



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

FIRST SECTION

CASE OF ULJAR AND OTHERS v. CROATIA

(Application no. 32668/02)

JUDGMENT

STRASBOURG

8 March 2007

FINAL

08/06/2007

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 Uljar and others 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 N. VAJIĆ,

Mr A. KOVLER,

Mrs E. STEINER,

Mr S.E. JEBENS,

Mr G. MALINVERNI, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 15 February 2007,

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

PROCEDURE

1. The case originated in an application (no. 32668/02) 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 four Croatian nationals, Mrs Biserka Uljar, Mr Ratomir Brnabić, Mrs Lolita Dabelić and Mrs Eleonora Tijanić (“the applicants”), on 17 July 2002.

2. The applicants were all represented by Mrs B. Uljar. The Croatian Government (“the Government”) were represented by their Agent, Mrs Š. Stažnik.

3. On 5 July 2005 the Court declared the application partly inadmissible and 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 remainder of the application at the same time.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1951, 1947, 1970 and 1971 respectively and live in Rijeka.

5. The applicants are heirs of the late A.B. who died on 14 December 1995. The first and the second applicant are his children, and the third and the fourth applicants are his grandchildren (children of his other daughter).

6. In the context of inheritance proceedings following A.B.'s death, on 16 August 1996 his former wife, M.K., brought a civil action against the applicants in the Krk Municipal Court (*Općinski sud u Krku*). M.K. sought her share in co-ownership of a house on the account of certain investments she had made while living in common law marriage (*izvanbračna zajednica*) with the deceased.

7. In the period between the entry into force of the Convention in respect of Croatia and the rendering of the first-instance judgment, the Krk Municipal Court held nine hearings.

8. At the hearing held on 17 March 1998 the applicants moved for evidence to be taken in order to prove that A.B. had not lived in a common law marriage with the plaintiff and that he had reconstructed his house independently with his own means. On 22 April and 3 August 1998 the court heard two and six witnesses respectively.

9. The Krk Municipal Court then requested certain witnesses to be heard before other courts. In reply, it received minutes of the witness testimonies from the Zadar Municipal Court and the Split Municipal Court.

10. On 11 August 1999 the applicants filed a counterclaim seeking a declaration that there had been no common law marriage between the plaintiff and the late A.B.

11. The next hearing was held on 12 August 1999 at which the court heard nine witnesses.

12. At the next hearing held on 25 April 2000 the court heard the second and the third applicant and adjourned the hearing for 10 August 2000, when the first applicant again sought for a number of witnesses to be heard.

13. At the next hearings held on 5 June and 13 August 2001 the court heard yet more witnesses and on 3 December 2001 it closed the main hearing.

14. On 3 December 2001 the court gave judgment dismissing both M.K.'s action and the applicants' counterclaim. On appeal, on 1 October 2003 the Rijeka County Court (*Županijski sud u Rijeci*) quashed the first-instance judgment and remitted the case finding that it was necessary to establish the plaintiff's citizenship.

15. In 2003 the first and the second applicant filed a constitutional complaint concerning the length of the proceedings. On 16 January 2004 the Constitutional Court (*Ustavni sud Republike Hrvatske*) declared their complaint inadmissible because the County Court had in the meantime, on 1 October 2003, quashed the first-instance judgment and remitted the case.

16. In the resumed proceedings, on 4 November 2003 the President of the Krk Municipal Court accepted the applicants' request for withdrawal of the first-instance judge and assigned another judge to hear the case.

17. The court held hearings on 12 February 2004 and 17 June 2004.

18. On 26 October 2004 the court adopted a decision declaring the plaintiff's action inadmissible, because as a foreign national, she had not obtained the necessary permissions for acquisition of property in line with the domestic legislation. At the same time, the Krk Municipal Court

concluded that the applicants' counterclaim had been withdrawn. M.K. appealed against that decision but on 9 March 2006 the Rijeka County Court dismissed her appeal.

II. RELEVANT DOMESTIC LAW

19. 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 court with jurisdiction 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 court with jurisdiction 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.”

THE LAW

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

20. The applicants 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...”

21. The Government contested that argument.

22. The Court notes that the proceedings started on 16 August 1996, when M.K. lodged her civil action against the applicants, and ended on 9 March 2006, when the County Court upheld the first-instance decision. They thus lasted nine years and seven months.

23. The period to be taken into consideration began on 6 November 1997, after the Convention had entered into force in respect of Croatia and

ended on 9 March 2006. It thus lasted approximately eight years and four months for two levels of jurisdiction.

24. However, in order to determine the reasonableness of the length of time in question, regard must be had to the state of the case on 5 November 1997 (see, among other authorities, *Styranowski v. Poland*, judgment of 30 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3376, § 46).

A. Admissibility

25. The Government invited the Court to reject the applicants' complaint for non-exhaustion of domestic remedies.

26. They maintained that the first and the second applicant could have filed another constitutional complaint, after the Constitutional Court had declared their first complaint inadmissible on 16 January 2004. Bearing in mind that the Constitutional Court changed its practice in this respect, so as to comply with the Court's case-law, the Government claimed that a complaint under section 63 of the Constitutional Court Act would have been an effective remedy for the first and the second applicants' length complaint.

27. In respect of the third and the fourth applicant, the Government pointed out that they failed to exhaust domestic remedies in that they never filed a constitutional complaint under section 63 of the Constitutional Court Act.

28. The applicants disagreed with the Government contesting in the circumstances the effectiveness of a constitutional complaint in respect of their length complaint.

29. The Court reiterates that under Article 35 § 1 of the Convention it may only deal with a matter after all domestic remedies have been exhausted. The purpose of the exhaustion rule is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to it (see, among many other authorities, *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-IV). The obligation to exhaust domestic remedies requires that an applicant make normal use of remedies which are effective, sufficient and accessible in respect of his Convention grievances.

30. The Court further recalls that the rule of domestic remedies must be applied with some degree of flexibility and without excessive formalism (see *Cardot v. France*, judgment of 19 March 1991, Series A no. 200, p. 18, § 34). It has further recognised that the rule of exhaustion is neither absolute nor capable of being applied automatically; in reviewing whether it has been observed it is essential to have regard to the particular circumstances of each individual case (see *Van Oosterwijck v. Belgium*, judgment of 6 November 1980, Series A no. 40, p. 18, § 35).

31. Applying those principles in the present case, in respect of the first and the second applicant the Court recalls that the arguments put forward by the Government have been rejected in earlier cases (see *Zagorec v. Croatia*,

no. 10370/03, §§ 18-24, 6 October 2005; *Nogolica v. Croatia* (no. 2), no. 29052/03, §§ 19-26, 17 November 2005). It sees no reason to reach a different conclusion in the present case. It follows that the Government's objection in that respect must be dismissed.

32. As regards the third and the fourth applicant, the Court observes that they were parties to the same proceedings as the first two applicants, who had already unsuccessfully availed themselves of the remedy in respect of those proceedings. The Court considers that in this way the domestic authorities were afforded the opportunity to remedy the violation alleged. It further considers that it would be excessively formalistic to require the third and the fourth applicant to have lodged another constitutional complaint themselves seeing that the one previously lodged by the first two applicants had failed. In the circumstances of the present case the Government's argument in this respect should accordingly be rejected.

33. The Court further notes that the applicants' length complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

34. 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 applicants and the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

35. The Court considers that the period of eight years and four months for two levels of jurisdiction is *a priori* unreasonable and calls for a global assessment. Their overall length could be justified only under exceptional circumstances.

36. The Government submitted that the case was of high factual and legal complexity and that the applicants significantly contributed to its protraction by filing motions to hear a large number of witnesses as well as a request for withdrawal of the first-instance judge.

37. The Court considers that the arguments put forward by the Government are not sufficient to explain a delay of more than eight years for two court instances. While it is true that the applicants to a certain extent contributed to the protraction of the case, in the Court's view, the delay was mainly caused by the failure of the first-instance court to effectively control the proceedings. It was that court which had the authority to decide how to conduct the proceedings, in particular, which evidence to take and how to evaluate acts or omissions of the parties, while bearing in mind all procedural requirements guaranteed by Article 6 § 1 of the Convention. Moreover, the Court observes certain period of inactivity for which the Government provided no explanation (e.g. the first-instance court held no

hearings between 12 August 1999 and 25 April 2000 or between 10 August 2000 and 5 June 2001; it took the second-instance court one and a half years to dismiss the plaintiffs' appeal on 9 March 2006).

38. 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 *Frydlender*, cited above).

39. 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. Having regard to its case-law on the subject, 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. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. The applicants claimed 22,168.17 euros (EUR) in respect of pecuniary and EUR 10,000 in respect of non-pecuniary damage.

42. The Government contested these claims.

43. 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, the Court considers that the applicants must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards them the amount claimed in full, plus any tax that may be chargeable thereon.

B. Costs and expenses

44. The applicants also claimed EUR 1,275.20 for the costs and expenses incurred before the domestic courts and the Court.

45. The Government contested this claim.

46. 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 applicants, who were not represented by a lawyer, the sum of EUR 500 under this head, plus any tax that may be chargeable on that amount.

C. Default interest

47. 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*
 - (a) that the respondent State is to pay the applicants jointly, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts which should be converted into Croatian kunas at the rate applicable at the date of settlement:
 - (i) EUR 10,000 (ten 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;
4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 8 March 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President