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

FIRST SECTION

CASE OF ZAGOREC v. CROATIA

(Application no. 10370/03)

JUDGMENT

STRASBOURG

6 October 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 Zagorec 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. QUESADA, *Deputy Section Registrar*,

Having deliberated in private on 15 September 2005,

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

PROCEDURE

1. The case originated in an application (no. 10370/03) 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 Marijan Zagorec ("the applicant"), on 17 March 2003.

2. The applicant was represented by Mr B. Spiz, a lawyer practising in Zagreb. The Croatian Government ("the Government") were represented by their Agent, Ms Š. Stažnik.

3. On 14 September 2004 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 1956 and lives in Ivanec Zaprešički, Croatia.

5. On 4 December 1992 the applicant instituted civil proceedings before the Zagreb Municipal Court (*Općinski sud u Zagrebu*) seeking non-pecuniary damages for injuries he had suffered in a traffic accident.

6. On 29 October 1997 the Zagreb Municipal Court gave judgment awarding part of the damages sought.

7. On appeal, on 9 February 1999 the Zagreb County Court (*Županijski sud u Zagrebu*) quashed the first-instance judgment and remitted the case.

8. In the resumed proceedings, the court held two hearings and gave another judgment on 18 March 2002. It again awarded part of the damages sought. The judgment was served on the applicant on 30 July 2002.

9. Meanwhile, on 5 July 2002 the applicant filed a constitutional complaint with the Constitutional Court (*Ustavni sud Republike Hrvatske*), complaining about the length of the proceedings. On 7 November 2002 the Constitutional Court declared the applicant's complaint inadmissible, since the Municipal Court had given its judgment in the case.

10. On the respondent's appeal, on 17 December 2002 the Zagreb County Court again quashed the first-instance judgment and remitted the case.

11. In the resumed proceedings, the court held two hearings and concluded the main hearing on 13 May 2004. However, since the presiding judge had been dismissed from office, the main hearing was reopened and, subsequently, a judgment given on 16 December 2004.

12. The proceedings are currently pending before the Zagreb County Court, following an appeal against the above judgment.

II. RELEVANT DOMESTIC LAW

13. The relevant part of section 63 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:

> "(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 LAW

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

14. 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..."

15. The Court notes that the proceedings started on 4 December 1992, when the applicant lodged his civil action, and are still pending. They have thus lasted over twelve and a half years.

16. 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 about seven years and ten months falls within the Court's competence *ratione temporis*.

17. 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).

A. Admissibility

18. The Government invited the Court to reject the applicant's complaint for non-exhaustion of domestic remedies. It maintained that the applicant could have filed another constitutional complaint, after the Constitutional Court had dismissed his first one. Bearing in mind that the Constitutional Court changed its practice in this respect, so as to comply with the Court's case-law, the Government claimed that a complaint under section 63 of the Constitutional Court Act would have been an effective remedy for the applicant's length complaint.

19. Furthermore, the Government maintained that, in view of the change in the Constitutional Court's case-law, the Court should make an exception from the general rule of non-exhaustion of domestic remedies and declare this complaint inadmissible even though that change occurred only after the lodging of the application with the Court.

20. The applicant disagreed with the Government and contested the effectiveness of a constitutional complaint with respect to his length complaint.

21. The Court reiterates that under Article 35 § 1 of the Convention it may only deal with a matter after all domestic remedies have been

exhausted. The purpose of the exhaustion rule is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to it (see, among many other authorities, *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-IV). The obligation to exhaust domestic remedies requires that an applicant make normal use of remedies which are effective, sufficient and accessible in respect of his Convention grievances.

22. The Court further reiterates, that the issue whether domestic remedies have been exhausted is normally determined by reference to the date when the application was lodged with the Court (see *Baumann v. France*, no. 33592/96, § 47, ECHR 2001-V (extracts)). This rule is subject to exceptions which may be justified by the specific circumstances of each case (see *Nogolica v. Croatia* (dec.), no. 77784/01, ECHR 2002-VIII).

23. Turning to the present case, the Court observes that, in lodging a constitutional complaint under section 63 of the Constitutional Court Act, the applicant made normal use of the remedy which was declared to be an effective one in respect of his length complaint (see *Slaviček v. Croatia* (dec.), no. 20862/02, ECHR 2002-VII). He therefore offered the domestic bodies the opportunity of preventing or putting right the violation alleged. However, it is understandable that the applicant, seeing that his constitutional complaint had failed, did not lodge a second constitutional complaint. For the Court, this would overstretch the duties incumbent on an applicant pursuant to Article 35 § 1 of the Convention (see, *mutatis mutandis*, *Unión Alimentaria Sanders S.A. v. Spain*, judgment of 7 July 1989, Series A no. 157, p. 14, § 35; *Ullrich v. Austria*, no. 66956/01, § 29, 21 October 2004).

24. As regards the Government's request to depart from the general rule of exhaustion and to declare the applicant's complaint inadmissible even though the alleged change in the case-law of the Constitutional Court occurred only after the lodging of his application, the Court points out that, unlike in the *Nogolica* case, the Government have not shown any specific circumstances which would justify such a departure (see, *mutatis mutandis*, *Pikić v. Croatia*, no. 16552/02, § 32, 18 January 2005). In these circumstances, the Government's objection must be dismissed.

25. The Court further notes that the complaint under Article 6 of the Convention 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

26. 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). The Court reiterates that special diligence is called for in cases concerning determination of compensation for victims of road accidents (see *Silva Pontes v. Portugal*, judgment of 23 March 1994, Series A no. 286-A, p. 15, § 39).

27. As to the complexity of the case, the Government submitted that the proceedings were somewhat complex since the competent court had difficulties in determining whether the applicant had been under the influence of alcohol at the time of the accident. The applicant disagreed. For the Court, this issue cannot justify the prolongation of the proceedings over more than twelve years.

28. As to the conduct of the applicant, the Government did not claim that he had in any way contributed to the length of the proceedings. The Court sees no reason to hold otherwise.

29. The Government further claimed that the domestic courts acted with due diligence, in particular, they gave two first-instance and two second-instance decisions, without any apparent periods of inactivity. The applicant disagreed. The Court is not satisfied that, after five years of first-instance proceedings prior to the ratification of the Convention, the remitted first-instance proceedings lasted about three and a half years (from February 1999 until July 2002), during which time the court held only two hearings. Moreover, following another remittal of the case in December 2002, it took the first-instance court another two years to decide the case for the third time only in December 2004. These periods are, in the Court's view, unjustified and excessive.

30. 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 the conclusion that the present case was examined with due diligence. 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.

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

31. The applicant further complained that the constitutional complaint under section 63 of the Constitutional Court Act had not been an effective remedy in respect of his length complaint. He relied on Article 13 of the Convention, which reads as follows:

> “Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

32. The Government contested that argument, claiming that the Constitutional Court had meanwhile changed its practice in cases similar to the applicant’s.

33. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

34. The Court recalls that in the *Debelić* case it already found a violation of Article 13 in a case where the Constitutional Court had declared a complaint inadmissible because the competent courts had meanwhile given a decision, as it had failed to deal with the substance of the applicant’s length complaint (see *Debelić v. Croatia*, no. 2448/03, § 46, 26 May 2005). The Cout sees no reason to depart from such a conclusion.

There has accordingly been a violation of Article 13 of the Convention in the present case.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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

36. The applicant claimed 120,000 Croatian kunas (HRK) (approximately 16,200 euros (EUR)) in respect of pecuniary and non-pecuniary damage.

37. The Government contested these claims.

38. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, the Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards award him EUR 1,000 under that head, plus any tax that may be chargeable on the above amount.

B. Costs and expenses

39. The applicant also claimed EUR 2,000 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

40. 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, the following amount which should be converted into Croatian kunas at the rate applicable at the date of settlement:
      (i) EUR 1,000 (one thousand euros) in respect of non-pecuniary damage;
      (ii) any tax that may be chargeable on the above amount;
   (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 6 October 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA	Christos ROZAKIS
Deputy Registrar	President