



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

1959 · 50 · 2009

SECOND SECTION

CASE OF MOLNAR GABOR v. SERBIA

(Application no. 22762/05)

JUDGMENT

STRASBOURG

8 December 2009

FINAL

08/03/2010

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 Molnar Gabor v. Serbia,

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Vladimiro Zagrebelsky,

Danutė Jočienė,

Dragoljub Popović,

Nona Tsotsoria,

Işıl Karakaş, *judges*,

and Françoise Elens-Passos, *Deputy Section Registrar*,

Having deliberated in private on 17 November 2009,

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

PROCEDURE

1. The case originated in an application (no. 22762/05) 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, at that time, a national of the State Union of Serbia and Montenegro, Mr Istvan Molnar Gabor (“the applicant”), on 15 June 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 Ms A. Horváth, a lawyer practising in Subotica. The Government of the State Union of Serbia and Montenegro and, subsequently, the Government of Serbia (“the Government”) were represented by their Agent, Mr S. Carić.

4. The applicant complained about the continuing refusal of the respondent State to release all of his foreign currency savings, and in particular the non-enforcement of the final judgment rendered in his favour.

5. On 15 February 2007 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

A. Relevant background to the applicant's case

6. Following the financial crisis in the former Socialist Federal Republic of Yugoslavia, as well as the collapse of the banking system in Serbia in the 1990s, in 1998 and 2002 the respondent State adopted specific legislation accepting the conversion of foreign currency deposits in certain banks, including *Vojvođanska banka*, into a public debt. The legislation set the time-frame (2016) and the amounts, including interest, to be paid back to the banks' former clients. It also explicitly provided, *inter alia*, that any foreign currency-related judicial proceedings were to be discontinued (for details concerning the relevant domestic law see paragraphs 20-27 below).

B. Relevant facts of the applicant's case

7. The applicant was born in 1926 and lives in Subotica, Serbia. He is retired and receives a pension in the net amount of approximately 250 Euros ("EUR") monthly.

8. The facts of the case, as submitted by the parties, may be summarised as follows.

9. On a number of separate occasions, the applicant deposited a certain amount of his foreign currency savings with the Subotica branch of *Vojvođanska banka*, a bank based in Novi Sad.

10. In 1991 the said bank refused to release the applicant's funds.

11. On 21 July 1993 the applicant filed a civil claim, seeking the release of his foreign currency deposits with the interest stipulated.

12. On 27 September 1993 the Municipal Court in Subotica ruled partly in favour of the applicant and ordered the bank to pay him: (i) 15,584.41 German Marks ("DEM"), on account of his foreign currency savings; (ii) 37,460,000,000 Yugoslav Dinars ("YUD"), for his legal costs¹; and (iii) the statutory interest due in respect of the latter as of 27 September 1993.

13. On 20 March 1996 the District Court in Subotica upheld this judgment, adding that the respondent bank should also pay interest on the sum of DEM 15,584.41 which had been awarded. In particular, this interest was to be paid as of 1 January 1993, based on the DEM sight deposit rate (*kamata na štedne uloge po viđenju*).

¹ At the time in question Serbia had been suffering from record levels of inflation.

14. On 2 October 1996 the Supreme Court rejected the respondent's appeal on points of law (*revizija*) and confirmed the District Court's judgment.

15. On 24 April 2001 and 26 September 2001, respectively, the applicant filed two separate requests with the Municipal Court in Subotica, seeking enforcement of the above judgment by means of a bank account transfer.

16. On 2 April 2002 the Municipal Court rejected those requests, stating that, under the relevant domestic legislation, all judicial enforcement proceedings aimed at the collection of foreign currency deposits had to be discontinued.

17. On 30 March 2004 the bank confirmed that the applicant's foreign currency savings had been converted into a public debt in the amount of EUR 8,740.18.

18. As of 1 March 2007 the applicant was still owed EUR 6,652, having in the meantime, in several instalments and on various grounds, been reimbursed a total of EUR 2,088.18.

19. There is no information in the case file whether the applicant received any payments thereafter.

II. RELEVANT DOMESTIC LAW

A. Act on the Settlement of Obligations Arising from the Citizens' Foreign Currency Savings (*Zakon o izmirenju obaveza po osnovu devizne štednje građana*; published in the Official Gazette of the Federal Republic of Yugoslavia - OG FRY - nos. 59/98, 44/99 and 53/01)

20. Articles 1, 2, 3 and 4 provided that all foreign currency savings deposited with "authorised banks" before 18 March 1995, including explicitly the deposits held by the bank at issue in the present case, were to become a public debt.

21. Under Article 10, the State's responsibility in that respect was to be fully honoured by 2012 through the payment of specified amounts, plus interest, and according to a certain time-frame.

22. Article 22 provided that, as of the date of this Act's entry into force (12 December 1998), "all pending lawsuits, including judicial enforcement proceedings, aimed at the collection of the foreign currency covered by this Act shall be discontinued."

B. Act on the Settlement of the Public Debt of the Federal Republic of Yugoslavia Arising from the Citizens' Foreign Currency Savings (Zakon o regulisanju javnog duga Savezne Republike Jugoslavije po osnovu devizne štednje građana; published in OG FRY no. 36/02)

23. This Act repeals the Act described above. In so doing, however, it explicitly acknowledges as part of the public debt all deposits previously recognised as such (in the total amount of EUR 4.2 billion as of 31 March 2002). It modifies the time-frame for honouring the debt in question (from 2012 to 2016) and specifies amended amounts, plus interest, to be paid annually.

24. Pursuant to Article 13, the banks' clients can make use of their deposits converted into Government bonds in order to pay taxes or indeed, under Articles 12 and 14, in advance of the said time-frame, for a number of purposes such as buying State property, taking part in the privatisation of State-owned businesses and banks, as well as, under certain conditions and up to a specified amount, the payment of medical treatment, medication and funeral costs.

25. In accordance with Articles 10 and 11, former clients of the banks in question may sell the said bonds on the stock exchange or to other banks or individuals. Such trading is exempt from all taxation.

26. Article 36 reaffirms that “all lawsuits aimed at the collection of the foreign currency savings covered by this Act, including the judicial enforcement proceedings, shall be discontinued.”

27. This Act has been in force since 4 July 2002. It was subsequently amended on two occasions, but these amendments concerned peripheral issues unrelated to the savers above-described status.

C. Obligations Act (Zakon o obligacionim odnosima; published in the Official Gazette of the Socialist Federal Republic of Yugoslavia - OG SFRY - nos. 29/78, 39/85, 45/89, 57/89 and OG FRY no. 31/93)

28. Articles 199 and 200 provide, *inter alia*, that anyone who has suffered fear, physical pain or mental anguish as a consequence of a breach of “personal rights” (*prava ličnosti*) may, depending on its duration and intensity, sue for financial compensation before the civil courts and, in addition, request other forms of redress “which may be capable” of affording adequate non-pecuniary satisfaction.

29. Article 379 § 1 provides, *inter alia*, that all claims recognised by a final court decision shall become time-barred within ten years, including those claims which would otherwise have become time-barred within a shorter period of time.

30. Article 360 § 3 provides that courts shall not take into account whether a given claim is time-barred unless and until there is a specific objection by the debtor to this effect.

D. Statutory Interest Act (Zakon o visini stope zatezne kamate; published in OG FRY no. 9/01)

31. Article 1 provides that statutory interest shall be paid as of the date of maturity of a recognised monetary claim in YUD until the date of its settlement (which includes awards granted by final court judgments).

32. Article 2 states that such interest shall be calculated on the basis of the official retail price index (*mesečna stopa rasta cena na malo*) plus another 0.5% monthly (*mesečna fiksna stopa*).

THE LAW

ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1

33. The applicant complained about the continuing refusal of the respondent State to release all of his foreign currency savings instantaneously, as well as the non-enforcement of the final judgment rendered in his favour.

The Court considers that these complaints fall to be examined under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, which, in so far as relevant, read as follows:

Article 6 § 1

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”

Article 1 of Protocol No. 1

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his 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

1. Compatibility

34. The Government noted that the final judgment in question, as well as the relevant foreign currency legislation had been adopted before the Serbian ratification of the Convention and Protocol No. 1 thereto. They concluded, therefore, that the applicant's complaints were incompatible *ratione temporis* with the provisions at issue.

35. The applicant maintained that his application concerned a continuing situation.

36. The Court considers that the issue raised by the Government is closely linked to the merits of the applicant's complaints, involving such questions as the continuing nature of the alleged violations and the proportionality of the effects of the intervening legislation. Consequently, the Court joins its examination of this question to its assessment of the merits of the application.

2. Exhaustion of domestic remedies

37. The Government further submitted that, as regards the non-enforcement, the applicant had not exhausted all effective domestic remedies as required by Article 35 § 1 of the Convention. In the first place, he should have sought execution of the judgment at issue before the “1998 foreign currency Act” had entered into force (see paragraphs 15, 16, 22 and 26 above). Secondly, having requested enforcement by means of a bank account transfer, he had subsequently failed to propose alternative means of execution. Finally, the applicant had not brought a separate civil lawsuit under Articles 199 and 200 of the Obligations Act (see paragraph 28 above).

38. The applicant maintained that he had complied with the “exhaustion requirement”, adding that he had been financially unable to institute the enforcement proceedings any earlier.

39. As regards the Government's submission that the applicant should have filed a separate civil claim, the Court recalls that it has already held that this particular remedy was ineffective within the meaning of Article 35 § 1 of the Convention (see, *mutatis mutandis*, *ZIT Company v. Serbia*, no. 37343/05, §§ 45-47, 27 November 2007). It sees no reason to depart from this finding in the present case.

40. Concerning the Government's remaining submissions, the Court notes that the applicant was entitled to request the enforcement of the judgment in question at any point within a period of ten years, which he

ultimately did (see paragraphs 13-15, 29 and 30 above). Further, as of 1998 the execution of the said judgment was legally barred, rendering the issue of the proposed means of enforcement utterly irrelevant. Neither of these remedies can therefore be considered effective, as understood by Article 35 § 1.

41. It follows that the Government's objection must be dismissed in its entirety.

3. Conclusion

42. The Court considers that the applicant's complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further considers that they are not inadmissible on any other ground. They must therefore be declared admissible.

B. Merits

43. The Government maintained that the State was faced with a large-scale financial crisis, undermining its very foundations (see paragraph 23 above), and essentially had no choice but to adopt legislation aimed at protecting the public interest. This legislation, however, does not impose an excessive burden on the applicant who is entitled, just like any other foreign currency saver in his situation, to the gradual recovery of his funds.

44. The applicant reaffirmed his complaints.

45. The Court notes that Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal; in this way it embodies the “right to a court”, of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect. However, that right would be illusory if a Contracting State's domestic legal system allowed a final, enforceable judicial decision to remain inoperative to the detriment of one party. Execution of a judgment given by any court must therefore be regarded as an integral part of the “trial” for the purposes of Article 6 (see *Hornsby v. Greece*, judgment of 19 March 1997, *Reports of Judgments and Decisions* 1997-II, p. 510, § 40).

46. The Court further recalls that an applicant may allege a violation of Article 1 of Protocol No. 1 only in so far as his or her complaints relate to “possessions” within the meaning of that provision. “Possessions” can be “existing possessions” or assets, including claims, in respect of which an applicant can argue that he has at least a “legitimate expectation” (which must be of a nature more concrete than a mere hope) that they will be realised, that is that he or she will obtain effective enjoyment of a property right (see, *inter alia*, *Gratzinger and Gratzingerova v. the Czech Republic* (dec.) [GC], no. 39794/98, ECHR 2002-VII, § 69; *Kopecký v. Slovakia* [GC], no. 44912/98, § 35, ECHR 2004-IX). By way of contrast,

the hope of recognition of a property right which it has been impossible to exercise effectively after the entry into force of Protocol No. 1 with regard to the State concerned cannot be considered a “possession” within the meaning of Article 1 of Protocol No. 1 (see *Gaćeša v. Croatia* (dec.), no. 43389/02, 1 April 2008).

47. Lastly, it is observed that the second paragraph of Article 1 of Protocol No. 1 reserves to States the right to enact such laws, as they deem necessary to control the use of property in accordance with the general interest. In order to implement economic policies, legislatures must have a wide margin of appreciation both with regard to the existence of a problem of public concern warranting measures of control and as to the choice of the detailed rules for the implementation of such measures. The Court will respect the legislature's judgment as to what is in the general interest unless that judgment is manifestly without reasonable foundation (see, in the “foreign currency context”, *Trajkovski v. the former Yugoslav Republic of Macedonia* (dec.), no. 53320/99, 7 March 2002, p. 12).

48. Turning to the present case, whilst having regard to these principles, the Court observes that as of 3 March 2004, which is when Serbia ratified the Convention and Protocol No. 1 thereto, the applicant has clearly had no enforceable legal title which would allow him to seek judicial execution of the foreign currency award rendered in his favour, nor, for that matter, a legitimate expectation under domestic law that he could otherwise obtain all of his savings instantaneously.

49. In particular, the provisions of the Acts described at paragraphs 22 and 26 above, read in conjunction, barred the enforcement of the applicant's judgment as of 12 December 1998. Consequently, the Court considers that the said legislation extinguished the impact of the final judgment in question well before the respondent State's ratification. The applicant, therefore, cannot now be said to have a continuing right to the enforcement sought.

50. The Court further holds that, given the dire reality of the Serbian economy at the relevant time (see paragraph 12, footnote 1, and paragraph 23 above) and the wide margin of appreciation afforded to States in respect of matters involving economic policy, the impugned legislation, providing for the gradual reimbursement of the funds here at issue (see paragraphs 23-27 above), struck a fair balance between the general interest of the community and the applicant's persisting legitimate claim to his original savings, as well as the property rights of all others in the same situation as him (see *mutatis mutandis*, *Trajkovski v. the former Yugoslav Republic of Macedonia*, cited above, pp. 12-14).

51. In such circumstances the Court finds that there has been no violation of Article 6 § 1 of the Convention or of Article 1 of Protocol No. 1.

FOR THESE REASONS, THE COURT

1. *Declares* the application admissible unanimously;
2. *Holds* by 4 votes to 3 that there has been no violation of Article 6 § 1 of the Convention;
3. *Holds* by 4 votes to 3 that there has been no violation of Article 1 of Protocol No. 1.

Done in English, and notified in writing on 8 December 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the joint dissenting opinion of Judges Tulkens, Popović and Karakaş is annexed to this judgment.

F.T.
F.E.P.

JOINT DISSENTING OPINION OF JUDGES TULKENS, POPOVIĆ AND KARAKAŞ

Much to our regret we could not follow the majority of our colleagues in this case, for the sake of following reasons.

In the present case the respondent State failed to execute a final judgment given in the applicant's favour. We are of opinion that the reason invoked by the State for such an interference with an individual's rights is not acceptable. It is not open to a State authority to cite lack of funds as an excuse for not honouring a judgment debt. We do admit that a delay in the execution of a judgment may be justified in particular circumstances, but the delay may not be such as to impair the essence of the right protected under Art. 6.1 of the Convention (see *Burdov v. Russia*, ECHR 2002-III paragraph 35, and *Immobiliare Saffi v. Italy* [GC] ECHR 1999-V paragraph 74).

We would also like to underline the fact that the applicant's situation in this case is significantly different from the presumed majority of other savers, whose savings had also been transformed into a public debt, but who have never obtained a final judgment ordering release of their deposits. That is why we consider that it was not justified for the authorities to intervene in the execution of a final judgment rendered at the domestic level, although it was done in a manner permitted by the relevant domestic legislation. For that reason we conclude that the right of access to court as protected by Art. 6. of the Convention was impaired (see *Jeličić v. Bosnia and Herzegovina*, ECHR 2006- paragraphs 38-46).

Our conclusion is that the impossibility of obtaining the execution of the final judgment at issue constitutes an interference with the right to the peaceful enjoyment of possessions, as set out in the first sentence of the first paragraph of Art. 1 First Protocol (see *Burdov*, paragraph 40 and *Jeličić*, paragraphs 47-49).

As to the respondent Government's objection to the Court's jurisdiction *ratione temporis* we are of opinion that all facts fall within the Court's jurisdiction if they are only extensions of an already existing situation at the moment of the ratification of the Convention by a member state (see *Yagci and Sargin v. Turkey*, Judgments and Decisions 1995, A 319 paragraph 40; *Almeida Garret, Mascarenhas Falcao and Others v. Portugal*, ECHR 2000-I paragraph 43). It is to be noted that the applicant in the present case has been unable to have his judgment legally enforced as of 1998, which situation has continued to this date.

Last but not least we find it necessary to stress the reason for maintaining of the coherence of the Court's case-law. We consider the

ruling in *Jeličić* to be binding in this case as a leading precedent. Although the Court may depart from its previous rulings the Court is entitled to it only “if it is persuaded that there were cogent reasons for doing so” (see *Cossey v. United Kingdom*, Judgments and Decisions 1990, A 184 paragraph 35; *Chapman v. United Kingdom*, ECHR 2001-I paragraph 70; *Christine Goodwin v. United Kingdom*, ECHR 2002-I paragraph 74; *Mamatkulov and Askarov v. Turkey*, ECHR 2005- paragraph 121). In the present judgment we cannot find any reference to cogent reasons which led our colleagues to depart from the Court's previous ruling in a case which was identical to the present one.