



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

FIRST SECTION

CASE OF POJE v. CROATIA

(Application no. 29159/03)

JUDGMENT

STRASBOURG

9 March 2006

FINAL

09/06/2006

*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 Poje 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 14 February 2006,

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

PROCEDURE

1. The case originated in an application (no. 29159/03) 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 two Croatian nationals, Mrs Branka Poje and Mr Ivan Poje ("the applicants"), on 8 July 2003.

2. The applicants were 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 10 December 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 applicants were born in 1961 and 1983 respectively and live in Zagreb.

5. On 4 January 1992 I.P., the first applicant's husband and the second applicant's father, died in a traffic accident.

6. On 10 February 1992 the applicants brought a civil action against the insurance company C.O. with the Zagreb Municipal Court (*Općinski sud u Zagrebu*) seeking damages.

7. The Municipal Court held hearings on 6 April and 2 December 1992, 3 May, 20 June and 19 September 1994 and 10 November 1997.

8. On 17 September 1998 and 10 February 1999 the applicants filed two rush notes requesting the court to schedule a hearing and deliver a decision.

9. The hearings scheduled for 9 February 1999 and 19 January 2000 were adjourned due to the illness of the judge. The hearings scheduled for 10 May 2000 and 19 September 2000 were adjourned for absence of the summoned witnesses. At the hearing held on 9 February 2001 the court heard those witnesses.

10. On 23 March 2001 the Municipal Court closed the main hearing and gave judgment dismissing the applicants' claim. The judgment was served on the applicants on 12 April 2001.

11. On 25 April 2001 the applicants appealed to the Zagreb County Court (*Županijski sud u Zagrebu*).

12. On 18 February 2003 the County Court quashed the first-instance judgment and remitted the case. The decision was served on the applicants on 30 April 2003.

13. In the resumed proceedings, the Zagreb Municipal Court held hearings on 10 October 2003, 7 April 2004 and 20 May 2005.

The Government submitted that the court also had held a hearing on 10 December 2003. According to the applicants that hearing never took place.

14. It appears that the proceedings are still pending before the Municipal Court.

15. Meanwhile, in 2002 the applicants lodged a constitutional complaint with the Constitutional Court (*Ustavni sud Republike Hrvatske*) complaining about the length of the proceedings.

16. On 11 April 2003 the Constitutional Court declared the applicants' complaint inadmissible, since the Municipal Court had given its judgment in the case while the complaint had been pending before the Constitutional Court.

II. RELEVANT DOMESTIC LAW

17. 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 competent court 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 competent court 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

18. The applicants 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...”

19. The Government contested that argument.

20. 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.

The period in question had not yet ended. It has so far lasted some eight years for two levels of jurisdiction.

A. Admissibility

21. The Government invited the Court to reject the application on the ground that the applicants had failed to exhaust domestic remedies as required under Article 35 § 1 of the Convention. They maintained that the applicants could have filed another constitutional complaint, after the Constitutional Court had dismissed their 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 applicants’ length complaint.

22. 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.

23. The applicants contested that argument. They argued that it was not justified to demand from them to lodge another constitutional complaint when their previous complaint had been declared inadmissible.

24. The Court notes that the arguments put forward by the Government have been rejected in earlier case (see *Zagorec v. Croatia*, no. 10370/03, §§ 18-24, 6 October 2005) and sees no reason to reach a different

conclusion in the present case. It follows that the Government's objection must be dismissed.

25. 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

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 applicants and the relevant authorities and what was at stake for the applicants in the dispute (see, *inter alia*, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII). In connection with the latter point, special diligence is necessary in disputes concerning determination of compensation for victims of road accidents (see, *inter alia*, *Silva Pontes v. Portugal*, judgment of 23 March 1994, Series A no. 286-A, p. 15, § 39).

27. 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, *inter alia*, *Silva Pontes*, cited above, and *Martins Moreira v. Portugal*, judgment of 26 October 1988, Series A no. 143).

28. 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, 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

29. Lastly, the applicants complained that the constitutional complaint under section 63 of the Constitutional Court Act had not been an effective remedy in respect of their length complaint. They 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."

30. The Government contested that argument, claiming that the Constitutional Court had meanwhile changed its practice in cases similar to the applicants'.

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

32. 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). It recalls that it already found a violation of Article 13 in cases where the Constitutional Court had declared constitutional complaints inadmissible because the competent courts had meanwhile given a decision, as it had failed to deal with the substance of the applicants' arguable length complaints (see *Zagorec v. Croatia*, cited above, § 34, and *Debelić v. Croatia*, no. 2448/03, §§ 42-47, 26 May 2005). The Court sees no reason to reach a different conclusion in the present case.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. 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

35. The applicants claimed 100,000 Croatian kunas (HRK) in respect of pecuniary and non-pecuniary damage.

36. The Government contested the claim.

37. 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 considers that the applicants must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards them jointly 9,000 euros (EUR) under that head.

B. Costs and expenses

38. The applicants also claimed EUR 2,000 for the costs and expenses incurred before the Court. However, they failed to submit itemised particulars of their claim or any relevant supporting documents, although they were invited to do so.

39. The Government contested the claim.

40. The Court observes that the applicants 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

41. 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 applicants jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 9,000 (nine thousand 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;
5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 9 March 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President