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

SECOND SECTION

DECISION

Application no. 79590/12
Ivana MARINKOVIĆ
against Croatia

The European Court of Human Rights (Second Section), sitting on 14 June 2016 as a Committee composed of:

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

Having regard to the above application lodged on 22 November 2012,

Having regard to the declaration submitted by the respondent Government on 7 October 2015 requesting the Court to strike the application out of the list of cases and the applicant's reply to that declaration,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

1. The applicant, Ms Ivana Marinković, is a Croatian national, who was born in 1985 and lives in Beograd. She was represented before the Court first by Mrs B. Paprić, a lawyer practising in Osijek, and subsequently by Mr I. Vuković, a lawyer practising in Belgrade.

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

3. The application had been communicated to the Government.

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

5. On 9 June 1999 the applicant, who was a minor at the time and represented by her mother, instituted enforcement proceedings with the Split Municipal Court (*Općinski sud u Splitu*) against her father, seeking payment

of the child maintenance ordered by a previous final and enforceable judgment of the same court of 29 January 1999.

6. In the period between 22 December 2006 and 15 January 2015 the applicant availed herself four times of the available domestic remedies for the length of proceedings. The last domestic decision in this respect was adopted on 10 July 2015. Each time the relevant courts found a violation of her right to a hearing within a reasonable time and ordered that the enforcement be completed within specific time-limits, ranging from five to eight months. In addition, those courts awarded the applicant the total of 17,700[1] Croatian kunas in compensation for the excessive length of those enforcement proceedings.

7. The enforcement was not completed within the specified time-limits and the enforcement proceedings are still pending.

8. Meanwhile, on 21 July 2009 the applicant lodged her first application with the Court. By a decision of 29 March 2011 the Court struck the case out of its list of cases following a friendly settlement between the parties under which the applicant agreed to waive any further claims against Croatia in respect of the facts giving rise to that application against an undertaking by the Government to pay her 4,650 euros (see *Papić v. Croatia* (dec.), no. 41489/09, 29 March 2011).

COMPLAINTS

9. The applicant complained under Article 6 § 1 of the Convention and Article 1 of the Protocol No. 1 about the excessive delays in the above enforcement proceedings.

10. She also complained under Article 13 of the Convention that she did not have an effective remedy in respect of her length complaint.

THE LAW

A. Alleged violation of Article 6 § 1 of the Convention

11. The applicant complained that the delays in the enforcement proceedings had been incompatible with the "reasonable time" requirement laid down in Article 6 § 1 of the Convention. She also complained under Article 1 of the Protocol No. 1 to the Convention that, owing to those delays, she had not received the child maintenance awarded to her by the final and enforceable judgment of 29 January 1999 (see paragraph 5 above).

[1] Approximately 2,310 euros.

12. The Court, having regard to its case-law (see, notably, *Panetta v. Italy*, no. 38624/07, §§ 29 and 31, 15 July 2014), considers that this part of the application falls to be examined under Article 6 § 1 of the Convention only. That Article reads as follows:

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

13. After the failure of attempts to reach a friendly settlement, by a letter of 7 October 2015 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by this part of the application. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

14. The declaration provided as follows:

> "(a) acknowledges that in the instant case there has been a violation of the applicant's right to a fair trial within a reasonable time, guaranteed by the Article 6 § 1 of the Convention; and
>
> (b) is ready to pay to the applicant 1,665 euros to cover any and all non-pecuniary damage as well as costs and expenses, plus any tax that may be chargeable to the applicant.
>
> This sum will be converted into Croatian kunas at the rate applicable on the date of payment, and will be payable within three months from the date of notification of the decision by the Court pursuant to Article 37 § 1 of the European Convention on Human Rights to the account indicated by the applicant. In the event of failure to pay this sum within the said three-month period, the Government undertake to pay simple interest on it, from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points. The payment will constitute the final resolution of the case."

15. By a letter of 2 November 2015, the applicant indicated that she was not satisfied with the terms of the unilateral declaration because the enforcement proceedings in question were still pending.

16. The Court reiterates that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified, under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

> "for any other reason established by the Court, it is no longer justified to continue the examination of the application".

17. It also reiterates that in certain circumstances, it may strike out an application under Article 37 § 1 (c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued.

18. To this end, the Court has examined the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (*Tahsin Acar v. Turkey* (preliminary objections) [GC],

no. 26307/95, §§ 75-77, ECHR 2003-VI; *WAZA Sp. z o.o. v. Poland* (dec.), no. 11602/02, 26 June 2007; and *Sulwińska v. Poland* (dec.), no. 28953/03, 18 September 2007).

19. The Court has established in a number of cases (see, for example, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII; *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 69-98, ECHR 2006-V; and *Wende and Kukówka v. Poland*, no. 56026/00, 10 May 2007), including those brought against Croatia (see, for example, *Horvat v. Croatia*, no. 51585/99, ECHR 2001-VIII; *Kozlica v. Croatia*, no. 29182/03, 2 November 2006; and *Pavić v. Croatia*, no. 21846/08, 28 January 2010), its practice concerning complaints about the violation of one's right to a hearing within a reasonable time.

20. Having regard to the nature of the admissions contained in the Government's declaration, as well as the amount of compensation proposed – which is consistent with the amounts awarded in similar cases – the Court considers that it is no longer justified to continue the examination of the application (Article 37 § 1 (c)).

21. Moreover, in light of the above considerations, and in particular given the clear and extensive case-law on the topic, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the application (Article 37 § 1 *in fine*).

22. Finally, the Court emphasises that, should the Government fail to comply with the terms of their unilateral declaration, the application could be restored to the list in accordance with Article 37 § 2 of the Convention (see *Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

23. In view of the above, it is appropriate to strike the case out of the list in so far as it relates to the above complaint.

B. Alleged violation of Article 13 of the Convention

24. The applicant also complained that the domestic remedies she had resorted to in order to complain about the delays in the above enforcement proceedings had been ineffective in that the orders to complete the enforcement within the specified time-limits had not been complied with. She relied on Article 13 of the Convention, which reads as follows:

> "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."

25. The Court reiterates that Article 13 requires a remedy in domestic law only where an individual has an "arguable claim" that one of his or her rights or freedoms set forth in the Convention has been violated (see, for example, *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 52,

Series A no. 131). However, given its above findings according to which it is no longer justified to continue the examination of the application in so far as it concerns the applicant's main complaint under Article 6 § 1 of the Convention, the Court considers that her related complaint under Article 13 thereof cannot be considered "arguable" within the meaning of the Court's case-law (see *Đuzel v. Croatia* (dec.), no. 43443/11, 19 May 2015).

26. It follows that this complaint is inadmissible under Article 35 § 3 (a) of the Convention as manifestly ill-founded and must therefore be rejected pursuant to Article 35 § 4 thereof.

For these reasons, the Court, unanimously,

Takes note of the terms of the respondent Government's declaration under Article 6 § 1 of the Convention and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike that part of the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention.

Declares the remainder of the application inadmissible.

Done in English and notified in writing on 7 July 2016.

Hasan Bakırcı
Deputy Registrar

Nebojša Vučinić
President