



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

FIRST SECTION

CASE OF KVARTUČ v. CROATIA

(Application no. 4899/02)

JUDGMENT

STRASBOURG

18 November 2004

FINAL

18/02/2005

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 Kvartuč v. Croatia,

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

Mr C.L. ROZAKIS, *President*,

Mrs F. TULKENS,

Mrs N. VAJIĆ,

Mrs S. BOTOUCHAROVA,

Mr A. KOVLER,

Mr V. ZAGREBELSKY,

Mrs E. STEINER, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 28 October 2004,

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

PROCEDURE

1. The case originated in an application (no. 4899/02) 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 Zoran Kvartuč (“the applicant”), on 19 January 2002.

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

3. On 22 May 2003 the Court declared certain complaints inadmissible and decided to communicate the complaint concerning the length of the proceedings to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of that complaint at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1956 and lives in Zadar, Croatia.

5. On 15 July 1995 he lent 40,000 German marks to Z.G. and G.G. on the condition that the loan be repaid within 15 days of a request for repayment.

6. On 25 August 1995 Z.G. and G.G. died. Subsequently, proceedings concerning the inheritance of their estate commenced before the Zadar Municipal Court (*Općinski sud u Zadru*).

7. On 4 October 1995 the applicant instituted civil proceedings before the Zadar Municipal Court against I.G. and M.G. (Z.G. and G.G.'s children) claiming repayment of the loan.

8. I.G. and M.G. were absent from the first hearing of 30 October 1995 as they had not been summoned.

9. The second hearing was held on 20 November 1995 in the presence of the applicant and M.G.

10. On 12 June 1997 and on 16 July 1998 the applicant requested the court to deal with his claim as soon as possible.

11. At the third hearing on 17 November 1998 the court requested the applicant to submit some additional information.

12. At the fourth hearing of 18 May 1999 the court stayed the proceedings pending the completion of the inheritance proceedings indicated in paragraph 6 above.

13. On 4 June 1999 the applicant submitted the information requested on 17 November 1998.

14. On 24 June 1999 the applicant again requested the court to deal with his claim as soon as possible.

15. I.G. and M.G. did not appear at the fifth hearing of 2 September 1999 although they were duly summoned.

16. At the sixth hearing on 21 September 1999 the court adjourned the trial *sine die* pursuant to a request of the representative of I.G. and M.G.

17. On 26 September 2001 the inheritance proceedings ended and the proceedings for repayment of the loan resumed on 10 January 2002.

18. On 6 February 2002 the court held the seventh hearing and, on the same date, gave its judgment allowing the applicant's claim. That judgment became final because no appeal was lodged.

19. On 17 April 2002 the applicant obtained an order enforcing the judgment.

20. On 6 November 2002 the applicant requested the court to speed up the enforcement proceedings.

21. On 9 December 2003 the court scheduled for January 2004 an on-site assessment of the value of an apartment belonging to I.G. and M.G. An expert appointed by the court was not able to enter the apartment as I.G. and M.G. were not present. Nevertheless, the expert assessed the value of the apartment and submitted his report to the court on 2 February 2004.

22. On 17 May 2004 the court established the value of the apartment.

23. On 20 July 2004 the court held the first auction but the apartment was not sold.

24. The enforcement proceedings are still pending.

II. RELEVANT DOMESTIC LAW

25. Article 29 of the Croatian Constitution guarantees, *inter alia*, the right to a tribunal which will decide upon one's rights and obligations within a reasonable term.

26. The relevant parts of the Constitutional Court Act 1999 (*Ustavni zakon o Ustavnom sudu*, Official Gazette nos. 99/1999 and 29/2002) read as follows:

Article 62

“Everyone may lodge a constitutional complaint with the Constitutional Court if he or she deems that the individual act of a state body, a body of local and regional self-government, or a legal person with public authority, which decided about his or her rights and obligations, or about suspicion or accusation for a criminal act, has violated his or her human rights or fundamental freedoms guaranteed by the Constitution, or his or her right to local and regional self-government guaranteed by the Constitution (hereinafter: constitutional right)...”

Article 76

“By its decision to accept a constitutional complaint, the Constitutional Court shall repeal the disputed act by which a constitutional right has been violated...”

THE LAW

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

27. The applicant complained that the length of the proceedings was incompatible with the “reasonable time” requirement of Article 6 § 1 of the Convention, which provision reads as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

A. Admissibility

1. Exhaustion of domestic remedies

28. The Government submitted that the applicant failed to exhaust domestic remedies because he did not complain to the Constitutional Court about the length of the proceedings pursuant to Article 62 of the Constitutional Court Act 1999.

29. The applicant contested the effectiveness of that remedy.

30. The Court reiterates that it has held that remedies available to a litigant at domestic level for raising a complaint about the length of proceedings are “effective”, within the meaning of Article 13 of the Convention if they “[prevent] the alleged violation or its continuation, or [provide] adequate redress for any violation that [has] already occurred”

(*Kudla v. Poland* [GC], no. 30210/96, § 158, 26 October 2000). Article 13 therefore offers an alternative: a remedy is “effective” if it can be used either to expedite a decision by the courts dealing with the case, or to provide the litigant with adequate redress for delays that have already occurred (see *Kudla* cited above, § 159). In the Court’s view, having regard to the “close affinity” between Articles 13 and 35 § 1 of the Convention, the same is necessarily true of the concept of “effective” remedy within the meaning of the second provision (*Mifsud v. France* (dec.) [GC], no. 57220/00, ECHR 2002-VIII).

31. The Court notes that the Government have not referred to one domestic case where any individual complained pursuant to Article 62 of the Constitutional Court Act 1999 about the length of proceedings and which resulted in the prevention of excessive delay or its continuation, or in damages for delay which had already occurred.

32. In such circumstances, the Court considers that a complaint pursuant to Article 62 of the Constitutional Court Act 1999 cannot be regarded as an effective remedy in the present case.

2. Conclusion

33. The Court considers that the application raises questions of law which are sufficiently serious for its determination to depend on an examination of the merits, no other ground for declaring it inadmissible having been established. The Court therefore declares the application admissible. In accordance with its decision to apply Article 29 § 3 of the Convention (see paragraph 3 above), the Court will immediately consider the merits of the application.

B. Merits

34. The applicant maintained that the proceedings before the Zadar Municipal Court lasted an unreasonably long period of time.

35. The Government maintained that the case was complex as it was necessary to complete another set of proceedings in order to determine the applicant’s case. They also submitted that the applicant contributed to the overall length of the proceedings by not responding to the relevant court’s request of 17 November 1998 to provide some additional information until 4 June 1999.

1. Period to be taken into consideration

36. The Court notes that the proceedings started on 4 October 1995 when the applicant filed an action with the Zadar Municipal Court seeking repayment of the loan from I.G. and M.G. The period which falls within the Court’s jurisdiction did not begin on that date but on 6 November 1997 following the ratification of the Convention by Croatia. Since the enforcement proceedings are still pending and they must be regarded as the

second stage of the proceedings which began on 4 October 1995 (see *Di Pede v. Italy*, judgment of 26 September 1996, *Reports of Judgments and Decisions* 1996-IV, § 24, and *Zappia v. Italy*, judgment of 26 September 1996, *Reports of Judgments and Decisions* 1996-IV, § 20), the period in question has not yet ended. The proceedings have already thus lasted more than nine years, almost seven of which after the ratification of the Convention by Croatia.

37. The Court further notes that in assessing the reasonableness of the time that has elapsed since 6 November 1997, account must be taken of the stage reached in the proceedings by that date.

2. Reasonableness of the length of the proceedings

38. 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).

39. As to the complexity of the case, the Court notes that the applicant's case was adjourned pending the inheritance proceedings. Even assuming this was necessary and that the inheritance proceedings were not themselves unreasonably long, the inheritance proceedings did not end until September 2001 (almost six years after the applicant had issued his proceedings). The Zadar Municipal Court should therefore have been particularly diligent in pursuing the applicant's proceedings once the inheritance proceedings had terminated.

40. As to the behaviour of the applicant, the Court accepts that the applicant took more than six months to provide the Zadar Municipal Court with requested information. However, given the above-noted adjournment of his proceedings pending the inheritance proceedings, this did not have any impact on the overall length of proceedings.

41. On the other hand, and as regards the behaviour of the domestic authorities, the Court notes, in particular, that the Zadar Municipal Court did not take any steps to enforce its judgment in the applicant's favour between 17 April 2002 and 9 December 2003 (more than one year and seven months). The Government did not attempt to justify this long period of inactivity in the enforcement proceedings.

42. In such circumstances, the Court concludes that the delay concerning enforcement, following as it did a long adjournment, is sufficient to enable the Court to conclude that the applicant's case was not heard within a reasonable time. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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

44. The applicant claimed 7,000 euros (EUR) in respect of non-pecuniary damage.

45. The Government considered the claimed amount excessive.

46. The Court notes the unreasonably long duration of the applicant’s proceedings and considers that some feelings of frustration and anxiety must have arisen which justify an award of non-pecuniary damage. Making its assessment on an equitable basis and having regard to the circumstances of the case – in particular, the overall duration of the proceedings – the Court awards the applicant EUR 3,600, plus any tax that may be chargeable (see, *inter alia*, *Radoš and Others v. Croatia*, no. 45435/99, § 113, 7 November 2002).

B. Costs and expenses

47. The applicant also claimed EUR 10,000 for the costs and expenses incurred before the domestic courts and EUR 5,000 for those incurred before the Court.

48. The Government considered those amounts also excessive.

49. According to the Court’s case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court observes that the applicant has not incurred, before the domestic courts, any extra costs and expenses because of the length of the proceedings (see, *inter alia*, *Rajak v. Croatia*, no. 49706/99, § 59, 28 June 2001). As to the legal costs and expenses incurred before it, the Court notes that the applicant was not legally represented before the Court. Therefore, the costs incurred consisted of the mailing costs and expenses for making copies of the relevant documents. Making its own assessment, the Court considers it reasonable to award the applicant EUR 500, plus any tax that may be chargeable (see, *inter alia*, *Šoć v. Croatia*, no. 47863/99, § 126, 9 May 2003).

C. Default interest

50. 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. *Declares* the complaint concerning the length of the proceedings admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts which should be converted into Croatian kunas at the rate applicable at the date of settlement:
 - (i) EUR 3,600 (three thousand and six hundred euros) in respect of non-pecuniary damage;
 - (ii) EUR 500 (five hundred euros) in respect of costs and expenses; and
 - (iii) any tax that may be chargeable on the above amounts;
 - (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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 18 November 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President