



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

FIRST SECTION

CASE OF KRNIĆ v. CROATIA

(Application no. 8854/04)

JUDGMENT

STRASBOURG

31 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 Krnić v. Croatia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 8 July 2008,

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

PROCEDURE

1. The case originated in an application (no. 8854/04) 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 Josip Krnić (“the applicant”), on 18 December 2003.

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

3. On 11 December 2007 the Court declared the application partly inadmissible and decided to communicate the complaints concerning the length of the proceedings and the lack of remedies for those complaints to the Government. It also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1941 and lives in Samobor.

5. On 8 October 1990 the applicant brought a civil action against his former employer, the company F., challenging his dismissal and seeking his reinstatement and payment of salary arrears for the period of his unemployment.

6. The Zagreb Municipal Court (*Općinski sud u Zagrebu*) granted the claim in part in a judgment of 6 December 1991, which was upheld by the Zagreb County Court (*Županijski sud u Zagrebu*) on 13 April 1993.

7. In a decision of 2 September 1998 the Supreme Court (*Vrhovni sud Republike Hrvatske*) quashed the lower courts' judgments and remitted the case for retrial, upon an appeal lodged by the defendant.

8. In the fresh proceedings the Zagreb Municipal Court ordered the applicant's reinstatement and dismissed his claim for payment of salary arrears on 11 May 2000. The applicant lodged an appeal.

9. On 29 April 2003 the Zagreb County Court upheld the part of the first instance judgment dismissing the claim for payment and quashed it in the part granting the applicant's claim for reinstatement and in that part remitted the case for a fresh trial.

10. The applicant did not attend a hearing scheduled for 21 October 2003 before the Zagreb Municipal Court and the proceedings were stayed. On 24 October 2003 the applicant asked that the proceedings be resumed and further hearings were held on 12 February and 6 April 2004. On 2 June 2004 the trial was concluded but the applicant then submitted further evidence and the trial was reopened on 17 June 2004. Further hearings were held on 3 May 2005 and 7 November 2007 when the applicant asked for the exemption of the presiding judge. Hearings were held on 6 February and 10 April 2008 and the proceedings are still pending.

11. Meanwhile, on 24 January 2003 the applicant also lodged a constitutional complaint about the length of the proceedings. On 27 November 2003 the Constitutional Court (*Ustavni sud Republike Hrvatske*) declared the applicant's constitutional complaint inadmissible because the Zagreb County Court had in the meantime, on 29 April 2003, decided on his appeal.

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 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 period in question has not yet ended. It has thus lasted about ten years and eight months after the ratification of the Convention, for three levels of jurisdiction.

A. Admissibility

15. The Government invited the Court to reject the applicant's complaint for non-exhaustion of domestic remedies. It maintained that the applicant could have filed another constitutional complaint, after the Constitutional Court had dismissed his first one. Bearing in mind that the Constitutional Court has changed its practice in this respect, so as to comply with the Court's case-law, the Government claimed that a complaint under section 63 of the Constitutional Court Act would have been an effective remedy for the applicant's length complaint.

16. Furthermore, the Government maintained that, in view of the change in the Constitutional Court's case-law, the Court should make an exception from the general rule of non-exhaustion of domestic remedies and declare this complaint inadmissible even though the change occurred only after the lodging of the application with the Court.

17. The applicant disagreed with the Government and contested the effectiveness of a constitutional complaint with respect to his length complaint.

18. The Court reiterates that under Article 35 § 1 of the Convention it may only deal with a matter after all domestic remedies have been exhausted. The purpose of the exhaustion rule is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to it (see, among many other authorities, *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-IV). The obligation to exhaust domestic remedies requires that an applicant make normal use of remedies which are effective, sufficient and accessible in respect of his Convention grievances.

19. The Court further reiterates that the issue whether domestic remedies have been exhausted is normally determined by reference to the date when the application was lodged with the Court (see *Baumann v. France*, no. 33592/96, § 47, ECHR 2001-V (extracts)). This rule is subject to exceptions which may be justified by the specific circumstances of each case (see *Nogolica v. Croatia* (dec.), no. 77784/01, ECHR 2002-VIII).

20. Turning to the present case, the Court observes that, in lodging a constitutional complaint under section 63 of the Constitutional Court Act, the applicant made normal use of the remedy which was declared to be an effective one in respect of his length complaint (see *Slaviček v. Croatia* (dec.), no. 20862/02, ECHR 2002-VII). He therefore offered the domestic

bodies the opportunity of preventing or putting right the violation alleged. However, it is understandable that the applicant, seeing that his constitutional complaint had failed, did not lodge a second constitutional complaint. For the Court, this would overstretch the duties incumbent on an applicant pursuant to Article 35 § 1 of the Convention (see, *mutatis mutandis*, *Unión Alimentaria Sanders S.A. v. Spain*, judgment of 7 July 1989, Series A no. 157, p. 14, § 35, and *Ullrich v. Austria*, no. 66956/01, § 29, 21 October 2004).

21. As regards the Government's request to depart from the general rule of exhaustion and to declare the applicant's complaint inadmissible even though the alleged change in the case-law of the Constitutional Court occurred only after the lodging of his application, the Court points out that, unlike in the *Nogolica* case, the Government have not shown that there are any specific circumstances which would justify such a departure (see, *mutatis mutandis*, *Pikić v. Croatia*, no. 16552/02, § 32, 18 January 2005).

In these circumstances, the Government's objection must be dismissed.

22. The Court further 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.

B. Merits

23. 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).

24. As to the conduct of the parties, the Government claimed that the applicant had contributed to the protraction of the proceedings in asking that his case be decided by a judicial panel instead of a single judge, submitting further evidence after the hearing had been concluded and causing adjournment of one hearing. The applicant contended those arguments and claimed that the prolongation of the proceedings was entirely attributable to the domestic authorities. The Court does not consider that the arguments of the Government can justify the length of proceedings in the present case.

25. 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 *Frydlender*, cited above). Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject as well as the overall length of the proceedings, the Court considers that in the instant case

the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

There has accordingly been a breach of Article 6 § 1.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

26. The applicant further complained that the constitutional complaint under section 63 of the Constitutional Court Act had not been an effective remedy in respect of his length 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.”

27. The Government contested that argument. They submitted that, at the time when the applicant lodged his complaint the case-law of the Constitutional Court did not allow the examination of the entire length of the proceedings in a situation where they had been pending for a very short time before a higher level of jurisdiction. However, the Constitutional Court had changed its practice so as to harmonise it with the Court’s case-law.

A. Admissibility

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

B. Merits

29. 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 *Kudla v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI). A constitutional complaint under section 63 of the Constitutional Court Act was recognised to be an effective remedy for the length of proceedings still pending in Croatia (see *Slaviček v. Croatia* (dec.), no. 20862/02, ECHR 2002-VII). However, the Court has already found a violation of Article 13 due to the fact that a certain practice of the Constitutional Court was not compatible with the Court’s case-law (see *Debelić v. Croatia*, no. 2448/03, § 47, 26 May 2005).

30. In the area of remedies concerning the length of proceedings, the Court has to satisfy itself that the Constitutional Court’s decision is capable of covering all stages of the proceedings complained of and thus, in the same way as decisions given by the Court, of taking into account the overall length (see, *mutatis mutandis*, *Bako v. Slovakia* (dec.), no. 60227/00, 15 March 2005). In the present case, when deciding on the applicant’s

complaint, the Constitutional Court only took into consideration the length of the proceedings before one level of jurisdiction, that is, the court before which the proceedings had been pending at the time of the lodging of the constitutional complaint, but failed to examine the previous period, namely, the time during which the applicant's case was pending at first instance. This approach of the Constitutional Court is different from that of the Court and is not capable of covering all stages of the proceedings. It is therefore incompatible with the protection of rights in this respect offered by the Court (*cf., a contrario, Bako v. Slovakia*, cited above).

31. Whilst it is true that the fact that a remedy does not lead to an outcome favourable to the applicant does not render it ineffective (see *Kudla*, cited above, § 157), the Court concludes that the practice of the Constitutional Court in the circumstances of the present case rendered an otherwise effective remedy ineffective. This conclusion does not, however, 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 (see *Raguž v. Croatia*, no. 43709/02, § 37, 10 November 2005).

Accordingly, there has been a violation of Article 13 of the Convention in the present case.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. 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

33. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage.

34. The Government contested the claim.

35. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 5,400 under that head plus any tax that may be chargeable to him.

B. Costs and expenses

36. The applicant also claimed 1,878.98 Croatian kunas (HRK) for the costs and expenses incurred before the Court.

37. The Government left the matter to the Court's discretion.

38. 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 270 for the proceedings before it plus any tax that may be chargeable to the applicant.

C. Default interest

39. 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 remainder of 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 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 5,400 (five thousand four hundred euros) in respect of non-pecuniary damage plus any tax that may be chargeable to the applicant;
 - (ii) EUR 270 (two hundred seventy euros) in respect of costs and expenses plus any tax that may be chargeable to the applicant;
 - (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 31 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President