



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

FIRST SECTION

CASE OF GUDELJEVIĆ v. CROATIA

(Application no. 18431/02)

JUDGMENT

STRASBOURG

31 March 2005

FINAL

31/06/2005

*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 Gudeljević 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 N. VAJIĆ,

Mrs S. BOTOUCHAROVA,

Mr A. KOVLER,

Mrs E. STEINER,

Mr K. HAJIYEV, *judges*,

and Mr S. QUESADA, *Deputy Section Registrar*,

Having deliberated in private on 10 March 2005,

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

PROCEDURE

1. The case originated in an application (no. 18431/02) 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 Marko Gudeljević (“the applicant”), on 23 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 1 December 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

4. The applicant was born in 1966 and lives in Poreč.

5. On 7 January 1994 the applicant instituted civil proceedings in the Virovitica Municipal Court (*Općinski sud u Virovitici*) against the insurance company C. seeking payment on the basis of an insurance contract.

6. On 22 February 1996 the applicant’s claim was dismissed. The applicant appealed against the judgment on 20 March 1996.

7. On 18 July 1996 the Bjelovar County Court (*Županijski sud u Bjelovaru*) dismissed his appeal and upheld the first instance judgment.

8. On 7 October 1996 the applicant filed a request for revision on points of law with the Supreme Court (*Vrhovni sud Republike Hrvatske*). The

Supreme Court rejected the applicant's request on 7 June 2001. The judgment was served on the applicant on 24 October 2001.

THE LAW

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

9. The applicant complained that the length of the 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 his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

A. Admissibility

10. 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 under section 62 of the Constitutional Court Act read in conjunction with Article 29 (1) of the Constitution.

11. The applicant contested the effectiveness of that remedy claiming that such a complaint could not have been lodged prior to the Supreme Court's decision on his request for revision on points of law.

12. The Court recalls that in its *Kvartuč* judgment it found that section 62 of the Constitutional Court Act did not represent an effective domestic remedy in respect of the length of proceedings (see *Kvartuč v. Croatia*, no. 4899/02, §§ 28-32, 18 November 2004). The Court sees no reason to depart from its view expressed in the above judgment.

13. It follows that the Government's objection must be rejected.

14. The Court further 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

15. The applicant maintained that the proceedings exceeded a reasonable time, in particular in their part before the Supreme Court.

16. The Government contested that view. They maintained that the proceedings concerned only interest sought by the applicant and that the

insurance company as the counterparty had contributed to their protracted character.

1. Period to be taken into consideration

17. The Court notes that the proceedings started on 7 January 1994, when the applicant filed his civil claim, and ended on 24 October 2001, when the Supreme Court's judgment was served on the applicant. They thus lasted almost seven years.

18. The period to be taken into consideration began on 6 November 1997, after the Convention had entered into force in respect of Croatia. It follows that a period of some four years falls within the Court's competence *ratione temporis*.

19. 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

20. 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).

21. As to the complexity of the case and the conduct of the applicant, the Government admitted that the case was not complex and that the applicant did not contribute to the length of the proceedings. The Court sees no reason to hold otherwise.

22. As regards the conduct of the domestic authorities, the Court notes that, within the time to be taken into consideration, the applicant's case was pending before the Supreme Court for some four years, during which time it only reviewed the case on points of law and did not take any evidence or perform any other procedural activity.

23. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

24. There has accordingly been a breach of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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

26. The applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage.

27. The Government contested the claim.

28. The Court considers that the applicant must have sustained some degree of non-pecuniary damage on account of the length of the domestic proceedings. Ruling on an equitable basis, it awards the applicant EUR 2,400 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

29. The applicant also claimed EUR 3,000 for the costs and expenses. 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

30. 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 2,400 (two thousand four

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 31 March 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Deputy Registrar

Christos ROZAKIS
President