



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

FIRST SECTION

CASE OF ŠUNDOV v. CROATIA

(Application no. 13876/03)

JUDGMENT

STRASBOURG

13 April 2006

FINAL

13/07/2006

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 Šundov 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 23 March 2006,

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

PROCEDURE

1. The case originated in an application (no. 13876/03) 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, Mr Zvonko Šundov ("the applicant"), on 7 April 2003.

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

3. On 19 October 2004 the Court decided to communicate the application 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**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1952 and lives in Križevci.

5. The applicant was dismissed from work on 15 November 1991. Even though that decision of the employer was subsequently quashed by the Zagreb Municipal Court (*Općinski sud u Zagrebu*) on 10 October 1994, the applicant has never been reinstated.

6. On 18 December 1995 the applicant instituted civil proceedings against the employer, seeking compensation for his salary.

7. On 4 June 1997 the court obtained the opinion of an expert accountant. At the hearing held on 22 September 1997 the applicant

objected to the expert opinion; and the court requested additional observations from the expert.

8. On 16 April 1998 the court held a hearing at which the applicant objected to the expert opinion and requested additional written observations from the expert witness. On 15 June 1998 the applicant requested another expert opinion. On 9 February 1999 the court obtained another opinion from a different expert.

9. On 2 March 1999 the applicant requested a fresh expert opinion. A new one was obtained on 17 January 2000. The applicant objected to that opinion as well.

10. In his rush notes of 20 October 2000 and 8 February 2001, the applicant urged the court to schedule a hearing.

11. The court obtained an additional expert opinion on 10 March 2001 and heard the expert on 19 March 2001. The applicant again objected to the opinion. On 18 September 2001 he requested that the appointed expert withdraw and a new opinion be obtained. He also requested withdrawal of the trial judge. On 21 September 2001 the court transferred the case-file to another judge and appointed a new expert.

12. On 4 October 2001 the court ordered the applicant to give better particulars of his claim. At the hearing on 20 November 2001 the expert replied to the objections of the applicant; and the employer was ordered to submit additional documents.

13. On 16 January 2002 the applicant urged the court to continue the proceedings, as the employer had failed to provide the requested documents.

14. On 15 February 2002 the court decided to hear the financial expert witness.

15. On 18 August 2002 the applicant filed a constitutional complaint under section 63 of the Constitutional Act on the Constitutional Court, complaining about the length of the proceedings.

16. On 12 February 2003 the Constitutional Court (*Ustavni sud Republike Hrvatske*) dismissed the applicant's complaint. It found that the Municipal Court had proceeded with due diligence. It also concluded that the applicant contributed to the length of the proceedings by asking seven times for an additional expert opinion. In those circumstances, the Constitutional Court found that the proceedings had not lasted unreasonably long.

17. Subsequently, on 31 January 2003 the main hearing was closed. On 7 May 2003 the court gave judgment dismissing the applicant's claim. On appeal, on 11 May 2004 the Zagreb County Court (*Županijski sud u Zagrebu*) upheld the first-instance judgment.

18. The applicant filed an appeal on points of law and the proceedings are currently pending before the Supreme Court (*Vrhovni sud Republike Hrvatske*).

THE LAW

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

19. 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...”

20. The Court notes that the proceedings started on 18 December 1995, when the applicant lodged his civil action, and are still pending. By this date, they have thus lasted more than ten years.

21. The period to be taken into consideration began on 6 November 1997, after the Convention had entered into force in respect of Croatia, and has not yet ended. It has thus lasted approximately eight years and three months for three levels of jurisdiction.

22. 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

23. 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.

24. The Government submitted that the applicant had not lodged another constitutional complaint to the Constitutional Court. They observed that he had previously lodged such a complaint, and that the Constitutional Court on 12 February 2003 dismissed it. Having regard to the fact that the proceedings are still pending, lodging 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.

25. The applicant contested that argument. He argued that it was not justified to demand from him to lodge another constitutional complaint when his previous complaint had been dismissed.

26. The Court notes that the arguments put forward by the Government have already been rejected in earlier case (see *Antonić-Tomasović v. Croatia*, no. 5208/03, § 34, 10 November 2005) and sees no reason to reach a different conclusion in the present case. It follows that the Government’s objection must be dismissed.

27. 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

28. 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). The Court reiterates that special diligence is necessary in employment disputes (see *Ruotolo v. Italy*, judgment of 27 February 1992, Series A no. 230-D, p. 39, § 17).

29. The Government submitted that the proceedings were not complex. The Court sees no reason to hold otherwise.

30. The Government further argued that the applicant himself significantly contributed to the length of the proceedings, having requested additional expert opinions as many as seven times during the first-instance proceedings. The Court accepts that the applicant contributed to the protraction of the proceedings, but notes, on the other hand, that the domestic court did not have to grant additional expert opinion every time the applicant had requested it; the court itself has the authority to decide how to conduct the proceedings, and in particular, which evidence to take. The Court therefore considers the period between 22 September 1997 (when the applicant objected to the expert opinion for the first time) and 20 November 2001 (after which date the applicant filed no further objections to the expert opinions) as a period of shared responsibility for the length of the proceedings. Furthermore, the Court observes certain periods of inactivity attributable to the domestic authorities. In particular, between 20 November 2001 and the adoption of a judgment on 7 May 2003, the first-instance court held only one hearing on 31 January 2003.

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 the fact that the proceedings have been pending for over eight years before three instances, 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. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. 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

33. The applicant claimed 20,000 EUR (twenty thousand euros) in respect of pecuniary and non-pecuniary damage.

34. The Government contested this claim.

35. 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 1,800 in respect of non-pecuniary damage, plus any tax that may be chargeable on this amount.

B. Costs and expenses

36. The applicant did not claim any costs or expenses incurred before the Court. Accordingly, no award is made under this head.

C. Default interest

37. 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*
 - (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 1,800 (one thousand and eight hundred euros) in respect of non-pecuniary damage; and

- (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 13 April 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President