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

FOURTH SECTION

DECISION

Application no. 6340/20
Mihad LAVIĆ
against Bosnia and Herzegovina

The European Court of Human Rights (Fourth Section), sitting on 9 November 2020 as a Chamber composed of:

Yonko Grozev, *President,*
Tim Eicke,
Faris Vehabović,
Iulia Antoanella Motoc,
Armen Harutyunyan,
Pere Pastor Vilanova,
Jolien Schukking, *judges,*

and Andrea Tamietti, *Section Registrar,*

Having regard to the above application lodged on 16 January 2020,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Mihad Lavić, is a national of Bosnia and Herzegovina, who was born in 1979 and lives in Hadžići. He was represented before the Court by Mr S. Zaklan, a lawyer practising in Mostar.

A. The circumstances of the case

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

3. The applicant was at the relevant time, and is still, a public servant on the payroll of the Herzegovina-Neretva Canton[1]. On 29 September 2009 and

[1] Bosnia and Herzegovina consists of two entities (the Federation of Bosnia and Herzegovina and the Republika Srpska) and a district (the Brčko District). The Federation

2 July 2012 he obtained domestic judgments ordering the canton to pay him various amounts in respect of unpaid work-related benefits together with default interest at the statutory rate and legal costs. Writs of execution were then issued on 23 February 2011 and 19 June 2014.

4. On 16 September 2015 the applicant obtained a Constitutional Court decision finding a breach of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention and ordering the canton to take the necessary measures with a view to securing the enforcement of all domestic judgments against it within a reasonable time.

5. According to the latest information available to the Court (dated 16 January 2020), none of the judgments indicated in paragraph 3 above have been enforced.

B. Relevant domestic law and practice

6. The relevant domestic law and practice concerning the issue of non-enforcement of domestic judgments against cantons were set out in *Muhović and Others v. Bosnia and Herzegovina* ((dec.), nos. 40841/13 and 12 others, §§ 7-15 and 17, 8 October 2020).

7. In addition, the Herzegovina-Neretva Canton introduced on 28 July 2020 an action plan with a view to securing the enforcement of all domestic judgments against it[2]. The plan states that on 31 December 2019 there were 5,382 unenforced judgments and the debt was about 55,000,000 convertible marks (BAM)[3] (almost 25% of the cantonal budget in 2020). The plan states also that the judgments will be enforced, in chronological order, by 2032.

COMPLAINTS

8. The applicant complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention about the non-enforcement of the judgments against the Herzegovina-Neretva Canton.

THE LAW

9. The applicant complained about the non-enforcement of the judgments given in his favour. The relevant parts of the provisions relied on by him provide as follows:

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of Bosnia and Herzegovina consists of ten cantons, including the Herzegovina-Neretva Canton.

[2] See Official Gazette of the Herzegovina-Neretva Canton no. 5/20.

[3] The convertible mark uses the same fixed exchange rate to the euro that the German mark has (1 euro = 1.95583 convertible marks).

Article 6 § 1 of the Convention

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

Article 1 of Protocol No. 1 to the Convention

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

10. The Court reiterates that whilst it is not open to a State authority to cite lack of funds as an excuse for not honouring a judgment debt (see *Burdov v. Russia*, no. 59498/00, § 35, ECHR 2002-III; *Teteriny v. Russia*, no. 11931/03, § 41, 30 June 2005; and *Jeličić v. Bosnia and Herzegovina*, no. 41183/02, §§ 39 and 42, ECHR 2006-XII), the system of staggering the enforcement of final domestic judgments may be accepted in exceptional circumstances (see *Đurić and Others v. Bosnia and Herzegovina*, nos. 79867/12 and 5 others, § 30, 20 January 2015).

11. In 2017 the Court adopted leading judgments concerning the non-enforcement of judgments against the Zenica-Doboj Canton and the Central Bosnia Canton, finding a breach of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention (see *Kunić and Others v. Bosnia and Herzegovina*, nos. 68955/12 and 15 others, 14 November 2017, and *Spahić and Others v. Bosnia and Herzegovina*, nos. 20514/15 and 15 others, 14 November 2017). It later followed the same approach in cases concerning the non-enforcement of judgments against the Herzegovina-Neretva Canton (see, for example, *Balić and Others v. Bosnia and Herzegovina* [Committee], nos. 44080/16 and 37 others, 27 June 2019).

12. Given the number of similar cases, the Court invited the respondent State, under Article 46 of the Convention (see *Kunić and Others*, § 34, and *Spahić and Others*, § 33, both cited above), to solve the problem that had led to the finding of a breach by securing the implementation of the general measures indicated by the Constitutional Court in this connection. In many cases concerning the non-enforcement of domestic judgments against the Herzegovina-Neretva Canton, the Constitutional Court ordered the canton to take the necessary measures with a view to securing the enforcement of all domestic judgments against it within a reasonable time (see, for example, the Constitutional Court decision mentioned in paragraph 4 above).

13. Turning to the present case, the Court notes that the Herzegovina-Neretva Canton has set a time frame for the enforcement of all domestic judgments against it (see paragraph 7 above). It has undertaken to enforce

all (more than 5,000) judgments, in chronological order, by 2032. In a case about the non-enforcement of domestic judgments against another canton (see *Muhović and Others v. Bosnia and Herzegovina* (dec.), nos. 40841/13 and 12 others, §§ 30-33 and 17, 8 October 2020), the Court held that an enforcement time frame with a longer duration, where the final date was set for 2041, was acceptable and amounted to implementation of the general measures it had indicated. There is no reason to take a different approach in the present case.

14. Accordingly, the Court concludes that the matter has been resolved for the purposes of Article 37 § 1 (b) of the Convention (ibid., § 34).

15. While there is no doubt that the applicant has suffered some non-pecuniary damage because of the delays that have occurred, the Court notes that he is entitled to substantial default interest. In view of the fact that, in Bosnia and Herzegovina, the statutory rate of default interest is significantly higher than the rate of inflation (ibid., § 17), the Court agrees with the Constitutional Court that this will alleviate the applicant's distress at least to some extent (see the Constitutional Court's finding in this connection in its pilot decision of 12 March 2019, quoted in *Muhović and Others*, cited above, § 14). Furthermore, the Court has held in cases concerning structural problems at domestic level that it is not necessary to order that adequate redress be awarded to all persons affected (see, in particular, *Suljagić v. Bosnia and Herzegovina*, no. 27912/02, § 64, 3 November 2009, and *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia* [GC], no. 60642/08, § 149, ECHR 2014). Indeed, the Court's role, after the State has implemented the general measures in conformity with the Convention, cannot be converted into providing individualised financial relief in repetitive cases arising from the same systemic situation (see *Zadrić v. Bosnia and Herzegovina* (dec.), no. 18804/04, 16 November 2010, and *Muhović and Others*, cited above, § 35).

16. In view of the above, the Court finds that it is no longer justified to continue the examination of the present application. Moreover, in accordance with Article 37 § 1 *in fine*, it finds no particular circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the continued examination of the case. Accordingly, the application should be struck out of the Court's list of cases.

17. This conclusion is, however, without any prejudice to the Court's power to restore, pursuant to Article 37 § 2, the present or any other similar applications to the list of cases if the circumstances justify such a course (see *Muhović and Others*, cited above, § 37).

For these reasons, the Court, unanimously,

Decides to strike the application out of its list of cases.

Done in English and notified in writing on 3 December 2020.

Andrea Tamietti Registrar	Yonko Grozev President