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

SECOND SECTION

DECISION

Application no. 13308/19
Jasminka MENDEŠ
against Croatia

The European Court of Human Rights (Second Section), sitting on 3 September 2024 as a Committee composed of:

Lorraine Schembri Orland*, President*,
Frédéric Krenc,
Davor Derenčinović*, judges*,
and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 13308/19) 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 4 March 2019 by a Croatian national, Ms Jasminka Mendeš ("the applicant"), who was born in 1970, lives in Vinkovci and was represented by Mr D. Štivić, a lawyer practising in Županja;

the decision to give notice of the application to the Croatian Government ("the Government"), represented by their Agent, Ms Š. Stažnik;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the applicant's complaint about the allegedly excessive costs of civil proceedings.

2. In June 1999, in order to secure the payment of a tax debt, the Tax Administration recorded a security interest (*založno pravo*) for the amount of approximately 11,000 euros (EUR) on property listed in the land register as owned by the applicant's mother.

3. After the applicant's mother's tax debt significantly increased, and she moved to Germany and no longer had any income in Croatia, in 2004 the mother gifted that property and another plot to the applicant.

4. In 2005 the State lodged an action against the applicant (*actio Pauliana*), seeking to establish that the two property gift contracts concluded between the applicant and her mother produced no effect towards the State and to allow the sale of the said properties in order to settle her mother's tax debt of about EUR 40,000.

5. During the proceedings, the applicant admitted that she had been aware of her mother's outstanding tax debt but contested the State's claim arguing that it had become time-barred. She also sought both financial and construction expert opinions to be obtained and insisted on being served with tax decisions containing a certificate of finality.

6. In 2014 the applicant's mother reached a settlement with the tax authorities and paid off her tax debt.

7. Consequently, the State withdrew its civil action against the applicant but sought reimbursement of the costs of the proceedings. The applicant consented to the withdrawal but sought reimbursement of her costs from the State.

8. By a judgment of 19 December 2017, the first-instance court ordered the applicant to pay the State costs of proceedings in the amount of 45,500 Croatian kunas (HRK; equivalent to 6,038 euros) holding that the action had been withdrawn after the claim had been settled, given that the applicant's mother had settled her tax debt in relation to which the civil proceeding had been instituted.

9. The applicant's remedies against the above decisions were unsuccessful. The final domestic decision in the case – that of the Constitutional Court – was served on her on 9 November 2018.

10. Meanwhile, in 2017 the applicant gifted all of the above-mentioned properties (see paragraph 3) back to her mother.

11. The applicant complained, relying on Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 thereto, about the excessive costs of the proceedings and the allegedly arbitrary nature of the domestic courts' decisions in that respect.

THE COURT'S ASSESSMENT

12. The Court considers it unnecessary to address the Government's objections as to the admissibility, as the application is in any event inadmissible for the following reasons.

A. General principles

13. The relevant general principles concerning the compliance of unreasonably high costs of proceedings with the right of access to a court and the right to a fair trial under Article 6 § 1 of the Convention, and with the right to peaceful enjoyment of possessions under Article 1 of Protocol No. 1

to the Convention have been summarised in *Čolić v. Croatia* (no. 49083/18, §§ 39-44 and 67-69, 18 November 2021), *Cindrić and Bešlić v. Croatia* (no. 72152/13, §§ 91-109 and 116-118, 6 September 2016), *Klauz v. Croatia* (no. 28963/10, §§ 76-97 and 108-110, 18 July 2013, and *Karahasanoğlu v. Turkey*, nos. 21392/08 and 2 others, §§ 134-136, 16 March 2021).

14. In particular, the Court has previously held that unreasonable costs of proceedings may indeed raise an issue under the Convention primarily in cases in which a party succeeds with the grounds of the civil claim, but not with its entire amount and where the costs of proceedings thus "consume" a large portion or even the entirety of the financial award in the case (see *Čolić*, § 46, and *Klauz*, § 76, both cited above). The Court has further accepted that high litigation costs may exceptionally also raise an issue in cases in which a party has been completely unsuccessful with the grounds of the claim, in situations where that party could for some reason not predict his or her own prospects of success (see *Čolić*, cited above, § 47).

B. Alleged violation of Articles 6 § 1 and 13 of the Convention

15. Unlike the above-cited previous cases against Croatia which concerned costs of proceedings imposed on plaintiffs (see paragraph 13 above), the present case concerns costs imposed on the applicant as a respondent in civil proceedings. For this reason, and bearing in mind that Article 6 § 1 is to be considered a *lex specialis* in relation to Article 13 (see, for example, *Kardoš v. Croatia*, no. 25782/11, § 63, 26 April 2016), the Court will examine the applicant's complaint from the perspective of the fair hearing requirement as guaranteed under Article 6 § 1 of the Convention (compare *Karahasanoğlu*, cited above, § 136).

16. In the present case, the State instituted civil proceedings against the applicant contesting two gift contracts which she had concluded with her mother, and which could have prevented the tax authorities from settling the mother's outstanding tax debt (see paragraph 4 above). Under section 283(2) of the Obligations Act in force at the relevant time, such an *actio Pauliana* could only be brought against a third party with whom or for whose benefit the contested transaction had been undertaken, and not against the debtor personally. For that reason, the State could bring this type of legal action solely against the applicant and not against her mother.

17. The central issue in the present case is the fact that the State withdrew its civil action and that the applicant was ordered to reimburse the litigation costs of the State's representation by the State Attorney's Office, although she as the respondent did not settle the plaintiff's claim personally because the debt in question was in fact settled through an agreement between the applicant's mother as the debtor and the tax authorities.

18. The Court notes in this connection that section 158(1) of the Civil Procedure Act ("the CPA") provides that a plaintiff who withdraws a civil

action is required to reimburse the respondent's costs of proceedings, unless the action was withdrawn immediately after the respondent had satisfied the plaintiff's claim. In the latter case, the respondent has to reimburse the costs of proceedings to the plaintiff.

19. The Court reiterates that it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law. This applies in particular to the interpretation by courts of rules of a procedural nature. The Court's role is confined to ascertaining whether the effects of such an interpretation are compatible with the Convention (see *Čolić*, cited above, §§ 47-48).

20. The applicant maintained that the State did not withdraw the action immediately after the debt had been settled. In that connection, the Court notes that when the competent tax authorities adopted their decision settling the debt in administrative proceedings, the civil proceedings had been pending on appeal. Once the second-instance court quashed the first-instance judgment and remitted the case precisely with a view to establishing whether the debt had been settled, and the competent tax authorities at the next hearing confirmed that there had no longer been an outstanding tax debt on the part of the applicant's mother, the State withdrew its action 17 days later, and the applicant did not object to that withdrawal. It can thus not be said that the domestic courts' conclusion that the withdrawal had been "immediate" had been arbitrary or manifestly unreasonable.

21. As to whether it had been possible in the given circumstances to interpret the mother's settlement of the tax debt as the applicant's satisfying the State's claim in the civil proceedings, the Court notes that the Supreme Court has held that for the exception provided in section 158(1) of the Civil Procedure Act (see paragraph 18 above) to apply, it was sufficient that the debt was paid either by the respondent as the debtor or by an interested third party (see the Supreme Court's decision no. Rev 1013/04-2 of 7 March 2006 submitted by the Government, but also the Supreme Court's more recent decisions Rev-744/2010 of 13 October 2010, Revx-794/12 of 30 January 2013 and, most recently, Rev 240/2023 of 28 November 2023).

22. In view of the foregoing, as well as the fact that the applicant and her mother had been represented by the same lawyer in the various proceedings against them and had thus been fully aware of all the relevant circumstances, the Court finds that the conclusion of the domestic courts that the applicant had satisfied the claim by having her mother as the debtor settle the debt is neither arbitrary nor inconsistent with previous practice of the domestic courts in similar cases.

23. Furthermore, the Court agrees with the Government's assertion that the applicant herself caused the action by accepting a gift from her mother, being fully aware that her mother had had an outstanding tax debt (see paragraph 5 above) and that she had no other income or property from which that debt could be settled. It can thus not be said that the State's civil

action against the applicant had been malicious or frivolous (see *Karahasanoğlu*, cited above, § 138). Moreover, the applicant should have known that contesting the State's claim lacked reasonable prospects of success on the merits and that she risked incurring legal costs by engaging in lengthy civil proceedings (see, by converse implication, *Cindrić and Bešlić*, cited above, § 107).

24. Instead, the applicant litigated the case before the first-instance court for a number of years proposing numerous evidence and undertaking actions which undoubtedly increased the overall costs of the proceedings (see paragraph 5 above). In this connection, the Court does not accept the applicant's argument that she had proposed a stay of the civil proceedings until the decision on her mother's partial tax debt write-off had been taken, since she had only proposed such a stay seven months before the decision had actually been taken, during which period only one hearing was held.

25. As to the calculation of the costs, the Court notes that their amount did not appear unreasonably high compared to the value of the subject matter in dispute and the evidence that had been presented at the applicant's request. The fact that part of her mother's debt had meanwhile become time-barred did not have a significant impact on the amount of the costs she had ultimately been ordered to pay.

26. In sum, although the proceedings in question did not end with a substantive decision on the merits, they did essentially end in the plaintiff's favour, because the debt which was the subject of the dispute had been settled by the debtor (see, *mutatis mutandis*, *Karahasanoğlu*, cited above, § 136).

27. The foregoing considerations are sufficient to enable the Court to conclude that in the circumstances of the case at hand, the responsibility for the litigation costs was determined by the domestic courts in a fair and adversarial manner.

C. Alleged violation of Article 1 of Protocol No. 1 to the Convention

28. It was undisputed between the parties that the costs order against the applicant had constituted an interference with her right to peaceful enjoyment of possessions. However, the said interference was lawful, in that it was based on section 158 of the CPA, and pursued the legitimate aim of a proper administration of justice and protection of the rights of others (compare, *Cindrić and Bešlić*, cited above, §§ 96-97).

29. As regards the proportionality of the said measure, for the same reasons as those stated above in respect of Article 6 § 1 of the Convention (see paragraphs 16-26), the Court finds that in the circumstances of the present case the domestic courts' decisions as to the costs of the proceedings were not disproportionate to the legitimate aim pursued and that they did not violate the applicant's property rights.

D. Conclusion

30. It follows that the present application is inadmissible under Article 35 § 3 (a) of the Convention as manifestly ill-founded and that it must be rejected pursuant to Article 35 § 4 thereof.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 26 September 2024.

Dorothee von Arnim Deputy Registrar	Lorraine Schembri Orland President