



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

FIRST SECTION

CASE OF LETICA v. CROATIA

(Application no. 27846/05)

JUDGMENT

STRASBOURG

18 October 2007

FINAL

18/01/2008

*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 Letica 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 27 September 2007,

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

PROCEDURE

1. The case originated in an application (no. 27846/05) 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 Jere Letica and Mr Branko Letica “the applicants”), on 9 June 2005

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

3. On 11 January 2007 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

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

4. The applicants were born in 1930 and 1940 respectively and live in Zagreb.

5. On 29 January 1974 the Split Municipal Court (*Općinski sud u Splitu*) received a death certificate of a certain M.K. and at the hearing held on 28 February 1974 her will was pronounced. The applicants were among her heirs. However, another party claimed that M.K. had made another will on a date posterior to the one of the will which had been pronounced.

6. Until 5 November 1997 a number of hearings were held, but the proceedings were not concluded. The last hearing was held on 3 October 1995. After 5 November 1997 (i.e. the date when the Convention was ratified by Croatia) the first hearing was held on 22 April 2003, and then again on 15 May 2003.

7. On 21 May 2003 the Split Municipal Court stayed the inheritance proceedings and instructed the applicants and two other persons to institute civil proceedings against a third person in connection with the dispute among them arising in respect of the inheritance proceedings. However, despite the fact that the proceedings were stayed, on 20 August 2003 another hearing was held when it was decided that the attorney, who allegedly assisted M.K. in drafting her second will, be heard. Since the attorney resided in Zagreb, she was heard by the Zagreb Municipal Court (*Općinski sud u Zagrebu*) on 11 May 2004.

8. It appears that the applicants appealed against the decision staying the proceedings and on 13 July 2004 the case file was therefore transferred to the Split County Court (*Županijski sud u Splitu*) as the appellate court.

9. Meanwhile, on 23 January 2004 the applicants filed a constitutional complaint about the length of proceedings. On 14 February 2005 the Constitutional Court found a violation of the applicants' right to a trial within reasonable time and awarded each applicant Croatian Kunas (HRK) 10,600 in compensation. It also ordered the Split County Court to adopt its decision in the shortest time possible but no later than six months from the publication of the decision in the Official Gazette.

10. On 8 April 2005 the Split County Court upheld the first instance decision by which the inheritance proceedings had been stayed.

11. In the civil proceedings instituted according to the Municipal Court's instruction (see paragraph 7 above) on 9 May 2005, another party filed a constitutional complaint about the length of these proceedings and on 12 March 2007 the Constitutional Court ordered the Split Municipal Court to adopt its decision in the shortest time possible but no later than six months from the publication of the decision in the Official Gazette.

12. The inheritance proceedings are still pending.

II. RELEVANT DOMESTIC LAW

13. Article 29 § 1 of the Constitution (*Ustav Republike Hrvatske*, Official Gazette no. 41/2001 of 7 May 2001) reads as follows:

“In the determination of his rights and obligations or of any criminal charge against him, everyone is entitled to a fair hearing within a reasonable time by an independent and impartial court established by law.”

14. 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.”

THE LAW

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

15. The applicants complained that the length of the inheritance proceedings was 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...”

A. Admissibility

16. 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 29 January 1974. Thus, they were pending for about twenty-three years and nine months before the ratification.

17. The case was still pending on 14 February 2005 when the Constitutional Court gave its decision. On that date the proceedings had lasted another seven years and three months.

18. The proceedings have not yet ended. They have lasted about another two years and seven months after the decision of the Constitutional Court.

Thus, in total, the case has so far been pending for more than nine years and ten months after the ratification. During that period no decisions on merits has been adopted and the case has been examined at one level of jurisdiction.

19. 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.

20. The applicants disagreed.

21. 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-...).

22. In this connection, the Court notes that on 14 February 2005 the Constitutional Court awarded each applicant the equivalent of approximately 1,440 euros (EUR) and ordered the Split County Court to deliver a decision on appeal within six months. Furthermore, upon another constitutional complaint concerning the length of civil proceedings the resolution of which is indispensable for the inheritance proceedings in question to continue (see §§ 7 and 11 above), and which complaint was lodged by the other party to those civil proceedings, the Constitutional Court also ordered that those civil proceedings be speeded up, which had a beneficial effect on the applicant as well. However, the Court considers that the amount awarded did not correspond to the gravity of the violation, bearing in mind the circumstances of the present case and in particular the overall length of the inheritance proceedings, exceeding thirty one years at the time when the Constitutional Court gave its decision. This factor combined with the fact that the proceedings are still pending leads to a result that the redress obtained by the applicants at the domestic level was unreasonable having regard to the Court's case-law and 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.

23. The Court further recalls that, when the compensation awarded by the national authorities in respect of the length of proceedings has been found insufficient, 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, the examination of the total length is warranted (see *Solárová and Others v. Slovakia*, no. 77690/01, §§ 41 and 43, 5 December 2006).

24. In this connection the Court observes, as noted above, that the proceedings have so far lasted another two years and seven 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).

25. 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

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 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).

27. 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 *Mahmutović v. Croatia*, no. 9505/03, 15 February 2007).

28. 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.

29. 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. 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

32. The applicants asked the Court to award them damages in the amount corresponding to its case-law in similar cases.

33. The Government made no comments in this respect.

34. 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).

35. The Court recalls that each applicant was awarded EUR 1,440 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 1,400 in respect of the period covered by the Constitutional Court's decision.

36. The Court also awards the applicants the sum of EUR 2,400 for the further delay in the proceedings following the delivery of the Constitutional Court's decision of 14 February 2005.

37. Accordingly, the applicants shall be awarded jointly the total sum of EUR 3,800 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

38. The applicants 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

39. 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 application admissible;
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 3,800 (three 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;
 - (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;

Done in English, and notified in writing on 18 October 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President