



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

1959 · 50 · 2009

FIRST SECTION

CASE OF VUJČIĆ v. CROATIA

(Application no. 33867/06)

JUDGMENT

STRASBOURG

25 June 2009

FINAL

06/11/2009

This judgment may be subject to editorial revision.

In the case of Vujčić 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 4 June 2009,

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

PROCEDURE

1. The case originated in an application (no. 33867/06) 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 Josip Vujčić (“the applicant”), on 14 August 2006.

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

3. On 18 September 2008 the Court declared the application partly inadmissible and decided to communicate the complaints concerning the length of the proceedings and the lack of remedies in that respect 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 1962 and lives in Zagreb.

5. On 6 July 2000 the applicant brought a civil action against his former employer, a Hungarian company called GE L.T. Rt., in the Zagreb Municipal Court (*Općinski sud u Zagrebu*), challenging his dismissal and seeking payment of his salary arrears and a bonus for outstanding work performance. On an unspecified date the defendant in the proceedings

lodged a counter-claim, requesting that the applicant reimburse the bonus which the company had allegedly overpaid him.

6. The Zagreb Municipal Court held hearings on 13 October 2000 and 21 February 2001. On 21 February 2001 the Zagreb Municipal Court declared the applicant's claim inadmissible as being lodged out of time. On 5 February 2002 the Zagreb County Court quashed that decision and remitted the case to the first-instance court.

7. On 15 April 2003 the Zagreb Municipal Court dismissed the applicant's claim in the part challenging his dismissal, as being lodged out of time. The applicant did not appeal against that decision, which thus became final. The proceedings continued in respect of the remainder of the applicant's claims and the defendant's counter-claim.

8. On 20 July 2005 the applicant lodged a constitutional complaint about the length of the proceedings. On 12 July 2006 the Constitutional Court found a violation of the applicant's right to a hearing within a reasonable time. It awarded the applicant 9,000 Croatian kunas (HRK) and ordered the Zagreb Municipal Court to decide the case in the shortest time possible and not later than eight months after the publication of the decision of the Constitutional Court in the Official Gazette.

9. The Constitutional Court's decision was published in the Official Gazette on 28 August 2006 and the eight-month period expired on 29 April 2007.

10. The proceedings are currently pending before the Zagreb Municipal Court.

THE LAW

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

11. 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..."

12. The Government contested that argument.

A. Admissibility

Exhaustion of domestic remedies

13. The Government argued that the applicant had failed to exhaust domestic remedies because he had not lodged a fresh constitutional complaint. They relied on the newly established practice of the Constitutional Court in its decision no. U-III A-3763/2005 of 17 October 2007 whereby, in the event that a lower court failed to comply with the time-limit imposed by a prior decision of the Constitutional Court, the latter again found a violation of the applicant's right to a hearing within reasonable time for the period between the first and the second decision of the Constitutional Court and awarded appropriate just satisfaction.

14. The applicant claimed that he had exhausted all available remedies.

15. 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. Remedies available to a litigant at domestic level are considered effective if they prevent the alleged violation or its continuation, or provide adequate redress for any violation that has already occurred (see *Mifsud v. France* (dec.) [GC], no. 57220/00, § 17, ECHR 2002-VIII).

16. The Court reiterates further 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).

17. In the instant case, the applicant did not file a fresh constitutional complaint, but instead, he lodged his application with the Court. It was not until a year and three months later that the Constitutional Court held for the first time that there had been a violation of the right to a hearing within a reasonable time in circumstances where a lower court had failed to comply with a time-limit imposed by a previous decision of the Constitutional Court. Accordingly, the applicant could not have been expected to file such a complaint, which at that time did not offer him any reasonable prospect of success.

18. Therefore, as to the Government's proposal to depart from the general rule of non-exhaustion, the Court reaches the conclusion that –

unlike the position in the *Nogolica* case and having regard to the subsidiary character of the Convention machinery – there are no special circumstances which would justify making an exception to that rule with regard to applications lodged with it before 24 March 2004.

19. It follows that the present application cannot be rejected for non-exhaustion of domestic remedies. Accordingly, the Government's objection must be dismissed.

The applicant's victim status

20. The Government submitted that 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 appropriate compensation. The violation complained of had, therefore, been remedied before the domestic authorities and as a result the applicant had ceased to be a victim.

21. The applicant replied that he could still be considered a victim of the violation complained of.

22. The Court notes that at the time when the Constitutional Court's decision was given the civil proceedings had been pending for six years. The just satisfaction awarded by the Constitutional Court on account of the excessive length 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 proceedings concerned an employment-related 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 victim status for the purposes of Article 34 of the Convention.

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

24. 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

25. The applicant claimed that the length of the civil proceedings in question had exceeded the reasonable time requirement by a wide margin.

26. The Government argued that the proceedings were complex and that the Municipal Court conducting them had undertaken a number of relevant procedural steps.

27. The Court notes that the proceedings to be considered commenced on 6 July 2000 when the applicant brought his civil action before the domestic courts. At present the case is still pending before the first-instance court. So far the proceedings have thus lasted almost nine years for two levels of jurisdiction. The reasonableness of this period 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*, 27 February 1992, § 17, Series A no. 230-D).

28. 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).

29. 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, 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

30. The applicant further complained under Article 13 of the Convention, taken in conjunction with Article 6 § 1, that the Zagreb Municipal Court had not complied with the Constitutional Court’s order to conclude the enforcement proceedings within a 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.”

31. The Government contested that argument.

A. Admissibility

32. The Court finds 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*

33. The Government admitted that the Zagreb Municipal Court had exceeded the time-limit set forth in the Constitutional Court's decision. 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 applicant's case.

34. 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. As regards the circumstances of the present case, the Government submitted that after the decision of the Constitutional Court there had been no delays in the proceedings and that the Municipal Court undertook a number of procedural steps. However, the proceedings were not concluded owing to the complexity of the case.

35. The applicant considered that the mere fact that the Municipal Court had "ignored" the Constitutional Court's decision was sufficient indication that no effective remedy existed in Croatia in relation to the length of proceedings in such circumstances.

2. *The Court's assessment*

36. 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).

37. 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 cases still pending in Croatia (see *Slaviček v. Croatia* (dec.), no. 20862/02, ECHR 2002-VII). In the present case, the Constitutional Court 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 mere fact that the compensation awarded to the applicant at the domestic level does not correspond to the amount 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).

38. However, the Court considers that the obligation of the States under Article 13 also encompasses the duty to ensure that the competent authorities enforce remedies when granted and notes that it has already found violations on 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 the 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*, 19 March 1997, § 40, *Reports of Judgments and Decisions* 1997-II).

39. The Court considers that the Government's submissions in respect of the delays in complying with the Constitutional Court's decision cannot be accepted, in view of the fact that the Constitutional Court's decision was adopted in July 2006 and that the purpose of ordering the time-limits for the conclusion of the civil proceedings in question was to speed up these proceedings and bring about their conclusion. However, the Court notes that the proceedings are still pending. Therefore, the Government's explanation cannot be considered decisive in the present case. In particular, as already found above, the compensation awarded to the applicant was insufficient. While it is true that this factor alone does not normally render the remedy ineffective, 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 a 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).

40. The Court is therefore of the view that in the instant case, where the applicant did not receive sufficient compensation for the inordinate length of the civil proceedings and where the competent court has failed to comply with the time-limit set in relation to it and thereby has failed to implement the Constitutional Court's decision thus far, it cannot be argued that the constitutional complaint the applicant 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.

41. 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.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. 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

43. The applicant claimed 994,456.44 euros (EUR) in respect of pecuniary damage and EUR 1,500,000 in respect of non-pecuniary damage.

44. The Government deemed the claims excessive and also argued that there had been no causal link between the violations claimed and the claim for pecuniary damage.

45. 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 EUR 2,440 in respect of non-pecuniary damage plus any tax that may be chargeable to him.

B. Costs and expenses

46. The applicant also claimed EUR 10,000 for the costs and expenses incurred before the Court.

47. The Government deemed the claim excessive.

48. 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 were 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 applicant, who was not represented by a lawyer, the sum of EUR 500 under this head plus any tax that may be chargeable to him.

C. Default interest

49. 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 2,440 (two thousand four hundred and forty euros) in respect of non-pecuniary damage, plus any tax that may be chargeable;
 - (ii) EUR 500 (five hundred 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 25 June 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President