



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

FIRST SECTION

CASE OF BUTKOVIĆ v. CROATIA

(Application no. 32264/03)

JUDGMENT

*This version was rectified on 5 September 2007
Under Rule 81 of the Rules of Court*

STRASBOURG

24 May 2007

FINAL

24/08/2007

*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 Butković v. Croatia,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,

Mr L. LOUCAIDES,

Mr A. KOVLER,

Mr D. SPIELMANN,

Mr S.E. JEBENS,

Mr G. MALINVERNI, *judges*,

Ms K. BULJAN, *ad hoc judge*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 3 May 2007,

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

PROCEDURE

1. The case originated in an application (no. 32264/03) 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 Hrvoje Butković (“the applicant”), on 27 May 2003.

2. The Croatian Government (“the Government”) were represented by their Agent, Ms Štefica Stažnik.

3. On 29 August 2006 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 1963 and lives in Zagreb.

1. Proceedings concerning regulation of rent and the tenants' eviction

5. The applicant is the owner of a flat in Zagreb in which lived S.V. under a specially protected tenancy arrangement. S.V.'s wife, M.V., as well as three other persons, A, B and C, were part of the household and their legal position in respect of the flat depended on S.V.'s position.

6. On 22 October 1996, the Lease Act (*Zakon o najmu stanova*), was enacted. It abolishes the specially protected tenancies and regulates the conditions of leasing privately-owned flats, including those previously let under the specially protected tenancy arrangements.

7. On 9 June 1997 the applicant filed a civil action against S.V. and his household with the Zagreb Municipal Court (*Općinski sud u Zagrebu*) challenging the defendants' right to a protected rent as stipulated by the Lease Act. At the same time the applicant filed a separate action against the defendants seeking their eviction from the flat. S.V. died in September 1997 but the above proceedings continued, now with M.V. being the person benefiting from the protected rent arrangement.

8. On 12 November 1997 the Municipal Court decided to join the two civil suits.

9. A hearing was held on 14 May 1998 following which judgment was pronounced dismissing the applicant's claims. The judgment was served on him on 27 November 1998. The applicant appealed against the judgment to the Zagreb County Court (*Županijski sud u Zagrebu*) on 2 December 1998.

10. On 12 December 2000 the Zagreb County Court (*Županijski sud u Zagrebu*) pronounced judgment in the case. The Court rejected, as did the Municipal Court, the applicant's claim for eviction of the defendants. As regards the applicant's challenge to the defendants' right to a protected rent the County Court quashed the judgment of the Municipal Court and remitted the case to that court for a new examination.

11. To the extent the County Court had rejected his claim for the eviction of the defendants from his flat, the applicant filed a constitutional complaint with the Constitutional Court (*Ustavni sud Republike Hrvatske*). On 13 October 2004 the Constitutional Court rejected the complaint.

12. In the meantime the Municipal Court resumed its examination of the remaining part of the civil suit, i.e. the question of the defendants' right to a protected rent. On 9 November 2001 the court performed an on the spot inquiry and an expert opinion was obtained on 19 November 2001. A hearing was held on 25 September 2002 whereas two subsequent hearings scheduled for 20 February 2003 and 4 February 2004 were cancelled.

13. On 25 February 2004 the Municipal Court adjourned the proceedings pending the outcome of a civil suit instituted by M.V. before the same court concerning the conclusion of a lease agreement between her and the applicant (see below). The applicant appealed against this decision. On 9 November 2004 the Zagreb County Court rejected the appeal in so far as it concerned M.V. but quashed the decision to adjourn the proceedings in so far as it concerned A, B and C.

14. By judgment of 30 September 2005 the Municipal Court rejected the applicant's claims for an increased rent in regard of A, B and C as these defendants were not tenants but only members of the tenant's, M.V.'s,

household. The applicant appealed against the judgment to the Zagreb County Court. It appears that the proceedings are at present pending.

15. It appears that the proceedings concerning M.V. which were adjourned by the Municipal Court on 24 February 2004, are still pending before that court.

16. As regards the length of the above proceedings the applicant lodged, on 2 March 2004, a complaint with the Constitutional Court. On 9 November 2005 the Constitutional Court dismissed the applicant's complaint in respect of the length of proceedings as manifestly ill-founded. It does not appear that the applicant has subsequently addressed himself to the Constitutional Court regarding the length of the proceedings before the Municipal Court and the County Court.

2. Proceedings concerning the lease contract

17. As indicated above (§ 13) M.V. instituted proceedings, on 23 October 1998, against the applicant in the Zagreb Municipal Court in order to obtain the conclusion of a lease agreement. As this dispute apparently remained unresolved the applicant lodged, on 2 March 2004, a complaint with the Constitutional Court in respect of the length of the proceedings.

18. On 9 November 2005 the Constitutional Court found that the applicant's right to have the dispute determined within a reasonable time was breached and awarded him just satisfaction in the amount of 6,500 Croatian Kunas. Furthermore, it ordered the Zagreb Municipal Court to adopt a judgment within six months from the publication of its decision in the Official Gazette.

19. In compliance with the above the Municipal Court pronounced judgment on 6 December 2005. M.V. appealed against this judgment to the Zagreb County Court where the case is at present pending.

II. RELVANT DOMESTIC LAW

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 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

21. The applicant complained that the length of the above sets of 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...”

1. Proceedings concerning regulation of rent and the tenants' eviction

22. 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 9 June 1997, when the applicant brought two civil actions against S.V., M.V., A, B and C with the Zagreb Municipal Court (*Općinski sud u Zagrebu*) (see § 7 above). Consequently, the case was already pending four months and twenty-seven days before the ratification.

a. Proceedings concerning the defendants' eviction

23. The claim concerning the defendants' eviction was finally dealt with by the Constitutional Court on 13 October 2004. Thus, these proceedings lasted six years, eleven months and eight days after the ratification, before three levels of jurisdiction.

A. Admissibility

24. The Government made no observations in respect of these proceedings.

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

B. Merits

26. 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).

27. The Court notes that the proceedings were pending before the first instance court one year and twenty-two days after the ratification and before the appellate court about two years, which periods in themselves do not appear excessive. However, the proceedings before the Constitutional Court lasted more than three years and six months. Although the case may be considered as somewhat complex, the mere complexity does not justify such an excessive period of examination of the case before the Constitutional Court, especially having in mind the importance of the case for the applicant who sought the eviction of the defendants and re-possession of his flat. In these circumstances the Court considers that the overall length of proceedings failed to satisfy the reasonable time requirement.

It follows that there has been a violation of Article 6 § 1 in respect of the length of these proceedings.

b. Proceedings concerning regulation of rent

28. As regards the proceedings for regulation of rent, the Court notes that they were divided into two sets of proceedings by the County Court's decision of 9 November 2004 (see § 13 above). The proceedings concerning M.V. are currently pending before the Zagreb Municipal Court and the proceedings concerning A, B and C are currently pending before the Zagreb County Court. However, in its decision of 9 November 2005 the Constitutional Court considered the length of these proceedings together. On that date the proceedings had lasted eight years and three days after the ratification. The proceedings in question have thus lasted about nine years before two levels of jurisdiction after the Convention entered into force in respect of Croatia, and are at present pending.

A. Admissibility

29. The Government made no observations in respect of these proceedings.

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

B. Merits

31. The Court considers that the length of the proceedings at issue, which have so far lasted more than nine years each before two levels of jurisdiction, and are still pending, is *a priori* unreasonable and calls for a global assessment. Their overall length could be justified only in exceptional circumstances. However, the Government have not put forward any justification for the length of proceedings.

32. 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, *Nogolica v. Croatia* (no. 3), no. 9204/04, 7 December 2006).

33. 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 about one year and two months.

34. In conclusion, the Court 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 these proceedings.

2. Proceedings concerning the lease contract

35. In respect of the proceedings concerning the lease contract the Court considers that the period to be taken into consideration began on 23 October 1998 when M.V. instituted proceedings against the applicant before the Zagreb Municipal Court seeking it to order the acceptance of a lease agreement.

36. The case was still pending on 9 November 2005 when the Constitutional Court gave its decision. On that date the proceedings had lasted seven years and sixteen days.

37. The period in question has thus lasted about eight years before two levels of jurisdiction after the Convention entered into force in respect of Croatia, and the proceedings are still pending before the Zagreb County Court.

A. Admissibility

38. The Government submitted that the applicant could no longer claim to be a victim within the meaning of Article 34 of the Convention because the Constitutional Court awarded just satisfaction to the applicant in respect of the length of the proceedings.

39. The applicant contested these arguments and objected to the amount of the just satisfaction awarded.

40. The question whether the applicant can still claim to be a victim, within the meaning of Article 34 of the Convention, of a violation of his right to a hearing within a reasonable time falls to be determined in the light of the principles recently established under the Court's case-law (*Cocchiarella v. Italy* [GC], no. 64886/01, §§ 69-107, ECHR 2006-... and *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 178-213, ECHR 2006 - ...).

41. The Constitutional Court, after having analysed the proceedings complained of awarded the applicant the equivalent of approximately 880 euros on 9 November 2005.

42. The low amount of just satisfaction awarded to the applicant by the Constitutional Court, as compared with the amounts usually granted by the Court, alone leads to the conclusion that the redress provided to him at domestic level was insufficient. In these circumstances, the argument that the applicant has lost his "victim" status cannot be upheld.

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

B. Merits

44. The Government accepted that, in view of the findings of the Constitutional Court, the proceedings lasted unreasonably long.

45. The underlying principles for assessing the reasonableness of the length of proceedings are the same as mentioned above (see § 26).

46. 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).

47. Having examined all the material submitted to it, the Court finds no 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 concurs with the Constitutional Court that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

48. The Court has also examined whether further delays occurred after the delivery of the Constitutional Court's judgment. It notes that the Municipal Court issued its judgment on 6 December 2005. After the plaintiff filed her appeal against the first instance judgment on 20 March 2005 the proceedings have been pending before the appellate court for a period which now amounts to about one year and ten months.

49. In view of the above considerations, the Court concludes that there has been a breach of Article 6 § 1 in respect of the length of the proceedings in issue.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1

50. The applicant complained under Article 8 of the Convention and Article 1 of Protocol No. 1 alleging that his right to respect for his home as well as his property rights were violated because the domestic courts had prevented him from living in his flat.

The invoked provisions read as follows:

Article 8

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

Article 1 of Protocol No. 1

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

51. The Court notes at the outset that the applicant instituted two sets of proceedings against the persons occupying his flat. The first set of these proceedings, concerning the applicant's claim for the eviction of the tenants ended with the Constitutional Court's decision of 13 October 2004. In these proceedings the domestic courts dismissed the applicant's claim. The applicant also instituted proceedings for regulation of the rent which are still pending. Furthermore, the tenant, M.V., instituted proceedings against the applicant in order to secure a lease agreement with a protected rent, pursuant to the Lease Act. The proceedings are presently pending. The Court considers that these proceedings are intrinsically linked to the issues raised by the applicant under Article 8 of the Convention and under Article 1 of Protocol No. 1. The Court cannot speculate what the outcome of these proceedings would be and how this outcome would affect the applicant's right to respect for his home and his property rights.

It follows that this part of the application is premature and must be rejected under Article 35 §§ 1 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

52. 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

53. The applicant claimed 122,000 euros (EUR) in respect of pecuniary damage and EUR 100,000 in respect of non-pecuniary damage.

54. The Government deemed these sums excessive and argued that there was no causal link between the violations claimed and the pecuniary damage sought.

55. 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 applicant must have sustained non-pecuniary damage - such as distress resulting from the protracted length of proceedings – which is not sufficiently compensated by the finding of a violation of the Convention. Ruling on an equitable basis, it awards him EUR 7,700 under that head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

56. The applicant also claimed EUR 8,880 for the costs and expenses incurred before the Court.

57. The Government left it to the Court to assess the necessity of the costs incurred.

58. 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 the proceedings before the Court plus any tax that may be chargeable on that amount.

C. Default interest

59. 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 complaint concerning the length of the proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the excessive length of the proceedings;
3. *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 7,700 (seven thousand and seven 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 24 May 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President