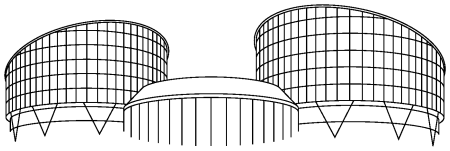

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF MARTINOVIĆ v. BOSNIA AND HERZEGOVINA

(Application no. 41749/12)

JUDGMENT

STRASBOURG

25 September 2018

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

In the case of Martinović v. Bosnia and Herzegovina,

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

Carlo Ranzoni, *President,*
Faris Vehabović,
Péter Paczolay, *judges,*
and Andrea Tamietti, *Deputy Section Registrar,*

Having deliberated in private on 4 September 2018,

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

PROCEDURE

1. The case originated in an application (no. 41749/12) against Bosnia and Herzegovina lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a national of Bosnia and Herzegovina, Ms Božana Martinović ("the applicant"), on 12 June 2012.

2. The applicant was self-represented. The Government of Bosnia and Herzegovina ("the Government") were represented by their Agent, Ms B. Skalonjić.

3. On 12 December 2016 the application was communicated to the Government.

4. The Government objected to the examination of the application by a Committee. After having considered the Government's objection, the Court rejects it.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1955 and lives in Assemini (Italy).

A. The first set of proceedings

6. By a decision of 4 December 2006 of the Cantonal Prosecutor of the Hercegovina-Neretva Canton (*Hercegovačko-neretvanski kanton*; one of the ten cantons of the Federation of Bosnia and Herzegovina) the applicant was

granted the reimbursement of costs which she had incurred as a witness in the amount of 519 convertible marks (BAM)[1].

7. On 29 February 2008 the Mostar Municipal Court ("the Municipal Court") rejected the applicant's request for the enforcement of this decision, deeming it unenforceable.

8. On 18 September 2008 the Mostar Cantonal Court ("the Cantonal Court") quashed this decision and remitted the case for reconsideration.

9. On 19 November 2008 the Municipal Court issued a writ of execution (*rješenje o izvršenju*).

10. On 19 June 2009 the Municipal Court upheld the objection lodged against this decision.

11. On 1 April 2010 the Cantonal Court quashed this decision and again remitted the case to the Municipal Court.

12. On 18 February 2011 the Municipal Court partly accepted the objection against the writ of execution specifically as regards the interest on the main debt calculated from 4 January 2007, and the interest on the total costs of the enforcement proceedings.

13. On 2 December 2011 the Cantonal Court upheld this decision.

14. On 19 September 2013 the Supreme Court of the Federation of Bosnia and Herzegovina dismissed the applicant's request for revision as inadmissible.

15. On 23 December 2013 the Constitutional Court of Bosnia and Herzegovina partially accepted the applicant's appeal and thereby found a violation of her right to a trial within a reasonable time, due to the non-enforcement of the decision of the Municipal Court of 18 February 2011 (see paragraph 12 above). It also ordered the Hercegovina-Neretva Canton to undertake measures in order to enforce the decision within a reasonable time. The Constitutional Court, however, did not award the non-pecuniary damage requested by the applicant.

16. On 21 October 2014 the Constitutional Court of Bosnia and Herzegovina confirmed that the final decision in question had not yet been enforced.

17. On 18 December 2014 the said final decision was enforced and the applicant was paid in cash.

B. The second set of proceedings

18. By a judgment of the Municipal Court of 3 April 2009, which became final on 16 December 2009, a certain P.M. was ordered to pay the applicant the costs of civil proceedings in the amount of BAM 1,959.

[1] The convertible mark uses the same fixed exchange rate to the euro as the German mark: EUR 1 = BAM 1.95583.

19. On 31 October 2010 the applicant submitted to the Municipal Court a request for the enforcement of this judgment.

20. On 14 September 2011, 4 November 2011 and 5 October 2012 the applicant submitted requests for the acceleration of the enforcement proceedings.

21. On 5 December 2012 the Municipal Court issued a writ of execution.

22. On 13 June 2013 the Municipal Court dismissed the objection lodged against its decision of 5 December 2012, and P.M. subsequently appealed this decision to the Cantonal Court.

23. On 17 September 2013 the Constitutional Court of Bosnia and Herzegovina found a violation of the applicant's right to a trial within a reasonable time, due to the duration of the enforcement proceedings before the Municipal Court. It further ordered the Cantonal Court to urgently rule on the appeal lodged by P.M. The Constitutional Court, however, did not award the non-pecuniary damage requested by the applicant.

24. On 16 October 2013 the Cantonal Court dismissed the appeal lodged by P.M.

25. On 11 June 2015 the Municipal Court issued a writ of execution.

26. On 4 August 2016 the said final judgment was enforced and the applicant was paid in cash on her bank account in Bosnia and Herzegovina. It appears that the applicant was still living in Italy at that time.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1

27. The applicant complained that the delayed enforcement of the final and enforceable domestic decisions rendered in her favour violated her rights under Article 6 of the Convention and Article 1 of Protocol No. 1, which, in so far as relevant, read as follows:

Article 6

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

Article 1 of Protocol No. 1

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his 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."

A. Admissibility

1. The Government's objection of abuse of the right of individual application

28. The Government argued, in relation to the second set of proceedings, that the application constitutes an abuse of the right of petition, as the applicant failed to inform the Court, in the supplement to her application of 2 November 2016, that the decision rendered in her favour had in fact been fully enforced by August 2016 (see paragraph 26 above).

29. The applicant disagreed and reiterated her complaints.

30. The Court recalls that according to Rule 47 § 7 of the Rules of Court applicants shall keep the Court informed of all circumstances relevant to the application. An application may be rejected as abusive under Article 35 § 3 of the Convention if, among other reasons, it was knowingly based on untrue facts (see, among other authorities, *Kerechashvili v. Georgia* (dec.), no. 5667/02, ECHR 2006-V). Incomplete and therefore misleading information may also amount to abuse of the right of application, especially if the information concerns the very core of the case and no sufficient explanation is given for the failure to disclose that information (see *Predescu v. Romania*, no. 21447/03, §§ 25 and 26, 2 December 2008, and *Gross v. Switzerland* [GC], no. 67810/10, § 28, ECHR 2014).

31. Turning to the present case, the Court notes that at the time when the applicant lodged her application on 12 June 2012 the decision in the second set of her proceedings had still not been enforced (see, *a contrario*, *Stevančević v. Bosnia and Herzegovina* (dec.), no. 67618/09, §§ 27 and 28, 10 January 2017), that the payment was ultimately made on the applicant's bank account in Bosnia and Herzegovina, while she lived in Italy (see paragraph 26 above), and that the applicant was not represented by a lawyer before the Court.

32. In view of the above, the Court cannot conclude that conduct of the applicant was incompatible with the purpose of the right of individual application as provided for in the Convention, or it has significantly impeded the proper functioning of the Court. Bearing in mind that the inadmissibility of an application on the ground that it constitutes an abuse of the right of application must remain an exception (see *S.A.S. v. France* [GC], no. 43835/11, § 68, ECHR 2014 (extracts)), the Court dismisses the Government's objection in this regard.

2. The Government's objection of loss of victim status

33. The Government further maintained that the applicant had lost her victim status as the decisions in her favour had been fully enforced.

34. The applicant disagreed.

35. The Court has always held that a decision or measure favourable to an applicant is not in principle sufficient to deprive him of his victim status unless the national authorities have acknowledged the alleged breach and afforded appropriate and sufficient redress (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 180 and 193, ECHR 2006-V, and *Kudić v. Bosnia and Herzegovina*, no. 28971/05, § 17, 9 December 2008). While it is true that the national authorities expressly acknowledged the breach alleged in the present case, the applicant was awarded no compensation in respect of the delayed enforcement of the decisions in question (paragraph 15 and 23 above). Therefore, she may still claim to be a victim, within the meaning of Article 34, of an alleged violation of the rights guaranteed by Article 6 § 1 of the Convention and by Article 1 of Protocol No. 1 in relation to the period during which the said decisions remained unenforced (see, *mutatis mutandis*, *Dubenko v. Ukraine*, no. 74221/01, § 36, 11 January 2005).

36. The Government's objection must hence be dismissed.

3. Other grounds for inadmissibility

37. The Court lastly notes that the application is otherwise neither manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor inadmissible on any other ground. It accordingly declares it admissible.

B. Merits

38. The general principles relating to the non-enforcement or delayed enforcement of final domestic judgments are set out in *Hornsby v. Greece* (19 March 1997, § 40, *Reports of Judgments and Decisions* 1997-II) and *Jeličić v. Bosnia and Herzegovina* (no. 41183/02, §§ 38-39, ECHR 2006-XII).

39. The Court has repeatedly found violations of Article 6 of the Convention and Article 1 of Protocol No. 1 in respect of issues similar to those in the present case (see, for example, *Jeličić*, cited above, and *Čolić and Others v. Bosnia and Herzegovina*, nos. 1218/07 and 14 others, 10 November 2009).

40. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. In view of its case-law on the subject, and the fact that the final decisions under consideration have not been enforced for more than six years, the Court

considers that there has been a breach of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

41. 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

42. The applicant claimed 12,320 euros (EUR) in respect of non-pecuniary damage in relation to both sets of proceedings.

43. The Government contested this claim.

44. The Court accepts that the applicant has sustained some non-pecuniary loss arising from the breaches of the Convention found in this case which cannot be sufficiently compensated by the finding of a violation alone. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 4,000 in respect of non-pecuniary damage.

B. Costs and expenses

45. The applicant claimed EUR 1,512 for costs and expenses incurred before the domestic courts and for those incurred before the Court, in relation to both sets of proceedings.

46. The Government contested this claim.

47. 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, are reasonable as to quantum and concern proceedings that are related to the violation of the Convention provision found. 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 applicant EUR 100 under this head.

C. Default interest

48. 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. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 of the Convention and of Article 1 of Protocol No. 1;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 100 (one hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (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;

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

Done in English, and notified in writing on 25 September 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti	Carlo Ranzoni
Deputy Registrar	President