



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

y

FIRST SECTION

CASE OF PAVIĆ v. CROATIA

(Application no. 21846/08)

JUDGMENT

STRASBOURG

28 January 2010

FINAL

28/04/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Pavić 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 7 January 2010,

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

PROCEDURE

1. The case originated in an application (no. 21846/08) 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 Zoran Pavić (“the applicant”), on 9 April 2008.

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 16 March 2009 the President of the First Section decided to give notice of the application to the Government. It was 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 1971 and lives in Golubinci, Serbia.

5. On 14 March 1988 the applicant brought a civil action against his then employer in the Zagreb Basic Court of Associated Labour (*Osnovni sud udruženog rada u Zagrebu*), seeking damages in connection with an employment-related accident. The case was later on transferred to the Zagreb Municipal Court (*Općinski sud u Zagrebu*).

6. On 29 May 2006 the applicant lodged a request for the protection of the right to a hearing within a reasonable time with the Zagreb County Court (*Županijski sud u Zagrebu*) complaining about the length of the above civil proceedings.

7. On 14 March 2007 the Zagreb Municipal Court orally pronounced its ruling as to the applicant's civil claim and awarded him compensation for the employment-related accident. At this moment in time, however, the applicant did not receive a written copy of the judgment (see paragraph 12 below).

8. On 25 April 2007 the Zagreb County Court found a violation of the applicant's right to a hearing within a reasonable time. It awarded him compensation in the amount of 6,500 Croatian kuna (HRK), and ordered the Zagreb Municipal Court to decide the case as quickly as possible but in any case within six months.

9. On 21 May 2007 the applicant appealed against the Zagreb County Court decision, contesting the amount of compensation awarded, the six-month time-limit and the dismissal of his claim for the costs of proceedings.

10. On 4 October 2007 the applicant's appeal was forwarded to the Supreme Court of the Republic of Croatia (*Vrhovni sud Republike Hrvatske*).

11. On 11 January 2008 the applicant lodged a constitutional complaint as he did not receive the Municipal Court decision within six months as ordered by the County Court. In a letter of 23 January 2008 the Constitutional Court notified the applicant that it was not competent to supervise the implementation of the higher court's decisions ordering lower courts to decide a case within a certain time-limit.

12. The written copy of the Zagreb Municipal Court's judgment of 14 March 2007 (see paragraph 7 above) was served on the applicant's counsel on 22 February 2008. In the meantime, on 14 January 2008 the defendant had lodged an appeal against the first instance judgment with the Zagreb County Court.

13. On 30 June 2008 the Supreme Court accepted the applicant's appeal of 21 May 2007 against the County Court's decision of 25 April 2007, concerning the length of proceedings and awarded him an additional amount of HRK 6,500 in compensation.

14. On 13 January 2009 the County Court partly upheld the first instance judgment of 14 March 2007.

II. RELEVANT DOMESTIC LAW

15. Article 29 § 1 of the Constitution (*Ustav Republike Hrvatske*, Official Gazette no. 41/2001 of 7 May 2001) reads as follows:

“In the determination of his rights and obligations or of any criminal charge against him, everyone is entitled to a fair hearing within a reasonable time by an independent and impartial court established by law.”

16. The relevant part of the Courts Act (*Zakon o sudovima*, Official Gazette nos. 150/05, 16/07 and 113/08), which entered into force on 29 December 2005, reads as follows:

III. PROTECTION OF THE RIGHT TO A HEARING WITHIN A REASONABLE TIME

Section 27

“(1) A party to court proceedings who considers that the competent court failed to decide within a reasonable time on his or her rights or obligations or a criminal charge against him or her, may lodge a request for the protection of the right to a hearing within a reasonable time with the immediately higher court.

(2) If the request concerns proceedings pending before the High Commercial Court of the Republic of Croatia, the High Court for Administrative Offences of the Republic of Croatia or the Administrative Court of the Republic of Croatia, the request shall be decided by the Supreme Court of the Republic of Croatia.

(3) The proceedings for deciding the request referred to in paragraph 1 of this section shall be urgent. The rules of non-contentious procedure shall apply *mutatis mutandis* in those proceedings and, in principle, no hearing shall be held.

Section 28

(1) If the court referred to in section 27 of this Act finds the request well founded, it shall set a time-limit within which the court before which the proceedings are pending must decide on a right or obligation of, or a criminal charge against, the person who lodged the request, and shall award him or her appropriate compensation for the violation of his or her right to a hearing within a reasonable time.

(2) The compensation shall be paid out of the State budget within three months of the date the party's request for payment is lodged.

(3) An appeal, to be lodged within fifteen days with the Supreme Court, lies against a decision on the request for the protection of the right to a hearing within a reasonable time. No appeal lies against a Supreme Court decision, but a constitutional complaint may be lodged.”

THE LAW

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

17. 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. In particular, he complained that the compensation he had been awarded for the length of proceedings was not adequate. Article 6 § 1 of the Convention 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 ...”

18. The Government contested these arguments.

19. 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 14 March 1988, when the applicant brought his civil action. Consequently it was pending for more than nine years and seven months at one level of jurisdiction before the ratification. The period to be taken into consideration ended on 13 January 2009, when the appeal judgment was adopted. Thus, in total the case was pending for more than twenty years, of which more than eleven years were after the ratification of the Convention, at two levels of jurisdiction.

A. Admissibility

20. The Government submitted that the County Court and the Supreme Court had accepted the applicant’s request, found a violation of his 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 lost his victim status.

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 Supreme Court gave its decision the proceedings had been pending for more than ten years and seven months at two levels of jurisdiction, after the ratification of the Convention by Croatia. The just satisfaction awarded by the County Court and the Supreme 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 proceedings concerned an employment-related dispute.

23. The compensation awarded 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-V, or *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 178-213, ECHR 2006-V). In these circumstances, in respect of the period covered by the County Court's and Supreme Court's finding, the applicant has not lost his status as victim within the meaning of Article 34 of the Convention.

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 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). The Court reiterates that special diligence is necessary in employment disputes (see *Ruotolo v. Italy*, 27 February 1992, § 17, Series A no. 230-D).

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

27. 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, *Plazonić v. Croatia*, no. 26455/04, 6 March 2008, and *Medić v. Croatia*, no. 49916/07, 26 March 2009). The Court is in particular mindful of the fact that, although the County Court ordered the Municipal Court to adopt a decision within six months, the judgment, pronounced orally at a hearing held before the Municipal Court on 14 March 2007, was served on the applicant's counsel on 22 February 2008, that is, about ten months after the decision of the County Court. The Government gave no explanation for that delay. In this connection, it is to be noted that the judgment of 14 March 2007 could not be appealed or become final before its written copy had been served on the parties.

28. Therefore, in the period which was susceptible to the Supreme Court's scrutiny the length of the proceedings was already excessive and failed to meet the "reasonable time" requirement.

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

30. The applicant also complained under Article 13 of the Convention, taken in conjunction with Article 6 § 1 thereof, that the Zagreb Municipal Court had not complied with the Zagreb County Court 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.”

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 applicant called into question the effectiveness of the domestic remedies in connection with the length of proceedings on account of non-enforcement of the County Court's decision by the Municipal Court. He maintained that although the Municipal Court had actually adopted its judgment of 14 March 2007, that is to say even before the County Court decided on his complaint about the length of the proceedings at issue, the first-instance judgment had been served on his counsel some ten months later. In these circumstances, in the applicant's view, the remedy used was not effective.

34. The Government argued that a complaint about the length of proceedings under the Courts Act was an effective domestic remedy which provided both for speeding up of the proceedings at issue and award of just satisfaction. Furthermore, the Court had already accepted a constitutional complaint about the length of proceedings as an effective domestic remedy in that respect. They further submitted that the Zagreb Municipal Court had adopted the first-instance judgment even before the Zagreb County Court had decided the applicant's complaint about the length of proceedings.

2. The Court's assessment

35. 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).

36. 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). The Court was satisfied that this remedy provided both for a possibility of obtaining monetary just satisfaction and speeding up of the proceedings at issue. After the introduction of amendments in the Courts Act in December 2005, a possibility of lodging a constitutional complaint in respect of the length of proceedings remained and was complemented by a complaint with the immediately higher court which has to be exhausted first. All courts deciding upon such a complaint may award compensation in respect of the length of proceedings and at the same time impose a time-limit for a lower court for adopting its decision. The Court therefore accepts that the changes introduced in December 2005 did not alter the features of the remedy and accepts it as an effective remedy in respect of the length of proceedings.

37. In the present case, firstly the County Court and then the Supreme Court both accepted the applicant’s complaints about the length of proceedings, found a violation of his 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 v. Croatia*, no. 12419/04, § 28, 31 July 2007 and *Rišková 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 mere fact that the Municipal Court’s judgment had been pronounced even before the County Court decided upon the applicant’s complaint about the length of proceedings cannot be seen as

sufficient since the civil proceedings in question were not thus concluded. The first-instance judgment becomes final only after the expiry of the time-limit for lodging an appeal which starts running from the day when the judgment has been served on the parties. Thus, in the present case, although the first-instance judgment was pronounced on 14 March 2007, it did not become final or enforceable from that date. Therefore, the Court cannot accept that the time-limit imposed by the County Court was complied with by the Municipal Court since the judgment of 14 March 2007 was served on the applicant's counsel only on 22 February 2008, that is to say some ten months after the decision of the County Court, thus exceeding the six-month time-limit imposed by that court by four months.

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 County Court's decision, it cannot be held that the 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 complaint about the length of pending proceedings under section 27 of the Courts Act and subsequently also 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 5,000 Euros (EUR) in respect of non-pecuniary damage.

44. The Government deemed the amount claimed excessive.

45. The Court awards the applicant EUR 1,500 in respect of non-pecuniary damage.

B. Costs and expenses

46. The applicant, who was represented by a lawyer, also claimed EUR 1,030 for the costs and expenses incurred before the domestic courts in respect of his request for the protection of the right to a hearing within a reasonable time and appeal against the County Court's decision, as well as EUR 905 for the costs and expenses incurred before the Court.

47. The Government deemed the amounts claimed 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 are reasonable as to quantum. As the applicant's request before the County Court and the appeal before the Supreme Court were essentially aimed at remedying the violation of the Convention alleged before the Court, the costs incurred in respect of those remedies may be taken into account in assessing the claim for costs (see *Scordino*, cited above, § 284; and *Medić*, cited above, § 50). In the present case, regard being had to the information in its possession and the above criteria, the Court awards the applicant a sum of EUR 1,030 for costs and expenses in the domestic proceedings and EUR 905 in respect of the proceedings before the Court, both plus any tax that may be chargeable to the applicant on that amount.

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 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 Croatian kunas at the rate applicable at the date of settlement:

- (i) EUR 1,500 (one thousand five hundred euros) in respect of non-pecuniary damage;
- (ii) EUR 1,935 (one thousand nine hundred and thirty five 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 28 January 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Christos Rozakis
President