



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

FIRST SECTION

CASE OF KAIĆ AND OTHERS v. CROATIA

(Application no. 22014/04)

JUDGMENT

STRASBOURG

17 July 2008

FINAL

17/10/2008

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 Kaić and Others 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 26 June 2008,

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

PROCEDURE

1. The case originated in an application (no. 22014/04) 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 twenty-six Croatian nationals listed in the Appendix (“the applicants”), on 18 March 2004.

2. The applicants were represented by Mrs Lj. Nogolica, a lawyer practising in Zagreb. The Croatian Government (“the Government”) were represented by their Agent, Mrs Š. Stažnik.

3. On 4 October 2005 the Court decided to give notice of the application to the Government. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. During 1992 the applicants lent various sums of money to a certain S.D., who was supposed to pay the money back within periods ranging from two to twelve months and at interest rates ranging from 10% to 18% per month (so-called “financial engineering”).

A. Civil proceedings

5. Since S.D. failed to perform her contractual obligations, on 21 March 1994 the applicants brought a civil action against her in the Zagreb Municipal Court (*Općinski sud u Zagrebu*).

6. In the period before the entry into force of the Convention in respect of Croatia (5 November 1997) the court held several hearings.

7. On 17 November 1997 the court invited the applicants to advance the costs of a financial expert. On 1 December 1997 the applicants refused to do so, arguing that an expert opinion was unnecessary since they had already submitted a similar opinion to which the respondent had not objected. They invited the court to give a judgment on the basis of the existing evidence.

8. The court held further hearings on 5 April and 26 October 2001 and 4 July 2003. On the last-mentioned date it delivered a judgment finding for the applicants. The judgment was served on the applicants' advocate on 30 December 2003.

9. On 12 February 2004 S.D. appealed to the Zagreb County Court (*Županijski sud u Zagrebu*).

10. On 8 November 2005 the County Court dismissed the respondent's appeal and upheld the first-instance judgment.

B. The proceedings before the Constitutional Court

11. Meanwhile, on 2 December 2002 the applicants lodged a constitutional complaint with the Constitutional Court (*Ustavni sud Republike Hrvatske*) complaining about the length of the above proceedings. On 9 November 2004 the Constitutional Court found a violation of the applicants' constitutional right to a hearing within a reasonable time, awarded 4,000 Croatian kunas (HRK) in compensation to each of them and ordered the County Court to decide the appeal in the shortest time possible but no later than six months from the publication of the decision in the Official Gazette. The Constitutional Court's decision was published on 26 November 2004.

THE LAW

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

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

13. The Government contested that argument.

14. 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 21 March 1994, when the applicants brought their civil action against S.D. Consequently, they were pending for some three years and seven months before the ratification.

15. The case was still pending on 9 November 2004 when the Constitutional Court gave its decision. On that date the proceedings had lasted about seven years.

16. The proceedings ended on 8 November 2005, when the Zagreb County Court adopted its judgment, that is, one year after the decision of the Constitutional Court. Thus, in total, the proceedings lasted some eight years after the ratification, for two levels of jurisdiction.

A. Admissibility

1. The parties' arguments

17. The Government submitted that the Constitutional Court had accepted the applicants' constitutional complaint, found a violation of their constitutional right to a hearing within a reasonable time, and awarded them appropriate compensation. The violation complained of had, therefore, been remedied before the domestic authorities and the applicants had lost their victim status.

18. The applicants replied that they could still be considered victims of the violation complained of.

2. The Court's assessment

19. The Court observes that in the present case the applicants' victim status within the meaning of the Convention depends on whether the redress

afforded to them 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, notably, *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 69-98, to be published in ECHR 2006; and *Arvanitaki-Roboti and Others v. Greece* [GC], no. 27278/03, § 29, 15 February 2008).

20. The Court notes that the Constitutional Court awarded each applicant the equivalent of approximately 530 euros (EUR). This amount is manifestly unreasonable having regard to the Court's case-law. This factor alone leads to the conclusion that the redress obtained by the applicants at the domestic level was insufficient (see *Cocchiarella*, cited above, §§ 106-107, and *Jakupović v. Croatia*, no. 12419/04, § 17, 31 July 2007). Accordingly, the applicants can still claim to be “victims” of a breach of their right to a hearing within reasonable time, and the Government's objection must therefore be dismissed.

21. In addition, the Court reiterates that, if the way in which the Constitutional Court interpreted and applied the relevant provisions of the domestic law produced 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. Given the above finding that the applicants may still claim to be “victims” of the alleged violation – and that therefore the Constitutional Court's decision in the present case is inconsistent with the Convention principles – the examination of the total length is warranted (see *Jakupović*, cited above, § 18).

22. In this connection the Court observes, as noted above (see paragraph 16), that the proceedings lasted for another year after the Constitutional Court's decision. The applicants did not lodge another constitutional complaint in respect of this period. However, in light of the above conclusion concerning their victim status, they were not required to do so. The Court shall take this period into consideration when determining the merits of the case and, if appropriate, the applicants' claim for just satisfaction under Article 41 of the Convention (see *Jakupović*, cited above, § 19).

23. 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

24. 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*, cited above, § 68, and *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

25. The Government accepted that, in view of the findings of the Constitutional Court, the proceedings had lasted unreasonably long.

26. The Court sees no reason to hold otherwise as it has frequently found violations of Article 6 § 1 of the Convention in cases raising similar issues as the present one (see, for example, *Poje v. Croatia*, no. 29159/03, 9 March 2006, and *Škare v. Croatia*, no. 17267/03, 15 June 2006). Therefore, already in the period which was susceptible to the Constitutional Court's scrutiny the length of the proceedings was excessive and failed to meet the "reasonable time" requirement. It necessarily retained that character throughout the subsequent period of one year after the delivery of the Constitutional Court's decision.

27. In the light of the foregoing, the Court considers that there has been a breach of Article 6 § 1.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

28. The applicants also complained under Article 13 of the Convention, taken in conjunction with Article 6 § 1 thereof, that the Zagreb County Court had not complied with the Constitutional Court's order to deliver a decision within the prescribed time-limit. Article 13 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."

29. The Government contested that argument.

A. Admissibility

30. The Government invited the Court to reject this complaint on the ground that the applicants had failed to exhaust domestic remedies. They argued that the applicants should have lodged another constitutional complaint, which would have enabled the Constitutional Court to assess the significance of the County Court's failure to comply with its decision.

31. The applicants did not comment on this issue.

32. In this respect the Court refers to its judgment in the case of *Vaney v. France* (no. 53946/00, § 53, 30 November 2004) where, in the context of Article 6 § 1 of the Convention, it rejected a similar non-exhaustion objection raised by the Government, as accepting it would have led to the applicant being caught in a vicious circle where the failure of one remedy would have constantly given rise to an obligation to make use of another

one. It considers that this reasoning applies with equal force in the context of Article 13 in the circumstances such are those prevailing in the present case. Thus, the Government's objection must be dismissed.

33. 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

1. The parties' arguments

34. The Government admitted that the Zagreb County Court had exceeded the time-limit set forth in the Constitutional Court's decision by six months. However, they considered that this factor alone could not lead to a conclusion that the constitutional complaint had not been an effective remedy in the applicants' case.

35. Firstly, they submitted that, pursuant to the Constitutional Court Act, all state authorities, including courts, are bound by the Constitutional Court's decisions and have a duty to implement them. In the vast majority of cases, the courts in Croatia respected the Constitutional Court orders and delivered their decisions in due time. It was however possible that the courts sometimes did not comply fully with those orders. For that reason, and in order to monitor compliance with its own decisions, the Constitutional Court had set up a system of supervision by requesting all courts in Croatia to submit reports on timely implementation of those decisions. In particular, since 1 January 2005 every Constitutional Court's decision ordering a lower court to decide a case within a certain time-limit, in its operative provisions contained an order to the President of that court to provide information by a certain date on the delivery and service of the decision the adoption of which had been ordered by the Constitutional Court.

36. Secondly, as regards the circumstances of the present case, the Government reiterated that the Constitutional Court had decided in the applicants' favour, expressly acknowledged a violation of their right to a hearing within a reasonable time, and awarded them compensation. Against that background, the County Court's delay of six months in complying with the Constitutional Court's decision had not had a significant impact on the applicants' situation nor had it jeopardised the authority of that decision "to a degree that would cast doubt on its efficiency."

37. The applicants considered that the mere fact that the County Court had "ignored" the Constitutional Court's decision sufficiently indicated that no effective remedy existed in Croatia for its "slow judiciary".

2. *The Court's assessment*

38. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI). The “effectiveness” of a “remedy” within the meaning of Article 13, however, does not depend on the certainty of a favourable outcome for the applicant. (see *Kudła*, cited above, § 157).

39. The Court has already accepted that a complaint to the Constitutional Court under section 63 of the Constitutional Court Act represented an effective remedy for length of proceedings still pending in Croatia (see *Slaviček v. Croatia* (dec.), no. 20862/02, ECHR 2002-VII). In the present case, the Constitutional Court accepted the applicants' constitutional complaint, found a violation of their constitutional right to a hearing within a reasonable time and awarded them compensation. The mere fact that the compensation awarded to the applicants at the domestic level does not correspond to the amounts awarded by the Court in comparable cases does not render the remedy ineffective (see for example, *Jakupović*, cited above, § 28, and *Riškova v. Slovakia*, no. 58174/00, § 100, 22 August 2006).

40. However, the Court considers that the obligation of the States under Article 13 encompasses also the duty to ensure that the competent authorities enforce remedies when granted and notes that it has already found violations on the account of a State's failure to observe that requirement (see *Iatridis v. Greece* [GC], no. 31107/96, § 66, ECHR 1999-II). For the Court, it would be inconceivable that Article 13 provided the right to have a remedy, and for it to be effective, without protecting the implementation of remedies afforded. To hold the contrary would lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention (see, by analogy, *Hornsby v. Greece*, judgment of 19 March 1997, *Reports of Judgments and Decisions* 1997-II, pp. 510–511, § 40).

41. In so holding the Court does not exclude the possibility that there may be instances where delayed implementation or even non-implementation of the Constitutional Court's decisions may be justified and thus may not lead to a breach of Article 13 of the Convention. However, in the present case the Government did not attempt to justify the six-month delay, which, in the Court's view, is of a special importance given the fact that the violation found concerned the length of proceedings. In this respect the Court notes that the Zagreb County Court is an appellate court, which means that the list of possible reasons for the delay non-attributable to the authorities (for example, the conduct of the applicants) is relatively short.

42. The Government rather attempted to diminish the importance of the County Court's delay by emphasising various mitigating factors, such as the award of compensation and the express acknowledgment of the violation,

which in their view rendered the remedy effective nevertheless. Admittedly, while these factors may be of some importance in deciding whether an applicant had an effective remedy, the Court considers that they cannot be considered decisive in the present case. In particular, as already found above (see paragraph 20), the compensation awarded to the applicants was too low and thus insufficient. While it is true that this factor alone normally does not render the remedy ineffective (see paragraph 39 above), the Court notes that in the present case it was reinforced by the failure of the competent court to execute the Constitutional Court's decision in timely fashion; it being understood that the cessation of an ongoing violation is for the Court an important element of the right to an effective remedy (see, implicitly, *Cocchiarella*, cited above, § 74).

43. The Court is therefore of the view that in the instant case, where the applicants did not receive sufficient compensation for the inordinate length of their proceedings and where the competent court exceeded the time-limit set for it by six months and thereby failed to implement the Constitutional Court's decision in due time, it cannot be argued that the constitutional complaint the applicants resorted to was an effective remedy for the length of those proceedings. The combination of these two factors in the particular circumstances of the present case rendered an otherwise effective remedy ineffective.

This conclusion, however, does not call into question the effectiveness of the remedy as such or the obligation to lodge a constitutional complaint under section 63 of the Constitutional Court Act in order to exhaust domestic remedies concerning complaints about the length of proceedings still pending.

44. There has accordingly been a breach of Article 13 in the present case.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. 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

46. The applicants claimed 14,000 Croatian kunas (HRK) each in respect of non-pecuniary damage.

47. The Government contested this claim.

48. The Court observes that each applicant was awarded 530 euros (EUR) by the Constitutional Court. Having regard to the circumstances of the present case as well as the fact that, notwithstanding this domestic remedy, the Court has found a violation, it considers that in the light of the criteria established in its case-law (see, *Cocchiarella*, cited above, §§ 139-141, *Arvanitaki-Roboti and Others*, cited above, §§ 29-31, and *Kakamoukas and Others v. Greece* [GC], no. 38311/02, §§ 41-43, 15 February 2008) each applicant should be awarded EUR 1,350, plus any tax that may be chargeable on that amount.

B. Costs and expenses

49. The applicants also claimed costs and expenses incurred before the Court without specifying the amount.

50. The Government contested the claim.

51. The Court notes that pursuant to the Rule 60 § 1 of the Rules of Court an applicant who wishes to obtain an award of just satisfaction under Article 41 of the Convention in the event of finding a violation of his or her Convention rights must make a specific claim to that effect. Since in the present case the applicants' representative failed to specify the claim for costs and expenses, the Court makes no award under this head (Rule 60 § 3).

C. Default interest

52. 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* that there has been a violation of Article 13 of the Convention;
4. *Holds*

(a) that the respondent State is to pay each applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,350 (one

thousand three hundred fifty euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Croatian kunas at the rate applicable at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 17 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President

Appendix	
1. Krešimir Kaić	2. Ana Jovanović
3. Ilija Jovanović	4. Zdenko Rastovčan
5. Rade Obradović	6. Ružica Dolanski
7. Vanja Aćimović	8. Zdenka Gabelica
9. Ivana Morović	10. Anka Marušić
11. Milan Prpić	12. Snježana Mrvec
13. Borislav Slabinjac	14. Mladen Sekušak
15. Dino Rastovčan	16. Dubravka Miletić
17. Vasilije Moguša	18. Milivoj Škof
19. Ivan Pražetina	20. Vera Antunović
21. Franjo Kvaternjak	22. Viktorija Bradarić
23. Mensura Dražić	24. Jasminka Lončar
25. Marija Lončar	26. Blanka Jamnicky