



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

FIRST SECTION

CASE OF PLAZONIĆ v. CROATIA

(Application no. 26455/04)

JUDGMENT

STRASBOURG

6 March 2008

FINAL

06/06/2008

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 Plazonić v. Croatia,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Christos Rozakis, *President*,

Nina Vajić,

Anatoli Kovler,

Khanlar Hajiyeu,

Dean Spielmann,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 12 February 2008,

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

PROCEDURE

1. The case originated in an application (no. 26455/04) 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 a Croatian national, Mr Ivan Plazonić (“the applicant”), on 28 May 2004.

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

3. On 19 September 2006 the Court decided to communicate the complaint concerning the length of the three sets of 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**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1936 and lives in Koška.

A. The first set of proceedings*1. Civil proceedings*

5. On 8 October 1996 the applicant brought a civil action against a certain artisan B.P. in the Pula Municipal Court (*Općinski sud u Puli*) seeking payment.

6. The court held hearings on 12 November (in the applicant's absence) and 19 December 1997, 28 January 1998, 3 September and 4 October 1999, 3 February, 3 March and 5 December 2000 and 9 January and 7 May 2001.

7. The hearings scheduled for 15 July 1998 and 16 November 1999 were adjourned on the applicant's request. Those scheduled for 14 December 1999 and 14 March 2001 were also adjourned.

8. The hearing scheduled for 31 October 2000 was adjourned since the parties attempted to reach an in-court settlement (*sudska nagodba*).

9. At the hearing held on 7 May 2001 the Municipal Court gave judgment accepting the applicant's claim in part. The respondent appealed on 24 December 2001 and on 1 February 2002 his appeal was together with the case-file forwarded to the Pula County Court (*Županijski sud u Puli*).

10. On 13 October 2003 the Pula County Court quashed the first-instance judgment and remitted the case.

11. In the resumed proceedings, the Pula Municipal Court held hearings on 2 March and 22 November 2004 and 21 February 2005.

12. At the hearing held on 7 March 2005 the court gave new judgment accepting the applicant's claim in part.

13. On 16 January 2006 the Pula County Court dismissed the respondent's appeal and upheld the first-instance judgment.

2. Enforcement proceedings

14. On 24 March 2006 the applicant applied to the Pula Municipal Court for enforcement of the above judgment by garnishment of funds from the debtor's bank accounts. On 29 March 2006 the court issued a writ of execution (*rješenje o ovrsi*) garnishing temporarily the funds on all debtor's bank accounts. After having received the relevant information from the banks, on 9 May 2006 the court invited the applicant to specify, within eight days, from which savings account the funds should be seized. Since the applicant did not do so within the prescribed period, on 3 July 2006 the court issued a decision discontinuing the enforcement proceedings. The decision became final on 16 July 2006.

15. Meanwhile, on 7 June 2006 the applicant instituted new enforcement proceedings before the same court seeking execution of the same judgment. However, in these proceedings he sought to satisfy his claim, alternatively, by garnishment of funds from the debtor's bank account or by seizure and sale of his movable property. On 9 June 2006 the court issued a writ of execution. On 27 November 2006 the court scheduled the intervention of the bailiff (*sudski ovršitelj*) for 17 January 2007. A day before the intervention the applicant asked for postponement of enforcement. The request was granted and the enforcement postponed until 8 May 2007. Afterwards the court continued the proceedings and on 15 June 2007 served the writ of execution to the debtor's bank with a view to seizing the funds and transferring them to the applicant's account. Following the applicant's request of 19 July 2007 to continue with the seizure of the debtor's movables, the court scheduled the bailiff's intervention for 19 November

2007. The bailiff effected the *in situ* inspection as scheduled but found no movable property susceptible to seizure.

It appears that the proceedings are still pending.

B. The second set of proceedings

1. Civil proceedings

16. On 30 December 1996 the applicant brought a civil action against his former employer the company P. in the Pula Municipal Court seeking payment of salary arrears.

17. Following a change in legislation governing territorial jurisdiction in October 1997, on 14 May 1998 the case was transferred to the Pazin Municipal Court (*Općinski sud u Pazinu*).

18. The court held hearings on 4 April, 4 and 20 May and 14 September 1999. The hearings scheduled for 4 March and 24 August 1999 were postponed because the applicant had not received the summons whereas the one scheduled for 7 October 1999 was postponed at his request. The hearing scheduled for 2 November 1999 was postponed because the summoned witness failed to attend.

19. As the applicant did not attend two successive hearings held on 2 December 1999 and 2 May 2000, the court issued a decision declaring that his action was considered withdrawn. The applicant then filed a request for restoring the proceedings to the *status quo ante* (*prijedlog za povrat u prijašnje stanje*), which the court granted on 20 June 2000.

20. At the hearing held on 26 September 2000 the Pazin Municipal Court adopted a judgment ruling in part for the applicant.

21. On appeal, on 16 September 2002 the Pula County Court quashed the first-instance decision and remitted the case.

22. In the resumed proceedings, the Pazin Municipal Court held hearings on 23 December 2002 and 24 January 2003.

23. On the last-mentioned date, the Municipal Court again gave judgment ruling for the applicant in part. In the absence of appeals, the judgment became final and enforceable shortly afterwards.

2. Enforcement proceedings

24. In January 2003 the applicant applied for enforcement. The enforcement was completed on 4 March 2003 by garnishment of funds from the debtor company's bank account.

C. The third set of proceedings

1. Civil proceedings

25. On 21 May 1997 the applicant brought a civil action against the company L. in the Pula Municipal Court seeking payment. As the Pula

Municipal Court had no territorial jurisdiction, on 8 October 1997 the case was transferred to Rijeka Municipal Court (*Općinski sud u Rijeci*).

26. The first hearing was held on 18 June 1998. As neither party attended the hearing scheduled for 12 July 1999, the court temporarily suspended the proceedings (*mirovanje postupka*) for a period of three months.

27. On 26 October 1999 the applicant requested the court to resume the proceedings.

28. The court held hearings on 19 April, 5 July, 9 October and 12 December 2001 as well as on 5 June, 17 September and 13 November 2002.

29. At the hearing held on 23 January 2003 the court gave judgment for the applicant.

30. On 20 October 2004 the Rijeka County Court (*Županijski sud u Rijeci*) dismissed the respondent's appeal and upheld the first-instance judgment.

2. Enforcement proceedings

31. On 25 May 2005 the applicant applied to the Rijeka Municipal Court for enforcement of the above judgment. On 21 July 2005 the court issued a writ of execution by garnishment of funds from the debtor company's bank account. The writ was served on the debtor company's bank on 11 October 2005.

32. On 28 March 2006 the applicant requested the court to continue the enforcement by seizure and sale of the debtor company's movable property in satisfaction of his claim. On 18 April 2006 the court accepted the applicant's request and issued new writ of execution.

33. On 6 July 2006 the bailiff effected an *in situ* inspection at the address provided by the applicant only to find that the debtor company was no longer doing business at that address. Accordingly, on 6 July 2006 the court issued an instruction inviting the applicant to submit another address within the following three months in the absence of which it would discontinue the enforcement proceedings. The instruction was served on the applicant on 18 October 2006.

34. On 15 January 2007 the applicant requested the court to summon the debtor company's director with a view to disclosing the company's assets (*prokazni popis imovine*). The court granted the request and scheduled a hearing for 25 April 2007, which the summoned director failed to attend. After the director had failed to appear at the next hearing scheduled for 13 July 2007, the court requested the police authorities to inquire about his address. The next hearing was scheduled for 6 November 2007.

It appears that the proceedings are still pending.

D. The fourth set of proceedings

35. On 3 June 1996 the competent tax authority issued a decision ordering the applicant to pay 19,427 Croatian kunas of taxes.

36. On 27 March 1997 the Ministry of Finance (*Ministarstvo financija*) upheld the first-instance decision. The applicant subsequently brought an administrative action.

37. On 2 March 2000 the Administrative Court (*Upravni sud Republike Hrvatske*) quashed the decision of 27 March 1997 and remitted the case.

38. In the resumed proceedings, on 23 October 2000 the competent tax authority issued a new decision ordering the applicant to pay a lower amount of taxes.

39. The applicant claimed that he had paid the requested sum, but that the tax authority had nevertheless continued sending him warning letters and had refused to unblock his bank account.

E. The proceedings before the Constitutional Court

40. Meanwhile, on 4 December 2002 the applicant lodged a constitutional complaint under section 63 of the Constitutional Court Act complaining about the length of the first and the second set of the above proceedings. On 3 May 2004 he lodged a second constitutional complaint complaining about the length of the third set of proceedings.

41. On 23 December 2004 the Constitutional Court dismissed the applicant's first complaint in respect of the first set of proceedings. Having regard in particular to the applicant's conduct (who failed to attend one hearing and asked for adjournment of another two hearings), it held that the first proceedings had not exceeded a reasonable time.

42. However, it would appear that the Constitutional Court is still examining the applicant's first complaint in respect of the second set of proceedings.

43. On 7 April 2005 the Constitutional Court also dismissed the applicant's second constitutional complaint. Taking into account particularly the applicant's conduct (who brought his action in the first-instance court having no territorial jurisdiction), it held that the length of the proceedings complained of had not been excessive.

II. RELEVANT DOMESTIC LAW

44. 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 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 PROCEEDINGS

45. The applicant complained that the length of the first, the second and the third set of 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...”

46. The Government contested that argument.

1. Period to be taken into consideration

47. 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. Furthermore, the Court reiterates that the execution of a judgment given by any court must be regarded as an integral part of the “hearing” for the purposes of Article 6 (see *Hornsby v. Greece*, judgment of 19 March 1997, *Reports of Judgments and Decisions* 1997-II, pp. 510–511, § 40).

48. The first and the third proceedings were still pending when the Constitutional Court decided on their length. On 23 December 2004 the first proceedings had lasted some seven years and one month for two levels of jurisdiction. On 7 April 2005 the third proceedings had lasted some seven years and five months, during which the case was examined also before two levels of jurisdiction. The Constitutional Court has not yet decided on the length of the second proceedings (see paragraph 42 above).

49. The first and the third proceedings are still pending while the second proceedings ended on 4 March 2003. Thus, after the respective decisions of the Constitutional Court, the first proceedings have so far been pending for another two years and eleven months whereas the third proceedings have so far lasted some two years and seven months. It follows that, in total, the first

proceedings have to date lasted more than eleven years, and the third proceedings more than ten and a half years, after the entry into force of the Convention in respect of Croatia. The second proceedings lasted six years and two months, after the ratification.

2. Reasonableness of the length of the proceedings

50. 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], no. 64886/01, § 68, to be published in ECHR 2006; and *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

A. Admissibility

51. The Government invited the Court to reject the complaint on the ground that the applicant had failed to exhaust domestic remedies, as required under Article 35 § 1 of the Convention.

1. The first and the third set of proceedings

52. The Government argued that the applicant should have again complained to the Constitutional Court about the length of the first and the third set of proceedings. They observed that he had already lodged constitutional complaints to that end on 4 December 2002 and 3 May 2004, and that the Constitutional Court dismissed them on 23 December 2004 and 7 April 2005. However, having regard to the fact that afterwards the proceedings had continued, to lodge further constitutional complaints would have had reasonable prospects of success since it would have enabled the Constitutional Court to examine the overall length of both proceedings, taking into consideration their duration after its previous decisions.

The applicant did not comment on this issue.

53. The Court finds that the question of exhaustion of domestic remedies in respect of the first and the third proceedings is inextricably linked to the merits of this complaint. Therefore, to avoid prejudging the latter, both questions should be examined together. Accordingly, the Court holds that the question of exhaustion of domestic remedies in respect of this complaint should be joined to the merits (see *Kozlica v. Croatia*, no. 29182/03, § 21, 2 November 2006).

54. 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.

2. *The second set of proceedings*

55. The Government initially argued that the applicant had never lodged a constitutional complaint under section 63 of the Constitutional Court Act about the length of the second proceedings. The applicant replied that in his first constitutional complaint of 4 December 2002 he had complained both about the length of the first and the second set of proceedings. However, the Constitutional Court had examined his complaint only in respect of the first proceedings.

56. In their letter of 16 November 2007, the Government submitted that the Constitutional Court was currently examining the applicant's constitutional complaint in respect of the second proceedings. They however maintained their objection that the applicant had failed to exhaust domestic remedies.

57. The Court does not find it necessary to examine the objection raised by the Government, as this complaint is in any event inadmissible in respect of the second proceedings for the following reasons.

58. The Court observes that the second proceedings lasted six years and two months before two levels of jurisdiction. After 1998, in which no hearings were held due to jurisdictional changes, there were no substantial periods of inactivity as the first-instance court accelerated the proceedings and was scheduling hearings at regular intervals. Altogether, nine hearings were held while four were adjourned for various reasons (one at the applicant's request). Furthermore, it is to be noted that the enforcement was completed in less than three months. That being so, the Court considers, in the light of the criteria established in its case-law on the question of "reasonable time" (see paragraph 50 above), and having regard to all the information in its possession, that this complaint is inadmissible under Article 35 § 3 of the Convention as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 thereof.

B. Merits

59. The Court observes at the outset that the applicant availed himself of an effective domestic remedy in respect of the length of the proceedings – a constitutional complaint (see *Slaviček v. Croatia* (dec.), no. 20862/02, ECHR 2002-VII) – and that the Constitutional Court dismissed his complaints. In these circumstances, the Court is required to verify whether the way in which the Constitutional Court interpreted and applied the relevant provisions of the domestic law, produces consequences that are consistent with the principles of the Convention, as interpreted in the light of the Court's case-law. In doing so, the Court has to examine the period between the date of the entry into force of the Convention in respect of Croatia and the date of the Constitutional Court's decisions. If the Constitutional Court's decisions are consistent with Convention principles, the Court will, when examining the question of exhaustion of domestic remedies, refrain from dealing with the length of the proceedings

subsequent to those decisions. Otherwise, a genuine examination of the total length after the ratification is warranted (see *Kozlica v. Croatia*, cited above, § 23).

1. The first set of proceedings

60. The Court notes that the period examined by the Constitutional Court amounts to seven years and one month (see paragraph 48 above) during which the case was examined before two levels of jurisdiction. In that period there existed two substantial periods of inactivity (from 7 May 2001 when the Pula Municipal Court gave its first judgment in the case until 1 February 2002 when the case-file was sent to the Pula County Court following the appeal, as well as between 2 March and 22 November 2004) amounting altogether to almost a year and a half in which no hearings were held. They are solely attributable to the authorities. Therefore, and given that the case was not particularly complex, the Court cannot accept the view that the applicant significantly contributed to the length of the proceedings.

2. The third set of proceedings

61. In these proceedings, the Constitutional Court examined the period of seven years and five months (see paragraph 48 above) during which the case was pending before two levels of jurisdiction. In that period there were two substantial periods of inactivity (from 6 November 1997 until 18 June 1998 and between 26 October 1999 and 19 April 2001) amounting altogether to more than two years in which no hearings were scheduled. These periods of inactivity being attributable to the authorities, and given that the case was of no particular complexity, the Court is unable to find the applicant's conduct as decisive factor for the inordinate length of the proceedings.

3. Conclusion

62. Having examined all the material submitted to it, and having regard to its case-law on the subject, the foregoing considerations are sufficient to enable the Court to conclude that already in the periods which were susceptible to the Constitutional Court's scrutiny the length of the first and the third proceedings was excessive and failed to meet the "reasonable time" requirement. It has necessarily kept such character throughout the subsequent periods of two years and eleven months (the first proceedings) and two years and seven months (the third proceedings). In these circumstances, to ask the applicant to lodge further constitutional complaints, would overstretch his duties under Article 35 § 1 of the Convention (see *Kozlica v. Croatia*, cited above, § 28).

63. In conclusion, the Court rejects the Government's objection as to the exhaustion of domestic remedies and finds that there has been a breach of Article 6 § 1 of the Convention on account of the excessive length of the first and the third set of proceedings.

II. ALLEGED VIOLATIONS OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE UNFAIRNESS OF THE PROCEEDINGS

64. The applicant also complained under Article 6 § 1 of the Convention about the unfairness of the second set of proceedings and, in particular, about the failure of the domestic court to hear certain witnesses. He also complained under the same Article about the outcome of the fourth set of proceedings.

65. As regards the second set of proceedings, the Court notes that the applicant did not appeal against the Pazin Municipal Court's judgment of 24 January 2003. As regards the fourth set of proceedings, the Court recalls that tax assessment disputes fall outside the scope of Article 6 § 1 of the Convention as they do not involve determination of "civil rights and obligations" within the meaning of that Article, which is thus not applicable to such cases (see *Ferrazzini v. Italy* [GC], no. 44759/98, § 29, ECHR 2001-VII).

66. It follows that this part of the application is inadmissible under Article 35 § 1 of the Convention for non-exhaustion of domestic remedies, and incompatible *ratione materiae* with its provisions within the meaning of Article 35 § 3. It follows that these complaints must be rejected pursuant to Article 35 § 4.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

67. Lastly, the applicant complained about the violation of his right guaranteed in Article 10 of the Convention in the fourth set of proceedings.

68. In the light of all the material in its possession, the Court considers that the present case does not disclose any appearance of a violation of Article 10 of the Convention. 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.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

69. 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

70. The applicant did not submit a claim for just satisfaction in respect of pecuniary or non-pecuniary damage. Accordingly, the Court considers that there is no call to award him any sum on that account.

B. Costs and expenses

71. The applicant claimed 8,597 euros (EUR) for the costs and expenses incurred before the domestic courts.

72. The Government contested the claim.

73. 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 observes that there is no evidence in the file to suggest that the applicant incurred any costs and expenses in seeking to remedy the violation of his right to a hearing within a reasonable time before the domestic authorities. The Court therefore rejects the claim for costs and expenses.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Joined to the merits* the Government's objection as to the exhaustion of domestic remedies in respect of the first and the third set of proceedings and rejected it;
2. *Declared* the complaints concerning the excessive length of the first and the third set of proceedings admissible and the remainder of the application inadmissible;
3. *Held* that there had been a violation of Article 6 § 1 of the Convention on account of the excessive length of the first and the third set of proceedings;
4. *Dismissed* the applicant's claim for just satisfaction.

Done in English, and notified in writing on 6 March 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President