



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

FIRST SECTION

CASE OF VIDAS v. CROATIA

(Application no. 40383/04)

JUDGMENT

STRASBOURG

3 July 2008

FINAL

10/10/2008

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 Vidas v. Croatia,

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

Christos Rozakis, *President*,

Nina Vajić,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 12 June 2008,

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

PROCEDURE

1. The case originated in an application (no. 40383/04) 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 Stipe Vidas (“the applicant”), on 25 October 2004.

2. The applicant was represented by Mr I. Debelić, a lawyer practising in Rab. The Croatian Government (“the Government”) were represented by their Agent, Mrs Š. Stažnik.

3. On 31 January 2007 the Court decided to communicate the complaints concerning the length of proceedings and the alleged lack of an effective remedy in that respect 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 1947 and lives in Rab.

5. While working with a circular saw on 16 May 1994 the applicant sustained an injury in the workplace resulting in the loss of two fingers. The injuries were of such a degree that on 29 March 1995 the applicant had to retire and was awarded a disability pension.

6. On 22 September 1995 the applicant brought a civil action against the company, S., in the Rab Municipal Court (*Općinski sud u Rabu*) seeking damages in connection with the above accident. The applicant subsequently

designated company J. as the respondent because he considered it to be the legal successor of company S., which had gone bankrupt and had been erased from the companies' register in 1996.

7. In a judgment of 15 May 2000 the Rab Municipal Court declared the applicant's action inadmissible for lack of jurisdiction and referred the case to the Rijeka Commercial Court (*Trgovački sud u Rijeci*). The applicant appealed and on 4 October 2000 the Rijeka County Court (*Županijski sud u Rijeci*) quashed the first-instance decision and referred the case to the Crikvenica Municipal Court (*Općinski sud u Crikvenici*) as the competent court.

8. On 25 October 2002 the Crikvenica Municipal Court gave judgment dismissing the applicant's claim. The judgment was quashed upon an appeal lodged by the applicant on 29 January 2003 by the Rijeka County Court and the case was remitted to the court of first instance.

9. Meanwhile, on 28 March 2002 the applicant lodged a constitutional complaint with the Constitutional Court (*Ustavni sud Republike Hrvatske*) complaining about the length of the above proceedings. On 13 April 2005 the Constitutional Court found a violation of his constitutional right to a hearing within a reasonable time, awarded him 5,200 Croatian kunas (HRK) in compensation, and ordered the Crikvenica Municipal Court to give a decision in the case in the shortest time possible but no later than twelve months following the publication of the decision in the Official Gazette. The Constitutional Court's decision was published on 2 May 2005.

10. In the resumed proceedings, on 10 February 2006 the Crikvenica Municipal Court again gave judgment dismissing the applicant's claim. The applicant again appealed and on 5 July 2006 the Rijeka County Court dismissed the appeal and upheld the first-instance judgment.

11. On 5 September 2006 the applicant lodged an appeal on points of law (*revizija*) with the Supreme Court which was dismissed on 21 February 2007.

II. RELEVANT DOMESTIC LAW

12. 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

13. The applicant complained about the length of the civil proceedings under Article 6 § 1 of the Convention, the relevant part of 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...”

14. 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 he had been afforded appropriate redress at the national level.

15. 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 22 September 1995, when the applicant brought his civil action. Thus, they were pending for about a year and ten months before the ratification.

16. The case was still pending on 13 April 2005 when the Constitutional Court gave its decision. On that date the proceedings had lasted, after the ratification, seven years and five months at two levels of jurisdiction.

17. The proceedings were concluded by the Supreme Court’s judgment of 21 February 2007. They thus lasted a further year, ten months and eight days after the Constitutional Court’s decision. During that time the case was examined at three levels of jurisdiction. Thus, in total, the case was pending for more than nine years and three months after the ratification.

A. Admissibility

18. 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 his constitutional right to a hearing within a reasonable time, and awarded him compensation. The violation complained of had, therefore, been remedied before the domestic authorities and the applicant had lost his victim status.

19. The applicant disagreed.

20. 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 him 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-...).

21. In this connection, the Court notes that on 13 April 2005 the Constitutional Court awarded the applicant the equivalent of approximately 700 euros (EUR) and ordered the Crikvenica Municipal Court to deliver a decision within twelve months. The compensation awarded by the Constitutional Court cannot be considered sufficient having regard to the Court's case-law, in particular bearing in mind that the proceedings at issue concerned an action for damages in connection to a work-related accident which rendered the applicant unfit for further work. Accordingly, the applicant can still claim to be the "victim" of a breach of his right to a hearing within reasonable time, and the Government's objection must therefore be dismissed.

22. 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 applicant may still claim to be a "victim" of the alleged violation, an examination of the total length is warranted (see *Solárová and Others v. Slovakia*, no. 77690/01, §§ 41 and 43, 5 December 2006).

23. In this connection the Court observes, as noted above, that the proceedings lasted another year and ten months after the Constitutional Court's decision. The Court shall take this period into consideration when determining the merits of the case and, if appropriate, the applicant's claim for just satisfaction under Article 41 of the Convention (see *Solárová and Others v. Slovakia*, cited above, § 42; *Riškova v. Slovakia*, no. 58174/00, § 90, 22 August 2006).

24. Having regard to the above facts the Court considers 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

25. 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).

26. 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).

27. 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.

28. As regards the period subsequent to the delivery of the Constitutional Court’s decision, the Court notes that, following a remittal, the proceedings were examined at three levels of jurisdiction and finally concluded in February 2007. Although no further unjustified delays occurred in that period, having regard to the overall length of the proceedings and the delays that occurred prior to the Constitutional Court’s decision, the Court considers that the applicant was not afforded a trial within a reasonable time.

29. 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

30. The applicant complained under Article 13 of the Convention that he had not had an effective remedy for the length of the civil proceedings because it had taken the Constitutional Court more than three years to decide his constitutional complaint. He 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.”

31. The Government contested that argument.

A. Admissibility

32. The Court considers that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

B. Merits

33. The Government argued that the Constitutional complaint was an effective remedy in respect of the length of proceedings, as it had already been recognised by the Court.

34. The applicant contested that argument.

35. Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an “arguable complaint” under the Convention and to grant appropriate relief (see, among many other authorities, *Kudla v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI).

36. The scope of the Contracting States’ obligations under Article 13 varies depending on the nature of the applicant’s complaint; however, the remedy required by Article 13 must be “effective” in practice as well as in law (see, for example, *İlhan v. Turkey* [GC], no. 22277/93, § 97, ECHR 2000-VII). The term “effective” is also considered to mean that the remedy must be adequate and accessible (*Paulino Tomás v. Portugal* (dec.), no. 58698/00, ECHR 2003-...). In addition, particular attention should be paid to, *inter alia*, the speediness of the remedial action itself, it not being excluded that the adequate nature of the remedy can be undermined by its excessive duration (*Tomé Mota v. Portugal* (dec.), no. 32082/96, ECHR 1999-IX, and *Paulino Tomás*, cited above).

37. The Court recalls that it has already found that a constitutional complaint under section 63 of the Constitutional Court Act represents an effective remedy about the length of proceedings that are pending (see *Slaviček v. Croatia* (dec.), no. 20862/02, ECHR 2002-VII). As to the present case the Court notes that the proceedings before the Constitutional Court upon the applicant’s complaint about the length of the civil proceedings lasted three years and fifteen days. The Court considers that a remedy designed to address the length of proceedings may be considered effective only if it provides adequate redress speedily. In the circumstances of the present case it considers that the effectiveness of the constitutional complaint as a remedy for the length of the pending civil proceedings was undermined by its excessive duration.

It follows that there has been a violation of Article 13 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

38. Lastly, relying on Article 1 of Protocol No. 1 to the Convention and without specifying this complaint further, the applicant alleged that the facts of the case also disclosed a violation of the right to the peaceful enjoyment of his possessions “in the widest sense”.

39. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court considers that this complaint does not disclose any appearance of a violation of the Convention. It follows that it 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

40. 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

41. The applicant claimed EUR 11,500 in respect of pecuniary damage and EUR 21,775 in respect of non-pecuniary damage.

42. The Government deemed the amount claimed on account of pecuniary damage unrelated to the facts of the present case and the amount claimed on account of non-pecuniary damage excessive.

43. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 2,300 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

44. The applicant also claimed EUR 12,546 for the costs and expenses incurred before the domestic courts and the Court.

45. The Government did not comment.

46. According to the Court’s case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are 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 sum of EUR 1,560 plus any tax that may be chargeable to the applicant.

C. Default interest

47. 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 complaints concerning the length of the civil proceedings and the alleged lack of an effective remedy in that respect 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 has been a violation of Article 13 of the Convention;
4. *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, the following amounts which are to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 2,300 (two thousand three hundred euros) in respect of non-pecuniary damage;
 - (ii) EUR 1,560 (one thousand five hundred and sixty euros) in respect of costs and expenses;
 - (iii) any tax that may be chargeable to the applicant 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

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

Søren Nielsen
Registrar

Christos Rozakis
President