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

SECOND SECTION

DECISION

Application no. 7011/19
Jadranka STRANCARIĆ
against Croatia

The European Court of Human Rights (Second Section), sitting on 9 July 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. 7011/19) 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 30 January 2019 by a Croatian national, Ms Jadranka Strancarić ("the applicant"), who was born in 1960 and lives in Zagreb and who was represented by Mr K. Čurin, a lawyer practising in Zagreb;

the decision to give notice of the complaint concerning the lack of impartiality to the Croatian Government ("the Government"), represented by their Agent, Ms Š. Stažnik, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the alleged lack of impartiality of the Constitutional Court in deciding the applicant's constitutional complaint.

2. By a first-instance judgment of the Zagreb Municipal Civil Court dated 2 December 1996 ("the 1996 judgment"), the applicant and her late husband were ordered to pay a debt to a certain S.K. Their appeal was declared inadmissible as having been lodged out of time, and the 1996 judgment thus became final and enforceable. The applicant then lodged a motion to quash

the certificate of enforceability of that judgment, arguing that she had never received the court decision concerning her appeal, but her motion was dismissed by the first-instance court and she was ordered to pay the costs of those proceedings to S.K. It appears that the applicant did not lodge an appeal against the latter decision. All the above decisions were given by Judge A.A., acting as a single judge.

3. During the proceedings concerning the validity of the certificate of enforceability of the 1996 judgment (see paragraph 2 above), the applicant's attorney Z.N. complained to the president of the Zagreb Municipal Civil Court about Judge A.A.'s conduct. He submitted that Judge A.A. had disrespected him by alluding that he had been "skilled in forging signatures", and had also refused to properly note his objection to the content of the minutes of the hearing, noting that his knowledge of civil procedural law had surely been superior to that of Z.N. In his submission, Z.N. indicated that a copy of the request for recusal of Judge A.A., allegedly lodged by the applicant in 1999, was enclosed. The applicant did not submit a copy of that request to the Court.

4. By a letter of 16 October 2001, the president of the Zagreb Municipal Civil Court notified Z.N. that Judge A.A. had denied that he had intended to offend him and that the complaint disclosed no appearance of disrespectful behaviour.

5. Subsequently, S.K. initiated two sets of enforcement proceedings against the applicant, seeking payment of the 1996 judgment debt and of the costs of the proceedings concerning the validity of the certificate of enforceability (see paragraph 2 above). By two writs of execution, adopted by the Zagreb Municipal Civil Court in 2001 and 2005 respectively, the enforcement by way of sale of the applicant's house was allowed.

6. Meanwhile, in a concurrent set of proceedings before the Zagreb Municipal Civil Court, a bank also initiated enforcement against the applicant seeking payment of a loan which had been secured by mortgage on her house. The first-instance court issued a writ of execution in 2000, ordering sale of the house. On appeal, the second-instance court instructed the applicant to institute civil proceedings against the bank and request that the enforcement be declared inadmissible, which she did.

7. After the enforcement proceedings initiated by S.K. and the bank were joined and transferred to the Novi Zagreb Municipal Court, the applicant requested postponement of the enforcement pending the outcome of the civil proceedings to declare the enforcement initiated by the bank inadmissible (see paragraph 6 above). Her request was refused and her appeal against that decision was dismissed.

8. In her constitutional complaint lodged under section 63 of the Constitutional Court Act, the applicant complained about the writ of execution concerning the bank's claim (see paragraph 6 above), arguing that it violated her right to a fair trial, home and property and requested that it be

postponed. In passing, she mentioned that those enforcement proceedings also concerned the debt she owed to S.K. (see paragraphs 2, 5 and 7 above), without providing any further details. She did not mention that the enforcement in that respect was ordered on the basis of the 1996 judgement, nor called into question its lawfulness.

9. The Constitutional Court dismissed her complaint by a decision of 7 November 2018 sitting in a panel of six judges, including Judge A.A. The decision was served on the applicant on 19 November 2018.

10. Meanwhile, between 2005 and 2007, the applicant lodged two criminal complaints against S.K., Judge A.A., several other judges and various officials who had been involved in the civil and enforcement proceedings against her, accusing them of collusion. The Zagreb County State Attorney's Office rejected her complaints and her subsequent motion to institute investigations against those persons was declared inadmissible on formal grounds in 2007.

11. In 2017 and 2018, the applicant complained to the Croatian Parliament, the Ministry of Justice and the Commission for the Prevention of Conflicts of Interest ("the Commission") about the conduct of Judge A.A. in the civil proceedings against her (see paragraph 2 above). The Croatian Parliament inquired with the State Attorney's Office, which confirmed that the applicant's allegations were essentially the same as those stated in her criminal complaints which had been dismissed (see paragraph 10 above). The Ministry of Justice notified the applicant that it was not competent to undertake any action with regard to her complaints, as they concerned the lawfulness of a final court judgment.

12. In its decision of 12 October 2018, the Commission decided not to initiate proceedings against Judge A.A., because the complaint concerned a period in which he had not held a public office under the Commission's purview. According to the delivery instruction, the Commission's decision was published on its website and delivered to Judge A.A. electronically.

13. Before the Court, the applicant complained, under Article 6 § 1 of the Convention, that the Constitutional Court in her case had not been impartial because of the involvement of Judge A.A. who had already been involved in the proceedings at an earlier stage and against whom both the applicant and her attorney Z.N. had previously lodged criminal and other complaints.

THE COURT'S ASSESSMENT

14. The Court does not find it necessary to examine the Government's preliminary objections, as the present case is in any event inadmissible for the following reasons.

15. The general principles concerning the impartiality of tribunals have been set out in *Denisov v. Ukraine* [GC], no. 76639/11, §§ 61-63, 25 September 2018.

16. In the present case, the applicant considered that Judge A.A.'s participation in the proceedings before the Constitutional Court failed to meet the requirements of impartiality both under the subjective and the objective test. Her concerns stemmed from the fact that he had delivered the 1996 judgment, which eventually gave rise to the enforcement proceedings before the Novi Zagreb Municipal Court (see paragraphs 2, 5 and 7 above), which were examined by the Constitutional Court in a panel including Judge A.A. (see paragraph 9 above). Moreover, he had been well aware of various complaints she had lodged against him (see paragraphs 10-12 above) and, having received the Commission's decision just days before deciding her constitutional complaint, he must have acted with prejudice. She also noted that the complaint lodged by her attorney Z.N. (see paragraphs 3-4 above) could not be regarded as having been submitted strictly on his behalf but also hers.

17. The Court notes that the applicant's complaint regarding the existence of personal bias of Judge A.A. rested on the assumption that he had been aware of the complaints lodged against him. However, it appears that he could have known only of two such complaints: the one lodged by the applicant's attorney Z.N. and the one lodged by the applicant with the Commission, as there was nothing to suggest that he was notified of the decisions concerning the remaining complaints (see paragraphs 10-11 above) or that he was otherwise aware of them.

18. From the Commission's decision, the identity of the person who had lodged the complaint could not be discerned, as it was only indicated that the decision had been adopted with regard to a "non-anonymous" complaint lodged against Judge A.A. in connection with his conduct in a specified set of proceedings before the Zagreb Municipal Civil Court. Neither the names of the parties to those proceedings nor their subject-matter had been specified. It thus seems far-fetched that from the contents of that decision Judge A.A. could have remembered who the applicant was and realised that he was about to decide on her constitutional complaint, especially since in her constitutional complaint the applicant made no reference to the 1996 proceedings or judgment (see paragraph 8 above).

19. Be that as it may, the Court finds that this circumstance in itself is not capable of rebutting the presumption of Judge A.A.'s impartiality under the subjective test (see *Kyprianou v. Cyprus* [GC], no. 73797/01, § 119, ECHR 2005-XIII).

20. As regards the objective test, the applicant presented no evidence to suggest that Judge A.A. had expressed any views concerning her complaint with the Commission, let alone displayed hostility or a wish to retaliate (see *Rustavi 2 Broadcasting Company Ltd and Others v. Georgia*, no. 16812/17, §§ 358-361, 18 July 2019; and contrast *Tocono and Profesorii Prometeişti v. Moldova*, no. 32263/03, §§ 28-33, 26 June 2007).

21. Furthermore, as to the complaint lodged by the applicant's attorney Z.N., it is true that Judge A.A.'s alleged animosity towards the former could be perceived as motivating personal bias towards the applicant and thus call into question his impartiality (see, *mutatis mutandis*, *Škrlj v. Croatia*, no. 32953/13, §§ 38-41, 11 July 2019). However, Judge A.A. denied any intent of insulting Z.N. and, after due examination, the president of the Zagreb Municipal Civil Court found no issues (contrast *Škrlj*, cited above). What is more, the applicant appears not to have challenged the decision rejecting the motion to quash the certificate of enforceability of the 1996 judgment, which was adopted in the proceedings in relation to which attorney Z.N. had lodged his complaint, even though she maintained that she had sought that Judge A.A. be disqualified as early as 1999 (see paragraphs 2 and 3 above). In addition, it cannot be overlooked that a period of some 17 years had passed between the lodging of that complaint and the adoption of the Constitutional Court's decision. In light of the above, the Court is not persuaded that a complaint which had been dismissed almost two decades ago, in which period Judge A.A. rose to the position of a Constitutional Court judge, would have such a long-lasting effect as to ground objectively justified misgivings as to his impartiality (see, *mutatis mutandis*, *Rustavi 2 Broadcasting Company Ltd and Others*, cited above, § 362).

22. Turning to the applicant's argument concerning Judge A.A.'s previous functional involvement in the civil proceedings before the Zagreb Municipal Civil Court, the Court notes that in those proceedings the issue to be decided concerned the existence of the applicant's obligation to settle a debt owed to S.K. In contrast, the issue to be decided in the proceedings before the Constitutional Court concerned the constitutionality of the writ of execution ordering that the applicant's house be sold in order to repay a loan debt owed to a bank (see paragraphs 6 and 8 above). Arguing that that writ had been unconstitutional, the applicant asked that the enforcement proceedings before the Novi Zagreb Municipal Court be postponed. The only connection between these two issues lay in the fact that S.K.'s debt was also to be settled in the enforcement proceedings before the Novi Zagreb Municipal Court by way of sale of the applicant's house (see paragraph 7 above). However, in her constitutional complaint the applicant in no way referred to the 1996 judgment. Instead, she merely noted that the enforcement by way of sale of her house had also been ordered because of her debts toward S.K.

23. Therefore, it cannot be said that the substantive issues examined by the Zagreb Municipal Civil Court and the Constitutional Court were intrinsically linked so as to call into question the impartiality of Judge A.A. (see *Warsicka v. Poland*, no. 2065/03, §§ 40-45, 16 January 2007; and contrast *Scerri v. Malta*, no. 36318/18, §§ 69-77, 7 July 2020; and *Indra v. Slovakia*, no. 46845/99, §§ 48-55, 1 February 2005).

24. Against this background, the applicant's argument that Judge A.A. should have withdrawn of his own motion from the Constitutional Court proceedings cannot be accepted. None of the absolute grounds for withdrawal resulting in the automatic disqualification of the judge concerned, as set out in section 71 of the Civil Procedure Act which applied in the proceedings before the Constitutional Court, obtained in the present case (see *Mežnarić v. Croatia*, no. 71615/01, §§ 21, 22 and 28, 15 July 2005). Moreover, there is nothing to suggest that Judge A.A. should have informed the president of the Constitutional Court of the existence of circumstances casting doubt on his impartiality in accordance with section 72(2) of the Civil Procedure Act, nor can his failure to do so be taken as indicative of his lack of impartiality (contrast, *mutatis mutandis*, *Škrlj*, cited above, §§ 43-45; *Golubović v. Croatia*, no. 43947/10, §§ 51-59, 27 November 2012; and *Tocono and Profesorii Prometeişti*, cited above, § 31).

25. Having regard to the circumstances of the case taken as a whole, it cannot be said that the applicant's fears as to the impartiality of the Constitutional Court when examining her constitutional complaint were objectively justified.

26. Accordingly, this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 5 September 2024.

Dorothee von Arnim Deputy Registrar	Lorraine Schembri Orland President