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

SECOND SECTION

CASE OF BULOVIĆ v. SERBIA

(Application no. 14145/04)

JUDGMENT

STRASBOURG

1 April 2008

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Bulović v. Serbia,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Françoise Tulkens, *President,*
Antonella Mularoni,
Ireneu Cabral Barreto,
Vladimiro Zagrebelsky,
Dragoljub Popović,
András Sajó,
Nona Tsotsoria, *judges,*

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 11 March 2008,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 14145/04) against the State Union of Serbia and Montenegro, lodged with the Court, under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"), by, at that time, a citizen of the State Union of Serbia and Montenegro, Ms Radmila Bulović ("the applicant"), on 5 April 2004.

2. As of 3 June 2006, following the Montenegrin declaration of independence, Serbia remained the sole respondent in the proceedings before the Court.

3. On 8 June 2004 the applicant's guardian authorised the applicant's father, Mr R. Živanović, to represent the applicant in the proceedings before the Court. The Government of the State Union of Serbia and Montenegro and, subsequently, the Government of Serbia ("the Government") were represented by their Agent, Mr S. Carić.

4. On 2 May 2007 the Court decided to give priority to the application, in accordance with Rule 41 of the Rules of Court, as well as to communicate it to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on its admissibility and merits at the same time.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1951 and lives in Subotica.

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

A. The first set of civil proceedings

7. On 9 March 1994 the Municipal Court in Sombor (*Opštinski sud u Somboru*) ruled in favour of the applicant and ordered S.B., her former husband, to pay her a monthly maintenance allowance in the amount of 25% of the minimum salary in Serbia, starting from 10 December 1993, plus the arrears of that allowance which had already accrued, together with statutory interest.

8. By 31 May 1994 this judgment had become final.

B. The enforcement proceedings and the second set of civil proceedings

9. On 9 September 1996 the applicant filed a request for the enforcement of the above judgment and specified that the amount of maintenance due was 5,226 Yugoslav Dinars plus statutory interest. She proposed, in particular, that this enforcement be carried out through the auctioning of the debtors movable assets.

10. On 12 September 1996 the Municipal Court in Sombor ("the Municipal Court") accepted the applicant's request and issued an enforcement order.

11. On 26 September 1996 S.B. filed a complaint against this order, stating that it was not clear how the applicant had calculated the exact amount of the maintenance sought.

12. On 3 February 1998 the Municipal Court instructed S.B. to institute separate civil proceedings wherein he could request that the proposed enforcement be declared "inadmissible" (*nedopušteno*).

13. On 13 April 1998 S.B. filed a claim to this effect.

14. On 27 November 1998 the Municipal Court ordered the stay of the enforcement proceedings until the conclusion of the separate civil suit.

15. On 23 December 2002 the Municipal Court resumed the enforcement proceedings *ex officio*, having found, *inter alia*, that as of 30 June 1999 the separate civil suit had itself been suspended pending the outcome of another case.

16. On 25 February 2003 S.B. again requested that the enforcement proceedings be stayed, given the subsequent re-opening of the separate civil suit.

17. On 25 July 2003 the Social Care Centre appointed a temporary guardian to act on behalf of the applicant, who had in the meantime been stripped of her legal capacity.

18. On 2 December 2003 the applicant's guardian requested that the enforcement proceedings be continued and stated that the separate civil claim filed by S.B. had been dismissed.

19. On 6 April 2004 the Municipal Court rejected the request for the stay of the enforcement proceedings filed on 25 February 2003.

20. On 14 April 2004 S.B. lodged a complaint against this decision.

21. On 25 October 2006 the Municipal Court noted, in an internal document, that the entire enforcement file had, by mistake, been placed in another case file, which was why the complaint of 14 April 2004 had not yet been considered.

22. On 26 October 2006 the three-judge panel of the Municipal Court rejected this complaint and upheld the decision of 6 April 2004.

23. On 1 March 2007 the bailiffs attempted to enter S.B.'s home in order seize his movable assets. They were, however, apparently unable to do so as the "premises were locked".

24. On 27 April 2007 S.B. informed the bailiffs that he had, in the meantime, fully covered his debt to the applicant.

25. On 17 May 2007 the applicant withdrew her enforcement request filed with the Municipal Court, stating that S.B. had paid his debt with costs and interest.

26. On the same date the applicant signed a separate statement to the same effect.

27. On 23 May 2007 the President of the Municipal Court sent a letter to the applicant's lawyer which read as follows:

> "As regards ... [your client's] ... enforcement case[,] ... we would like to apologise for ... [its] ... long duration, ... for which there are several reasons such as ... [her] ... failure to appear at scheduled hearings, the lawful stay of these proceedings which had lasted for five years, the ... [time needed to appoint] ... a guardian ... and the unjustifiably long time which the court took to decide in respect of the complaint ... [filed by S.B.] ... against the ... [court's] ... decision of 6 April 2004."

II. RELEVANT DOMESTIC LAW

A. Enforcement Procedure Act 2000 (Zakon o izvršnom postupku; published in the Official Gazette of the Federal Republic of Yugoslavia - OG FRY - no. 28/00, 73/00 and 71/01)

28. Article 4 § 1 provides that the enforcement court is obliged to proceed urgently.

29. Articles 63-84 regulate enforcement through the auctioning of the debtor's movable assets.

B. Enforcement Procedure Act 2004 (Zakon o izvršnom postupku; published in the Official Gazette of the Republic of Serbia - OG RS - no. 125/04)

30. This Act entered into force on 23 February 2005, thereby repealing the Enforcement Procedure Act of 2000. In accordance with Article 304, however, all enforcement proceedings instituted prior to 23 February 2005 are to be concluded pursuant to the earlier legislation.

C. Relevant provisions of the Obligations Act

31. The relevant provisions of this Act are set out in the *V.A.M. v. Serbia* judgment (no. 39177/05, §§ 71 and 72, 13 March 2007).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

32. The applicant did not rely on a specific provision of the Convention. In substance, however, she complained about the respondent State's failure to secure a speedy enforcement of the final judgment rendered in her favour.

33. The Court considers that this complaint falls to be examined under Article 6 § 1 of the Convention, which, in the relevant part, reads as follows:

> "In the determination of his [or her] civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

A. Admissibility

1. Exhaustion of domestic remedies

34. The Government submitted that the applicant had not exhausted all effective domestic remedies. In particular, she had failed to bring a separate civil lawsuit under Articles 172, 199 and 200 of the Obligations Act, as well as to refer to the relevant provisions of the Convention which were directly applicable.

35. The applicant contested the effectiveness of this remedy.

36. The Court has already held that the above remedy could not be deemed effective within the meaning of its established case-law under Article 35 § 1 of the Convention (see *Tomić v. Serbia*, no. 25959/06, §§ 76 and 81, 26 June 2007). It sees no reason to depart from this finding in the present case and concludes, therefore, that the Government's objection must be rejected.

2. The applicant's "victim status" and the application of Article 37 § 1 (b) of the Convention

37. The Government noted that the applicant had been "fully compensated" by S.B. and that the Municipal Court had sent her an official apology for the excessive length of the impugned proceedings. She was therefore no longer a "victim", within the meaning of Article 34 of the Convention (see *Faulkner v. United Kingdom*, no. 37471/97, decision of 18 September 2001).

38. The Government further argued, in the alternative, that the application should be struck out of the Court's list of cases because the matter had already been resolved.

39. The Court recalls that a decision or a measure favourable to the applicant is not in principle sufficient to deprive him or her of the status of "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention complained of (see, for example, *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI).

40. Even assuming that the applicant has obtained a sufficiently unequivocal acknowledgement of the violation allegedly suffered (see paragraph 27 above), the Government have failed to provide her with any compensation for the delay in question. It is further noted that the applicant's case is clearly distinguishable from that of *Faulkner* to which the Government referred. The Court therefore finds that the applicant has retained her victim status and dismisses the Government's objection in this regard.

41. Finally, the Court considers that in the absence of the said compensation "the effects of a possible violation of the Convention" remain

yet to be "redressed" by the respondent State (see *Kaftailova v. Latvia* (striking out) [GC], no. 59643/00, § 48, 7 December 2007, as regards the general principles). Thus the matter cannot be struck out of the Court's list in accordance with Article 37 § 1 (b) of the Convention.

3. Conclusion

42. The Court considers that the applicant's complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and finds no other ground to declare it inadmissible. The application must therefore be declared admissible.

B. Merits

1. Arguments of the parties

43. The Government maintained that there had been no violation of Article 6 § 1 of the Convention.

44. In particular, as regards the period after 3 March 2004, they pointed out that the proceedings in question had been stayed in accordance with the relevant domestic legislation.

45. Finally, the Government argued that the misplacement of the applicant's case file was a "technical error" which could not have been rectified in the absence of the applicant's specific objection to this effect.

46. The applicant disagreed and reaffirmed her original complaints.

2. Relevant principles

47. The Court recalls that the execution of a judgment given by a court must be regarded as an integral part of the "trial" for the purposes of Article 6 (see *Hornsby v. Greece*, judgment of 19 March 1997, *Reports of Judgments and Decisions* 1997-II, p. 510, § 40).

48. Further, a delay in the execution of a judgment may be justified in particular circumstances. It may not, however, be such as to impair the essence of the right protected under Article 6 § 1 of the Convention (see *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 74, ECHR 1999-V).

49. Finally, irrespective of whether a debtor is a private or a State-controlled actor, it is up to the State to take all necessary steps to enforce a final court judgment and, in so doing, ensure the effective participation of its entire apparatus (see, *mutatis mutandis*, *Pini and Others v. Romania*, nos. 78028/01 and 78030/01, §§ 174-189, ECHR 2004-V (extracts); see also *mutatis mutandis*, *Hornsby*, cited above, p. 511, § 41).

3. The Court's assessment

50. The Court notes first that the impugned proceedings ended on 17 May 2007 (see paragraph 25 above). These proceedings had thus been ongoing for some three years and two months since the Serbian ratification of the Convention on 3 March 2004 (the period which falls within this Court's competence *ratione temporis*).

51. Secondly, the Court observes that, in order to determine the reasonableness of the delay in question, regard must also be had to the state of the case on the date of ratification (see, *mutatis mutandis*, *EVT Company v. Serbia*, no. 3102/05, § 51, 21 June 2007) and notes that on 3 March 2004 the proceedings complained of had already been pending for approximately seven years and six months (see paragraphs 9-18 above).

52. Thirdly, it would appear that the applicant's case file had been misplaced by the Municipal Court from 14 April 2004 until 25 October 2006, which is why there were no procedural developments in the meantime. Indeed, the President of the Municipal Court had himself admitted as much (see paragraph 21 above).

53. Finally, the proceedings in question ended not as a result of the successful seizure carried out by the Municipal Court, but because of the applicant's decision to withdraw her enforcement request in response to the debtor's payment (see paragraphs 25-26 above).

54. In these circumstances, the Court considers that the Serbian authorities had failed to conduct the impugned enforcement proceedings effectively, thereby impairing the essence of the applicant's "right to a court". There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

55. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

56. The applicant did not submit a claim for pecuniary or non-pecuniary damages. Accordingly, the Court considers that there is no call to award her any sum on that account.

B. Costs and expenses

57. Noting that the domestic proceedings had, in the meantime, been concluded favourably, the applicant claimed 202,500 Serbian dinars for the costs and expenses incurred domestically, as well as those incurred in the proceedings before this Court.

58. The Government described this claim as belated.

59. The Court notes that the applicant's claim was indeed submitted on 31 October 2007, the deadline for so doing being 22 October 2007. The applicant has therefore failed to comply with Rule 60 §§ 2 and 3 of the Rules of Court. Her claim is therefore dismissed.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Dismisses* the applicant's claim for just satisfaction.

Done in English, and notified in writing on 1 April, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President