



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

FIRST SECTION

CASE OF SKOKANDIĆ v. CROATIA

(Application no. 43714/02)

JUDGMENT

STRASBOURG

31 July 2007

FINAL

31/10/2007

*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 Skokandić 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 D. SPIELMANN,

Mr S.E. JEBENS,

Mr G. MALINVERNI, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 10 July 2007,

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

PROCEDURE

1. The case originated in an application (no. 43714/02) 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 two Croatian nationals, Mr Ante Skokandić and Mr Ivan Skokandić (“the applicants”), on 10 October 2002.

2. The applicants, who had been granted legal aid, were represented by Mr E. Havkić, a lawyer practising in Zagreb. The Croatian Government (“the Government”) were represented by their Agent, Mrs Š. Stažnik.

3. On 16 September 2004 the Court decided to communicate to the Government the complaints concerning the length of the proceedings and the lack of remedies in that respect as well as in respect of the right to property. On 20 February 2007 it decided to apply Article 29 § 3 of the Convention and to rule on the admissibility and merits of the application at the same time.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicants, who are brothers, were born in 1939 and 1936 and live in Pisarovina and Korčula, respectively.

A. Civil proceedings for declaration of ownership

5. On 5 September 1974 the applicants brought a civil action against a certain J.P. and the Town of Korčula in the Korčula Municipal Court (*Općinski sud u Korčuli*) seeking to be declared owners of a plot of land on which a stone-pit has been located.

6. Following a remittal, on 5 September 1994 the Korčula Municipal Court (*Općinski sud u Korčuli*) decided to close the main hearing.

7. Afterwards, the applicants urged the Municipal Court several times to deliver the judgment, and filed several complaints with the Ministry of Justice.

8. On 10 April 2002 the court sent its judgment dated 5 September 1994 to the parties. The applicants, who were declared to be the owners of a part of the disputed land, received the judgment eight days later. The respondents appealed.

9. Meanwhile, on 19 March 2002 the applicants lodged a constitutional complaint under section 63 of the Constitutional Court Act complaining about the length of the above proceedings. On 7 July 2004 the Constitutional Court (*Ustavni sud Republike Hrvatske*) found a violation of their constitutional rights to a hearing within a reasonable time, awarded them each 8,100 Croatian kunas (HRK) in compensation, and ordered the Dubrovnik County Court to give a decision on the appeal in the shortest time possible but no later than six months following the publication of the decision in the Official Gazette. The Constitutional Court's decision was published on 20 July 2004.

10. On 7 October 2004 the Dubrovnik County Court (*Županijski sud u Dubrovniku*) accepted the appeal of the respondents, quashed the first-instance judgment and remitted the case.

11. The proceedings are currently again pending before the Korčula Municipal Court as the first-instance court.

B. Proceedings before the Administrative Court

12. On 14 June 1995 the Ministry of Economy (*Ministarstvo gospodarstva*) concluded an agreement with the company B.M. ("the company") granting it a concession for exploitation of minerals and stone on the land in the above dispute ("the concession agreement").

13. On 16 April 1997 the competent administrative authority granted the company a permit (*lokacijska dozvola*) for the planned exploitation.

14. In November 2001 the company started works on the property.

15. On 21 June 2002 the applicants brought an administrative action in the Administrative Court (*Upravni sud Republike Hrvatske*) challenging the concession agreement and the obtained permit. They also requested that the

works be stopped pending the civil proceedings determining ownership of the property.

16. On 26 June 2002 the Administrative Court invited the applicants to specify the decisions they were challenging and to submit their copies.

17. On 1 August 2002 the applicants completed their action by specifying the impugned decisions but failed to submit their copies.

18. On 20 November 2002 the Administrative Court declared the applicants' action inadmissible, finding that they had failed to complete their action as requested on 26 June 2002.

C. Civil proceedings for trespass

19. After the beginning of the exploitation works, on 21 November 2001 the second applicant brought an action in trespass (*actio negatoria*) in the Korčula Municipal Court against J.P. as the shareholder of the company B.M., the town of Korčula and the State. He also applied for an interim measure (*privremena mjera*) to halt the exploitation works.

20. On 2 June 2004 the Municipal Court dismissed the second applicant's claim as well as his application for an interim measure. It found that he had proved neither his ownership of the land at issue nor the unlawfulness of the exploitation works.

21. On 9 December 2005 the Dubrovnik County Court dismissed the second applicant's appeal and upheld the first-instance judgment.

22. On 8 March 2006 the second applicant lodged a regular constitutional complaint under section 62 of the Constitutional Court Act against the second-instance judgment. The case is currently pending before the Constitutional Court.

23. Meanwhile, on 30 July 2004 the second applicant lodged a constitutional complaint under section 63 of the Constitutional Court Act complaining about the length of the above proceedings. On 27 April 2006 the Constitutional Court dismissed his complaint finding that the length of the proceedings had not been excessive.

II. RELEVANT DOMESTIC LAW

24. 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 62

“1. Everyone may lodge a constitutional complaint with the Constitutional Court if he or she deems that the decision of a state authority, local or regional self-government, or a legal person invested with public authority, on his or her rights or obligations, or about suspicion or accusation for a criminal offence, has violated his or her human rights or fundamental freedoms, or right to local or regional self-government, guaranteed by the Constitution (hereinafter: constitutional right)...

2. If another legal remedy is allowed against the violation of the constitutional rights [complained of], the constitutional complaint may be lodged only after this remedy has been exhausted.

3. In matters in which an administrative action or, in civil and non-contentious proceedings, an appeal on points of law [*revizija*] are allowed, remedies shall be considered exhausted only after the decision on these legal remedies has been given.”

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 individual'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.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE LENGTH OF THE CIVIL PROCEEDINGS FOR DECLARATION OF OWNERSHIP

25. The applicants complained that the length of the civil proceedings for declaration of ownership 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...”

26. The Government contested that argument.

27. 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 September 1974, when the applicants brought their civil action against J.P. and the Town of Korčula. Consequently, they were pending for more than 23 years before the ratification.

28. The case was still pending on 7 July 2004 when the Constitutional Court gave its decision. On that date the proceedings had lasted about six years and eight months.

29. The proceedings have not yet ended. They have lasted another three years after the decision of the Constitutional Court. Thus, in total, the case has so far been pending for more than nine and a half years after the ratification. During that period two decisions were rendered and the case was examined before two levels of jurisdiction.

A. Admissibility

30. The Government submitted that the applicants could no longer claim to be victims within the meaning of Article 34 of the Convention since on 7 July 2004 the Constitutional Court had accepted their constitutional complaint, found a violation of their constitutional right to a hearing within reasonable time and awarded them compensation. The violation complained of had, therefore, been remedied before the domestic authorities and the applicants had lost their victim status.

31. The applicants disagreed.

32. The Court considers that the question whether the applicants can still claim to be victims, within the meaning of Article 34 of the Convention, of a violation of their 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 (see *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 69-107, to be published in ECHR 2006; and *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 178-213, to be published in ECHR 2006).

33. In this connection, the Court notes that on 7 July 2004 the Constitutional Court awarded each applicant the equivalent of approximately 1,100 euros (EUR) and ordered the County Court to deliver a decision on the appeal within six months. The County Court did so in less than three months by quashing the appealed judgment and remitting the case to the first-instance court. However, taking into account the special circumstances of the present case, the fact that the Constitutional Court gave its decision after some two years and three months from lodging of the constitutional complaint and that, as a result of the above remittal, the

proceedings complained of are again pending before the first-instance court, the Court considers that the compensation which amounts to approximately 37 % of what it generally awards in similar Croatian cases, cannot be considered sufficient having regard to its case-law. Accordingly, the applicants can still claim to be “victims” of a breach of their right to a hearing within reasonable time, and the Government's objection must therefore be dismissed.

34. In addition, the Court recalls that, if the way in which the Constitutional Court interpreted and applied the relevant provisions of the domestic law produces consequences that are inconsistent with the principles of the Convention, as interpreted in the light of the Court's case-law, the Court is called upon to examine the overall length of the impugned proceedings (see, *mutatis mutandis*, *Kozlica v. Croatia*, no. 29182/03, § 23, 2 November 2006). Given the above finding that the applicants may still claim to be “victims” of the alleged violation – and that therefore the Constitutional Court's decision in the present case is inconsistent with the Convention principles – the examination of the total length is warranted (see *Solárová and Others v. Slovakia*, no. 77690/01, §§ 41 and 43, 5 December 2006).

35. In this connection the Court observes, as noted above, that the proceedings have so far lasted another three years after the Constitutional Court's decision. The applicants did not lodge another constitutional complaint in respect of this period. However, in light of the above conclusion concerning their victim status, they were not required to do so. The Court shall take this period into consideration when determining the merits of the case and, if appropriate, the applicants' claim for just satisfaction under Article 41 of the Convention (see *Solárová and Others v. Slovakia*, cited above, § 42; *Riškova v. Slovakia*, no. 58174/00, § 90, 22 August 2006).

36. 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

37. 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).

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

39. The Court sees no reason to hold otherwise as it has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the present case (see, for example, *Tatjana Marinović v. Croatia*, no. 9627/03, 6 October 2005). Therefore, 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.

40. As regards the period subsequent to the delivery of the Constitutional Court's decision, the Court notes that, following a remittal, the proceedings are again pending at first instance. In these circumstances, the Court necessarily concludes that further unjustified delays occurred after that date.

41. In the light of the foregoing, the Court considers that there has been a breach of Article 6 § 1.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 6 § 1 THEREOF

42. The applicants further complained under Article 13 of the Convention, taken in conjunction with Article 6 § 1 thereof, that they had not had an effective remedy for the length of the civil proceedings complained of because the Constitutional Court had not decided their constitutional complaint in that regard. 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 Government reiterated that on 7 July 2004, that is, after the applicants introduced their application with the Court, the Constitutional Court ruled on their constitutional complaint, found a violation of their constitutional right to a hearing within reasonable time and awarded them compensation. Against this background, it could not be argued that the constitutional complaint had not been an effective remedy in the applicants' case. The applicants agreed.

44. The Court considers that the applicants have agreed with the Government that, because the Constitutional Court eventually gave decision on their constitutional complaint, they were no longer victims of the violation complained of and sees no reason to hold otherwise. 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.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 1 OF PROTOCOL No. 1 THERETO

45. The applicants also complained that they had not had an effective remedy at their disposal in order to stop the exploitation of their property, since the Korčula Municipal Court failed to decide on their application for an interim measure of 21 November 2001. Article 1 of Protocol No. 1 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.”

46. The Government argued that Article 13 was not applicable in the present case. That Article was not an independent provision but its applicability was related to some other right protected by the Convention, in the instant case, to Article 1 of Protocol No. 1 thereto. However, the applicants had not proven that they were the owners of the property which was the subject of the exploitation works.

47. The applicants disagreed.

48. As regards the first applicant, the Court notes that he did not apply for an interim measure and was thus not a party to the ensuing proceedings. For that reason he cannot be considered a “victim” of a violation complained of. It follows that in respect of the first applicant this complaint is incompatible *ratione personae* with the provisions of the Convention, within the meaning of Article 35 § 3, and must be rejected in accordance with Article 35 § 4.

49. As regards the second applicant, the Court first reiterates that for a remedy to be effective it must, *inter alia*, provide relief rapidly enough to avoid any irreparable harm (see, notably, *Čonka v. Belgium*, no. 51564/99, § 79, ECHR 2002-I). It further considers that regular remedies (for example, a civil action) may not always be able to do so because they are sometimes too slow or allow for dilatory manoeuvres. Therefore, Article 13 may require the availability of provisional remedies in cases where their absence could result in irreparable harm for the rights guaranteed by the Convention. In such situations the provisional remedies could be the only effective remedies.

50. However, the Court reiterates that Article 13 does not contain a general guarantee of legal protection of all substantive rights. It relates exclusively to those cases in which an applicant alleges, on arguable

grounds, that one of his or her rights or freedoms set forth in the Convention has been violated. The Court observes in this connection that the proceedings the applicants instituted to be declared the owners of the property at issue are still pending. Therefore, in so far as the applicants rely on Article 1 of Protocol No. 1 to the Convention, the Court considers that it would be premature to take a position on the applicability of that Article (see, *mutatis mutandis*, *Grabinski v. Poland* (dec.), no. 3702/02, 18 October 2005), to which their complaint under Article 13 is linked.

51. In any event, the Court considers that in the present case neither applicant could have ever claimed, on arguable grounds, that he was facing irreparable harm on account of the exploitation works performed on the land at issue. Should the applicants eventually be declared the owners of the disputed land they will be able to bring a civil action in damages against the State and the company B.M. and obtain compensation for any damage they may have sustained. Therefore, the failure of the Municipal Court to promptly decide on the second applicant's application for an interim measure, though regrettable, does not raise an issue under the Convention. It follows that, even assuming applicability of Article 1 of Protocol No. 1, the applicants' Article 13 complaint is inadmissible under Article 35 § 3 as manifestly ill-founded in respect of the second applicant, and must be rejected pursuant to Article 35 § 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 6 ON ACCOUNT OF THE OUTCOME OF THE ADMINISTRATIVE PROCEEDINGS

52. The applicants complained under Article 6 § 1 of the Convention about the outcome of the above administrative proceedings.

53. The Court notes that the applicants failed to lodge a constitutional complaint against the Administrative Court's decision of 20 November 2002. It follows that this part of the application is inadmissible under Article 35 § 1 for non-exhaustion of domestic remedies and must be rejected pursuant to Article 35 § 4 of the Convention.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

54. Lastly, the applicants complained of the infringement of their rights under Articles 14 and 17 of the Convention, which provide, respectively, for prohibition of discrimination in the enjoyment of Convention rights and prohibition of abuse of these rights.

55. In the light of all the material in its possession, and in so far as the matters complained of were within its competence, the Court considers that the present case does not disclose any appearance of a violation of any of the above Articles of the Convention. It follows that these complaints are

inadmissible under Article 35 § 3 as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

56. 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

57. The applicants claimed 6,700 euros (EUR) in respect of non-pecuniary damage.

58. The Government contested the claim.

59. The Court reiterates that where an applicant had resorted to an available domestic remedy and thereby obtained a finding of a violation and was awarded compensation, but can nevertheless still claim to be a “victim”, the amount to be awarded under Article 41 may be less than the amounts the Court was awarding in similar cases. In that case an applicant must be awarded the difference between the amount obtained from the Constitutional Court and an amount that would not have been regarded as manifestly unreasonable compared with the amounts awarded by the Court. An applicant should also be awarded an amount in respect of stages of the proceedings that may not have been taken into account by the Constitutional Court (see, *mutatis mutandis*, *Cocchiarella v. Italy* [GC], cited above, §§ 139-141).

60. The Court recalls that each applicant was awarded EUR 1,100 by the Constitutional Court, which is approximately 37 % of what the Court would have awarded them. Having regard to the circumstances of the present case, the characteristics of the constitutional complaint as well as the fact that, notwithstanding this domestic remedy, the Court has found a violation, it considers, ruling on an equitable basis, that the applicants should be awarded jointly the sum of EUR 500 in respect of the period covered by the Constitutional Court's decision.

61. The Court also awards the applicants jointly the sum of EUR 1,800 for the further delay in the proceedings following the delivery of the Constitutional Court's decision of 7 July 2004 (see paragraphs 34-35 above).

62. Accordingly, the applicants shall be awarded jointly the total sum of EUR 2,700 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

63. The applicants, who received legal aid, did not submit a claim for the costs and expenses. Accordingly, the Court considers that there is no call to award them any sum on that account.

C. Default interest

64. 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 excessive 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;
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 in accordance with Article 44 § 2 of the Convention, EUR 2,700 (two thousand seven 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;
 - (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 31 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President