljana Local Court issued a decision. It held that E.M.'s claim amounted to EUR 11,610,395, which would remain largely unpaid even if the immovable property in question were sold. It allowed E.M.'s request to attach the applicant's claims in respect of non-pecuniary damage and costs and expenses awarded to the applicant by the Court in the principal judgment. At the same time, it suspended that set of enforcement proceedings until the decision on reopening was given. It noted that the applicant had lodged an extraordinary remedy and took into account the Court's principal judgment in the case and the Ljubljana District Court's decision to initiate proceedings before the Constitutional Court. It also noted that the applicant would not be able to dispose of the aforementioned sums awarded by the Court, but that they would not be transferred to E.M. unless the applicant's application to reopen was turned down. E.M.'s appeal was dismissed by the Ljubljana Higher Court on 5 December 2023.

10. In the meantime, on 16 February 2023 the Government's representatives met with E.M.'s representative to discuss possible solutions regarding the execution of the Court's judgment. The Government's report on the meeting indicates that there was no basis for reaching an agreement because of the significant difference in the participants' position on the matter.

THE LAW

11. 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."

I. PECUNIARY DAMAGE

A. The parties' submissions

1. *The applicant*

12. The applicant argued that payment by the State of the total amount of his debt to E.M., as set out in the Israeli district court's judgments, was the appropriate way to remedy the violation found in the principal judgment. He submitted that the outstanding debt owed to E.M., enforceable under Slovenian law, had amounted, on 19 July 2023, to 23,159,585 Israeli new shekels (approximately EUR 5.8 million). He further submitted that, up to

30 November 2023, he had paid by way of enforcement EUR 329,306 to E.M. and provided material evidence in this regard. He claimed this sum together with default interest, which in total amounted to nearly EUR 450,000.

13. The applicant acknowledged that if the reopening of the recognition proceedings were ultimately allowed, and the recognition decision were overturned, the enforcement proceedings would come to an end. In such a scenario, the Government would need to pay damages corresponding to the assets collected from the applicant up to that point, which might be far less than the full amount owed to E.M. However, he pointed out that there was no guarantee that the case would be reopened and argued that, even if it were, he would until then have to suffer the consequences of the pending enforcement proceedings.

2. The Government

14. The Government did not dispute the fact that the applicant had paid EUR 329,306 to E.M. by way of enforcement of the latter's claim arising from the Israeli district court's judgments. They argued that, despite their best efforts, they were not in a position to compensate the applicant for the loss he had incurred as a result of the violation found in the principal judgment. They explained that he would not be able to use any compensation received for that purpose. Money paid as compensation could be subject of the pending enforcement and he would therefore not be able to dispose of it. Accordingly, they submitted that the most appropriate course of action would be for the Court to postpone the decision on pecuniary damage until the Constitutional Court had decided on the constitutionality of the impugned law or until a decision had been taken on the application to reopen the recognition proceedings (see paragraph 9 above).

15. The Government further argued that the applicant's claim for pecuniary damage far exceeded the value of his property in Slovenia. In particular, he would never suffer damage corresponding to the total amount of the debt owed to E.M. set out in the Israeli district court's judgments.

16. Finally, the Government disputed the applicant's approach in calculating default interest, arguing that he had failed to explain the calculation method and the amount of the interest rate.

B. The Court's assessment

17. The Court finds that the applicant has sustained pecuniary damage as a result of the recognition of the Israeli district court's judgments by the Slovenian courts in proceedings which did not comply with Article 6 § 1 of the Convention, as found in the principal judgment (see the principal judgment, §§ 55-76, and paragraphs 5 to 9 above).

18. It reiterates that a judgment in which it finds a breach imposes on the respondent State a legal obligation to put an end to the breach and make

reparation for its consequences in such a way as to restore, as far as possible, the situation existing before the breach (see *Brumărescu v. Romania* (just satisfaction) [GC], no. 28342/95, § 19, ECHR 2001-I).

19. The Contracting States that are parties to a case are in principle free to choose the means whereby they will comply with a judgment in which the Court has found a breach. This discretion as to the manner of execution of a judgment reflects the freedom of choice attaching to the primary obligation of the Contracting States under Article 1 of the Convention to secure the rights and freedoms guaranteed. If the nature of the breach allows *restitutio in integrum*, it is for the respondent State to implement it. If, however, national law does not allow – or allows only partial – reparation to be made for the consequences of the breach, Article 41 empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate (see *Papamichalopoulos and Others v. Greece* (Article 50), 31 October 1995, § 34, Series A no. 330-B).

20. The Court observes that enforcement regarding the applicant's immovable property and the sums awarded to him in respect of non-pecuniary damage and costs and expenses pursuant to the principal judgment is for the moment suspended. However, the sums awarded pursuant to the principal judgment have been withheld and cannot be disposed of by the applicant (see paragraph 9 above). As regards the enforcement concerning his bank account and pension, his request to suspend has been ultimately allowed (see paragraph 7 above). Since 5 December 2023 he has therefore not incurred losses on that account. According to the latest information received by the Court, EUR 329,306 was taken from the applicant's bank account and pension and paid to E.M. up to 30 November 2023 (see paragraph 8 above).

21. The Court observes that the respondent State supported the applicant in his attempt to reopen the recognition proceedings in their capacity as an intervening party in the proceedings (see paragraph 6 above). While the enforcement of E.M.'s claim seems to now be suspended, the Court understands that the Government are possibly faced with a practical difficulty in that compensation paid by the Government could be withheld from the applicant at least until the decision on his application to reopen the recognition proceedings is given (see paragraphs 9 and 14 above). The Court is not in a position to determine what the best solution would be in the domestic legal system to ensure that the applicant receives the sums awarded to him by the Court and to discontinue the ongoing enforcement based on the domestic decisions found to be in breach of Article 6 § 1 of the Convention, especially given that the issue regarding the possibility to reopen the recognition proceedings is currently pending before the Constitutional Court. However, since there is no indication of when the proceedings before the Constitutional Court would be completed and what the impact on the applicant would be in the event of their favourable outcome, the Court does not find it justified either to delay the judgment regarding the reserved matter

under Article 41, as suggested by the Government (see paragraph 15 above). It notes in this connection that the respondent State remains under a legal obligation to put an end to the breach and make reparation for its consequences.

22. In view of the above considerations, the Court considers it reasonable to award the applicant the sum corresponding to the pecuniary loss he sustained up to 30 November 2023, namely EUR 329,306. It further considers that interest should be added to the above award in order to compensate for the loss of value of the award over time. The interest should reflect national economic conditions, such as levels of inflation and rates of interest (see *Ghigo v. Malta* (just satisfaction), no. 31122/05, § 20, 17 July 2008, and *Vaskrsić v. Slovenia*, no. 31371/12, § 98, 25 April 2017). In the circumstances of the present case, having regard also to inflation during the relevant period, the Court, ruling on an equitable basis, awards the applicant EUR 390,000 in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

23. The Court further considers that the respondent State should ensure that the applicant's property, including the sums awarded pursuant to the principal judgment, as well as this judgment, is not subject to enforcement of the claim arising from the Israeli district court's judgments. The Government should also compensate the applicant for any sums taken from his bank account or pension by way of such enforcement after 30 November 2023. While the respondent State is free to choose the means of complying with this obligation, it is important that the redress, namely the payment of just satisfaction and the cessation of any further loss resulting from the violation found in the principal judgment, is provided to the applicant without delay. This conclusion is without prejudice to any obligation on the part of the applicant arising from any future reopened or fresh Convention compliant proceedings regarding the recognition of the Israeli district court's judgments or his liability for the damage sustained by E.M. because of the surgery performed by him in May 1992 (see the principal judgment, § 2).

II. COSTS AND EXPENSES

24. The applicant claimed reimbursement of the legal expenses due to E.M. in relation to the recognition proceedings in the amount of EUR 22,875 plus default interest, as well as his own legal fees in relation to the proceedings concerning the Israeli district court's judgments in the amount of EUR 109,150.

25. The Government disputed those claims. As regards the costs and expenses payable by the applicant to E.M. and his own legal fees, they formed part of his claim in the proceedings leading to the Court's principal judgment and the Court had therefore already decided on them. Any expenses incurred

after the Court's principal judgment of 20 October 2022 could be paid to the applicant in the domestic proceedings in the event that he succeeded.

26. 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 were actually and necessarily incurred and are reasonable as to their quantum. The Court notes that it has already made an award for the costs and expenses of the domestic proceedings and the proceedings before the Court, incurred up to the adoption of the principal judgment which became final on 20 January 2023 (see the principal judgment, § 86). As regards the legal fees related to the application to reopen the recognition proceedings and the submissions before the Court regarding the application of Article 41, which followed the principal judgment, the Court awards the applicant EUR 3,100 for all related costs and expenses.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Holds*

- (a) that the respondent State must ensure that the applicant's property is not subject to further enforcement of the claim arising from the Israeli district court's judgments recognised in the proceedings before the Slovenian court which did not comply with Article 6 § 1 of the Convention;
- (b) that the respondent State must compensate the applicant for any eventual pecuniary loss incurred after 30 November 2023 as a result of enforcement of the claim arising from the Israeli district court's judgments recognised in the proceedings before the Slovenian court which did not comply with Article 6 § 1 of the Convention;
- (c) 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) 390,000 (three hundred and ninety thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage sustained up to 30 November 2023;
 - (ii) EUR 3,100 (three thousand one hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
- (d) 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;

DOLENC v. SLOVENIA (JUST SATISFACTION) JUDGMENT

2. *Dismisses*, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 February 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth
Registrar

Krzysztof Wojtyczek
Acting President