CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 37362/02
by Dušan BRAJKOVIČ
against Slovenia

The European Court of Human Rights (Third Section), sitting on 30 September 2004 as a Chamber composed of:

Mr G. RESS, *President*,
Mr I. CABRAL BARRETO,
Mr L. CAFLISCH,
Mr R. TÜRMEN,
Mr J. HEDIGAN,
Mrs M. TSATSA-NIKOLOVSKA,
Mr K. TRAJA, *judges*,
and Mr M. VILLIGER, *Deputy Section Registrar,*

Having regard to the above application lodged on 1st October 2002,
Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Dušan Brajkovič, is a Slovenian national who was born in 1929 and lives in Maribor.

A. The circumstances of the case

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

In 1992, the applicant (together with his wife) instituted proceedings before the Maribor Basic Court, Maribor Unit *(Temeljno sodišče v Mariboru, Enota v Mariboru*) against F. T. in order to recover a debt of 15,000 DEM.

On 3 November 1992 the Maribor Basic Court issued a partial judgment to which F.T. consented, ordering him to pay 8.000 DEM plus interest. On 10 December 1992 this judgement became final.

On 12 January 1993 the same court in the same proceedings ruled in favour of the applicant and ordered the debtor to pay an additional amount of 7,000 DEM plus interests and their costs. On 1 June 1993 the judgment became final.

On 9 May 1994 the applicant instituted execution proceedings with the Maribor Basic Court, Slovenska Bistrica Unit *(Temeljno sodišče v Mariboru, Enota v Slovenski Bistrici*) in order to the secure the attachment of the debtor's real property.

On 9 May 1994 the Basic Court ordered the compulsory sale of the debtor's real property.

Subsequently, the same court ordered the joinder of different proceedings against the same debtor.

In 1995, the reform of the Slovenian judicial system took place and the Slovenska Bistrica Local Court *(Okrajno sodišče v Slovenski Bistrici)* gained jurisdiction in the present case.

In 1996 the applicant filed numerous supervisory complaints with the Ministry of Justice ("MJ") and the Slovenska Bistrica Local Court in respect of the length of the enforcement proceedings.

On 22 March 1996 the MJ responded that the proceedings were within the reasonable time-limit and that on 4 April 1996 a date for a hearing was set.

On 6 January 1997 the court responded that due to the lack of the personnel, the court was not able to handle the cases within a reasonable time.

On 14 April 1998 the applicant again applied at the court for expedition of his enforcement proceedings.

On 19 February 1999 a hearing was scheduled.

On 11 March 1999 a hearing was held.

On 1 February 2000 a hearing scheduled for 3 February 2000 was cancelled due to the illness of the judge.

On 14 March 2000 a hearing scheduled for 16 March 2000 was cancelled and scheduled for 30 March 2000 since the summons for the hearing were not served on time on the debtor.

On 5 July 2000 the court issued a evaluation of the debtor's real property.

On 11 January 2001 the first public auction was held in order to purchase the debtor's real property.

On 15 March 2001 the second public auction was held albeit unsuccessfully since the property could not be sold at half price.

On 21 March 2001 the applicant together with other creditors proposed to the court to purchase the real property at one third of the price.

On 13 June 2001 the Local Court rejected the proposal, since the debtor and some of the mortgagees did not agree with it.

On 20 June 2001 the applicant filed his submissions against the court's decision of 13 June 2001.

On 1 July 2002 the third public auction was held.

On 1 July 2002 the Local Court terminated the proceedings since the debtor's real property could not find a purchaser even at the third auction and at half price.

On 11 July 2002 the applicant appealed against this order.

On 17 December 2002 the Maribor Higher Court rejected his appeal.

The applicant did not indicate that he appealed to the Constitutional Court.

COMPLAINTS

1. Under Article 6 of the Convention, the applicant complained about the length of the indemnity proceedings. Under Article 13 he also claimed that no effective remedies were available to him before the domestic courts.

2. The applicant also complained under Articles 6 § 1 of the Convention about the unfairness of the enforcement proceedings due to the fact that the court terminated the proceedings as the debtor's real property could not find a purchaser even at the third public auction and at half price.

THE LAW

1. Under Articles 6 § 1 and 13 of the Convention the applicant complained that the proceedings before the domestic judicial authorities lasted to long and that he had no domestic remedies at his disposal.

Article 6 provides as far as relevant:

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

Article 13 reads:

" 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. "

The Court considers that it cannot determine the admissibility of the complaints. It is therefore necessary, in accordance with Rule 54 § 3 (b) of the Rules of Court, to give notice of these complaints to the respondent Government.

2. The applicant also complained under Article 6 § 1 of the Convention about the unfairness of the indemnity proceedings.

However, the Court notes that domestic remedies have not been exhausted as required by Article 35 § 1 of the Convention since the applicant failed to lodge an appeal with the Constitutional Court. Therefore, this part of the application should be rejected under Article 35 § 4 of the Convention.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaint concerning the length of proceedings and the effectiveness of the domestic remedies;

Declares the remainder of the application inadmissible.

Mark VILLIGER
Deputy Registrar

Georg RESS
President