



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

FIRST SECTION

CASE OF MAČINKOVIĆ v. CROATIA

(Application no. 29759/04)

JUDGMENT

STRASBOURG

7 December 2006

FINAL

07/03/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Mačinković v. Croatia,

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

Mr C.L. ROZAKIS, *President*,

Mrs N. VAJIĆ,

Mr A. KOVLER,

Mrs E. STEINER,

Mr K. HAJIYEV,

Mr D. SPIELMANN,

Mr S.E. JEBENS, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 16 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 29759/04) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Croatian national, Mr Marijan Mačinković (“the applicant”), on 12 July 2004.

2. The applicant was represented by Ms L. Kušan, a lawyer practising in Ivanić-Grad. The Croatian Government (“the Government”) were represented by their Agent, Ms Štefica Stažnik.

3. On 5 September 2005 the Court decided to give notice of the application to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1945 and lives in Kloštar Ivanić.

5. On 1 September 1999 the Ivanić Grad Municipal Court (*Općinski sud u Ivanić Gradu*) adopted a judgment ordering a certain F.P. to pay some money to the applicant. On 18 May 2000 the applicant sought enforcement of the above judgment.

6. The Zagreb Municipal Court (*Općinski sud u Zagrebu*) issued an enforcement order on 6 July 2000.

7. On 20 November 2000 a court bailiff attempted to draft a seizure list of F.P.'s possessions, but he refused to cooperate.

8. On 19 December 2000 the applicant informed the court that F.P. owned a motor vehicle and proposed to seize it. On 17 April 2001 the court invited the applicant to advance the costs of the bailiff's intervention, which the applicant did on 25 April 2001. On 12 April 2002 the court scheduled another on-site intervention for 3 June 2002, which was unsuccessful because F.P. once again refused to cooperate.

9. Pursuant to the applicant's further motion, on 26 September 2002 the court decided that another on-site intervention would be scheduled after the applicant advanced the costs.

10. The applicant asked the court to seize F.P.'s passport on 20 February 2003. Following that demand, on 1 July 2003 the court asked the Ministry of the Interior whether F.P. was the owner of a certain motor vehicle. The Ministry replied in negative on 22 July 2003.

11. The applicant then on 8 September 2003 asked for another bailiff's intervention.

12. However, on 24 May 2004 the case-file was transferred to the newly-established Zaprešić Municipal Court.

13. Since F.P.'s wife presented the evidence that F.P. had paid part of the sum due to the applicant during the bailiff's intervention on 25 October 2004, the intervention was adjourned with consent of the applicant's legal representative.

14. However, F.P. did not comply with the rest of his obligation and therefore, on 24 December 2004 the applicant asked for another bailiff's intervention. The intervention took place on 8 March 2005 and a seizure list was drafted.

15. On 29 September 2005 the applicant asked the court to schedule a public auction. The auction was scheduled for 22 November 2005.

16. The enforcement proceedings still appear to be pending before the first-instance court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

17. Section 63 of the Constitutional Act on the Constitutional Court (*Ustavni zakon o Ustavnom sudu Republike Hrvatske* –Official Gazette no. 49/2002 of 3 May 2002; “the Constitutional Court Act”) reads as follows:

“(1) The Constitutional Court shall examine a constitutional complaint even before all legal remedies have been exhausted in cases when a competent court has not decided within a reasonable time a claim concerning the applicant's rights and obligations or a criminal charge against him ...

(2) If the constitutional complaint ... under paragraph 1 of this Section is accepted, the Constitutional Court shall determine a time-limit within which a competent court shall decide the case on the merits...

(3) In a decision under paragraph 2 of this Article, the Constitutional Court shall fix appropriate compensation for the applicant in respect of the violation found concerning his constitutional rights ... The compensation shall be paid from the State budget within a term of three months from the date when the party lodged a request for its payment.”

18. Under the case-law of the Constitutional Court, constitutional complaints lodged under section 63 in the context of enforcement proceedings were to be declared inadmissible. In its decision no. U-IA/1165/2003 of 12 September 2003 the Constitutional Court interpreted section 63 as follows:

“The Constitutional Court shall institute proceedings pursuant to a constitutional complaint lodged under section 63 of the Constitutional Act [on the Constitutional Court] for the length of proceedings only in cases where the court has not decided within a reasonable time on the merits of the rights and obligations of the complainant, that is, where it has failed to deliver a decision on the merits within a reasonable time.

In the present case the constitutional complaint has been lodged for non-enforcement of a final decision by which the party’s rights and obligations had already been decided.

Taking into consideration the above cited provisions of the Constitutional Act [on the Constitutional Court] ..., the Constitutional Court is of the opinion that in this case the conditions for applicability of section 63 were not met.”

In its decision no. U-III A/781/2003 of 14 May 2004 the Constitutional Court provided further interpretation of section 63:

“Taking into consideration the above cited provisions of the Constitutional Act [on the Constitutional Court] and the fact that the constitutional complaint was not lodged for a failure to deliver a decision within a reasonable time but rather because the enforcement was not carried out, the Constitutional Court is of the opinion that in this case the conditions for applicability of section 63 were not met.”

19. In decision no. U-III A/1128/2004 of 2 February 2005 the Constitutional Court changed its practice, accepting a complainant’s constitutional complaint and awarding him compensation as well as ordering the competent court to conclude the enforcement proceedings within six months from its decision. In doing so, the Constitutional Court expressly relied on the Court’s case-law on the matter.

THE LAW

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

20. The applicant complained that the length of the enforcement proceedings had been incompatible with the “reasonable time” requirement, laid down in Article 6 § 1 of the Convention, which 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...”

21. The Government contested that argument.

22. The period to be taken into consideration began on 8 May 2000 and has not yet ended. It has thus lasted about six years and six months.

A. Admissibility

23. The Government invited the Court to reject the applicant’s complaint for non-exhaustion of domestic remedies, claiming that in 2002 Section 63 of the Constitutional Act on the Constitutional Court introduced an effective domestic remedy in respect of the length of proceedings. On 2 February 2005 the Constitutional Court adopted a decision whereby it applied the reasonable time requirements in respect of the pending enforcement proceedings.

24. The applicant contested these arguments.

25. The Court reiterates that under Article 35 § 1 of the Convention it may only deal with a matter after all domestic remedies have been exhausted. The purpose of the exhaustion rule is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to it (see, among many other authorities, *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-IV). The obligation to exhaust domestic remedies requires that an applicant make normal use of remedies which are effective, sufficient and accessible in respect of his Convention grievances.

26. The Court further recalls that as of 22 March 2002 a constitutional complaint under section 63 of the Constitutional Court Act is considered an effective remedy in respect of the length of proceedings still pending in Croatia (see *Slaviček v. Croatia* (dec.), no. 20862/02, ECHR 2002-VII). However, at that time it was not clear whether the new remedy would at all apply to the length of enforcement proceedings (see *Pibernik v. Croatia* (dec.), no. 75139/01, 4 September 2003). The subsequent developments in the Constitutional Court’s case-law showed that only as of 2 February 2005 did a constitutional complaint become an effective remedy for the length of enforcement proceedings (see *Karadžić v. Croatia*, no. 35030/04, § 38, 15 December 2005).

27. The Court reiterates that the issue whether domestic remedies have been exhausted is normally determined by reference to the date when the application was lodged with the Court (see *Baumann v. France*, no. 33592/96, § 47, ECHR 2001-V (extracts)). This rule is subject to exceptions which may be justified by the specific circumstances of each case (see *Nogolica v. Croatia* (dec.), no. 77784/01, ECHR 2002-VIII).

28. Turning to the present case, the Court observes that the applicant lodged his application with the Court on 12 July 2004. It was not until more than a year and a half later that the Constitutional Court held for the first time that there had been a violation of the right of access to a court in a similar case. Accordingly, the applicant could not have been expected to file such a complaint, which at that time did not offer him any reasonable prospect of success.

29. As to a possible departure from the general rule of non-exhaustion, the Court does not find any special circumstances which would justify making an exception to that rule in the present case (see *Omerović v. Croatia*, no. 36071/03, 1 June 2006).

30. In these circumstances, the Court considers that the applicant's complaint cannot be rejected for failure to exhaust domestic remedies.

31. The Court further notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It also notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

32. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

33. The Government submitted that the proceedings were complex and not of a significant importance to the applicant. They stressed that F.P. had paid almost half of his whole debt to the applicant. As to the conduct of the applicant the Government argued that the applicant had contributed to the length of proceedings because he had agreed that the intervention scheduled for 25 October 2004 be postponed. As to the conduct of the domestic authorities the Government submit that the domestic courts in the enforcement proceedings were bound by the contents of the applicant's application and that it was on the applicant to choose the best means of enforcement.

34. The applicant contested these arguments.

35. The Court reiterates that it is for the Contracting States to organise their legal systems in such a way that their courts can guarantee to everyone

the right to obtain a final decision on disputes relating to civil rights and obligations within a reasonable time (see, among other authorities, *Horvat v. Croatia*, no. 51585/99, § 59, ECHR 2001-VIII).

36. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Estima Joge v. Portugal*, judgment of 21 April 1998, *Reports of judgments and decisions* 1998-II, and *Vodopyanovy v. Ukraine*, no. 22214/02, 17 January 2006 and *Omerović v. Croatia*, no. 36071/03, 1 June 2006).

37. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the enforcement proceedings was excessive and failed to meet the “reasonable time” requirement.

There has accordingly been a breach of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

38. 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

39. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

40. The Government submitted that the amount claimed was excessive and that there was no correlation between the sum claimed and the applicant’s financial expectations.

41. As to the non-pecuniary damage sought, the Court, ruling on an equitable basis and taking into account that the case has been pending for about six and half years, awards the applicant 3,000 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable on this amount.

B. Costs and expenses

42. The applicant also claimed EUR 1,830 for the costs and expenses incurred before the Court.

43. The Government did not express an opinion on the matter.

44. According to the Court’s case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown

that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,500 for costs and expenses in the proceedings before the Court.

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 according to Article 44 § 2 of the Convention, the following amount which should be converted into Croatian kunas at the rate applicable at the date of settlement:
 - (i) EUR 3,000 (three thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 1,500 (one thousand and five hundred euros) in respect of costs and expenses; and
 - (ii) any tax that may be chargeable on the above amounts;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 7 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President