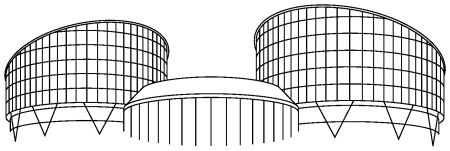

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

DECISION

Application no. 41672/07
MiletaPETROVIĆ
against Serbia

The European Court of Human Rights (Third Section), sitting on 6 May 2014 as a Chamber composed of:

JosepCasadevall, *President,*
AlvinaGyulumyan,
JánŠikuta,
DragoljubPopović,
LuisLópez Guerra,
JohannesSilvis,
ValeriuGriţco, *judges,*

andSantiago Quesada, *Section Registrar,*

Having regard to the above application lodged on 14 September 2007,

Having regard to the observations submitted by the parties,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, MrMiletaPetrović, is a Serbian national, who was born in 1955 and lives in Čačak.

2. The Serbian Government ("the Government") were represented by their Agent, Mr S. Carić.

I. THE CIRCUMSTANCES OF THE CASE

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

A. The civil trespass proceedings

4. On 15 March 2003 B.D. demolished a part of the ventilation system of the applicant's restaurant.

5. On 17 March 2003 the applicant filed a civil trespass claim (*tužba zbog smetanja poseda*) against B.D.

6. On 14 April 2004 the Municipal Court (*Opštinski sud*) in Čačak ruled in favour of the applicant, ordering B.D. to reconstruct the ventilation system in question, in accordance with the original project design and under the supervision of mechanical and construction engineering experts, as well as to pay 109,800 Serbian dinars ("RSD") (approximately 1,570[1] euros ("EUR") at the relevant time) on account of the costs incurred.

7. By 23 July 2004 this decision became both final and enforceable.

B. The enforcement proceedings

8. On 8 September 2004, following the applicant's request of 30 July 2004, the Municipal Court (hereinafter "the enforcement court") issued an enforcement order. On 26 October 2004 the enforcement order was upheld on the appeal.

9. On 10 November 2004 the applicant requested the enforcement court to order B.D. to advance the costs of the construction works. By 30 June 2005 the enforcement court held a hearing, appointed two experts and requested their opinion on two different occasions, assessed the costs, collected offers, selected building contractors and finally, considered at two instances and enforced the decision ordering B.D. to advance the costs and authorising the applicant to undertake the necessary construction works thereof. The applicant objected to the experts' reports and refused to collect the advance deposited with the enforcement court.

10. Between 20 September 2005 and 17 May 2006 the enforcement court ordered the applicant to commence with the construction works, appointed new experts and obtained two of their reports as to the modalities of the enforcement, held three hearings and examined witnesses in connection with the original construction works on the ventilation system, and twice ordered the applicant to have his building contractor provide an estimate of the building costs. The applicant objected to the experts' reports, lodged a request for the protection of legality against the court order and refused to abide by it.

11. On 2 June 2006 the enforcement court terminated the enforcement proceedings. On the applicant's appeal, this decision was quashed on 28 June 2006 and the enforcement court was instructed to prevent the

[1] The amounts in euro are given for reference only, based on an approximate average value at the relevant time.

parties' abuse of procedural rights by undertaking the required actions in their stead.

12. In the period from 30 June 2006 to 29 January 2008 the enforcement court proceeded with the enforcement and scheduled ten hearings, two of which were adjourned due to the applicant's and B.D.'s ill-health, one because of a mistake in summons, the other one for unspecified reasons and the last two as a result of the applicant's request for a relinquishment to another court and for the failure of one of the experts to appear, who was therefore fined. In addition, the enforcement court appointed new experts, requested expert opinions on three different occasions, considered the applicant's independent expert report and consulted a case-file from the administrative body which had issued the construction and use permits for the applicant's restaurant. The applicant's building contractor failed to provide project documentation specifically requested by the court three times.

13. In the meantime, the applicant lodged numerous complaints about the length of the enforcement proceedings with the President of the District Court (*Okružni sud*) in Čačak and the Ministry of Justice and filed several requests for the reclusion of, and criminal complaints against the judges and experts.

14. On 29 February 2008 the enforcement court terminated the enforcement proceedings. The court found in particular that, since the demolished ventilation system had not been constructed in line with the original project design, the supervision of its reconstruction was impossible and that, therefore, the Municipal Court decision of 14 April 2004 could not be enforced.On 30 June 2008 this decision was upheld on the appeal.

C.The applicant's complaints about the enforcement proceedings to domestic authorities

1. The civil proceedings

15. On 6 June 2005 the applicant instituted civil proceedings against B.D. and the respondent State for compensation for damage due to the excessive length of the enforcement proceedings.

16. On 21 April 2009 the Municipal Court (*Prvi opštinski sud*) in Belgrade rejected the applicant's claim for compensation for lost earnings and declared the applicant's claim for compensation for non-pecuniary damage withdrawn.

17. On 25 August 2011 the Appeals Court (*Apelacioni sud*) quashed the judgment of 21 April 2009 in the part rejecting the applicant's claim against B.D. and remittedthat part of the case to the first-instance court for reconsideration. At the same time the Appeals Court upheld the remainder of the judgment of 21 April 2009.

18. It would appear that the proceedings are still pending.

2. The constitutional proceedings

19. On 5 August 2008 the applicant filed a constitutional appeal complaining about the non-enforcement of the Municipal Court decision of 14 April 2004.

20. On 20 April 2011 the Constitutional Court (*Ustavni sud*) of the Republic of Serbia rejected the applicant's constitutional appeal.

II. RELEVANT DOMESTIC LAW

A. Enforcement Procedure Act 2000 (*Zakon o izvršnom postupku*; published in the Official Gazette of the Federal Republic of Yugoslavia nos. 28/00, 73/00 and 71/01)

21. Article 4 § 1 provided that the enforcement court was obliged to proceed urgently.

22. Article 43 stipulated that the enforcement would be carried out within the boundaries of the enforcement order.

23. Article 62 set out situations in which the enforcement was terminated *ex officio*.

24. Article 203 specified details with regard to enforcement in situations in which the action requested from the debtor could be performed by other persons.

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

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

COMPLAINTS

26. The applicant complained under Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1 about the non-enforcement of the court decision of 14 April 2004, as well as about a lack of an effective domestic remedy in that regard.

THE LAW

27. Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1, insofar as relevant, read as follows:

Article 6 § 1

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

Article 1 of Protocol No. 1

"Every natural or legal person is entitled to the peaceful enjoyment of his [or her] possessions. No one shall be deprived of his [or her] possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

Article 13

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

28. The Government raised a number of admissibility objections. Notably, they argued that the application was manifestly ill-founded because the domestic courts had conducted the enforcement proceedings with due diligence and without unreasonable delays.

29. The applicant contested those arguments considering that his right to have his ventilation system reconstructed had been recognised by a final court decision which remained unenforced.

30. The Court recalls that Article 6 § 1 of the Convention, *inter alia*, protects the implementation of final, binding judicial decisions, which, in States that accept the rule of law, cannot remain inoperative to the detriment of one party. Accordingly, the execution of a judicial decision cannot be prevented, invalidated or unduly delayed (see, among other authorities, *Hornsby v. Greece*, 19 March 1997, § 40, *Reports of Judgments and Decisions* 1997-II).

31. In terms of Article 1 of Protocol No. 1, the Court notes that a "claim" can constitute a "possession" if it is sufficiently established to be enforceable (see *Burdov v. Russia*, no. 59498/00, § 40, ECHR 2002-III) and reiterates that it is under this provision, as well as Article 6 § 1 of the Convention, that the State has a positive obligation to organise a system for enforcement of judgments that is effective both in law and in practice and ensures their enforcement without undue delay (see *Fuklev v. Ukraine*, no. 71186/01, § 84, 7 June 2005).

32. The Convention,however, does not impose an obligation on a State to execute every judgment of a civil character without having regard to the particular circumstances of the case (see *Sanglier v. France*, no. 50342/99, § 39, 27 May 2003). In cases such as the present one, which necessitate actions by a debtor who is a private person, the State, being vested with public authority, has to act diligently in order to assist a creditor with the execution of a judgment (see *Fociac v. Romania*, no. 2577/02, § 70, 3 February 2005). The Court's only task is to examine whether the measures applied by the Serbian authorities in the present case were adequate and sufficient.

33. Turning to the present case, the Court notes at the outset that the decision of 14 April 2004 enjoined B.D., a private person, to reconstruct the applicant's ventilation system in accordance with the original project design and under the supervision of mechanical and construction engineering experts, as well as to pay certain sums on account of the costs of the proceedings. This decision became final and enforceable on 23 July 2004, and the enforcement in respect of the construction works was requested by the applicant on 30 July 2004. The Court further observes that, almost four years later, on 30 June 2008, the proceedings were terminated.

34. The Court considers that, having regard to the facts of the case, the domestic courts took prompt and pertinent actions to enforce the decision of 14 April 2004 and that there were no significant periods of inactivity in the enforcement proceedings. Namely,the enforcement order became final only three months upon the applicant's request. It took the courts another eight months upon the applicant's request to assess the costs of the construction works, collect offers, select building contractors and finally, consider at two instances and enforce the decision ordering B.D. to advance the costs of the enforcement. Moreover, the enforcement court held eight hearings, appointed six experts and requested their opinions on the costs and modalities of the enforcement on seven different occasions, and took other evidence on the parties' proposals or on its own initiative (see paragraphs 9, 10 and 12 above) in order to clarify the case, which although legally not particularly difficult, presented a certain complexity on its facts. In addition, the Court finds that the domestic courts dealt with a large number of the parties' submissions, including appeals without undue delay (see, for example, paragraphs 8, 11 and 14 above). Likewise, the Court gives particular significance to the fact that the domestic courts took concrete steps to avert and reprimand attempts by the parties and other participants to obstruct the enforcement (see paragraphs 10, 11 and 12 above). Finally, the Court notes that the domestic courts determined, on the basis of substantial and consistent evidence, that the Municipal Court decision of 14 April 2004 had never been enforceable because the applicant himself had not abode by the original project design when constructing the impugned ventilation

system. The respondent State is therefore, not responsible for the non-enforcement of the decision at stake.

35. As regards the behaviour of the applicant, the Court observes that he failed or refused to abide by the courts' orders on numerous occasions, most notably, he failed to take appropriate action once the courts authorised him to proceed with the works and on several occasions also failed to provide documents and information expressly requested from the courts. In addition, he continuously contested the experts' competences and their opinions, and filed several criminal complaints against the judges and experts. Accordingly, the Court finds that the applicant's conduct clearly made an important contribution to the prolongation of the proceedings.

36. In such circumstances, the Court concludes that in the present case the State has done what could reasonably have been expected of it in order to enforce the decision of 14 April 2004. Indeed, the Constitutional Court of Serbia reached the same conclusion on 20 April 2011 (see paragraph 20). It follows that the applicant's complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 must be rejected as manifestly ill-founded in accordance with Article 35 §§ 3 and 4 of the Convention.

37. In view of its finding in paragraph 36 above, the Court considers that the applicant has no arguable claim under the Convention or its Protocols which would require a remedy within the meaning of Article 13. Consequently, this complaint is alsomanifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

SantiagoQuesada
Registrar

JosepCasadevall
President