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

SECOND SECTION

DECISION

Application no. 2545/14
Nikola FRLAN
against Croatia

The European Court of Human Rights (Second Section), sitting on 20 September 2016 as a Chamber composed of:

Işıl Karakaş, *President,*
Julia Laffranque,
Paul Lemmens,
Valeriu Griţco,
Ksenija Turković,
Jon Fridrik Kjølbro,
Georges Ravarani, *judges,*

and Hasan Bakırcı, *Deputy Section Registrar,*

Having regard to the above application lodged on 29 December 2013,

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

1. The applicant, Mr Nikola Frlan, is a Croatian national who was born in 1961 and lives in Zagreb. He was represented before the Court by Mr A. Korljan, a lawyer practising in Zadar.

2. The Croatian Government ("the Government") were represented by their Agent, Ms Š. Stažnik.

A. The circumstances of the case

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

4. On 28 February 1995 the applicant took out a loan with Z. bank (hereinafter "the bank") of 193,400 deutschmarks (DEM). He used his house as security, allowing the bank to register a charge against it.

5. On 6 November 2000 the bank instituted enforcement proceedings against the applicant in the Zagreb Municipal Court (*Općinski sud u Zagrebu*), for the seizure and sale of his house. It was argued that he had failed to repay the loan.

6. On 14 February 2001 the Zagreb Municipal Court granted the bank's request and issued an enforcement order against the applicant. He appealed, arguing that the enforcement order had been declared invalid and that the interest rate on the loan had been miscalculated.

7. On 16 May 2006 the Zagreb County Court (*Županijski sud u Zagrebu*) dismissed the applicant's appeal as being without merit, finding that the statutory conditions for enforcement had been met.

8. On 8 March 2011 the Zagreb Municipal Civil Court (*Općinski građanski sud u Zagrebu* – "the Zagreb Civil Court") held a second public auction for the sale of the house. There was only one bidder, M. The court granted title to the applicant's house to him, on condition that he paid 471,000 kunas (HRK) as the purchase price, which was half of the estimated market value. The decision became final on 30 March 2011, after M. paid the purchase price.

9. On 20 May 2011 the Zagreb Civil Court ordered that the house be transferred to M. The decision was not amenable to appeal.

10. On 21 January 2013 the applicant requested that the enforcement proceedings be stayed until the outcome of criminal proceedings he had instituted against his former representative was known.

11. On an unspecified date the Zagreb Civil Court scheduled the applicant's eviction for 28 February 2013.

12. On 13 February 2013 the applicant requested that the enforcement proceedings be stayed until the dispute with his bank had been settled. He argued that his daughter would have to interrupt her studies in the middle of the academic year and that she was a carer for other members of the household.

13. On 28 February 2013 the Zagreb Civil Court declared the applicant's application inadmissible, finding that the statutory conditions for adjournment had not been met and that he had lost his right to possession of the house when he had received the decision of 20 May 2011. In addition, the court referred to a statement he had given to the court bailiff on 19 November 2012 promising to move out of the house before 1 February 2013 without lodging any further appeal.

14. On 1 March 2013 the judge in charge of the enforcement proceedings held a meeting with the parties' lawyers, the court bailiff and the police. The applicant's representatives were informed that there would be no further announcements regarding the eviction date, but that it would

not take place before 11 March 2013. They were also informed that there would be no further adjournments, and the police were instructed to better prepare themselves.

15. On 6 March 2013 the applicant applied to the Zagreb Civil Court for the judge in charge of the enforcement proceedings to be withdrawn from the case, arguing that he was preparing a "secret eviction".

16. On 2 April 2013 the President of the Civil Court refused that request.

17. On 9 April 2013 the Zagreb Civil Court scheduled the applicant's eviction for 16 April 2013, ordering the court bailiff to execute it. The applicant lodged a constitutional complaint against that decision.

18. On 16 April 2013 the applicant and his family were evicted.

19. On 20 June 2013 the Constitutional Court declared the applicant's constitutional complaint inadmissible as it did not have jurisdiction.

20. On an unspecified date the applicant brought a claim against M. before the Zagreb Civil Court to determine ownership of a garage and some land adjacent to the house. He argued that in the enforcement proceedings M. had bought only the house, not the garage and land.

21. On 29 November 2013 the Zagreb Civil Court dismissed the applicant's claim, arguing that M. had bought the property in its entirety in good faith at the court's public auction.

22. On 9 December 2013 the applicant lodged an appeal against that judgment, which is still pending.

B. Relevant domestic law

23. The relevant provisions of the Obligations Act (*Zakon o obveznim odnosima*, Official Gazette nos. 35/2005, 41/2008, 125/2011) read as follows:

Nullity

Section 322

"(1) A contract that is contrary to the Constitution, mandatory rules or morals shall be declared null and void (*ništetan*) unless the purpose of the breached rule indicates some other sanction or the law in a particular case provides otherwise.

(2) If the conclusion of a contract is prohibited only to one party, the contract shall remain valid, unless the law in a particular case provides otherwise, and the party that has breached the statutory prohibition shall bear the relevant consequences."

Voidable contracts

Section 330

"A contract is voidable (*pobojan*) if a party to it had no legal capacity or entered into the contract under duress (*mane volje*) at the time when it was concluded or where the contract is voidable under this Act or another statute."

COMPLAINT

24. The applicant complained under Article 8 of the Convention that his right to respect for his home had been violated.

THE LAW

25. The applicant complained that his right to respect for his home had been violated. He relied on Article 8 of the Convention, the relevant part of which reads:

> "1. Everyone has the right to respect for his ... home ...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

1. Submissions of the parties

26. The Government submitted that the application had not been lodged within the time allowed by Article 35 § 1 of the Convention. They maintained that the application had been lodged more than six months after he had received the final enforcement order, after title to the house had been granted to M., after the house had passed into M.'s possession and after the applicant had been evicted.

27. They argued further that the applicant had not exhausted domestic remedies, because he had not lodged a constitutional complaint against the enforcement order or brought a civil action to declare the agreement at issue null and void. In constitutional proceedings he could have argued that the agreement was contrary to the Constitution, which guaranteed the "inviolability of one's home". He could also have brought a civil action claiming that the enforcement order on his house was not admissible. In such proceedings, he could have put forward all of the arguments concerning his right to respect for his home. The applicant had also omitted to ask that the proceedings be brought to the *status quo ante* in respect of an appeal against the decision granting title to the house to M.

28. The Government also argued that the grounds for interference with the applicant's right to respect for his home were set out in the Enforcement Act. Interference pursued the legitimate aim of protecting the interests of others, namely the applicant's creditors. They maintained that, by using his house as security for a loan, the applicant had agreed to his house being sold if he failed to comply with his contractual obligations.

29. The applicant replied that he had complied with the six-month rule and had exhausted the available domestic remedies.

30. He also argued that the interference with his right to respect for his home had been unacceptable and that he had already repaid the loan.

2. The Court's assessment

31. The Court does not have to address all the issues raised by the parties because, even assuming that the applicant properly exhausted the available domestic remedies and complied with the six-month time-limit, the application is in any event inadmissible for the following reasons.

32. The applicant in the present case complained that payment of his debt had been enforced by the sale of his home. The Court notes at the outset that he voluntarily used his home as security for a loan. By doing so, he agreed that failure to meet his payments would allow the creditor to enforce the debt by the sale of the applicant's house.

33. The fact that the applicant did not challenge the loan agreement before the national courts in appropriate proceedings implies that he freely entered into the agreement at issue and freely stipulated that the loan could be secured using the house as security. The applicant must therefore have been aware that his house would be sold to pay any outstanding debt if he failed to make the repayments.

34. The sale of the applicant's house in the enforcement proceedings was a consequence of his failure to meet his contractual obligations. Moreover, it was a consequence to which he had expressly agreed.

35. It can therefore be concluded that the applicant agreed and accepted that payment of his outstanding debt would be enforced by the sale of his house.

36. Accordingly, this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 13 October 2016.

Hasan Bakırcı
Deputy Registrar

Işıl Karakaş
President