



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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 18822/03
by Branko PILIPOVIĆ
against Croatia

The European Court of Human Rights (First Section), sitting on 12 December 2006 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,

Mr L. LOUCAIDES,

Mrs F. TULKENS,

Mrs N. VAJIĆ,

Mr A. KOVLER,

Mrs E. STEINER,

Mr K. HAJIYEV, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having regard to the above application lodged on 19 April 2003,

Having regard to the decision to apply Article 29 § 3 of the Convention and examine the admissibility and merits of the case together.

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Branko Pilipović, who is of Serbian origin and whose nationality is unknown, was born in 1956 and lives in Johova, Bosnia and Herzegovina. He was represented before the Court by Mrs B. Isailović, a lawyer practising in Paris. The Croatian Government (“the Government”) were represented by their Agent, Mrs Š. Stažnik.

A. The circumstances of the case

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

On 2 March 1990 the Sisak Employment Tribunal (*Osnovni sud udruženog rada u Sisku*) gave judgment ordering company A. (“the company”) to pay the applicant the amount of 801.80 Yugoslav dinars (“YUD”) together with the pertaining statutory interest and the litigation costs. The judgment became final on 7 November 1990 when it was upheld by the Employment Tribunal of Croatia (*Sud udruženog rada Hrvatske*).

On 21 March 1991 the applicant applied to the Sisak Municipal Court (*Općinski sud u Sisku*) for enforcement of the above judgment.

On 27 March 1991 the Municipal Court issued a writ of execution (*rješenje o izvršenju*) ordering the financial institution operating the company’s account (*Služba društvenog knjigovodstva*, subsequently *Zavod za platni promet* and eventually *Financijska agencija*) (“the FINA”) to collect the amount corresponding to the applicant’s claim, i.e. 333,724.54 YUD, and transfer it to his account.

On 11 April 1991 the company filed an objection (*prigovor*) to the writ. The applicant replied on 23 April 1991.

On 2 December 1991 the Municipal Court dismissed the company’s objection and the writ thereby became final. It appears that on 4 February 1993 the writ was sent to the FINA in order to be carried out.

The Government submitted that the proceedings had ended on 4 February 1993. However, since the case-file had been closed and, eventually, destroyed on 1 December 1998 pursuant to section 248 of the Courts’ Rules (see below under the Relevant domestic law), the Government were unable to specify whether the proceedings had been terminated because the applicant’s claim had been satisfied or for some other reason.

The applicant submitted that in July 1991 he had gone to stay with his parents in Bosnia and Herzegovina. He further submitted that due to the escalation of the war in Croatia in October 1991, he had been unable to return. Thus, he had decided to stay in Bosnia and Herzegovina where he had later on been granted refugee status.

The applicant also submitted that since April 1991 he had not received any information from the Sisak Municipal Court concerning his case.

On 3 December 1999 he wrote to the Sisak Municipal Court asking it to continue the enforcement proceedings. He received no reply.

On 3 May 2001 the applicant, through his advocate R.B., repeated his request. The court replied on 2 August 2001 informing the applicant's advocate that the enforcement proceedings at issue had been discontinued and the case-file destroyed.

On 15 May and 31 July 2002 the applicant again requested the Sisak Municipal Court to continue the enforcement proceedings.

On 25 April 2003 he wrote to the President of the Sisak Municipal Court complaining that he had received no reply to his previous letters. The President replied on 29 May 2003 informing the applicant that the proceedings had ended on 4 December 1993, and the case-file had been destroyed on 1 December 1998.

Meanwhile, following the applicant's enquiry about the writ of execution, on 10 March 2003 the FINA – Sisak Office informed him that it had never received the writ from the Sisak Municipal Court.

B. Relevant domestic law

The 1991 Enforcement Proceedings Act (*Zakon o izvršnom postupku*, Official Gazette nos. 53/1991 and 91/1992), in force at the material time, did not provide for a possibility to continue enforcement proceedings that had already ended but only those that had been stayed or postponed (section 67). Moreover, the Act provided that a petition for reopening of a case (*prijedlog za ponavljanje postupka*) was not allowed as a remedy in the enforcement proceedings (section 9).

The 1996 Enforcement Act (*Ovršni zakon*, Official Gazette nos. 57/1996), which entered into force on 11 September 1996, contains the same rules on continuation of the proceedings (sections 9 and 66) and reopening of a case (section 12).

The Courts' Rules (*Sudski poslovnik*, Official Gazette nos. 80/1997 and 20/98), as in force at the material time, regulated, *inter alia*, time-limits for keeping case-files in archives of the courts. They provided that the case-files concerning enforcement proceedings had to be kept for five years following the discontinuation or termination of such proceedings, unless they concerned rights *in rem*, in which case the files had to be kept for thirty years (section 248). After the expiry of those time-limits the case-files had

to either be delivered to the institution keeping historical archives or be destroyed (section 247).

COMPLAINTS

1. The applicant complained under Article 6 § 1 of the Convention about the length of the enforcement proceedings, as well as under Article 1 of Protocol No. 1 to the Convention taken alone, and in conjunction with Article 13 thereof, about the failure of the domestic authorities to enforce the judgment of 2 March 1990.

2. He also complained under Article 14 of the Convention that the failure of the domestic authorities to enforce the final judgment in his favour was due to his Serbian origin and that, therefore, he had been discriminated against.

THE LAW

A. Alleged violation of Article 6 § 1 of the Convention

The applicant complained about the length of the enforcement proceedings and about the non-enforcement of the final court judgment in his favour.

His complaint was examined by the Court under Article 6 § 1 of the Convention, which guarantees, *inter alia*, the right of access to a court and the right to a fair hearing within reasonable time. Article 6 § 1 in its relevant part reads as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing within a reasonable time by [a] ... tribunal...”

The Government disputed the admissibility of this complaint on two grounds. They invited the Court to reject the application as being incompatible *ratione temporis* with the provisions of the Convention. In any event, in their view, the applicant had failed to exhaust domestic remedies as required under Article 35 § 1.

*Jurisdiction ratione temporis***(a) The parties' submissions**

The Government pointed out that the enforcement proceedings complained of had ended on 4 February 1993, that is, before the Convention entered into force in respect of Croatia on 5 November 1997. The decision of the Sisak Municipal Court to terminate the proceedings constituted an instantaneous act, which did not give rise to any continuing situation.

As regards the applicant's correspondence with the Municipal Court after the ratification, the Government argued that he had not instituted any new proceedings, nor had he used any remedy that would have led to a decision falling within the Court's temporal jurisdiction. Moreover, that correspondence was so closely connected with the circumstances under which the enforcement proceedings had been terminated that separating the two would lead to the retroactive application of the Convention.

The applicant argued that the enforcement proceedings at issue had never been terminated and were thus still pending. In any event, the case-file had been destroyed in 1998, that is, after Croatia had ratified the Convention.

(b) The Court's assessment

The Court reiterates that State responsibility for enforcement of final judgments against private persons extends no further than the involvement of State bodies in enforcement proceedings. Once enforcement proceedings are closed in accordance with the national legislation, the responsibility of the State ends (see *Shestakov v. Russia* (dec.), no. 48757/99, 18 June 2002).

In the present case the Court considers it established that the enforcement proceedings at issue ended on 4 February 1993, that is, before the Convention's entry into force in respect of Croatia on 5 November 1997.

The Court further recalls that its temporal jurisdiction is to be determined in relation to the facts constitutive of the alleged interference. The subsequent failure of remedies aimed at redressing that interference cannot bring it within the Court's temporal jurisdiction. In other words, while it is true that from the ratification date onwards all of the State's acts and omissions must conform to the Convention, it imposes no specific obligation on the Contracting States to provide redress for wrongs or damage caused prior to that date (see *Blečić v. Croatia* [GC], no. 59532/00, §§ 77 and 81, to be published in ECHR 2006).

In the Court's view, this reasoning applies *a fortiori* to those cases in which an applicant is attempting to remedy the alleged violation by using means of redress not envisaged in the domestic law of the State concerned.

Having regard to the foregoing, the Court considers that the applicant's unsuccessful attempts after 1999 to continue the enforcement proceedings that already ended – a possibility which has not existed under the relevant

domestic legislation – cannot bring those proceedings within the Court’s temporal jurisdiction.

It follows that this complaint is incompatible *ratione temporis* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4.

In view of this conclusion, it is not necessary for the Court to examine the Government’s further plea of inadmissibility based on the applicant’s failure to exhaust domestic remedies.

B. Alleged violation of Article 14 of the Convention

The applicant also complained that he had been discriminated against claiming that the non-enforcement by the domestic courts of the final judgment in his favour had been due to his Serbian origin. He relied on Article 14 of the Convention, which read as follows:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

The Court notes that Article 14 does not contain a general prohibition of discrimination in respect of any right set forth by law. It relates exclusively to those cases in which an applicant alleges that he or she was discriminated against in respect of a right or freedom set forth in the Convention.

In this connection the Court refers to its findings above according to which the applicant’s complaint under Article 6 § 1 to the Convention is outside its competence *ratione temporis*.

It follows that this complaint is also incompatible *ratione temporis* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4.

For these reasons, the Court by a majority

Discontinues the application of Article 29 § 3 of the Convention;

Declares the application inadmissible.

Søren NIELSEN
Registrar

Christos ROZAKIS
President