



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

FIRST SECTION

CASE OF ROGOŠIĆ v. CROATIA

(Application no. 55520/07)

JUDGMENT

STRASBOURG

20 May 2010

FINAL

20/08/2010

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

In the case of Rogošić 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 Søren Nielsen, *Section Registrar*,

Having deliberated in private on 29 April 2010,

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

PROCEDURE

1. The case originated in an application (no. 55520/07) 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 Mirko Rogošić (“the applicant”), on 19 November 2007.

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

3. On 1 July 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 1932 and lives in Belgrade, Serbia.

5. On 31 May 2000 the applicant brought a civil action in the Zadar Municipal Court (*Općinski sud u Zadru*), seeking payment for a house he had sold to a private individual, M.G.

6. The first hearing scheduled for 6 November 2000 was adjourned owing to the failure of the applicant's representative to submit a proper authority form. Further hearings were held on 16 January, 15 February, 19 March, 10 and 22 May, 13 June and 9 August 2002.

7. At the hearing held on 29 August 2002 the applicant's representative asked that the applicant give his evidence before a court in Belgrade by means of legal assistance between the two States. On the same day the Zadar Municipal Court requested the competent Municipal Court in Belgrade for legal assistance in that respect.

8. On 19 March 2003 the Zadar Municipal Court received the record of the applicant's evidence given before the First Municipal Court in Belgrade.

9. The Zadar Municipal Court held further hearings on 8 June, 9 September, 18 October, 4 November and 2 December 2004 and 5 April 2006.

10. Meanwhile, on 24 October 2005, the applicant lodged a constitutional complaint under section 63 of the Constitutional Court Act complaining about the length of the above civil proceedings.

11. In the period between March and September 2006 the Zadar Municipal Court and the Zadar County Court (*Županijski sud u Zadru*) were deciding on the applicant's requests for transfer of jurisdiction to another court and withdrawal of the presiding judge.

12. On 12 December 2006 the Municipal Court delivered a judgment ruling for the applicant in part. Both parties appealed to the Zadar County Court.

13. On 12 February 2007, the applicant sought an interim measure (*privremena mjera*) from the Zadar Municipal Court so as to prohibit M.G. from disposing of the house in question. On 24 April 2007 the Zadar County Court returned the case to the Municipal Court in order to decide on the applicant's request for an interim measure.

14. On 24 May 2007 the Constitutional Court dismissed the applicant's complaint about the length of the proceedings finding that the delays in the proceedings had been attributable to the applicant. The Constitutional Court's decision was served on the applicant on 8 September 2007.

15. On 1 June 2007 the Municipal Court dismissed the applicant's request for the interim measure and forwarded the case to the Zadar County Court. On 19 September 2006 the latter quashed the first-instance judgment of 12 December 2006 and remitted the case. In the resumed proceedings the Municipal Court invited the applicant to specify his claim according to the instructions given by the County Court.

16. On 30 October 2007 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 Zadar County Court complaining about the length of the proceedings upon his request for the interim measure.

17. On 8 November 2007 the County Court declared the applicant's request inadmissible because the applicant, who resided abroad, had not appointed a special representative in Croatia who would receive the courts' summons on behalf of the applicant (*punomoćnik za primanje pismena*), as

required by the relevant legislation. On 21 April 2008 the Supreme Court (*Vrhovni sud Republike Hrvatske*) upheld the County Court's decision.

18. In the resumed civil proceedings, on 11 February 2008 the Municipal Court gave a judgment for the applicant. Both parties lodged their appeals. The appeal proceedings are currently pending before the Zadar County Court.

II. RELEVANT DOMESTIC LAW

19. The relevant part of section 63 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:

“(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 individual's rights and obligations or a criminal charge against him or her within a reasonable time ...

(2) If a constitutional complaint ... under sub-section 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

(3) In a decision issued under sub-section 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 on which a request for payment is lodged.”

20. The relevant part of the Courts Act (*Zakon o sudovima*, Official Gazette nos. 150/05, 16/07, 113/08 and 153/09), as in force at the material time, 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 sub-section 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 on which the party's request for payment is lodged.

(3) An appeal, to be lodged with the Supreme Court within fifteen days, 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."

21. The relevant part of section 146 of the Code of Civil Procedure (*Zakon o parničnom postupku*, Official Gazette 53/91, 91/92, 58/93, 112/99, 117/03, 84/08) reads as follows:

Representative for receiving the courts' summons**Section 146**

"(1) Where a plaintiff ... residing abroad and not having a representative in Croatia, does not appoint a representative for receiving the courts' summons in Croatia at the time of lodging a civil action, the court [conducting the proceedings] shall declare the action inadmissible.

..."

THE LAW**I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION
ON ACCOUNT OF THE LENGTH OF THE CIVIL PROCEEDINGS**

22. The applicant complained that the length of the civil proceedings had been incompatible with the "reasonable time" requirement, provided in Article 6 § 1 of the Convention, which reads as follows:

"In the determination of his civil rights and obligations ... everyone is entitled to a free... hearing within a reasonable time by a independent and impartial tribunal ..."

23. The Court notes that the proceedings commenced on 31 May 2000, when the applicant brought his civil action. On 24 May 2007 when the Constitutional Court gave its decision and dismissed the applicant's

complaint, the proceedings had lasted some seven years at two levels of jurisdiction.

24. The proceedings have not yet ended. They have lasted another two years and eight months after the decision of the Constitutional Court. Thus, in total, the case has been pending so far for some nine years and nine months at two levels of jurisdiction.

A. Admissibility

25. The Government invited the Court to reject the application on the ground that the applicant had not exhausted all domestic remedies as required under Article 35 § 1 of the Convention. They maintained that for the period following the Constitutional Court's decision the applicant could have lodged a request for the protection of the right to a hearing within reasonable time with a higher court and a constitutional complaint against a higher court's decision, which he had failed to do.

26. The applicant contested these arguments.

27. The Court finds that the question of exhaustion of domestic remedies is inextricably linked to the merits of this complaint. Accordingly the Court holds that question of exhaustion of domestic remedies should be joined to the merits.

28. The Court further notes 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

29. 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 dismissed his complaint. In these circumstances, the Court is required to verify whether the way in which the Constitutional Court interpreted and applied the relevant provisions of the domestic law, produces consequences that are consistent with the principles of the Convention, as interpreted in the light of the Court's case-law. If the Constitutional Court's decision is consistent with the Convention principles, the Court will, when examining the question of exhaustion of domestic remedies, refrain from dealing with the length of the proceedings subsequent to that decision. Otherwise, a genuine examination of the total length after the ratification is warranted (see also *Kozlica v. Croatia*, no. 29182/03, § 23, 2 November 2006).

30. 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, *Cocchiarella v. Italy* [GC], cited above, § 68; and *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

31. The Government maintained that even though the case was not complex, it nevertheless involved a hearing of the applicant before a court in another state. They argued that the length of proceedings was mainly attributable to the applicant. In particular, he had not submitted a proper authority form and his initial civil action had not been submitted in a proper form which had been the reason for quashing the first-instance judgment. He also requested to give evidence before a foreign court which contributed to the length of the proceeding. He had also requested transfer of jurisdiction to another court and withdrawal of the presiding judge. Finally he sought an interim measure at the stage when the proceedings had already been pending before the appeal court.

32. The applicant contested these arguments.

33. The Court notes that in the present case the period examined by the Constitutional Court amounts to some seven years (see paragraph 23 above). The Court accepts that the fact that the applicant preferred to give his evidence before a court in Belgrade instead of appearing before the Zadar Municipal Court contributed to the length of proceedings. On the other hand, the Court observes that in the relevant period there were several substantial periods of the courts' inactivity (see §§ 6-11 above) altogether exceeding three years. While it is true that the applicant requested transfer of jurisdiction, withdrawal of the presiding judge and an interim measure, the Court considers that it is a normal function of courts when deciding civil-law matters to adopt various procedural decisions, such as those in the present case (see, *Cerin v. Croatia*, no. 54727/00, § 26, 15 November 2001 and *Rajak v. Croatia*, no. 49706/99, § 42, 28 June 2001). In this connection, the Court reiterates that it is for the Contracting States to organise their legal systems in such a way that their courts can guarantee everyone's right to obtain a final decision on disputes relating civil rights and obligations within a reasonable time (see, *Horvat v. Croatia*, no. 51585/99, § 59, ECHR 2001-VIII and *Nogolica v. Croatia* (no. 3), no. 9204/04, § 27, 7 December 2006).

34. In the light of the foregoing the Court does not find that the length of the proceedings is attributable to the applicant only and holds that the above-mentioned delays are mostly attributable to the national courts. Moreover, the Government provided no explanation in respect of the length of the proceedings following the Constitutional Court's decision, which has so far amounted to some two years.

35. Having examined all the material submitted to it, and having regard to its case-law on the subject, the foregoing considerations are sufficient to

enable the Court to conclude that already in the period which was susceptible to the Constitutional Court's scrutiny, the length of the proceedings was excessive and failed to meet the "reasonable time" requirement. It necessarily kept such character throughout the subsequent period of some two years. In these circumstances, to ask the applicant to lodge a further request for protection of the right to a hearing within reasonable time, would overstretch his duties under Article 35 § 1 of the Convention (see, for example, *Antonić-Tomasović v. Croatia*, no. 5208/03, §§ 25-34, 10 November 2005 and *Kozlica v. Croatia*, no. 29182/03, §§ 23-28, 2 November 2006).

36. In conclusion, the Court finds that the Constitutional Court's decision is not consistent with the Convention principles. Therefore the Court rejects the Government's objection as to the exhaustion of domestic remedies and finds that in the present case there has been a violation of Article 6 § 1 of the Convention on account of the excessive length of the proceedings.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

37. The applicant also complained that the proceedings were unfair and that the courts were not impartial and that he was discriminated against because he lived in Serbia.

38. The Court notes that the proceedings at issue are still pending and that therefore any complaints about their fairness as well as the complaint that the applicant was discriminated against are premature.

39. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. The applicant claimed EUR 20,000 in respect of non-pecuniary damage.

42. The Government contested the claim.

43. The Court, ruling on an equitable basis, awards the applicant EUR 3,400 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

44. 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

45. 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. *Joins to the merits* the Government's objection as to the exhaustion remedies and rejects it;
2. *Declares* the complaint concerning the length of the civil proceedings admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 6 § 1 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, EUR 3,400, plus any tax that may be chargeable to the applicant, in respect of non-pecuniary damage, to be converted into Croatian kuna at the rate applicable at the date of settlement;
 - (b) 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 May 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President