



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

FIRST SECTION

CASE OF POSEDEL-JELINOVIĆ v. CROATIA

(Application no. 35915/02)

JUDGMENT

STRASBOURG

24 November 2005

FINAL

12/04/2006

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 Posedel-Jelinović 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. NIELSEN, *Section Registrar*,

Having deliberated in private on 3 November 2005,

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

PROCEDURE

1. The case originated in an application (no. 35915/02) 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, Ms Ester Posedel-Jelinović (“the applicant”), on 5 September 2002.

2. The Croatian Government (“the Government”) were represented by their Agent, Ms Š. Stažnik.

3. On 11 October 2004 the Court decided to communicate the complaint 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 1936 and lives in Split.

5. The applicant was a holder of a specially protected tenancy on a flat in Split. Under the legislation in force, all holders of specially protected tenancies were entitled to buy their flats under favourable terms, provided that they purchased only one flat. In 1993 the applicant purchased that flat and subsequently donated it to her son.

6. The applicant's late husband had a specially protected tenancy on another flat in Split. He died in 1995, before he could exercise the right to purchase that flat.

7. The applicant, as her husband's heir, instituted administrative proceedings for acknowledgment of her specially protected tenancy. Her tenancy on the second flat was acknowledged on 17 April 1997.

8. On 23 October 1998 the applicant instituted civil proceedings in the Split Municipal Court (*Općinski sud u Splitu*), requesting the court to order the City of Split to conclude a flat purchase agreement with her.

9. On 30 April 1999 the applicant filed a motion for withdrawal of the first-instance judge. On 10 May 1999 her motion was dismissed because there was no evidence that the judge was biased.

10. On 13 July 1999 the Municipal Court dismissed the applicant's claim. It found that the applicant had already bought one flat as a holder of a specially protected tenancy and that she had no right to buy another one.

11. On 13 October 2000 the Split County Court (*Županijski sud u Splitu*) dismissed the applicant's appeal for the same reasons.

12. In 2000 the applicant proposed to the competent State Attorney's Office (*Državno odvjetništvo*) to file a motion for the protection of legality (*zahtjev za zaštitu zakonitosti*), an extraordinary remedy under the domestic law. Her proposal was denied on 20 February 2001.

13. Meanwhile, on 4 December 2000 the applicant also filed a constitutional complaint claiming that the Municipal Court and the County Court, in their judgments of 13 July 1999 and 13 October 2000, had violated her right to respect for home and property.

14. The Government submit that throughout the proceedings the applicant was filing various submissions to the Constitutional Court (*Ustavni sud Republike Hrvatske*). In one of them, a letter dated 27 February 2001, the applicant requested the Constitutional Court to "terminate all judicial actions and remand the case to the County Court". Further letters of the applicant, from November 2001 onwards, consisted of rush notes.

15. On 30 June 2004 the Constitutional Court dismissed her complaint as ill-founded.

II. RELEVANT DOMESTIC LAW

16. The Specially Protected Tenancies (Sale to Occupier) Act (*Zakon o prodaji stanova na kojima postoji stanarsko pravo*, Official Gazette no. 27/1991 with further amendments) ("the Act") regulates the conditions of sale of flats let under specially protected tenancies. Section 1 of the Act entitles the holders of specially protected tenancies on publicly-owned flats to purchase such flats under favourable conditions, provided that each holder buys only one flat.

THE LAW

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

17. 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...”

18. The Government contested this view.

19. The proceedings at issue began on 23 October 1998 and ended on 30 June 2004 with the decision of the Constitutional Court. They thus lasted 5 years and 8 months.

A. Admissibility

20. The Government submitted that the applicant never complained about the length of the proceedings before lodging her constitutional complaint in 2000. In their view, the applicant thereby failed to exhaust domestic remedies.

21. The Court observes that in Croatia an effective domestic remedy for the length of the proceedings exists only since 22 March 2002, namely a constitutional complaint to the Constitutional Court (see *Slaviček v. Croatia* (dec.), no. 20862/02, ECHR 2002-VII). Since at that date the applicant’s case was already pending before the Constitutional Court, she cannot be expected to have lodged a length complaint with the same court. The Government’s objection in this respect must therefore be dismissed.

22. 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

23. 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).

24. As to the complexity of the case, the Government admitted that the proceedings were not complex. The Court sees no reason to hold otherwise.

25. As to the conduct of the applicant, the Government argued that the applicant contributed to the proceedings before the Constitutional Court by repeatedly filing various submissions, and even requesting it at one point to “terminate all judicial actions”. The applicant disagreed with the Government, stressing that she mainly filed rush notes to the Constitutional Court with a view to expediting the proceedings before it. The Court will not exclude that the applicant’s numerous submissions to the Constitutional Court may have caused certain delays. However, it does not find that her conduct essentially contributed to the length of the Constitutional Court proceedings as a whole.

26. As to the conduct of the authorities, the Court observes that it took the Municipal Court nine months to give a first-instance judgment and that the County Court decided on the applicant’s appeal within three months. The Court has found nothing in respect of the length of these proceedings, which could give rise to any criticism. As regards the proceedings in the Constitutional Court, the Court observes that they lasted approximately three and a half years. In this connection, however, the Court bears in mind the specific role of the Constitutional Court as the guardian of the Constitution (see, for example, *Süßmann v. Germany*, judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1174, §§ 55-57), and the fact that a delay at some stage of the proceedings may be tolerated if the overall duration cannot be deemed excessive (see *Pretto and Others v. Italy*, judgment of 8 December 1983, Series A no. 71, p. 16, § 37; *Nuutinen v. Finland*, no. 32842/96, § 110, ECHR 2000-VIII).

27. In sum, taking into account that the applicant’s case was decided by three court instances in five years and eight months, the Court is satisfied that in the present case, the length of the proceedings did not breach the “reasonable time” requirement (see *Marcotrigiano v. Italy (no. 2)*, no. 47783/99, § 18, 1 March 2001; *Stoidis v. Greece*, no. 46407/99, § 21, 17 May 2001).

28. There has accordingly been no violation of Article 6 § 1.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

29. The applicant further complained that the proceedings were unfair in that the domestic courts misapplied the domestic law, that she had not been heard during the first-instance proceedings and that the judge of the Municipal Court had been biased. She also complained that she had no effective remedy at her disposal to challenge the impartiality of the judge and, finally, that by failing to allow her to buy the flat, the domestic authorities violated her property rights.

The applicant relied on Articles 6 § 1 and 13 of the Convention and on Article 1 of Protocol No. 1 to the Convention, the relevant parts of which read as follows:

Article 6 § 1

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal...”

Article 13

“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.”

Article 1 of Protocol No. 1

“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.”

A. Admissibility

30. In respect of the applicant’s fairness complaint, the Court notes that she never raised this issue in her constitutional complaint. It follows that the complaint under Article 6 of the Convention must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

31. As regards the applicant’s complaint under Article 13, the Court observes that the applicant had a remedy for challenging the first-instance judge for bias in that she filed a motion for his withdrawal. The mere fact that this remedy did not lead to a decision favourable to the applicant did not render it ineffective. It follows that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4 of the Convention.

32. Finally, as regards the applicant’s complaint under Article 1 of Protocol No. 1, the Court recalls that this provision does not guarantee the right to acquire property (see *Van der Mussele v. Belgium*, judgment of 23 November 1983, Series A no. 70, p. 23, § 48, *Kopecký v. Slovakia* [GC], no. 44912/98, § 35, ECHR 2004-IX). An applicant can allege a violation of Article 1 of Protocol No. 1 only in so far as the impugned decisions related to his or her “possessions” within the meaning of this provision. “Possessions” can be either “existing possessions” or assets, including claims, in respect of which the applicant can argue that he or she has at least

a “legitimate expectation” of obtaining effective enjoyment of a property right. (*Kopecký*, *ibid.*, § 35). A “legitimate expectation” must be of a nature more concrete than a mere hope, and must be based on a legal provision or a legal act such as a judicial decision. (*Kopecký*, *ibid.*, § 49).

33. In the present case the applicant had no legitimate expectation to buy another flat under favourable conditions, as the domestic legislation did not offer her that right. Section 1 of the Act expressly confers such right only for the purchase of one flat.

34. It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4 of the Convention.

FOR THESE REASONS, THE COURT

1. *Declares* unanimously the complaint concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;
2. *Holds* by six votes to one that there has been no violation of Article 6 § 1 of the Convention;

Done in English, and notified in writing on 24 November 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinion of Mr Spielmann is annexed to this judgment.

DISSENTING OPINION OF JUDGE SPIELMANN

(Translation)

I am unable to agree with the decision of the majority of the Court that there has been no violation of Article 6 § 1 of the Convention.

Although it may be felt that, in general, a total length of five years and eight months for the examination of a case at three levels of jurisdiction is not excessive, this cannot be said of the present case.

Because the Constitutional Court in itself took three and a half years to deal with the case, the overall length was unnecessarily prolonged.

Consequently, the time taken to examine the case cannot be regarded as reasonable.

I therefore consider that Article 6 § 1 of the Convention was breached.