



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

FIRST SECTION

CASE OF DEBELIĆ v. CROATIA

(Application no. 2448/03)

JUDGMENT

STRASBOURG

26 May 2005

FINAL

26/08/2005

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 Debelić v. Croatia,

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

Mr C.L. ROZAKIS, *President*,

Mr L. LOUCAIDES,

Mr P. LORENZEN,

Mrs N. VAJIĆ,

Mr A. KOVLER,

Mrs E. STEINER,

Mr K. HAJIYEV, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 3 May 2005,

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

PROCEDURE

1. The case originated in an application (no. 2448/03) 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 Ivan Debelić (“the applicant”), on 2 January 2003.

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

3. On 11 December 2003 the Court declared the application partly inadmissible and decided to communicate the complaints concerning the length of the proceedings and the lack of remedies in that respect 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

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1939 and lives in Rab.

5. On 10 June 1996 a company J. (“the company”) instituted civil proceedings against the applicant in the Rijeka Commercial Court (*Trgovački sud u Rijeci*) seeking restitution of business premises in the applicant's possession and payment of rent.

6. On 7 August 1996 the applicant filed a counterclaim against the company seeking payment of a certain amount of money on the basis of his investments in the business premises.

7. The two cases were joined.

8. On 2 October 1996 the Rijeka Commercial Court decided in the company's favour. At the same time it dismissed the applicant's claim as inadmissible because the company had meanwhile gone bankrupt and the applicant failed to report his claim in bankruptcy.

9. The applicant appealed against that decision. On 11 February 1997 the High Commercial Court (*Visoki trgovački sud Republike Hrvatske*) upheld the first instance judgment.

10. On 27 March 1997 the applicant filed a request for revision on points of law (*revizija*) with the Supreme Court (*Vrhovni sud Republike Hrvatske*).

11. On 11 December 2001 the Supreme Court dismissed the applicant's request on its merits. That decision was not served on the applicant until 6 May 2002.

12. Meanwhile, on 22 March 2002 a new section 59 (a), which subsequently became section 63 of the Constitutional Court Act entered into force, introducing a domestic remedy for length of proceedings in form of a constitutional complaint.

13. In line with the new legislation, on 11 April 2002 the applicant filed a constitutional complaint with the Constitutional Court (*Ustavni sud Republike Hrvatske*) complaining about the length of the proceedings.

14. On 2 October 2002 the Constitutional Court dismissed the applicant's complaint because the Supreme Court had meanwhile decided his case.

II. RELEVANT DOMESTIC LAW AND PRACTICE

15. Article 29 of the Constitution guarantees, *inter alia*, the right to a court which shall decide on an individual's rights and obligations within a reasonable time.

16. The relevant part of section 62 of the Constitutional Act on the Constitutional Court (*Ustavni zakon o Ustavnom sudu Republike Hrvatske*, Official Gazette no. 49/2002, of 3 May 2002; “the Constitutional Court Act”) reads as follows:

Section 62

“1. 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)...

2. If another legal remedy is allowed against the violation of the constitutional rights [complained of], the constitutional complaint may be lodged only after this remedy has been exhausted.

3. In matters in which an administrative action or, in civil and non-contentious proceedings, a revision on points of law are allowed, remedies are exhausted only after the decision on these legal remedies has been given.”

17. The relevant part of section 63 of the Constitutional Court Act reads as follows:

Section 63

“1. The Constitutional Court shall examine a constitutional complaint whether or not all legal remedies have been exhausted if the court with jurisdiction fails to decide a claim concerning the applicant's rights and obligations or a criminal charge against him or her within a reasonable time ...

2. If a constitutional complaint ... under paragraph 1 of this section is upheld, the Constitutional Court shall set a time-limit within which the court with jurisdiction must decide the case on the merits...

3. In a decision issued under paragraph 2 of this section, the Constitutional Court shall assess appropriate compensation for the applicant for the violation of his or her constitutional rights ... The compensation shall be paid out of the State budget within three months from the date a request for payment is lodged.”

The relevant part of the Civil Procedure Act (*Zakon o parničnom postupku*, Official Gazette nos. 53/91, 91/92, 58/93, 112/99, 88/01) in the relevant part reads as follows:

Section 382 provides that a request for revision on points of law may be filed against the second instance judgment within 30 days following its service on the party. It also enumerates cases in which such a request is allowed.

Sections 395 and 396 provide that the Supreme Court, in case it finds a request for revision on points of law well-founded, may quash the second instance judgment and remit the case or, in certain cases, it may also reverse the second instance judgment.

THE LAW

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

18. 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

1. *Compatibility ratione materiae*

19. The Government maintained that the applicant's proceedings concerning his request for revision on points of law did not fall within the scope of Article 6 § 1 of the Convention, because under the domestic law such request is considered an extraordinary legal remedy.

20. The Court firstly observes that the actual name given to the proceedings in the domestic legal system or the fact that the national jurisdictions have considered them as an extraordinary remedy cannot be considered determinant: what is decisive is the nature and the scope of the proceedings at issue (see *San Leonard Band Club v. Malta*, no. 77562/01, § 41, ECHR 2004-...). Furthermore, it is the Court's well-established practice that the proceedings following an appeal on points of law or an appeal for cassation fall within the scope of Article 6 § 1 of the Convention (see, for example, *H.E. v. Austria*, no. 33505/96, §§ 14 and 18, 11 July 2002; and *Cobianchi v. Italy (no. 1)*, no. 43434/98, §§ 8 and 11, 9 November 2000).

21. As to the nature of proceedings following a request for revision on points of law in civil matters in Croatia, the Court observes that the Supreme Court may, if it finds such a request well-founded, quash the lower instances' judgments and remit the case, or in certain cases even decide the case itself. Reasons for revision on points of law are expressly enumerated in the Civil Procedure Act and are not subject to any discretionary decision of the court. Moreover, so as to exhaust remedies, section 62 of the Constitutional Court Act requires a complainant to have previously filed a request for revision on points of law whenever such motion is allowed. A constitutional complaint is, on the other hand, a preliminary condition for lodging an application with the Court.

22. In these circumstances, the Court concludes that the proceedings following a request for revision on points of law are decisive for the

applicant's civil rights and obligations and that they fall within the scope of Article 6 § 1. It has also to be noted that, in a number of cases against Croatia, the Court had previously taken into consideration the length of proceedings before the Supreme Court when assessing the overall length of the proceedings (see, for example, *Jelavić-Mitrović v. Croatia*, no. 9591/02, § 28, 13 January 2005).

23. Accordingly, the Government's objection must be dismissed.

2. Exhaustion of domestic remedies

24. 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. They claimed that such a constitutional complaint was an effective remedy for proceedings which have already come to an end.

25. 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.

26. The Court recalls that 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 *Camasso v. Croatia*, no. 15733/02, § 25, 13 January 2005). The Court sees no reason to depart from its view expressed in the above judgment.

27. It follows that the Government's objection in this respect must be rejected.

3. Conclusion

28. The Court notes that this complaint 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

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

30. The Government contested that view.

1. Period to be taken into consideration

31. The Court notes that the proceedings started on 10 June 1996, when the civil action was filed against the applicant, and ended on 6 May 2002, the date of the service of the Supreme Court's judgment. They thus lasted almost six years.

32. 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 four years and six months falls within the Court's competence *ratione temporis*.

33. 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

34. 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).

35. 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.

36. As regards the conduct of the domestic authorities, the Court notes that, within the entire period to be taken into consideration, the applicant's case was pending before the Supreme Court, i.e. for four years and six months. During this time, the Supreme Court only reviewed the case on points of law and did not take any evidence or perform any other procedural activity.

37. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above).

38. 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 in view of the long period of inactivity before the Supreme Court, the proceedings failed to meet the "reasonable time" requirement.

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

40. The applicant further complained of the fact that the constitutional complaint under section 63 of the Constitutional Court Act was not an effective remedy in his case, because the Constitutional Court had failed to decide on its merits. He relied on Article 13 of the Convention.

41. The Government contested that argument. They maintained that a constitutional complaint under section 62 of the Constitutional Court Act was an effective remedy for the length of the proceedings which had already ended.

42. The Court recalls that it has already established (see § 26) that a complaint under section 62 of the Constitutional Court Act does not represent an effective remedy in respect of the length of civil proceedings that had already come to an end. It must be established whether a complaint under section 63 of the Act was an effective remedy in the applicant's case.

43. The Court further recalls that a constitutional complaint under section 63 of the Constitutional Court Act was recognised to be an effective remedy for the length of proceedings still pending in Croatia (see *Slaviček v. Croatia* (dec.), no. 20862/02, ECHR 2002-VII). Such constitutional complaint was found not to be an effective remedy for the length of proceedings that had already ended (see *Šoć v. Croatia*, no. 47863/99, § 94, 9 May 2003).

44. The Court reiterates that the effect of Article 13 is to require the provision of a domestic remedy allowing the competent national authority both to deal with the substance of the relevant Convention complaint and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they comply with their obligations under this provision (see *Chahal v. the United Kingdom*, judgment of 15 November 1996, *Reports* 1996-V, pp. 1869-70, § 145). The remedy required by Article 13 must be “effective”, both in practice and in law. However, such a remedy is required only for complaints that can be regarded as “arguable” under the Convention (see *Metropolitan Church of Bessarabia and Others v. Moldova*, no. 45701/99, § 137, ECHR 2001-XII).

45. In the instant case, in view of the conclusion under Article 6 § 1 (see § 38), the Court considers that the applicant's complaint did raise an issue of unreasonable length under that provision. The applicant could therefore have expected the Constitutional Court to deal with the substance of his constitutional complaint, which it did not. Even though the applicant lodged his complaint while his proceedings had still been pending, after they had ended, the Constitutional Court dismissed his complaint as inadmissible, without examining their length until that time.

46. Whilst it is true that the fact that a remedy does not lead to an outcome favourable to the applicant does not render a remedy ineffective (see *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI), the Court concludes that the practice of the Constitutional Court in the circumstances of the present case rendered an otherwise effective remedy ineffective. This conclusion does not, however, call into question the effectiveness of the remedy as such or the obligation to lodge a constitutional complaint under section 63 of the Constitutional Court Act in order to exhaust domestic

remedies concerning complains about the length of proceedings still pending.

47. Accordingly, there has been a violation of Article 13 of the Convention in the present case.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

48. 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

49. The applicant claimed 25,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

50. The Government contested that claim.

51. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this limb of the claim. On the other hand, it awards the applicant EUR 2,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

52. The applicant did not make any claim in this respect. Accordingly, no award is made under this head.

C. Default interest

53. 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* that there has been a violation of Article 13 of the Convention;

4. *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 2,000 (two thousand 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;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 26 May 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President