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Aleksandra MAGANIĆ, PhD., Full Professor,
University of Zagreb, Faculty of Law,
amagic@pravo.hr

Marko BRATKOVIĆ, PhD., Associate Professor,
University of Zagreb, Faculty of Law
marko.bratkovic@pravo.hr

THE EFFECTIVENESS OF ENFORCEMENT IN THE CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS

Summary: *The effectiveness of enforcement is often considered a benchmark for the overall efficiency of the civil justice system. This paper explores the extensive case law of the European Court of Human Rights (ECtHR) concerning the principles of promptly implementing final and binding judicial decisions.*

Under Article 6, paragraph 1 of the European Convention on Human Rights, everyone is guaranteed the right to a fair trial, which includes the right to court proceedings in civil matters. However, this right would be illusory if domestic legal systems allowed final, binding court decisions to remain unenforced to the detriment of one party. Therefore, the enforcement of a judgment must be regarded as an integral part of the trial process, and the time required for enforcement is considered part of the duration of the legal proceedings.

All member states of the Council of Europe are obligated to ensure that those who obtain a final and binding court judgment have a real and practical opportunity to enforce it. Failure to enforce or significant delays in enforcement render the rights guaranteed by Article 6 ineffective and illusory. If lengthy enforcement results in a permanent or prolonged inability to exercise any right, it can escalate from a violation of the right to a trial within a reasonable time to a violation of the right to court access, a qualified form of violation under Article 6, paragraph 1.

While it is acceptable for contracting states to intervene in the enforcement process under extraordinary circumstances, such intervention should not prevent, nullify, or unjustifiably delay enforcement, nor should it undermine the essence of the decision to be enforced. It is not unreasonable to require additional documentation from interested parties for swift enforcement. However, doing so (solely) to avoid or unjustifiably delay enforcement can seriously undermine the beneficial effect of Article 6, paragraph 1. Cooperation from the judgment creditor is expected, but only to the extent necessary.

The Strasbourg Court typically considers domestic statutory deadlines for proceedings, but non-compliance with these deadlines does not automatically constitute a violation of the Convention. The justification for delays is judged based on the complexity of the enforcement proceedings, the conduct of the parties and authorities, and the amount and nature of the awarded compensation.

The Court has repeatedly stated that state authorities cannot cite a lack of funds or resources as an excuse for failing to enforce a judgment. Contracting states are not responsible if a creditor cannot satisfy their claim due to the insolvency of a “private” debtor subject to bankruptcy. The state’s responsibility for enforcing a judgment against a private party is limited to the involvement of state bodies in that process.

When a judgment is issued against the state, the responsible state body, once duly notified, must take all necessary actions to comply with the judgment. It is the state’s duty to ensure the enforcement of a binding court decision. A person who has won a case against the state should not be required to initiate a separate enforcement procedure. The term „state organisation“ is not limited to central government bodies but includes any national authority performing public functions, especially in decentralised systems.

Enforcement should generally be carried out in full accordance with the court’s decision. Situations may arise where enforcement in the form of restitutio in integrum is objectively impossible due to factual or legal obstacles, but in such cases, the state must in good faith and on its initiative consider alternative solutions, such as compensation.

The case law of the ECHR against Bosnia and Herzegovina shows that applicants have previously unsuccessfully tried to enforce their rights to „old“ foreign currency savings, pensions, war damages, and employment-related compensations in national courts. If the effectiveness of enforcement is a litmus test for the overall efficiency of the civil justice system, then the level of judicial efficiency in Bosnia and Herzegovina is not at an acceptable level.

Keywords: enforcement, Strasbourg Court, enforcement effectiveness, right to a fair trial, peaceful enjoyment of possessions