



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

FIRST SECTION

CASE OF RIZMAN v. CROATIA

(Application no. 28704/06)

JUDGMENT

STRASBOURG

31 July 2008

FINAL

31/10/2008

This judgment may be subject to editorial revision.

In the case of Rizman 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 8 July 2008,

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

PROCEDURE

1. The case originated in an application (no. 28704/06) 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 Ivan Rizman (“the applicant”), on 30 May 2006.

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

3. On 1 October 2007 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. The applicant was born in 1966 and lives in Lipovljani.

5. On 15 April 1993 the applicant brought a civil action in the Zagreb Municipal Court (*Općinski sud u Zagrebu*) against his employer, the company I., seeking damages for an injury sustained in the workplace.

6. On 21 June 1994 the court gave judgment, which was quashed by the Zagreb County Court (*Županijski sud u Zagrebu*) on 19 September 1999.

7. In 2002 the applicant lodged a constitutional complaint concerning the length of proceedings under section 63 of the Constitutional Court Act. On 20 December 2004 the Constitutional Court (*Ustavni sud Republike Hrvatske*) accepted the applicant’s complaint, finding a violation of his right

to a hearing within a reasonable time and awarding him compensation in the amount of 5,100 Croatian kunas (HRK). It also ordered the Zagreb Municipal Court to decide the applicant's case in the shortest time possible but no later than ten months following the publication of the decision in the Official Gazette. The decision was published on 12 January 2005.

8. On 1 February 2007 the Zagreb Municipal Court gave judgment dismissing the applicant's claim. The judgment was quashed on appeal by the Zagreb County Court on 16 October 2007 and the case was remitted to the Municipal Court, where the proceedings are currently pending.

II. RELEVANT DOMESTIC LAW

9. 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

10. 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...”

11. 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 15 April 1993, when the applicant brought his

civil action. Thus, they were pending for about four years and six months before the ratification.

12. The proceedings are still pending. They thus have lasted about another three years and six months after the Constitutional Court's decision. During that time the case has been examined at two levels of jurisdiction. Thus, in total, the case has been pending for more than ten years and six months after the ratification.

A. Admissibility

13. 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.

14. The applicant disagreed.

15. The Court notes that at the time when the Constitutional Court's judgment was given the proceedings had been pending for 7 years and one month at two levels of jurisdiction, after the ratification of the Convention by Croatia. The just satisfaction awarded by the Constitutional Court does not correspond to what the Court would have been likely to award under Article 41 of the Convention in respect of the same period, due account being taken of the fact that the case concerns an employment dispute. It therefore cannot be regarded as adequate in the circumstances of the case (see the principles established under the Court's case-law in *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 65-107, ECHR 2006-... or *Scordino v. Italy* (no. 1) [GC], no. 36813/97, §§ 178-213, ECHR 2006 - ...). In these circumstances, in respect of the period covered by the Constitutional Court's finding the applicant has not lost his status as a victim within the meaning of Article 41 of the Convention.

16. The Court notes further that the proceedings are still pending and that, therefore, it is called upon to examine the overall length of proceedings.

17. 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

18. 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).

19. 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, among many authorities, *Husić v. Croatia*, no. 14878/04, 25 October 2007).

20. 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.

21. As regards the period subsequent to the delivery of the Constitutional Court’s decision, the Court notes that the proceedings were examined at two levels of jurisdiction and are presently pending before the court of first instance. Having regard to this and the overall length of the proceedings, the Court considers that the applicant has not been afforded a trial within a reasonable time.

22. In view of the above considerations, the Court concludes that there has been a breach of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. 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

24. The applicant claimed EUR 5,500 in respect of non-pecuniary damage.

25. The Government deemed the amount claimed excessive.

26. The Court awards the applicant EUR 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

27. The applicant also claimed EUR 974 for the costs and expenses incurred before the Court.

28. The Government did not comment on the matter.

29. 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 awards the amount claimed plus any tax that may be chargeable to the applicant.

C. Default interest

30. 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*
 - (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 3,000 (three thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 974 (nine hundred and seventy-four 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 31 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President