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

FOURTH SECTION

DECISION

Application no. 47091/10
Vanja LOMBAR
against Slovenia

The European Court of Human Rights (Fourth Section), sitting on 6 December 2016 as a Committee composed of:

Nona Tsotsoria, *President,*
Krzysztof Wojtyczek,
Marko Bošnjak, *judges,*

and Andrea Tamietti, *Deputy Section Registrar,*

Having regard to the above application lodged on 4 August 2010,

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, Ms Vanja Lombar, is a Slovenian national who was born in 1974 and lives in Kranj. She was represented before the Court by Mr B. Rejc, a lawyer practising in Ljubljana.

2. The Slovenian Government ("the Government") were represented by their Agent, Mrs V. Klemenc, State Attorney.

A. The circumstances of the case

1. Enforcement proceedings against the applicant's father

3. The applicant and her father, J., resided in the same house. According to the public register the house consisted of one unit and one household, and had one connection to the water supply. According to the land registry the house was in J.'s name.

4. On 24 January 2002 the company A., which provided water and other communal services, instituted enforcement proceedings against J.

5. On 1 December 2003 the Ljubljana Local Court issued a writ of execution against J. for the sum of 572 euros (EUR) and granted enforcement of the collection of the money from, *inter alia*, the debtor's movable property.

6. On 27 November 2007 the bailiff entered J.'s house and seized a laptop, a printer, an oil painting, a living room sofa set, a cross trainer, and a gold bracelet.

7. On 24 December 2007 the applicant, represented by a lawyer, B.R., who also represented J. in the impugned enforcement proceedings, lodged an objection as a third party (*ugovor tretjega*). She argued that the seized items (see paragraph 6 above) belonged to her and applied to postpone the enforcement proceedings. She alleged that she was a co-owner of the house and had a separate household.

8. On 29 February 2008 the court ordered the bailiff to postpone the enforcement proceedings in view of the applicant's objection.

9. On 6 March 2008 J., represented by B.R., lodged an objection to annul the finality and enforceability clause (*potrdilo o pravnomočnosti in izvršljivosti*) of the writ of execution of 1 December 2003 (see paragraph 5 above), submitting that the decision had not been properly served on him.

10. On 14 March 2008 the Ljubljana Local Court, with Judge N.B. sitting as a single judge, dismissed the applicant's objection on the basis of section 65 of the Enforcement Act (see paragraph 26 below) and instructed the applicant to bring an action to establish the inadmissibility of the enforcement proceedings in respect of her personal property. The court postponed a decision on costs, which was eventually taken in the contentious proceedings (see paragraph 21 below).

11. On 17 March 2008 the Ljubljana Local Court upheld J.'s objection of 6 March 2008 (see paragraph 9 above) and annulled the finality and enforceability clause of the writ of execution of 1 December 2003, finding that the writ of execution had not been properly served on him.

12. On 8 April 2008 the Ljubljana Local Court annulled the writ of execution of 1 December 2003 in the part allowing enforcement by seizing movable property.

13. On 25 April 2008 the applicant instituted contentious proceedings in accordance with the court's decision of 14 March 2008 (see paragraph 10 above) by bringing an action to establish the inadmissibility of the enforcement proceedings (see paragraphs 18 to 25 below).

14. On 10 July 2008 the Ljubljana Local Court amended the decision of 8 April 2008 (see paragraph 12 above) by adding to its operative part the annulment of the enforcement acts undertaken up to that point. It would appear that the decision was served on the applicant, via her representative, on 19 September 2008.

15. On 30 September 2008, one day after the order of 10 July 2008 had become final, the Ljubljana Local Court issued an order stating that the applicant had a right to retrieve the possessions which had been seized but which she said she owned. It noted that the enforcement acts had been annulled as a result of the annulment of the writ of execution (see paragraphs 12 and 14 above). The decision was served on the applicant's representative on 14 October 2008.

16. Subsequently the applicant sent at least three letters arguing that it had not been her duty to retrieve the objects from the bailiff's storage facility. The bailiff replied by informing her of his working hours and of the fact that he was not authorised to transport the items back to her place (see paragraph 27 below).

17. On 26 February 2010 the applicant picked up the movable property, except for the sofas, which had not been taken from the house, at the bailiff's premises in Grosuplje, approximately 50 km from her home.

2. Contentious proceedings instituted by the applicant

18. On 25 April 2008 the applicant, in accordance with the court's instruction of 14 March 2008 (see paragraph 10 above), brought an action to establish the inadmissibility of the enforcement action in respect of the movable property which she claimed was hers. In addition, she claimed reimbursement of any costs incurred by her in the contentious proceedings and those resulting from the enforcement proceedings related to her third party objection.

19. On 14 July 2008 the court scheduled a hearing for 23 September 2008. However, the hearing was rescheduled because the applicant's representative, B.R., could not be served with the summons.

20. Further to the parties submitting their pleadings, the Ljubljana Local Court held a hearing on 21 October 2008. Referring to the decisions issued in the enforcement proceedings on 10 July and 30 September 2008 respectively (see paragraphs 14 and 15 above), the judge asked the applicant to justify her legal interest in the contentious proceedings. The applicant maintained that she would not withdraw the claim and stated that she explicitly "reserve[d] the right to pursue a compensation claim on account of the seizure of property and it being impossible to enter her house". The applicant argued at the hearing that as she had not been a party to the enforcement proceedings they should not have affected her legal position. The defendant party disputed her arguments, submitting that the applicant had no legal interest to continue the proceedings.

21. On 21 November 2008 the court dismissed the applicant's action. It pointed out that every complainant must have a legal interest in pursuing a claim for such a claim to be admissible. Furthermore, the legal interest must persist throughout the proceedings. While a legal interest was presumed when a claim was lodged following an unsuccessful objection based on

section 64 of the Enforcement Act (see paragraph 26 below), such a presumption was rebutted when the enforcement proceedings giving rise to it had been discontinued, as in this case. In such a situation the aim pursued by the claim had already been achieved by the termination of the enforcement proceedings. The Court further found that the applicant, though not an opposing party in the enforcement proceedings, had nevertheless participated in them and had been served with the decisions affecting her position. However, despite being served with the decision annulling the enforcement acts and being notified of her right to collect the items in question, the applicant had refused to withdraw her claim. The court thus dismissed the claim owing to a loss of legal interest, which entailed that all the costs had to be borne by the applicant, in the same way as if she had been entirely unsuccessful with her claim (see domestic case-law quoted in paragraph 28 below). The Court also pointed out that the applicant could not substantiate her legal interest by referring to a possible civil compensation claim. Such a claim would have to have a different factual and legal basis. In particular, the court pointed out that the concept of inadmissible enforcement proceedings is not the same as unlawful conduct, which is a prerequisite for civil liability in tort. The granting of the applicant's claim would thus not prove unlawfulness on the part of the creditor or other participants in the proceedings, or affect other enforcement proceedings, as such a claim was, by its very nature, limited to a particular set of enforcement proceedings and had also been formulated in such a way in the present proceedings. The Court, relying on section 154 of the Civil Procedure Act (see paragraph 28 below), ordered the applicant to pay the defendant's costs of EUR 789 for the proceedings. The sum included the lawyer's fees for the preparation of the reply to the applicant's claim and of one set of the defendant's pleadings, as well as its representation at the hearing.

22. On 12 December 2008 the applicant lodged an appeal against the decision of 21 October 2008. She argued, *inter alia*, that she had up to that point not been served with any decision annulling the enforcement acts and that she therefore had no reason to withdraw her claim. Furthermore, interlocutory decisions in enforcement proceedings could not affect her position in the contentious proceedings. She also submitted that it was unreasonable to make her bear the costs of the proceedings. While theoretically she could have withdrawn her claim, she had had no reason to do so.

23. On 8 April 2009 the Ljubljana Higher Court dismissed the applicant's appeal, upholding the lower court's decision in respect of loss of legal interest and the obligation to pay the opposing party's costs. Like the lower court, it pointed out that the aim of the contentious proceedings had been achieved by the termination of the enforcement proceedings. It also repeated the principle by which the outcome of contentious proceedings

based on a third party's objection could only have effect within enforcement proceedings, which in this particular case had already been discontinued. The court, referring to copies of the delivery slips, noted that the applicant had received the decisions of 8 April 2008 and 10 July 2008, via her representative, on 19 September 2008 (see paragraph 14 above). It also noted that the delivery slip had explicitly referred to the applicant.

24. The applicant lodged a constitutional complaint, in which she complained that the proceedings had been unfair, and invoked, *inter alia*, Articles 6 and 13 of the Convention.

25. On 1 February 2010 the Constitutional Court dismissed her complaint as manifestly ill-founded. It also disallowed the part relating to the conduct of the Ljubljana Local Court in the enforcement proceedings.

B. Relevant domestic law and practice

26. The relevant provisions of the Enforcement and Securing of Civil Claims Act in force at the relevant time ("the Enforcement Act", Official Gazette no. 51/1998 with amendments) read, in so far as relevant, as follows.

Section 64

"A person who can satisfactorily demonstrate that he has a right over an object of enforcement proceedings which prevents enforcement, can lodge an objection to the enforcement decision by which he asks the court to declare that enforcement in respect of that object is not permissible.

..."

Section 65

"...

If the creditor, within a given time-limit, declares that he disagrees with the objection, the court dismisses the objection.

The person who lodged the objection can, within thirty days of the date on which the order described in the aforementioned paragraph has become final, institute an action to establish that enforcement in respect of that object is not admissible.

...

If the court establishes by a final judgment that an enforcement action which has not yet become final or which has been postponed is not permissible in respect of a certain object, the court stays enforcement proceedings in respect of that object and annuls the writ of execution.

..."

27. In accordance with section 95(2) of the Enforcement Act a debtor is to be informed of his or her right to retrieve items that have been seized after a writ of execution has been annulled.

28. An action for establishing the inadmissibility of an enforcement order in relation to a certain item was from the outset confined to the enforcement proceedings in which the action arose (section 65 of the Enforcement Act, see paragraph 26 above). If the enforcement process was discontinued, the reason for such an action and the legal interest involved ceased to exist and the action was accordingly dismissed, with the result of costs being imposed on the losing party (see, for example, Ljubljana Higher Court decision no. II Cp 1015/2001 of 25 September 2002, Supreme Court's decision no. Ips 647/2007 of 20 November 2008, and Ljubljana Higher Court decision no. II Cp 4217/2008 of 8 April 2009). According to the case-law of the domestic courts such a situation was considered as analogous to the plaintiff's claim being unsuccessful (section 154 of the Civil Procedure Act).

29. The applicant submitted two Higher Court decisions, namely Ljubljana Higher Court decision no. I Cpg 23/2012 of 17 October 2012 and Maribor Higher Court decision no. I Cpg 44/2013 of 28 August 2013, which concerned compulsory composition debt proceedings. In those decisions the courts found that when a claim pursued by way of an action in contentious proceedings was acknowledged by a defendant in compulsory composition proceedings, the action should be dismissed due to a loss of legal interest. As regards the consequences for costs, the Ljubljana Higher Court found that such a decision meant the claim had failed and the defendant could not be made to bear the plaintiff's costs, and should, because he or she had acknowledged the claim, bear his or her own costs. In the Maribor Higher Court decision, the court imposed all the costs on the defendant, noting that the acknowledgment of a claim in compulsory composition proceedings was equivalent to acknowledging a claim in contentious proceedings.

COMPLAINTS

30. The applicant complained that the seizure of her alleged possessions had been in breach Article 1 of Protocol No. 1 to the Convention and that contrary to that Article she had had to bear a disproportionate burden, in particular on account of the costs imposed on her in the contentious proceedings.

31. The applicant further complained under Article 6 § 1 of the Convention of a violation of her right of access to a court, and that the contentious proceedings had been arbitrary, lacked impartiality and had not been adversarial. Lastly, the applicant complained of a violation of Article 13 taken together with Article 1 of Protocol No. 1 to the Convention.

THE LAW

A. Abuse of the right of application

32. The Government argued that the applicant's submissions in her application form that she had been unable to access her property until 26 February 2010 were untrue and misleading and constituted an abuse of the right of application.

33. The applicant replied that she had no intention to mislead the Court and had solely provided her version of events.

34. The Court refers to the principles summarised in its judgment in the case of *Gross v. Switzerland* (no. 67810/10, § 28, ECHR 2013), and notes that the applicant's submissions are not such as to justify a decision to declare the application inadmissible as an abuse of the right of petition. In particular, the applicant submitted to the Court the relevant decisions which made clear that she could have retrieved the items after the enforcements acts had been annulled, had she decided to do so. It accordingly dismisses the Government's objection.

B. As regards the alleged violation of Article 1 of Protocol No. 1 to the Convention

35. The applicant complained of a violation of Article 1 of Protocol No. 1 to the Convention, which reads as follows:

> "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."

1. The parties' submissions

36. The Government argued that the complaint was incompatible *ratione materiae* with the Convention, as no decision had acknowledged the applicant's property rights over the seized items, nor did it appear from the facts that she owned them. Assuming that the applicant had had a possession, the Government argued that the interference with her right to the peaceful enjoyment of her possessions had complied with the requirements of Article 1 of Protocol No. 1 to the Convention. The Government alleged, in particular, that the dismissal of the applicant's claim in the contentious proceedings had been based on valid legislation and jurisprudence, which had been known to the applicant's legal representative. The applicant had

been asked at the hearing to consider the loss of legal interest, but had refused to withdraw her claim.

37. The applicant argued that the seizure of her goods had been unlawful because the writ of execution had been annulled. It had also been a disproportionate measure because the value of the items seized had greatly exceeded the debt, the seizure had lasted two years and three months, and she had had to bear the costs of transportation from the bailiff's facility to her home.

38. The applicant also complained about the dismissal of her contentious proceedings claim aimed at retrieving the items in question and argued that she had had to bear the costs of those proceedings. In that connection, she argued that she had not been served with the relevant decisions from the enforcement proceedings, but had been affected by them.

2. The Court's assessment

39. The Court notes that the applicant's complaint has two aspects. On the one hand, she complained about the seizure of her items and, on the other, she complained about the result of the contentious proceedings. The Court finds it appropriate to deal with those two issues separately. It notes that the findings relating to the second part of the complaint have a bearing on the outcome of the case as regards the first. The Court will accordingly examine the second part of the complaint first.

(a) Complaint relating to the contentious proceedings

40. The Court notes that it has previously found that the imposition of costs of proceedings could, albeit in a different context, fall within the general rule under the first sentence of the first paragraph of Article 1 of Protocol No. 1 (see *Cindrić and Bešlić v. Croatia*, no. 72152/13, § 92, 6 September 2016, and *Hoare v. the United Kingdom* (dec.), no. 16261/08, § 51, 12 April 2011). It will proceed on the assumption that this provision is applicable to the present case.

41. As regards the requirement of lawfulness (see *Iatridis v. Greece* [GC], no. 31107/96, § 58, ECHR 1999-II), the Court takes note of the relevant legal provisions and their interpretation by the domestic courts, which support the Ljubljana Local Court's conclusion in the present case (see paragraphs 21, 23, 26 and 28 above). It notes that the decisions submitted by the applicant relate to compulsory composition debt proceedings (see paragraph 29 above) and therefore arguably differ from the present subject. Referring to the foregoing, the Court considers that the applicant, or at least her counsel, should have been aware that after the annulment of the enforcement acts her claim in the contentious proceedings would likely be dismissed for lack of a legal interest and, consequently, the costs of the opposing party imposed on her.

42. The Court observes that for an interference with a property right to comply with Article 1 of Protocol No 1, it must have a legitimate aim. It notes that costs are a well-established feature of the justice system and are intended, among other things, to act as a disincentive to unnecessary litigation (see *Hoare*, cited above, § 59). The Court therefore considers that the costs order in the present case pursued a legitimate aim of ensuring the proper administration of justice and protecting the rights of others (see, *mutatis mutandis*, *Cindrić and Bešlić*, cited above, § 96).

43. The Court further observes that in order to be compatible with the general rule set forth in the first sentence of the first paragraph of Article 1, an interference with the right to the peaceful enjoyment of possessions must strike a "fair balance" between the demands of the general interests of the community and the requirements of the protection of the individual's fundamental rights (see *Beyeler v. Italy* [GC], no. 33202/96, § 107, ECHR 2000-I). It observes that in the present case the costs order was imposed on the applicant because she had been unsuccessful in the contentious proceedings. Those proceedings would in principle have allowed the applicant to retrieve the items seized in her father's house (see paragraphs 18 to 25 above) but became redundant once the applicant had been allowed to retrieve them following the annulment of the enforcement acts in the enforcement proceedings against her father (see paragraphs 14 and 15 above).

44. The applicant was alerted to that fact by the court at the hearing of 21 October 2008, but refused to withdraw her claim, arguing that her position should not be affected by the outcome of the enforcement proceedings (see paragraph 20 above). The Court notes that, contrary to the applicant's allegations (see paragraphs 22 and 38 above), the applicant's representative had, by 14 October 2008 at the latest, become aware of the applicant's right to retrieve the items in question (see paragraph 15 above), but she nevertheless insisted on her claim in the contentious proceedings (see paragraph 20 above). That resulted in it being dismissed, with the consequence that the opposing party's costs were imposed on her. The Court further notes that the applicant did not argue that a withdrawal of her claim, which was an obvious and explicitly acknowledged alternative available to her (see paragraphs 20 to 22 above), would have led to the same distribution of costs. In those circumstances, the Court considers that there was nothing arbitrary in the way in which the applicable rules on costs were applied to the applicant's case such as to upset the fair balance between the conflicting interests at stake.

45. Consequently, this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

(b) Complaint concerning the seizure

46. The Court considers it unnecessary to provide a definitive answer as to whether the seized items were the applicant's possessions (see the Government's objection, paragraph 36 above) as, in any event, it finds the related complaint inadmissible for the following reasons.

47. The Court notes that by the decision of 8 April 2008 the domestic court found that the writ of execution had been invalid owing to a procedural mistake, namely inappropriate service (see paragraphs 11 and 12 above). The applicant, or at least her representative, became aware of that decision no later than 19 September 2008 (see paragraphs 14 and 23 above). The Court further notes that the applicant was by 14 October 2008 at the latest aware via her representative that she had the right to retrieve the seized items (see paragraph 15 above). The applicant did not institute any proceedings based on the annulment of the enforcement acts. Nevertheless, she lodged her application with the Court only on 4 August 2010, which is clearly more than six months after she had been allowed to retrieve the seized items. The Court sees no reason why the fact that the applicant refused to pick up her items until 26 February 2010 (see paragraph 17 above) should have an impact on the running of the six-month time-limit.

48. It is true that the applicant lodged her application with the Court within six months of the termination of the contentious proceedings (see paragraph 25 above). However, it reiterates that where an applicant avails himself or herself of an apparently existing remedy and only subsequently becomes aware of circumstances which render the remedy ineffective, it may be appropriate for the purposes of Article 35 § 1 to take the start of the six-month period as the date when the applicant first became or ought to have become aware of those circumstances (see *Edwards v. the United Kingdom* (dec.), no. 46477/99, 7 June 2001, and *Varnava and Others v. Turkey* [GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, § 157, ECHR 2009-V).

49. The Court, referring to its above findings (see paragraphs 43 and 44 above), notes that after the annulment of the enforcement acts, and even more so after the order to retrieve the items addressed to the applicant and served on her lawyer on 14 October 2008 (see paragraph 15 above), the contentious proceedings became pointless, had no reasonable prospect of success and could thus not interrupt the running of the six-month time-limit with respect to the applicant's complaint about the seizure of her items.

50. In those circumstances, the Court finds it appropriate to take the applicant's notification of her right to retrieve the items (see paragraph 15 above) as the start of the six-month period.

51. Accordingly, this part of the application must be declared inadmissible for failure to comply with the six-month time-limit, pursuant to Article 35 §§ 1 and 4 of the Convention.

C. Other complaints

52. The applicant complained under Article 6 § 1 of the Convention that the rejection of her claim for the reimbursement of costs by the Ljubljana Local Court had amounted to a denial of her right of access to a court and had been arbitrary, that the contentious proceedings had not been adversarial, and that the judge in the contentious proceedings had lacked impartiality. Lastly, she complained under Article 13 of the Convention that she had not had access to an effective legal remedy in respect of her complaint under Article 1 of Protocol No. 1 to the Convention.

53. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

54. It follows that this complaint 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 12 January 2017.

Andrea Tamietti	Nona Tsotsoria
Deputy Registrar	President