



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

FIRST SECTION

CASE OF NIKOLAC v. CROATIA

(Application no. 17117/06)

JUDGMENT

STRASBOURG

10 July 2008

FINAL

01/12/2008

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 Nikolac 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 André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 19 June 2008,

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

PROCEDURE

1. The case originated in an application (no. 17117/06) 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 Slavomir Nikolac (“the applicant”), on 8 April 2006.

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

3. On 18 September 2007 the Court decided to communicate the complaint about the length of the proceedings to the Government. 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 1932 and lives in Vinkovci.

5. On an unspecified date in 1992 the applicant brought a civil action against his former employer in the Vinkovci Municipal Court (*Općinski sud u Vinkovcima*), challenging his dismissal from work and seeking the payment of his salary arrears. In its judgment of 2 June 1993 the Municipal Court partly allowed the applicant’s claim. However, the judgment was

quashed by an appellate court and the case remitted to the Municipal Court, which on its part found that it had no jurisdiction in the matter in its decision of 6 February 1996. The latter decision was upheld by the Osijek County Court (*Županijski sud u Osijeku*) on 11 July 1996.

6. On an appeal by the applicant on points of law lodged on 27 September 1996, the Supreme Court (*Vrhovni sud Republike Hrvatske*) transferred the case to the Administrative Court (*Upravni sud Republike Hrvatske*) on 13 October 1999. On 31 January 2002 the Administrative Court dismissed the applicant's claim.

7. A subsequent constitutional complaint by the applicant of 21 June 2002 was dismissed by the Constitutional Court (*Ustavni sud Republike Hrvatske*) on 12 October 2005.

II. RELEVANT DOMESTIC LAW

8. 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 of the date a request for payment is lodged.”

THE LAW

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

9. The applicant made two separate complaints under Article 6 § 1 of the Convention. He firstly complained that the length of the proceedings had been incompatible with the “reasonable time” requirement. Secondly, he complained that the proceedings had been unfair, 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

10. The period to be taken into consideration began only on 6 November 1997, when the Convention entered into force 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. The Court notes that prior to the entry into force of the Convention in respect of Croatia the proceedings had already lasted about five years.

11. The period in question ended on 12 October 2005. It follows that a period of six years, eleven months and six days falls within the Court's competence *ratione temporis*. In that period the case was first pending for one year, eleven months and seven days before the Supreme Court on an appeal on points of law lodged by the applicant. After that it was examined by the Administrative Court until 31 January 2002 and then by the Constitutional Court until 12 October 2005.

1. Admissibility

12. 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.

13. The applicant did not address this issue.

14. The Court reiterates that since 22 March 2002 a constitutional complaint under section 63 of the Constitutional Court Act has been considered an effective remedy in respect of 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 Administrative Court ended on 31 January 2002 and that at that time no remedy capable of addressing the length of proceedings before the Administrative Court was available in the nation's legal system. As to the proceedings conducted after such a remedy was introduced on 22 March 2002, the Court notes that from 21 June 2002 the case was pending before the Constitutional Court. In these circumstances, the Court considers that the applicant's complaint cannot be rejected for failure to exhaust domestic remedies.

15. 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

16. 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 (see *Ruotolo v. Italy*, judgment of 27 February 1992, Series A no. 230-D, p. 39, § 17).

17. 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 about five years. Furthermore, in the period to be taken into consideration, the proceedings lasted almost another seven years. During that time it took the Administrative Court more than two years and three months and the Constitutional Court about three years and four months to decide on the applicant's case, whereas the first of these courts only reviewed the case without establishing the facts and the second reviewed the constitutionality of the lower court's decision, while neither heard any evidence or performed any other procedural activity.

18. 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

19. In so far as the applicant'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).

20. The Court finds that there is nothing to indicate that the national courts' evaluation of the facts and evidence presented in the applicant's case was contrary to Article 6 of the Convention. The applicant was fully able to state his case and challenge the evidence; all essential evidence was presented and the courts' decisions were satisfactorily reasoned. In these circumstances the Court finds that the case discloses no appearance of a violation of the guarantees of a fair hearing relied on by the applicant. 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

21. 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. Damages

22. The applicant claimed 1,925,795.91 Croatian kunas (HRK) in respect of pecuniary damage and HRK 1,000,000 in respect of non-pecuniary damage.

23. 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.

24. 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 2,400 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

25. The applicant also claimed HRK 5,533 for the costs and expenses incurred before the domestic courts and the Court.

26. The Government did not comment.

27. 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 760 plus any tax that may be chargeable to the applicant.

C. Default interest

28. 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 complaint concerning the length of proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the length of proceedings;
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, 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 2,400 (two thousand four hundred euros) in respect of non-pecuniary damage;
 - (ii) EUR 760 (seven hundred 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 10 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André WAMPACH
Deputy Registrar

Christos ROZAKIS
President