



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

FIRST SECTION

CASE OF MEDIC v. CROATIA

(Application no. 49916/07)

JUDGMENT

STRASBOURG

26 March 2009

FINAL

26/06/2009

This judgment may be subject to editorial revision.

In the case of Medić v. Croatia,

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

Anatoly Kovler, *President*,

Nina Vajić,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 5 March 2009,

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

PROCEDURE

1. The case originated in an application (no. 49916/07) 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 Šime Medić (“the applicant”), on 11 October 2007.

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

3. On 17 June 2008 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1950 and lives in Zadar.

5. On 3 June 1994 the applicant applied for the enforcement of a final judgment of the Omiš Municipal Court (*Općinski sud u Omišu*) ordering a certain N.B. to pay him a sum of money. An enforcement order to that effect was issued on 14 September 1994. The enforcement order was to be carried out by selling a real estate owned by N.B. at a public tender. On 26 March 1996 a certain M.B. objected to the enforcement proceedings claiming that she was the co-owner of the real estate in question. The

Municipal Court instructed M.B. to institute civil proceedings whereby she would claim her ownership and consequently the Municipal Court stayed the enforcement proceedings pending the outcome of these civil proceedings.

6. On 9 May 1996 M.B. brought a civil action in the same Municipal Court against the applicant and some other persons, asking the court to disallow the enforcement proceedings.

7. On 9 December 1996 N.B. brought a separate civil action in the Omiš Municipal Court against the applicant and some other persons, also asking the court to disallow the enforcement proceedings.

8. In civil proceedings instituted by M.B. the Omiš Municipal Court adopted a judgment on 3 March 1999 which was quashed on 6 February 2004 by the Split County Court (*Županijski sud u Splitu*) and the case was remitted for retrial.

9. On 1 July 2004 the applicant lodged a constitutional complaint about the length of the enforcement proceedings.

10. In civil proceedings instituted by M.B. the Municipal Court adopted a decision that the claim had been withdrawn on 18 May 2005. This decision became final on 10 June 2005.

11. In civil proceedings instituted by N.B. on 12 September 2005 the Municipal Court decided that the action had been withdrawn. N.B. lodged an appeal and the case was forwarded to the Split County Court as the appellate court.

12. On 29 March 2006 the Constitutional Court found a violation of the applicant's right to a hearing within a reasonable time. It awarded him 7,800 Croatian kunas (HRK) in compensation, and also ordered the Split County Court to determine the civil dispute relating to the enforcement proceedings in question, instituted by N.B., in the shortest time possible but no later than six months after the publication of the decision of the Constitutional Court in the Official Gazette. It also ordered the Omiš Municipal Court to conclude the enforcement proceedings in the shortest time possible but no later than six months after the above decision of the Split County Court became final. The Constitutional Court's decision was published in the Official Gazette of 19 April 2006.

13. In the civil proceedings instituted by N.B., on 26 May 2006 the Split County Court remitted the case to the Omiš Municipal Court with the instruction that the submission lodged by N.B. and entitled "appeal" had to be examined by the Municipal Court as a request to bring the proceedings to the *status quo ante*. The Municipal Court accepted this request and held hearings on 12 April, 22 May and 5 and 21 June 2007. On 29 June 2007 it dismissed the claim. This judgment became final on 8 January 2008.

14. On 5 May 2008 the applicant requested the Omiš Municipal Court to resume the enforcement proceedings. A hearing was held on 8 July 2008

and the first public tender was scheduled for 21 October 2008. It appears that these proceedings are still pending.

THE LAW

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

15. The applicant complained that the length of the enforcement proceedings had exceeded the reasonable time requirement under Article 6 § 1 of the Convention, the relevant part of 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 ...”

16. The Government contested that argument.

A. Admissibility

17. The Government submitted that the Constitutional Court had accepted the applicant’s constitutional complaint, found a violation of his constitutional right to a hearing within a reasonable time, and awarded him appropriate compensation. The violation complained of had, therefore, been remedied before the domestic authorities and the applicant had lost his victim status as a result.

18. The applicant replied that he could still be considered a victim of the violation complained of.

19. The Court notes at the outset that this case concerning the length of the enforcement proceedings instituted by the applicant in 1994 was closely related to the length of two sets of civil proceedings instituted against the applicant in 1996 by M.B. and N.B. respectively. The Court notes further that at the time when the Constitutional Court’s decision was given the enforcement proceedings and the civil proceedings instituted by N.B. had both been pending for seven years and three months after the ratification of the Convention by Croatia, the date of the ratification being 5 November 1997. The civil proceedings instituted by M.B. were concluded on 10 June 2005. As regards the length of the enforcement proceedings instituted by the applicant the just satisfaction awarded by the Constitutional Court due to the excessive length does not correspond to what the Court would have been likely to award under Article 41 of the Convention in respect of the same period, due account being taken of the fact that the enforcement had been stayed for a number of years, pending the resolution of two sets of related civil proceedings. It therefore cannot be regarded as adequate in the circumstances of the case (see the principles established under the Court’s

case-law in *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 65-107, ECHR 2006-..., or *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 178-213, ECHR 2006 - ...). In these circumstances, in respect of the period covered by the Constitutional Court's finding the applicant has not lost his victim status within the meaning of Article 41 of the Convention.

20. The Court notes further that the proceedings are still pending and that therefore it is called upon to examine the overall length of proceedings.

21. Having regard to the above facts the Court considers that this complaint 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

22. The applicant claimed that the length of the enforcement proceedings in question had exceeded the reasonable time requirement by a wide margin.

23. The Government argued that the case was complex and that the length of the enforcement proceedings depended on the resolution of two related sets of civil proceedings. They further maintained that the domestic courts caused no unnecessary delays.

24. 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 applicants and the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

25. The Court considers that the period to be taken into consideration in respect of the enforcement proceedings began on 6 November 1997, the day after the entry into force of the Convention in respect of Croatia. However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time. In this connection the Court notes that the enforcement proceedings commenced on 3 June 1994, when the applicants lodged his request for an enforcement order. Thus, they were pending for about three years and five months before the ratification. These proceedings are still pending. Thus, in total, they have been pending for more than fourteen years, of which more than eleven years were after the ratification of the Convention.

26. Furthermore, the Court considers the length of the two sets of related civil proceedings also relevant in the circumstances of the present case because the enforcement proceedings instituted by the applicant had been stayed for a prolonged period, pending the resolution of these civil proceedings. In this connection the Court notes that the civil proceedings instituted by M.B. against the applicant lasted about eight years after the

ratification, at two levels of jurisdiction. The civil proceedings instituted by N.B. against the applicant lasted about ten years after the ratification, at two levels of jurisdiction.

27. Thus, having examined all the material submitted to it, the Court considers that in the instant case the length of the enforcement proceedings was excessive and failed to meet the “reasonable time” requirement.

28. In view of the above, the Court concludes that there has been a breach of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

29. The applicants also complained under Article 13 of the Convention, taken in conjunction with Article 6 § 1, that the Split Municipal Court had not complied with the Constitutional Court’s order to conclude the enforcement proceedings within the prescribed time-limit. Article 13 reads as follows:

“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.”

30. The Government contested that argument.

A. Admissibility

31. The Government invited the Court to reject this complaint on the grounds that the applicants had failed to exhaust domestic remedies. They argued that the applicants should have lodged another constitutional complaint, which would have enabled the Constitutional Court to assess the significance of the County Court’s failure to comply with its decision.

32. The applicants did not comment on this issue.

33. In this respect the Court refers to its judgment in the case of *Vaney v. France* (no. 53946/00, § 53, 30 November 2004) where, in the context of Article 6 § 1 of the Convention, it rejected a similar non-exhaustion objection raised by the Government, as accepting it would have led to the applicant being caught in a vicious circle where the failure of one remedy would have constantly given rise to an obligation to make use of another one. It considers that this reasoning applies with equal force in the context of Article 13 in the circumstances such are those prevailing in the present case. Thus, the Government’s objection must be dismissed.

34. The Court further notes that this complaint 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

1. *The parties' arguments*

35. The Government admitted that the Split Municipal Court had exceeded the time-limit set forth in the Constitutional Court's decision. However, they considered that this factor alone could not lead to a conclusion that the constitutional complaint had not been an effective remedy in the applicants' case.

36. They submitted that, pursuant to the Constitutional Court Act, all state authorities, including courts, are bound by the Constitutional Court's decisions and have a duty to implement them. As regards the circumstances of the present case, the Government reiterated that the Split County Court had complied with the time-limit imposed by the Constitutional Court. The civil proceedings in question then continued before the Municipal Court and the judgment from these proceedings became final on 8 January 2008. However, the applicant requested that the enforcement proceedings be resumed only on 5 May 2008. Furthermore, the fact that the object of the enforcement was real estate required time.

37. The applicant considered that the mere fact that the Municipal Court had "ignored" the Constitutional Court's decision was sufficient indication that no effective remedy existed in Croatia in relation to the length of proceedings in such circumstances.

2. *The Court's assessment*

38. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI). The "effectiveness" of a "remedy" within the meaning of Article 13, however, does not depend on the certainty of a favourable outcome for the applicant. (see *Kudła*, cited above, § 157).

39. The Court has already accepted that a complaint to the Constitutional Court under section 63 of the Constitutional Court Act represented an effective remedy for length-of-proceedings cases still pending in Croatia (see *Slaviček v. Croatia* (dec.), no. 20862/02, ECHR 2002-VII). In the present case, the Constitutional Court accepted the applicant's constitutional complaint, found a violation of his constitutional right to a hearing within a reasonable time and awarded him compensation. The mere fact that the compensation awarded to the applicant at the domestic level does not correspond to the amount awarded by the Court in comparable cases does not render the remedy ineffective (see for example, *Jakupović*, cited above, § 28, and *Riškova v. Slovakia*, no. 58174/00, § 100, 22 August 2006).

40. However, the Court considers that the obligation of the States under Article 13 also encompasses the duty to ensure that the competent authorities enforce remedies when granted and notes that it has already found violations on account of a State's failure to observe that requirement (see *Iatridis v. Greece* [GC], no. 31107/96, § 66, ECHR 1999-II). For the Court, it would be inconceivable that Article 13 provided the right to have a remedy, and for it to be effective, without protecting the implementation of the remedies afforded. To hold the contrary would lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention (see, by analogy, *Hornsby v. Greece*, 19 March 1997, § 40, *Reports of Judgments and Decisions* 1997-II).

41. The Court considers that the Government's submissions in respect of the delays in complying with the Constitutional Court's decision cannot be accepted, in view of the fact that the Constitutional Court's decision was adopted in March 2006 and that the purpose of ordering the time-limits both for the conclusion of the enforcement proceedings in question and the related civil proceedings was to speed up the execution of the enforcement order from 1994. However, the Court notes that the enforcement proceedings are still pending. Therefore, the Government's explanation cannot be considered decisive in the present case. In particular, as already found above, the compensation awarded to the applicant was insufficient. While it is true that this factor alone does not normally render the remedy ineffective, the Court notes that in the present case it was reinforced by the failure of the competent court to execute the Constitutional Court's decision in a timely fashion; it being understood that the cessation of an ongoing violation is for the Court an important element of the right to an effective remedy (see, implicitly, *Cocchiarella*, cited above, § 74).

42. The Court is therefore of the view that in the instant case, where the applicant did not receive sufficient compensation for the inordinate length of the enforcement proceedings and where the competent court has failed to comply with the time-limit set in relation to it and thereby has failed to implement the Constitutional Court's decision thus far, it cannot be argued that the constitutional complaint the applicant resorted to was an effective remedy for the length of those proceedings. The combination of these two factors in the particular circumstances of the present case rendered an otherwise effective remedy ineffective.

43. This conclusion, however, does not call into question the effectiveness of the remedy as such or the obligation to lodge a constitutional complaint under section 63 of the Constitutional Court Act in order to exhaust domestic remedies concerning complaints about the length of proceedings.

There has accordingly been a breach of Article 13 in the present case.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. 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

45. The applicant claimed 510,542.80 Croatian kuna (HRK) in respect of pecuniary damage and 16,000 euros (EUR) in respect of non-pecuniary damage.

46. The Government contested these claims.

47. 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 3,650 under that head plus any tax that may be chargeable to him.

B. Costs and expenses

48. The applicant also claimed HRK 23,384 for the costs and expenses incurred before the domestic courts and HRK 4,500 for those incurred before the Court.

49. The Government contested the claim.

50. 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. As the applicant’s case before the Constitutional Court was essentially aimed at remedying the violation of the Convention alleged before the Court, these domestic legal costs may be taken into account in assessing the claim for costs (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 284, ECHR 2006-...) while the claim for the costs related to the other domestic proceedings is to be rejected since these proceedings were not aimed at remedying the violations alleged before the Court. In the present case, regard being had to the information in its possession and the above criteria, the Court awards the applicant a sum of EUR 50 for costs and expenses in the proceedings before the Constitutional Court. As to the Convention proceedings, the Court considers it reasonable to award the applicant, who was not represented by a lawyer, the sum of EUR 500.

C. Default interest

51. The Court considers it appropriate that the default interest 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 as regards the length of the enforcement proceedings;
3. *Holds* that there has been a violation of Article 13 of the Convention;
4. *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 which are to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 3,650 (three thousand six hundred fifty euros) in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant;
 - (ii) EUR 550 (five hundred fifty euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant;
 - (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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 26 March 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Anatoly Kovler
President