



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

FIRST SECTION

CASE OF BALEN v. CROATIA

(Application no. 43429/05)

JUDGMENT

STRASBOURG

25 October 2007

FINAL

25/01/2008

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 Balen 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. 43429/05) 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 Croatian national, Ms Nada Balen (“the applicant”), on 10 November 2005.

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

3. On 5 February 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 applicant was born in 1948 and lives in Zagreb.

5. Following her dismissal from work the applicant brought a civil action in the Zagreb Municipal Court (*Općinski sud u Zagrebu*) on 8 May 1997 against her former employer seeking her reinstatement. Since the entry into force of the Convention in respect of Croatia on 5 November 1997, the Municipal Court held five hearings and on 8 April 1998 a judgment was adopted, dismissing the applicant's claim. The judgment was served on the applicant on 1 September 1999.

6. Following an appeal the case-file was forwarded to the Zagreb County Court (*Županijski sud u Zagrebu*) on 4 December 1999 which, however, returned it to the Municipal Court on 22 December 2000 with the instruction to request a proper power of attorney from the defendant. After having complied with this instruction, the Municipal Court again forwarded the case-file to the County Court on 15 January 2001. On 23 September 2004 the County Court upheld the first instance judgment which thus became final.

7. Meanwhile, on 21 July 2003 the applicant lodged a constitutional complaint under section 63 (1) of the Constitutional Court Act. On 6 April 2005 the Constitutional Court (*Ustavni sud Republike Hrvatske*) accepted the applicant's complaint, finding a violation of her constitutional right to a hearing within a reasonable time. It awarded the applicant compensation in the amount of 7,500 Croatian kunas (HRK).

II. RELEVANT DOMESTIC LAW

8. 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.”

9. 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

10. The applicant complained that the length of the civil proceedings concerning her claim for reinstatement 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 applicant's right to a hearing within a reasonable time. However, they maintained that she had been afforded appropriate redress at the national level.

12. 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 8 May 1997, when the applicant brought her civil action. Thus, they were pending for about six months before the ratification.

13. The case was concluded by the Zagreb County Court's judgment of 23 September 2004. The proceedings thus lasted further six years, ten months and seventeen days after the ratification. During that period two decisions were rendered and the case was examined at two levels of jurisdiction.

14. When the Constitutional Court made its assessment the proceedings had already been concluded. They lasted six years, ten months and seventeen days after the ratification of the Convention by Croatia, before two levels of jurisdiction.

A. Admissibility

15. The Government submitted that the applicant could no longer claim to be a victim within the meaning of Article 34 of the Convention since the Constitutional Court had accepted the applicant's constitutional complaint, found a violation of her constitutional right to a hearing within a reasonable time, and awarded her compensation. The violation complained of had, therefore, been remedied before the domestic authorities and the applicant had lost her victim status.

16. The applicant disagreed.

17. The Court observes that in the present case the applicant's victim status within the meaning of the Convention depends on whether the redress afforded to her 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-...).

18. In this connection, the Court notes that on 6 April 2005 the Constitutional Court awarded the applicant the equivalent of approximately 1,000 euros (EUR). The compensation awarded by the Constitutional Court cannot be considered sufficient having regard to the Court's case-law. Accordingly, the applicant can still claim to be the "victim" of a breach of her right to a hearing within reasonable time, and the Government's objection must therefore be dismissed.

19. 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

20. 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).

21. 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 *Tatjana Marinović v. Croatia*, no. 9627/03, 6 October 2005).

22. 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.

23. 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

24. 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

25. The applicant asked the Court to award her damages in the amount corresponding to its case-law in similar cases.

26. The Government submitted that the applicant had already been awarded full compensation by the Constitutional Court.

27. 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. (see, *mutatis mutandis*, *Cocchiarella v. Italy* [GC], cited above, §§ 139-141).

28. The Court recalls that the applicant was awarded about EUR 1,020 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 applicant should be awarded EUR 600.

B. Costs and expenses

29. The applicant did not submit a claim for the costs and expenses. Accordingly, the Court considers that there is no call to award her any sum on that account.

C. Default interest

30. 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 applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 600 (six 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 25 October 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President