SECOND SECTION

DECISION

Application no. 50372/20
Alen IVKOVIĆ
against Croatia

The European Court of Human Rights (Second Section), sitting on 25 March 2025 as a Committee composed of:

Gediminas Sagatys*, President*,
Davor Derenčinović,
Juha Lavapuro*, judges*,

and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 50372/20) 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 30 October 2020 by a Croatian national, Mr Alen Ivković ("the applicant"), who was born in 1970, lives in Rijeka and was represented by Mr B. Čolić, a lawyer practising in Rijeka;

the decision to give notice of the complaints concerning the delayed enforcement of a judgment adopted in the applicant's favour and equality of arms in the proceedings before the Constitutional Court to the Croatian Government ("the Government"), represented by their Agent, Ms Š. Stažnik, and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns an interim measure whereby the Constitutional Court, without the applicant having been informed of the proceedings, stayed the enforcement of a judgment ordering a company (the "company") to pay him a sum of money, until it decided on the company's constitutional complaint.

2. By a judgment of 27 February 2020, which was binding and enforceable under domestic law, the High Commercial Court upheld in part and in part reversed the Pazin Commercial Court's judgment of 11 October 2019 and ordered the company to pay the applicant 4,323,684.34 Croatian kunas (HRK; i.e. 573,851 euros (EUR)) with statutory default interest, as well as to reimburse him the costs of the proceedings in the amount of HRK 784,339.35 (EUR 104,100).

3. On 22 April 2020 the applicant instituted enforcement proceedings concerning a part of the judgment debt before the Financial Agency, which seized the requested amount from the company's accounts.

4. Meanwhile, the company concurrently brought several legal remedies against the High Commercial Court's judgment, including the following: (i) it lodged a petition to appeal on points of law with the Supreme Court; (ii) it lodged a constitutional complaint with the Constitutional Court, requesting at the same time also an interim measure to stay the enforcement of the judgment.

5. By a decision of 30 April 2020, the Constitutional Court allowed the company's request and issued an interim measure staying the enforcement of the High Commercial Court's judgment until it decided on the company's constitutional complaint.

6. Having learnt from the media of the company's constitutional complaint and the interim measure request included therein, as well as of the Constitutional Court's decision on the interim measure, on 25 May 2020 the applicant requested the Constitutional Court to provide him with copies of both the constitutional complaint and the decision in question. By a letter of 3 July 2020, the Constitutional Court granted his request and invited him to submit his observations on the company's constitutional complaint, which he did by lodging several submissions. In his submissions of 16 July 2020, he also requested, to no avail, that the measure be lifted. The proceedings concerning the company's constitutional complaint were stayed, pending the outcome of the proceedings before the Supreme Court.

7. By its decision of 27 June 2023, the Supreme Court allowed the company's appeal on points of law, quashed the High Commercial Court's judgment and remitted the case to that court. Thereupon, by a decision of 12 October 2023, the Constitutional Court, noting that the impugned judgment had been quashed, declared the company's constitutional complaint inadmissible, thereby lifting the interim measure.

8. On 26 September 2024 the High Commercial Court quashed the Pazin Commercial Court's judgment of 11 October 2019 (see paragraph 2 above) and remitted the case; the proceedings are currently pending before the first-instance court.

9. In his initial application to the Court of 30 October 2020, the applicant complained, under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 thereto, about the delayed enforcement of the final judgment

of the High Commercial Court adopted in his favour. He also complained under Article 6 § 1 of the Convention that he had not been notified of, or given an opportunity to comment on, the constitutional complaint and the request for an interim measure lodged by the company with the Constitutional Court. In his further submissions to the Court of 10 and 26 October 2023, and of 9 December 2024, concerning new factual information (see paragraphs 7-8 above), the applicant also complained, referring to the same Articles and relying on the Court's findings in the case of *Solomun v. Croatia* (no. 679/11, §§ 60-63, 2 April 2015), that depriving the final judgment in his favour of any legal effect had been in breach of the principle of legal certainty.

THE COURT'S ASSESSMENT

A. Complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 concerning the delayed enforcement of a domestic judgment

10. The Court notes, firstly, that both Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 thereto protect the enforcement of final and binding judgments – not judgments that may be subject to review by a higher court and, eventually, quashed (see *Kural v. Türkiye*, no. 84388/17, § 27, 19 March 2024; *Gjyli v. Albania*, no. 32907/07, § 33, 29 September 2009; and *EVT Company v. Serbia*, no. 3102/05, §§ 46-49, 21 June 2007), irrespective of whether the lower court's decision was already enforceable under domestic law (see *Ouzounis and Others v. Greece*, no. 49144/99, § 21, 18 April 2002, and *Gjyli*, cited above, §§ 32-33).

11. The present case falls within the latter category. In particular, the applicant complained about the delayed enforcement of the High Commercial Court's judgment of 27 February 2020, which under domestic law was binding and enforceable (see paragraph 2 above). However, that judgment was subject to review by the Supreme Court, which quashed it in appeal-on-points-of-law proceedings (see paragraph 7 above). In those circumstances, it cannot be held that the delay on the part of the domestic authorities to implement the judgment in question could be considered incompatible with either Article 6 § 1 of the Convention or Article 1 of Protocol No. 1 thereto (compare also *Kural*, cited above, §§ 27-29, and *OOO Link Oil SPB v. Russia* (dec.), no. 42600/05, 25 June 2009).

12. It follows that 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.

B. Complaint under Article 6 § 1 of the Convention about a breach of the principle of equality of arms

13. In so far as the applicant complained that he had not been notified of, and given an opportunity to comment on, the constitutional complaint and the request for an interim measure lodged by the company with the Constitutional Court, the Court reiterates that the principle of equality of arms, which is one of the elements of the broader concept of a fair hearing, requires that each party must be given the opportunity to have knowledge of and comment on the observations filed or evidence adduced by the other party (see, for example, *Hrdalo v. Croatia*, no. 23272/07, § 34, 27 September 2011). This requirement applies also to the submissions filed in proceedings before the Constitutional Court (see *Gaspari v. Slovenia*, no. 21055/03, § 50, 21 July 2009).

14. However, even in cases in which Article 6 applies to interim measure proceedings, in exceptional cases – where, for example, the effectiveness of the measure sought depends upon a rapid decision-making process – it may not be possible immediately to comply with all of the requirements of Article 6 (see, for example, *Micallef v. Malta* [GC], no. 17056/06, §§ 83-86, ECHR 2009).

15. In the present case, while the company's constitutional complaint lodged with the Constitutional Court, which also included the request for an interim measure, was not initially communicated to the applicant, the Court notes that he was nevertheless notified of it after the enforcement of the High Commercial Court's judgment had been stayed. He also submitted his observations on the constitutional complaint before the Constitutional Court, which eventually declared it inadmissible (see paragraphs 6 and 7 above). It follows that, in respect of the company's constitutional complaint, the principle of equality of arms was fully observed before the Constitutional Court.

16. In respect of the Constitutional Court's decision to grant the company's request and issue the interim measure, even assuming the applicability of Article 6 to the present interim measure proceedings, the Court notes that this decision only ordered a stay of enforcement of the High Commercial Court's judgment and was thus an urgent measure serving to uphold the *status quo*. The Court notes that the applicant was not immediately notified of and given the opportunity to comment on the company's request for interim measures. However, as already noted, the Constitutional Court eventually provided him with copies of both the company's constitutional complaint (which included the interim measure request) and its decision and invited him to submit his observations (see paragraph 6 above) thus giving him an opportunity to argue that the measure should be lifted.

17. He did so on 16 July 2020, some three months after the measure had been imposed, requesting that the Constitutional Court's decision be set aside and the measure be lifted (see paragraph 6 above). The Constitutional Court could have, if it had found his arguments convincing, lifted the measure already at that time. However, having received the applicant's observations on the interim measure which it had requested, the Constitutional Court did not decide to lift the interim measure (see paragraph 7 above).

18. The Court concludes that the applicant was rapidly able to comment on the company's request and ask that the Constitutional Court's decision on the interim measure, upholding the *status quo*, be set aside and the measure be lifted. The present case is thus to be distinguished from the case of *Gaspari* (cited above, § 51), where the constitutional complaints lodged by the other party to the proceedings had never been communicated to the applicant and where the Constitutional Court's decision could not have been subsequently set aside.

19. It follows that this part of the application is also manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

20. In view of the conclusions above, the Court does not find it necessary to examine the Government's remaining objections as to the admissibility.

C. Complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 concerning the alleged breach of the principle of legal certainty

21. The Government submitted that the applicant, to the extent that his complaint concerned the quashing of the High Commercial Court's judgment by the Supreme Court (see paragraphs 2 and 7 above), failed to properly exhaust domestic remedies, as he did not lodge a constitutional complaint against the Supreme Court's decision of 27 June 2023. Having regard to its case-law on the matter (see *Pavlović and Others v. Croatia*, no. 13274/11, § 32, 2 April 2015, with further references), the Court sees no reason to hold otherwise in the present case.

22. It follows that this complaint is inadmissible under Article 35 § 1 of the Convention for non-exhaustion of domestic remedies and must be rejected pursuant to Article 35 § 4.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 2 May 2025.

Dorothee von Arnim Deputy Registrar	Gediminas Sagatys President