



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

FIRST SECTION

CASE OF CAMASSO v. CROATIA

(Application no. 15733/02)

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 Camasso 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,

Mrs S. BOTOCHAROVA,

Mr A. KOVLER, *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. 15733/02) 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 Lorenzo Camasso ("the applicant"), on 4 April 2002.

2. The applicant was represented by Mr B. Kozjak, a lawyer practising in Virovitica. The Croatian Government ("the Government") were represented by their Agent, Ms L. Lukina-Karajković.

3. On 10 June 2003 the Court decided to communicate the application. 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**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1964 and lives in Bjelovar, Croatia.

5. On 6 November 1994 the applicant was arrested on suspicion that he had committed murder. On the same date he was detained on remand at Bjelovar County Prison (*Okružni zatvor Bjelovar*).

6. On 9 November 1994 the Bjelovar County Court (*Županijski sud u Bjelovaru*) opened an investigation against the applicant.

7. On 5 December 1994 the Bjelovar County State Attorney's Office (*Okružno državno odvjetništvo Bjelovar*) indicted the applicant for murder.

8. On 21 December 1994 the first hearing was held before the Bjelovar County Court.

9. On 26 April 1995 the County Court found the applicant guilty of murder. It held that the applicant had exceeded the force necessary for self-defence and sentenced him to ten months' imprisonment.

10. On 15 May 1995 the applicant appealed against the first-instance judgment. The County State Attorney's Office also filed an appeal.

11. On 16 August 1995 the Supreme Court (*Vrhovni sud Republike Hrvatske*) quashed the first-instance judgment for factual shortcomings and remitted the case.

12. In the resumed proceedings, on 16 October 1995 the County Court found the applicant guilty of manslaughter. It sentenced him to one year's imprisonment. On the same date the applicant was released since the time he had spent in pre-trial detention was credited against his sentence.

13. On 30 October 1995 the applicant appealed against the first-instance judgment. The County State Attorney's Office also filed an appeal.

14. On 18 November 1997 the Supreme Court again quashed the first-instance judgment and remitted the case. It held that the first-instance court had failed to state any reasons refuting the applicant's argument that he had acted in self-defence.

15. In the resumed proceedings, the County Court held hearings on 11 February 1998 and 3 April 1998. On 3 April 1998 the County Court again found the applicant guilty of manslaughter and sentenced him to one year's imprisonment.

16. On 27 April 1998 the applicant appealed against the first-instance judgment. The County State Attorney's Office also filed an appeal.

17. On 28 August 2001 the Supreme Court dismissed the appeals as ill-founded and upheld the first-instance judgment. The Supreme Court's judgment was served on the applicant's counsel on 8 October 2001.

II. RELEVANT DOMESTIC LAW

18. Article 29 of the Croatian Constitution provides, *inter alia*, that everyone suspected or accused of a criminal offence is entitled to a fair and public hearing within a reasonable time by an independent and impartial court established by law.

19. The relevant parts of the 1999 Constitutional Act on Constitutional Court (*Ustavni zakon o Ustavnom sudu*, Official Gazette nos. 99/1999 and 29/2002) ("the Constitutional Court Act") 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 quash the disputed act by which a constitutional right has been violated...”

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

20. The applicant complained that the length of the criminal proceedings had been incompatible with the “reasonable time” requirement, provided in Article 6 § 1 of the Convention, which reads as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

A. Admissibility

21. The Government submitted that the applicant had not exhausted domestic remedies in that he had failed to complain to the Constitutional Court about the length of the proceedings under Article 62 of the Constitutional Court Act.

22. The applicant contested the effectiveness of that remedy.

23. 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” (see *Kudla v. Poland* [GC], no. 30210/96, § 158, ECHR 2000-XI). 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, § 17, ECHR 2002-VIII).

24. 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 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.

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

26. It follows that the Government’s objection as to the non-exhaustion of domestic remedies must be rejected.

27. 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

28. The applicant maintained that the criminal proceedings instituted against him had lasted an unreasonably long time.

29. The Government contested this view. They maintained that the case had been factually and legally complex. The first-instance court had to examine and assess some complex circumstances in order to determine correctly which criminal offence had been committed and to apply the appropriate criminal sanction.

They also submitted that the domestic authorities had handled the applicant's case with due diligence, especially while the applicant had been in detention, during which period two first-instance and one second-instance judgments had been delivered. A certain delay that had occurred in the proceedings following the appeal against the third first-instance judgment was justified by the fact that the Supreme Court gave priority to files involving defendants in detention which was not the applicant's case at the material time.

1. Period to be taken into consideration

30. The overall length of the proceedings amounted to six years and eleven months. The period to be taken into consideration began on 6 November 1997, after the entry into force of the Convention in respect of Croatia, and ended on 8 October 2001 when the Supreme Court's judgment was served on the applicant's counsel. It thus amounted to three years, eleven months and two days.

31. However, 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, *Styranowski v. Poland*, no. 28616/95, § 46, ECHR 1998-VIII; *Foti and Others v. Italy*, judgment of 10 December 1982, Series A no. 56, p. 18, § 53). In this connection the Court notes that the proceedings commenced on 6 November 1994 when the applicant was arrested and detained on remand and that, therefore, at the time of the entry into force of the Convention in respect of Croatia, the proceedings had already been pending for three years.

2. Reasonableness of the length of the proceedings

32. 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 (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

33. The Court accepts that the case involved a certain degree of complexity in respect of the legal issues. However, the length of the proceedings cannot be explained by this fact alone.

34. As to the conduct of the applicant, the Court observes that the Government did not claim that the applicant contributed to the length of the proceedings. The Court sees no reason to hold otherwise.

35. As to the conduct of the judicial authorities, the Court notes, in particular, that it took the Supreme Court three years and four months to deliver a decision on the applicant's appeal. The Court recalls that it has previously found violations of Article 6 § 1 of the Convention in similar cases. For example, in the *Eckle v. Germany* judgment (of 15 July 1982, Series A no. 51, p. 37, § 84), the Court found a violation of Article 6 § 1 on account of, *inter alia*, the fact that the appellate proceedings lasted almost three years. The Court considers that the Government's explanation that the Supreme Court gave priority to files concerning defendants in detention, which was not the applicant's case at the material time, cannot justify the protracted character of the appellate proceedings.

36. In the absence of any special circumstances, the foregoing considerations are sufficient to enable the Court to conclude, having regard to its case-law on the subject, 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

37. 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

38. The applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage.

39. The Government considered the amount claimed excessive.

40. 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 the Court awards the applicant EUR 1,500 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

41. The applicant also claimed EUR 5,000 for the costs and expenses incurred before the Court. However, he gave no particulars of this claim, as required by Rule 60 of the Rules of Court, although he was invited to do so. In these circumstances, the Court makes no award under this head.

C. Default interest

42. 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 application 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, EUR 1,500 (one thousand five hundred euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (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;
4. *Dismisses* the remainder of the applicant's 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