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

FIRST SECTION

DECISION

Application no. 5670/16
Alan PRAUNSPERGER
against Croatia

The European Court of Human Rights (First Section), sitting on 11 January 2022 as a Committee composed of:

Erik Wennerström, *President,*
Lorraine Schembri Orland,
Ioannis Ktistakis, *judges,*

and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 5670/16) against Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 19 January 2016 by a Croatian national, Mr Alan Praunsperger, who was born in 1948 and lives in Rab ("the applicant") and who was represented by Mr H. Vukić, a lawyer practising in Rijeka;

the decision to give notice of the complaints concerning non-enforcement and equality of arms to the Croatian Government ("the Government"), represented by their Agent, Ms Š. Stažnik, and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT-MATTER OF THE CASE

1. On 28 September 2001 the applicant applied to the Opatija Municipal Court for enforcement of the same court's judgment ordering housing co-operative O. ("the debtor") to pay him a certain amount of money. He ultimately sought enforcement by seizure and sale of a flat, the ownership of which was contested by a certain B.M. in concurrent civil proceedings instituted on 21 August 2012 in which the applicant was the defendant.

2. In the course of the enforcement proceedings, the sale of the flat scheduled for 20 July 2015 was postponed by the Constitutional Court, upon B.M.'s constitutional complaint and a request for interim measure.

3. On 19 April 2016 the Supreme Court in the concurrent civil proceedings declared the enforcement inadmissible finding that the flat in question had passed from the debtor to B.M. before the applicant had applied for enforcement. The interim measure was lifted on 25 May 2016 and the enforcement proceedings were eventually discontinued on 16 September 2016.

4. The applicant complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, first about the delayed enforcement, and then of the non-enforcement of the Opatija Municipal Court's judgment in his favour. He also complained under Article 6 § 1 of the Convention that he had not been notified of, or given the chance to comment on, the constitutional complaint and the request for an interim measure lodged by B.M.

THE COURT'S ASSESSMENT

A. Alleged violation of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1 on account of non-enforcement of a domestic judgment

5. In his initial application to the Court of 19 January 2016 the applicant complained of the delayed enforcement of the Opatija Municipal Court's judgment in his favour, that is, of the excessive length of the enforcement proceedings in question. He did not complain of the concurrent civil proceedings in which the Supreme Court eventually declared that enforcement inadmissible. He mentioned those proceedings only in passing suggesting that B.M. had instituted those proceedings but had later abandoned his civil action.

6. It was only in his observations of 18 October 2017 that the applicant complained of the outcome of those civil proceedings, which had ended on 11 November 2016, when the Constitutional Court notified the applicant's representative of its decision dismissing his constitutional complaint lodged against the Supreme Court's judgment of 19 April 2016.

7. It follows that, in so far as the applicant's enforcement-related complaint under Article 6 § 1 of the Convention and Article of Protocol No. 1 concerns non-enforcement of the Opatija Municipal Court's judgment, he failed to comply with the six-month time-limit. In this regard it should be noted that a complaint is characterised by the facts alleged in it and not merely by the legal grounds or arguments relied on (see, among many other authorities, *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 113-114, 20 March 2018). The Government's objection as to

the admissibility based on non-compliance with the six-month time-limit must therefore be accepted.

8. To the extent that the applicant may still be understood to complain not only of non-enforcement as such but also of the excessive length of the enforcement proceedings, the Court notes that the applicant already complained under Article 6 § 1 and Article 13 of the Convention of their length and the lack of an effective remedy in that respect in a previous application no. 28286/10. In a decision of 28 May 2013 the Court struck that application out of its list on the basis of a friendly settlement under which the applicant had 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 him 6,580 euros to cover any non-pecuniary damage as well as costs and expenses (see *Praunsperger v. Croatia* (dec.), no. 28286/10, 28 May 2013).

9. In such circumstances the applicant is entitled to complain only of the excessive length of the enforcement proceedings in the period after the Court's strike-out decision of 28 May 2013. However, their length in that period was largely dependent on the length of the concurrent civil proceedings for declaring the enforcement inadmissible. Those civil proceedings in that period lasted three years and four months, and in total four years and two months, at four levels of jurisdiction which cannot be considered excessive. Moreover, during those proceedings the Constitutional Court ordered the postponement of the sale of the flat, thereby effectively staying the enforcement proceedings.

10. In view of the above, the Court finds that this complaint is inadmissible under Article 35 §§ 1 and 3 (a) of the Convention for non-compliance with the six-month rule and as manifestly ill-founded, and that it must therefore be rejected pursuant to Article 35 § 4 thereof.

B. Alleged violation of Article 6 § 1 on account of the breach of the principle of equality of arms

11. The Court reiterates that the principle of equality of arms, which is one of the elements of the broader concept of a fair hearing, requires that each party must be given the opportunity to have knowledge of and comment on the observations filed or evidence adduced by the other party (see, for example, *Hrdalo v. Croatia*, no. 23272/07, § 34, 27 September 2011). However, in exceptional cases – where, for example, the effectiveness of the measure sought depends upon a rapid decision-making process – it may not be possible immediately to comply with all of the requirements of Article 6 (see, for example, *Micallef v. Malta* [GC], no. 17056/06, § 86, ECHR 2009).

12. In this regard the Court notes that B.M. lodged a constitutional complaint together with a request for interim measure to postpone the enforcement on 8 July 2015 and that the Constitutional Court issued the

requested measure six working days later, on 17 July 2015, that is, merely three days before the scheduled sale of the flat in question (see paragraph 2 above). In these circumstances the Court agrees with the Government that there was simply not enough time to notify the applicant of B.M.'s constitutional complaint or his request for interim measure, and to give him an opportunity to comment on those submissions.

13. It is also to be noted that on 5 April 2016 the applicant urged the Constitutional Court to decide B.M.'s constitutional complaint as soon as possible so that the interim measure could be lifted. As a response, on 11 April 2016 the Constitutional Court prompted the Supreme Court to deliver a decision in the concurrent civil proceedings, which the Supreme Court did eight days later, on 19 April 2016.

14. This suggests that nothing prevented the applicant from addressing the Constitutional Court earlier, that is, immediately after learning of the reasons for postponement of the sale of the flat in question. It further suggests that the applicant could have addressed the Constitutional Court by presenting his arguments as to why the imposition of the interim measure had not been justified and asked that it be lifted even before the decision on B.M.'s constitutional complaint.

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

16. In view of this conclusion, the Court does not find it necessary to examine the Government's remaining objection as to the admissibility, namely that, based on the *Micallef* criteria (see *Micallef*, cited above, §§ 84-85), Article 6 § 1 of the Convention was not applicable to the proceedings before the Constitutional Court concerning the interim measure.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 3 February 2022.

Liv Tigerstedt Deputy Registrar	Erik Wennerström President