



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

FIRST SECTION

CASE OF TATJANA MARINOVIĆ v. CROATIA

(Application no. 9627/03)

JUDGMENT

STRASBOURG

6 October 2005

FINAL

06/01/2006

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 Tatjana Marinović 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. 9627/03) 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, Ms Tatjana Marinović (“the applicant”), on 4 March 2003.

2. The Croatian Government (“the Government”) were represented by their Agents, Ms L. Lukina-Karajković and subsequently Ms Š. Stažnik.

3. On 7 July 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 1944 and lives in Zagreb.

5. In 1982 the applicant, together with her relative A.M, purchased a flat in Crikvenica. The purchase agreement did not contain any provision on the shares of ownership of the flat.

6. On 23 May 1989 A.M. instituted civil proceedings before the Crikvenica Municipal Court (*Općinski sud u Crikvenici*) seeking declaration of her ownership of two-thirds of the flat. On 29 October 1989 the applicant filed a counterclaim, seeking declaration that she was the owner of seven-eighths of the flat.

7. Following two remittals, on 18 June 1996 the Crikvenica Municipal Court ruled that A.M. was the owner of three-fifths and the applicant of two-fifths of the flat.

8. On appeal, on 8 October 1997 the Rijeka County Court (*Županijski sud u Rijeci*) upheld the first-instance judgment.

9. On 20 October 1998 the applicant filed an appeal on points of law (*revizija*) against the County Court's judgment. On 4 April 2002 the Supreme Court (*Vrhovni sud Republike Hrvatske*) dismissed her appeal as ill-founded. The decision was served on the applicant on 13 September 2002.

II. RELEVANT DOMESTIC LAW AND PRACTICE

10. 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."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION CONCERNING THE LENGTH OF THE PROCEEDINGS

11. 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...fair hearing within a reasonable time by a ... tribunal...”

12. The Government contested that view.

13. The Court notes that the proceedings started on 23 May 1989, when the civil action was filed against the applicant, and ended on 13 September 2002, the date of the service of the Supreme Court’s judgment. They thus lasted twelve and a half years.

14. 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, ten months and eight days falls within the Court’s competence *ratione temporis*.

15. 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

16. The Government submitted that the applicant failed to exhaust domestic remedies because she did not complain to the Constitutional Court about the length of the proceedings pursuant to section 62 of the Constitutional Court Act. They claimed that such a constitutional complaint was an effective remedy for the length of the proceedings which have already come to an end.

17. The applicant contested the effectiveness of the alleged remedy.

18. The Court recalls that it has already held that section 62 of the Constitutional Court Act does 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. It follows that the Government’s objection in this respect must be rejected.

19. 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

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. In respect of the above criteria, the Government submitted that the case was rather complex and did not fall within the category of cases which would require priority. It further submitted that the somewhat protracted character concerning the applicant's appeal on points of law was caused by an increase in the workload of the Supreme Court at the material time.

22. The applicant contested these views.

23. The Court observes that, within the time period to be taken into consideration, the applicant's case was pending before one instance for almost four years. During that time the Supreme Court only reviewed the case on points of law and did not perform any other procedural activity. As to the Government's argument regarding the workload of the Supreme Court, the Court recalls that Article 6 § 1 imposes on the Contracting States the duty to organise their judicial systems in such a way that their courts can meet each of its requirements, including the obligation to hear cases within a reasonable time (see, among many other authorities, *Kyrtatos v. Greece*, no. 41666/98, § 42, ECHR 2003-VI (extracts)).

24. 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). 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 (see, for example, *Debelić v. Croatia*, no. 2448/03, § 39, 26 May 2005), 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. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

25. The applicant also complained that the proceedings concerning her ownership had not been fair and that they violated her property rights. She relied on Article 6 § 1 and on Article 1 of Protocol No. 1 to the Convention.

A. Admissibility

26. The Court observes that the applicant never filed a constitutional complaint under section 62 of the Constitutional Court Act raising the same issues that she complains about before the Court. Even though section 62 of the Constitutional Court Act is not an effective remedy for length complaints (see § 14 above), it nonetheless is a remedy that has to be exhausted in respect of any other complaints concerning rights guaranteed by the Convention.

27. It follows that these complaints must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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

29. The applicant claimed 57,650 Croatian kunas (HRK) (approximately 7,790 euros (EUR)) in respect of pecuniary as well as HRK 50,000 (approximately EUR 6,750) in respect of non-pecuniary damage.

30. The Government contested these claims.

31. 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 her EUR 2,700 under that head, plus any tax that may be chargeable on the above amount.

B. Costs and expenses

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

C. Default interest

33. 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 complaint concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;
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, the following amount which should be converted into Croatian kunas at the rate applicable at the date of settlement:
 - (i) EUR 2,700 (two thousand seven hundred 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;
4. *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
Deputy Registrar

Christos ROZAKIS
President