



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

FIRST SECTION

**CASE OF BUJ v. CROATIA**

*(Application no. 24661/02)*

JUDGMENT

STRASBOURG

1 June 2006

**FINAL**

*01/09/2006*

*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 Buj 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,

Mrs N. VAJIĆ,

Mrs E. STEINER,

Mr K. HAJIYEV,

Mr D. SPIELMANN, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 11 May 2006,

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

**PROCEDURE**

1. The case originated in an application (no. 24661/02) 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 Vinko Buj (“the applicant”), on 1 May 2002.

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

3. On 8 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****THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1938 and lives in Jelsa.

5. The applicant’s mother died on 1 May 1994 and inheritance proceedings were opened before the Stari Grad Municipal Court (*Općinski sud u Starom Gradu*).

6. On 8 June 1999 the court issued a decision distributing the property between the applicant and his brother. The relevant part of that decision reads:

... the land registry division of this court shall register the ownership of the heirs [listed above], once [that part of the decision] becomes final...

7. Subsequently, the applicant's brother lodged an appeal against that decision complaining about the ruling on the costs of the proceedings.

8. On 12 April 2002 the Split County Court (*Županijski sud u Splitu*) declared the appeal inadmissible. The decision was served on the applicant's representative on 22 May 2002.

9. It would appear that the applicant's ownership of the inherited property has to date not been recorded in the land register.

## THE LAW

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

10. 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..."

11. The Government contested that argument.

12. The period to be taken into consideration began only after 5 November 1997, when Croatia ratified the Convention. 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 that date (see, among other authorities, *Styranski v. Poland*, judgment of 30 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3376, § 46).

#### A. Admissibility

13. The Government maintained that Article 6 § 1 of the Convention was not applicable to the present case. The applicant's inheritance proceedings are non-contentious and do not involve a dispute of a serious and genuine nature. As to the subsequent inscription in the land register, the Government also argued that there was no dispute, since in the present case the registration of ownership was to be done by the court of its own motion and not on a request by the applicant. Both parts of the proceedings are therefore incompatible *ratione materiae* with the Article 6 § 1 of the Convention.

14. The Government further argued that the applicant did not exhaust available domestic remedies in that he failed to lodge a constitutional

complaint, which is an effective remedy for the length of pending proceedings. That remedy became available in the Croatian legal system on 22 March 2002, and the applicant's inheritance proceedings were pending until 22 May 2002, i.e. until the service of the second-instance decision on his lawyer.

15. The applicant contested these arguments.

16. The Court recalls that Article 6 § 1 of the Convention requires that all stages of legal proceedings for the "determination of ... civil rights and obligations", not excluding stages subsequent to judgment on the merits, be resolved within a reasonable time (see *Estima Jorge v. Portugal*, judgment of 21 April 1998, *Reports of Judgments and Decisions* 1998-II, p. 772 § 35; *Robins v. the United Kingdom*, judgment of 23 September 1997, *Reports of Judgments and Decisions* 1997-V, p. 1809 § 28). Execution of a judgment given by any court must therefore be regarded as an integral part of the "trial" for the purposes of Article 6 (see *Hornsby v. Greece*, judgment of 19 March 1997, *Reports of Judgments and Decisions* 1997-II, pp. 510–11, § 40).

17. The Court further recalls that section 63 of the Constitutional Court Act was recognised to be an effective domestic remedy in respect of length of proceedings still pending (see *Slaviček v. Croatia* (dec.), no. 20862/02, ECHR 2002-VII), and that, irrespective of the date of introduction of the application with the Court, an applicant must have filed a constitutional complaint if the proceedings complained of were still pending after 22 March 2002 (see *Nogolica v. Croatia* (dec.), no. 77784/01, ECHR 2002-VIII).

18. In the present case, with regard to the inheritance proceedings, the Court finds it unnecessary to determine the issue of applicability of Article 6 of the Convention, since this part of the application is in any event inadmissible for reason of non-exhaustion of domestic remedies. The applicant's inheritance proceedings were pending before the County Court until 22 May 2002 and, even though he had two months to lodge a constitutional complaint, he did not do so. It follows that the applicant's complaint in respect of these proceedings must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

19. As to the subsequent registration of ownership in the land register, the Court notes that its purpose was the inscription of changes in land ownership produced by the decision given in the inheritance proceedings, which was to be carried out *ex officio* by the land registry division of the Municipal Court. That being so, those proceedings serve as a functional equivalent to enforcement. Furthermore, regardless from the fact whether Article 6 is applicable to the inheritance proceedings or not, the Court recalls that an enforcement title determining civil rights does not necessarily have to result from proceedings to which Article 6 is applicable (see,

*mutatis mutandis*, *Estima Jorge v. Portugal*, cited above, p. 773, § 38). The Municipal Court's decision of 8 June 1999 constituted an enforcement title, regardless of the nature of the inheritance proceedings. Even though the inscription of the applicant's right to ownership in the instant case would under the domestic law not be considered a constitutive one, the ensuing proceedings in the land registry were decisive for the effective exercise of his rights, i.e. the free enjoyment of his ownership. Prior to that inscription, the applicant continues to be severely limited in disposing freely of his property.

Consequently, Article 6 § 1 applies to this part of the proceedings.

20. Moreover, in respect of length of the registration of ownership, the Government admitted that a constitutional complaint under section 63 would not be an effective remedy for this part of the proceedings. They have not argued that any other remedy may have been effective.

21. Consequently, the Court will only examine the period after 22 May 2002, after which date the applicant did not have a remedy concerning the length of the proceedings at the domestic level. In respect of this part of the proceedings, the Government's argument therefore has to be dismissed.

22. The Court further notes that the complaint concerning the length of the land registry proceedings 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 observes that the period to be examined has lasted four years and has not yet come to an end.

24. The Court recalls 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).

25. The Government claimed that the lengthy period of time necessary for the registration of the applicant's ownership in the land register was a systemic problem in Croatia and that the system was currently undergoing reform.

26. The applicant maintained that he still has not become the registered owner of his late mother's property.

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 *Frydlender*, cited above).

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. The enforcement of the decision given in the inheritance proceedings, in form of registration of property in the applicant's name, has now been pending for more than four years, without a single decision to that end. 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. The applicant further complained of the fact that in Croatia there was no court to which application could be made to complain of the excessive length of proceedings. He relied on Article 13 of the Convention.

30. The Government contested that argument. They submitted that a constitutional complaint was an effective remedy for the length of inheritance proceedings. In respect of the subsequent land registry proceedings, the Government admitted that there was no remedy at the domestic level.

### A. Admissibility

31. In so far as this complaint concerns the length of the inheritance proceedings, in view of the conclusions above (see paragraph 18), this complaint is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

32. In so far as this complaint concerns the length of the subsequent land registry proceedings, the Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

### B. Merits

33. 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).

34. Accordingly, the Court considers that in the present case there has been a violation of Article 13 of the Convention on account of the lack of a remedy under domestic law whereby the applicant could have complained about the excessive length of the land registry proceedings.

### III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

35. The applicant further complained that the length of the proceedings complained of had infringed his right to the peaceful enjoyment of his possessions, as guaranteed by Article 1 of Protocol No. 1.

36. The Government contested that argument.

#### A. Admissibility

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

#### B. Merits

38. Having regard to its finding under Article 6 § 1 (see paragraph 28 above), the Court considers that it is not necessary to examine whether, in this case, there has been a violation of Article 1 of Protocol No. 1 (see *Zanghì v. Italy*, judgment of 19 February 1991, Series A no. 194-C, p. 47, § 23).

### IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. 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

40. The applicant claimed non-pecuniary damage, leaving it to the Court’s discretion to determine the appropriate amount.

41. The Government did not express an opinion on the matter.

42. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 2,400 under that head, plus any tax that may be chargeable on that amount.

#### B. Costs and expenses

43. The applicant did not make any claim under this head. Accordingly, the Court makes no award.

### C. Default interest

44. 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 length of the inheritance proceedings inadmissible and the remainder of 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* that no separate issue arises under Article 1 of Protocol No. 1 to the Convention;
5. *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, 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, 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.

Done in English, and notified in writing on 1 June 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN  
Registrar

Christos ROZAKIS  
President