



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

FIRST SECTION

CASE OF ANTONIĆ-TOMASOVIĆ v. CROATIA

(Application no. 5208/03)

JUDGMENT

STRASBOURG

10 November 2005

FINAL

10/02/2006

*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 Antonić-Tomasović 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 E. STEINER,

Mr D. SPIELMANN, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 20 October 2005,

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

PROCEDURE

1. The case originated in an application (no. 5208/03) 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, Mrs Mira Antonić-Tomasović (“the applicant”), on 28 January 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, Mrs Š. Stažnik.

3. On 29 October 2004 the Court decided to communicate the complaint concerning the length of the proceedings. 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**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1940 and lives in Zagreb.

5. On 28 May 1990 a certain D.I. (“the plaintiff”) brought a civil action against the applicant in the Zagreb Municipal Court (*Općinski sud u Zagrebu*) seeking the conclusion of a sale contract by which the applicant was to sell her flat to the plaintiff.

6. On 6 November 1990 the applicant filed her response and a counter-claim alleging that the plaintiff did not pay her the full price for the flat.

7. In November 1990 the plaintiff requested that the case be joined to another case pending between the same parties. In November 1991, July and November 1992 the applicant requested the court to schedule a hearing. In May 1994 the applicant objected to the plaintiff's request to have the two cases joined.

8. The court held hearings on 21 November 1990, 14 February, 8 April and 22 November 1994 and 7 March 1995.

9. By a judgment of 7 March 1995 the Municipal Court accepted the plaintiff's claim and dismissed the applicant's counter-claim. On 23 October 1996 the applicant appealed.

10. On 9 June 1998 the Zagreb County Court (*Županijski sud u Zagrebu*) accepted the applicant's appeal and remitted the case.

11. In the resumed proceedings, the Municipal Court held a hearing on 19 July 1999. On that date it decided to close the main hearing.

12. On 15 October 1999 the applicant requested the court to reopen the main hearing and obtain an opinion from a financial expert. On 10 November 1999 the court accepted the applicant's request.

13. On 21 January 2000 the court heard witnesses and requested the applicant to advance the costs of the expert. On 26 January 2000 the applicant did so.

14. On 2 February 2000 the court appointed an expert. On 19 May 2000 the expert submitted his report to the court which then forwarded it to the applicant, who received it on 28 August 2000.

15. On 11 October 2000 the Municipal Court closed the main hearing.

16. By a judgment of 11 October 2000 the court again accepted the plaintiff's claim and declared inadmissible the applicant's counter-claim. The judgment was served on the applicant on 2 July 2001.

17. The plaintiff and the applicant appealed on 10 July and 12 July 2001, respectively. In her appeal, the applicant also applied to be exempted from the court fees. The appeals were forwarded to the County Court, which received them on 8 February 2002.

18. On 15 October 2002 the Zagreb County Court, without deciding on the admissibility or merits of the appeals, returned the case-file to the Municipal Court. It instructed the latter to decide on the applicant's application for exemption from the court fees and the plaintiff's 'appeal' which, in fact, constituted an application for a rectification of the judgment.

19. On 14 September 2004 the Zagreb County Court accepted the appeals, quashed the Municipal Court's judgment of 11 October 2000 and remitted the case.

20. In the resumed proceedings, the Municipal Court scheduled a hearing for 8 March 2005. It appears that the proceedings are still pending before the first-instance court.

21. Meanwhile, on 9 May 2002 the applicant lodged a constitutional complaint about the length of the proceedings. On 14 November 2002 the

Constitutional Court dismissed her complaint on its merits. It examined the length of the proceedings in respect of their part following the Convention's entry into force with respect to Croatia. The Constitutional Court found that the case was complex since it had already been remitted once and because the Municipal Court needed to obtain an expert's opinion. It also found that the applicant contributed to the length of the proceedings in that until May 1994 she had not objected to the plaintiff's proposal of November 1990 to have that case joined to another one. Only then did she argue that the second proceedings were irrelevant.

THE LAW

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

22. 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..."

23. The Government contested that argument.

24. The period to be taken into consideration began on 6 November 1997, the day after the entry into force of the Convention in respect of Croatia. However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time. In this connection the Court notes that the proceedings commenced on 28 May 1990, when the plaintiff brought a civil action against the applicant.

The period in question had not yet finished on 8 March 2005. It had already lasted on the last-mentioned date some seven years and four months. During that period three decisions were rendered and the case was examined before two levels of jurisdiction.

A. Admissibility

25. The Government invited the Court to reject the application on the ground that the applicant had failed to exhaust domestic remedies as required under Article 35 § 1 of the Convention.

26. The Government submitted that the applicant had not lodged another constitutional complaint to the Constitutional Court. They observed that she had previously lodged such a complaint on 9 May 2002, and that the Constitutional Court on 14 November 2002 dismissed it. However, in doing so, that court examined only the period between the date of the entry into

force of the Convention in respect of Croatia and the date of lodging of the constitutional complaint.

27. Having regard to the fact that the proceedings are still pending, lodging of another constitutional complaint would have had reasonable prospects of success since it would have enabled the Constitutional Court to examine the overall length of the proceedings taking into consideration their duration after its previous decision.

28. The applicant contested that argument. She argued that it was not justified to demand from her to lodge another constitutional complaint when her previous complaint had been dismissed.

29. 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.

30. The Court recalls that according to its case-law, a constitutional complaint under section 63 of the Constitutional Court Act is an effective remedy which has to be used in the context of complaints about the length of court proceedings that are still pending (*Slaviček v. Croatia* (dec.), no. 20862/02, ECHR 2002-VII).

31. In the present case, the applicant made normal use of this remedy on 9 May 2002, when the proceedings had already been pending for more than four years after Croatia had ratified the Convention. The Constitutional Court dismissed this complaint finding that the proceedings had not exceeded reasonable time. The proceedings were subsequently pending for another three years and have not yet come to an end.

32. It follows that the applicant has raised the “reasonable time” issue before the competent domestic authorities, thereby offering them the opportunity of preventing or putting right the violation alleged.

33. However, seeing that her constitutional complaint had failed, the Court considers it understandable that the applicant did not lodge a second constitutional complaint, as 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. 13-14, § 35; and *Ullrich v. Austria*, no. 66956/01, § 29, 21 October 2004).

34. The Court, therefore, concludes that the applicant has complied with her obligation to exhaust domestic remedies. The Government’s objection must therefore be dismissed.

35. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It also notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

36. 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).

37. As to the complexity of the case, the Court disagrees with the Constitutional Court's finding and the Government's argument that the case was complex due to the fact that the issues mandated an opinion from a financial expert (see paragraph 21 above). To obtain that opinion took only three months.

38. In view of the overall length of the proceedings in the examined period, the Court is hesitant to attribute decisive importance to any delays which may possibly have been caused by the applicant's conduct. In addition, there exists an apparent contradiction in the reasoning of the Constitutional Court, which was reiterated by the Government, in that it only examined the period after Croatia ratified the Convention while, at the same time, it held the applicant responsible for a period of inactivity that had occurred prior to the ratification (see paragraph 21 above).

39. As to the conduct of the judicial authorities, the Court notes that over seven years have elapsed without the courts being able to deliver a final judgment and, that, after the second remittal, the case is again pending at first instance. Therefore, irrespective of the number of the hearings held and the procedural steps taken, the Court considers that in the examined period the domestic courts have not utilised the time available to them to speed up the proceedings with a view to bringing the case to an end as soon as possible.

40. The foregoing considerations are sufficient to enable the Court to conclude that the applicant's case was not heard within a reasonable time. There has accordingly been a breach of Article 6 § 1.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

A. Admissibility

41. The applicant further complained under Article 13 of the Convention taken in conjunction with Article 6 § 1 that she had not had an effective remedy in regard to the excessive length of the proceedings. Article 13 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.”

42. The Court notes that the applicant had at her disposal an effective domestic remedy to complain about the length of the proceedings – a constitutional complaint – of which she availed herself. The mere fact that the outcome of the Constitutional Court proceedings was not favourable to her does not render the remedy ineffective.

43. It follows that this complaint is inadmissible under Article 35 § 3 as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

A. Admissibility

44. The applicant also complained that she had been denied the right to protect her property. She relied on Article 1 of Protocol No. 1 which reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

45. The Court observes that the proceedings are still pending and that this complaint is therefore premature.

46. It follows that this part of the application is inadmissible under Article 35 § 1 for non-exhaustion of domestic remedies and must be rejected pursuant to Article 35 § 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

47. 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

48. The applicant claimed 120,000 Croatian kunas (HRK)¹ without specifying the nature of the damage sustained.

49. The Government contested the claim.

50. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards her 3,300 euros (EUR) under that head, plus any tax that may be chargeable.

B. Costs and expenses

51. The applicant also claimed EUR 2,000 for the costs and expenses incurred before the Court. However, she failed to submit itemised particulars of this claim or any relevant supporting documents, although she was invited to do so.

52. The Government contested the claim.

53. The Court observes that the applicant failed to comply with the requirements set out in Rule 60 § 2 of the Rules of Court. In these circumstances, it makes no award under this head (Rule 60 § 3).

C. Default interest

54. 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;

¹ Approximately 16,000 euros (EUR).

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 in accordance with Article 44 § 2 of the Convention, EUR 3,300 (three thousand three 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 10 November 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President