



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

FIRST SECTION

CASE OF LONZA v. CROATIA

(Application no. 14062/07)

JUDGMENT

STRASBOURG

1 April 2010

FINAL

01/07/2010

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

In the case of Lonza 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 André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 11 March 2010,

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

PROCEDURE

1. The case originated in an application (no. 14062/07) 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 Vlaho Lonza (“the applicant”), on 23 February 2007.

2. The applicant was represented by Mr T. Vukičević, a lawyer practicing in Split. The Croatian Government (“the Government”) were represented by their Agent, Ms Š. Stažnik.

3. On 19 June 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 is a Croatian national who was born in 1944 and lives in Dubrovnik.

5. On 25 July 1984 the applicant brought a civil action in the Split Municipal Court (*Općinski sud u Splitu*) against two private individuals, seeking to be declared the owner of a flat in Dubrovnik.

6. In the period before the entry into force of the Convention in respect of Croatia (5 November 1997), the Municipal Court held fourteen hearings.

7. In the period after 5 November 1997 the Municipal Court held further sixteen hearings and on 22 November 2001 gave its judgment for the applicant.

8. On 6 February 2002 the respondents lodged an appeal with the Split County Court (*Županijski sud u Splitu*). However, since it was established that one of the respondents had died in May 2004, the case was returned to the Municipal Court which, after the inheritance proceedings had been completed in February 2006, stayed the proceedings on 28 June 2006.

9. Meanwhile, on 12 January 2005 the applicant lodged a constitutional complaint under section 63 of the Constitutional Court Act complaining about the length of the above proceedings.

10. After the Municipal Court established that the inheritance proceedings after the respondent who had died had ended with a final decision on 24 February 2006, the court invited his son to take over the proceedings and on 27 November 2006 again sent the case-file to the Split County Court to decide on the appeal by the respondents.

11. On 1 March 2007 the Constitutional Court found a violation of the applicant's constitutional right to a hearing within a reasonable time. It awarded him 12,500 Croatian kunas (HRK) in compensation and ordered the Split County Court to give a decision in the applicant's case in the shortest time possible but no longer than ten months following the publication of its decision in the Official Gazette. The Constitutional Court's decision was published on 13 April 2007. The Constitutional Court found that the delays in the proceedings had been caused by the inefficiency of the Municipal Court.

12. On 19 December 2008 the Split County Court dismissed the appeal by the respondents and upheld the first-instance judgment of 22 November 2001.

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 proceedings had been incompatible with the “reasonable time” requirement laid down in Article 6 § 1 of the Convention. The applicant also complained that the compensation he had been awarded for the length of proceedings was not adequate. Article 6 § 1 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...”

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 25 July 1984, when the applicant brought his civil action. Consequently, they were pending for more than thirteen years before the ratification.

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

18. The period to be taken into consideration ended on 19 December 2008 when the Split County Court gave its judgment. Thus, in total, the proceedings lasted twenty four years and five months at two levels of jurisdiction, of which more than eleven years were 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 request, 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 after the ratification of the Convention by Croatia, at two levels of jurisdiction. It awarded the applicant a compensation for non-pecuniary damages and set a time limit for the Split County Court to give a decision in the case. The Split County Court failed to comply with the time-limit for adopting a decision imposed by the Constitutional Court. In view of these facts, the Court considers that the redress was insufficient (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).

22. In these circumstances, in respect of the period covered by the Constitutional Court's finding, the applicant can still claim to be a "victim" of a breach of the "reasonable time" requirement.

2. Exhaustion of domestic remedies

23. As regards the length of proceedings following the Constitutional Court's decision, the Government argued that the applicant should have again complained to the Constitutional Court or to a higher court. They relied on the practice of the Constitutional Court, adopted in its decision no. U-III-A-3763/2005 of 17 October 2007, where it found a further violation of the complainant's right to a hearing within a reasonable time in the circumstances where a lower court had failed to comply with a time-limit for adopting a decision, imposed by a previous decision of the Constitutional Court.

24. The applicant contested this argument claiming that he had properly exhausted all available remedies.

25. 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 and set a time-limit for the Split County Court for adopting a decision in the applicant's case. However, this time-limit was not complied with. In these circumstances the Court finds that the applicant was not required to lodge a further constitutional complaint since the decision of the Constitutional Court adopted upon his first complaint had no effect on the length of the proceedings he was complaining about.

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

3. Conclusion

27. 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

28. 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).

29. The Government accepted that, in view of the findings of the Constitutional Court, 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, *Plazonić v. Croatia*, no. 26455/04, 6 March 2008, and *Medić v. Croatia*, no. 49916/07, 26 March 2009). 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 one year and nine months after the delivery of the Constitutional Court's decision.

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

31. The applicant also complained under Article 13 of the Convention, taken in conjunction with Article 6 § 1 thereof, that the Split County Court had not complied with the Constitutional Court's 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."

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 since the Split County Court had not complied with the time-limit fixed by the Constitutional Court.

34. The Government argued that a constitutional complaint about the length of proceedings was an effective domestic remedy which provided both for speeding up of the proceedings at issue and for the 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.

2. *The Court's assessment*

35. The Court notes that the complaint under Article 13 is mainly concerned with the fact that the Split County Court did not comply with the time limit for adopting its decision, imposed by the Constitutional Court. The Court reiterates that it has set out the relevant principles in respect of the applicant's complaint under Article 13 in the *Kaić* judgment (see *Kaić and Others v. Croatia*, no. 22014/04, § 38 in fine).

36. As regards the present case the Court notes that the applicant did not receive sufficient satisfaction for the inordinate length of the civil proceedings in view of the fact that 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. Therefore, it cannot be held that the complaint the applicant resorted to was an adequate remedy for the length of those proceedings.

37. 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.

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

III. ALLEGED VIOLATION OF ARTICLE 1 OF THE OF PROTOCOL No. 1 TO THE CONVENTION

39. Lastly, the applicant complained that the length of the proceedings complained of had infringed his right to the peaceful enjoyment of his possessions as guaranteed by Article 1 of Protocol No. 1 on the grounds that

while the proceedings at issue were pending, he had been prevented from freely disposing of his flat.

40. The Government contested that argument.

A. Admissibility

41. The Court notes that this complaint is linked to the length complaint examined above under Article 6 § 1 of the Convention and must therefore likewise be declared admissible.

B. Merits

42. Having regard to its finding under Article 6 § 1, the Court considers that it is not necessary to examine whether, in this case, there has been a violation of Article 1 of Protocol No. 1 (see *Zanghì v. Italy*, judgment of 19 February 1991, Series A no. 194-C, p. 47, § 23 and *Buj v. Croatia*, no. 24661/02, 1 June 2006, § 38).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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

44. The applicant claimed EUR 10,000 in respect of non-pecuniary damage.

45. The Government contested that claim.

46. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 1,700 in this respect, plus any tax that may be chargeable on that amount.

B. Costs and expenses

47. The applicant, who was represented by a lawyer, also claimed an unspecified amount for the costs of his representation before the domestic courts and the Court, both in respect of his request for the protection of the right to a hearing within a reasonable time.

48. The Government contested that claim.

49. 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. As the applicant's constitutional complaint was essentially aimed at remedying the violation of the Convention alleged before the Court, the costs incurred in respect of this remedy may be taken into account in assessing the claim for costs (see *Scordino*, cited above, § 22; and *Medić*, cited above, § 31). In the present case, regard being had to the information in its possession and the above criteria, though the applicant did not specify the costs of his legal representation, the Court awards him a sum of EUR 680 for costs and expenses before the Constitutional Court proceedings and EUR 1,200 in respect of the proceedings before the Court, plus any tax that may be chargeable to the applicant on these amounts.

C. Default interest

50. 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* that no separate issue arises under Article 1 of Protocol No. 1 to the Convention;
5. *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 1,700 (one thousand seven hundred euros) in respect of non-pecuniary damage;
 - (ii) EUR 1,880 (one thousand eight hundred eighty 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;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 1 April 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Christos Rozakis
President