

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

FIRST SECTION

CASE OF BEĆIROVIĆ v. CROATIA

(Application no. 45379/10)

JUDGMENT

STRASBOURG

18 December 2012

This judgment is final but it may be subject to editorial revision.



In the case of Bećirović v. Croatia,

The European Court of Human Rights (First Section), sitting as a Committee composed of:

Khanlar Hajiyev, *President,*
Nina Vajić,
Julia Laffranque, *judges,*

and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 27 November 2012,

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

PROCEDURE

1. The case originated in an application (no. 45379/10) 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 Ibrahim Bećirović ("the applicant"), on 3 May 2010.

2. The applicant was represented by Ms V. Pušić Miličević, a lawyer practising in Zagreb. The Croatian Government ("the Government") were represented by their Agent, Ms Š. Stažnik.

3. On 6 July 2011 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1954 and lives in Zagreb.

A. Civil proceedings

5. On 21 November 2005 Ms M.S. brought a civil action against the applicant in the Rab Municipal Court (*Općinski sud u Rabu*) seeking that the loan agreement concluded between her and the applicant be declared null and void. The plaintiff's statement of claim was served on the applicant on 12 January 2006.

6. On 16 May 2007 the Supreme Court (*Vrhovni sud Republike Hrvatske*) ordered that the case be transferred to the Rijeka Municipal Court (*Općinski sud u R ijeci*).

7. On 30 September 2011 the Rijeka Municipal Court delivered a judgment ruling for the plaintiff in part.

8. Following appeals by both parties, on 5 September 2012 the Rijeka County Court (*Županijski sud u Rijeci*) quashed the first-instance judgment and remitted the case.

9. The proceedings are currently again pending before the Rijeka Municipal Court.

B. Proceedings following the applicant's request for the protection of the right to a hearing within a reasonable time Merits

10. Meanwhile, on 19 March 2009 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 Rijeka County Court, complaining about the length of the above civil proceedings.

11. On 14 May 2009 the Rijeka County Court found a violation of the applicant's right to a hearing within a reasonable time, awarded him 4,000[1] Croatian kunas (HRK) in compensation and ordered the Rijeka Municipal Court to give a decision in the applicant's case within ten months of service of its decision. According to the Government, the County Court's decision was served on the Rijeka Municipal Court on the same day.

12. On 31 August 2009 the Supreme Court dismissed an appeal by the applicant and upheld the first-instance decision. The Supreme Court's decision was served on the applicant's representative on 14 October 2009.

II. RELEVANT DOMESTIC LAW

13. The relevant provisions of the Courts Act (*Zakon o sudovima*, Official Gazette nos. 150/05, 16/07 and 113/08), governing the request for the protection of the right to a hearing within a reasonable time, as the remedy for the length of judicial proceedings in Croatia, are set out in *Praunsperger v. Croatia*, no. 16553/08, § 21, 22 April 2010.

14. Section 64 of the Constitutional Act on the Constitutional Court of the Republic of Croatia (*Ustavni zakon o Ustavnom sudu Republike Hrvatske*, Official Gazette nos. 99/99, 29/02 and 49/02 – "the Constitutional Court Act") provides that a constitutional complaint may be lodged within the time-limit of thirty days which begins on the day that the contested decision is received.

15. According to the Constitutional Court's practice, that court is not competent to supervise the implementation of higher courts' decisions ordering lower courts to decide a case within a certain time-limit (see, for example, *Pavić v. Croatia*, no. 21846/08, § 11, 28 January 2010).

1. Approximately 545 euros (EUR).

THE LAW

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

16. 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, which 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..."

17. The Government contested that argument.

18. The period to be taken into consideration began on 12 January 2006, when the plaintiff's statement of claim was served on the applicant, and has not yet ended. Thus, the case has so far been pending for six years and nine months, at two levels of jurisdiction.

A. Admissibility

1. The applicant's victim status

19. The Government first submitted that on 14 May 2009 the Rijeka County 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 first notes that at the time of the Rijeka County Court's decision of 14 May 2009, the proceedings had been pending for some three years and four months, at one level of jurisdiction (see paragraph 11 above). It also notes that the County Court awarded the applicant the equivalent of approximately 545 euros (EUR). The compensation awarded by that 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 Court further notes that in the same decision the Rijeka County Court also ordered the Rijeka Municipal Court to decide the applicant's case within ten months of the service of its decision. Given that the County Court's decision was, according to the Government, served on the Rijeka Municipal Court on 14 May 2009 (see paragraph 11 above), the above time-limit expired on 14 March 2010. However, the Rijeka Municipal Court adopted a judgment in the applicant's case only on 30 September 2011 (see paragraph 7 above), thereby exceeding the time-limit left to it by some one and a half year.

23. Having regard in particular to the fact that the Rijeka Municipal Court did not comply with the County Court's order to deliver a decision within ten months, the compensation awarded 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). Therefore, in respect of the period covered by the County Court's finding, the applicant has not lost his victim status within the meaning of Article 34 of the Convention.

2. Exhaustion of domestic remedies

24. The Government also invited the Court to declare the application inadmissible for non-exhaustion of domestic remedies. They submitted that the applicant should have lodged a constitutional complaint against the Supreme Court's decision. They further submitted that, as regards the length of proceedings in the period following the Rijeka County Court's decision, the applicant should have lodged a second request for the protection of the right to a hearing within reasonable time. However, he had failed to resort to those remedies.

25. The applicant replied that, even though his appeal had been dismissed, he had eventually been satisfied with the Supreme Court's decision because at that time he had believed that the Rijeka Municipal Court would comply with the order of the Rijeka County Court and decide his case within ten months. Therefore, at that moment he had not had any interest to lodge a constitutional complaint against the Supreme Court's decision. The applicant also submitted that, in view of the fact that the Rijeka Municipal Court had not observed the order of the Rijeka County Court to decide his case within the specified time-limit, he was not required to lodge a second request for the protection of the right to a hearing within reasonable time to complain about the length of the proceedings in the period after the Rijeka County Court's decision.

26. As regards the Government's argument that the applicant should have lodged a constitutional complaint against the Supreme Court's decision, the Court first observes that this decision was served on the applicant's representative on 14 October 2009. Having regard to section 64 of the Constitutional Court Act (see paragraph 14 above), it follows that the applicant could have lodged a constitutional complaint against it the latest on 13 November 2009. The Court further refers to its above finding that the applicant can still claim to be the victim of the violation of his right to a hearing within a reasonable time primarily because the Rijeka Municipal Court did not comply with the Rijeka County Court's order to deliver a decision in his case within ten months (see paragraphs 22-23 above). That became evident on 14 March 2010 when that time-limit expired. However, at that moment the statutory time-limit for lodging a constitutional complaint against the Supreme Court's decision had already elapsed. In any event, given that the Constitutional Court is not competent to supervise the

implementation of higher courts' decisions ordering lower courts to decide a case within a certain time-limit (see paragraph 15 above), the Court does not see, and the Government has not demonstrated, how lodging a constitutional complaint would have remedied the failure of the Municipal Court to comply with the County Court's order in the present case.

27. As regards the Government's argument that the applicant should have lodged a second request for the protection of the right to a hearing within reasonable time to complain about the length of the proceedings in the period following the Rijeka County Court's decision, the Court notes that it has already rejected similar objections raised by the Government in a number of length-of-proceedings cases against Croatia (see, for example, *Lonza v. Croatia*, no. 14062/07, §§ 25-26, 1 April 2010; *Kvartuč v. Croatia (no. 2)*, no. 34830/07, §§ 34-36, 22 April 2010, and *Čiklić v. Croatia*, no. 40033/07, §§ 26-28, 22 April 2010) and sees no reason to hold otherwise in the present case.

28. It follows that both objections by the Government's 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 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).

31. The Court notes that in its decision of 14 May 2009 the Rijeka County Court found that the proceedings had lasted unreasonable long. The Court sees no reason to hold otherwise as it has itself frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar as the present case (see, for example (see, for example, *Jelavić-Mitrović v. Croatia* (dec.), no. 9591/02, ECHR, 13 January 2005). Therefore, already in the period which was subject to the County Court's scrutiny the length of the proceedings was excessive and failed to meet the "reasonable time" requirement. It has retained that character throughout the subsequent period that has so far lasted some three years and five months after the delivery of the County Court's decision (see paragraph 18 above).

32. 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

33. 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

34. The applicant did not submit any claim in respect of pecuniary or non-pecuniary damage. The Court therefore considers that there is no call to award him any sum on that account.

B. Costs and expenses

35. The applicant claimed HRK 3,075 for the costs and expenses incurred before the domestic courts and HRK 6,150 for those incurred before the Court.

36. The Government contested these claims.

37. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the sum of EUR 180 for costs and expenses in the domestic proceedings and EUR 750 for the proceedings before the Court, plus any tax that may be chargeable to the applicant on these amounts.

C. Default interest

38. The Court considers it appropriate that the default interest rate 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, EUR 930 (nine hundred and thirty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be

converted into Croatian kunas, 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;

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

Done in English, and notified in writing on 18 December 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Khanlar Hajiyev
President