CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF SUKOBLJEVIĆ v. CROATIA

(Application no. 5129/03)

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 Sukobljević 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,
Mr A. KOVLER,
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. 5129/03) 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 Đuro Sukobljević ("the applicant"), on 28 January 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 28 February 2005 the Court decided to communicate the complaint concerning the length of the proceedings 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

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1944 and lives in Zagreb.

A. Civil and bankruptcy proceedings

5. On 24 March 1993 the applicant brought a civil action against the company T. ("the employer") in the Zagreb Municipal Court (*Općinski sud u Zagrebu*) seeking damages for a work-related injury.

6. On 3 February 1995 the Municipal Court gave judgment awarding damages to the applicant in the amount of 31,780 Croatian kunas (HRK) and the litigation costs.

7. On 21 May 1996 the employer appealed to the Zagreb County Court (*Županijski sud u Zagrebu*).

8. On 23 March 1999 the County Court quashed the first-instance judgment and remitted the case.

9. In the resumed proceedings, the Municipal Court held a hearing on 7 December 1999 at which it requested the applicant to provide the minutes drawn up by the labour inspectorate concerning the incident resulting in his injury or to indicate a person or authority who possessed that document. On 12 June 2000 the court repeated its request.

10. On 16 June 2000 and 3 January 2001 the applicant requested the court to invite the employer to produce the above evidence. On 26 June 2001 the court did so.

11. At the hearing held on 14 December 2001 the court decided to effect an *in situ* inspection (*očevid*) on 15 February 2002 with the assistance of an expert, and invited the applicant to advance the costs. Since the applicant did so only on 19 February 2002, the inspection did not take place.

12. On 3 January 2002 the Zagreb Commercial Court (*Trgovački sud u Zagrebu*) decided to open bankruptcy proceedings against the employer. It invited the creditors to report their claims by 28 February 2002 and scheduled a hearing, at which the reported claims were to be examined, for 20 March 2002. In accordance with the Bankruptcy Act, the decision was published in the "Official Gazette" no. 6/02 of 21 January 2002.

13. On 8 May 2002 the Zagreb Municipal Court invited the applicant to inform it whether the bankruptcy proceedings had been opened against the employer. On 8 June 2002 the applicant replied in the affirmative and requested that any future communication with the employer be conducted through its bankruptcy manager (*stečajni upravitelj*).

14. On 12 June 2002 the Municipal Court stayed the proceedings on account of the pending bankruptcy proceedings.

15. On 13 June 2002 the applicant reported his claim to the Zagreb Commercial Court. On 8 January 2004 and 30 June 2005 he filed two rush notes with that court urging the delivery of a decision on his claim.

16. On 20 March 2006 the Commercial Court, without issuing a formal decision, replied that in the bankruptcy proceedings against the employer the applicant's claim had never been examined.

17. It would appear that both the civil and the bankruptcy proceedings are formally still pending.

B. Proceedings before the Constitutional Court

18. Meanwhile, on 18 June 2002 the applicant lodged a constitutional complaint with the Constitutional Court (*Ustavni sud Republike Hrvatske*) complaining about the length of the civil proceedings.

19. On 16 December 2002 the Constitutional Court dismissed the applicant's complaint. It examined the length of the proceedings in their part following the Convention's entry into force with respect to Croatia. The Constitutional Court 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 not responded to the Municipal Court's request of 7 December 1999 for more than six months, that he had failed to advance the inspection costs in due time and that he had failed to request the Municipal Court to invite the bankruptcy manager to take over the civil proceedings which would have resulted in their resumption.

II. RELEVANT DOMESTIC LAW

A. The Constitutional Court Act

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 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. The Civil Procedure Act

21. The Civil Procedure Act (*Zakon o parničnom postupku*, Official Gazette nos. 53/91, 91/92, 58/93, 112/99, 88/01 and 117/03) in the relevant part provides as follows:

22. Section 212(1) provides that proceedings shall be stayed, *inter alia*, if bankruptcy proceedings are opened (against one or both of the parties).

23. Section 215(1) provides that proceedings shall resume when the bankruptcy manager takes over the proceedings or when the court, of its own motion or at the initiative of the opposite party, invites the bankruptcy manager to do so.

C. The Bankruptcy Act

24. The Bankruptcy Act (*Stečajni zakon*, Official Gazette nos. 44/96, 29/99, 129/00, 123/03, 197/03, 187/04 and 82/06) in the relevant part provides as follows:

25. Section 7(2) provides that bankruptcy proceedings are urgent.

26. Section 55(1) provides that in its decision to open the bankruptcy proceedings the court shall set a date for the examination hearing (*ispitno ročište*) which shall be scheduled within two months after the lapse of the time-limit left to the creditors to report their claims to the bankruptcy manager.

27. Section 96 provides that creditors shall realise their claims against the bankrupt only in bankruptcy proceedings.

28. Section 173(1) provides that creditors shall report their claims against the bankrupt to the bankruptcy manager in writing, stating the basis and the amount thereof.

29. Section 175 provides for an examination hearing before the competent commercial court at which the bankruptcy manager shall either accept or oppose each of the reported claims. Likewise, a creditor can oppose the claim reported by another creditor.

30. Section 176(2) provides that the claims reported within three months after the first examination hearing may be examined at one or more separate examination hearings. Those hearings shall be scheduled by the court at the proposal of the creditors who failed to report their claims in due time, and under the condition that they advance the costs. If the costs are not advanced, the separate hearing shall not be held and the belated reports shall be declared inadmissible.

31. Section 176(4-6) provides that the court shall declare inadmissible the reports submitted after the expiry of the time-limit set forth in paragraph 2. The creditor which submitted the report shall have a right to appeal against that decision.

32. Section 177 provides that the claim is deemed to have been accepted if no objection has been raised by either the bankruptcy manager or another creditor. The commercial court shall prepare a schedule of examined claims on the basis of which it shall issue a decision (*rješenje*) showing which claims have been accepted and which were opposed, while setting out the amount and priority of each claim.

33. Section 179(1) provides that civil proceedings that concern a claim reported to the bankruptcy manager and that were pending at the moment of the opening of bankruptcy proceedings, shall be resumed by taking over of these proceedings (by an authorised person in the name of the bankrupt). The motion to resume the civil proceedings can be made by the plaintiff whose claim has been opposed in bankruptcy or, in the name of the bankrupt, the bankruptcy manager or another creditor that opposed the plaintiff's claim.

34. Section 181(1) provides that a final decision establishing the claim and its priority, or establishing that a claim does not exist, shall be effective against the bankrupt and all its creditors.

THE LAW

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

35. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, laid down 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..."

36. The Government contested that argument.

37. The Court firstly notes that under Croatian law if the bankruptcy proceedings are opened against a certain company its creditors are entitled to realise their claims against it only in the bankruptcy proceedings. Therefore, all civil proceedings against that company are stayed until the bankruptcy manager, at the examination hearing in the bankruptcy proceedings, either accepts or opposes the claims reported by the creditors. If the bankruptcy manager accepts a claim which was under examination in civil proceedings, the claim is considered finally determined and the civil proceedings consequently become obsolete. If he opposes such a claim, he has to take over the pending civil proceedings, which shall accordingly be resumed, and the claim determined therein (see paragraphs 21-34 above).

The Court therefore considers that in the present case the determination of the applicant's "civil rights", within the meaning of Article 6 § 1 of the Convention, began in the civil proceedings and continued in the bankruptcy proceedings.

38. 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 24 March 1993, when the applicant brought his civil action against the employer. Consequently, they were already pending for more than four and a half years before the ratification.

39. The case was still pending on 16 December 2002 when the Constitutional Court gave its decision. On that date the proceedings had lasted about five years and one month.

40. The proceedings have not yet ended. They have lasted another three years and ten months after the decision of the Constitutional Court. Thus, in

total, the case has so far been pending for some eight years and eleven months after the ratification.

A. Admissibility

41. 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 18 June 2002, and that the Constitutional Court dismissed it on 16 December 2002. 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 18 June 2002, the proceedings had continued and that they were still pending, to lodge a second 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.

42. 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.

43. 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.

44. 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

45. 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.

46. 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).

47. The Government emphasised that the applicant reported his claim in bankruptcy only on 13 June 2002, that is, more than three months after the expiry of the time-limit set forth by the Commercial Court i.e. 28 February 2002 (see paragraphs 12 and 15 above). As to the preceding period, they repeated, in substance, the findings of the Constitutional Court (see paragraph 19 above). In addition, they submitted that the case had not mandated particular urgency as the applicant had been seeking damages for a light bodily injury.

48. The applicant replied that he could not have requested the Municipal Court to resume the civil proceedings before his claim would be examined in the bankruptcy proceedings. Moreover, his injury had been rather serious.

49. The Court notes that in the present case the period examined by the Constitutional Court amounts to five years and one month (see paragraph 39 above). It observes that during that period the delays in the civil proceedings between 7 December 1999 and 16 June 2000 and between 14 December 2001 and 15 February 2002 are attributable to the applicant. On the other hand, there existed two substantial periods of inactivity solely attributable to the authorities, namely, between 6 November 1997 and 23 March 1999, and between 16 June 2000 and 26 June 2001, amounting altogether to two years and five months.

50. As to the subsequent bankruptcy proceedings, the Court takes note of the Government's argument that the applicant failed to report his claim in the bankruptcy proceedings in due time. However, it also notes that under the Bankruptcy Act belated reports are either to be declared inadmissible, or, if submitted within the additional period of three months after the first examination hearing, to be examined at a separate examination hearing (see paragraphs 30-31). In the present case the first examination hearing had been held on 20 March 2002, whereas the applicant reported his claim on 13 June 2002. Therefore, it would appear that he did so within the above mentioned additional period. However, no separate examination hearing has ever been held nor has the applicant's report been declared inadmissible.

The delay resulting thereof cannot be attributed to the applicant alone, and has not been explained by the Government. In the Court's view, it is mainly attributable to the authorities.

51. Lastly, as his claim has not been examined in the bankruptcy proceedings, the applicant could not have requested the Zagreb Municipal Court to resume the civil proceedings.

52. 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 has necessarily kept such character throughout the subsequent period. 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).

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

54. 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

55. 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.

56. 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

57. 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

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

59. The Government contested the claim.

60. As to the non-pecuniary damage sought, it reiterates the principle enunciated above (see paragraph 45) 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 40 and 52), the Court, ruling on an equitable basis, awards the applicant 4,800 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

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

62. The Government contested the claim.

63. 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 900 for the proceedings before the Court, plus any tax that may be chargeable on that amount.

C. Default interest

64. 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;

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 4,800 (four thousand eight hundred euros) in respect of non-pecuniary damage;
(ii) EUR 900 (nine 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 2 November 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President