



FIRST SECTION

CASE OF MARINIĆ v. CROATIA

(Application no. 22360/15)

JUDGMENT

STRASBOURG

2 September 2021

This judgment is final but it may be subject to editorial revision.



In the case of Marinić v. Croatia,

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

Krzysztof Wojtyczek, *President*,

Erik Wennerström,

Ioannis Ktistakis, *judges*,

and Liv Tiggerstedt, *Deputy Section Registrar*,

Having regard to:

the application (no. 22360/15) 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”) by two Croatian nationals, Ms Sarafina Marinić (“the first applicant”) and Mr Goran Marinić (“the second applicant”), on 4 May 2015;

the decision to give notice to the Croatian Government (“the Government”) of the complaint concerning the applicants’ inability to enforce a final judgment in their favour and to declare the remainder of the application inadmissible;

the parties’ observations;

the absence of the Government’s objection against the examination of the case by a Committee

Having deliberated in private on 6 July 2021,

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

INTRODUCTION

1. The case concerns a three-year delay on the part of the Croatian authorities in enforcing a final judgment against the State in the applicants’ favour.

THE FACTS

2. The first applicant was born in 1956 and lives in Šibenik. The second applicant was born in 1983 and lives in Zagreb. The applicants were represented before the Court by Mr Ž. Živković, a lawyer practising in Šibenik.

3. The Government were represented by their Agent, Ms Š. Stažnik.

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

I. BACKGROUND TO THE CASE

5. The late husband of the first applicant and father of the second applicant was a war veteran who was killed during the war in Croatia in 1992.

6. The administrative authorities granted the applicants a family disability benefit as family members of a fallen war veteran. Since the social benefit at issue was not being paid voluntarily, the applicants instituted civil proceedings against the State seeking payment thereof.

7. By a judgment of 17 December 2012 the Šibenik Municipal Court (*Općinski sud u Šibeniku*) allowed the applicants' claim in part and ordered the State to pay to them the outstanding amount of 187,611.52¹ Croatian kunas (HRK) together with the accrued statutory default interest, as well as future monthly payments. It dismissed the remaining part of the applicants' claim in the amount of HRK 527,595.58² as time-barred. That decision was upheld by the Šibenik County Court (*Županijski sud u Šibeniku*) on 24 March 2014 and it became enforceable on 22 April 2014.

8. On 29 April 2014 the State lodged an extraordinary appeal on points of law (*izvanredna revizija*) with the Supreme Court (*Vrhovni sud Republike Hrvatske*) against the second-instance judgment. The next day the applicants lodged a regular appeal on points of law (*revizija*) against the same judgment.

9. On 24 May 2017 the Supreme Court declared inadmissible the appeal on points of law lodged by the State and dismissed as unfounded the one lodged by the applicants. The State's extraordinary appeal on points of law was declared inadmissible because the State had failed to formulate a legal question of importance for the uniform application of the law and had thereby failed to meet the procedural requirements for that remedy.

II. ENFORCEMENT PROCEEDINGS

10. On 25 April 2014 the applicants instituted proceedings before the Financial Agency (*Financijska agencija*) seeking enforcement of the Šibenik Municipal Court's judgment (see paragraph 7 above) by means of seizure of funds in the enforcement debtor's bank accounts. The judgment debt, including the accrued statutory default interest on that date, amounted to HRK 348,766.23³.

11. On 30 April 2014 the State asked the Šibenik Municipal Court to postpone the enforcement. In its request the State submitted that the applicants had been awarded a large amount of money and that it had lodged an appeal on points of law with the Supreme Court. The State also contended that, if the enforcement were to be carried out, it would probably suffer nearly irreparable harm because, in the event of a successful outcome of the extraordinary remedy to which it had resorted, it would not be able to recover the amount at issue from the applicants.

1. About 25,000 euros (EUR) at the material time

2. About EUR 70,240 at the material time

3. About EUR 45,760 at the material time

12. On the same day, the Šibenik Municipal Court allowed the postponement of enforcement, finding the arguments put forward by the State well-founded. That court therefore ordered the Financial Agency to postpone ordering the banks to transfer the seized amounts to the applicants until the Supreme Court had decided the parties' appeals on points of law in the above-mentioned civil proceedings (see paragraphs 8 above and 19 below).

13. On 16 June 2014 the Šibenik County Court dismissed an appeal by the applicants and upheld the first-instance decision, endorsing the reasons given therein. The County Court's decision was served on the applicants' representative on 2 July 2014.

14. On 28 July 2014 the applicants lodged a constitutional complaint with the Constitutional Court (*Ustavni sud Republike Hrvatske*), complaining, *inter alia*, about the inability to enforce a final judgment in their favour.

15. On 21 October 2014 the Constitutional Court declared the applicants' constitutional complaint inadmissible on the grounds that the contested decisions were not amenable to constitutional review. It served its decision on the applicants' representative on 4 November 2014.

16. On 9 June 2017 the Šibenik Municipal Court forwarded the Supreme Court's judgment and decision of 24 May 2017 (see paragraph 9 above) to the Financial Agency and instructed it to proceed with the enforcement because the statutory requirements for the postponement of enforcement had ceased to exist.

17. On the same day, the Financial Agency collected the entire amount of the debt together with the statutory default interest accrued by that date (HRK 404,994.39⁴ in total) and transferred it to the applicants. The enforcement was thus completed.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT LEGISLATION

A. Enforcement Act

18. The relevant provisions of the Enforcement Act (*Ovršni zakon*, Official Gazette 112/12 with subsequent amendments), as in force at the material time, provided as follows.

19. Under subparagraph 1 of section 65(1), the court could, upon a request by the enforcement debtor, postpone the enforcement entirely or in part if

4. About EUR 54,530 at the material time

(a) the enforcement debtor demonstrated that he or she would probably sustain irreparable harm or harm that would be very difficult to repair if the enforcement were to be carried out; and

(b) a remedy had been used against the decision (the enforcement title) on the basis of which the enforcement was ordered.

B. Civil Procedure Act

20. The relevant provision of the Civil Procedure Act (*Zakon o parničnom postupku*, Official Gazette, no. 53/91 with subsequent amendments), as in force at the material time, provided as follows:

Section 384

“An appeal on points of law shall not postpone the enforcement of the *res judicata* judgment against which it has been lodged.”

21. Other relevant provisions of the Civil Procedure Act concerning appeals on points of law are set out in *Mirenić-Huzjak and Jerković v. Croatia* (dec.), no. 72996/16, § 26, 24 September 2019.

II. RELEVANT PRACTICE

22. In several decisions (nos. U-III-153/1996 of 24 April 1996, U-III-499/2003 of 25 April 2003, U-III-930/2007 of 25 April 2007, U-III-2559/2013 of 20 June 2013 and U-III-154/2014 of 20 February 2014), the Constitutional Court has declared constitutional complaints against the dismissal of requests for postponement of enforcement inadmissible on the grounds that such decisions were not amenable to constitutional review.

THE LAW

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

23. The applicants complained that the unjustified delays in the enforcement of a final judgment in their favour had violated their right to a court as guaranteed by Article 6 § 1 of the Convention, the relevant part of which reads as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing within a reasonable time by [a] ... tribunal ...”

A. Admissibility

1. *The parties' arguments*

24. The Government argued that the applicants had failed to comply with the six-month time-limit as they had lodged a constitutional complaint, which was not a remedy they had been required to use for exhaustion purposes. In 1996 the Constitutional Court had adopted the view that decisions concerning postponement of enforcement were not amenable to constitutional review, and it had never departed from that case-law (see paragraph 22 above). Therefore, the final domestic decision in the present case had been the decision of the Šibenik County Court of 16 June 2014, which had been served on the applicants' representative on 2 July 2014 (see paragraph 13 above). However, the applicants had lodged their application with the Court on 4 May 2015, that is, more than six months later.

25. The Government further submitted that the matter had been resolved because the applicants' claim had been paid in full, together with the accrued statutory default interest (see paragraph 17 above). For that reason, they proposed that the Court strike the case out of its list of cases. Alternatively, they proposed that the Court declare the application inadmissible on account of loss of victim status.

26. The applicants submitted that they had properly exhausted domestic remedies and had complied with the six-month time-limit. They argued that the Constitutional Court had departed from its earlier case-law regarding the admissibility of constitutional complaints against decisions concerning postponement of enforcement. In support of their argument they referred to a decision in which that court had examined a constitutional complaint concerning the length of enforcement proceedings. They further argued that the fact that their claim had been paid in full together with the accrued statutory default interest did not affect their victim status because they had not obtained any compensation for non-pecuniary damage sustained by the delayed enforcement.

2. *The Court's assessment*

27. As concerns compliance with the six-month rule, the Court notes that it has already had the opportunity to address a similar objection as to admissibility raised by the Government in a number of cases against Croatia, and each time has dismissed it (see, for example, *Šimecki v. Croatia*, no. 15253/10, §§ 28-33, 30 April 2014, and *Vrtar v. Croatia*, no. 39380/13, §§ 75-76, 7 January 2016 and the cases cited therein). It sees no reason to hold otherwise in the present case.

28. As to the applicants' victim status, the Court reiterates that a decision or measure favourable to the applicants, such as the enforcement of a judgment after a substantial delay, is not in principle sufficient to deprive

them of their status as “victims” unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see *Burdov v. Russia (no. 2)*, no. 33509/04, § 56, ECHR 2009). Similarly, to be able to conclude that the matter has been resolved and that Article 37 § 1 (b) of the Convention applies, the Court must establish whether the circumstances complained of still obtain and whether the effects of a possible violation of the Convention on account of those circumstances have also been redressed (see, for example, *Konstantin Markin v. Russia [GC]*, no. 30078/06, § 87, ECHR 2012 (extracts)).

29. In view of these principles, the Court considers it sufficient to note that the domestic authorities never acknowledged the violation complained of and that the applicants never obtained any compensation for non-pecuniary damage sustained as a result of delayed enforcement of the judgment of 17 December 2012 (see paragraph 7 above). The Court thus finds that the applicants can still claim to be the victims of the violation alleged and that the matter has not been resolved.

30. In view of the foregoing (see paragraphs 27-29 above), the Court rejects both the Government’s request for the application to be struck out under Article 37 § 1 (b) of the Convention and their objections as to admissibility.

31. The Court further notes that the present application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties’ arguments

32. The applicants submitted that the enforcement of the judgment against the State in their favour had been delayed without valid reasons. In their submission, the State had failed to demonstrate that it would have suffered nearly irreparable harm if the enforcement were to be carried out. Firstly, it was highly unlikely that the payment of the amount awarded to the applicants (see paragraphs 7 and 10 above) would have affected the State budget to such an extent as to jeopardise its regular functioning. Secondly, the mere fact that the applicants were private individuals was not enough to conclude that the State would have been unable to obtain repayment of the disputed amount had it succeeded with the extraordinary appeal on points of law.

33. The Government submitted that the delay in the enforcement of the judgment had been justified as the domestic courts had correctly assessed that the statutory conditions for granting postponement of enforcement had been met. In this connection, the Government reiterated that the applicants had been awarded a large amount of money (see paragraphs 7 and 10

above). Moreover, they were private individuals whose financial situation and sources of income had been unknown. Therefore, the domestic courts had reasonably assessed that the State would have suffered nearly irreparable harm if the applicants had been unable to return the amount at issue in the event that the outcome of the extraordinary remedy used by the State had been unfavourable to them.

34. The Government further argued that it had been absolutely certain that the applicants would receive the full amount of the claim in the event of a decision favourable to them on the appeal on points of law because the money had been seized and deposited in a special account to which the State had had no access. Lastly, the full amount of the claim had eventually been paid to the applicants together with the accrued statutory default interest (see paragraph 17 above), thus constituting appropriate compensation.

2. *The Court's assessment*

35. The relevant Convention principles concerning non-enforcement and delayed enforcement of a final judgment against the State were summarised in *Burdov* (cited above, §§ 65-70). Specifically, a delay in the execution of a judgment may be justified in particular circumstances but may not be such as to impair the essence of the right protected under Article 6 § 1 of the Convention (*ibid.*, § 67).

36. In the present case the applicants obtained a final judgment ordering the State to pay them the outstanding amount (HRK 187,611.52⁵ together with statutory default interest) of the family disability benefit to which they had been entitled as family members of a fallen war veteran. The State was also ordered to pay future monthly payments of the social benefit in question (see paragraph 7 above).

37. Even though the applicants were not required to resort to enforcement proceedings in order to have the final judgment against the State executed (see, for example, *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004), they instituted such proceedings without delay (see paragraphs 7 and 10 above). The State, instead of complying with the judgment, sought postponement of the enforcement.

38. It is not in dispute between the parties that the final judgment in the applicants' favour was eventually enforced three years after it had become enforceable. The Court considers that this period alone is sufficiently long to raise an issue under Article 6 § 1 of the Convention (see *Petrushko v. Russia*, no. 36494/02, § 25, 24 February 2005; *Sokur v. Ukraine*, no. 29439/02, § 36, 26 April 2005; and *Burdov*, cited above, §§ 73-74, 77 and 83).

39. Having regard to the above principles (see paragraph 35), the Court's task in the present case is therefore to examine whether a three-year

5. About EUR 25,000 at the material time

delay in the execution of the judgment was justified in view of the grounds on which the domestic courts allowed postponement of enforcement.

40. The domestic courts granted the State's request for postponement of enforcement, finding that, if the State were to succeed with its extraordinary appeal on points of law, the applicants would not be able to repay the amounts awarded to them, which meant that the State would probably sustain harm that would be very difficult to repair (see paragraphs 11-13 above).

41. The Court is of the view that the loss of the amount at issue (see paragraph 10 above) could seriously affect the financial situation of an individual, but it is difficult to accept that it could have the same impact on the State's budget.

42. The Court also notes that the domestic courts granted postponement of enforcement without examining the applicants' financial situation and their ability to repay the amount at issue in the event of an unfavourable decision of the Supreme Court (see paragraphs 11-13 above).

43. Furthermore, the domestic courts did not assess, even cursorily, the prospects of success of the State's extraordinary appeal on points of law. This remedy was eventually declared inadmissible because the State had failed to comply with the procedural requirements of domestic law and lodged a clearly inadmissible appeal on points of law (see paragraph 9 above). If such a practice were to be accepted, the State could, whenever it found it convenient, delay the payment of its obligations as established by final judgments by simply availing itself of remedies which were outright inadmissible or lacked any chance of success.

44. In view of the foregoing, the Court finds that the delay in the execution of the Šibenik Municipal Court's judgment was not justified and that, by delaying its enforcement, the domestic authorities failed to respect the applicants' right to a court.

45. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. 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

47. The applicants claimed 5,000 euros (EUR) each in respect of non-pecuniary damage.

48. The Government contested these claims.

49. The Court finds that the applicants must have suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation. Making its assessment on an equitable basis, the Court awards them EUR 3,000 each, plus any tax that may be chargeable.

B. Costs and expenses

50. The applicants, jointly, also claimed EUR 1,300 in respect of costs and expenses incurred before the domestic courts.

51. The Government contested this claim, deeming it excessive, unfounded and unsubstantiated.

52. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicants jointly the sum sought, plus any tax that may be chargeable to them.

C. Default interest

53. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Rejects* the Government's request to strike the case out of its list;
2. *Declares* the application admissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months, the following amounts, to be converted into Croatian kunas at the rate applicable at the date of settlement:
 - (i) EUR 3,000 (three thousand euros) to each applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 1,300 (one thousand three hundred euros) to the applicants jointly, plus any tax that may be chargeable to them, in respect of costs and expenses;

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(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 2 September 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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Liv Tigerstedt
Deputy Registrar

Krzysztof Wojtyczek
President