



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

FIRST SECTION

CASE OF KOZLICA v. CROATIA

(Application no. 29182/03)

JUDGMENT

STRASBOURG

2 November 2006

FINAL

02/02/2007

*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 Kozlica 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 12 October 2006,

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

PROCEDURE

1. The case originated in an application (no. 29182/03) 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 Kadrija Kozlica (“the applicant”), on 8 July 2003.

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

3. On 12 January 2005 the Court decided to communicate the complaint concerning the length of the proceedings. 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 1938 and lives in Orašje, Bosnia and Herzegovina.

A. Civil proceedings

5. On 25 November 1994 the applicant brought a civil action against the company V. (“the employer”) and the insurance company C.O. in the Zagreb Municipal Court (*Općinski sud u Zagrebu*) seeking damages for a work-related injury in the amount of 96,700 Croatian kunas (HRK).

6. The court held hearings on 2 June and 30 November 1999 and 21 February 2001.

7. In the period between May 1998 and October 2000 the applicant filed four rush notes urging the court to schedule a hearing and speed up the proceedings.

8. On 21 February 2001 the Municipal Court gave judgment dismissing the applicant's claim. The applicant appealed on 6 March 2001 to the Zagreb County Court (*Županijski sud u Zagrebu*).

9. On 26 March 2001 the applicant applied to be exempted from the court fee for the appeal. Since it was the Municipal Court that was competent to decide on the applicant's request for exemption, the County Court returned the case-file to it with a view to reaching a decision thereon. A hearing before the Municipal Court scheduled for 14 January 2003 was adjourned since the applicant had not received the summons due to his change of address. The next hearing scheduled for 3 June 2003 was adjourned owing to the illness of the judge assigned to hear the case. Lastly, a hearing at which the applicant gave a declaration of his income and assets was held on 13 May 2004. On 24 May 2004 the applicant was served with the decision in his favour exempting him from the court fee for the appeal. The case-file was then sent back to the County Court with a view to deciding on the applicant's appeal.

10. On 5 April 2005 the County Court dismissed the appeal. The judgment was served on the applicant on 25 April 2005. No appeal on points of law (*revizija*) lay to the Supreme Court against this judgment (see paragraph 14 below).

B. Proceedings before the Constitutional Court

11. Meanwhile, on 23 July 2002 the applicant lodged a constitutional complaint with the Constitutional Court (*Ustavni sud Republike Hrvatske*) complaining about the length of the civil proceedings.

12. On 17 April 2003 the Constitutional Court dismissed the applicant's complaint. It held that the delay was attributable to the complexity of the case and the applicant's conduct. It found that the applicant had contributed to the length of the proceedings in that he had applied for exemption from the court fee only after he had appealed against the first-instance judgment.

II. RELEVANT DOMESTIC LAW

A. The Constitutional Court Act

13. 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 whether or not all legal remedies have been exhausted if the competent court fails to decide a claim concerning the applicant’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.”

B. Amendments to the Civil Procedure Act

14. On 6 November 1999 the Amendments to the Civil Procedure Act (*Zakon o izmjenama i dopunama Zakona o parničnom postupku*, Official Gazette no. 112/1999 of 29 October 1999) entered into force. They raised the statutory threshold for lodging an appeal on points of law (*revizija*) to the Supreme Court from HRK 3,000 to 100,000. That is to say that, from then on, for such an appeal to be admissible *ratione valoris* in non-commercial matters, the value of the subject matter in dispute had to exceed the last-mentioned amount. The Amendments also provided for their immediate application to pending proceedings except to those cases in which an appeal on points of law had already been lodged.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE LENGTH OF THE PROCEEDINGS

15. 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...”

16. The Court considers that 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 25 November 1994, when the applicant brought his civil action against the employer and the insurance company C.O.

Consequently, they were already pending for almost three years before the ratification.

17. The case was still pending on 17 April 2003 when the Constitutional Court gave its decision. On that date the proceedings had lasted some five and a half years for two levels of jurisdiction.

18. The proceedings ended on 25 April 2005 when the judgment of the County Court was served on the applicant, that is, some two years after the decision of the Constitutional Court. Thus, in total, the proceedings lasted almost seven and a half years after the ratification for two levels of jurisdiction.

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. They maintained that the applicant had not lodged a second constitutional complaint to the Constitutional Court. The Government observed that he had already lodged such a complaint on 23 July 2002, and that the Constitutional Court dismissed it on 17 April 2003. However, in doing so, that court had examined only the period between the date of the entry into force of the Convention in respect of Croatia and the date on which the constitutional complaint had been lodged. Having regard to the fact that after the filing of the constitutional complaint on 23 July 2002, the proceedings lasted for another two years and eight months, to lodge a second constitutional complaint while the proceedings were still pending 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.

20. The applicant contested that argument. He argued that it was not justified to require him to lodge another constitutional complaint when his previous complaint had been dismissed.

21. The Court finds that the question of exhaustion of domestic remedies is inextricably linked to the merits of this complaint. Therefore, to avoid prejudging the latter, both questions should be examined together. Accordingly, the Court holds that the question of exhaustion of domestic remedies should be joined to the merits.

22. 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

23. The Court observes at the outset that the applicant availed himself of an effective domestic remedy in respect of the length of the proceedings – a

constitutional complaint (see *Slaviček v. Croatia* (dec.), no. 20862/02, ECHR 2002-VII) – and that the Constitutional Court dismissed his complaint. In these circumstances, the Court is required to verify whether the way in which the Constitutional Court interpreted and applied the relevant provisions of the domestic law, produces consequences that are consistent with the principles of the Convention, as interpreted in the light of the Court's case-law (see, *mutatis mutandis*, *Cocchiarella v. Italy* [GC], no. 64886/01, § 82, to be published in ECHR 2006). In doing so, the Court has to examine the period between the date of the entry into force of the Convention in respect of Croatia and the date of the Constitutional Court's decision (see, by analogy, *Cocchiarella v. Italy* [GC], cited above, § 103). If the Constitutional Court's decision is consistent with Convention principles, the Court will, when examining the question of exhaustion of domestic remedies, refrain from dealing with the length of the proceedings subsequent to that decision. Otherwise, a genuine examination of the total length after the ratification is warranted.

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, *Cocchiarella v. Italy* [GC], cited above, § 68; and *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

25. The Government argued that the case had been complex and that the length of the proceedings was primarily attributable to the applicant. In particular, he had applied for an exemption from the court fee only after having lodged his appeal and had subsequently failed to notify the Municipal Court of the change of his address, thereby causing the adjournment of the hearing of 14 January 2003.

26. The applicant replied that he had sought exemption only from the court fee for the appeal. Consequently, he could not have done so before he had actually lodged his appeal. As to the change of his address, he submitted that he had been heard as a party at the hearing held on 6 June 1999 during which he gave, *inter alia*, his personal information, including his address which he had changed some time before that hearing.

27. The Court notes that in the present case the period examined by the Constitutional Court amounts to five and a half years (see paragraph 17 above). During that period there existed two substantial periods of inactivity (from November 1997 to June 1999, and from November 1999 to February 2001) amounting altogether to almost three years in which no hearings were held. They are solely attributable to the authorities. Moreover, it took the Municipal Court more than a year and a half to schedule a hearing concerning the applicant's request for exemption from the court fee. The Court therefore cannot accept the view that the applicant significantly contributed to the length of the proceedings.

28. 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 already in the period which was susceptible to the Constitutional Court's scrutiny the length of the proceedings was excessive and failed to meet the "reasonable time" requirement. It necessarily kept such character throughout the subsequent period of some two years. In these circumstances, to ask the applicant to lodge a second constitutional complaint, would overstretch his duties under Article 35 § 1 of the Convention (see, for example, *Antonić-Tomasović v. Croatia*, no. 5208/03, §§ 25-34, 10 November 2005).

29. In conclusion, the Court rejects the Government's objection as to the exhaustion of domestic remedies and finds that in the present case there has been a breach of Article 6 § 1 of the Convention on account of the excessive length of the proceedings.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION TAKEN ALONE AND IN CONJUNCTION WITH ARTICLE 14 THEROF

30. The applicant further complained, for the first time in his written observations dated 19 May 2005, that his right of access to a court had been infringed because he had been unable to lodge an appeal on points of law (*revizija*) owing to the change in legislation governing civil procedure which had raised the statutory threshold for admissibility of such an appeal. He also submitted that limiting *ratione valoris* the right to lodge an appeal on points of law created inequality before the law and was therefore contrary to Article 14 of the Convention which reads as follows:

"The enjoyment of the rights and freedoms set forth in the Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

31. The Government submitted that the applicant was precluded to complain about the violation of his right of access to a court since this complaint had not been contained in his original application to the Court. Rather, he had raised it only in his written observations dated 19 May 2005.

Admissibility

32. The Court considers that in the present case it can leave open the question whether the applicant has complied with the six-month requirement. It reiterates that Article 6 of the Convention does not compel the Contracting States to set up courts of appeal or of cassation. However, where such courts do exist, the guarantees of Article 6 must be complied with, for instance in that it guarantees to litigants an effective right of access to the courts for the determination of their "civil rights and obligations". The manner in which Article 6 § 1 applies to courts of appeal or of cassation

depends on the special features of the proceedings concerned and account must be taken of the entirety of the proceedings conducted in the domestic legal order and the court of cassation's role in them; the conditions of admissibility of an appeal on points of law may be stricter than for an ordinary appeal (see, *inter alia*, *Brualla Gómez de la Torre v. Spain*, judgment of 19 December 1997, *Reports of Judgments and Decisions* 1997-VIII, p. 2956, § 37).

33. The Court notes that the arguments similar to those put forward by the applicant have been rejected in an earlier case (see, *mutatis mutandis*, *Brualla Gómez de la Torre v. Spain*, cited above) and sees no reason to reach a different conclusion in the present case. In particular, the Court considers that increasing the financial threshold for appeals to the Supreme Court in order to stop that court being overloaded with cases of lesser importance, was a legitimate aim. Moreover, the solution adopted in the instant case by the Croatian legislator followed a generally recognised principle that procedural rules apply immediately to the pending proceedings (see, *mutatis mutandis*, *Brualla Gómez de la Torre v. Spain*, cited above, p. 2956, §§ 35-36).

34. In the light of the foregoing and having regard to the proceedings as a whole, the Court considers that the essence of the applicant's right of access to a court was not impaired nor was he discriminated against on that account. It follows that this part of the application is inadmissible under Article 35 § 3 as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

35. The applicant further complained under Article 13 of the Convention taken in conjunction with Article 6 § 1 that he had not had an effective remedy in regard to the excessive length of the proceedings. Article 13 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.”

Admissibility

36. The Court notes that the applicant had at his disposal an effective domestic remedy to complain about the length of the proceedings – a constitutional complaint – of which he availed himself. The mere fact that the outcome of the Constitutional Court proceedings was not favourable to him does not render the remedy ineffective.

37. It follows that this complaint is inadmissible under Article 35 § 3 as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

38. 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

39. The applicant claimed 150,000 Croatian kunas (HRK) in respect of pecuniary and non-pecuniary damage.

40. The Government contested the claim.

41. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

42. As to the non-pecuniary damage sought, it reiterates the principle enunciated above (see paragraph 23) that if the Constitutional Court’s decision produces consequences that are inconsistent with the principles of the Convention, the Court has to examine the total length of the proceedings after the ratification. In the light of its above findings (see paragraphs 18 and 28), the Court, ruling on an equitable basis, awards the applicant 3,600 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

43. The applicant also claimed EUR 2,000 for the costs and expenses incurred before the Court.

44. The Government contested the claim.

45. 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 1,000 for the proceedings before the Court, plus any tax that may be chargeable on that amount.

C. Default interest

46. 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. *Joins to the merits* the Government's objection as to the exhaustion of domestic remedies and rejects it;
2. *Declares* the complaint concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the excessive length of the proceedings;
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 3,600 (three thousand six hundred euros) in respect of non-pecuniary damage;
 - (ii) EUR 1,000 (thousand 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 2 November 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President