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

FIRST SECTION

CASE OF RAGUŽ v. CROATIA

(Application no. 43709/02)

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 Raguž 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. 43709/02) 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 Vladimir Raguž ("the applicant"), on 20 November 2002.

2. The applicant, who had been granted legal aid, was represented by Mr T. Vukičević, a lawyer practising in Split. The Croatian Government ("the Government") were represented by their Agent, Ms Š. Stažnik.

3. On 14 September 2004 the Court decided to communicate the complaints concerning the length of the proceedings and the lack of remedies in that respect to the Government. On 29 September 2005 it decided to apply Article 29 § 3 of the Convention and 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 1930 and lives in Split.

5. The applicant worked for the company K. ("the company") for several years. By virtue of a 1985 court decision and the subsequent decision of the company in 1986, he was granted use of a privately owned flat. However, he was not able to move into the flat until 1 September 1989.

6. On 15 December 1989 the applicant filed a civil action against the company and T.V. as the owner of the flat seeking damages for not having been able to move into the flat until 1989 and for having had to renovate it. Subsequently, T.V. filed a counterclaim seeking the applicant's eviction from the flat and the payment of rent for the time he had spent in it.

7. On 13 December 1995 the Split Municipal Court (*Općinski sud u Splitu*) dismissed both the applicant's claim and T.V.'s counterclaim.

8. On appeal, on 28 August 1998 the Split County Court (*Županijski sud u Splitu*) quashed the first-instance judgment and remitted the case in so far as it involved the payment of rent by the applicant. At the same time, the County Court upheld the remainder of the first-instance judgment in its part concerning the applicant's claim and T.V.'s claim for the applicant's eviction, which thereby became final. T.V. filed an appeal on points of law (*revizija*) against that part of the County Court's decision. On 21 March 2001 the Supreme Court (*Vrhovni sud Republike Hrvatske*) declared his appeal inadmissible, because the value of the subject matter in dispute did not reach the threshold prescribed by law.

9. In the resumed first-instance proceedings, the applicant withdrew his claim in respect of the company, but maintained in his action against T.V. During the proceedings, also T.V. changed his counterclaim on several occasions. Subsequently, on 1 July 2003 the Split Municipal Court again dismissed the applicant's action, accepting T.V.'s counterclaim for payment of rent by the applicant.

10. On 15 May 2003 the applicant appealed against that decision.

11. On 19 May 2003 the applicant filed a constitutional complaint concerning the length of the proceedings.

12. On 23 October 2003 the Constitutional Court (*Ustavni sud Republike Hrvatske*) dismissed the applicant's complaint as ill-founded. It found that, at the time when the applicant had lodged his constitutional complaint, the proceedings before the Split County Court had been pending for only four days and that therefore, on the basis of the existing case-law of the Constitutional Court, the conditions set out in section 63 § 1 of the Constitutional Act were not fulfilled.

13. On 4 February 2005 the Split County Court dismissed the applicant's appeal and upheld the first-instance judgment in its part concerning the order to pay to T.V. the rent. At the same time, the second-instance court remitted the case in its part concerning the exact amount of the rent due.

II. RELEVANT DOMESTIC LAW

14. 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

15. 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..."

16. The Court notes that the proceedings started on 15 December 1989, when the applicant lodged his civil action, and are still pending. They have thus lasted over fifteen and a half years.

17. 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*.

18. 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

19. 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 has 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.

20. 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 such change occurred only after the lodging of the application with the Court.

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

22. 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.

23. 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).

24. 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).

25. 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.

26. The Court further 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

27. 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).

28. As to the complexity of the case, the Government submitted that the case was factually and legally complex and, at the same time, not falling within the category of cases which would require priority. The applicant disagreed. The Court accepts that the case was somewhat complex.

29. As to the conduct of the parties, the Government claimed that the applicant and T.V. both attributed to the protraction of the proceedings in failing to specify their claims. The applicant argued that his contribution to the prolongation of the proceedings was minor in comparison to the inactivity of the authorities. Whilst it is true that both the applicant and T.V. appear to have changed their claim several times, the Court does not consider that such amendments significantly contributed to the length of the proceedings in the instant case.

30. As to the conduct of the domestic courts, the Government deemed that they had acted expeditiously in the matter, which the applicant disputed. The Court observes that during the time which falls within its competence *ratione temporis*, i.e. somewhat less than eight years, the domestic courts gave three decisions in the applicant's case. However, the resumed first-instance proceedings having lasted almost five years (from August 1998 until July 2003), the Court does not consider that the domestic authorities acted without unreasonable delay. It also cannot accept the fact that it took the Supreme Court more than two and a half years to declare T.V.'s appeal on points of law inadmissible as a valid argument for the protracted character of the resumed first-instance proceedings.

31. 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 as well as the overall length of the proceedings, 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

32. 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."

33. The Government contested that argument. They submitted that, at the time when the applicant lodged his complaint the case-law of the Constitutional Court did not allow the examination of the entire length of the proceedings in a situation where they had been pending very shortly before a higher instance. However, the Constitutional Court changed its practice so as to harmonise it with the Court's case-law.

A. Admissibility

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

B. Merits

35. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI). 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). However, the Court has already found a violation of Article 13 due to the fact that a certain practice of the Constitutional Court was not compatible with the Court's case-law (see *Debelić v. Croatia*, no. 2448/03, § 47, 26 May 2005).

36. In the area of remedies concerning the length of proceedings, the Court has to satisfy itself that the Constitutional Court's decision is capable

of covering all stages of the proceedings complained of and thus, in the same way as decisions given by the Court, of taking into account the overall length (see, *mutatis mutandis*, *Bako v. Slovakia* (dec.), no. 60227/00, 15 March 2005). In the present case, when deciding on the applicant's complaint, the Constitutional Court only took into consideration the length of the proceedings before one court instance, i.e. the instance where the proceedings had been pending at the time of lodging of the constitutional complaint, but failed to examine the previous period, i.e. the time during which the applicant's case was pending at first instance. This approach of the Constitutional Court is different from that of the Court and is not capable of covering all stages of the proceedings. It is therefore incompatible with the protection of rights in this respect offered by the Court (*cf., a contrario, Bako v. Slovakia*, cited above).

37. 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*, cited above, § 157), 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 complaints about the length of proceedings still pending.

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

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

38. The applicant also complained of the infringement of his rights under Articles 3, 14 and 17 of the Convention, which guarantee, respectively, freedom from inhuman and degrading treatment or torture, freedom from discrimination in the enjoyment of Convention rights and prohibition of use of rights.

39. The Court considers that the present case raises no issue under any of the above Articles of the Convention. These complaints should therefore be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

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

42. The Government contested these claims.

43. 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, it awards the applicant EUR 2,400 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

44. The applicant, who was granted legal aid, did not make any claims under this head. Accordingly, the Court does not award him any.

C. Default interest

45. 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 and the existence of an effective remedy 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* 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 2,400 (two thousand four 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;

5. *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 Christos ROZAKIS
Registrar President