



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

FIRST SECTION

CASE OF SAHINI v. CROATIA

(Application no. 63412/00)

JUDGMENT

STRASBOURG

19 June 2003

FINAL

19/09/2003

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 Sahini v. Croatia,

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

Mr C.L. ROZAKIS, *President*,

Mr P. LORENZEN,

Mrs F. TULKENS,

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 27 May 2003,

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

PROCEDURE

1. The case originated in an application (no. 63412/00) 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 national of the Former Yugoslav Republic of Macedonia, Mr Sefket Sahini ("the applicant"), on 22 January 2000.

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

3. The applicant alleged that the civil proceedings instituted by him before the Rijeka Municipal Court had lasted unreasonably long.

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.

5. 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 (Rule 52 § 1).

6. By a decision of 10 October 2002 the Court declared the application partly admissible.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

8. The applicant was born in 1944 and lives in Moosburg, Germany.

9. On 18 June 1990 the applicant filed a civil action against I.R. for disturbance of peaceful possession of leased premises before the Rijeka Municipal Court (*Općinski sud u Rijeci*). He claimed that I.R. disturbed the peaceful possession of his business premises - a tailor's workshop in Rijeka

- in that she had forcefully evicted the applicant and his son from the premises.

10. On 29 September 1994 I.R. died and the proceedings were continued against her legal successors.

11. In the ensuing proceedings, several hearings were held and several adjourned until 5 November 1997 when the Convention entered into force in respect of Croatia.

12. The hearing scheduled for 5 October 1999 was adjourned on the applicant counsel's request.

13. At the hearing on 22 November 1999 the proceedings were concluded and the court rejected the applicant's request. The applicant did not appeal against that decision and it became final on 10 February 2000.

THE LAW

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

14. The applicant alleged that the civil proceedings instituted by him before the Rijeka Municipal Court had not been decided 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

15. The Court observes that the proceedings commenced on 18 June 1990. 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, ECHR - 2001-VIII). The proceedings were concluded on 10 February 2000. They therefore lasted for nine years, seven months and twenty-two days of which a period of two years, three months and five days falls to be examined by the Court.

16. The Court reiterates 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, *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 proceedings had lasted for seven years, four months and seventeen days.

B. Applicable criteria

17. 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

18. The Government submitted that the subject matter of the applicant's case had not called 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.

19. As to the applicant's behaviour within the period to be taken into consideration by the Court, the Government asserted that the applicant's counsel had asked the court to adjourn the hearing of 5 October 1999 because he had wanted to consult the applicant.

20. With respect to the behaviour of the domestic authorities, the Government claimed that the domestic courts had shown diligence in the conduct of the proceedings. In particular, the Government pointed out that in the civil proceedings the courts were limited in their activity as they could not take procedural steps on their own initiative but mostly according to the requests of the parties.

21. The applicant disagreed with the Government.

D. The Court's assessment

22. As to the complexity of the case, the Court notes that the case did not involve any particular factual or legal complexity. In this respect the Court especially notes that the proceedings for disturbance of peaceful possession of the applicant's property did not deal with any property issues but only had to establish whether the applicant had possession of the premises in question and whether his possession had been disturbed by the defendant.

23. As to the behaviour of the domestic authorities, 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 notes a period of complete inactivity between 5 November 1997 when the Convention entered into force in respect of Croatia, and 5 October 1999 when the court of first instance held a hearing which amounted to one year and eleven months. The Court notes that the

Government has not given any explanation for this delay in the proceedings and that this delay is entirely attributable to the domestic authorities.

24. As to the behaviour of the applicant, the court accepts that the applicant's counsel caused the adjournment of one hearing. However, this single occurrence did not significantly contribute to the length of the proceedings.

25. Having regard to the overall duration of the proceedings and the period of inactivity for which the entire responsibility lies with the domestic authorities, the Court finds that the length of proceedings in the present case exceeded the reasonable time requirement from Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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

27. In respect of pecuniary damage the applicant sought 720,000 euros (EUR). He explained that the Croatian authorities had been renting his premises and collecting a monthly rent which had so far reached the sum claimed. The applicant did not seek any non-pecuniary damage.

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

29. As to the applicant's claim for alleged pecuniary damages, it is not for the Court to speculate what would have been the outcome of the proceedings, had they been terminated within a reasonable time (see *G.S. v. Austria*, no. 26297/95, 21 December 1999, § 41, unreported). It therefore makes no award under the head of just satisfaction.

B. Costs and expenses

30. Under this head the applicant sought EUR 2,000 in respect of the proceedings before the Court.

31. The Government did not comment on the applicant's claim.

32. 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 (see for instance *Bladet Tromsø and Stensaas v. Norway*, no. 21980/93, ECHR 1999 - III, p. 329, § 80)

33. As to the costs and expenses incurred, the Court observes that the applicant was not legally represented before the Court. Therefore, the costs incurred would have consisted of the mailing costs and expenses for making

copies and translations 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

34. 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;
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 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;
3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 19 June 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Deputy Registrar

Christos ROZAKIS
President