



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

FIRST SECTION

CASE OF OMERović v. CROATIA

(Application no. 36071/03)

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 Omerović 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 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. 36071/03) 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 Mehmedalija Omerović (“the applicant”), on 8 April 2003.

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

3. On 14 January 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 1945 and lives in Gračanica, Bosnia and Herzegovina.

5. On 18 September 2000 the applicant sought enforcement of a judgment awarding him compensation following an employment dispute with the company G. (“the debtor”). He applied for enforcement on the debtor’s bank account and on its movable property.

6. On 6 February 2001 the Slatina Municipal Court (*Općinski sud u Slatini*) issued an enforcement order, which became final on 21 February 2001.

7. On 24 October 2001 the court made a list of the debtor's movable property in the applicant's absence and scheduled a public auction for 25 January 2002. The auction was unsuccessful.

8. Another public auction was held on 16 April 2002, which was again unsuccessful, as no bids were made.

9. On 12 August 2002 the court made a new list of the debtor's movables on which the applicant, who had been duly summoned, did not appear.

10. On 28 October 2003 the applicant requested an injunction prohibiting the debtor to transfer or encumber shares it held in other companies.

11. On 19 November 2003 the court held yet another unsuccessful public auction.

12. On 6 July 2004 the applicant requested the court to order that the debtor should disclose its assets (*prokazni popis imovine*).

13. On 23 July 2004 the debtor paid the applicant the principal amount of his claim, stating that it would satisfy the remainder of the claim within eight days.

14. On 17 August 2004 the applicant informed the court that the claim had not been settled in full. The court forwarded the applicant's submission to the debtor, for observations.

15. On 27 September 2004 and 19 January 2005 the court imposed fines on the debtor, for failure to comply with its orders.

16. On the latter date the court also denied the applicant's motion for the disclosure of the debtor's assets. At the same time, the court also dismissed the applicant's motion for injunction prohibiting the transfer of the debtor's shares. Instead it instructed the applicant to provide a detailed list and addresses of companies in which the debtor held such shares. On 25 January 2005 the applicant submitted the requested information.

17. The proceedings are still pending.

18. Meanwhile, on 10 June 2002 the applicant filed a constitutional complaint concerning the length of the proceedings.

19. On 2 October 2002 the Constitutional Court (*Ustavni sud Republike Hrvatske*) declared his complaint inadmissible finding that the enforcement order had already been issued.

II. RELEVANT DOMESTIC LAW AND PRACTICE

20. 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 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."

21. 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."

22. 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

23. 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...”

24. The Government contested that argument.

25. The period to be taken into consideration began on 18 September 2000 and has not yet ended. It has thus lasted approximately five and a half years.

A. Admissibility

26. The Government invited the Court to reject the applicant’s complaint for non-exhaustion of domestic remedies. It maintained that the applicant could have filed another constitutional complaint, after the Constitutional Court had dismissed his 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 applicant’s length complaint.

27. The applicant disagreed with the Government.

28. 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.

29. The Court further recalls that a constitutional complaint under section 63 of the Constitutional Court Act was found to be 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). As to the length of enforcement proceedings, the Court has already found that before 2 February 2005 such a constitutional complaint was not an effective remedy, due to the case-law of the Constitutional Court at that time (see *Karadžić v. Croatia*, no. 35030/04, § 38, 15 December 2005). After that

date, and the change in the relevant practice of the Constitutional Court, a constitutional complaint under section 63 was to be regarded as an effective remedy in respect of the length of enforcement proceedings (see *Karadžić v. Croatia*, cited above, § 39).

30. Turning to the present case, the Court observes that the applicant lodged a constitutional complaint prior to 2 February 2005 and that his complaint was declared inadmissible, in line with the Constitutional Court's practice at the material time. The applicant subsequently lodged his application with the Court on 8 April 2003.

31. In the Court's view, it is understandable that, seeing that his constitutional complaint had failed, the applicant did not lodge a second one. Requiring him to do so would overstretch the duties incumbent on an applicant pursuant to Article 35 § 1 of the Convention (see, *Zagorec v. Croatia*, no. 10370/03, § 23, 6 October 2005; *mutatis mutandis*, *Unión Alimentaria Sanders S.A. v. Spain*, judgment of 7 July 1989, Series A no. 157, p. 14, § 35; *Ullrich v. Austria*, no. 66956/01, § 29, 21 October 2004). In these circumstances, the Government's objection must be dismissed.

32. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

33. 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).

34. The Government submitted that the enforcement proceedings were somewhat complex because the public auctions for sale of the debtor's movable property had been unsuccessful. The Court, however, is not persuaded by this argument.

35. The Government further submitted that the applicant had shown certain laxity in not appearing at the listing of the debtor's movables on two occasions and for personally not having undertaken further steps to ensure a positive outcome of the public auctions. The Government underlined that it was primarily for the enforcement creditor to give initiative and propose to the competent court the means of enforcement with a view to settling his claim. The Court observes that the State cannot be held liable for a situation in which the enforcement debtor has no means to satisfy his debt or, as in the instant case, for the impossibility to sell the debtor's property on public auctions. However, the Court notes that the applicant firstly sought

enforcement on the debtor's bank account and movable property. Following the unsuccessful public auctions, the applicant requested an injunction prohibiting the transfer of shares held by the debtor in other companies, which motion was decided more than a year after it had been lodged. Moreover, the applicant also requested the court to order the debtor to disclose its assets. In these circumstances, the Court does not accept the Government's argument as to the applicant's inactivity in the proceedings.

36. 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 *Prodan v. Moldova*, no. 49806/99, § 56, ECHR 2004-III (extracts)).

37. 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 and to the fact that the enforcement proceedings have so far lasted about five and a half years, 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

38. 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 his enforcement proceedings. He relied on Article 13 of the Convention.

39. The Government contested that argument, claiming that a complaint to the Constitutional Court was now an effective remedy in that respect.

A. Admissibility

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

B. Merits

41. 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 *Kudla v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI).

42. In the light of the above considerations regarding the exhaustion of domestic remedies (see above §§ 29-30), the Court observes that, at the time when he lodged his application, there was no remedy under domestic law whereby the applicant could have obtained a ruling upholding his right to

have his case heard within a reasonable time, as set forth in Article 6 § 1 of the Convention.

43. Consequently, the Court considers that in the present case there has been a violation of Article 13 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. 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

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

46. The Government contested the claim.

47. 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 applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 3,000 under that head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

48. The applicant made no claim under this head. Accordingly, the Court makes no award in this respect.

C. Default interest

49. 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 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 3,000 (three thousand euros) in respect of non-pecuniary damage;
 - (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;
5. *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