



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

FIRST SECTION

CASE OF LESNINA D.D. v. CROATIA

(Application no. 18421/05)

JUDGMENT

STRASBOURG

25 October 2007

FINAL

31/03/2008

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 Lesnina d.d. 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,

Mrs E. STEINER,

Mr K. HAJIYEV,

Mr D. SPIELMANN, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 4 October 2007,

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

PROCEDURE

1. The case originated in an application (no. 18421/05) 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 a company from Slovenia, Lesnina d.d. (“the applicant”), on 15 April 2005.

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

3. On 28 November 2006 the Court decided to communicate the complaint concerning the length of the proceedings. 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**THE CIRCUMSTANCES OF THE CASE**

4. In June 1992 eight persons brought a civil action in the Zadar Municipal Court (*Općinski sud u Zadru*) against the applicant company (then called “*Moderni interijeri*”), challenging their dismissal from work. The plaintiffs also sought that a preliminary measure be issued.

5. In its judgment of 21 December 1992 the Zadar Municipal Court granted the claim, but the judgment was quashed by the Zadar District Court

(*Okružni Sud u Zadru*) on 6 October 1993 and the case was remitted to the Zadar Municipal Court.

6. In the fresh proceedings the Zadar Municipal Court again granted the claim on 27 September 1994. It also granted the requested preliminary measure. On 17 May 1995 the judgment on the merits was reversed in part by the Zadar County Court (*Županijski sud u Zadru*) and it became final. Furthermore, the decision concerning the preliminary measure was quashed and to that extent the case was remitted to the Zadar Municipal Court for fresh decision.

7. Both the applicant company and the plaintiffs filed appeals on points of law against the appellate judgment on the merits. In accordance with the applicable procedural rules the appeal shall be lodged with the Municipal Court which conducted the case at the first instance and then forwarded with the case-file, for a decision on the merits, to the Supreme Court (*Vrhovni sud Republike Hrvatske*).

8. After receiving the appeals on points of law the Municipal Court firstly forwarded the case-file to the Supreme Court. However, it was returned to the Municipal Court with an instruction that it first decide on the plaintiffs' request for a preliminary measure. On 20 January 1998 the Municipal Court issued a decision noting that this request had been withdrawn. The case-file was then again forwarded to the Supreme Court.

9. On 22 November 2000 the Supreme Court dismissed both appeals on points of law.

10. The applicant company then filed a constitutional complaint alleging that the lower courts had erred in their application of relevant laws, that its right to property and free entrepreneurship had been violated. On 29 September 2004 the Constitutional Court (*Ustavni sud Republike Hrvatske*) dismissed the complaint. The decision was served on the applicant company's representative on 21 October 2004.

THE LAW

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

11. The applicant company made two separate complaints under Article 6 § 1 of the Convention. It firstly complained that the length of the proceedings had been incompatible with the “reasonable time” requirement. Secondly, it complained about the fairness of the proceedings alleging that the domestic courts had wrongly established the relevant facts and erred in their application of legal provisions. The relevant parts of Article 6 read as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing within a reasonable time by [a] ... tribunal...”

A. Length of proceedings

12. The period to be taken into consideration began only on 6 November 1997, when the recognition by Croatia of the right of individual petition took effect. 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. The Court notes that prior to the entry into force of the Convention in respect of Croatia the proceedings already lasted five years, five months and five days.

13. The period in question ended on 21 October 2004. It follows that a period of six years, eleven months and fifteen days falls within the Court's competence *ratione temporis*. In that period the case was first pending for two months and sixteen days before the Municipal Court upon the plaintiffs' request that a preliminary measure be granted. After that it was examined by the Supreme Court upon both parties' appeals on points of law until 22 November 2000 and then by the Constitutional Court until 21 October 2004.

1. Admissibility

14. The Government invited the Court to reject the application for non-exhaustion of domestic remedies. They submitted that as of 22 March 2002 the applicant could have lodged a constitutional complaint under section 63 of the Constitutional Court Act.

15. The applicant company did not address this issue.

16. The Court recalls that as of 22 March 2002 a constitutional complaint under section 63 of the Constitutional Court Act is considered an effective remedy in respect of the length of proceedings still pending in Croatia (see *Slaviček v. Croatia* (dec.), no. 20862/02, ECHR 2002-VII). The Court notes that the domestic proceedings before the Supreme Court ended on 22 November 2000 and that at that time no remedy capable of addressing the length of civil proceedings was available in the nation legal system. As to the proceedings conducted after such a remedy was introduced, i.e. on 22 March 2002, the Court notes that at that moment the case was pending before the Constitutional Court. In the Court's opinion filing a constitutional complaint about the length of proceedings before the Constitutional Court would not serve any meaningful purpose. In these circumstances, the Court considers that the applicant company's complaint cannot be rejected for failure to exhaust domestic remedies.

17. 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.

2. *Merits*

18. 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, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII). The Court reiterates that special diligence is necessary in employment disputes (*Ruotolo v. Italy*, judgment of 27 February 1992, Series A no. 230-D, p. 39, § 17).

19. 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 *Frydlender*, cited above).

20. As regards the conduct of the domestic authorities, the Court notes that, prior to the entry into force of the Convention in respect of Croatia, the proceedings had already been pending before the domestic courts for more than five years. Furthermore, in the period to be taken into consideration, the proceedings lasted for almost another seven years. During that time it took the Supreme Court more than two years and ten months and the Constitutional Court almost four years to decide on the applicants' case, whereas the first of these courts only reviewed the case on points of law and the second the constitutionality of the lower courts' decision, while neither took any evidence or performed any other procedural activity.

21. In these circumstances, and taking into account the overall duration of the proceedings, the Court considers that the length of the proceedings in the instant case was excessive and failed to satisfy the reasonable time requirement.

There has accordingly been a breach of Article 6 § 1.

B. Fairness of the proceedings

Admissibility

22. In so far as the applicant company's complaint may be understood to concern assessment of the evidence and the result of the proceedings before the domestic courts, the Court reiterates that, according to Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and

freedoms protected by the Convention. Moreover, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see *Schenk v. Austria*, judgment of 12 July 1988, Series A no. 140, p. 29, §§ 45-46 and *Garcia Ruiz v. Spain*, no. 30544/96, Reports of Judgments and Decisions 1999-I, § 28).

23. The Court finds that there is nothing to indicate that the national courts' evaluation of the facts and evidence presented in the applicant company's case was contrary to Article 6 of the Convention. The applicant company was fully able to state its case and challenge the evidence; all essential evidence was presented; there had been a public hearing at first instance and the courts' decisions were satisfactorily reasoned.

24. The Court notes also that the applicant company was able to lodge an appeal against the first instance judgment, an appeal on points of law as well as a constitutional complaint. In these circumstances the Court finds that the case discloses no appearance of a violation of the provisions invoked by the applicant company. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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.”

26. The applicant company did not submit a claim for just satisfaction or costs and expenses within the fixed time-limit. Accordingly, the Court considers that there is no call to award any sum on that account.

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* that there is no call to award any just satisfaction.

Done in English, and notified in writing on 25 October 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President