



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

FIRST SECTION

CASE OF ČULJAK AND OTHERS v. CROATIA

(Application no. 58115/00)

JUDGMENT

STRASBOURG

19 December 2002

FINAL

19/03/2003

*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 Čuljak & Others 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 S. NIELSEN, *Deputy Section Registrar*,

Having deliberated in private on 28 November 2002,

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

PROCEDURE

1. The case originated in an application (no. 58115/00) 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 two Croatian nationals, Mr Gojko and Mr Branko Čuljak and the company Mesoprodukt (“the applicants”), on 16 December 1999.

2. The applicants were represented by Mr Ivan Žalac, a lawyer practising in Slavonski Brod. The Croatian Government (“the Government”) were represented by their Agent, Ms Lidija Lukina Karajković.

3. The applicants alleged, in particular, that the length of three sets of proceedings lasted unreasonably long, contrary to Article 6 § 1 of the Convention.

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed 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.

5. By a decision of 16 May 2002 the Court declared the application admissible.

6. The Chamber decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 2 *in fine*).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

7. The first and the second applicants were born in 1958 and 1959, respectively, and live in Požega. The third applicant, “Mesoprodukt”, is a meat production company.

8. In 1991 the first and second applicants founded the company “Mesoprodukt”, a personal private company in Požega. The company is entirely owned by the first and second applicants and they are liable for the company's obligations with all their assets. The present case concerns several proceedings in respect of “Mesoprodukt”.

1. Proceedings against the Požega and Slavonija County

9. By virtue of the Požega County Veterinary Inspection (*veterinarski inspektor Ureda za gospodarstvo Županije požeško-slavonske*) decision of 26 May 1994, the applicant company was prohibited from slaughtering animals and producing meat for human consumption.

10. Upon the applicant company's appeal the Appeal Commission of the Ministry of Agriculture and Forestry (*Uprava za veterinarstvo poljoprivrede i šumarstva*) quashed the first instance decision on 14 June 1994.

11. On 14 November 1994 the applicant company filed a suit with the Požega Municipal Court (*Općinski sud u Požegi*) seeking payment of damages from the Požega and Slavonija County (*Županija Požeško-Slavonska*), due to the fact that it had been prohibited from producing meat from 26 May 1994 until 14 June 1994.

12. Prior to 5 November 1997 the Požega Municipal Court ordered that a financial expertise be carried out and invited the applicant company to pay an advance for expenses related to the expert opinion. The applicant company paid the advance in part.

13. On 3 April 1998 the court invited the applicant company to pay the remainder of the advance.

14. On 4 May 1999 the appointed expert informed the court that the applicant company had not paid the remainder of the advance for the expenses.

15. At the hearing on 7 May 1999 the court invited the Požega Tax Revenue Service to submit documentation about the applicant company's income in 1993 and 1994 in order to carry out a complete financial expertise. In January 2000 the requested documents were submitted. On 10 April 2000 the court sent this documentation to the appointed expert. The applicant company was invited to pay an advance for the expenses related to a new expertise.

16. The next hearing scheduled for 23 January 2001 was adjourned at the request of the applicants' counsel.

17. At the hearing on 1 March 2001 the court stayed the proceedings because the first and second applicants, although they received the notice of the hearing date, did not appear.

18. On 12 June 2001 the applicants' counsel asked the court to resume the proceedings. The court then ordered that additional expertise be carried out and invited the defendant to pay an advance for the expenses of the expertise.

19. On 5 December 2001 the defendant informed the court that it did not wish to pay the expenses.

20. On 4 January 2002 the court requested the Slavonski Brod Commercial Court (*Trgovački sud u Slavonskom Brodu*) to provide documentation concerning the applicant company's registration.

On 17 January the requested documentation was submitted.

21. At the hearing on 18 February 2002 one witness was heard and the defendant filed further written submissions. The applicants' counsel was asked to file a written reply and to specify their claim within fifteen days.

22. It appears that the proceedings are pending before the court of first instance.

2. Proceedings against the Ministry of Interior and the Ministry of Finance

23. On 18 March 1994 the police seized a vehicle owned by the first applicant's wife. The vehicle had been used for transportation of goods related to "Mesoprodukt". On 21 April 1994 the vehicle was returned.

24. On 14 November 1994 the applicant company filed a suit with the Požega Municipal Court against the Ministry of Interior (*Ministarstvo unutarnjih poslova*) and the Ministry of Finance (*Ministarstvo financija*), seeking payment of damages for the profits lost due to its inability to transport goods with the vehicle.

25. On 14 August 1996 the Požega Municipal Court pronounced judgment granting the applicant company's claim. Both parties appealed against the judgment.

26. On 19 November 1997 the Požega County Court (*Županijski sud u Požegi*) quashed the first instance judgment and remitted the case for re-trial.

27. The hearing scheduled for 16 June 1998 was adjourned due to the illness of the expert who was to be heard.

28. The hearing scheduled for 4 June 1999 was adjourned due to the expert's absence.

29. On 29 October 1999 the Act on Changes of the Civil Obligations Act was introduced providing that all proceedings concerning actions for damages resulting from acts of members of the Croatian army or police when acting in their official capacity during the war in Croatia were to be stayed pending the enactment of new legislation on the subject.

30. On 22 January 2002 the proceedings were stayed pursuant to the above Act.

31. The applicants' counsel appealed against that decision. The appeal was rejected on 27 March 2002 by the Požega County Court.

32. The proceedings are accordingly pending before the first instance court.

3. Proceedings against the Ministry of Finance

33. On 9 December 1993 the the Požega County Finance Police Office (*Postaja financijske policije za Požeško-slavonsku županiju*) ordered the applicant company to pay a transfer and sale of goods tax (*porez na promet proizvoda i usluga*) in the amount of 179,837.52 Croatian Kunas (HRK) and HRK 363,600.87 in interest. As the applicant company refused to pay those sums, its bank account was blocked.

34. The applicant company's ensuing appeals were successful and on 13 January 1997 the Ministry re-assessed the amount of tax to be paid to HRK 64,955.00 and HRK 64,381.52 in interest. The applicant company paid those sums immediately after receiving this decision.

35. Subsequently, on 19 November 1997 the applicant company filed a suit with the Požega Municipal Court seeking payment of damages from the Ministry of Finance due to the fact that the authorities' miscalculation of the tax had caused an unwarranted blocking of the bank account of the company.

36. On 9 December 1997 the defendant filed its submissions objecting to the applicant company's claim.

37. The preliminary hearing scheduled for 10 December 1997 was adjourned due to the defendant's absence.

38. On 15 October 1998 the defendant submitted a detailed reply denying the applicant company's claim.

39. The next hearing was held on 29 October 1998.

40. On 15 October 1999 the court invited the applicant company to pay the court fees. The applicant company failed to do so.

41. On 2 March 2000 the court informed the Tax Revenue Service that the applicant company had not paid the court fees.

42. At the hearing on 17 January 2001 the defendant asked the court to stay the proceedings until the applicant company had paid the court fees. The court invited the Tax Revenue Service to inform it whether the applicant company had paid the fees. It also invited the Požega Commercial Court (*Trgovački sud u Požegi*) to submit documentation concerning the assets of the applicant company.

43. On 6 March 2001 the Požega Commercial Court submitted the requested documentation.

44. It appears that the proceedings are presently pending before the court of first instance.

4. Proceedings before the Constitutional Court

45. In respect of the above-mentioned three sets of civil proceedings the applicant company lodged a complaint with the Constitutional Court

(*Ustavni sud Republike Hrvatske*) complaining about the excessive length of the three above sets of proceedings and requesting the speeding up of those proceedings.

46. By decision of 4 May 2000 the Constitutional Court rejected the applicant company's complaint finding that the proceedings did not exceed the reasonable time requirement.

THE LAW

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

47. The applicants complain that the three sets of civil proceedings instituted by the applicant company owned by the first and the second applicants have not been concluded within a “reasonable time” as required under Article 6 § 1 of the Convention, the relevant part of which 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...”

First the Court notes that it is not disputed that the first and second applicants, being the sole owners of “Mesoprodukt” and personally responsible for its actions may claim to be victims within the meaning of Article 34 of the Convention.

A. Period to be taken into account

48. The Court observes that two sets of the proceedings commenced on 14 November 1994 while the third set commenced on 19 November 1997.

49. However, the period which falls within the Court's jurisdiction in respect of the first and second sets of the proceedings did not begin on 14 November 1994, 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, ECHR - 2002 ...).

50. All three sets of proceedings are pending before the court of first instance. The first and second sets of the proceedings have therefore lasted for about eight years so far, of which a period of about five years falls to be examined by the Court. The third set of the proceedings have lasted for about five years.

51. 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, *Styrkowski 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 first and second sets of proceedings had lasted for about three years.

B. Applicable criteria

52. 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, *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 Court's assessment

53. The Government contended that the subject matter of the cases involving the applicant company did not call for particular urgency in deciding them like e. g. cases related to family law matters or to payment of damages to the victims of traffic accidents. The applicants did not express themselves on this point.

54. The Court considers that, irrespective of whether or not the subject matter of the cases called for particular urgency in deciding them, the cases do not appear to involve any particular legal or factual complexity. Thus, the Court does not find that this issue could justify the length of the proceedings.

55. As to the applicants' behaviour the Government contended that the former had significantly contributed to the delays in the proceedings. In the first set of the proceedings the applicants had asked the adjournment of the hearing scheduled for 23 January 2001, failed to submit written observations and had not appeared at the hearing scheduled for 1 March 2001. Due to the applicants' behaviour these proceedings had been stayed from 1 March 2001 until 12 June 2001. Furthermore, even after the proceedings had been resumed the applicants' counsel had not specified the claim as requested by the Požega Municipal Court.

56. In respect of the second set of the proceedings the Government pointed out that the courts had been prevented from taking any steps since 29 October 1999 when the Act on Changes of the Civil Obligations Act had ordered that all proceedings concerning actions for damages resulting from acts of members of the Croatian army or police during the Homeland War in Croatia were to be stayed.

57. As regards the third set of the proceedings the Government submitted that the applicants failed to pay the court fees and thus prevented the court from proceedings with the case.

58. In sum the Government contended that the application did not disclose any appearance of a violation of Article 6 of the Convention because the delays were entirely attributable to the applicants.

59. The applicants submitted that they were not able to pay the court fees and the advance for expenses related to the financial expertise because the bank account of the applicant company had been blocked for no reason. However, the fact that they had not paid the court fees should not, in their view, have prevented the court from deciding their claims.

60. Furthermore, the applicants argued that the delays were entirely attributable to the domestic authorities because the hearings had been held rarely and the courts had been inactive.

61. The Court notes that since 5 November 1997 when the Convention entered into force in respect of Croatia the first set of proceedings have been pending for about five years in one instance. Within that period no hearing was held until 7 May 1999, which amounts to one year, six months and one day and the case lay dormant between 3 April 1998 and 4 May 1999, which amounts to one year one month and one day.

62. Furthermore it took about eight months before the Požega Tax revenue Service submitted the requested documentation to the Požega Municipal Court and a further three months for the court to send this documentation to the appointed expert.

63. In the light of these periods of inactivity and the overall duration of the proceedings, even if the applicants may be considered as having contributed to the length of the proceedings by requesting an adjournment and by failing, so far, to submit their final claims, 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).

64. As regards the second set of the proceedings, the Court recalls that these have been pending for about five years subsequent to 5 November 1997. Within that period the case lay dormant between 16 June 1998 and 4 June 1999 which amounts to about one year.

65. More importantly, the Court notes that from 29 October 1999 there has been no activity in the proceedings due to the enactment of the legislation which ordered that all proceedings where the damages were sought in relation to acts of the Croatian army or police members during the Homeland War be stayed, pending new legislation on that issue.

66. Taking into account the periods on inactivity before 29 October 1999 and the fact that no new legislation, which would enable the applicants to have their civil claim decided by the domestic courts, has been enacted yet, the Court rejects the Government's contention that the delays were attributable to the applicants in any respect. To the contrary, the Court considers that, while it is true that the courts have been prevented from proceeding with the case, the responsibility for such a delay lies exclusively with the domestic authorities since Parliament enacted a law ordering that

all proceedings of such nature be stayed and has not, so far, introduced any new regulation of the matter.

67. Finally, as regards the third set of the proceedings, the Court notes that these have been pending for about five years. Within that period three hearings were held. There was no activity from 9 December 1997 until 10 December 1999, which amounts to two years.

68. In respect of the Government's contention that the applicants contributed to the delay in these proceedings because they have not paid the court fees, the Court notes that this fact did not prevent the Požega Municipal Court from proceeding with the case.

69. Thus, the Court considers that, taking into account the overall duration of these proceedings and the periods of inactivity, their length is excessive.

70. In conclusion the Court finds that there has been a violation of Article 6 § 1 of the Convention in respect of all three sets of proceedings.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

71. 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

72. The applicants sought an award of HRK 2,195,880 [Approximately 302,700 euros.] to compensate them for the financial loss they have allegedly suffered on account of the length of the proceedings. It was explained that the applicant company had been prevented from continuing with its meat production activities due to the fact that its bank account had been blocked.

73. The Government submitted that the applicants could seek damages only in respect of a violation of the reasonable time requirement.

74. The Court notes that the applicants' claim for pecuniary damage is based on allegedly lost profits. The Court cannot speculate what the outcome would have been if the applicants had obtained a final decision on their actions within a reasonable time. The Court accordingly dismisses the claim.

75. In respect of non-pecuniary damage, the first and second applicants sought the sum of HRK 500,000 [Approximately 68,900 euros.] each and HRK 1,000,000 on behalf of the applicant company.

76. 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.

77. The Court accepts that the applicants 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 first and second applicants 4,500 euros (EUR) each. As to the applicant company the Court notes that it is a personal private company, entirely owned by the first and second applicants and that they are liable for the obligations of the company with all their assets. Therefore, no separate damage shall be awarded in that respect.

B. Costs and expenses

78. In respect of the first set of proceedings before the domestic courts the applicants sought HRK 161,151 for costs and expenses, in respect of the second set of proceedings HRK 36,630 and in respect of the third set of proceedings HRK 328,314.20. They explained that these were the expenses of the legal representation in these proceedings.

79. In respect of the proceedings before the Court the applicants sought HRK 610,610 [Approximately 84,200 euros.] for their legal representation.

80. The Government invited the Court to assess the costs and expenses incurred by the applicants.

81. 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.

82. As to the costs and expenses incurred, the Court observes that the applicants claimed reimbursement of the fee of their representative. Applying the criteria laid down in its case-law, it must therefore ascertain whether the sum claimed was actually and necessarily incurred in order to prevent or obtain redress for the matter found to constitute a violation of the Convention and was reasonable as to quantum (see, among many other authorities, *Öztürk v. Turkey* [GC], no. 22479/93, § 83, ECHR 1999-VI). The Court notes that Mr Žalac represented the applicants throughout the proceedings before the Court. Making its ruling, here again, on an equitable basis, the Court considers it reasonable to award the applicants EUR 2,000 for their costs and expenses.

C. Default interest

83. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of all three sets of proceedings;
2. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 4,500 (four thousand and five hundred euros) to the first and second applicants each in respect of non-pecuniary damage;
 - (ii) EUR 2,000 (two thousand euros) in respect of costs and expenses;
both of 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 from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
3. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 19 December 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Deputy Registrar

Christos ROZAKIS
President