



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

FIRST SECTION

CASE OF RAJČEVIĆ v. CROATIA

(Application no. 56773/00)

JUDGMENT

STRASBOURG

23 July 2002

FINAL

06/11/2002

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 Rajčević v. Croatia,

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

Mr C.L. ROZAKIS, *President*,

Mrs F. TULKENS,

Mr P. LORENZEN,

Mrs N. VAJIĆ,

Mr E. LEVITS,

Mr A. KOVLER,

Mr V. ZAGREBELSKY, *judges*,

and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 9 July 2002,

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

PROCEDURE

1. The case originated in an application (no. 56773/00) 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, Mr Ilija Rajčević (“the applicant”), on 19 February 1999.

2. The Croatian Government (“the Government”) were represented by their Agent, Ms Lidija Lukina Karajković.

3. The applicant alleged that the proceedings concerning his civil claim for damages had exceeded the “reasonable time” requirement.

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 29 November 2001 the Court declared the application partly 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*). The parties replied in writing to each other's observations.

7. On 1 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. The applicant was born in 1930 and lives in Karlovac, Croatia.

9. On 18 September 1992 the applicant filed a civil action with the Karlovac Municipal Court (*Općinski sud u Karlovcu*), seeking damages for his destroyed property from an insurance company - C.O. The applicant claimed that an unknown person had set fire in his summer house in Pirovac, Croatia, and had also appropriated his property from the house.

10. Before 5 November 1997, i.e., the date of the entry of the Convention into force in respect of Croatia, the first instance court held three hearings.

11. At the hearing on 2 December 1997 the defendant asked the court to order the Šibenik Police Department (*Policajska uprava Šibenska*) to submit a report concerning the applicant's claim.

On 5 December 1997 the court ordered the Šibenik Police Department and the defendant's office in Šibenik to submit information relevant for the applicant's claim. Furthermore, the court ordered the Šibenik Public Prosecutor's Office (*Općinsko državno odvjetništvo u Šibeniku*) to inform it about criminal reports on arson submitted in the period relevant for the applicant's claim.

The defendant's office in Šibenik replied on 22 December 1997, the Šibenik Public Prosecutor's Office on 2 January 1998 and the Šibenik Police Department on 12 January 1998.

12. According to the Government the hearing scheduled for 12 May 1998 was adjourned because the applicant's counsel had not received the notice of the hearing date.

According to the applicant the hearing on 12 May 1998 was held in his presence. The defendant repeated its request from the previous hearing that the court order the Šibenik Police Department to submit a report relevant for the applicant's claim. The applicant replied that the defendant was already in possession of that report and accused the defendant's counsel of lying. The judge left the courtroom.

13. According to the Government, since neither the applicant nor his counsel, although notified, appeared at the hearing scheduled for 6 October 1998 the court stayed the proceedings (*mirovanje postupka*).

According to the applicant he had never been notified of the hearing date.

14. On 12 January 1999 the applicant's counsel requested the court to resume the proceedings.

15. On 21 January 1999 the Karlovac Municipal Court struck out the applicant's claim. On 3 February 1999 the applicant appealed against that decision. On 17 March 1999 the Karlovac County Court (*Županijski sud u Karlovcu*) quashed the first instance decision and remitted the case to the Karlovac Municipal Court.

16. It appears that the applicant filed a motion requesting that the presiding judge be removed from the case. On 5 July 1999 the President of the Karlovac Municipal Court rejected the request.

17. At the hearing on 5 October 1999 the court invited the defendant to submit its observations on the County Court's decision of 17 March 1999 within 30 days.

On 12 October 1999 the defendant filed its submissions.

18. On 14 February 2000 the applicant increased the sum sought.

19. At the next hearing on 17 May 2000 the court decided that it would order the Šibenik Public Prosecutor's Office to submit further information concerning the arson in the applicant's house.

On 9 June 2000 the Šibenik Public Prosecutor's Office submitted the requested information.

20. According to the Government, on 21 July 2000 the court scheduled the next hearing for 10 October 2000, but the applicant failed to collect the notice of the hearing date sent to him by registered mail. On 25 August 2000 the court unsuccessfully attempted another delivery of the notice of the hearing date to the applicant.

21. According to the applicant, he had never received the notices for the above hearings.

22. On 25 September 2000 the defendant filed additional submissions.

On 27 September 2000 the court sent the defendant's submissions to the applicant and invited him to file his reply within eight days.

On 8 October 2000 the applicant filed his reply.

23. On 16 November 2000 the applicant filed his additional submissions. According to the Government, since he had failed to submit a copy for the defendant, on 3 January 2001 the court ordered him to submit another copy.

According to the applicant he had already sent a copy of his submissions directly to the defendant.

On 9 February 2001 the applicant sent a letter to the court refusing to submit another copy of his submissions of 16 November 2000.

24. On 19 March 2001 the court invited the defendant to submit its inner regulations and other information concerning the applicant's claim.

25. On 9 April 2001 the court invited the Šibenik Police Department to inform it whether there were any war operations in the area where the applicant's house is situated.

26. On 12 April 2001 the defendant submitted its inner regulations.

27. On 8 June 2001 the court invited the defendant to submit copies of the photographs depicting the remnants of the applicant's house after destruction and also their estimation of damages.

On 21 June 2001 the defendant submitted the requested documentation.

On 29 June 2001 the court sent the copy of that documentation to the applicant.

28. At the hearing on 10 July 2001 the court decided to invite the Šibenik Warning and Information Centre (*Centar za obavještavnje i*

uzbunjivanje u Šibeniku) to inform it whether there were any war operations in the area where the applicant's house is situated.

29. On 23 July 2001 the defendant asked the court to extend the time limit for its submissions concerning a possible settlement with the applicant.

30. On 2 August 2001 the Ministry of Defence Administration for Communications (*Uprava za komunikacije Ministarstva obrane*) informed the court that on 4 May 1992 there were no war operations in the area where the applicant's house is situated.

31. On 16 October 2001 the Supreme Court (*Vrhovni sud Republike Hrvatske*) asked that the case-file be sent to it in order to decide upon the applicant's request that the case be heard before another court.

32. On 17 October 2001 the Karlovac Municipal Court held a hearing. The applicant asked that the court adopt a judgment. It was decided that the case-file would not be transferred to the Supreme Court. The proceedings were concluded and the court adopted judgment rejecting the applicant's claim.

33. On 10 December 2001 the applicant appealed against the judgment.

On 6 February 2002 the Karlovac County Court rejected the applicant's appeal.

THE LAW

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

The applicant alleged that the proceedings concerning his claim for damages for his destroyed property have not been concluded within a reasonable time as required by Article 6 § 1 of the Convention, the relevant part of which reads:

“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

34. The Court observes that the proceedings commenced on 18 September 1992. However, the period which falls within the Court's jurisdiction did not begin on that date, but on 6 November 1997, after the Convention entered into force in respect of Croatia (see *Horvat v. Croatia*, no. 51585/99, § 50, 26 July 2001, to be published in the Court's official reports). The proceedings were concluded by the Karlovac County Court's judgment of 6 February 2002. They have therefore lasted for nine years, four months and eighteen days, of which a period of four years and three months falls to be examined by the Court.

35. The Court reiterates that in order to determine the reasonableness of the length of time in question, regard must be had, however, 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 connection the Court notes that at the time of entry into force of the Convention in respect of Croatia the proceedings had lasted for about four years and ten months.

B. Applicable criteria

36. The Court reiterates 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 lay 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, *Humen v. Poland* [GC], no. 26614/95, § 60, 15 October 1999, unreported, and *Mikulić v. Croatia*, no. 53176/99, § 38, 7 February 2002, to be published in the Court's official reports).

C. The parties' submissions

37. The Government submitted that the application did not disclose any appearance of a violation of Article 6 of the Convention, in particular having regard to the time elapsed after the entry into force of the Convention in respect of Croatia. They submitted further that the subject matter of the applicant's case did not call for particular urgency in deciding it. They referred to the Court's case-law, arguing that the cases that did call for special urgency were those that related to family-law matters or to payment of damages to the victims of road accidents, those that involved the interests of a great number of persons and cases concerning dismissal from work.

38. As to the behaviour of the applicant, the Government argued that he had contributed to the delays. In particular, they stressed that the proceedings had been stayed twice because the applicant, although notified, had failed to appear at the hearings. Furthermore, he had refused to submit an additional copy of his submissions to the court.

The applicant disagreed with the Government. He claimed that he had not received the notice of the hearing when the court had stayed the proceedings due to his absence. Also, he had not filed another copy of his submissions because he had already sent a copy directly to the defendant and informed the court about it.

39. With respect to the behaviour of the domestic authorities, the Government asserted that the domestic courts had showed diligence in the conduct of the proceedings. Furthermore, the proceedings had partly taken place during the war in Croatia when the normal operation of courts had been impaired.

The applicant maintained that the first instance court had requested twice the same information from the Šibenik Public Prosecutor's Office. Furthermore, some of the requested information had been entirely unnecessary for the proceedings. The whole proceedings had been deliberately delayed.

D. The Court's assessment

40. The Court notes that in the period to be taken into account the proceedings have been pending before the court of first instance for about four years and eight months.

As to the complexity of the case, the Court notes that the issue to be decided was the applicant's action for damages for his destroyed property sought from an insurance company. The Court does not find that the case involved either factual or legal complexity.

As to the behaviour of the applicant the Court notes that the applicant somewhat contributed to the length of proceedings in so far as he twice failed to collect the notice of the hearing dates and refused to file an additional copy of his submissions.

As to the behaviour of the domestic authorities the Court notes that the Šibenik Municipal Court for the first time requested information relevant for the applicant's claim from the Šibenik Police Department and the Šibenik Public Prosecutor's Office as late as 5 December 1997, more than five years after the applicant filed his action for damages. The Šibenik Municipal Court on three further occasions, i.e. on 17 May 2000, 9 April and 10 July 2001, invited the relevant authorities to submit additional information about the facts concerning the destruction of the applicant's house. Finally, it received a reply from the Ministry of Defence Administration for Communication on 2 August 2001, almost nine years after the commencement of the proceedings.

The Government did not submit any explanations for these delays in the proceedings.

In the light of the delays attributable to the domestic authorities and the overall duration of the proceedings, even if the applicant somewhat contributed to the lengths of the proceedings, the Court is not persuaded by the Government's explanations for the delays. It reiterates 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, *Horvat v Croatia*, cited above, § 59).

41. 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 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

42. 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

43. The applicant sought an award of 86,932 Croatian Kunas (HRK)¹ to compensate him for the destruction of his house; HRK 86,932 for the interests; and HRK 180,000² for financial loss he has allegedly suffered on account of the impossibility to use the house. In respect of non-pecuniary damage, the applicant sought the sum of 15,000 euros (EUR).

44. The Government did not comment on the applicant's request.

45. The Court notes that the violation it has found relates solely to the length of the civil proceedings before the competent tribunals. The applicant's claims for compensation of pecuniary damage relate, however, to the consequences of the destruction of his property. In these circumstances, no causal link has been established between the violation found and the damage alleged. The applicants' claims under this head must therefore be rejected.

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 the Court awards the applicant 1,800 euros.

B. Costs and expenses

46. For the proceedings before the domestic courts the applicant sought 2,000 euros for his legal representation, copying and mailing expenses. The applicants did not seek reimbursement of costs and expenses involved in the proceedings before the Court.

47. The Government did not comment on the applicant's request.

48. The Court reiterates that 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. 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. It therefore rejects the applicant's claim under this head.

¹ Approximately 11,900 euros.

² Approximately 24,650 euros.

C. Default interest

49. The Court considers that the default interest should be fixed at a rate equal to the marginal lending rate of the European Central Bank plus three percentage points.

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, EUR 1,800 (one thousand and eight hundred euros) in respect of non-pecuniary damage which should be converted into the national currency of the respondent State (Croatian Kuna) at the rate applicable at the date of settlement;
 - (b) that simple interest at a rate equal to the marginal lending rate of the European Central Bank plus three percentage points 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.

Done in English, and notified in writing on 23 July 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President