



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

FIRST SECTION

CASE OF NOGOLICA v. CROATIA (NO. 3)

(Application no. 9204/04)

JUDGMENT

STRASBOURG

7 December 2006

FINAL

07/03/2007

*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 Nogolica v. Croatia (No. 3),

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 16 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 9204/04) 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 Zvonko Nogolica (“the applicant”), on 24 February 2004.

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

3. On 25 April 2005 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1962 and lives in Zagreb.

5. On 5 October 1995 the applicant filed a civil action seeking damages with the Zagreb Municipal Court (*Općinski sud u Zagrebu*) against the weekly magazine A. (“the respondent”), claiming that it had published a libellous article about him.

6. The court held several hearings before 5 November 1997, the date of the entry into force of the Convention in respect of Croatia.

7. At the hearing on 1 October 1998 the court heard a witness.

8. The hearing scheduled for 19 November 1998 was adjourned for 12 March 1999 when the court heard another witness and an expert.

9. At the next hearing on 2 February 2000 the court heard yet another witness and concluded the main hearing. On the same day, it gave judgment dismissing the applicant's claim. The judgment was served on the applicant on 10 April 2000.

10. On 14 April 2000 the applicant appealed against the first instance judgment. On 15 October 2002 the Zagreb County Court (*Županijski sud u Zagrebu*) quashed that judgment and remitted the case.

11. On 10 December 2002 the applicant filed a constitutional complaint with the Constitutional Court (*Ustavni sud Republike Hrvatske*), complaining about the length of the proceedings.

12. On 22 March 2004 the Zagreb Municipal Court held a hearing and adopted a new judgment granting the applicant's claim in part. The applicant appealed against the judgment and the proceedings are still pending before the second instance court.

13. On 17 June 2004 the Constitutional Court dismissed the applicant's complaint of 10 December 2002 as ill-founded. It took into consideration the period of some five years (between the entry into force of the Convention in respect of Croatia and the filing of the constitutional complaint by the applicant), finding that the competent courts had acted expeditiously, while it observed that the proceedings had been somewhat complex.

II. RELEVANT DOMESTIC LAW

14. 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 even before all legal remedies have been exhausted in cases when a competent court has not decided within a reasonable time a claim concerning the applicant's rights and obligations or a criminal charge against him ...

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

(3) In a decision under paragraph 2 of this Article, the Constitutional Court shall fix appropriate compensation for the applicant in respect of the violation found concerning his constitutional rights ... The compensation shall be paid from the State budget within a term of three months from the date when the party lodged a request

THE LAW

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

15. 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...”

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 5 October 1995, when the applicant brought his civil action seeking damages against a Croatian weekly magazine. Consequently, the case was already pending for one year and eleven months before the ratification.

17. The case was still pending on 17 June 2004 when the Constitutional Court gave its decision. On that date the proceedings had lasted some six years and eight months after the ratification.

18. The period in question has thus lasted about nine years before three levels of jurisdiction after the Convention entered into force in respect of Croatia, and still has not ended.

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 with the Constitutional Court. The Government observed that he had previously lodged such a complaint on 10 December 2002, and that the Constitutional Court dismissed it on 17 June 2004. 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 of the lodging of the constitutional complaint. Having regard to the fact that the proceedings were not concluded, the lodging of 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.

20. The applicant contested that argument.

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 submitted that the applicant contributed to the length of proceedings because he filed an appeal against the first instance judgment although the first instance court partially accepted his claim. Furthermore, the defendant in the case called witnesses who did not comply with the court's summons to attend the hearings which caused that those hearings had to be postponed.

26. The applicant contested that view.

27. In respect of the arguments put forward by the Government the Court notes that it is the normal task of an appellate court in judicial proceedings to decide upon admissible appeals against first instance judgments. The Court further recalls that it is for the Contracting States to organise their legal systems in such a way that their courts can guarantee everyone's right to obtain a final decision on disputes relating to civil rights and obligations within a reasonable time (see, among other authorities, *Cocchiarella v. Italy* [GC], no. 64886/01, § 119, ECHR 2006-... and *Horvat v. Croatia*, no. 51585/99, § 59, ECHR 2001-VIII).

28. The Court notes that in the present case the relevant period (see paragraph 18 above) amounts to more than eight years and ten months and that the case is still pending. During that period there existed several substantial periods of inactivity before the first instance court (from November 1997 to October 1998, then from March 1999 to February 2000) amounting altogether to almost two years in which no hearings were held. After that the appellate proceedings lasted for two years and six months (from 14 April 2000 until 15 October 2002). Furthermore, there was yet another substantial period of inactivity after the case was remitted to the first instance court (from October 2002 until March 2004) amounting to one year, five months and seven days. All these periods of inactivity are solely attributable to the authorities. The Court therefore cannot accept the view that the applicant significantly contributed to the length of the proceedings.

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 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 and half 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).

30. 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 13 OF THE CONVENTION

31. 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

32. 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.

33. 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

34. 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

35. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

36. The Government maintained that the applicant's claim for just satisfaction was unfounded and excessive because there existed no causal link between the violation complained of and the applicant's financial expectations.

37. As to the non-pecuniary damage sought, the Court reiterates the principle enunciated above 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, the Court, ruling on an equitable basis, awards the applicant 4,000 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

38. The applicant also claimed EUR 500 for the costs and expenses incurred before the Court.

39. The Government did not express an opinion on the matter.

40. 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 claimed covering costs for the proceedings before the Court, plus any tax that may be chargeable on this amount.

C. Default interest

41. 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 4,000 (four thousand 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 7 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President