



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

FIRST SECTION

CASE OF MAJSKI v. CROATIA

(Application no. 33593/03)

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 Majski v. Croatia,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,

Mrs N. VAJIĆ,

Mr A. KOVLER,

Mrs E. STEINER,

Mr K. HAJIYEV,

Mr D. SPIELMANN,

Mr S.E. JEBENS, *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. 33593/03) 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 Radovan Majski (“the applicant”), on 13 August 2003.

2. The applicant was represented by Mr M. Mihočević, a lawyer practising in Zagreb. The Croatian Government (“the Government”) were represented by their Agent, Mrs Š. Stažnik.

3. On 22 March 2005 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 applicant was born in 1949 and lives in Vukovar.

5. The applicant had a specially protected tenancy of a flat in Vukovar. However, between 5 June 1997 and 24 February 2004 he lived and worked in Zagreb as Assistant Minister of Justice.

6. Following the peaceful reintegration of the Vukovar region, on 10 May 1998 certain S.Z. and D.Z. occupied the applicant’s flat.

7. On 30 April 1999 the applicant instituted civil proceedings in the Vukovar Municipal Court (*Općinski sud u Vukovaru*) to have S.Z. and D.Z. (“the respondents”) evicted.

8. On 10 December 1999 the court accepted the applicant’s claim and ordered the respondents to vacate the flat. It observed that the applicant had a specially protected tenancy of the flat and that the respondents had only been granted temporary use.

9. On 9 February 2000 the Vukovar County Court (*Županijski sud u Vukovaru*) dismissed the respondents’ appeal.

10. On 10 March 2000 the applicant sought enforcement of the Municipal Court’s judgment of 10 December 1999. On 21 April 2000 the Vukovar Municipal Court issued an eviction order. The respondents appealed, but their appeal was dismissed by the Vukovar County Court on 31 May 2002.

11. The applicant subsequently filed a constitutional complaint under section 63 of the Constitutional Court Act complaining about the length of the proceedings. On 16 May 2003 the Constitutional Court (*Ustavni sud Republike Hrvatske*) declared his complaint inadmissible.

12. On 30 September 2003 a court bailiff went to the flat with a view to carrying out the eviction order, but the applicant agreed with the debtors to postpone the eviction until 20 November 2003. He asked for postponement on several occasions after that date.

13. On 29 January 2004 the respondents delivered the keys to the flat to the applicant.

14. On 6 February 2004 the Vukovar Municipal Court concluded the enforcement proceedings.

II. RELEVANT DOMESTIC LAW AND PRACTICE

15. 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 even before all legal remedies have been exhausted in cases when a competent court has not decided within a reasonable time a claim concerning the applicant’s rights and obligations or a criminal charge against him ...

(2) If the constitutional complaint ... under paragraph 1 of this Section is accepted, the Constitutional Court shall determine a time-limit within which a competent court shall decide the case on the merits...

(3) In a decision under paragraph 2 of this Article, the Constitutional Court shall fix appropriate compensation for the applicant in respect of the violation found concerning his constitutional rights ... The compensation shall be paid from the State budget within a term of three months from the date when the party lodged a request for its payment.”

16. Under the case-law of the Constitutional Court, constitutional complaints lodged under section 63 in the context of enforcement proceedings were to be declared inadmissible. In its decision no. U-III A/1165/2003 of 12 September 2003 the Constitutional Court interpreted section 63 as follows:

“The Constitutional Court shall institute proceedings pursuant to a constitutional complaint lodged under section 63 of the Constitutional Act [on the Constitutional Court] for the length of proceedings only in cases where the court has not decided within a reasonable time on the merits of the rights and obligations of the complainant, that is, where it has failed to deliver a decision on the merits within a reasonable time.

In the present case the constitutional complaint has been lodged for non-enforcement of a final decision by which the party’s rights and obligations had already been decided.

Taking into consideration the above cited provisions of the Constitutional Act [on the Constitutional Court] ..., the Constitutional Court is of the opinion that in this case the conditions for applicability of section 63 were not met.”

In its decision no. U-III A/781/2003 of 14 May 2004 the Constitutional Court provided further interpretation of section 63:

“Taking into consideration the above cited provisions of the Constitutional Act [on the Constitutional Court] and the fact that the constitutional complaint was not lodged for a failure to deliver a decision within a reasonable time but rather because the enforcement was not carried out, the Constitutional Court is of the opinion that in this case the conditions for applicability of section 63 were not met.”

17. In decision no. U-III A/1128/2004 of 2 February 2005 the Constitutional Court changed its practice, accepting a complainant’s constitutional complaint and awarding him compensation as well as ordering the competent court to conclude the enforcement proceedings within six months from its decision. In doing so, the Constitutional Court expressly relied on the Court’s case-law on the matter.

THE LAW

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

18. The applicant complained that the length of the enforcement 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 10 March 2000 and ended on 6 February 2004. It thus lasted 3 years and 11 months.

A. Admissibility

21. The Government invited the Court to reject the applicant's complaint for non-exhaustion of domestic remedies, claiming that the applicant could have filed a constitutional complaint before the County Court decided the respondents' appeal against the eviction order on 31 May 2002. Since until that date the courts had not finally determined the parties' rights and obligations, under the Constitutional Court's practice at the material time, such a complaint would have been examined on its merits.

22. The applicant contested this argument.

23. 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.

24. The Court further recalls that as of 22 March 2002 a constitutional complaint under section 63 of the Constitutional Court Act is considered an effective remedy in respect of the length of proceedings still pending in Croatia (see *Slaviček v. Croatia* (dec.), no. 20862/02, ECHR 2002-VII). However, at that time it was not clear whether the new remedy would at all apply to the length of enforcement proceedings (see *Pibernik v. Croatia* (dec.), no. 75139/01, 4 September 2003). The subsequent developments in the Constitutional Court's case-law showed that only as of 2 February 2005 did a constitutional complaint become an effective remedy for the length of enforcement proceedings (see *Karadžić v. Croatia*, no. 35030/04, § 38, 15 December 2005).

25. Turning to the present case, the Court observes that the applicant did lodge a constitutional complaint, albeit after the County Court's decision of 31 May 2002, which was declared inadmissible. The Government have not produced any convincing evidence, e.g. case-law of the Constitutional Court, to prove that the outcome of the applicant's complaint would have been any different had he lodged it prior to the County Court's decision. Furthermore, the Constitutional Court's practice at the material time provided that section 63 was applicable only in cases where the competent court had not decided "the merits of the complainant's rights or obligations" (see above § 16), whereas in enforcement proceedings the court does not, in

principle, deal with the merits of civil rights, but rather with the execution of a right already determined by a final court judgment. In these circumstances, the Court considers that the applicant's complaint cannot be rejected for failure to exhaust domestic remedies.

26. The Court further notes that the application 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

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. The Government submitted that the proceedings were complex because the eviction order was to be executed in difficult circumstances of reintegration of the previously occupied territory of Croatia. The applicant contested this argument, claiming that during the same period the court had enforced similar orders relating to several hundreds of flats in the same area without undue delays. The Court is not persuaded by the Government's argument and cannot accept it as a justification for the length of the enforcement in the present case.

29. As to the conduct of the parties, the Government argued that the respondents contributed to the protraction of the proceedings on several occasions. The Government also stressed that as of September 2003 the applicant himself requested the eviction to be postponed. The Court recognises that the applicant indeed requested postponement of the enforcement. However, only four months are attributable to this fact, whereas for the remaining period of time the Government produced no convincing explanation. Moreover, the Court notes that the first attempt with a view to carrying out the eviction order took place only on 30 September 2003, i.e. three years and five months after it had been issued.

30. 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 *Pibernik v. Croatia*, no. 75139/01, § 60, 4 March 2004; *Cvijetić v. Croatia*, no. 71549/01, § 43, 26 February 2004).

31. 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 enforcement 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 8 OF THE CONVENTION

32. The applicant complained, for the first time in his written observations dated 25 July 2005, that the length of the enforcement proceedings also violated his right to respect for home, as guaranteed under Article 8, which reads as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

33. The Court recalls that the running of the six-month time-limit for complaints not included in the initial application is not interrupted until the date when the complaint is first submitted to the Court (see *Allan v. the United Kingdom* (dec.), no. 48539/99, 28 August 2001).

34. In the present case the Court observes that the enforcement proceedings were concluded on 6 February 2004, whereas the applicant raised his new complaint under Article 8 for the first time on 25 July 2005, i.e. more than six months later. It follows that this complaint has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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

36. The applicant claimed 14,220 euros (EUR) in respect of pecuniary damage suffered by his family. He also claimed EUR 36,000 in respect of non-pecuniary damage. He submitted that he was paying his flat in Zagreb EUR 105 per month.

37. The Government contested these claims.

38. The Court recalls that it can only award damage to a person directly suffering from an act or omission at issue (see, among many other authorities, *Prager and Oberschlick v. Austria*, judgment of 26 April 1995, Series A no. 313, p. 15, § 26). In the present case the Court can therefore take into account only the damage actually sustained by the applicant, and not by other member of his family, who are in any event, not the applicants in the present case.

39. The Court notes that the applicant's claim for pecuniary damage is not supported by any documents, which would enable the Court to establish the amount of real damage suffered. Moreover, the Court observes that during the course of the enforcement proceedings the applicant lived and worked in Zagreb as a state official, where he would in any event had to cover his accommodation expenses. Therefore the Court discerns no causal link between the expenses incurred to the applicant on account of living in Zagreb and the length of the enforcement proceedings for eviction of illegal tenants from his flat in Vukovar. Consequently, no award is made under this head.

40. As regards the non-pecuniary damage, it is reasonable to assume that the applicant suffered anxiety and frustration as a result of the delays in carrying out the eviction order. On an equitable basis, the Court awards him EUR 2,400 under this head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

41. The Court notes that the applicant did not make any claim in this respect. Therefore, it makes no awards under this head.

C. Default interest

42. 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 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*

(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 amounts;

(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 1 June 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President