

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

FIRST SECTION

CASE OF MARELJA v. CROATIA

(Application no. 4255/10)

JUDGMENT

STRASBOURG

18 December 2012

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



In the case of Marelja v. Croatia,

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

Julia Laffranque, *President,*
Nina Vajić,
Erik Møse, *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. 4255/10) 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 Drago Marelja ("the applicant"), on 15 January 2010.

2. The applicant was represented by Ms M. Jukić-Jurišić, a lawyer practising in Zagreb. The Croatian Government ("the Government") were represented by their Agent, Ms Š. Stažnik.

3. On 17 January 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1961 and lives in Đakovo.

A. Civil proceedings

5. On 14 July 2004 the applicant brought a civil action in the Zagreb Municipal Civil Court (*Općinski građanski sud u Zagrebu*) against insurance company J.O. seeking damages.

6. On 3 February 2010 that court adopted a judgement for the applicant.

7. On 22 September 2010 the Zagreb County Court *(Županijski sud u Zagrebu)* dismissed an appeal by the defendant and upheld the first-instance judgement. The judgement was served on the applicant's representative on 6 December 2010.

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

8. Meanwhile, on 30 September 2008 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 Zagreb County Court.

9. On 30 April 2009 the Zagreb County Court found a violation of the applicant's right to a hearing within a reasonable time, awarded him 2,000 Croatian kunas (HRK) in compensation and ordered the Zagreb Municipal Civil Court to give a decision in the applicant's case within six months of service of its decision. This decision was served on the applicant's representative on 18 May 2009.

10. On 25 May 2009 the applicant appealed against the County Court's decision in its part concerning the award of compensation. He argued that the compensation that court had awarded him was too low and sought HRK 20,000 instead.

11. On 30 September 2009 the Supreme Court (*Vrhovni sud Republike Hrvatske*) allowed the applicant's appeal in part and awarded him additional HRK 4,000, that is, HRK 6,000[1] in total.

12. On 21 October 2009 the Zagreb County Court's decision of 30 April 2009 was served on the Zagreb Municipal Civil Court with a view to deciding the applicant's case within the time-limit set forth in that decision.

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.

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, which reads as follows:

[1] Approximately 823 euros (EUR).

"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 that argument.

16. The period to be taken into consideration began on 14 July 2004, when the applicant brought his civil action, and ended on 6 December 2010, when the Zagreb County Court's judgment of 22 September 2010 was served on the applicant's representative. It thus lasted six years and four months, at two levels of jurisdiction.

A. Admissibility

1. The applicant's victim status

17. The Government first submitted that in its decision of the 30 April 2009 the Zagreb County Court had accepted the applicant's request and found a violation of his right to a hearing within a reasonable time. It had awarded him appropriate compensation and ordered the Zagreb Municipal Civil Court to give a decision in his case within six months of service of its decision, which court had complied with that order. In particular, they explained that because the applicant had appealed against the Zagreb County Court's decision, it could not have been served on the Zagreb Municipal Civil Court immediately, that is, before it had become final. The decision of the County Court had become final on 30 September 2009, when the Supreme Court dismissed the applicant's appeal against it, and had been served on the Zagreb Municipal Civil Court shortly afterwards, on 21 October 2009. As the Municipal Court had adopted a judgment in the applicant's case on 3 February 2010, it did so within the time-limit of six months set forth by the County Court. The violation complained of had, therefore, been remedied before the domestic authorities and, as a result, the applicant had lost his victim status.

18. The Court first notes that at the time of the Zagreb County Court's decision of 30 April 2009, the proceedings had been pending for four years and nine months, at one level of jurisdiction. The same period was taken into account by the Supreme Court in its decision of 30 September 2009. It further notes that the Zagreb County Court and the Supreme Court awarded the applicant the equivalent of approximately 823 euros (EUR). The compensation awarded by those courts 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.

19. The Court further observes that the applicant appealed against the Zagreb County Court's decision of 30 April 2009 only in its part concerning the award of compensation. It follows that the uncontested part of that decision, in particular the order to the lower court to decide the applicant's

case within six months, became final on 27 May 2009 when the eight-day time-limit for lodging an appeal expired. In these circumstances the Court sees no reason why the County Court's decision was not immediately served on the Zagreb Municipal Civil Court but only after the Supreme Court had decided on the applicant's appeal.

20. By serving the decision in question on the Municipal Court only on 21 October 2009, the domestic courts unduly extended the time-limit left to that court by some five months. In these circumstances, the Court finds little force in the Government's argument that the Zagreb Municipal Civil Court formally complied with Zagreb County Court's decision and adopted a judgment in the applicant's case within the specified time-limit (see paragraph 17 above).

21. Having regard in particular to the above described unjustified delay in the service of the County Court's decision ordering the lower court to decide the applicant's case within six months, the compensation awarded cannot be regarded as adequate in the circumstances (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 domestic courts' finding, the applicant has not lost his victim status within the meaning of Article 34 of the Convention.

2. Exhaustion of domestic remedies

22. 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 and that the application was premature because it had been lodged with the Court on 5 January 2010, that is, when the time-limit set forth in the Zagreb County Court's decision of 30 April 2009 had not yet expired. Lastly, they submitted that, as regards the length of proceedings in the period following that 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.

23. As regards the Government's argument that the applicant should have lodged a constitutional complaint against the Supreme Court's decision, the Court 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 of the unjustified delay in service of the County Court's decision (see paragraphs 19-21 above). In these circumstances the Court does not see, and the Government has not explained, how lodging a constitutional complaint would have remedied that error.

24. As regards the argument that the application was premature, the Court reiterates that the domestic courts, by unjustifiably delaying the

service of the County Court's decision, unduly extended the time-limit left to the Zagreb Municipal Civil Court to decide the applicant's case by some five months (see paragraphs 19-21 above). In any event, the issue whether an application is premature is to be determined with regard to the moment when the Court decides on the admissibility of the application and not with regard to the time the application was lodged (see, for example, *Ringeisen v. Austria*, 16 July 1971, § 91, Series A no. 13; and *Sud Est Réalisations v. France*, no. 6722/05, § 38, 2 December 2010).

25. Lastly, 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 Zagreb County Court's decision of 30 April 2009, 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.

26. It follows that all the Government's objections 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 Court notes that the Zagreb County Court and the Supreme Court found that the proceedings had lasted unreasonably long (see paragraphs 9 and 11 above). 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 similar issues as the present one (see, for example, *Sukobljević v. Croatia* (dec.), no. 5129/03, ECHR 1 June 2006). Therefore, already in the period which was subject to the scrutiny of the County Court and the Supreme Court (see paragraph 18 above) 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 one year and seven months after the delivery of the County Court's decision on 30 April 2009 (see paragraph 16 above).

30. 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

31. 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

32. The applicant claimed HRK 50,000 in respect of non-pecuniary damage.

33. The Government contested the claim.

34. The Court reiterates that where an applicant had resorted to an available domestic remedy and thereby obtained a finding of a violation and was awarded compensation, but can nevertheless still claim to be a "victim", the amount to be awarded under Article 41 may be less than the amounts the Court was awarding in similar cases. In that case an applicant must be awarded the difference between the amount obtained from the domestic courts and an amount that would not have been regarded as manifestly unreasonable compared with the amounts awarded by the Court. An applicant should also be awarded an amount in respect of stages of the proceedings that may not have been taken into account by the domestic courts (see, *mutatis mutandis*, *Cocchiarella v. Italy* [GC], cited above, §§ 139-141; *Jakupović v. Croatia*, no. 12419/04, § 33, 31 July 2007; *Skokandić v. Croatia*, no. 43714/02, § 59, 31 July 2007; *Husić v. Croatia*, no. 14878/04, § 31, 25 October 2007; and *Letica v. Croatia*, no. 27846/05, § 34, 18 October 2007).

35. The Court reiterates that the applicant was awarded EUR 823 by the domestic courts (see paragraph 18 above). Having regard to the circumstances of the present case, the characteristics of the request for the protection of the right to a hearing within a reasonable time, as well as the fact that, notwithstanding this domestic remedy, the Court has found a violation, it considers, ruling on an equitable basis, that the applicant should be awarded EUR 300 in respect of the period subject to the domestic courts' scrutiny.

36. The Court also awards the applicant the sum of EUR 750 for the further delay of some one year and seven months in the period following the delivery of the County Court's decision of 30 April 2009 (see paragraph 29 above).

37. Accordingly, the applicant shall be awarded the total sum of EUR 1,050 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

38. The applicant also claimed HRK 5,000 for the costs and expenses incurred before the domestic courts.

39. The Government contested the claim.

40. 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, plus any tax that may be chargeable to the applicant on that amount.

C. Default interest

41. 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, the following amounts, to be converted into Croatian kunas, at the rate applicable at the date of settlement:

(i) EUR 1,050 (one thousand and fifty euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 180 (one hundred and eighty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(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 18 December 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach	Julia Laffranque
Deputy Registrar	President