



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

FIRST SECTION

CASE OF JELAVIĆ - MITROVIĆ v. CROATIA

(Application no. 9591/02)

JUDGMENT

STRASBOURG

13 January 2005

FINAL

13/04/2005

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 Jelavić-Mitrović v. Croatia,

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

Mr C.L. ROZAKIS, *President*,

Mr L. LOUCAIDES,

Mrs F. TULKENS,

Mr P. LORENZEN,

Mrs N. VAJIĆ,

Mr D. SPIELMANN,

Mr S.E. JEBENS, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 9 December 2004,

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

PROCEDURE

1. The case originated in an application (no. 9591/02) 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 two Croatian nationals, Mr Božo Jelavić-Mitrović and Mr Tomo Jelavić-Mitrović (“the applicants”), on 30 November 2001.

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

3. On 20 May 2003 the Court decided to communicate the application to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

4. The applicants were born in 1943 and 1973 and live in Muć Gornji and Split respectively.

5. On 6 December 1989 the applicants rented business premises from the “Cibona” Basketball Club (“the Club”) in Zagreb.

6. On 10 February 1990 the Club unilaterally terminated the contract, because the applicants had delayed in paying an amount of money stipulated in the contract.

7. The applicants subsequently instituted civil proceedings before the Zagreb Municipal Court (*Općinski sud u Zagrebu*) seeking to have the contract restored. On 17 October 1990 the first-instance court accepted their claim.

8. On 21 May 1991 the Zagreb County Court (*Okružni sud Zagreb*) dismissed an appeal by the Club. The applicants sought enforcement of that judgment on 18 July 1991.

9. The proceedings ended on 11 March 1992 when the Supreme Court (*Vrhovni sud Republike Hrvatske*) dismissed the Club's request for revision on points of law.

10. The Club meanwhile concluded a new contract renting the same business premises to Ž.B. and T.B. ("the new tenants"), who immediately occupied the premises.

11. On 3 September 1991 the new tenants, as third parties, objected to the enforcement sought by the applicants on 18 July 1991, claiming that they were entitled to use the premises. They were instructed by the competent court to file a civil action against the applicants in order to have the enforcement declared inadmissible.

12. On 21 October 1991 the new tenants instituted civil proceedings against the applicants to that end. They claimed that they had not known and could not have known about the applicants' contract with the Club. Consequently, on 8 January 1992 the enforcement proceedings were stayed pending a decision on this question.

13. After judgments at first instance and on appeal, which were quashed by the Supreme Court on 21 April 1994, the proceedings were remitted to the Zagreb Municipal Court.

14. In the resumed proceedings, the Zagreb Municipal Court held two hearings and heard evidence from two witnesses. On 4 April 1996 the court declared the enforcement inadmissible. It found that the new tenants, in concluding their contract with the Club, had acted in good faith and that they were thus entitled to use the premises in line with the legislation in force at the material time.

15. On 8 April 1997 the Zagreb County Court dismissed an appeal by the applicants.

16. On 10 June 1997 the applicants filed a request for revision on points of law (*revizija*). On 8 November 2000 the Supreme Court dismissed their request on the merits. This decision was served on the applicants on 31 January 2001.

17. On 15 June 2001 the Constitutional Court (*Ustavni sud Republike Hrvatske*) dismissed a constitutional complaint by the applicants, finding no violation of their constitutional rights.

THE LAW

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

18. The applicants complained that the length of the civil proceedings instituted against them on 21 October 1991 had been incompatible with the “reasonable time” requirement, provided in Article 6 § 1 of the Convention, 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...”

A. Admissibility

19. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

20. The applicants maintained that the civil proceedings instituted against them on 21 October 1991 in the Zagreb Municipal Court had lasted an unreasonably long time.

21. In so far as the Government contested the length of the civil proceedings complained of, they claimed that those proceedings had been complex both in law and in facts.

1. *Period to be taken into consideration*

22. The proceedings at issue began on 21 October 1991, when civil proceedings were instituted against the applicants, and ended on 15 June 2001 with the decision of the Constitutional Court. They thus lasted 9 years, 7 months and 25 days.

23. The period to be taken into consideration began on 6 November 1997 after the Convention entered into force in respect of Croatia. It follows that a period of 3 years, 7 months and 9 days falls within the Court’s competence *ratione temporis*.

24. However, 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, *Styranowski v. Poland*, judgment of 30 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3376, § 46).

2. Reasonableness of the length of the proceedings

25. 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 following criteria: the complexity of the case, the conduct of the applicant and 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).

26. As to the complexity of the case, the Court considers that the proceedings were not complex.

27. As to the conduct of the applicants, the Court observes that the Government did not claim that the applicant contributed to the length of the civil proceedings. The Court has no reason to hold otherwise.

28. As regards the conduct of the domestic authorities, the Court notes that, prior to the entry into force of the Convention, the proceedings had already been pending before the domestic courts for some six years. Furthermore, in the period to be taken into consideration, the proceedings lasted for almost another four years. During that time it took the Supreme Court more than three years to decide on the applicants' case, whereas it only reviewed the case on points of law and did not take any evidence or perform any other procedural activity.

29. In these circumstances, and taking into account the overall duration of the proceedings, the Court considers that the length of the proceedings in the instant case was excessive and failed to satisfy the reasonable time requirement (see, *mutatis mutandis*, *Janssen v. Germany*, no. 23959/94, § 51, 20 December 2001).

30. There has accordingly been a violation of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. 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

32. Concerning pecuniary damage, the applicants claimed that they could have earned 500,000 kunas (HRK)¹ if they had been able to use the rented premises as planned. They further submitted that they could have earned over 400,000 euros (EUR) if they had sublet the premises. The applicants did not claim an award for non-pecuniary damage.

¹approximately 67,200 euros

33. The Government submitted that there was no causal link between the length of the proceedings and the applicants' allegedly lost earnings.

34. The Court considers that there is no causal link between the pecuniary damage claimed and the violation found. Consequently, no award is made under this head.

B. Costs and expenses

35. The applicants claimed, in general terms, the reimbursement of their costs and expenses incurred during the proceedings before the domestic courts, without specifying the exact amount claimed. Moreover, they gave no particulars of this claim, as required by Rule 60 of the Rules of Court, although they were invited to do so.

36. In these circumstances, the Court makes no award under this head.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Dismisses* the applicants' claim for just satisfaction.

Done in English, and notified in writing on 13 January 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President