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

FOURTH SECTION

CASE OF RAJAK v. CROATIA

(*Application no. 49706/99*)

JUDGMENT

STRASBOURG

28 June 2001

FINAL

12/12/2001

This judgment will become final in the circumstances set out in Article 44 § 2.

In the case of Rajak v. Croatia,

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

Mr G. RESS, *President*,
Mr A. PASTOR RIDRUEJO,
Mr V. BUTKEVYCH,
Mrs N. VAJIĆ,
Mr J. HEDIGAN,
Mr M. PELLONPÄÄ,
Mrs S. BOTOUCHAROVA, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 12 October 2000 and on 7 June 2001,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 49706/99) against Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Croatian national, Mr Rajko Rajak ("the applicant"), on 23 February 1999.

2. The applicant was represented by Mr Zoran Novaković, a lawyer practising in Zagreb (Croatia). The Croatian Government ("the Government") were represented by their Agent, Ms Lidija Lukina-Karajković.

3. The applicant alleged that, contrary to Article 6 § 1 of the Convention, civil proceedings instituted by him had not been heard within a reasonable time.

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

5. By a decision of 12 October 2000 the Chamber declared the application partly admissible.

6. The applicant but not the Government, filed observations on the merits (Rule 59 § 1). The Chamber decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 2 *in fine*).

THE FACTS

7. On 18 June 1975 the applicant filed a civil action with the Rijeka District Court (*Okružni sud Rijeka*) against "Brodograđevna industrija 3. Maj", a publicly-owned company in Rijeka, claiming payment for technical improvements and rationalisation of the working process. The District Court held hearings on 15 January and 8 June 1976.

8. On 16 December 1977 the case file was transmitted to a court expert who submitted his opinion on 5 January 1981.

9. On 9 December 1981 the Rijeka District Court decided that it did not have jurisdiction and consequently transferred the case to the Rijeka District Commercial Court (*Okružni privredni sud u Rijeci*). As that court also denied its jurisdiction, a conflict of jurisdiction arose and on 24 March 1982 the Supreme Court of Croatia (*Vrhovni sud Republike Hrvatske*) transferred the case to the Rijeka Employment Tribunal (*Osnovni sud udruženog rada u Rijeci*).

10. On 26 October 1982 the Rijeka Employment Tribunal held a hearing and on the same day delivered a judgment rejecting the applicant's claim. The applicant appealed against the judgment, and on 11 May 1984 the Employment Appeal Tribunal (*Sud udruženog rada Hrvatske*) quashed the first instance judgment and remitted the case to the Rijeka Employment Tribunal.

11. That court held hearings on 2 April and 11 June 1985. On the latter date the court delivered its judgment, partly granting the applicant's claim. Both the applicant and the defendant appealed against the judgment. On 27 December 1985 the Employment Appeal Tribunal again quashed the first instance judgment and remitted the case to the Rijeka Employment Tribunal, instructing it to allow the parties to question the expert at an oral hearing.

12. The Rijeka Employment Tribunal held hearings on 1 April, 11 November and 22 December 1986 and on 20 January 1987.

13. In the meantime, according to the Government, the Samobor Social Welfare Centre (*Centar za socijalni rad u Samoboru*) appointed to the applicant a guardian *ad litem* and instituted proceedings for a guardianship order. In those proceedings an expert opinion was requested from a neuro-psychiatrist working in the Vršac hospital. However, the expert died and the request for the guardianship order was withdrawn. The applicant then moved to Zagreb.

14. The applicant contests the Government's submissions and claims that the presiding judge in his case before the Rijeka Employment Tribunal was the one who initiated the proceedings for the guardianship order. It was not due to the death of the expert appointed in that case that the proceedings were terminated, but due to the fact that on 30 September 1988 the Zagreb Municipal Court (*Općinski sud u Zagrebu*) rejected the request to issue a

guardianship order as there had been no evidence presented before the court which could put into question the applicant's capacity to represent his interests.

15. On 22 June 1986 the applicant unsuccessfully challenged the Rijeka Employment Tribunal for bias and requested that his case be dealt by a different court.

16. The next hearing in the Rijeka Employment Tribunal took place on 13 January 1987.

17. After the hearing on 17 March 1987 the court delivered its judgment granting the applicant's claims in part. Both the applicant and the defendant appealed against the judgment. On 18 January 1990 the Employment Appeal Tribunal quashed once more the first instance judgment and remitted the case to the Rijeka Employment Tribunal.

18. The applicant then challenged all employment tribunals in Croatia for bias and requested that a non-Croatian court deal with his case. On 18 October 1991 the Employment Appeal Tribunal rejected his request.

19. In 1991 all employment tribunals were abolished and the case was transferred to the Rijeka Municipal Court (*Općinski sud u Rijeci*).

20. During the hearing held on 30 June 1992 the applicant specified his claim seeking USD 280,000 for technical improvements and USD 1,500,000 for non-pecuniary damage caused by mental suffering. He also claimed USD 500,000 for pecuniary damage caused by the defendant's failure to make use of his patents, which would have brought the applicant USD 500,000 per year, and USD 60,000 for loss of earnings.

21. During the hearing held on 15 September 1992 the Rijeka Municipal Court, upon the applicant's motion, decided that it had no jurisdiction regarding certain of the applicant's claims.

22. On 27 September 1993 the Rijeka Municipal Court decided that another expert opinion be submitted by the Rijeka Engineering Faculty (*Strojarski Fakultet u Rijeci*). The applicant objected and asked that an expert opinion be submitted by an institution from Slovenia.

23. On 11 February 1993 the Supreme Court of Croatia (*Vrhovni sud Republike Hrvatske*) quashed the above decision.

24. At the next hearing on 1 April 1996, the Rijeka Municipal Court considered that a new expert opinion was needed and appointed a company from Samobor (Croatia) to act as an expert. The applicant objected and requested that D. B. be appointed as expert instead. The court also ordered the applicant to pay an advance for expenses related to the expert opinion.

25. By letter of 21 March 1998 the applicant made further specifications to his claim.

26. During the next hearing on 18 May 1998 the court decided that the decision appointing the expert would be issued in writing.

27. On 22 July 1999 the court adjourned the case until 1 October 1999 as the applicant's counsel was on annual leave. During the hearing on

1 October 1999 the defendant was ordered to submit further documentation to the case file.

28. During the hearing on 1 March 2000 the court concluded the trial.

29. On 12 May 2000 the court pronounced judgment rejecting the applicant's claim due to his failure to pay the advance for expenses for the new expert opinion.

30. On 29 May 2000 the applicant appealed against the judgment. On 25 October 2000 the Rijeka County Court (*Okružni sud u Rijeci*) quashed the first instance judgment. The case appears to be presently pending before the court of first instance.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

31. The Government maintain that the applicant has failed to exhaust domestic remedies as he has not made an application pursuant to Section 59 § 4 of the Constitutional Court Act. In the Government's view such an application is an effective remedy as its use would have reduced the length of the proceedings.

32. In the applicant's view a Section 59 § 4 request is not an effective domestic remedy.

33. The Court considers that it is not necessary in the present case to examine the question whether a request pursuant to Section 59 § 4 has to be used in respect of complaints about the length of court proceedings, as even assuming that it might be an effective remedy in this respect, the effectiveness of such a remedy may depend on whether it has a significant effect on the length of the proceedings as a whole (see, *mutatis mutandis*, *Holzinger v. Austria*, no. 23459/94, § 22, ECHR 2001).

34. In the present case the proceedings started on 18 June 1975 and are still pending before the court of first instance. Section 59 § 4 of the Constitutional Court Act entered into force on 24 September 1999. It was from that moment on that the applicant could have made an application under this provision. On that date, however, the proceedings had already lasted for some 24 years, out of which one year, ten months and 19 days fall within the Court's jurisdiction. This period, during which the applicant had no remedy at his disposal against unreasonable delay, was substantial. Even if the applicant had filed an application under Section 59 § 4 of the Constitutional Court Act after 24 September 1999, any decision given under this provision which might have speeded up the proceedings could not have

made up for delays which might have already occurred (see *Holzinger v. Austria*, no. 28898/95, § 21, 30 January 2001, unpublished).

35. Accordingly, in the particular circumstances of the present case, a request under Section 59 § 4 of the Constitutional Court Act cannot be considered as an effective remedy. The Government's preliminary objection must therefore be dismissed.

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

36. The applicant complains that the proceedings concerning his civil action for payment for technical improvements and rationalisation of the working process in "Brodograđevna industrija 3. Maj" have not been concluded within a reasonable time as required by Article 6 § 1 of the Convention which, insofar as relevant reads as follows:

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

A. Period to be taken into account

37. The Court observes firstly that the proceedings commenced on 18 June 1975, when the applicant lodged a civil action for payment with the Rijeka District Court. However, the period which falls under the Court's jurisdiction did not begin on that date, but on 5 November 1997, when the Convention entered into force in respect of Croatia (see the Foti and Others v. Italy judgment of 10 December 1982, Series A no. 56, p. 18, § 53). The proceedings are currently pending before the court of first instance. Thus they have so far lasted more than 25 years, out of which a period of three years and seven months falls to be examined by the Court.

38. The Court notes further that in order to determine the reasonableness of the length of time in question, regard must also be had to the state of the case on 5 November 1997 (see, among other authorities, *Styranowski v. Poland* no. 28616/95, ECHR 1998-VIII). In this respect the Court notes that at the moment of the entry of the Convention into force in respect of Croatia the proceedings had lasted for more than 22 years.

B. Applicable criteria

39. The Court recalls that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case, the conduct of the applicant and of the relevant authorities, and the importance of what is at stake for the applicant in the litigation (see, as recent authorities, the *Humen v. Poland* [GC],

no 26614/95, § 60, unpublished, and *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, ECHR 2000-IV).

C. The Court's assessment

40. The Government argue that the case discloses a serious degree of complexity both as to the facts and to the law. In particular, recourse had to be had to several expert opinions that contributed to the complexity of the proceedings.

41. The applicant disagrees with the Government and asserts that the case does not involve either factual or legal complexity. He argues that the subject matter of the case falls within the area of technical improvements, rationalisation of working process and inventions, and, as such, it only requires relevant expert opinions.

42. The Court acknowledges that the case discloses a certain complexity, given the nature of the applicant's claim. However, the fact that several expert reports were needed would not suffice in itself for a finding that the case was exceptionally complex. It is the normal task of a court in judicial proceedings to obtain relevant expert opinions and to assess the facts accordingly. Nonetheless, it is true that the applicant called into question the conclusions and credibility of the expert on at least two occasions, which necessitated that further reports be prepared. To sum up, the Court accepts that the case may reasonably be regarded as somewhat complex.

43. Concerning the applicant's conduct, the Government submit that the applicant contributed to the length of proceedings as he changed his claim several times and twice challenged the courts dealing with his case for bias. Furthermore, the applicant asked that an institution from Slovenia should give its expert opinion and that either the defendant or the court pay the expertise expenses.

44. The applicant contests the Government's claim that he has contributed to the delays. He asserts that the legal issues involved have always been the same, and that the changes of his claim refer only to the amount of money sought, which had to be adjusted according to the expert opinions submitted.

45. The Court notes that the applicant objected to particular expert opinions and sought that an institution from Slovenia should give its expert opinion and also objected to another expert appointed by the Rijeka Municipal Court. However, the applicant's objections were filed before the period that is to be examined by the Court. Furthermore, the Court does not find it established that the applicant filed motions which could justify the length of the proceedings. The Court notes also that the applicant twice adjusted the amount of money sought, and that this might have delayed the proceedings at that stage. Otherwise, the applicant attended almost all the hearings and complied with the courts' summonses. The Court considers

that in other respects the applicant's conduct cannot in itself justify the protracted character of the proceedings.

46. As regards the conduct of the authorities, the Government claim that the domestic courts showed diligence in the conduct of the proceedings. In particular, the Government point out that the courts of first instance delivered several judgments, but these judgments were repeatedly quashed by the appellate courts.

47. The applicant, on the contrary, submits that hearings were held rarely, with delays for which there is no justification. For the period after the entry into force of the Convention in respect of Croatia, he points out that there was no activity of the courts between 18 May 1998 and 22 July 1999.

48. The Court notes that in the period to be taken into account the case lay dormant from 5 November 1997 until 18 May 1998 and then again from 18 May 1998 until 22 July 1999, which amounts to six months and 13 days and to one year, two months and four days, respectively. Although the court of first instance delivered judgment on 12 May 2000, that judgment was quashed by the appellate court, and the case is now again pending before the court of first instance. Therefore, the Court is not persuaded by the Government's explanations for the delays. It recalls that it is for Contracting States to organise their legal systems in such a way that their courts can guarantee the right to everyone to obtain a final decision on disputes relating to civil rights and obligations within a reasonable time (see, among other authorities, *G. H. v. Austria*, no. 31266/96, § 20, 3 October 2000, unpublished).

49. In the light of the criteria laid down in its case-law and having regard to all the circumstances of the case, the Court considers that the length of the proceedings complained of, which are still pending, failed to satisfy the reasonable-time requirement. There has, accordingly, been a violation of Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

50. 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

51. The applicant sought an award of USD 1,473,091.97 to compensate him for the financial loss he has allegedly suffered on account of the

unreasonable length of the proceedings at issue. He explained that the defendant failed to make use of his patents and sell them to various international companies. In consequence he suffered a loss of his profits.

52. The Government argue that the applicant has suffered no pecuniary damage due to the length of the proceedings and that there is no causal link between the length of the proceedings and the use of the applicant's patents.

53. The Court notes that the applicant's claim for pecuniary damage is primarily based on lost business opportunities which are speculative in nature. It cannot inquire into what the outcome would have been if the applicant had obtained a final decision on his action within a reasonable time. The Court accordingly dismisses the claim.

54. In respect of non-pecuniary damage, the applicant sought the sum of USD 2,000,000.00.

55. The Government asked the Court to assess the amount of just satisfaction to be awarded on the basis of its case-law in civil cases in which normal diligence was required.

56. The Court accepts that the applicant suffered damage of a non-pecuniary nature as a result of the length of the civil proceedings instituted by him. Making its assessment on an equitable basis and having regard to the circumstances of the case - in particular the overall duration of the proceedings and the applicant's personal situation - the Court awards the applicant 30,000 Croatian Kunas (HRK), as compensation for non−pecuniary damage.

B. Costs and expenses

57. The applicant sought the amount of HRK 5,642,458.32 for costs and expenses but he failed to specify his claim for reimbursement of legal costs and expenses incurred before domestic courts and the Court.

58. The Government invite the Court to assess the costs and expenses incurred by the applicant.

59. According to the Court's case-law, an award can be made in respect of costs and expenses only in so far as they have been actually and necessarily incurred by the applicant and are reasonable as to quantum (see, among other authorities, *Arvelakis v. Greece*, no. 41354/98, § 34, 12 April 2001, unpublished). In the present case, on the basis of the information in its possession and the above-mentioned criteria, the Court observes that there is no element in the file suggesting that the applicant has incurred, before the domestic courts, any extra costs and expenses because of the length of the proceedings. As to the legal costs and expenses incurred before it, the Court awards the applicant HRK 5,800.

C. Default interest

According to the information available to the Court, the statutory rate of interest applicable in Croatia at the date of adoption of the present judgment is 18% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's preliminary objection;

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

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention the following amounts:
      (i) in respect of non-pecuniary damage, 30,000 (thirty thousand) Croatian Kunas;
      (ii) in respect of costs and expenses, 5,800 (five thousand eight hundred) Croatian Kunas;
   (b) that simple interest at an annual rate of 18% shall be payable from the expiry of the above mentioned three months until settlement;

4. *Dismisses* the remainder of the applicant's claims for just satisfaction and costs and expenses.

Done in English, and notified in writing on 28 June 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Georg RESS
President