



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

FIRST SECTION

**CASE OF FÜTTERER v. CROATIA**

*(Application no. 52634/99)*

JUDGMENT

STRASBOURG

20 December 2001

**FINAL**

*20/03/2002*

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 Futterer v. Croatia,**

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

Mr C. L. ROZAKIS, *President*,

Mr G. BONELLO,

Mr P. LORENZEN,

Mrs N. VAJIĆ,

Mrs S. BOTOUCHAROVA,

Mr V. ZAGREBELSKY,

Mrs E. STEINER, *judges*,

and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 29 November and 6 December 2001,

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

**PROCEDURE**

1. The case originated in an application (no. 52634/99) 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, Aleksandar Fütterer (“the applicant”), on 16 June 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 his mother and continued 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 7 December 2000 the Court declared the application admissible.

6. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The Court decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 2 *in fine*).

7. On 7 November 2001, the application was allocated to the First Section. 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.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

8. On 5 July 1990 the applicant's mother filed an action with the Zagreb Municipal Court (*Općinski sud u Zagrebu*) against the Municipality of Črnomerec, Zagreb (*Općina Črnomerec*) concerning her property rights to a part of an apartment building situated within the area of the above municipality.

9. At the preliminary hearing on 17 January 1991 the defendant disputed the plaintiff's allegations. On 15 February 1991 the defendant submitted its reply to the plaintiff's claim. The next hearing took place on 2 February 1993.

10. By decision of 9 November 1994 the Zagreb Municipal Court decided that it had no jurisdiction in the case. On 6 December 1994 the plaintiff appealed against that decision. On 25 September 1996 the case file was transmitted to the Zagreb County Court (*Županijski sud u Gradu Zagrebu*) as the appellate court.

11. On 15 September 1997 the applicant's mother died and the applicant was proclaimed her only heir. He continued the proceedings instituted by his mother.

12. On 12 May 1998 the Zagreb County Court quashed the first instance decision and remitted the case to the Zagreb Municipal Court. The case was received at that court on 10 June 1998 and was assigned to a judge on 1 January 1999.

13. The next hearing before the Zagreb Municipal Court took place on 21 September 1999. The parties repeated their claims. According to the applicant on 27 October 1999 and 20 January 2000 he requested the court to speed up the proceedings.

14. As the law regulating ownership had been changed, on 2 May 2000 the court invited the applicant to adjust his claim to the changes in law.

15. At the hearing on 19 May 2000 the applicant's counsel submitted the adjusted claim. The court invited the Zagreb Housing Council (*Gradsko stambeno komunalno gospodarstvo Zagreb*) to submit a list of the flats in the building, the names of the owners and occupiers as well as the legal position of the occupiers and the flats.

16. The next hearing scheduled for 27 June 2000 was adjourned. The court repeated its request to the Zagreb Housing Council.

17. At the next hearing on 12 September 2000 the court invited the parties to file their observations concerning the Zagreb Housing Council's submissions. The next hearing was scheduled for 6 November 2001. The proceedings are pending before the first instance court.

## II. RELEVANT DOMESTIC LAW

18. Section 59 (4) of the Constitutional Act on the Constitutional Court (entered into force on 24 September 1999 - hereinafter “the Constitutional Court Act” - *Ustavni zakon o Ustavnom sudu*) read as follows:

“The Constitutional Court may, exceptionally, examine a constitutional complaint prior to exhaustion of other available remedies, if it is satisfied that a contested act, or failure to act within a reasonable time, grossly violates a party’s constitutional rights and freedoms and that, if it does not act a party will risk serious and irreparable consequences.”

## THE LAW

### I. THE GOVERNMENT’S PRELIMINARY OBJECTION AS TO THE EXHAUSTION OF DOMESTIC REMEDIES

19. The Government invited the Court to reject the application on the ground that the applicant failed to exhaust domestic remedies. In this respect they alleged that the applicant had failed to lodge a constitutional complaint pursuant to Section 59 (4) of the newly revised Constitutional Court Act. That Act exceptionally allows the Constitutional Court to examine a constitutional complaint before exhaustion of other available remedies in cases where it is evident that there is a serious risk that the party’s constitutional rights and freedoms may be violated and that serious and irreparable consequences may arise from the failure of the relevant authorities to reach a decision.

20. On 7 December 2000 in its decision on the admissibility of the case the Court rejected the Government’s objection finding that Section 59 (4) of the Constitutional Court Act was enacted after the applicant had introduced his application with the Court, and that, therefore, this Section could not have been applied retroactively to the applicant's case.

However, the Government have now submitted the Constitutional Court’s decision of 11 July 2000 where it examined delays in the proceedings occurred prior to the entry into force of Section 59 (4) of the Constitutional Court’s Act. They therefore argue that the application should be declared inadmissible for non-exhaustion.

21. The applicant submits that a complaint pursuant to Section 59 (4) of the Constitutional Court Act is not a regular remedy under the domestic legal system as the Constitutional Court has a complete discretion to decide whether or not to examine the complaint and only when a party suffered irreparable consequences.

22. The Court recalls that on 26 July 2001 in the case of *Horvat v. Croatia* it found that the complaint pursuant to Section 59 (4) of the 1999 Constitutional Court Act was not an effective remedy in respect of the length of the proceedings in Croatia (see *Horvat v. Croatia*, no. 51585/99, §§ 34-48, 26 July 2001, to be published in the Court's official reports). The Court sees no reason to depart from this finding. Thus, the Court rejects the Government's objection.

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

23. The applicant complains that the proceedings concerning his civil claim for recognition of ownership 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

24. The Court observes firstly that the proceedings commenced on 5 July 1990 when the applicant's mother filed her civil action 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 and *Rajak v. Croatia*, no. 49706/99, § 37, 28 June 2001, unpublished). The proceedings are currently pending before the court of first instance. Thus, they have so far lasted for more than 11 years, out of which a period of three years and ten months falls to be examined by the Court.

25. The Court recalls that in order to determine the reasonableness of the length of time in question, regard must be had to the state of the case on 5 November 1997 (see, among other authorities, *Styranowski v. Poland*, no. 28616/95, § 46, 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 seven years and four months.

### B. Applicable criteria

26. 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* judgment of 15 October 1999 [GC], no. 26614/95, 15 October 1999, unpublished, § 60 and *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, ECHR 2000-IV).

### **C. The parties' arguments**

27. The Government argue that the case discloses both factual and legal complexity as it is necessary to find out the property situation in respect of the building in question for several decades.

28. The applicant submits that the court had done nothing to find out the property situation of the building before 19 May 2000 when it requested the Zagreb Housing Council to submit a list of the flats in the building, the names of the owners and occupiers as well as the legal position of the occupiers and the flats.

29. Concerning the applicant's conduct, the Government submit that neither the applicant nor his mother requested the court to speed up the proceedings. Furthermore, the applicant has never informed the court that his mother had died. Although the law regulating the property rights entered into force on 1 January 1997 the applicant adjusted his claim to that law as late as 19 May 2000.

30. The applicant submits that in 1994 his mother requested the Ministry of Justice to speed up the proceedings and he filed such requests with the presiding judge on 27 October 1999 and 20 January 2000. He submits also that since his mother had legal representation in the proceedings, although she had died, the court had no obstacles to continue the proceedings. Furthermore, the fact that he had not adjusted his claim to the changes in law could not have prevented the court from proceeding with the case.

31. With respect to the behaviour of domestic authorities, the Government claim that the domestic courts showed diligence in the conduct of the proceedings. In particular, the Government point out that in the civil proceedings the courts are limited in their activity as they may not take procedural steps on their own initiative but mostly according to the requests of the parties. The Zagreb Municipal Court has held hearings according to its objective possibilities since the workload at the civil department of that court is huge and each judge is assigned some nine hundred to one thousand cases.

### **D. The Court's assessment**

32. The Court acknowledges that the case discloses a certain degree of complexity. However, as pointed out by the applicant, it was only in May 2000, when the proceedings had already been pending for more than ten years, that the Zagreb Municipal Court requested documents concerning the alleged complex facts.

33. As regards the applicant's conduct, it is true that it took the applicant quite a while to adjust his claim to the changes in the law. However, this is not a fact which could have prevented the court from proceeding with the case. Furthermore, under Article 6 § 1 of the Convention it is the duty of the courts to conclude the proceedings within a "reasonable time", regardless of whether the parties requested the speeding up of the proceedings. Consequently, the Court considers that the applicant's conduct cannot explain the protracted character of the proceedings.

34. The Court notes that in the period to be taken into account the case laid dormant between 5 November 1997 and 12 May 1998; 12 May 1998 and 21 September 1999; 21 September 1999 and 2 May 2000; and ever since 12 September 2000. 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 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).

35. 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 and which are still pending before the court of first instance, fails 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

36. 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

37. The applicant sought an award of 960,000 Croatian Kunas (HRK) to compensate him for the financial loss he has allegedly suffered on account of the length of the proceedings. He explained that he has not been able to lease the flats in Zagreb the possession of which he is seeking in the proceedings in question. In consequence he suffered a loss of profits.

38. 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 flats claimed by the applicant.

39. The Court notes that the applicant's claim for pecuniary damage is based on allegedly lost profits. The Court cannot speculate 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.

40. In respect of non-pecuniary damage, the applicant sought the sum of 40,000 Croatian Kunas (HRK).

41. 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.

42. The Court accepts that the applicant suffered damage of a non-pecuniary nature as a result of the length of the proceedings. Making its assessment on an equitable basis and having regard to the circumstances of the case the Court awards the applicant HRK 20,000, as compensation for non-pecuniary damage.

#### **B. Costs and expenses**

43. The applicant sought the amount of HRK 2,440 for costs and expenses for legal assistance.

44. The Government have not commented on the applicant's claim for the costs and expenses incurred in the proceedings before the Court.

45. 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). The Court observes that the applicant has only been assisted by a lawyer for the purpose of presenting his requests under Article 41 of the Convention. The Court awards the applicant the sum requested, i.e. HRK 2,440.

#### **C. Default interest**

46. 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) HRK 20,000 (twenty thousand Croatian Kunas) in respect of non-pecuniary damage;
    - (ii) HRK 2,440 (two thousand four hundred and forty) Croatian Kunas in respect of costs and expenses;
  - (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.

Done in English, and notified in writing on 20 December 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH  
Registrar

Christos ROZAKIS  
President