



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

FOURTH SECTION

CASE OF CERIN v. CROATIA

(Application no. 54727/00)

JUDGMENT

STRASBOURG

15 November 2001

FINAL

15/02/2002

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Cerin 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 L. CAFLISCH,

Mr J. MAKARCZYK,

Mr I. CABRAL BARRETO,

Mrs N. VAJIĆ,

Mr M. PELLONPÄÄ, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 8 March and 23 October 2001,

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

PROCEDURE

1. The case originated in an application (no. 54727/00) 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 a Croatian national, Čedomil Cerin (“the applicant”), on 27 November 1999.

2. 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. By a decision of 8 March 2001 the Chamber declared the application admissible.

5. 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.

6. The applicant and the Government each 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 10 February 1984 the applicant filed an action in the Zagreb Municipal Court (*Općinski sud u Zagrebu*) against a private person O. S.,

the Zagreb City Internal Affairs Office (*Gradski sekretarijat za unutrašnje poslove Zagreb*) and the Zagreb Union of Municipal Councils (*Gradska zajednica općina*), for payment of damages regarding his apartment in Zagreb. Subsequently, the applicant altered his claim and named as defendants M. A., the Municipality of Zagreb (*Grad Zagreb*) and the Republic of Croatia (*Republika Hrvatska*).

8. Until the date of entry into force of the Convention in respect of Croatia, i.e., 5 November 1997, the Zagreb Municipal Court as the court of first instance held numerous hearings and the relevant authorities examined the applicant's numerous motions for, *inter alia*, the removal of the presiding judges.

9. The most recent such motion was filed by the applicant on 7 May 1996 requesting the removal of the presiding judge. He also challenged the Zagreb Municipal Court for bias and requested that his case be dealt by a different court. On 26 September 1996 the Supreme Court (*Vrhovni sud Republike Hrvatske*) rejected the applicant's request.

10. The next hearing in the Zagreb Municipal Court scheduled for 9 March 1998 was adjourned at the applicant's request due to his absence from Zagreb.

11. The next hearing scheduled for 7 September 1998 was adjourned due to the applicant's illness.

12. At the next hearing on 2 March 1999 it was noted that the applicant had instituted another set of civil proceedings with the Zagreb Municipal Court against the judge presiding in the case in question and the Republic of Croatia. Therefore, the presiding judge requested permission to withdraw. His request was accepted and he was exempted from sitting. The applicant also submitted further specifications on his claim.

13. The case was then transmitted to another judge. At the hearing on 4 December 2000 the applicant's counsel was invited to submit evidence concerning the specification of the applicant's claim within 30 days.

14. On 1 March 2001 the applicant's counsel informed the court that she had ceased to represent the applicant.

15. On 2 and 15 March 2001 the applicant submitted further evidence and again changed his claim. According to the Government, the new claim was not expressed in terms that, if it was to be successful, would make it capable of judicial enforcement.

16. At the hearing on 9 April 2001 the applicant appeared with his new counsel, but without a letter of authority. The court invited the applicant to submit a letter of authority for his new counsel and to formulate his claim so as to make it capable of judicial enforcement in the event of its being successful. It appears that the case is still pending before the Zagreb Municipal Court.

THE LAW

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

17. The applicant complains that the proceedings concerning his civil action for payment of damages regarding his apartment in Zagreb have not been concluded within a reasonable time as required by Article 6 § 1 of the Convention which, in so far 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

18. The Court observes firstly that the proceedings commenced on 10 February 1984, when the applicant lodged a civil action for payment of damages with the Zagreb Municipal 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 17 years, out of which a period of three years and eleven months falls to be examined by the Court.

19. 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, *Styranski 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 13 years.

B. Applicable criteria

20. 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, unreported, and *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, ECHR 2000-IV).

C. The Court's assessment

21. The Government claim that the case discloses both legal and factual complexity and that the subject-matter of the applicant's case did not account for any particular urgency in deciding it. They refer to the Court's case-law, arguing that the cases having special urgency are those related to family law matters or to payment of damages to the victims of traffic accidents, those involving the interests of a great number of persons, and the so-called "dismissal cases".

22. The applicant submits that the case does not involve any complexity, as it is clear from the facts that his claim is justified.

23. The Court considers that, even if the case does not call for particular urgency and even if it may disclose certain factual complexity, these factors do not explain the overall duration of the proceedings.

24. Concerning the applicant's conduct, the Government submit that the behaviour of the applicant contributed to the delays, as it took him about ten years to specify his claim and as he filed numerous motions for the removal of the presiding judges and the president of the court who have been dealing with his case. Moreover, he filed two motions challenging the Zagreb Municipal Court for bias. In addition, about 40 hearings have been adjourned due to the applicant's requests. The judges had also several times instructed the applicant to arrange for legal representation and the applicant only did so as late as 1995.

25. The applicant argues that, due to the changes in the political system, i.e. the fact that the Socialist Republic of Croatia which was one of the republics of the former Yugoslavia became the Republic of Croatia, an independent State, he had to adjust the names of the defendants in his claim. Furthermore, a private person, O. S., whom he had sued as defendant, had died and he had to change his claim in this respect as well. Other changes in his claim were a result of the constantly growing costs he had been incurring in respect of the property subject-matter of the proceedings and also the fact that the defendants made some illegal modifications on the building in question. He stresses that only five hearings were adjourned due to his absence.

26. The Court will examine only the circumstances relevant for the period to be taken into account. It is true that in that period two hearings were adjourned at the request of the applicant. However, in that period the applicant did not challenge the court for bias. Although the applicant instituted proceedings against the presiding judge, this could not justify the length of the proceedings. It is the normal task of a court in judicial proceedings to decide upon the circumstances which might call for the removal of judges participating in a particular case. In addition, the applicant has had legal representation ever since 1995. The Court considers

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

27. 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 Zagreb Municipal Court held hearings at regular intervals, although the workload at the civil department of that court was huge and each judge was assigned some nine hundred to one thousand cases.

28. The applicant disagrees with the Government, arguing that no acceptable justification has been put forward to explain the delays in the proceedings concerning his request for payment of damages. Although the presiding judge put requests to the Zagreb Land Registry and the Ministry of the Interior in 1985 and 1990, respectively, to submit relevant documentation, these institutions failed to do so. Furthermore, it took about three years and ten months before his most recent motion for the removal of the presiding judge was examined.

29. The Court notes that in the period to be taken into account the case lay dormant at least from 5 November 1997 until 9 March 1998 and again from 2 March 1999 until 4 December 2000, which amounts to four months and four days and to one year, nine months and two days, respectively. Therefore, the Court is not persuaded by the Government's explanations for the delays. It recalls that it is for the Contracting States to organise their legal systems in such a way that their courts can guarantee everyone's right to obtain a final decision on disputes relating to civil rights and obligations within a reasonable time (see, among other authorities, *Horvat v. Croatia*, no. 51585/99, § 59, to be published).

30. 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.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. 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

32. The applicant sought an award of 912,000 German Marks (DEM) 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, had the proceedings been concluded within a reasonable time, he would have owned four flats and would have been able to rent them.

33. 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 applicant's financial expectations.

34. The Court notes that the applicant's claim for pecuniary damage is primarily based on lost financial 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.

35. In respect of non-pecuniary damage, the applicant sought the sum of DEM 220,000.

36. 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.

37. 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

38. The applicant sought the amount of DEM 12,000 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.

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

40. 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, *Nikolova v. Bulgaria* [GC], no. 31195/96, ECHR 1999-II, § 79). 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 2,500.

C. Default interest

41. 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. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
2. *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, 2,500 (two thousand five 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;
3. *Dismisses* the remainder of the applicant's claim for just satisfaction and costs and expenses.

Done in English, and notified in writing on 15 November 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Georg RESS
President