



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

1959 · 50 · 2009

SECOND SECTION

CASE OF MILICA POPOVIĆ v. SERBIA

(Application no. 33888/05)

JUDGMENT

STRASBOURG

24 November 2009

FINAL

28/06/2010

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

In the case of Popović v. Serbia,

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

Françoise Tulkens, *President*,

Vladimiro Zagrebelsky,

Danutė Jočienė,

Dragoljub Popović,

András Sajó,

Nona Tsotsoria,

Kristina Pardalos, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 3 November,

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

PROCEDURE

1. The case originated in an application (no. 33888/05) against the State Union of Serbia and Montenegro, lodged with the Court, under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”), by a Serbian national, Ms Milica Popović (“the applicant”), on 12 September 2005.

2. As of 3 June 2006, following the Montenegrin declaration of independence, Serbia remained the sole respondent in the proceedings before the Court.

3. The applicant was represented by Mr S. Stojanović, a lawyer practicing in Belgrade. The Serbian Government (“the Government”) were represented by their Agent, Mr S. Carić.

4. On 13 July 2006 the President of the Second Section decided to give notice of the application to the Government. Applying Article 29 § 3 of the Convention, it was also decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. On 23 October 1984 the Second Municipal Court (*Drugi opštinski sud*) in Belgrade issued a judgment stating, *inter alia*, that the applicant was the owner of 36% of a flat and a garage located in Belgrade. The remaining

64% was determined to be the property of D.S., the applicant's former partner. On 25 June 1985 this judgment became final.

6. In a separate set of proceedings, on 30 March 1987, the Fourth Municipal Court (*Četvrti opštinski sud*) in Belgrade ruled that the physical division of the said real estate was impossible, that a public auction should be held instead, and that the proceeds thereof should be divided among the former partners accordingly.

7. On 16 November 1987 this decision became final.

8. On 18 May 1990 the Fourth Municipal Court in Belgrade (hereinafter “the enforcement court”) accepted the applicant's request and ordered the enforcement of the above decision dated 30 March 1987.

9. At the hearing held on 2 September 1996 the applicant offered to buy the 64% of the flat in question owned by D.S. and thereby become its sole owner. On the same date the enforcement court accepted this offer, “awarded” the flat (*“dosudio nepokretnosti”*) to the applicant and set the price at 25,126.22 Dinars. D.S. subsequently filed an appeal against this decision.

10. Following a remittal, on 26 April 2002 the District Court upheld the decision of the enforcement court and it thereby became final.

11. On 3 March 2004 the Supreme Court accepted the request for the protection of legality (*zahtev za zaštitu zakonitosti*) filed by the Chief Public Prosecutor personally. It quashed the lower courts' decisions and remitted the case to the enforcement court for reconsideration. It would appear that the Supreme Court's decision was served on the applicant by 12 January 2005.

12. Following their separation in 1978, D.S. retained sole possession of the flat in question while the applicant appears to have had no access since then.

13. On 20 October 2006 the applicant was given back the nominal value of the amount paid pursuant to the decision of 2 September 1996 (see paragraph 9 above).

14. On 2 September 2007 the applicant died.

15. On 21 September 2007 the Fourth Municipal Court suspended the proceedings pending the determination of the applicant's legal heirs.

16. On 10 October 2008 the applicant's son, as her only legal heir, requested the continuation of the proceedings.

17. It would appear that there have been no further developments in the case since then.

II. RELEVANT DOMESTIC LAW

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

18. Article 4 provides that enforcement proceedings are to be conducted with particular urgency.

19. Articles 147-160 set out the details as regards the auctioning of real estate.

B. Inheritance Act 1995 (*Zakon o nasleđivanju*, published in the Official Gazette of the Republic of Serbia nos. 46/95 and 101/03)

20. Article 212 § 1 provides that the deceased's estate shall be transferred *ex lege* to the legal heirs at the moment of death.

THE LAW

I. THE APPLICANT'S DEATH

21. On 2 June 2007 the applicant died.

22. On 20 March 2008 the First Municipal Court (*Prvi opštinski sud*) in Belgrade declared the applicant's son, Mr Vojko Mišković, to be her sole legal heir.

23. On 23 April 2009 Mr Mišković informed the Court that he wished to maintain the proceedings lodged by his mother.

24. Given the relevant domestic legislation (see paragraph 20 above), as well as the fact that he has a “definite pecuniary interest” in the enforcement proceedings at issue, the Court finds, without prejudice to the Government's other preliminary objections, that Mr Mišković has standing to proceed in his mother's stead (see, *mutatis mutandis*, *Marčić and Others v. Serbia*, no. 17556/05, § 35-40, 30 October 2007).

25. Mr Mišković shall, therefore, himself be referred to as “the applicant” hereinafter.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

26. Under Article 1 of Protocol No. 1, the applicant complained about the non-execution of the Fourth Municipal Court's final decision of 30 March 1987.

27. Article 1 of Protocol No. 1 reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his [or her] possessions. No one shall be deprived of his [or her] possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

A. Admissibility

28. The Government raised various objections to the admissibility of this matter. However, the Court has rejected similar objections in many previous cases (see, for example, *EVT Company v. Serbia*, no. 3102/05, §§ 39-42, 21 June 2007). It finds no particular circumstances in the instant case which would require a departure from this jurisprudence. It therefore declares the application admissible.

B. Merits

29. The applicant reaffirmed that his property rights had been violated while the Government maintained that there had been no violation of Article 1 of Protocol No. 1.

30. The Court has frequently found that, in the context of Article 1 of Protocol No. 1, the States' positive obligations may require that measures be taken where necessary to protect the right of property, particularly where there is a direct link between the measures which an applicant may legitimately expect the authorities to undertake and the effective enjoyment of his or her possessions (see, for example, *Burdov v. Russia*, no. 59498/00, §§ 39-42, ECHR 2002-III).

31. It is thus the State's responsibility to make use of all available legal means at its disposal in order to enforce a final court decision, notwithstanding the fact that it has been issued against a private party, as well as to make sure that all relevant domestic procedures are duly complied with (see, *mutatis mutandis*, *Marčić and Others v. Serbia*, cited above, § 56).

32. Turning to the present case, the Court first notes that the ongoing inability of the domestic authorities to auction the flat in question amounts to an interference with the applicant's property rights. Secondly, the decision at issue had become final by 16 November 1987, and its enforcement had been ordered on 18 May 1990. Thirdly, Protocol No. 1 had entered into force in respect of Serbia on 3 March 2004, meaning that the non-enforcement at issue has been within the Court's competence *ratione temporis* for a period of five years and eight months, some fourteen years having already elapsed before that date. Lastly, there is nothing to suggest that the auction should have been anything but straightforward.

33. In view of the foregoing, the Court finds that the Serbian authorities have failed to fulfil their positive obligation, within the meaning of Article 1 of Protocol No. 1, to enforce the decision of 30 March 1987. There has, accordingly, been a violation of the said provision.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

34. The applicant further complained, under Article 13 of the Convention, that he has had no means to expedite the proceedings in question or obtain compensation for the past delay.

35. 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.”

36. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that it cannot be declared inadmissible on any other ground. The complaint must therefore be declared admissible.

37. Having regard to its findings in respect of Article 1 of Protocol No. 1 and its prior judgments on the issue (see, *mutatis mutandis*, *Cvetković v. Serbia*, no. 17271/04, § 59, 10 June 2008), the Court considers that, at the relevant time, there was indeed no effective remedy under domestic law for the applicant's complaint about the non-enforcement in question. There has, accordingly, been a violation of Article 13 of the Convention taken together with Article 1 of Protocol No. 1.

IV. OTHER ALLEGED VIOLATIONS

38. Under Article 6 § 1 of the Convention, the applicant also complained about the Supreme Court's decision of 3 March 2004.

39. The Court observes that this decision was served on the applicant by 12 January 2005 while the application itself was introduced on 12 September 2005, more than six months later. It follows that this

complaint has been lodged out of time, and must therefore be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

40. Finally, under Article 6 § 1 of the Convention, the applicant, again, complained about the non-enforcement of the Fourth Municipal Court's decision of 30 March 1987.

41. Having regard to its finding in respect of Article 1 of Protocol No. 1 above, the Court declares the applicant's identical complaint made under Article 6 § 1 admissible, but does not find it necessary to examine it separately on the merits under this provision (see, *mutatis mutandis*, *Davidescu v. Romania*, no. 2252/02, § 57, 16 November 2006).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. 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

43. The applicant claimed a total of 147,350 Euros (EUR) in respect of the pecuniary and the non-pecuniary damage suffered.

44. The Government contested these claims.

45. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

46. However, the Court considers that the applicant must have suffered some non-pecuniary damage as a result of the non-enforcement at issue. Accordingly, taking into account the circumstances of the case and making its assessment on an equitable basis, the Court awards the applicant EUR 1,800 under this head.

47. It must, further, be noted that a judgment in which the Court finds a violation of the Convention or of its Protocols imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in its domestic legal order to put an end to the violation found (see *Apostol v. Georgia*, no. 40765/02, § 71, ECHR 2006).

48. Having regard to its finding in the instant case, the Court considers that the respondent State must secure, by appropriate means, the enforcement of the Fourth Municipal Court's final decision of 30 March 1987 (see, among many other authorities, *Marčić and Others v. Serbia*, cited above, § 65).

B. Costs and expenses

49. The applicant claimed EUR 41,092 for the costs and expenses incurred before the domestic courts and EUR 2,000 for those incurred before the Court.

50. The Government contested these claims.

51. 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 were reasonable as to their quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings but considers it reasonable to award the sum of EUR 600 for the proceedings before the Court.

C. Default interest

52. 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 complaint concerning the non-enforcement of the final domestic decision admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1;
3. *Holds* that there has been a violation of Article 13 of the Convention taken together with Article 1 of Protocol No. 1;
4. *Holds* that it is not necessary to examine separately the non-enforcement complaint under Article 6 § 1 of the Convention;
5. *Holds*
 - (a) that the respondent State shall ensure, by appropriate means, within three months from the date on which this judgment becomes final, in accordance with Article 44 § 2 of the Convention, the enforcement of the Fourth Municipal Court's final decision of 30 March 1987;

(b) that the respondent State is to pay the applicant, within the same three month period, the following sums:

(i) EUR 1,800 (one thousand eight hundred euros), plus any tax that may be chargeable, for the non-pecuniary damage suffered, and

(ii) EUR 600 (six hundred euros), plus any tax that may be chargeable to the applicant for costs and expenses;

(c) 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;

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

Done in English, and notified in writing on 24 November 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally DOLLÉ
Registrar

Françoise TULKENS
President