



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

FIRST SECTION

CASE OF STOJIĆ v. CROATIA

(Application no. 36719/03)

JUDGMENT

STRASBOURG

1 June 2006

FINAL

23/10/2006

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 Stojić 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. 36719/03) 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 national of both Croatia and Slovenia, Mrs Aleksandra Stojić (“the applicant”), on 6 June 2003.

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

3. On 22 February 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**THE CIRCUMSTANCES OF THE CASE**

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

5. On 8 March 1993 the applicant instituted civil proceedings against an insurance company (“the respondent”) seeking compensation for damage caused by a fire in her house. On 2 July 1993 the Zagreb Municipal Court (*Općinski sud u Zagrebu*) dismissed her claim.

6. On appeal, on 6 February 1996 the Zagreb County Court (*Županijski sud u Zagrebu*) quashed the first-instance judgment and remitted the case.

7. In the resumed proceedings, the court held several hearings and heard two witnesses through the Biograd Municipal Court (*Općinski sud u*

Biogradu). On 1 June 1999 the Zagreb Municipal Court gave a new judgment awarding the applicant the damages in part. Both parties appealed.

8. On 5 December 2000 the Zagreb County Court again quashed the first-instance judgment and remitted the case.

9. In the resumed proceedings, on 8 March 2001 the court requested the applicant to provide the addresses of the witnesses she had proposed. The applicant did not comply with this request.

10. The court held further hearings on 22 November 2002, 4 April, 12 September and 5 December 2003.

11. On 5 October 2004 the court gave judgment accepting the applicant's claim in part.

12. Both parties appealed and the proceedings are still pending before the second-instance court.

13. Meanwhile, on 31 October 2002 the applicant filed a constitutional complaint concerning the length of the proceedings. On 9 April 2003 the Constitutional Court (*Ustavni sud Republike Hrvatske*) dismissed her complaint as ill-founded, finding that the competent courts acted expeditiously and that the only delay in the proceedings (between 8 March 2001 and 22 November 2002) was attributable to the applicant on account of her failure to provide the addresses of the proposed witnesses.

THE LAW

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

14. 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..."

15. The Government contested that argument.

16. The Court notes that the proceedings started on 8 March 1993, when the applicant lodged her civil action, and are still pending. By this date, they have thus lasted more than thirteen years.

17. 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 five months for two levels of jurisdiction.

18. 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, *Styrkowski v. Poland*,

judgment of 30 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3376, § 46).

A. Admissibility

19. 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.

20. The Government submitted that the applicant had not lodged another constitutional complaint after the Constitutional Court had dismissed her first complaint on 9 April 2003. Given 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.

21. The applicant contested that argument. She argued that it was not justified to demand from her to lodge another constitutional complaint when her previous complaint had been dismissed.

22. 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.

23. 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

24. 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).

25. The Government submitted that the case was of certain factual and legal complexity. However, the Court is not persuaded by this argument.

26. The Government further argued that both the applicant and the respondent contributed to the length of the proceedings, whereas the domestic courts acted expeditiously and without undue delay. The Court does not consider that the parties' conduct significantly contributed to the protraction of the proceedings. During the period indicated by the Constitutional Court and subsequently by the Government (between 8 March 2001 and 22 November 2002), the court had not been obliged to

wait for the applicant's submissions concerning her witnesses because court itself has the authority to decide how to conduct the proceedings, in particular, which evidence to take and how to evaluate acts or omissions of the parties. On the other hand, the Court observes certain periods of inactivity of the domestic courts, in particular between 5 December 2003 and 5 October 2004.

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. Having regard to the overall length of the proceedings of more than eight years and five months, 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

29. 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

30. The applicant claimed 2,868,585.33 Croatian kunas (HRK) in respect of pecuniary and HRK 100,000 in respect of non-pecuniary damage.

31. The Government contested these claims.

32. 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, the Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards her EUR 4,200 under that head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

33. The applicant also claimed HRK 5,232 for the costs and expenses incurred before the domestic courts and the Court.

34. The Government contested this claim.

35. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown

that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case the Court considers it reasonable to award the applicant, who was not represented by a lawyer, the sum of EUR 500 under this head, plus and tax that may be chargeable on that amount.

C. Default interest

36. 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 amounts which should be converted into Croatian kunas at the rate applicable at the date of settlement:
 - (i) EUR 4,200 (four thousand three hundred euros) in respect of non-pecuniary damage;
 - (ii) EUR 500 (five hundred euros) in respect of costs and expenses;
 - (iii) 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 amounts 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