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

SECOND SECTION

DECISION

Application no. 15430/18
Ivana PAJTAK SPEVAN
against Croatia

The European Court of Human Rights (Second Section), sitting on 21 May 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. 15430/18) 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 26 March 2018 by a Croatian national, Ms Ivana Pajtak Spevan ("the applicant"), who was born in 1995, lives in Cestica and was represented by Mr T. Juričan, a lawyer practising in Varaždin;

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 application concerns the applicant's inability to enforce a decision on costs adopted in criminal proceedings.

2. The applicant's mother and two other members of her family were injured parties (*oštećenici*) in criminal proceedings against a certain D.G. They were all represented by the same lawyer. By a first-instance judgment of 13 September 2006, which became final and enforceable on 3 June 2008, the accused was convicted and ordered to pay 19,215 Croatian kunas (HRK), equivalent to approximately 2,550 euros (EUR), on account of the costs of

the injured parties' legal representation. However, in its judgment the criminal court did not indicate the names of the injured parties, but only the name of their lawyer.

3. On 27 January 2009 the applicant's mother alone, represented by the same lawyer, applied for enforcement of the decision on costs contained in the criminal court's judgment. On 15 April 2011 the enforcement court dismissed her application for enforcement on the grounds that the judgment did not specify the names of the injured parties and that it was therefore unclear who the creditor was. The applicant's mother appealed, arguing that the judgment contained all the relevant information for it to be enforced. By a decision of 3 November 2011, the Zagreb County Court dismissed her appeal and upheld the first-instance decision.

4. Meanwhile, the applicant's mother asked the criminal court to rectify its judgment. On 1 June 2011 the first-instance criminal court did so and listed the names of the injured parties in the operative part of the judgment concerning the decision on costs. Upon the convict's appeal, on 12 October 2011 the second-instance court quashed the first-instance decision and remitted the case for a fresh examination as it found that:

- the Code of Criminal Procedure allowed only corrections of a transcript of a judgment and not of the original, and precluded rectification of a judgment after it became final;
- the criminal court's judgment was sufficiently clear as to whom the costs had been awarded.

5. The applicant's mother then, on 12 December 2011, withdrew her request for rectification and on 8 March 2013 instituted civil proceedings against the State, seeking compensation for the damage sustained by judicial malpractice. Her claim was dismissed on 22 January 2016 by the first-instance court, which found that the applicant essentially complained of a wrong application of the law by the judges who had ruled in the above criminal or enforcement proceedings, for which they could not be considered liable. It also noted that she had failed to lodge an appeal against the criminal court's judgment which did not specify the injured parties' names. On 28 March 2017, the first-instance judgment was upheld by the Varaždin County Court. The applicant, who took over the civil proceedings after her mother's death on 29 March 2016, then lodged a constitutional complaint, in which she complained of her mother's inability to enforce the decision on costs due to the ill-founded decision of the enforcement court. By a decision of 8 November 2017, served on the applicant's representative on 27 November 2017, the Constitutional Court declared her constitutional complaint inadmissible.

6. Before the Court the applicant complained, relying on Article 6 § 1 of the Convention, about the inability to enforce the final decision on costs adopted in the criminal proceedings.

THE COURT'S ASSESSMENT

7. The Government raised several objections as to the admissibility arguing, *inter alia*, that the applicant's mother had failed to exhaust domestic remedies. In particular, the Government submitted that the applicant's mother should have lodged a constitutional complaint against the second-instance decision in the enforcement proceedings complained of (see paragraph 3 above), and provided case-law examples suggesting that this remedy had been available against such type of decisions.

8. The Court notes that the applicant's mother indeed did not lodge a constitutional complaint against the Zagreb County Court's decision of 3 November 2011 (see paragraph 3 above), a remedy applicants are in principle required to use in order to exhaust domestic remedies before lodging applications with the Court against Croatia (see, for example, *Vrtar v. Croatia*, no. 39380/13, § 72, 7 January 2016, and *Šimecki v. Croatia*, no. 15253/10, §§ 29 and 33, 30 April 2014).

9. The applicant did not claim that this remedy was not available or that it was ineffective. Having regard to the case-law examples provided by the Government, and to its case-law on the matter (see the previous paragraph), the Court sees no reason to hold otherwise.

10. Instead of lodging the constitutional complaint, the applicant's mother brought a civil action for compensation against the State (see paragraph 5 above), a remedy which pursued a different aim from that of allowing her to enforce the final decision on costs (compare *Tarbuk v. Croatia*, no. 31360/10, § 33, 11 December 2012, and *Peruško v. Croatia*, no. 36998/09, § 56, 15 January 2013). Moreover, by her civil action she, essentially, contested the lawfulness of the decisions adopted in the criminal and enforcement proceedings (see paragraphs 2-3 and 5 above). However, because of the *res judicata* principle, these decisions could have been challenged only by using the relevant remedies available in those proceedings. Her civil action was therefore a remedy which, in the given circumstances, lacked any prospect of success and, consequently, cannot be considered effective. The Court is accordingly not convinced by the applicant's argument that the constitutional complaint would have been declared inadmissible if her mother had not brought the civil action beforehand.

11. It follows that the present application is inadmissible under Article 35 § 1 of the Convention for non-exhaustion of domestic remedies and that it must therefore be rejected pursuant to Article 35 § 4 thereof.

12. In view of this conclusion, the Court does not find it necessary to examine the Government's remaining objections as to the admissibility.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 13 June 2024.

Dorothee von Arnim Deputy Registrar	Lorraine Schembri Orland President