



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

FIRST SECTION

CASE OF ALAGIĆ v. CROATIA

(Application no. 17656/07)

JUDGMENT

STRASBOURG

11 February 2010

FINAL

11/05/2010

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

In the case of Alagić 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 21 January 2010,

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

PROCEDURE

1. The case originated in an application (no. 17656/07) 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 Muhamed Alagić (“the applicant”), on 10 April 2007.

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

3. On 21 May 2008 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, who is a Croatian national, was born in 1939 and lives in Zagreb.

5. On 30 December 1993 the applicant brought a civil action against a private party in the Zagreb Municipal Court (*Općinski sud u Zagrebu*), seeking payment of a debt and damages related to a breach of contract.

6. In the period before the ratification of the Convention by Croatia (5 November 1997), the court held four hearings.

7. On 16 May 1995 and 8 February 2000 the Municipal Court invited the applicant to specify his claim. Since he failed to comply, the Municipal Court decided on 13 March 2000 that the applicant had withdrawn his action.

8. On 24 March 2000 the applicant lodged a request for restoring the proceedings to the *status quo ante* (*prijedlog za povrat u prijašnje stanje*), which the Municipal Court granted on 3 November 2000 and set aside its decision of 13 March 2000.

9. On 24 December 2004 the applicant lodged a constitutional complaint about the length of the above proceedings.

10. On 13 April 2006 the Municipal Court adopted a judgment dismissing the applicant's claim. The applicant appealed against the first-instance judgment to the Zagreb County Court (*Županijski sud u Zagrebu*).

11. On 1 February 2007 the Constitutional Court found a violation of the applicant's constitutional right to a hearing within a reasonable time. It also found that the delays in the proceedings in the period before November 2000 were entirely attributable to the applicant while the further delays in the period from 17 September 2001 until 24 December 2004 were attributable exclusively to the inactivity of the Municipal Court. The Constitutional Court awarded the applicant 4,500 Croatian kunas (HRK) in compensation and ordered the County Court to give a decision in the applicant's case as quickly as possible but in any case within six months following the publication of its decision in the Official Gazette. The Constitutional Court's decision was published on 7 March 2007.

12. Meanwhile, on 13 February 2007 the County Court quashed the first-instance judgment and remitted the case to the Zagreb Municipal Court before which the proceedings are currently pending.

II. RELEVANT DOMESTIC LAW

13. 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

14. The applicant complained that the length of the civil proceedings had been incompatible with the “reasonable time” requirement, laid down in Article 6 § 1 of the Convention. In particular, he complained that the amount of compensation he had been awarded for the breach of his right to a hearing within reasonable time was not adequate and that the impugned proceedings are still pending. Article 6 § 1 of the Convention reads as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

15. The Government contested these arguments.

16. 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 of ratification. In this connection the Court notes that the proceedings commenced on 30 December 1993, when the applicant brought his civil action. Consequently, they were pending for almost four years before the ratification.

17. The case was still pending on 1 February 2007 when the Constitutional Court gave its decision. On that date the proceedings had lasted some nine years and three months after the ratification, at two levels of jurisdiction.

18. The period to be taken into consideration has not yet ended. Thus, in total, the case has so far been pending for almost sixteen years at two levels of jurisdiction, of which more than twelve years after Croatia’s ratification of the Convention.

A. Admissibility

1. *The applicant's victim status*

19. The Government submitted that the Constitutional Court had accepted the applicant's constitutional complaint, found a violation of his right to a hearing within 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.

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

21. The Court notes that at the time when the Constitutional Court gave its decision, the proceedings had been pending for more than nine years 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.

22. 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 Constitutional Court's finding, the applicant has not lost his status as a victim within the meaning 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 their overall length.

2. *Exhaustion of domestic remedies*

24. The Government argued that the applicant, in order to remedy violation of his right to a hearing within reasonable time, should have lodged a second constitutional complaint or a request for the protection of the mentioned right with a higher court, which he failed to do.

25. The applicant did not reply to this argument.

26. The Court observes at the outset that the applicant availed himself of an effective domestic remedy in respect of the length of the proceedings – a constitutional complaint (see *Slaviček v. Croatia* (dec.), no. 20862/02, ECHR 2002-VII) – and that the Constitutional Court found a violation of his right to a hearing within reasonable time but failed to award him appropriate compensation. The Court reiterates that in cases where the applicants' constitutional complaints were dismissed, it was required to verify whether the way in which the Constitutional Court interpreted and applied the relevant provisions of the domestic law, produced consequences that were consistent with the principles of the Convention, as interpreted in

the light of the Court's case-law. If the Constitutional Court's decisions were not consistent with Convention principles, the Court held that the applicants were not required to lodge further constitutional complaints, as that would overstretch their duties under Article 35 § 1 of the Convention (see, for example, *Kozlica v. Croatia*, no. 29182/03, §§ 23 and 28, 2 November 2006).

27. The Court considers that this reasoning applies with equal force in the circumstances such are those prevailing in the present case. This is so because given the above conclusion that the applicant is still a victim of the violation alleged, it cannot be said that the way in which the Constitutional Court interpreted and applied the relevant provisions of the domestic law produced consequences that were consistent with the Convention principles.

28. It follows that the Government's objection as to the exhaustion of domestic remedies must be rejected.

3. Conclusion

29. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It also notes, having regard to the foregoing, that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

30. The applicant complained that the length of proceedings had been excessive and also contested the Government's arguments that his behaviour had contributed to the overall length of proceedings and that the case had been complex.

31. The Government submitted that the Constitutional Court had found that the delays in the period before the year 2000 had been entirely attributable to the applicant. They argued that all further delays had also been attributable to the applicant and that the case had been complex since it required that a report by a finance expert be prepared.

32. 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).

33. The Court notes that, while it is true that the Constitutional Court found that the applicant had contributed to the delays which occurred prior to 3 November 2000, it nevertheless held that the proceedings had lasted unreasonably long. 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, *Skokandić*

v. Croatia, no. 43714/02, 31 July 2007; *Balen v. Croatia*, no. 43429/05, 25 October 2007; and *Brajović-Bratanović v. Croatia*, no. 9224/06, 9 October 2008). Therefore, already in the period which was subject 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 some two years and ten months after the delivery of the Constitutional Court's decision.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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

36. The applicant claimed 40,000 euros (EUR) in respect of a non-pecuniary damage.

37. The Government deemed the amount claimed excessive.

38. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 2,500 under that head.

B. Costs and expenses

39. The applicant did not submit a claim for costs and expenses. Accordingly, the Court considers that there is no call to award him any sum on that account.

C. Default interest

40. 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, EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of non-pecuniary damage, to be converted into Croatian kunas at the rate applicable at the date of settlement;
 - (c) 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 11 February 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President