

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

SECOND SECTION

CASE OF JOVOVIĆ v. MONTENEGRO

(Application no. 46689/12)

JUDGMENT

STRASBOURG

18 July 2017

This judgment is final but it may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Jovović v. Montenegro,

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

Paul Lemmens, *President,*
Nebojša Vučinić,
Stéphanie Mourou-Vikström, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having deliberated in private on 27 June 2017,

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

PROCEDURE

1. The case originated in an application (no. 46689/12) against Montenegro lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Montenegrin national, Mr Aco Jovović ("the applicant"), on 3 July 2012.

2. The applicant was represented by Mr M. Vojinović, a lawyer practising in Nikšić. The Montenegrin Government ("the Government") were represented by their Agent, Ms V. Pavličić.

3. On 9 February 2016 the application was communicated to the Government.

4. The Government objected to the examination of the application by a Committee. After having considered the Government's objection, the Court rejects it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1962 and lives in Podgorica.

A. Criminal, civil and enforcement proceedings

6. On 14 April 2003 a certain Ž. L. (hereinafter "the first debtor") and S. S. (hereinafter "the second debtor") were each sentenced to two years' imprisonment for attempted murder of the applicant in January 2003.

7. On an unspecified date, the applicant lodged a claim for damages with the Court of First Instance (*Osnovni sud*) in Nikšić.

8. On 23 June 2008 the aforementioned court ruled in favour of the applicant and ordered the debtors to pay him, jointly, 45,000 euros (EUR) plus statutory interest on account of the non-pecuniary damage suffered.

9. On 27 July 2009 the applicant lodged with the Court of First Instance in Podgorica a request for enforcement of the judgment dated 23 June 2008. Following an order, the applicant amended his request for enforcement on 25 February 2010. The enforcement order itself was then adopted on 31 March 2010.

10. On 24 April 2010 the debtors objected to the enforcement order, but their objections were rejected.

11. On 21 June 2010, 5 July 2010 and 7 July 2010 the enforcement court ordered the debtors to disclose their immovable property. It appeared that no immovable assets had been registered in the debtors' names.

12. On 19 July 2010 the enforcement court requested information from the Ministry of Interior as to whether the debtors owned any motor vehicles. The record showed that the first debtor had had two motor vehicles. However, on 16 February 2011, when a bailiff came to make an inventory, the vehicles had already been sold to a third person.

13. On 7 September 2011 the enforcement court ordered an inventory of the debtors' movable assets.

14. On 11 and 12 April 2012 new inventories of the debtor's moveable assets were carried out. Between April 2012 and January 2013 the enforcement court dealt with the objections to the inventories raised by the debtors and third parties.

15. On 9 January 2013 a decision to auction the debtors' specified movable assets was issued, and the applicant was ordered to deposit EUR 200 for the auction costs. The sale was scheduled for March 2013. However, on 27 February 2013 the second debtor informed the enforcement court that he had donated his movables to a charity. On 12 April 2013 a new inventory of his moveable assets was carried out.

16. On 15 April 2013 the applicant lodged a criminal complaint against the bailiff.

17. On an unspecified date in April the second debtor offered to pay the applicant EUR 15,000, but the applicant rejected this offer. The second debtor subsequently made a new offer in the amount of EUR 25,000, but this offer was also rejected by the applicant.

18. On 6 August 2013 the applicant informed the enforcement court that the second debtor had paid him EUR 31,000 and that he considered the enforcement proceedings in respect of this debtor as final.

19. On 18 October 2013 the enforcement proceedings in respect of the second debtor were formally terminated.

20. As regards the first debtor, the enforcement proceedings continued.

21. In September 2013 the first debtor's specified movable assets were estimated at EUR 1,285.99 and the enforcement court invited the applicant

to take possession of them on 16 September 2013. The applicant failed to do so. He was again invited to take possession of the assets in November 2013 and, once more, in July 2015. However, the applicant again declined to do so on both occasions.

22. On 20 October 2015 the first debtor's father informed the enforcement court that he would pay his son's debt.

23. In December 2015 the applicant was once again invited to take possession of the movable assets belonging to the first debtor. This time, the applicant explicitly rejected the court's offer stating that he did not need those "worthless" assets and that they could have instead been given to a charity.

24. On an unspecified date in December 2015 the applicant notified the enforcement court that he had entered into an agreement with the first debtor and that the first debtor would honor the judgement debt in instalments. However, it appears from the applicant's later submissions to this Court that the first debtor had in fact not paid him anything since he did not have any "valuable assets".

B. Other relevant facts

25. Between March 2011 and March 2012 the applicant availed himself of two domestic remedies concerning the length of proceedings, in particular two requests for review of the duration of the proceedings, in order to have them expedited (*kontrolni zahtjev*) and three actions for fair redress, aimed at obtaining compensation for the excessive duration of the proceedings (*tužba za pravično zadovoljenje*). The Court of First Instance rejected the applicant's requests for review on 30 June 2011 and 15 February 2012, respectively. The applicant unsuccessfully appealed to the High Court, which upheld the First Instance Court's decisions. The High Court in Podgorica also ruled against the applicant's actions for fair redress on 11 May 2011, 24 November 2011 and 10 May 2012, respectively.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION

26. The applicant complained under Articles 6 § 1 and 13 of the Convention about the non-enforcement of the judgment dated 23 June 2008 rendered in his favour. In so far as relevant, these provisions read as follows:

Article 6 § 1

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

Article 13

"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."

A. Admissibility

27. The Government maintained that the applicant's complaints were manifestly ill-founded. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

28. The applicant submitted that the enforcement proceedings had commenced on 27 July 2009, when he had lodged an enforcement request with the Court of First Instance in Podgorica, and were still pending.

29. The Government maintained that the enforcement proceedings had commenced on 25 February 2010, when the applicant had amended his enforcement request. They pointed out that in respect of the second debtor the enforcement proceedings had ended on 18 October 2013, whereas in respect of the first debtor the proceedings continued because of the applicant's failure to collect the movable assets which were awarded to him.

30. The Government further argued that the applicant had contributed to the length of the enforcement proceedings because he had repeatedly lodged requests for review or actions for redress (see paragraph 25 above). The Government thus concluded that the Montenegrin authorities had proceeded in a timely and efficient manner.

2. The Court's assessment

(a) The relevant principles

31. The Court recalls that Article 6 § 1 of the Convention, *inter alia,* protects the implementation of final, binding judicial decisions, which, in States that accept the rule of law, cannot remain inoperative to the detriment of one party. Accordingly, the execution of a judicial decision cannot be prevented, invalidated or unduly delayed (see, among other authorities,

Hornsby v. Greece, 19 March 1997, § 40, *Reports of Judgments and Decisions* 1997‑II).

32. It reiterates that an unreasonably long delay in the enforcement of a binding judgment may breach the Convention (see *Burdov v. Russia*, no. 59498/00, ECHR 2002-III). Furthermore, enforcement proceedings by their very nature need to be dealt with expeditiously (see *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 23, ECHR 2000-IV), and the State has an obligation to organise a system of enforcement of judgments that is effective both in law and in practice (see *Fuklev v. Ukraine*, no. 71186/01, § 84, 7 June 2005).

33. The Court notes that the present case concerns the enforcement of a judgment against two private persons. However, irrespective of whether enforcement is to be carried out against a private or State actor, it is up to the State to take all necessary steps, within its competence, to ensure execution of a final court judgment and, in so doing, to ensure the effective participation of its entire apparatus (see *Boucke v. Montenegro*, no. 26945/06, 21 February 2012), failing which it will fall short of the requirements contained in Article 6 § 1 (see *Felbab v. Serbia*, no. 14011/07, § 62, 14 April 2009).

(b) Application of those principles to the present case

34. The Court observes that, although the applicant lodged his enforcement request on 27 June 2009, a properly completed enforcement request is a precondition for the lawful commencement of any enforcement proceedings. The Court thus cannot but agree with the Government that the enforcement proceedings began on 25 February 2010.

(i) Enforcement proceedings in respect of the first debtor

35. The applicant maintained that the final domestic court decision has remained unenforced in respect of the first debtor. In particular, he stated that the property of the first debtor "has absolutely no value" and that the first debtor never intended to honour the judgment debt.

36. The Government did not contest that. Nevertheless, they pointed out that the applicant had personally contributed to the length of enforcement proceedings by rejecting to take possession of some of the first applicant's movable assets.

37. In accordance with the Court's settled case-law, a failure to enforce a judgment because of a private debtor's indigence cannot be held against the State unless and to the extent that it is imputable to the domestic authorities, for example, to their errors or delay in proceeding with the enforcement (see, *mutatis mutandis*, *Omasta v. Slovakia* (dec.), no. 40221/98, 10 December 2002).

38. Turning to the present case, there is no indication that the first debtor had ever had any immovable property against which the judgment debt

could have been enforced. As regards the first debtor's other property, there is a reference to certain motor vehicles, but even those were sold to a third party before the applicant had formally requested that their sale be barred pending the enforcement. There is certainly no information in the case file that would suggest otherwise.

39. In the light of the above, the Court considers that failure to enforce the judgment with regard to the first debtor cannot be attributed to the State. Accordingly there has been no violation of Article 6 § 1 of the Convention.

(ii) Enforcement proceedings in respect of the second debtor

40. In respect of the second debtor, the Court notes that the enforcement proceedings ended on 18 October 2013. The period to be taken into account thus lasted eight days short of three years and eight months.

41. It has been consistently held that the applicants cannot be blamed for making full use of the remedies available to them under domestic law (see, for example, *Erkner and Hofauer v. Austria*, 23 April 1987, § 68, Series A no. 117). Nonetheless, excessive and inefficient use of available domestic remedies by the applicant might contribute to the length of the impugned proceedings. Even if it is true that in the present case the applicant had made use of available domestic remedies in an attempt to expedite the proceedings, he had done so ineffectively by lodging one remedy after another, without waiting for a decision, thus adding to the length complained of for a total period of nine months (see paragraph 25 above, compare and contrast to *Stibilj v. Slovenia*, nos. 1446/07 and 5667/07, §§ 75-77, 6 October 2015).

42. The Court therefore considers that the domestic judgment under consideration in respect of the second debtor remained unenforced for approximately three years which could be attributed to respondent State's lack of adequate diligence.

43. The Court further notes that such length cannot be justified by the second debtor's insolvency, as the second debtor ultimately paid EUR 31,000 to the applicant. In these circumstances, the Court considers that the length of the enforcement proceedings in respect of the second debtor amounts to a violation of Article 6 § 1 of the Convention.

44. Having reached this conclusion, the Court does not find it necessary to examine essentially the same complaint under Article 13 of the Convention (see mutatis mutandis, *Kin-Stib and Majkić v. Serbia*, no. 12312/05, § 90, 20 April 2010).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. 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."

46. The Court notes that the applicant claimed compensation for non-pecuniary damage in his application form, but that no claim in that regard was made after the communication of the application to the Government.

47. The Court therefore makes no award in this regard and finds no exceptional circumstances which would warrant a different conclusion (see *Nagmetov v. Russia* [GC], no. 35589/08, §§ 76-78, 30 March 2017).

48. Lastly, the applicant failed to submit any quantified claim in respect of costs and expenses. Therefore, the Court makes no award in this respect either.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the enforcement proceedings concerning the second debtor;

3. *Holds* that there has been no violation of Article 6 § 1 of the Convention in respect of the enforcement proceedings concerning the first debtor;

4. *Holds* that there is no need to examine separately the same complaint under Article 13 of the Convention;

5. *Dismisses* the applicant's claim for just satisfaction.

Done in English, and notified in writing on 18 July 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı	Paul Lemmens
Deputy Registrar	President