



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

FIRST SECTION

CASE OF PODOREŠKI v. CROATIA

(Application no. 13587/03)

JUDGMENT
(Friendly settlement)

STRASBOURG

19 July 2007

This judgment is final but it may be subject to editorial revision.

In the case of Podoreški 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,

Mr K. HAJIYEV,

Mr D. SPIELMANN,

Mr G. MALINVERNI, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 28 June 2007,

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

PROCEDURE

1. The case originated in an application (no. 13587/03) 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, Mrs Zorica Podoreški (“the applicant”), on 21 March 2003.

2. The applicant was represented by Mr Z. Kostanjšek, a lawyer practising in Sisak. The Croatian Government (“the Government”) were represented by their Agent, Mrs Š. Stažnik.

3. The applicant alleged a violation of Article 6 § 1 of the Convention in that she had not had a fair hearing by an impartial tribunal because her appeal had been decided by the court at which the president of the civil division was the wife of one of her counterparties.

4. On 16 November 2006, after obtaining the parties' observations, the Court declared the application admissible.

5. On 29 May 2007 and on 30 May 2007 the Government and the applicant respectively submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

6. The applicant lives in Sisak.

7. On 6 October 1989 the applicant concluded a life-long assistance contract (*ugovor o doživotnom uzdržavanju*; “the contract”) with Mrs Z. C. The contract stipulated that the applicant was to inherit Z.C.'s flat, movables

and foreign currency savings, provided that she took care of her until her death.

8. On 27 June 1996, after the death of Z.C., her husband and relatives (“the plaintiffs”), including her nephew Mr B.H., instituted civil proceedings against the applicant in the Sisak Municipal Court (*Općinski sud u Sisku*) seeking annulment of the contract. They claimed that the applicant had not fulfilled her obligations arising out of the contract and that it should therefore be declared void.

9. During the first-instance proceedings, the applicant requested withdrawal of all judges of the Sisak Municipal Court and of the Sisak County Court (*Županijski sud u Sisku*) claiming that the plaintiffs were close relatives of one of the Sisak County Court's judges, Mrs L.H. In particular, B.H. was the husband of L.H., who was at that time the acting president of the Sisak County Court. The applicant claimed that the president of a court personally distributed files to the judges within the court and that L.H. inevitably had an influence on the appointment of the judge in her case. Moreover, she argued that the Sisak County Court was a small court, where all judges knew each other and that this would certainly undermine the impartiality of the judge assigned to hear the case.

10. The applicant therefore requested her case to be transferred to another court outside the Sisak County Court's territorial jurisdiction.

11. On 6 March 1997 the Sisak Municipal Court forwarded the applicant's request to the Supreme Court (*Vrhovni sud Republike Hrvatske*), interpreting it as a request for transfer of jurisdiction (*svrsishodna delegacija nadležnosti*) pursuant to section 68 of the Civil Procedure Act.

12. On 17 April 1997 the Supreme Court dismissed the applicant's request in respect of the Sisak Municipal Court as ill-founded, finding no indication that it might be biased. It further found that it was premature to decide on the transfer of jurisdiction of the Sisak County Court, because at that time the proceedings were only pending before the first-instance court.

13. On 1 July 1999 the Sisak Municipal Court gave judgment in favour of the plaintiffs and declared the contract void.

14. On 8 November 2001 judge L.H. ceased to perform the duties of the acting president of the Sisak County Court. She remained the president of the civil division of that court, a position which she had held since 1 May 1998. Under the legislation in force at the material time, the president of a court having several divisions has the administrative duty to assign cases to judges within the division.

15. The first-instance judgment appears to have been served on the applicant only in late 2001. On 23 October 2001 the applicant lodged an appeal with the Sisak County Court. In her appeal, the applicant requested that the case be reassigned to another County Court for decision.

16. On 25 April 2002 the Sisak County Court ruled on the merits of her case, dismissing the applicant's appeal and upholding the first-instance

judgment. The court had not forwarded the applicant's renewed request for transfer of jurisdiction to the Supreme Court. Instead, it concluded that such request was ill-founded, as the Supreme Court had already reached a decision on the same issue at an earlier stage in the proceedings, namely on 17 April 1997. Judge L.H. was not a member of the panel of three judges deciding on the appeal.

17. On 24 June 2002, the applicant filed a constitutional complaint with the Constitutional Court (*Ustavni sud Republike Hrvatske*) claiming *inter alia* that, by failing to decide on her request for the transfer of jurisdiction, the Sisak County Court violated her right to a fair hearing.

18. On 24 October 2002 the Constitutional Court dismissed the applicant's complaint, finding that the courts had correctly applied relevant substantive and procedural law in the applicant's case.

THE LAW

19. On 29 May 2007 the Court received the following declaration on the Government's behalf:

“I declare that the Government of Croatia offer to pay *ex gratia* 7,000 euros to Mrs Zorica Podoreški with a view to securing a friendly settlement of the above-mentioned case pending before the European Court of Human Rights.

This sum, which is to cover any pecuniary and non-pecuniary damage as well as costs and expenses, will be converted into the national currency at the rate applicable on the date of payment, and free of any taxes that may be applicable. It will be payable within three months from the date of notification of the decision taken by the Court pursuant to Article 37 § 1 of the European Convention on Human Rights. In the event of failure to pay this sum within the said three-month period, the Government undertake to pay simple interest on it, from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points. The payment will constitute the final resolution of the case.

The Government further undertake not to request that the case be referred to the Grand Chamber under Article 43 § 1 of the Convention.”

20. On 30 May 2007 the Court received the following declaration signed by the applicant's representative:

“I note that the Government of Croatia are prepared to pay *ex gratia* the sum of 7,000 euros to Mrs Zorica Podoreški with a view to securing a friendly settlement of the above-mentioned case pending before the European Court of Human Rights.

This sum, which is to cover any pecuniary and non-pecuniary damage as well as costs and expenses, will be converted into the national currency at the rate applicable on the date of payment, and free of any taxes that may be applicable. It will be payable within three months from the date of notification of the decision taken by the

Court pursuant to Article 37 § 1 of the European Convention on Human Rights. 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.

I accept the proposal and waive any further claims against Croatia in respect of the facts giving rise to this application. I declare that this constitutes a final resolution of the case.

This declaration is made in the context of a friendly settlement which the Government and the applicant have reached.

I further undertake not to request that the case be referred to the Grand Chamber under Article 43 § 1 of the Convention after delivery of the Court's judgment."

21. The Court takes note of the agreement reached between the parties (Article 39 of the Convention). It is satisfied that the settlement is based on respect for human rights as defined in the Convention or its Protocols (Article 37 § 1 *in fine* of the Convention and Rule 62 § 3 of the Rules of Court).

22. Accordingly, the case should be struck out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the application out of its list of cases;
2. *Takes note* of the parties' undertaking not to request a rehearing of the case before the Grand Chamber.

Done in English, and notified in writing on 19 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President