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

FIRST SECTION

DECISION

Application no. 6721/16
Branko BRKLJAČ
against Croatia

The European Court of Human Rights (First Section), sitting on 14 June 2022 as a Committee composed of:

Péter Paczolay, *President,*
Raffaele Sabato,
Davor Derenčinović, *judges,*
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 6721/16) 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") on 28 January 2016 by a Croatian national, Mr Branko Brkljač ("the applicant"), who was born in 1957 and lives in Zagreb, and was represented before the Court by Ms G. Franić, a lawyer practising in Zagreb;

the decision to give notice of the application to the Croatian Government ("the Government"), represented by their Agent, Ms Š. Stažnik;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the domestic courts' decision to declare inadmissible the applicant's civil action as being out of time.

2. In December 2012 the Osijek Municipal Court issued an enforcement order against the applicant. The applicant lodged an appeal, whereupon a decision was adopted on 20 February 2013 instructing him to bring a civil action within fifteen days of that decision becoming final to have the enforcement declared inadmissible. The applicant received that decision on 25 February 2013.

3. On 8 April 2013 the applicant asked the Osijek Municipal Court to certify that the decision of 20 February 2013 had become final by adding a stamped endorsement to that effect (*klauzula pravomoćnosti* – "certificate of finality").

4. On 17 April 2013 the Osijek Municipal Court stamped the decision of 20 February 2013 with the certificate of finality indicating that it had become final on 8 March 2013 and sent it to the applicant. He received it on 22 April 2013.

5. On 3 May 2013 the applicant brought a civil action before the Zagreb Municipal Civil Court seeking to have the enforcement declared inadmissible (*tužba radi proglašenja ovrhe nedopuštenom*). However, his action was declared inadmissible as out of time on the grounds that the fifteen-day statutory time-limit for bringing it was to be calculated from 8 March 2013 (the date of the finality of the decision of 20 February 2013), and not from the date on which that decision with the certificate of finality had been served on the applicant. The appellate court dismissed an appeal by the applicant. On 15 October 2015 the Constitutional Court dismissed a constitutional complaint lodged by the applicant as unfounded.

6. The applicant complained under Article 6 § 1 of the Convention that the national courts had deprived him of his right of access to a court in declaring his civil action inadmissible as being out of time. In particular, he argued that the fifteen-day statutory time-limit for bringing the action should have been calculated from 22 April 2013, when he had received the decision of 20 February 2013 with the certificate of finality, and not from the day on which the decision had become final (8 March 2013).

THE COURT'S ASSESSMENT

7. The general principles concerning the right of access to a court are set out in *Zubac v. Croatia* ([GC], no. 40160/12, §§ 76-79, 5 April 2018). The Court reiterates that the rules on time-limits for bringing judicial claims are undoubtedly designed to ensure the proper administration of justice and compliance with, in particular, the principle of legal certainty (see *Mizzi v. Malta*, no. 26111/02, § 83, ECHR 2006-I (extracts), and the references contained therein). What the Court needs to ascertain in a given case is whether the manner in which such rules were applied is compatible with the Convention.

8. The Court notes that section 48(3) of the Enforcement Act, as in force at the material time, expressly provided that the fifteen-day statutory time-limit for bringing a civil action to have an enforcement declared inadmissible started to run on the day on which the decision instructing the enforcement debtor to bring such an action had become final. That provision was cited in the decision of 20 February 2013 whereby the applicant was instructed to bring the civil action.

9. The Court notes that under section 333(1) of the Civil Procedure Act, a decision becomes final when it can no longer be challenged by way of appeal by either party. Thus, as the applicant himself acknowledged, under domestic law, a decision becomes final *ipso jure* independently of the court stamping it with the certificate of finality.

10. The Court notes that the parties may request the court to stamp a decision with a certificate of finality at any time, even years later. In those circumstances the Court accepts that, if the time-limit for bringing a civil action to have the enforcement declared inadmissible were to depend on the time at which the certificate of finality was issued or served to the party, this could seriously disrupt the time-limits in the enforcement proceedings and jeopardise the principle of legal certainty.

11. Relying on the Split County Court's judgment no. Gžp-753/2009 of 24 September 2009, the Government contended that the applicant's civil action would not have been considered as premature if there had been no certificate of finality on the copy of the decision instructing him to bring the action, because in the event of any doubt the civil court would have checked the enforcement case file and verified the date on which the decision had become final or asked the plaintiff to supplement his civil action with a certificate of finality. The Court notes that the applicant did not submit any domestic case-law proving otherwise.

12. It follows that having the certificate of finality stamped on the decision instructing the enforcement debtor to bring a civil action to have the enforcement declared inadmissible was not a requirement for bringing such an action, and that issuing the certificate did not in any way affect the running of the fifteen-day statutory time-limit.

13. Furthermore, the time-limit was not unforeseeable for the applicant, who was represented by a lawyer the entire time. The lawyer made timely enquiries to the competent court and learned that the decision of 20 February 2013 had become final on 8 March 2013. However, instead of bringing the civil action, the lawyer waited until 8 April 2013 to ask the court to issue the certificate of finality and to be served with it, and brought the civil action only on 3 May 2013.

14. It follows that the applicant himself brought about the situation in which his civil action was declared inadmissible as out of time.

15. Accordingly, this application is manifestly ill-founded and must be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 7 July 2022.

Liv Tigerstedt
Deputy Registrar

Péter Paczolay
President