



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

FIRST SECTION

CASE OF MAHMUTOVIĆ v. CROATIA

(Application no. 9505/03)

JUDGMENT

STRASBOURG

15 February 2007

FINAL

15/05/2007

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 Mahmutović v. Croatia,

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

Mr L. LOUCAIDES, *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 25 January 2007,

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

PROCEDURE

1. The case originated in an application (no. 9505/03) 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 Šefko Mahmutović (“the applicant”), on 26 February 2003.

2. The Croatian Government (“the Government”) were represented by their Agent, Ms Štefica Stažnik.

3. On 8 December 2005 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the proceedings 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 1949 and lives in Požega.

5. On 13 July 1990 the applicant lent a certain amount of money to T.T. who failed to pay it back within the agreed time-period. On 24 June 1992 the Požega Municipal Court gave judgment ordering T.T. to pay back the money to the applicant.

6. As T.T. failed to pay, on 11 February 1998 the applicant submitted a motion for enforcement (*prijedlog za ovrhu*). On 12 February 1998 the

Požega Municipal Court issued an enforcement order (*rješenje o ovrsi*) with a view to seizing T.T.'s movable property. On 17 March 1998 T.T. filed an appeal against that order, which was dismissed by the Požega County Court on 10 November 1998.

7. On 2 December 1998 the Municipal Court decided to register and evaluate T.T.'s movables, including his car.

8. On 7 December 1998 T.T.'s wife, D.T., filed an objection with the court, claiming that she was the owner of the car which had been registered as T.T.'s property.

9. On 26 July 1999 the Municipal Court instructed D.T. to institute civil proceedings against the applicant, in order to declare the enforcement on the car inadmissible. On 25 August 1999 D.T. filed a civil action against the applicant to that end. The court accordingly stayed the enforcement proceedings. Subsequently, on 27 March 2001 D.T. withdrew her claim and the enforcement proceedings resumed.

10. On 27 May 2002 the Municipal Court scheduled an on-site inspection for 20 June 2002 with a view to seizing T.T.'s car. However, the court bailiff failed to seize the car.

11. On 26 November 2002 the court scheduled another on-site inspection for 17 December 2002. However, the court decision could not be served on T.T. because he had meanwhile changed his residence.

12. Subsequently, on 15 October 2003 the parties concluded a court settlement. On 5 May 2004 the applicant's lawyer withdrew the enforcement request. Accordingly, on 6 May 2004 the Požega Municipal Court issued a decision terminating the enforcement proceedings.

II. RELEVANT DOMESTIC LAW AND PRACTICE

13. The relevant part of 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 whether or not all legal remedies have been exhausted if the competent court fails to decide a claim concerning the applicant's rights and obligations or a criminal charge against him or her within a reasonable time ...

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

(3) In a decision issued under paragraph 2 of this section, the Constitutional Court shall assess appropriate compensation for the applicant for the violation of his or her constitutional rights ... The compensation shall be paid out of the State budget within three months from the date a request for payment is lodged.”

14. 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-III A/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.”

15. In decision no. U-III A/1128/2004 of 2 February 2005 the Constitutional Court changed its practice, accepting a constitutional complaint and awarding 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

16. 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...”

17. The Government contested that argument claiming that the proceedings were complex and that the applicant significantly contributed to their length.

18. The period to be taken into consideration began on 11 February 1998 and ended on 6 May 2004. It thus lasted six years, two months and twenty-five days for one level of jurisdiction.

A. Admissibility

19. The Government invited the Court to reject the application for non-exhaustion of domestic remedies. They submitted that the applicant could have lodged a constitutional complaint under section 63 of the Constitutional Court Act. In support of their argument, the Government produced a copy of the Constitutional Court decision of 2 February 2005 (see paragraph 15 above) in which that court had found a violation of the complainant's right to a hearing within a reasonable time on account of lengthy enforcement proceedings.

20. The applicant contested that argument.

21. The Court 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).

22. 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)).

23. In the instant case, the applicant did not lodge a constitutional complaint, but instead, on 26 February 2003 he introduced his application with the Court. It was not until two years later that the Constitutional Court held for the first time that there had been a violation of the right to a hearing within reasonable time in respect of the length of enforcement proceedings. Accordingly, the applicant could not have been expected to lodge such a complaint, which at that time did not offer him any reasonable prospects of success. The Government's objection must therefore be dismissed.

24. The Court notes that the remainder of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the

Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

25. The Court reiterates that the State has an obligation to organise a system of enforcement of judgments that is effective both in law and in practice and ensures their enforcement without any undue delay (see *Fuklev v. Ukraine*, no. 71186/01, § 84, 7 June 2005).

26. 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, *Cocchiarella v. Italy* [GC], no. 64886/01, § 68, to be published in ECHR 2006; and *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII). The Court reiterates that enforcement proceedings by their very nature need to be dealt with expeditiously (see *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 23, ECHR 2000-IV).

27. The Court considers that the length of the enforcement proceedings at issue, that lasted more than six years, is *a priori* unreasonable and calls for a global assessment. Their overall length could be justified only under exceptional circumstances. However, the Government's arguments concerning the complexity of the case and the conduct of the applicant cannot sufficiently explain such a substantial delay, which was, in the Court's view, caused mainly by the failure of the domestic courts to effectively control the enforcement proceedings.

28. 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, for example, *Estima Jorge v. Portugal*, judgment of 21 April 1998, *Reports of Judgments and Decisions* 1998-II; *Heger v. Slovakia*, no. 62194/00, 17 May 2005 and *Poláček v. Slovakia*, no. 58707/00, 15 November 2005).

29. 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 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

30. 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

31. The applicant claimed 30,000 German Marks less 40,000 Croatian Kunas which he was paid following the settlement with the debtor, plus interest, in respect of pecuniary damage. He further claimed, in substance, that he suffered distress due to the excessive length of the enforcement proceedings in question, without specifying any particular amount in this respect.

32. The Government contested these claims as being excessive.

33. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, the Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 3,000 under that head, plus any tax that may be chargeable on this amount.

B. Costs and expenses

34. The applicant claimed costs for his representation by a lawyer in the course of domestic proceedings and the court expenses. However, he failed to submit any documents supporting these claims. Therefore, the Court is not able to award the applicant any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the remainder of 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, EUR 3,000 (three thousand euros) in respect of non-pecuniary damage, to be converted into Croatian Kunas at the rate applicable at the date of settlement, plus any tax that may be chargeable on this amount;
 - (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 15 February 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Loukis LOUCAIDES
President