



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

FIRST SECTION

CASE OF ČIKLIĆ v. CROATIA

(Application no. 40033/07)

JUDGMENT

STRASBOURG

22 April 2010

FINAL

22/07/2010

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

In the case of Čiklič 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. 40033/07) 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, Mrs Jelena Čiklič (“the applicant”), on 4 August 2007.

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

3. On 9 July 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, who is a Croatian national was born in 1957 and lives in Zadar, Croatia.

5. On 16 July 1996 the applicant brought a civil action against the company Z. in the Zadar Municipal Court (*Općinski sud u Zadru*) challenging her dismissal from work and seeking salary arrears.

6. The court held six hearings and on 10 October 1997 dismissed the action. The applicant appealed.

7. On 15 March 2000 the Zadar County Court (*Županijski sud u Zadru*) quashed the impugned judgment and remitted the case to the court of first instance.

8. In the resumed proceedings, the Zadar Municipal Court held six hearings and on 16 April 2003 stayed the proceedings (*prekid postupka*) because the bankruptcy proceedings had meanwhile been opened against the defendant.

9. On 14 July 2003 the Municipal Court found that it no longer had jurisdiction in the matter because of the opening of the bankruptcy proceedings and transferred the case to the Zadar Commercial Court (*Trgovački sud u Zadru*). The Commercial Court held three hearings and on 1 June 2004 adopted a judgment. The applicant appealed to the High Commercial Court (*Visoki trgovački sud Republike Hrvatske*).

10. On 3 May 2006 the applicant lodged a request for the protection of the right to a hearing within a reasonable time with the Supreme Court (*Vrhovni sud Republike Hrvatske*).

11. On 12 September 2006 the High Commercial Court quashed the first-instance judgment and remitted the case. In the resumed proceedings the Zadar Commercial Court gave its judgment on 6 February 2007 against which both parties appealed to the High Commercial Court.

12. On 6 March 2007 the Supreme Court found a violation of the applicant's right to a hearing within a reasonable time and attributed delays in the proceedings to the inefficiency of the Zadar Municipal Court and the High Commercial Court. It awarded the applicant 15,000 Croatian kuna in compensation and ordered the High Commercial Court to give a decision in the applicant's case within one month following the service of its decision. The Supreme Court's decision was served on the High Commercial Court on 2 July 2007, although the latter already gave its decision in that case (see § 11 above).

13. On 26 September 2007 the High Commercial Court quashed the first-instance judgment of 6 February 2007 and remitted the case. On 22 January 2009 the Zadar Commercial Court gave its judgment against which both parties appealed to the High Commercial Court.

14. On 7 October 2009 the High Commercial Court upheld the first instance judgment in part and in the remaining part quashed and remitted to the Zadar Commercial Court before which the proceedings are currently pending.

II. RELEVANT DOMESTIC LAW

15. 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

16. 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, she complained that the amount of compensation she had been awarded for the breach of her 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 ...”

17. The Government contested these arguments.

18. 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 16 July 1996 and have so far been pending for some thirteen years and five months at two levels of jurisdiction, of which about a year and three months before the ratification and for more than twelve years after the ratification of the Convention.

A. Admissibility

1. The applicant's victim status

19. The Government submitted that the Supreme Court had accepted the applicant's request, found a violation of her right to a hearing within reasonable time and awarded her appropriate compensation. The violation complained of had, therefore, been remedied before the domestic authorities and, as a result, the applicant had lost her victim status.

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

21. The Court notes that at the time when the Supreme 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 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.

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). Thus, in respect of the period covered by the Supreme Court's finding, the applicant has not lost her 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 had not exhausted domestic remedies and that she should have lodged a constitutional

complaint or another request for the protection of the mentioned right with a higher court, which she failed to do.

25. The applicant did not reply to this argument.

26. The Court observes at the outset that the applicant availed herself 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 violation of that right in her case but failed to award her 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. Where the Constitutional Court's decisions were inconsistent with the 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 of 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.

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 further notes 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 the civil proceedings had been excessive because of inefficiency of the domestic courts, particularly in view of the special diligence required in employment disputes.

31. The Government accepted that, in view of the findings of the Supreme Court, the proceedings had lasted unreasonably long and that the High Commercial Court failed to comply with the time-limit ordered by the Supreme Court.

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 the Supreme Court found that the proceedings had lasted unreasonably long and had attributed delays in the proceedings to the inefficiency of the Zadar Municipal Court and the High Commercial Court. 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 Supreme Court's scrutiny the length of the proceedings was excessive and failed to meet the "reasonable time" requirement. It retained that character throughout the subsequent period of some two years and ten months after the delivery of the Supreme Court's decision since the case is still pending.

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 23.943,66 euros (EUR) in respect of pecuniary and 21.126,76 euros (EUR) in respect of non-pecuniary damage.

37. The Government considered the claimed amount excessive and unfounded.

38. The Court does not discern any casual link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 2,600 in respect of non-pecuniary damage.

B. Costs and expenses

39. The applicant also claimed EUR 29,57 for the mailing expenses and unspecified amount for the cost of translation and duplication of documents and legal representation before the national courts.

40. The Government contested that claim.

41. 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 Supreme 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 costs and expenses in the domestic proceedings and EUR 500 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

42. 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 2,600 (two thousand six hundred 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