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

FOURTH SECTION

DECISION

Application no. 38636/17
Petar RODIĆ
against Bosnia and Herzegovina

The European Court of Human Rights (Fourth Section), sitting on 9 November 2020 as a Chamber composed of:

Yonko Grozev, *President,*
Tim Eicke,
Faris Vehabović,
Iulia Antoanella Motoc,
Armen Harutyunyan,
Gabriele Kucsko-Stadlmayer,
Ana Maria Guerra Martins, *judges,*

and Andrea Tamietti, *Section Registrar*,

Having regard to the above application lodged on 18 May 2017,

Having regard to the observations submitted by the Government of Bosnia and Herzegovina ("the Government") and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Petar Rodić, is a citizen of Bosnia and Herzegovina who was born in 1950 and lives in Bosanska Krupa. He was represented before the Court by Mr N. Maglajlić, a lawyer practising in Sarajevo.

2. The Government were represented initially by their Deputy Agent at the time, Ms S. Malešić, and subsequently by their acting Agent at the time, Ms V. Bjelica-Prutina.

A. The circumstances of the case

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

4. The applicant had an occupancy right to a flat in Sarajevo owned by Š.D. (see paragraphs 17-20 below).

5. On 1 November 2006 Š.D. lodged a civil claim with the Sarajevo Municipal Court ("the Municipal Court") against the applicant, seeking the termination of the applicant's right to use the flat and his eviction. Š.D. based his claim on the Housing Act 1984, submitting that the applicant had not been using the flat for a continuous period of more than six months (see paragraph 18 below).

6. On 6 April 2009 the Municipal Court allowed Š.D.'s claim, terminated the contract relating to the applicant's occupancy right and ordered the applicant to vacate the flat. On 15 June 2011 the Sarajevo Cantonal Court ("the Cantonal Court") upheld that judgment.

7. On 24 April 2012 the Supreme Court of the Federation of Bosnia and Herzegovina ("the Supreme Court") allowed an appeal on points of law by the applicant, overturned the judgments of 6 April 2009 and 15 June 2011 (see paragraph 6 above) and dismissed the eviction claim. That decision was served on the applicant on 29 May 2012.

8. In the meantime, on 10 May 2012 the applicant had been evicted.

1. Enforcement proceedings against Š.D.

9. On 30 May 2012 the applicant instituted proceedings against Š.D. for the enforcement of the Supreme Court's judgment (*prijedlog za dozvolu protivizvršenja*), seeking repossession of the flat in view of the fact that the enforceable document on the basis of which he had been evicted had been annulled (see paragraph 7 above).

10. On 14 February 2013 the Municipal Court rejected his application, in accordance with section 57 of the Enforcement Procedure Act 2003 (see paragraph 22 below), finding that enforcement was not possible on account of the transfer of title to the flat in question, because Š.D. had in the meantime gifted the flat to his son, A.D. The applicant was instructed to pursue civil proceedings against the new owner. That decision was confirmed by the Cantonal Court on 25 April 2014.

11. On 22 May 2014 the applicant lodged a constitutional appeal, relying on Articles 6 and 8 of the Convention and Article 1 of Protocol No. 1 to the Convention.

12. On 11 January 2017 the Constitutional Court dismissed the applicant's constitutional appeal as manifestly ill-founded. It held in particular that there had been no legal obstacles to Š.D.'s transfer of ownership of the flat. In that connection, the applicant had failed to use available domestic remedies for the protection of third-party interests in the Land Registry. The applicant had the possibility of applying for the entry of a notice in the Land Registry concerning the pending court proceedings (*zabilježba spora*) and/or a restriction on any disposition (*ograničenje raspolaganja*), which would have prevented the transfer of the flat.

2. Enforcement proceedings against the new owner

13. On 11 June 2014 the applicant instituted proceedings against A.D., the new owner of the flat in question (see paragraph 10 above), seeking the enforcement of the Supreme Court's judgment of 24 April 2012 (see paragraph 7 above).

14. On 6 November 2014 the Municipal Court rejected his application, finding that A.D. lacked the legal capacity to be a defendant in those proceedings. The applicant was again instructed to institute civil proceedings against A.D. with a view to establishing the latter's obligation to allow repossession of the flat (see paragraph 10 above).

15. On 3 August 2017 the Cantonal Court upheld the decision of 6 November 2014 (see paragraph 14 above). The court emphasised in particular that the enforceable document which had established the applicant's right to recover possession of the flat had been issued in respect of Š.D., who was no longer the owner of the flat. The document did not give the applicant the right to seek enforcement against the new owner. The applicant had to institute civil proceedings against the new owner to establish his right to recover possession of the flat.

16. On 13 October 2017 the applicant lodged a constitutional appeal. On 10 September 2019 the Constitutional Court dismissed his appeal as manifestly ill-founded.

B. Relevant domestic law

1. Housing legislation governing occupancy rights

17. In the former Socialist Federal Republic of Yugoslavia, nearly all flats were under the regime of "social ownership" – a type of ownership which did not exist in other socialist countries, but was particularly highly developed in the former Yugoslavia. Flats were generally built by socially owned enterprises or other public bodies for allocation to their employees, who became "occupancy right holders". Until 1974, when the Housing Act 1974 came into force, occupancy rights could be awarded in respect of both socially and privately owned flats. Subsequently, while it was no longer possible to award occupancy rights in respect of flats in private ownership, the pre-existing occupancy rights in respect of such flats were preserved.

18. The rights of both the allocation right holders (public bodies which nominally controlled the flats) and the occupancy right holders were regulated by the Housing Act 1984 (*Zakon o stambenim odnosima*, which is still in force in Bosnia and Herzegovina). Occupancy rights could be set aside only in court proceedings (section 50 of the Act) on limited grounds, the most important of which was failure by the occupancy right holders to physically use their flats for their own housing needs for a continuous period of at least six months, without justified grounds.

19. On 6 December 2000 all occupancy rights ceased to exist. The holders of occupancy rights in respect of socially owned flats were entitled to purchase their flats under favourable conditions. If they did not purchase the flats, they became tenants. However, the holders of occupancy rights in respect of privately owned flats could not purchase their flats (section 47(1) of the Privatisation of Flats Act 1997). It would appear that their situation continued to be regulated by the relevant provisions of the Housing Act 1984 and that they became "protected tenants" (*zaštićeni stanari*).

20. For more information on occupancy rights in the former Yugoslavia, see *Đokić v. Bosnia and Herzegovina* (no. 6518/04, §§ 5-10, 27 May 2010); and for information on occupancy rights over privately owned flats, see *Raljević v. Bosnia and Herzegovina* ((dec.), no. 32148/11, §§ 24 and 25, 27 January 2015).

2. Enforcement Procedure Act 2003

21. Section 27(1) of the Enforcement Procedure Act 2003 (*Zakon o izvršnom postupku*, Official Gazette of the Federation of Bosnia and Herzegovina, nos. 32/03, 52/03, 33/06, 39/06 and 39/09) provides that an enforceable document is valid for enforcement purposes if it contains, *inter alia*, an indication of a creditor and a debtor.

22. If the enforceable document is annulled, the debtor is entitled to request the creditor to put things back in the position they would have been in had the enforcement not taken place (*zahtjev za protivizvršenje*), within the same enforcement proceedings (section 54 of the Act). Such a request will not be accepted if factual and legal changes have occurred which have made restoration of the previous situation impossible (*nemogućnost protivizvršenja* – section 57 of the Act). Applications for enforcement in relation to real estate must be accompanied by proof of ownership from the Land Registry (section 70 of the Act).

3. Land Registration Act 2003

23. Section 2 of the Land Registration Act 2003 (*Zakon o zemljišnim knjigama*, Official Gazette of the Federation of Bosnia and Herzegovina, nos. 58/02, 19/03 and 54/04) provides that a notice (*zabilježba*) is an entry concerning circumstances and facts affecting a registered estate. It may concern, *inter alia*, pending court proceedings.

24. A restriction on disposition in respect of a registered estate is only valid if entered in the Land Registry (section 9 of the Act).

COMPLAINT

25. The applicant complained under Articles 6 and 8 of the Convention about the non-enforcement of the Supreme Court's judgment of 24 April 2012.

THE LAW

26. The applicant considered that the non-enforcement of the Supreme Court's judgment of 24 April 2012 (see paragraph 7 above) had violated his rights under Articles 6 and 8 of the Convention.

In so far as relevant, these provisions read as follows:

Article 6 § 1 of the Convention

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

Article 8 of the Convention

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. The parties' submissions

27. The Government argued that the applicant had not made use of the remedies available to him under domestic law. The applicant had had the possibility of protecting his interest by requesting that a notice (*zabilježba spora*) concerning the eviction proceedings and a restriction on the disposition of the title be entered in the Land Registry, as observed by the Constitutional Court (see paragraph 12 above). The enforcement court was not competent to examine the validity of the gift agreement and the applicant had had the possibility of bringing a civil action in the appropriate court for that purpose. The applicant had further failed to institute civil proceedings against the new owner of the flat seeking repossession of the flat in question, as instructed by the enforcement court (see paragraphs 10 and 14 above).

28. The applicant maintained his arguments. He submitted in particular that the gift agreement (see paragraph 10 above) had been a fictitious agreement, concluded in bad faith with the sole purpose of preventing the enforcement of the Supreme Court's judgment of 24 April 2012 and his

return to the flat. The applicant further argued that, this notwithstanding, the change in ownership could not have affected his right to use the flat.

1. The Court's assessment

29. The general principles concerning the rule of exhaustion of domestic remedies were restated in *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014). In particular, States are dispensed from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system. Those who wish to invoke the supervisory jurisdiction of the Court as concerns complaints against a State are thus obliged to use first the remedies provided by the domestic legal system. To be effective, a remedy must be capable of remedying directly the state of affairs complained of and must offer reasonable prospects of success. However, the existence of mere doubts as to the prospects of success of a remedy which is not obviously futile is not a valid reason for failing to exhaust that avenue of redress (ibid., §§ 70 and 74).

30. Turning to the present case, the Court notes that the applicant was evicted from the flat pursuant to a court decision which was subsequently overturned by the Supreme Court (see paragraph 7 above). However, as ownership of the flat had in the meantime been transferred to a third party, the applicant's application for enforcement of the Supreme Court's judgment was rejected. The enforcement court explained that the transfer of title made the enforcement impossible and instructed the applicant to institute civil proceedings against the new owner of the flat (see paragraphs 10 and 14 above). The applicant failed to do so.

31. The Court further notes, as the Constitutional Court also stated, that the applicant had the possibility of preventing any disposition of the flat in question by applying for an entry to that effect in the Land Registry (see paragraphs 12, 23 and 24 above).

32. The applicant has used neither of those remedies and has not shown that they were for any reason inadequate or ineffective in the particular circumstances of his case. The Court sees no special circumstances exempting him from the obligation to use them (see *Akdivar and Others v. Turkey*, 16 September 1996, § 67, *Reports of Judgments and Decisions* 1996-IV).

33. In view of the above, the Court considers that the application must be rejected for non-exhaustion of domestic remedies pursuant to Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 3 December 2020.

Andrea Tamietti Registrar	Yonko Grozev President