



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

FIRST SECTION

CASE OF ŠOĆ v. CROATIA

(Application no. 47863/99)

JUDGMENT

STRASBOURG

9 May 2003

FINAL

09/08/2003

*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 Šoć 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 S. NIELSEN, *Deputy Section Registrar*,

Having deliberated in private on 10 April 2003,

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

PROCEDURE

1. The case originated in an application (no. 47863/99) against the Republic of Croatia lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Croatian citizen, Mr Draško Šoć (“the applicant”), on 23 October 1996.

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

3. The applicant alleged, in particular, that several sets of civil proceedings instituted by him had exceeded the “reasonable time” requirement and that he had no remedy at his disposal in respect of the length of these proceedings.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

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 considered the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

6. 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.

7. By a decision of 24 January 2002 the Court declared the application partly admissible.

8. 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

I. THE CIRCUMSTANCES OF THE CASE

a. Proceedings against R.R.

9. On 27 January 1994 the applicant filed with the Dubrovnik Municipal Court (*Općinski sud u Dubrovniku*) an action against R.R. He claimed that in 1986 he and his then wife made a contract with R.R. with the effect that the applicant and his wife would provide R.R. with all care until her death and R.R. gave the applicant and his wife a flat in Dubrovnik for their use. Subsequently, another contract was made to the effect that the applicant and his wife would pay some of R.R.'s debts and that R.R. would make a testament leaving to the applicant's wife the ground floor of a house in Dubrovnik with a garden. In 1993 the applicant and R.R. made two additional contracts whereby R.R. sold to the applicant a house in Dubrovnik. The contracts were not entered into the land registry. R.R. stayed in the house and denied the applicant's property rights. By his action the applicant sought a declaration concerning his property rights. He also asked the court to issue an interim measure so as to prevent R.R. from selling the property in question.

10. It transpires from the case file that sometime in 1996 R.R. died but had beforehand sold the property in question to third persons.

11. Before 5 November 1997 when the Convention entered into force in respect of Croatia, several hearings were adjourned because the applicant's counsel did not appear.

12. The hearing scheduled for 24 February 1998 was also adjourned because the applicant's counsel did not appear. The postal receipt indicated that he had changed his address but had failed to inform the court.

13. The next hearing scheduled for 8 April 1998 was again adjourned at the request of the applicant's counsel who informed the court that he had had no contact with the applicant.

14. At the hearing of 19 May 1998 the applicant appeared in person and asked the court to adjourn the next hearing because he had instituted several proceedings with the Dubrovnik Municipal Court and would prefer not to have to travel from Zagreb to Dubrovnik too often.

15. On 22 January 2001 the applicant informed the court that he had obtained Croatian citizenship.

16. On 17 August 2001 the applicant filed a criminal complaint with the Public Prosecutor's Office against the presiding judge alleging that she committed the offence of negligent performance of duty in dealing with his case. He alleged that the judge had been ignoring his numerous requests to speed up the proceedings and his request for an interim measure.

17. On 18 August 2001 the applicant filed a request with the Supreme Court (*Vrhovni sud Republike Hrvatske*) seeking that the presiding judge be dismissed from her office and repeating his allegations from the criminal complaint filed against her.

18. On 27 August 2001 the applicant filed a motion with the president of the Dubrovnik Municipal Court challenging the presiding judge for bias and once again repeating his allegations from the criminal complaint against her.

19. On 19 September 2001 the president of the Dubrovnik Municipal Court rejected the applicant's motion of 27 August 2001 as unfounded.

20. The next hearing was scheduled for 23 October 2001. According to the Government the Dubrovnik Municipal Court attempted to serve the notice of the hearing date on the applicant at the address indicated in his claim. The receipt slip showed that the applicant was unknown at that address. The Zagreb Police Department informed the court that the applicant did not live at the other address where he was registered. The court then posted the notice on its public notice-board.

21. Since the applicant did not appear at the hearing scheduled for 23 October 2001 the court stayed the proceedings (*mirovanje postupka*).

22. By a letter of 13 February 2002 the Supreme Court informed the applicant that his allegations against the presiding judge had been unfounded.

23. On 4 March 2002 the Dubrovnik Municipal Court terminated the proceedings because the applicant had not sought that the proceedings be resumed.

b. Proceedings against Lj.Š.

24. On 11 March 1994 the applicant filed an action against Lj.Š. for payment of 9,718 Croatian Kunas (HRK), with the Zagreb Municipal Court (*Općinski sud u Zagrebu*).

25. By default judgment of 17 May 1994 the first instance court granted the applicant's claim. On 28 October 1997 the appellate court quashed that judgment and remitted the case to the first instance court.

26. On 9 and 29 April 1998 the applicant asked the first instance court to schedule a hearing, but did not submit Lj.Š.'s address. Therefore, the court requested her address from the Zagreb Police Department which was, however, unable to provide the requested address.

27. On 12 May 1998 the court invited the applicant to submit Lj.Š.'s address. The applicant did so on 19 June 1998.

28. As neither party appeared at the hearing scheduled for 12 November 1998 the court stayed the proceedings (*mirovanje postupka*).

29. On 25 November 1998 the applicant filed a motion to resume the proceedings (*prijedlog za povrat u prijašnje stanje*).

30. At the next hearing on 25 September 2000 the court heard the applicant and after that resumed the proceedings.

31. The next hearing scheduled for 23 November 2000 was adjourned because Lj.Š. did not appear. The postal receipt indicated that she had changed her address. The applicant submitted her new address. Lj.Š.'s counsel submitted a receipt of payment relevant for the applicant's claim. The applicant asked the court to adjourn the hearing because he wished to submit his reply.

32. Since the applicant failed to appear at the hearing scheduled for 22 January 2001 the court stayed the proceedings. Lj.Š.'s counsel appealed against that decision.

33. On 9 October 2001 the Zagreb County Court (*Županijski sud u Zagrebu*) upheld the decision to stay the proceedings.

34. The proceedings were resumed before the Zagreb Municipal Court which scheduled the next hearing for 20 March 2002. At that hearing the court allowed the applicant at his request to submit documentation in support of his claim within fifteen days.

35. The next hearing scheduled for 17 May 2002 was adjourned.

36. At the hearing on 18 September 2002 the court invited the applicant to specify his claim within fifteen days.

37. At the hearing on 24 October 2002 the court heard the applicant and again invited him to specify his claim.

38. The Court notes that neither party has referred to any further steps in the proceedings since the hearing on 24 October 2002 and therefore must assume that the proceedings are still pending before the court of first instance.

c. Proceedings against P.D. and D.D.

39. On 1 March 1997 the applicant filed with the Dubrovnik Municipal Court an action against P.D. and D.D. seeking a declaration concerning his property rights.

40. Before 5 November 1997 the court of first instance exempted the applicant from the payment of the court fees and rejected his request to be entirely exempted from the payment of costs and expenses in the proceedings. Several hearings were adjourned.

41. At the hearing on 20 March 1998 the defendants' counsel asked the court to order the applicant to deposit a security for the defendants' costs and expenses because the applicant was not a Croatian citizen.

42. At the next hearing on 19 May 1998 the court invited the applicant to submit a certificate on his residence in Croatia.

43. On 6 June 1998 the applicant informed the court that he was unable to submit the requested certificate.

44. On 22 January 2001 the applicant informed the court that he had obtained Croatian citizenship.

45. On 9 November 2001 the Dubrovnik Municipal Court pronounced judgment rejecting the applicant's claim.

46. The applicant appealed against the judgment. On 13 December 2001 the Dubrovnik Municipal Court rejected the appeal as being out of time. The applicant appealed against that decision. On 4 April 2002 the Dubrovnik County Court quashed the first instance decision rejecting the applicant's appeal.

47. The Court notes that neither party has referred to any further steps in the proceedings and therefore must assume that the proceedings are now pending before the Dubrovnik County Court upon the applicant's appeal against the first instance judgment of 9 November 2001.

d. Proceedings against K.M.

48. On 20 March 1997 the applicant filed with the Samobor Municipal Court (*Općinski sud u Samoboru*) an action against K.M. for payment of HRK 1,126.100.

49. On 17 November 1997 the applicant was invited to submit a declaration of means in connection with his application for the exemption from the payment of the court fees.

50. The applicant filed a motion challenging the presiding judge for bias. His motion was dismissed by the President of the court on 2 December 1997. However, the case-file was assigned to another judge.

51. At the next hearing on 17 February 1998 K.M. replied to the applicant's claim.

52. As the judge retired, the case was assigned to another judge.

53. At the hearing on 2 June 1998 the court invited the applicant to specify his claim.

54. The next hearing scheduled for 23 February 1999 was adjourned due to the applicant's illness.

55. At the hearing of 4 May 1999 the court again invited the applicant to specify his claim. On 7 May 1999 the applicant complied with the court's request.

56. In July 1999 the judge went on maternity leave. In February 2000 the case was assigned to another judge.

57. The next hearing scheduled for 20 September 2000 was adjourned because K.M. did not appear.

58. At the hearing on 5 October 2000 the court concluded the proceedings.

59. On 13 October 2000 the court pronounced judgment partly granting and partly rejecting the applicant's claim.

60. On 30 October and 11 December 2000, respectively, K.M. and the applicant filed their appeals against the judgment.

61. On 24 July 2001 the appellate court quashed the first instance judgment and remitted the case to the Samobor Municipal court for re-trial.

62. At the next hearing on 19 March 2002 the court decided to hear the parties at the hearing scheduled for 23 April 2002.

63. At the hearing on 17 June 2002 the court stayed the proceedings because the applicant did not appear. The applicant then asked the court to resume the proceedings.

64. The Court notes that neither party has referred to any further steps in the proceedings and therefore must assume that the proceedings are still pending before the court of first instance.

e. Proceedings against A.J.J.

65. On 20 March 1997 the applicant filed with the Zagreb Municipal Court an action against A.J.J. concerning certain compensation claims.

66. The court exempted the applicant from the payment of the court fees.

67. On 24 November 1997 A.J.J.'s counsel filed a request that the applicant be ordered to deposit a security for A.J.J.'s costs and expenses because the applicant was not a Croatian citizen.

68. At the hearing on 3 December 1997 A.J.J.'s counsel repeated the previous request. The applicant opposed that request.

69. It seems that A.J.J. had filed written submissions concerning the applicant's claim before the hearing on 29 September 1998 when the court invited the applicant to reply to A.J.J.'s submissions within fifteen days. The applicant did not submit any reply.

70. On 1 January 1999 the case was transferred to another judge because the previous judge had resigned.

71. On 7 June 2000 the court rejected A.J.J.'s request that the applicant deposit the security for her costs and expenses.

72. On 14 July 2000 A.J.J. appealed against the above decision.

73. In the meantime, on 12 July 2000, the applicant informed the court that he had obtained Croatian citizenship.

74. On 25 July 2000 A.J.J.'s appeal was sent to the applicant for reply.

75. At the hearing on 22 November 2000 the parties agreed that, since the applicant had obtained Croatian citizenship, there was no need for further examination of A.J.J.'s appeal.

76. At the next hearing on 13 March 2001 the court stayed the proceedings as the applicant did not appear.

77. On 23 March 2001 the applicant filed an application to resume the proceedings.

78. The next hearing scheduled for 11 September 2001 was adjourned because the applicant did not appear.

79. At the hearing on 5 March 2002 the court heard the applicant in connection with his application that the proceedings be resumed.

80. On 15 March 2002 the court rejected the applicant's request to resume the proceedings and terminated the proceedings. This decision became final on 9 April 2002.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The 2002 Constitutional Act on the Constitutional Court

81. The relevant parts of Section 63 of the Constitutional Act on the Constitutional Court (entered into force on 15 March 2002, published in the Official Gazette no. 49 of 3 May 2002 – hereinafter “the 2002 Constitutional Court Act” – *Ustavni zakon o Ustavnom sudu Republike Hrvatske iz 2002*) read as follows:

(1) The Constitutional Court shall examine a constitutional complaint even before all legal remedies have been exhausted in cases when a competent court has not decided within a reasonable time a claim concerning the applicant’s rights and obligations or a criminal charge against him ...

(2) If the constitutional complaint ... under paragraph 1 of this Section is accepted, the Constitutional Court shall determine a time-limit within which a competent court shall decide the case on the merits...

(3) In a decision under paragraph 2 of this Article, the Constitutional Court shall fix appropriate compensation for the applicant in respect of the violation found concerning his constitutional rights ... The compensation shall be paid from the State budget within a term of three months from the date when the party lodged a request for its payment.

B. The Constitutional Court’s case law

82. Decision of the Constitutional Court of 20 November 2002, no. U-III A-1535/2002 reads as follows in its relevant parts:

DECISION

The Court rejects the constitutional complaint.

Reasoning

1. The constitutional complaint was filed pursuant to Section 63 § 1 of the Constitutional Act on the Constitutional Court (Official Gazette no. 49/02-consolidated legislation, hereinafter the Constitutional Act).

It appears from the constitutional complaint and the enclosed documents that on 17 June 1992 the applicant, as a plaintiff, filed a claim before the Zagreb Municipal Court seeking damages from the Croatia Insurance Company from Zagreb. The applicant’s claim was rejected by the Zagreb Municipal Court’s final judgment no. Pn-2507/95 of 15 January 1998 (the Zagreb County Court rejected the applicant’s appeal as unfounded by its judgment No. Gž-6927/00 of 8 August 2000). The applicant’s request for revision was rejected as inadmissible by virtue of the Supreme Court’s decision No. Rev-2827/00 of 9 January 2002.

2. The applicant complains under Section 29 of the Constitution that the excessive length of civil proceedings (10 years) infringed his right to fair trial within a reasonable time ...

...

5. The Constitutional Court has established that the applicant has exhausted all available legal remedies within the meaning of Section 62 §§ 1 and 2 of the Constitutional Act because the proceedings have been concluded ...

6. Section 32 of the Constitutional Act provides that the Constitutional Court must reject a complaint when the conditions set out for considering the merits of the complaint have ceased to exist.

7. Since, for the above mentioned reasons, the conditions for considering the applicant's complaint set out in Section 63 § 1 of the Constitutional Act have ceased to exist, the Court has decided to reject the complaint pursuant to Section 32 of the Constitutional Act ...

“R J E Š E N J E

Ustavna tužba se odbacuje.

O b r a z l o ž e n j e

1. Ustavna tužba podnijeta je temeljem odredbe članka 63. stavka 1. Ustavnog zakona o Ustavnom sudu Republike Hrvatske (“Narodne novine”, broj 49/02-pročišćeni tekst, u daljnjem tekstu: Ustavni zakon)

Iz obrazloženja ustavne tužbe i priložene dokumentacije proizlazi da je podnositelj, kao tužitelj, dana 17. lipnja 1992. godine, podnio Općinskom sudu u Zagrebu tužbu protiv Croatia osiguranja d.d. iz Zagreba, kao tuženika, radi naknade štete. Tužbeni zahtjev podnositelja odbijen je pravomoćnom presudom Općinskog suda u Zagrebu, broj: Pn 2507-95 od 15. siječnja 1998. godine (Županijski sud u Zagrebu presudom broj: Gž 6927-00 od 8. kolovoza 2000. godine odbio je žalbu podnositelja kao neosnovanu.). Protiv pravomoćne presude podnositelj je izjavio reviziju, koja je odbacena kao nedopuštena rješenjem Vrhovnog suda Republike Hrvatske, broj: Rev 827-00 od 9. siječnja 2002. godine.

2. Podnositelj u ustavnoj tužbi ističe povredu odredbe članka 29. Ustava jer smatra da mu je zbog nerazumno dugog trajanja parnice (10 godina) povrijeđeno pravo na pošteno suđenje...

...

5. Ustavni sud je utvrdio da je u slučaju podnositelja ustavne tužbe iscrpljen pravni put u smislu odredbi članka 62. stavaka 1. i 2. Ustavnog zakona jer je sudski postupak pravomoćno okončan...

6. Odredba članka 32. Ustavnog zakona propisuje da će Ustavni sud rješenjem odbaciti ustavnu tužbu u slučajevima kad ne postoje pretpostavke za odlučivanje o biti stvari.

7. S obzirom da iz navedenih razloga ne postoje pretpostavke navedene u članku 63. stavku 1. Ustavnog zakona za odlučivanje o podnesenoj ustavnoj tužbi, na temelju odredbe članka 32. Ustavnog zakona, riješeno je kao u izreci.”

THE LAW

I. THE GOVERNMENT’S PRELIMINARY OBJECTION

83. The Court recalls that in the decision on the admissibility of the application the question relating to the exhaustion of domestic remedies was joined to the merits.

84. The Government firstly invited the Court to reject the application on the ground that the applicant had failed to exhaust domestic remedies. In this respect they alleged that the applicant had not lodged a constitutional complaint under Section 59 (4) of the Constitutional Court Act which exceptionally allowed the Constitutional Court to examine a constitutional complaint before exhaustion of other available remedies in cases where it was satisfied that there was a serious risk that the party’s constitutional rights and freedoms might have been violated and that serious and irreparable consequences might have resulted from the failure of the relevant authorities to reach a decision.

85. After the subsequent introduction of a new remedy in March 2002 the Government submitted their additional observations arguing that a constitutional complaint pursuant to Section 63 of the 2002 Constitutional Court Act enabled a party to seek the constitutional protection in respect of the length of proceedings and empowered the Constitutional Court to award just satisfaction and to set a time limit for the competent authority to decide the case on the merits.

86. The applicant disagreed with the Government.

87. The Court has first examined whether the applicant has complied with the rule of exhaustion of domestic remedies as required under Article 35 § 1 of the Convention. Recalling its decisions in the *Slaviček* and *Nogolica* cases where it found that there exists an effective remedy in respect of the length of proceedings still pending in Croatia, the Court sees no reason to depart in the present case from its view expressed in the above-mentioned cases (see *Slaviček v. Croatia* (dec.), no. 20862/02, 4 July 2002, ECHR 2002-... and *Nogolica v. Croatia* (dec.), no. 77784/01, 5 September 2002, ECHR 2002-...).

88. Accordingly, by reason of the failure to exhaust domestic remedies in respect of the proceedings which are still pending in Croatia (see above parts b., c. and d. of the Facts) the Court is unable to take cognisance of the merits of the complaints made.

89. As to the proceedings against R.R. (see above part a. of the Facts) and the proceedings against A.J.J. (see above part e. of the Facts), the Court has to ascertain whether Section 63 of the 2002 Constitutional Court Act applies to these proceedings having regard to the fact that they have already come to an end.

90. The Court recalls that under Article 35 of the Convention, normal recourse should be had by an applicant to remedies that are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see, *inter alia*, the *Vernillo v. France*, judgment of 20 February 1991, Series A no. 198, pp. 11-12, § 27, and *Dalia v. France*, no. 26102/95, § 38, ECHR 1998-I). In this respect the Court notes that the wording of Section 63 is not clear enough so as to leave no doubt that it applies to the proceedings that have already been concluded.

91. Furthermore, in the area of exhaustion of domestic remedies, there is a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to convince the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. However, once this burden of proof has been discharged, it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted or was for some reason inadequate and ineffective in the particular circumstances of the case or that there existed special circumstances absolving him or her from the requirement.

92. The Court notes further that the wording of many statutes is not absolutely precise. The need to avoid excessive rigidity and to keep pace with changing circumstances means that many laws are inevitably couched in terms which, to a greater or lesser extent, are vague (see, for example and *mutatis mutandis*, the *Müller and Others v. Switzerland*, judgment of 24 May 1988, Series A no. 133, p. 20, § 29 and the *Kokkinakis v. Greece*, judgment of 25 May 1993, Series A no. 260-A, p. 19, § 40). The interpretation and application of such provisions depend on practice (see, *mutatis mutandis* *Kokkinakis v. Greece*, cited above, p. 19, § 40 and *Mangualde Pinto v. France* (dec.), no. 43491/98, 5 December 2000, unreported).

93. In the present case, the Government have not supplied any decision that would indicate that the Constitutional Court accepts to deal with the issue of the excessive length of proceedings that have already been concluded. To the contrary, the decisions of the Constitutional Court relating to the implementation of Section 63 of the 2002 Constitutional Court Act clearly indicate that the Constitutional Court has adopted the view that Section 63 does not apply to situations where proceedings have already come to an end (see § 81 above).

94. In the Court's view, the practice of the Constitutional Court, the absence of any case-law supporting the Government's arguments as well as the lack of precision in the wording of Section 63 as to its applicability to proceedings that have already ended indicate that it can not be established that Section 63 represents a remedy for the length of such proceedings.

95. Accordingly, the Government's objection in respect of these two sets of proceedings must be dismissed (cf. parts a. and e. of the Facts).

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

96. The applicant alleged that the domestic courts had not decided his cases against R.R. and A.J.J. within a reasonable time requirement contrary to Article 6 § 1 of the Convention, the relevant parts provide 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

97. The Court observes that the proceedings against R.R. commenced on 27 January 1994 and the proceedings against A.J.J. on 20 March 1997 when the applicant lodged his civil claims with the competent courts. However, the period which falls within the Court's jurisdiction did not begin on those dates, 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 2001-...). The proceedings against R.R. were concluded on 4 March 2002 while the proceedings against A.J.J. were concluded on 9 April 2002. The first set of proceedings therefore lasted for eight years, one month and seven days of which a period of four years, three months and twenty-nine days falls to be examined by the Court. The second set of proceedings lasted for five years, five months and nineteen days of which a period of four years, five months and three days falls to be examined by the Court.

98. 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 the entry into force of the Convention in respect of Croatia the first set of proceedings had lasted for three years, nine months and eight days, while the second set of proceedings had lasted for seven months and fifteen days.

B. Applicable criteria

99. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case

and with reference to the criteria established by its case-law, particularly the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

C. The parties' submissions

100. As regards the complexity of the cases the Government argued that the case against R.R. disclosed a certain degree of complexity as neither the applicant nor the court were able to identify the correct addresses of the defendant and moreover the applicant did not inform the courts about his new address. In addition, they submitted that the subject matter of the applicant's cases did not call for particular urgency.

101. Concerning the applicant's conduct, the Government submitted that the applicant contributed to the length of the proceedings. For example, in the case against R. R. the applicant's counsel repeatedly asked the court to adjourn the hearings and finally when the applicant appeared before the court he asked the court to adjourn the hearing for an unlimited period since he did not want to travel from Zagreb to Dubrovnik too often.

102. As regards the conduct of the authorities, the Government pointed out that in 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. In this respect they claimed that domestic courts showed diligence in the conduct of the proceedings.

103. The applicant submitted that the delays in the proceedings were entirely attributable to the domestic authorities. The courts held hearings rarely, showed passivity in their conduct of the proceedings and ignored his requests for speeding up the proceedings.

D. The Court's assessment

1. Proceedings against R.R.

104. The Court considers that the case concerned a very complex factual situation where the court had to ascertain the applicant's property rights arising from contracts with a person who had already died and which contracts had not been entered into the relevant land registry. The case also involved, for the same reasons, a certain degree of legal complexity which was aggravated by the fact that R.R., before her death, had sold the property in question to third persons.

105. The Court reiterates that only delays for which the State can be held responsible may justify a finding that a "reasonable time" has been exceeded (see, *inter alia*, *Monnet v. France*, judgment of 27 October 1993, Series A no. 273, p. 12 § 30). In the instant case the Court finds that the

applicant did not show necessary diligence when requested to attend the court's hearings and to inform the court of the relevant facts. The Court notes that within the period to be taken into consideration, two hearings were adjourned because the applicant's counsel did not appear. Counsel informed the court that he had lost contact with the applicant. The applicant also failed to inform the court about his correct address and eventually the proceedings were terminated because the applicant did not appear at the hearing scheduled for 23 October 2001 and subsequently did not ask the court to resume the proceedings. In the Court's view such a behaviour indicates carelessness on behalf of the applicant concerning the resolution of his case. Furthermore, the applicant himself asked the court to adjourn the hearing scheduled for 19 May 1998 for an unspecified period of time because he did not want to travel to Dubrovnik too often. Thus, the applicant himself caused the delay in the proceedings from 19 May 1998 until 22 January 2002 when he again addressed the court to inform it that he had obtained Croatian citizenship.

106. As to the behaviour of the domestic authorities, the Court notes that the first instance court dealing with the applicant's case scheduled the hearings regularly until 19 May 1998, and then again after 22 January 2001. In the Court's view such conduct of the proceedings showed that the domestic courts showed due diligence in dealing with the applicant's case.

107. Having regard to all the circumstances of the case and in particular to the applicant's behaviour during the period after 5 November 1997, the Court does not consider excessive the total length of the proceedings. It therefore concludes that there has been no breach of Article 6§ 1 of the Convention in respect of the length of these proceedings.

2. Proceedings against A.J.J.

108. The Court considers that it does not appear that the case involved any particular legal or factual complexity.

109. The Court notes that following the entry into force of the Convention in respect of Croatia on 5 November 1997 the Municipal Court first had to decide on the question of depositing security for A.J.J.'s costs and expenses. This issue was eventually settled on 22 November 2000 when the parties agreed that there was no longer any need for such a measure. During this period the court held three hearings, on 3 December 1997, 29 September 1998 and 22 November 2000, and the case had to be transferred to another judge on 1 January 1999 due to the fact that the previous judge resigned from office. Furthermore, the Court notes that the applicant did not at any moment comply with the Municipal Court's invitation to submit a reply to A.J.J.'s submissions. In addition the Court recalls that following the resolution of the question of depositing security the proceedings were stayed on 13 March 2001 due to the applicant's failure to appear and the proceedings were eventually terminated because the applicant's subsequent request to resume the proceedings was rejected.

110. Having regard to the above the Court finds that also in this set of proceedings the applicant's behaviour caused such delays that, notwithstanding certain periods of inactivity for which the authorities can be held responsible, the total length of the proceedings cannot be considered excessive.

111. The Court concludes, therefore, that there has been no breach of Article 6 § 1 of the Convention in respect of the length of these proceedings.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

112. The applicant also complained that he had no effective remedy whereby he could raise the issue of the excessive length of the proceedings. This, in his view, amounted to a violation of Article 13 of the Convention, which provides:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

113. The Government invited the Court to reject this part of the application. They contended that the applicant had the possibility of lodging an application under Section 63 of the 2002 Constitutional Court Act. In the Government's view, that option represented an effective remedy in respect of the length of the proceedings in the applicant's cases.

114. The Court recalls that, as it has held on many occasions, Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an “arguable complaint” under the Convention and to grant appropriate relief (see, among many other authorities, *Kudla v. Poland*, no. 30210/96, pp. 238, 239, § 157, ECHR 2000-XI). Notwithstanding the terms of Article 13 read literally, the existence of an actual breach of another provision of the Convention (a “substantive” provision) is not a prerequisite for the application of the Article 13 (see the *Klass and Others v. Germany*, judgment of 6 September 1978, Series A no. 28, p. 29, § 64 and *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, p. 23, § 52).

115. In the present case the applicant complains under Article 6 § 1 of the Convention about the length of the above two sets of civil proceedings in respect of which the Government's preliminary objection has been rejected. It is true that the Court has concluded that the length of these proceedings has not exceeded a reasonable time requirement. Nevertheless, the fact that the applicant's allegations were not ultimately substantiated does not prevent his claim from being an arguable one for the purposes of Article 13 of the Convention (see, *mutatis mutandis*, *Kaya v. Turkey*, judgment of 19 February 1998, *Reports of Judgments and Decisions* 1998-I,

pp. 330, 331, § 107). Accordingly, the Court's conclusion on the merits does not dispense it with the requirement to examine the substance of the allegation.

116. As to the substance of the complaint made under Article 13 of the Convention the Court recalls that it has already established above (see §§ 88-93) that a request pursuant to Section 63 of the 2002 Constitutional Court Act does not represent an effective remedy in respect of the length of civil proceedings that had already come to an end. The Court has not found it established that any other effective remedy was available to the applicant.

117. Accordingly, the Court holds that in the present case there has been a violation of Article 13 of the Convention in that, in the proceedings against R.R. and A.J.J., the applicant had no domestic remedy whereby he could enforce his right to a "hearing within a reasonable time" as guaranteed by Article 6 § 1 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

118. 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

119. As regards pecuniary damage, the applicant claimed that he suffered a loss of 70,000 Croatian Kuna (HRK). However, he failed to specify his claim. The applicant also sought an award of HRK 120,000 in compensation for the suffering he has endured as a result of the violations of the Convention.

120. The Government contended that there was no causal link between the violation and the pecuniary damage allegedly suffered. As to non-pecuniary damage, they asked the Court to assess the amount of just satisfaction to be awarded on the basis of its case-law.

121. The Court recalls that it cannot speculate as to what the outcome of the proceedings at issue might have been if the violation of the Convention had not occurred. It therefore makes no award under the head of pecuniary damage.

122. As regard non-pecuniary damage the Court considers that the finding of a violation constitutes sufficient reparation.

B. Costs and expenses

123. In respect of the proceedings before the Court the applicants sought HRK 30,000.

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

125. 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.

126. As to the costs and expenses incurred, the Court observes that the applicant did not have legal representation before the Court and that he was allowed to use Croatian language. Therefore, the costs incurred consisted of the mailing costs and expenses for making copies of the relevant documents. Making its ruling on an equitable basis, the Court considers it reasonable to award the applicant EUR 500 for the costs and expenses.

C. Default interest

127. 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, by reason of the failure to exhaust domestic remedies, it is unable to take cognisance of the merits of the case in respect of the three sets of proceedings that are still pending before the domestic courts;
2. *Dismisses* the Government's objection as to the exhaustion of domestic remedies in respect of the two sets of proceedings that have already been concluded;
3. *Holds* that there has been no violation of Article 6 § 1 of the Convention in respect of both sets of proceedings that have already been concluded;
4. *Holds* that there has been a violation of Article 13 of the Convention in respect of both sets of proceedings that have already been concluded;
5. *Holds* that in respect of non-pecuniary damage the finding of a violation constitutes sufficient reparation.
6. *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 500 (five hundred euros) in respect of costs and expenses 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 9 May 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Deputy Registrar

Christos ROZAKIS
President