



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

FIRST SECTION

CASE OF JAKUPOVIĆ v. CROATIA

(Application no. 12419/04)

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 Jakupović 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. 12419/04) 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 three Croatian nationals, Mrs Adila Jakupović, Mr Ešerf Jakupović and Mrs Senada Jakupović (“the applicants”), on 4 March 2004.

2. The applicants were represented by Mrs Lj. Nogolica, a lawyer practising in Zagreb. The Croatian Government (“the Government”) were represented by their Agent, Mrs Š. Stažnik.

3. On 22 June 2006 the Court decided to give notice of the application 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

4. The applicants were born in 1947, 1943 and 1986 respectively and live in Novigrad.

5. On 2 February 1998 the applicants brought a civil action against the State and the hospital R. in the Zagreb Municipal Court (*Općinski sud u Zagrebu*) seeking non-pecuniary damages for the death of the first and the second applicant's son and the third applicant's brother.

6. The court held hearings on 4 June 1998, 18 January, 10 June and 2 September 1999. The applicants withdrew their action in respect of the State. Meanwhile the insurance company C.O. intervened in the proceedings.

7. The next hearing was held on 10 July 2003.

8. On 29 April 2004 the court gave judgment awarding the damages sought in part. Following an appeal by the respondents, on 21 March 2006 the Zagreb County Court quashed the first-instance judgment and remitted the case.

9. Meanwhile, on 10 December 2002 the applicants lodged a constitutional complaint concerning the length of proceedings under section 63 of the Constitutional Court Act. On 17 September 2004 the Constitutional Court accepted the applicants' complaint, finding a violation of their right to a hearing within a reasonable time and awarding them each compensation in the amount of 4,400 Croatian kunas (HRK).

THE LAW

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

10. 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...”

11. The Government acknowledged, in light of the Constitutional Court's decision, that there had been a violation of the applicants' right to a hearing within a reasonable time. However, they maintained that they were afforded appropriate redress at the national level.

12. The period to be taken into consideration began on 2 February 1998 when the applicants lodged their action. The proceedings had lasted about five years and seven months before one court instance when on 17 September 2004 the Constitutional Court gave its decision. Subsequently, the proceedings have lasted another two years and ten months after that date.

13. In total, the case has so far been pending for more than nine and a half years before two levels of jurisdiction.

A. Admissibility

14. The Government submitted that the applicants could no longer claim to be victims within the meaning of Article 34 of the Convention since the Constitutional Court had accepted the applicants' constitutional complaint, found a violation of their constitutional right to a hearing within a 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.

15. The applicants submitted that, in spite of the Constitutional Court's decision of 17 September 2004, they were still “victims” within the meaning of Article 34 of the Convention. They argued that the amount of compensation was insufficient and significantly lower than amounts usually awarded by the Court in Croatian length-of-proceedings cases.

16. The Court observes that in the present case the applicants' victim status within the meaning of the Convention depends on whether the redress afforded to them at the domestic level was adequate and sufficient having regard to Article 41 of the Convention. This issue falls to be determined in the light of the principles established under the Court's case-law (see, most recently, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 178-213, ECHR 2006-... and *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 69-98, ECHR 2006-...).

17. The Court notes that the Constitutional Court awarded the applicants the equivalent of approximately 600 euros (EUR). This amount is approximately 20% of what the Court generally awards in similar Croatian cases. This factor in itself leads to a result that the amount is manifestly unreasonable having regard to the Court's case-law. The redress obtained by the applicant at the domestic level was thus insufficient (see *Cocchiarella*, cited above, §§ 106-107; and, *mutatis mutandis*, *Tomašić v. Croatia*, no. 21753/02, § 35, 19 October 2006). The applicants can accordingly still claim to be “victims” of a breach of their right to a hearing within a reasonable time.

18. The Court further 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).

19. In this connection the Court observes, as noted above, that the proceedings have so far lasted another two years and ten months 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; *Rišková v. Slovakia*, no. 58174/00, § 90, 22 August 2006).

20. 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

21. 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).

22. 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 *Silva Pontes v. Portugal*, judgment of 23 March 1994, Series A no. 286-A).

23. Having examined all the material submitted to it, 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.

24. 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.

25. In view of the above considerations, the Court concludes that there has been a breach of Article 6 § 1.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

26. The applicants further complained that the constitutional complaint was not an effective remedy for the excessive length of their proceedings. They relied on Article 13 of the Convention, which 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.”

27. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI). The “effectiveness” of a “remedy” within the meaning of Article 13, however, does not depend on

the certainty of a favourable outcome for the applicant. (see *Kudla*, cited above, § 157).

28. The Court has already accepted that a complaint to the Constitutional Court under section 63 of the Constitutional Court Act represented an effective remedy for length of proceedings still pending in Croatia (see *Slaviček v. Croatia* (dec.), no. 20862/02, ECHR 2002-VII). In the present case, the Constitutional Court accepted the applicants' constitutional complaint, found a violation of their constitutional right and awarded them compensation. The mere fact that the just compensation awarded to the applicants at the domestic level does not correspond to the amounts awarded by the Court in comparable cases does not render the remedy ineffective (see for example *Riškova*, cited above, § 100).

29. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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

31. The applicants claimed 45,000 euros (EUR) in respect of non-pecuniary damage.

32. The Government contested this claim.

33. The Court recalls 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).

34. The Court recalls that each applicant was awarded EUR 600 by the Constitutional Court. 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 EUR 2,300 in respect of the period covered by the Constitutional Court's decision.

35. The Court also awards the applicants jointly the sum of EUR 3,600 for the further delay in the proceedings following the delivery of the Constitutional Court's decision of 17 September 2004 (see paras. 18-19).

36. Accordingly, the applicants shall be awarded jointly the total sum of EUR 5,900 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

37. The applicants also claimed HRK 25,000 for the costs and expenses incurred before the domestic courts and before the Court.

38. The Government contested this claim.

39. 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 jointly the sum of EUR 1,000 for costs and expenses, plus any tax that may be chargeable on that amount.

C. Default interest

40. 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 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 5,900 (five thousand nine hundred euros) in respect of non-pecuniary damage;
- (ii) EUR 1,000 (one thousand 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 31 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President