



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

FIRST SECTION

CASE OF ŠKARE v. CROATIA

(Application no. 17267/03)

JUDGMENT

STRASBOURG

15 June 2006

FINAL

15/09/2006

*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 Škare 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 23 May 2006,

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

PROCEDURE

1. The case originated in an application (no. 17267/03) 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 Danko Škare (“the applicant”), on 21 May 2003.

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

3. On 25 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**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1939 and lives in Zagreb.

A. Background to the case

5. On 17 July 1991 the Government adopted a decree forbidding any transactions with the immovable property situated in Croatia and belonging to the former Yugoslavia’s federal institutions or legal entities having seat in one of its former federal units (*Uredba o zabrani raspolaganja*

nekretninama na teritoriju Republike Hrvatske – “the Decree”, Official Gazette no. 36/1991). The Decree entered into force on 24 July 1991 and was to remain in force pending the process of succession of the former Yugoslavia.

6. In the period between 1993 and 1999 the Decree was challenged on five occasions by various petitioners in abstract constitutional review proceedings. The Constitutional Court refused all the petitions finding that the Decree had not been in breach of the Constitution.

7. In the period between July 1991 and April 1994, starting with the decree of 31 July 1991, the Government adopted several successive decrees forbidding transactions with other property that had remained in Croatia and belonging to the legal entities having seat in one of the former Yugoslavia’s federal units. Eventually, on 24 March 1994 Parliament passed an act of the same content (*Zakon o zabrani raspolaganja i preuzimanju sredstava određenih pravnih osoba na teritoriju Republike Hrvatske* – “the Act”, Official Gazette nos. 29 and 35/1994).

B. The particular circumstances of the case

8. The applicant was working as a professor at the former Military Academy in Zagreb.

9. On 13 and 16 August 1991, the Zagreb Garrison of the Yugoslav People’s Army (“the YPA”), issued two decisions granting the applicant the right to occupy a flat in Zagreb of 99.35 square metres that was owned by the YPA. He was also obliged to give back a flat of 51.56 square metres that had previously been awarded to him by the YPA, in which he had been living with his wife and two children until then.

They still live in the last-mentioned flat.

10. On 11 September 1992 the applicant brought a civil action against the State in the Zagreb Municipal Court (*Općinski sud u Zagrebu*) seeking to use the flat granted to him by the above-mentioned YPA decisions.

11. On 5 October 1992 the Municipal Court dismissed the applicant’s claim. It found that the YPA decisions had no legal effect since they had been issued contrary to the peremptory rules of the Decree.

12. The applicant appealed to the Zagreb County Court (*Okružni sud u Zagrebu*), which on 2 March 1993 quashed the first-instance judgment for incomplete facts and remitted the case.

13. In the resumed proceedings, on 7 March 1995 the Zagreb Municipal Court again dismissed the applicant’s claim repeating its previous findings. The applicant again appealed.

14. On 30 December 1996 the Zagreb County Court (*Županijski sud u Zagrebu*) dismissed the applicant’s appeal and upheld the first-instance judgment.

15. The applicant then lodged an appeal on points of law (*revizija*) with the Supreme Court (*Vrhovni sud Republike Hrvatske*). On 18 May 2000 the Supreme Court dismissed the applicant's appeal on points of law.

16. On 20 November 2000 the applicant lodged a constitutional complaint against the Supreme Court's decision with the Constitutional Court (*Ustavni sud Republike Hrvatske*).

17. Before dealing with the applicant's complaint, the Constitutional Court decided first to examine three petitions for constitutional review (*prijedlog za ocjenu ustavnosti*) directed against the Decree and the Act – which, in the Government's view, constituted the relevant substantive law applicable to his case. The Constitutional Court dismissed the two petitions against the Decree on 18 July and 28 December 2001, respectively. On 12 April 2002 it dismissed the petition against the Act.

18. At the Constitutional Court's panel meeting held on 30 June 2004 the rapporteur informed his colleagues that, meanwhile, a new case had been assigned to him raising apparently the same legal issues as that of the applicant. The rapporteur therefore withdrew the case from the agenda. Subsequently, it was established that no such similarity had existed as it initially appeared.

19. On 6 April 2005 the Constitutional Court dismissed the applicant's constitutional complaint. It observed *obiter dictum* that it could not deal with the applicant's argument that the Decree had been adopted *ultra vires*, since that issue could be examined only in abstract constitutional review proceedings, and not in those concerning a constitutional complaint.

THE LAW

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

20. 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..."

21. The Government contested that argument.

A. Admissibility

22. The Government maintained that part of the proceedings complained of, in particular the one before the Supreme Court concerning the applicant's appeal on points of law, did not fall within the scope of

Article 6 § 1 of the Convention, because under the domestic law such an appeal was considered an extraordinary legal remedy.

23. The Court notes that the arguments put forward by the Government have been rejected in an earlier case (see *Debelić v. Croatia*, no. 2448/03, §§ 19-23, 26 May 2005) and sees no reason to reach a different conclusion in the present case. It follows that the Government's objection must be dismissed.

24. The Court notes that the application 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

1. Period to be taken into consideration

25. The period to be taken into consideration began on 6 November 1997, the day after the entry into force of the Convention in respect of Croatia. However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time. In this connection the Court notes that the proceedings commenced on 11 September 1992, when the applicant brought his civil action against the State. Consequently, the case was already pending for more than five years before the ratification.

The period in question ended on 6 April 2005 when the Constitutional Court gave its decision. It thus lasted seven years and five months for two levels of jurisdiction.

2. Reasonableness of the length of the proceedings

26. 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).

27. The Government submitted that the applicant's case had required no special diligence but had been rather complex. Moreover, in order to give a decision in the applicant's case, the Constitutional Court had to decide first on the constitutional challenges to the applicable substantive law. In the Government's view, the delay resulting thereof did not appear excessive because an obligation to hear cases within reasonable time could not be construed for the Constitutional Court in the same way as for an ordinary court, due to its special role as a guardian of the Constitution. In arguing so they relied on the Court's case-law (see *Tričković v. Slovenia*, no. 39914/98,

§ 63, 12 June 2001; and *Đuričić v. Croatia* (dec.), no. 67399/01, 9 October 2003). The applicant contested those arguments.

28. The Court bears in mind the special features of the proceedings in the Constitutional Court. However, even assuming that it was necessary to await the outcome of the aforementioned abstract constitutional review proceedings (see paragraph 17 above) before the applicant's case could be dealt with (see, *mutatis mutandis*, *Süßmann v. Germany*, judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1174, §§ 56 and 59), the Court notes that it took the Constitutional Court more than two years after the last petition for constitutional review had been refused to put the applicant's case on the agenda, and another nine months to do so after the case had been withdrawn. Moreover, the Government has provided no explanation for the delay that occurred before the Supreme Court where the case had been pending for some two and a half years after the ratification.

29. Having examined all the material submitted to it, and having regard to its case-law on the subject, the foregoing considerations are sufficient to enable the Court to conclude 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

30. 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

31. The applicant claimed 10,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

32. The Government contested the claim.

33. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. As to the non-pecuniary damage sought, it notes that while the proceedings were pending the applicant and his family have continued to live in another flat, and that their ownership of that flat was never challenged. The Court considers nevertheless that the applicant must have sustained some moral damage, which cannot be compensated by the mere finding of a violation of the Convention. Making its assessment on an equitable basis and having regard to the circumstances of the case, the Court awards the

applicant 2,500 euros (EUR) as compensation for non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

34. The applicant did not make any claims under this head. Accordingly, the Court considers that there is no call to award him any sum on that account.

C. Default interest

35. 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 in accordance with Article 44 § 2 of the Convention, EUR 2,500 (two thousand five hundred euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 June 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President