



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

FIRST SECTION

CASE OF PLETEŠ v. CROATIA

(Application no. 21591/06)

JUDGMENT

STRASBOURG

10 July 2008

FINAL

29/09/2008

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 Pleteš 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. 21591/06) 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 Ivica Pleteš (“the applicant”), on 24 April 2006.

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

3. On 14 February 2007 the Court decided to communicate the application 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**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1950 and lives in Kastav.

5. On 1 July 1997 a certain N.K. brought a civil action against the applicant in the Rijeka Municipal Court (*Općinski sud u Rijeci*) seeking the division of jointly owned property. The court held six hearings, heard evidence from two witnesses and on 2 December 1999 dismissed the plaintiff’s claim against the applicant. A subsequent appeal by the plaintiff

was forwarded to the Rijeka County Court (*Županijski sud u Rijeci*) on 13 March 2000.

6. In the appellate proceedings the applicant lodged a request for the case to be transferred to another court, which was dismissed by the Supreme Court on 4 June 2003; a request for the President of the Rijeka County Court to stand down, which was dismissed by the Supreme Court on 13 October 2003 and a request for the presiding judge to stand down, which was dismissed by the President of the Rijeka County Court on 9 January 2004. The Government submitted that all three requests were unsubstantiated.

7. On 28 January 2004 the Rijeka County Court quashed the first-instance judgment and remitted the case for fresh examinations. In the resumed proceedings, the Municipal Court held hearings on 27 May and 6 July 2004 and scheduled an on-site inspection which was not carried out owing to the plaintiff's refusal to admit the assigned expert onto his property.

8. According to the Government, from 2004 to 2006 the applicant failed to collect mail sent to him by the Municipal Court. This caused the adjournment of hearings scheduled for 9 May, 6 September and 24 October 2006.

9. The Government further submitted that in the period between 2004 and 2006 criminal proceedings were instituted against the applicant on charges of numerous counts of fraud, threatening behaviour and usury. About fifteen hearings had been adjourned since the applicant had failed to collect the court summons.

10. Meanwhile, on 17 July 2004 the applicant lodged a constitutional complaint under section 63 of the Constitutional Court Act complaining about the length of the proceedings. On 17 November 2005 the Constitutional Court (*Ustavni sud Republike Hrvatske*) dismissed his complaint as ill-founded, finding that the proceedings were relatively complex and that the applicant had contributed to the delays by failing to appear at three hearings in 1998.

11. The case is at present pending before the Municipal Court.

THE LAW

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

12. The applicant complained that the length of the proceedings was 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...”

13. The Government contested that argument.

14. The period to be taken into consideration began 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 that time. The period in question has not yet ended. It has thus lasted so far about ten years and six months for two levels of jurisdiction.

A. Admissibility

15. The Government argued that the applicant should have lodged a further complaint with the Constitutional Court about the length of the proceedings. They observed that although he had already lodged a constitutional complaint to that end on 17 July 2004, which the Constitutional Court had dismissed on 17 November 2005, a further constitutional complaint would have had reasonable prospects of success since it would have enabled the Constitutional Court to examine the overall length of the proceedings, including the period following its previous decision.

16. The applicant contested that argument.

17. The Court finds that the question of exhaustion of domestic remedies is inextricably linked to the merits of this complaint. Therefore, to avoid prejudging the latter, both questions should be examined together. Accordingly, it 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).

18. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

19. 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).

20. The Court observes at the outset that the applicant availed himself of an effective domestic remedy in respect of the length of the proceedings by lodging a constitutional complaint (see *Slaviček v. Croatia* (dec.), no. 20862/02, ECHR 2002-VII), which the Constitutional Court dismissed.

In these circumstances, the Court is required to verify whether the way in which the Constitutional Court interpreted and applied the relevant provisions of domestic law produced 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 decision. If a Constitutional Court's decision is consistent with Convention principles, the Court will, when examining the question of the exhaustion of domestic remedies, refrain from dealing with the length of the proceedings subsequent to that decision. Otherwise, a genuine examination of the total length of the proceedings after ratification is warranted (see *Kozlica v. Croatia*, cited above, § 23).

21. The Court notes that the period examined by the Constitutional Court amounts to eight years (see paragraph 10 above) during which the case was examined at two levels of jurisdiction. While there appear to have been no substantial delays in the proceedings before the first-instance court, the same cannot be said of the appellate proceedings, which lasted three years, nine months and twenty-six days. Although in that period three requests by the applicant – two for judges to stand down and one for the case to be transferred to a different appellate court – were also examined, the Court does not see how deciding these procedural issues could justify such lengthy appellate proceedings. In this connection, it notes the Government's submission that the applicant's requests were unsubstantiated, a factor which, in the Court's view, would, if anything, have made it easier to decide the requests. However, the first decision, which concerned the applicant's request for a transfer of the case from the Rijeka County Court, was not adopted by the Supreme Court until the appellate proceedings had already been pending for about three years and three months. Furthermore, the Court reiterates that it is the normal task of a court in judicial proceedings to decide upon the circumstances which might call for the removal of judges participating in a particular case (see *Cerin v. Croatia*, no. 54727/00, § 26, 15 November 2001). Therefore, the Court cannot accept the view that the applicant significantly contributed to the length of the proceedings prior to the Constitutional Court's decision.

22. 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 the length of the proceedings subject to the Constitutional Court's scrutiny was excessive and failed to meet the "reasonable-time" requirement. In these circumstances, it would be going beyond the requirements of Article 35 § 1 of the Convention to compel the applicant to lodge a further constitutional complaint (see *Kozlica v. Croatia*, cited above, § 28).

23. In conclusion, the Court rejects the Government's objection regarding 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 the length of proceedings.

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.”

25. The applicant did not submit a claim for just satisfaction or for costs and expenses. Accordingly, the Court considers that there is no call to award him any sum on these accounts.

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;

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