



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

FIRST SECTION

CASE OF KVARTUČ v. CROATIA (No. 2)

(Application no. 34830/07)

JUDGMENT

STRASBOURG

22 April 2010

FINAL

04/10/2010

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

In the case of Kvartuč 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 25 March 2010,

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

PROCEDURE

1. The case originated in an application (no. 34830/07) 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 Zoran Kvartuč (“the applicant”), on 29 June 2007.

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

3. On 11 December 2008 the President of the First Section decided to give notice of the application. 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 1956 and lives in Zadar, Croatia.

5. On 15 March 1995 the applicant brought a civil action in the Zadar Municipal Court (*Općinski sud u Zadru*) against the Croatian Privatisation Fund and other two companies, seeking annulment of the share purchase contract whereby the Fund sold the shares of one company, in which the applicant holds the shares, to the other one.

6. On 23 May 1995 the court issued a decision dismissing the second respondent's plea of lack of jurisdiction *ratione materiae* (*stvarna nadležnost*). Following an appeal by the second respondent, on

21 December 1995 the Zadar County Court (*Županijski sud u Zadru*) reversed the first-instance decision finding that the ordinary courts had no jurisdiction in the matter and transferred the case to the Administrative Court (*Upravni sud Republike Hrvatske*). On 11 September 1997 the Administrative Court declined its jurisdiction in the matter and applied to the Supreme Court (*Vrhovni sud Republike Hrvatske*) to resolve the conflict of jurisdiction created thereby. On 1 October 1998 the Supreme Court decided that the ordinary courts had competence in the matter. On 11 December 1998 the case was transferred back to the Zadar Municipal Court.

7. The Municipal Court held hearings on 3 May 2000 and 19 February 2002.

8. On 23 March 2004 the court stayed the proceedings on account of the insolvency proceedings that had been opened against the second respondent on 16 November 2000. Those insolvency proceedings ended on 4 October 2004 when the P.P. company was deleted from the business register.

9. Because of the insolvency proceedings, on 9 February 2005 the Zadar Municipal Court declined its jurisdiction in the matter and transferred the case to the Zadar Commercial Court (*Trgovački sud u Zadru*).

10. On 24 May 2006 the applicant lodged a request for the protection of the right to a hearing within a reasonable time (*zahtjev za zaštitu prava na suđenje u razumnom roku*) with the High Commercial Court which request was dismissed on 3 November 2006. The applicant appealed to the Supreme Court.

11. On 18 October 2006 the Zadar Commercial Court stayed the proceedings because the second respondent had ceased to exist as a legal entity.

12. On 10 November 2006 the applicant appealed against that decision to the High Commercial Court (*Visoki trgovački sud Republike Hrvatske*).

13. On 17 May 2007 the Supreme Court reversed the High Commercial Court's decision of 3 November 2006 (see paragraph 10 above) by finding a violation of the applicant's right to a hearing within a reasonable time. It awarded him 14,000 Croatian kunas (HRK) in compensation and ordered the Commercial Court to give a decision in the applicant's case within six months of service of its decision.

14. The Supreme Court's decision was served on the Zadar Commercial Court on 29 June 2007.

15. Since at that time the case was pending before the High Commercial Court, on 3 July 2007 the judge of the Zadar Commercial Court, assigned to hear the case, wrote a letter to the High Commercial Court urging it to decide on the appeal by the applicant of 10 November 2006 against the first-instance decision. He explained that otherwise he could not proceed in the case and comply with the Supreme Court's order of 17 May 2007 to give a decision in the applicant's case within six months.

16. On 31 December 2008 the High Commercial Court dismissed the applicant's appeal from 10 November 2006 in part and upheld the first-instance decision in respect of the first and the second respondent. It however quashed the first-instance decision and remitted the case in respect of the third respondent. The case was returned to the Commercial Court on 26 January 2009.

17. The applicant then lodged an appeal on points of law (*revizija*) against the second-instance judgment, which the Supreme Court (*Vrhovni sud Republike Hrvatske*) declared inadmissible on 4 June 2009.

18. On 9 September 2009 the applicant lodged a constitutional complaint against the Supreme Court's decision. On 26 November 2009 the Constitutional Court declared applicant's complaint inadmissible.

19. Meanwhile, in the resumed proceedings following the High Commercial Court's decision on remittal of 31 December 2008, on 11 March 2009 the Zadar Commercial Court delivered a judgment ruling against the applicant.

20. The applicant appealed on 25 April 2009, and the proceedings are currently pending before the High Commercial Court.

II. RELEVANT DOMESTIC LAW

21. The relevant part of the Courts Act (*Zakon o sudovima*, Official Gazette nos. 150/05 and 16/07), 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 Petty Offences Court 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.”

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 from 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 the Supreme Court's decision but one may lodge a constitutional complaint.”

THE LAW

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

22. The applicant complained that the length of the civil proceedings was 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. 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 ...”

23. The Government contested that argument.

24. 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 15 March 1995, when the applicant brought his civil action. Consequently, they were pending for some two years and eight months before the ratification.

25. The case was still pending on 17 May 2007 when the Supreme Court gave its decision (see paragraph 13 above). On that date the proceedings had lasted some nine and a half years after the ratification, at two levels of jurisdiction.

26. The period to be taken into consideration has not yet ended. Thus, in total, the case has so far been pending for more than fourteen years and nine months at four levels of jurisdiction, of which more than twelve years were after Croatia's ratification of the Convention.

A. Admissibility

1. *The applicant's victim status*

27. The Government submitted that the Supreme 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.

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

29. The Court notes that at the time when the Supreme Court gave its decision, the proceedings had been pending for more than nine and a half years after the ratification of the Convention by Croatia, at two levels of jurisdiction. The just satisfaction awarded by 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.

30. 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) especially given the fact that lower courts did not comply with the Supreme Court's order to deliver a decision within six months. In these circumstances, in respect of the period covered by the Supreme Court's finding, the applicant has not lost his status as a victim within the meaning of Article 34 of the Convention.

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

2. *Exhaustion of domestic remedies*

32. As regards the length of proceedings following the Supreme Court's decision, the Government argued that the applicant should have lodged a second request for the protection of the right to a hearing within reasonable time, which he failed to do.

33. The applicant contested that argument.

34. 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 request for the protection of the right to a hearing within a reasonable time – and that the Supreme Court found a violation of that right in his case but failed to award him appropriate compensation. The Court reiterates that in cases where a similar remedy for the length of proceedings (a constitutional complaint) was 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 decision was 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).

35. The Court considers that this reasoning applies with equal force in the circumstances such as 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 Supreme Court interpreted and applied the relevant provisions of the domestic law produced consequences that were consistent with the Convention principles.

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

3. Conclusion

37. 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

38. 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).

39. The Court notes that the Supreme Court found 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, *Butković v. Croatia*, no. 32264/03, 24 May 2007). Therefore, already in the period which was subject to the Supreme 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 seven months after the delivery of the Supreme Court's decision.

40. 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

41. 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

42. The applicant claimed EUR 2,530,000 in respect of pecuniary and EUR 1,000,000 in respect of non-pecuniary damage.

43. The Government contested these claims as being excessive and unfounded.

44. 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 2,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

45. The applicant claimed EUR 10,000 for the costs and expenses incurred before the domestic courts and before the Court. He was not represented by a lawyer.

46. The Government contested that claim.

47. 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 request before the High Commercial Court 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, § 28; and *Medić v. Croatia*, no. 49916/07, § 50, 26 March 2009). 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 50 for the costs and expenses in the proceedings before domestic courts and EUR 500 for costs and expenses in the proceedings before the Court, plus any tax that may be chargeable to the applicant on these amounts.

C. Default interest

48. 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 Croatian kunas at the rate applicable at the date of settlement:
 - (i) EUR 2,000 (two thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 550 (five hundred fifty 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 April 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President