

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

FIRST SECTION

DECISION

Application no. 12424/10
Jovo CETINJA
against Croatia

The European Court of Human Rights (First Section), sitting on 18 September 2012 as a Committee composed of:

Anatoly Kovler, *President,*
Mirjana Lazarova Trajkovska,
Linos-Alexandre Sicilianos, *judges,*

and André Wampach, *Deputy Section Registrar,*

Having regard to the above application lodged on 8 January 2010,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

## THE FACTS

1. The applicant, Mr Jovo Cetinja, is a Croatian national, who was born in 1934 and lives in Đulovac. His application was lodged on 8 January 2010.

2. The Croatian Government ("the Government") were represented by their Agent, Ms Š. Stažnik.

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. On 22 May 1998 the applicant and the Agency for Real Estate Transactions (*Agencija za pravni promet i posredovanje nekretninama* – the "Agency"), owned by the State, reached a sale contract by which the applicant and his relatives B.C. and Č.D., represented by the applicant, sold all their property in Croatia to the Agency.

*1. The civil proceedings*

5. On 8 December 2006 the applicant brought a civil action against the Agency before the Zagreb Municipal Court (*Općinski sud u Zagrebu)* on his own behalf and on behalf of B.C and Č.D., seeking the annulment of the above mentioned sale contract. The action was signed by the applicant only, who stated that he was representing the other two plaintiffs.

6. On 20 December 2006 the first-instance court invited B.C. and Č.D., to submit a power of attorney for the applicant as their representative in the proceedings. However, the letter sent to them could not be delivered to the addresses indicated by the applicant since they had moved.

7. On 28 December 2006, 19 January 2007, 5 March 2007, 21 March 2007 and 20 April 2007 the first-instance court unsuccessfully tried to serve the letter on B.C. and Č.D.

8. On 2 May 2007 Č.D. informed the first-instance court that his representative was K.T., a lawyer practising in Zagreb.

9. On 24 September 2007 the applicant complained to the President of the Zagreb Municipal Court about the length of the proceedings at issue.

10. On 8 November 2007 the President of the Zagreb Municipal Court answered that the proceedings could not continue without a proper power of attorney being enclosed for B.C.

11. On 17 March 2008 the first-instance court ordered the applicant to submit a power of attorney for B.C. and to provide a correct address for him within eight days.

12. On 31 March 2008 the applicant informed the first–instance court that B.C. had died before the action had been lodged.

13. On 15 July 2008 the first-instance court declared the action inadmissible in respect of B.C.

14. Hearings were held on 13 March 2009, 11 September 2009 and 8 April 2010.

*2. The proceedings for protection of a right to trail within reasonable time*

15. On 25 October 2007 the applicant complained about the length of the above proceedings to the Zagreb County Court (*Županijski sud u Zagrebu*).

16. On 12 September 2008 the Zagreb County Court dismissed the applicant's complaint on the ground that the length of the proceedings thus far had not been excessive.

17. On 12 March 2009 the Supreme Court (*Vrhovni sud Republike Hrvatske*) dismissed the applicant's appeal and upheld the Zagreb County Court decision.

18. On 14 May 2009 the applicant complained to the Constitutional Court (*Ustavni sud Republike Hrvatske*) that the Supreme Court failed to decide upon his appeal within six months.

19. On 1 July 2009 the applicant lodged a second constitutional complaint about the length of the proceedings.

20. On 14 October 2009 the Constitutional Court dismissed the applicant's complaint concerning the length of proceedings for lack of jurisdiction.

21. On 5 November 2009 the Constitutional Court declared inadmissible the applicant's constitutional complaint of 14 May 2009 on the ground that it was not in its competence to assess the alleged failure of the Supreme Court to deliver a decision in the proceedings concerning the protection of the right to a hearing within reasonable time.

## COMPLAINT

22. The applicant complained under Article 6 § 1 of the Convention that the length of the civil proceedings before the Zagreb Municipal Court had been excessive.

23. The applicant also complained under Article 13 of the Convention that he had no effective remedy in respect of his length complaint.

## THE LAW

### *1. Article 6 § 1 of the Convention*

24. The applicant complained about the length of the civil proceedings pending before the first-instance court. He relied on Article 6 § 1 of the Convention which, in so far as relevant, 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 ..."

25. The Government submitted that the applicant failed to exhaust domestic remedies since he lodged a complaint for the protection of the right to a hearing within reasonable time prematurely – only after ten months after he had instituted civil proceedings. The Government pointed out that the applicant should have lodged a further complaint about the length of proceedings to the competent authority.

26. As to the merits of the applicant's complaint the Government argued that the case in question was complex since the applicant disputed the validity of the sale contract confirmed by a public notary and numerous witnesses had been heard. They also contended that the applicant had significantly contributed to the length of the proceedings. Namely, he had brought the civil action at issue on behalf of two other persons without submitting a power of attorney despite knowing that the second plaintiff had

already died. The applicant had informed the first-instance court about these facts when the proceedings had already been pending for one year and four months and only after the President of Municipal Court had explained to the applicant that the proceedings would continue as soon as he provided a power of attorney for B.C. Lastly, the Government stressed that the first-instance court had acted under the relevant procedural rules.

27. The applicant replied that the first-instance court should have immediately asked him to submit the relevant power of attorney. Furthermore, the applicant claimed that he had not known that B.C. had died.

28. 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 protection of the right for a hearing in reasonable time and that the authoritative courts dismissed his request. In these circumstances, the Court is required to verify whether the way in which the national courts 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 (see, *mutatis mutandis*, *Cocchiarella v. Italy* [GC], no. 64886/01, § 82, ECHR 2006-V).

29. In doing so, the Court has to examine the period between the date the civil proceedings began and the date of the Constitutional Court's decision on 14 October 2009 (see, *Cocchiarella v. Italy* [GC], cited above, § 103). If the Constitutional Court's decision is consistent with 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.

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 Court notes that at the time when the Constitutional Court reached its decision, the proceedings at issue had been pending for two years, eleven months and six days. It observes that during that period the case was examined by one instance of jurisdiction and that there existed no substantial periods of inactivity on the side of the domestic court.

32. The Court considers that the applicant significantly contributed to the length of the proceedings by bringing the action on behalf of B.C. and Č.D. without submitting a power of attorney authorising him to represent them and by providing wrong addresses for them. This caused significant delays in the proceedings in question.

33. In these circumstances the Court considers that at the time when the Constitutional Court reached its decision the proceedings at issue had not

exceeded reasonable time and that the applicant significantly contributed to their length.

34. It follows that the applicant's complaint, in so far as it concerns the length of the proceedings already examined by the national courts, is manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4 of the Convention.

35. To the extent that the applicant's complaint relates to the length of the proceedings subsequent to the decision of the Constitutional Court, the Court observes that he could have lodged another request for protection of the right for the trial in reasonable time, which would have enabled the national courts to examine the overall length of the proceedings taking into consideration their duration after its previous decision. However, the applicant failed to do so.

36. It follows that this part of the applicant's complaint must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

2. Article 13 of the Convention

37. The applicant complained that he had not had at his disposal an effective domestic remedy for his complaint about the length of the civil proceedings. He relied on Article 13 of the Convention which reads as follows:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

38. The Court notes that the applicant was able to complain before the national courts about the length of proceedings. The right to an effective remedy does not guarantee success of the remedy used.

39. It follows that this complaint is also manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

For these reasons, the Court unanimously

*Declares* the application inadmissible.

André Wampach
Deputy Registrar

Anatoly Kovler
President