



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

FIRST SECTION

CASE OF LUKAVICA v. CROATIA

(Application no. 39810/04)

JUDGMENT

STRASBOURG

5 July 2007

FINAL

05/10/2007

*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 Lukavica 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 K. HAJIYEV,

Mr D. SPIELMANN,

Mr S.E. JEBENS,

Mr G. MALINVERNI, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 14 June 2007,

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

PROCEDURE

1. The case originated in an application (no. 39810/04) 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, Ms Ljiljana Lukavica (“the applicant”), on 19 October 2004.

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 April 2006 the Court decided to communicate the complaints concerning the length of the proceedings and the right to property 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 1962 and lives in Jastrebarsko.

5. On 3 February 1994 the police authorities impounded the applicant's vehicle suspecting that it had been stolen.

6. On 25 November 1994 the Osijek Municipal State Attorney's Office gave a decision by which it refused to institute criminal proceedings against a certain M.S. – a person from whom in 1992 the applicant had bought the

car – and dismissed the criminal complaint relating thereto. It however failed to decide on returning the vehicle to the applicant.

A. Civil proceedings

7. Meanwhile, on 23 June 1994 the applicant brought a civil action against the State in the Zagreb Municipal Court (*Općinski sud u Zagrebu*) seeking recovery of the impounded vehicle or, alternatively, pecuniary damages. Subsequently, on 9 November 1999, the applicant withdrew the first claim maintaining the one for damages.

8. On 10 October 1997 the Municipal Court gave judgment dismissing the applicant's claim. The applicant appealed.

9. On 11 May 1999 the Zagreb County Court (*Županijski sud u Zagrebu*) quashed the first-instance judgment for misapplication of substantive law and remitted the case.

10. In the resumed proceedings, the Municipal Court held hearings on 5 November 1999, 5 September 2001, 7 March 2003 and 11 March 2004. The hearings scheduled for 16 March 2001 and 2 July 2002 were adjourned owing to the illness of the judge assigned to hear the case, and to the applicant's absence, respectively.

11. On 11 March 2004 the parties reached an in-court settlement (*sudska nagodba*) whereby the State was to return the vehicle to the applicant, pay her 30,000 Croatian kunas (HRK) in respect of pecuniary damages, cover the costs of the proceedings in the amount of HRK 13,664 and pay the statutory default interest on these amounts accruable from the date of settlement, all within eight days. Under Croatian law an in-court settlement is equal, in terms of its effects, to a *res judicata* judgment and constitutes an enforcement title.

B. Enforcement proceedings

12. Since the State failed to perform the assumed obligations, on 15 September 2004 the applicant applied to the Zagreb Municipal Court for enforcement of the part of the above settlement concerning payment of damages and costs of proceedings. The case was later on transferred to the Jastrebarsko Municipal Court (*Općinski sud u Jastrebarskom*).

13. On 15 February 2005 the Jastrebarsko Municipal Court issued a writ of execution (*rješenje o ovrši*), which was carried out on 5 April 2005.

14. The applicant's vehicle has not been returned to her. The Government submitted that she had never attempted to enforce that part of the in-court settlement. The applicant, however, submitted that, relying on the settlement, she had attempted to retrieve her vehicle from the police authorities but had been sent from one location to another, at none of which her car could be found.

C. Proceedings before the Constitutional Court

15. Meanwhile, on 16 July 2002 the applicant lodged a constitutional complaint under section 63 of the Constitutional Court Act complaining about the length of the above proceedings. On 29 September 2004 the Constitutional Court (*Ustavni sud Republike Hrvatske*) dismissed her complaint finding that the delay was attributable to the complexity of the case and the applicant's conduct. In particular, it found that the applicant had contributed to the length of the proceedings in that she had failed to attend the hearing of 2 July 2002. As to the conduct of the Municipal Court, the Constitutional Court observed that there had existed two substantial periods during which no hearings had been held. However, even though they altogether amounted to more than two years, they had been justified because in that period the Municipal Court had been taking evidence by corresponding with the competent administrative authorities.

II. RELEVANT DOMESTIC LAW

16. The relevant part 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:

Section 63

“(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.”

17. The relevant provisions of the Criminal Procedure Act (*Zakon o krivičnom postupku*, Official Gazette nos. 53/91, 91/92, 34/93 (consolidated text), 38/93 (errata) and 28/96), as in force at the material time, provided as follows:

Section 105(3)

Objects of evidentiary value shall be impounded temporarily and returned to the owner after the conclusion of the proceedings. If such an object is indispensable to the

owner, it may be returned to him or her even before the conclusion of the proceedings but he or she shall be obliged to bring it upon request.

Section 145(1)

If there is a risk of delay, the police authorities may even before the commencement of the investigation temporarily impound objects pursuant to the provision of section 201 of this Act ...

Section 201

(1) Objects which have to be seized pursuant to the Criminal Code, or which may be used as evidence in criminal proceedings, shall be temporarily impounded and deposited with a court, or their safe-keeping shall be secured in another way.

...

(4) The police authorities may impound the objects referred to in paragraph (1) when acting under the provisions of [*inter alia*, section] ... 145 of this Act, or when executing a court order.

Section 205

The objects which were temporarily impounded in the course of the criminal proceedings shall be returned to their owner or holder upon the termination of the proceedings if their seizure is not required (section 487).

Section 487

(1) Objects that must be seized according to the Criminal Code shall also be seized when criminal proceedings do not end with a judgment convicting the accused, provided that this is required by considerations of public safety or the protection of morals.

(2) The authority before which the proceedings were pending at the time they ended or were discontinued shall render a separate decision thereon.

(3) The decision on the seizure of objects referred to in paragraph (1) of this section shall also be given by a court when it has failed to give such a decision in a judgment convicting the accused.

(4) A certified written copy of the decision on the seizure of objects shall be served on the owner of the object, if he is known.

(5) The owner of the object is entitled to appeal against the decision referred to in paragraphs (2) and (3) of this section if he or she considers that no legal ground for the seizure of the object existed. If the decision referred to in paragraph (2) of this section was not given by a court, the panel of the competent first-instance court shall decide on the appeal.

THE LAW

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

18. 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...”

19. The Government contested that argument.

20. 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 23 June 1994, when the applicant brought her civil action against the State. Consequently, they were already pending for more than three years before the ratification.

21. The proceedings on the merits ended on 11 March 2004 when the parties reached an in-court settlement.

22. The Court notes that to date the above in-court settlement has not been enforced in its entirety. While the part of the settlement concerning payment was executed on 5 April 2005, the applicant's vehicle has never been returned to her. Therefore, and bearing in mind that execution of a judgment given by any court must be regarded as an integral part of the “hearing” for the purposes of Article 6 (see *Hornsby v. Greece*, judgment of 19 March 1997, *Reports of Judgments and Decisions* 1997-II, pp. 510–511, § 40), the Court considers that the proceedings in question have not yet ended. They have so far lasted some nine and a half years after the ratification.

A. Admissibility

23. 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

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], no. 64886/01, § 68, to be published in ECHR 2006; and *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

25. 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, *Kozlica v. Croatia*, no. 29182/03, 2 November 2006).

26. 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. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

27. The applicant further complained that the length of the proceedings complained of and the subsequent non-enforcement of the part of the in-court settlement of 11 March 2004 concerning the return of her vehicle had infringed her right to the peaceful enjoyment of her possessions because she has been unable to use her vehicle for a prolonged period of time. She relied on Article 1 of Protocol No. 1, which reads as follows:

“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.”

28. The Government contested that argument.

A. Admissibility

1 Exhaustion of domestic remedies

29. The Government first invited the Court to reject the complaint on the ground that the applicant had failed to exhaust domestic remedies as required under Article 35 § 1 of the Convention.

30. In particular, the Government noted that in her complaint to the Constitutional Court the applicant had not complained about her constitutional right to property. Moreover, they submitted that the applicant had never applied for enforcement of the part of settlement regarding the return of her vehicle.

31. The applicant disagreed.

32. The Court reiterates that a person who has obtained an enforcement title against the State cannot be required to resort to enforcement proceedings in order to have it executed (see, for example and *mutatis mutandis*, *Reynbakh v. Russia*, no. 23405/03, § 24, 29 September 2005; and *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004). The State authorities were aware of the applicant's claim, and, as soon as the in-court settlement of 11 March 2004 became enforceable, it was incumbent on the State to comply with it. Furthermore, it does not appear that the applicant has given up her claim to have the vehicle returned to her; she attempted to retrieve it from the police authorities on the basis of the settlement, but to no avail (see paragraph 14 above).

33. In the light of the foregoing, the Government's objection must be dismissed.

2. *The applicant's victim status*

34. The Government further submitted that the applicant could no longer claim to be a victim within the meaning of Article 34 of the Convention since on 11 March 2004 she had concluded an in-court settlement whereby the State had obliged itself not only to return the vehicle but also to compensate her for the loss of its value. The violation complained of had, therefore, been remedied at the domestic level and the applicant had lost her victim status.

35. The applicant pointed out that even after the conclusion of the in-court settlement of 11 March 2004 the State had failed to honour its obligations and that therefore she had had to institute enforcement proceedings for its compulsory execution.

36. For the Court, it is sufficient to note that, to date, the applicant's vehicle has not been returned to her (see paragraph 14 above). Accordingly, she can still claim to be a "victim" of a breach of her right to property, and the Government's objection must therefore be dismissed.

37. 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

38. The Government admitted that there had been an interference with the applicant's right to peaceful enjoyment of her possessions when the police authorities impounded her vehicle. However, they went to argue that this measure amounted to the control of use of property and that the interference was justified under Article 1 of Protocol No. 1. In the alternative, should a violation of Article 6 § 1 of the Convention be found, the Government invited the Court to find that it was unnecessary to examine the applicant's complaint under Article 1 of Protocol No. 1 (*Zanghi v. Italy*, judgment of 19 February 1991, Series A no. 194-C, p. 47, § 23).

39. The applicant disagreed.

40. The Court considers that it does not have to decide whether the very fact of impounding the applicant's vehicle was justified under Article 1 of Protocol No. 1 to the Convention. This fact in any event falls outside the Court's temporal jurisdiction. However, the Court notes that the applicant was not deprived of her title. Thus, the only issue to be examined is whether the applicant's inability to use her car for a prolonged period of time contravened Article 1 of Protocol No. 1.

41. In this connection, the Court notes that on 25 November 1994 the Osijek Municipal State Attorney's Office decided not to institute criminal proceedings against a person from whom the applicant had bought the car. Since, in doing so it did not decide to permanently seize the vehicle as the object of the offence (*obiectum sceleris*) under section 487 of the Criminal Procedure Act, the applicant was entitled to have the car returned to her pursuant to section 205 thereof (see paragraph 17 above). It follows that the State's continued retention of the applicant's vehicle after that date and, in particular after 5 November 1997 (being the date of the entry into force of the Convention in respect of Croatia), has been unlawful (see, *mutatis mutandis*, *Frizen v. Russia*, no. 58254/00, § 36, 24 March 2005). This unjustified interference was only exacerbated by the excessive length of the civil proceedings the applicant had instituted in order to either recover her car or obtain compensation for it, as well as the failure of the State to return the vehicle even after these proceedings were concluded in her favour. As a result, the applicant has been left for many years in the situation of uncertainty during which she was, and still is, unable to enjoy her possessions (see, *mutatis mutandis*, *Kesyan v. Russia*, no. 36496/02, §§ 79-80, 19 October 2006).

There has accordingly been a breach of Article 1 of Protocol No. 1.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

42. The applicant further complained under Article 13 of the Convention taken in conjunction with Article 6 § 1 thereof that she 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.”

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

44. 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

45. 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

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

47. The Government contested the claim.

48. As regards the pecuniary damage alleged, the Court notes that the State's outstanding obligation to ensure the effective enforcement of the in-court settlement of 11 March 2004 is not in dispute. The Court recalls that the most appropriate form of redress in respect of a violation of Article 6 is to ensure that an applicant as far as possible is put in the position he or she would have been had the requirements of Article 6 not been disregarded (see, for example, *Mužević v. Croatia*, no. 39299/02, § 91, 16 November 2006; and *Jeličić v. Bosnia and Herzegovina*, no. 41183/02, § 53, to be published in ECHR 2006). The Court finds that this principle applies as well in the context of Article 1 of Protocol No. 1 (see, for example, *Reynbakh v. Russia*, cited above, §§ 34-35). It therefore considers that the Government shall secure, by appropriate means, the enforcement of the in-court settlement of 11 March 2004 in so far as it relates to the return of the applicant's vehicle.

49. As regards the non-pecuniary damage, the Court, ruling on an equitable basis, awards the applicant 4,800 euros (EUR) under that head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

50. The applicant did not submit a claim for the costs and expenses. Accordingly, the Court considers that there is no call to award her any sum on that account.

C. Default interest

51. 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 complaints concerning the excessive length of the proceedings and the right to property admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
4. *Holds*
 - (a) that the respondent State shall secure, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, by appropriate means, the enforcement of the in-court settlement of 11 March 2004 in so far as it relates to the return of the applicant's vehicle;
 - (b) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 4,800 (four thousand eight hundred euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at a rate applicable at the date of settlement, plus any tax that may be chargeable;

(c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 5 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President