



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

FIRST SECTION

CASE OF BOŽIĆ v. CROATIA

(Application no. 22457/02)

JUDGMENT

STRASBOURG

29 June 2006

FINAL

11/12/2006

*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 Božić 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 8 June 2006,

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

PROCEDURE

1. The case originated in an application (no. 22457/02) 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, Ms Dragica Božić (“the applicant”), on 4 July 2000.

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

3. On 25 November 2004 the Court declared the application partly inadmissible and decided to communicate the complaints concerning the length of the proceedings and the lack of remedies in that respect to the Government. 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, Mrs Dragica Božić, is a Croatian national, who was born in 1943 and currently lives in Sotin, Croatia.

5. On 27 September 1991 the Croatian Pension Fund, Sisak Office (*Republički fond mirovinskog i invalidskog osiguranja, Područna služba u Sisku* – the Sisak Office) issued a decision granting the applicant the right to

a widow's (family) pension as of 6 August 1991. However, no payments were made until 1 August 1997.

6. On 18 September 1997 the applicant instituted administrative proceedings in order to recover the pension instalments due.

7. On 14 June 1999 the Sisak Office dismissed her request. It found that the payment of her pension was stopped between 6 August 1991 and 31 July 1997 since during that period the applicant had resided in the occupied areas of Croatia and her address had been unknown. On 9 July 1999 the applicant appealed against that decision.

8. On 19 June 2000 the Croatian Pension Fund, Central Office (*Hrvatski zavod za mirovinsko osiguranje, Središnja služba* – the Central Office) quashed the first-instance decision for factual errors and remitted the case.

9. In the resumed proceedings, the Sisak Office dismissed the applicant's request on 9 October 2000. The applicant appealed.

10. On 9 April 2001 the Central Office again quashed the first-instance decision and remitted the case.

11. On 22 August 2001 the Sisak Office for the third time dismissed the applicant's request. The applicant appealed.

12. On 15 November 2001 the Central Office for the third time quashed the first-instance decision for factual shortcomings and remitted the case. It instructed the Sisak Office to enquire whether the applicant had received a pension from the authorities that had exercised control over the occupied territory.

13. In the subsequent proceedings, on 16 May 2002 the applicant lodged an appeal for failure to respond under the Administrative Procedure Act (see paragraph 21 below) since the Sisak Office did not render a decision within the statutory time-limit of two months. Given that the Central Office also failed to decide on this appeal within the statutory time-limit of two months, on 17 December 2002 the applicant brought an action for failure to respond (see paragraph 22 below) in the Administrative Court (*Upravni sud Republike Hrvatske*). The applicant subsequently withdrew this action since in January 2003 the first-instance decision had been rendered.

14. On 29 January 2003 the Sisak Office accepted the applicant's request in part. It awarded her the pension instalments as of 1 October 1994 and dismissed her request for the instalments due prior to that date. The applicant appealed.

15. On 20 May 2003 the Central Office dismissed the applicant's appeal.

16. On 1 July 2003 the applicant brought an administrative action in the Administrative Court challenging that decision.

17. On 27 January 2005 the Administrative Court gave judgment dismissing the applicant's claim.

18. On 7 March 2005 the applicant lodged a constitutional complaint with the Constitutional Court against that judgment. The proceedings are currently pending before that court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Constitution

19. Article 29 § 1 of the Constitution (*Ustav Republike Hrvatske*, Official Gazette no. 41/2001 of 7 May 2001) reads as follows:

“In the determination of his rights and obligations or of any criminal charge against him, everyone is entitled to a fair hearing within a reasonable time by an independent and impartial court established by law.”

B. The relevant legislation

20. The relevant part of the Constitutional Act on the Constitutional Court (*Ustavni zakon o Ustavnom sudu Republike Hrvatske*) as amended on 15 March 2002, Official Gazette nos. 29/02 of 22 March 2002 and. 49/02 (consolidated text) – “the Constitutional Court Act”) reads as follows:

Section 63

“(1) The Constitutional Court shall examine a constitutional complaint whether or not all legal remedies have been exhausted if the competent court fails to decide a claim concerning the individual’s rights and obligations or a criminal charge against him or her within a reasonable time ...

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

(3) In a decision issued under paragraph 2 of this section, the Constitutional Court shall assess appropriate compensation for the applicant for the violation of his or her constitutional rights ... The compensation shall be paid out of the State budget within three months from the date a request for payment is lodged.”

21. The relevant provisions of the Administrative Procedure Act (*Zakon o općem upravnom postupku*, Official Gazette no. 53/1991 of 8 October 1991) provide as follows:

Section 218(1) provides that in simple matters, where there is no need to undertake separate examination proceedings, an administrative authority shall give a decision and serve it on a party within one month following the submission of an application. In all other, more complex cases, the authority shall give a decision and serve it on a party within two months.

Section 218(2) provides that a party whose application has not been decided and served within the time-limits set out in paragraph (1) may lodge

an appeal (appeal for failure to respond, *žalba zbog šutnje administracije*) as if his or her application had been dismissed.

Section 247(1) provides that the decision on the appeal shall be given and served on a party as soon as possible but at the latest within two months following the submission of the appeal.

Section 246(1) provides that the second-instance administrative authority deciding on the appeal for failure to respond shall request the first-instance authority to give reasons for its omission. If it finds that the failure to respond was attributable to the party or the reasons for such omission were otherwise justified, the second-instance authority shall order the first-instance authority to give a decision within one month. If it finds that the omission was not justified, it shall request the case-file.

Section 246(2) provides that if the case-file contains sufficient information, the second-instance administrative authority shall decide the case. Otherwise, it shall first hear the case and take evidence, and then give a decision. Exceptionally, if it considers that such a procedure would save time and costs, it shall order the first-instance authority to hear the case and take evidence within a specified time-limit, whereupon it shall decide the case itself. Such a decision shall be final.

22. The relevant provisions of the Administrative Disputes Act (*Zakon o upravnim sporovima*, Official Gazette nos. 53/1991, 9/92 and 77/92) provide as follows:

Section 26(1) provides that if the appellate authority fails to give a decision on a party's appeal against the first-instance decision within sixty days, and fails to do so upon a repeated request within a further period of seven days, the party may bring an action in the Administrative Court (action for failure to respond, *tužba zbog šutnje administracije*), as if his or her appeal had been dismissed.

Section 26(2) provides that when the first-instance administrative authority fails to give a decision against which no appeal lies, the party may directly bring an action in the Administrative Court.

Section 26(3) provides that, in matters where the right of appeal exists, if a first-instance administrative authority fails to give a decision on a party's application within sixty days, the party may submit his or her application to the appellate administrative authority. Against the latter authority's decision the party may bring an action in the Administrative Court, and if the authority fails to give a decision, the party may bring an administrative action under the conditions set out in paragraph 1.

Section 42(5) provides that when the Administrative Court, following the action for failure to respond, finds for the plaintiff, it shall either instruct the respondent administrative authority how to decide the case on points of law, or shall itself rule on the application (acting as a court of full jurisdiction under paragraph 2 of section 64).

Section 64(1) provides that, in the execution of the judgment rendered under section 42(5), the administrative authority shall issue its decision immediately but at the latest within 30 days. Otherwise, a party may by a special submission request it to do so. If the authority does not issue a decision within seven days following that request, a party may apply to the Administrative Court.

Section 64(2) provides that if such an application is made, the Administrative Court shall first ask the administrative authority to give reasons for its omission. The authority shall reply immediately but at the latest within seven days. If the authority fails to do so, or if the reasons given do not justify the failure to decide, the Administrative Court shall give a decision entirely substituting for the decision of the administrative authority.

C. The Constitutional Court's practice

23. In case no. U-III A/635/2004 of 25 November 2004, the Constitutional Court was seized under Section 63 of the Constitutional Court Act to examine the length of administrative proceedings instituted in July 1996 when the complainant had brought an action in the Administrative Court for the Ministry of Defence's failure to give a decision in his case. In October 1998 the Administrative Court ordered the Ministry to give a decision within 30 days. The Ministry gave a negative decision in July 1999. The complainant then brought a second administrative action, challenging that decision. In September 2000 the Administrative Court quashed the impugned decision and remitted the case. The Ministry again gave a negative decision and served it on the complainant in January 2004. On 18 February 2004 the complainant had brought a third administrative action, which was dismissed by the Administrative Court in June 2004. Meanwhile, on 25 February 2004 he lodged his constitutional complaint arguing that the Constitutional Court should, like the European Court of Human Rights, take into consideration the overall length of administrative proceedings when examining whether or not they exceeded a reasonable time.

Following its previous practice (decisions no. U-III-2467/2001 of 27 February 2002, and U-III A/3638/2003 of 18 February 2004), the Constitutional Court held that only the inactivity of the judicial authorities was relevant for a breach of Article 29 § 1 of the Constitution. In its view it was not possible for proceedings before the administrative authorities to last unreasonably long because the statutes regulating those proceedings contained the presumption that the application had been dismissed if the administrative authorities failed to give a decision within the statutory time-limits (see paragraphs 21 and 22 above). The Constitutional Court therefore examined only the length of the proceedings in their part between the

introduction of the complainant's third administrative action and lodging of the constitutional complaint. It dismissed the constitutional complaint finding that the proceedings had lasted only seven days.

THE LAW

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

24. 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..."

25. The Government contested that argument.

26. As regards the period to be taken into consideration, the Court firstly observes that the administrative proceedings were instituted on 18 September 1997, and that on 14 June 1999 the Sisak Office gave decision dismissing the applicant's request. However, the period to be taken into consideration began only on 9 July 1999, when the applicant appealed against that decision since it was then that a "dispute" within the meaning of Article 6 § 1 arose (see, *inter alia*, *Janssen v. Germany*, no. 23959/94, § 40, 20 December 2001). The period in question has not yet ended. It has so far lasted almost seven years. During that period eight decisions were rendered and the case was examined before three levels of jurisdiction.

A. Admissibility

27. 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. They submitted that the applicant had had an opportunity to lodge a constitutional complaint under Section 63 of the Constitutional Court Act and thereby complain about the length of the proceedings in the period between 1 July 2003 and 27 January 2005, i.e. while her action had been pending before the Administrative Court. However, she had not done so.

28. The Government admitted that the Constitutional Court, when deciding a constitutional complaint concerning the length of proceedings pending before the Administrative Court, did not take into account the period during which the case had been pending before the administrative authorities. However, reiterating the position of the Constitutional Court (see paragraph 23 above), the Government explained that this was so

because the Croatian legal system provided for remedies effectively preventing delays in administrative proceedings in their part conducted before the administrative authorities (see paragraphs 21 and 22 above). In this connection they noted that the Court had already found similar remedies to be effective for the purposes of Article 35 § 1 of the Convention (see *Pallanich v. Austria*, no. 30160/96, §§ 27-33, 30 January 2001). That being so, the Government argued, it was reasonable that the Constitutional Court had limited its review to the length of administrative proceedings in their part before the Administrative Court.

29. The applicant contested that argument. She noted, in particular, that to lodge a constitutional complaint under Section 63 of the Constitutional Court Act became available only in March 2002, that is, after she had introduced her application with the Court.

30. The Court recalls that it recognised a constitutional complaint under section 63 of the Constitutional Court Act as an effective remedy for the length of proceedings still pending in Croatia (see *Slaviček v. Croatia* (dec.), no. 20862/02, ECHR 2002-VII). Moreover, in its *Nogolica* decision (see *Nogolica v. Croatia* (dec.), no. 77784/01, ECHR 2002-VIII) the Court held that there existed special circumstances justifying a departure from the general rule on exhaustion of domestic remedies (according to which the issue of exhaustion should normally be determined by reference to the date when an application was lodged with the Court).

31. The Court sees no reason to depart from this established case-law in respect of civil and criminal proceedings. However, in the light of the subsequent practice of the Constitutional Court (see paragraph 23 above), it finds it necessary to review that case-law in respect of administrative proceedings (see *Jeftić v. Croatia* (dec.), no. 57576/00, 3 October 2002, and *Barbača v. Croatia* (dec.), no. 63779/00, 18 September 2003).

32. In this connection the Court reiterates that a remedy available to a litigant at domestic level for raising a complaint about the length of proceedings is “effective”, within the meaning of Article 13 and 35 § 1 of the Convention, only if it is capable of covering all stages of the proceedings complained of and thus, in the same way as a decision given by the Court, of taking into account their overall length (see *Wyszczelski v. Poland*, no. 72161/01, § 26, 29 November 2005, *Raguž v. Croatia*, no. 43709/02, § 36, 10 November 2005, *Majewski v. Poland*, no. 52690/99, § 35, 11 October 2005, *Kopecká v. Slovakia*, no. 69012/01, § 31, 31 May 2005, *Bako v. Slovakia* (dec.), no. 60227/00, 15 March 2005).

33. Regarding the question of the beginning of the proceedings, the Court further recalls that when under the national legislation an applicant has to exhaust a preliminary administrative procedure before having recourse to a court, the proceedings before the administrative authorities are to be included when calculating the overall length of the proceedings for the

purposes of Article 6 of the Convention (see, for example, *Kiurkchian v. Bulgaria*, no. 44626/98, § 51, 24 March 2005).

34. The above-cited practice (paragraph 23) indicates that the Constitutional Court, when deciding a constitutional complaint concerning the length of proceedings pending before the Administrative Court, does not take into consideration their overall duration. It excludes the period during which the case was pending before the administrative authorities on account of special means available for speeding up proceedings before those authorities (see *Štajcar v. Croatia* (dec.), no. 46279/99, 20 January 2000). That approach of the Constitutional Court differs from the one of the Court (see paragraph 33 above) as it does not cover all stages of the proceedings. It follows that a constitutional complaint cannot be considered an “effective” remedy in respect of the length of administrative proceedings.

35. However, the Court further recalls that even if a single remedy does not by itself entirely satisfy the requirement of “effectiveness”, the aggregate of remedies afforded by domestic law may do so (see, as the most recent authority, *Lukenda v. Slovenia*, no. 23032/02, § 67, 6 October 2005). Therefore it remains to be examined whether or not the aggregate of remedies, as suggested by the Government, could satisfy the requirement of effectiveness under Article 35 § 1 of the Convention.

36. In this connection the Court firstly notes that in the present case the administrative authorities gave seven decisions. In doing so the statutory time-limits (see paragraph 21 above) were not always strictly observed. However, the protracted character of the proceedings resulted only partly from the failure of those authorities to give their decisions in due time. In the Court’s view, the main cause of the delay was rather a deficiency in the procedural system allowing for repeated remittals mandated by incomplete findings of fact (see, *mutatis mutandis*, *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003). Since an appeal and an action for failure to respond are neither designated for remedying that deficiency nor capable of doing so, the Court is unable to conclude that their use would, in the circumstances of the present case, increase the effectiveness of a constitutional complaint. As the constitutional complaint alone cannot be considered an effective remedy for the length of administrative proceedings (see paragraph 34 above), it follows that the applicant cannot be expected to have lodged such a complaint, and that the Government’s objection must therefore be dismissed.

In view of this conclusion, it is not necessary for the Court to decide in the instant case whether or not the aggregate of remedies relied on by the Government may under different circumstances satisfy the requirements of Article 35 § 1.

37. The Court further notes that the complaint submitted by the applicant 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

38. 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). The Court reiterates that special diligence is necessary in pension disputes (see, *inter alia*, *H.T. v. Germany*, no. 38073/97, § 37, 11 October 2001).

39. The Court accepts that the case involved a certain degree of factual complexity. It also considers that the applicant had shown a certain laxity in pursuing means designated for speeding up administrative proceedings because she was not lodging appeals for failure to respond each time the administrative authorities exceeded the statutory time-limits for giving their decisions (see *Štajcar v. Croatia* (dec.), cited above). However, neither the complexity of the case nor the applicant's conduct can explain the length of the proceedings of almost seven years. As already noted above the delay was caused mainly by the successive remittals of the case, and it is therefore primarily attributable to the authorities.

40. 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, for example, *Pavlyulynets v. Ukraine*, no. 70767/01, 6 September 2005). 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.

41. Accordingly, 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

42. The applicant further complained that she had not had an effective remedy in respect of the length of the above administrative proceedings. She relied on Article 13 of the Convention, which reads as follows:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

43. The Government contested that argument.

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

45. 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). In this connection, the Court refers to its above findings (see paragraphs 30-36) concerning the exhaustion of domestic remedies.

Having regard to this the Court finds that there has been a violation of Article 13 of the Convention in the present case.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. 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

47. The applicant claimed 600,000 Croatian kunas (HRK) in respect of pecuniary damage and HRK 100,000 in respect of non-pecuniary damage.

48. The Government contested these claims.

49. 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 awards the applicant EUR 1,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

50. The applicant also claimed HRK 16,592 for the costs and expenses incurred before the domestic authorities.

51. The Government contested the claim.

52. 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, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 500 for costs and expenses in the domestic proceedings, plus any tax that may be chargeable.

C. Default interest

53. 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 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*
 - (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 are to be converted into the national currency of the respondent State at a rate applicable at the date of settlement:
 - (i) EUR 1,500 (one thousand five 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 29 June 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President