CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

FINAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 57576/00
by Milan JEFTIĆ
against Croatia

The European Court of Human Rights (First Section), sitting on 3 October 2002 as a Chamber composed of

Mr C.L. ROZAKIS, *President*,
Mr G. BONELLO,
Mr P. LORENZEN,
Mrs N. VAJIĆ,
Mrs S. BOTOUCHAROVA,
Mr V. ZAGREBELSKY,
Mrs E. STEINER, *judges*,

and Mr E. FRIBERGH, *Section Registrar*,

Having regard to the above application lodged on 21 October 1999,

Having regard to the partial decision of 11 October 2001,

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

The applicant, Mr Milan Jeftić, is a citizen of Bosnia and Herzegovina, who was born in 1947 and lives in Derventa, Bosnia and Herzegovina. The respondent Government are represented by their Agent Ms Lidija Lukina-Krajković.

A. The circumstances of the case

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

The applicant was an employee of the Croatian company "Graditelj", in Grubišno Polje, Croatia. On 25 May 1989 he had an accident at his workplace and suffered injuries. Since then he has mostly been on sick-leave. On 28 August 1991 the applicant obtained a certificate from the Kutina Health Insurance Fund (*Republički fond zdravstvene zaštite Kutina*) that the Croatian Health Insurance Fund covered sick-leave allowance regardless of the applicants' place of living. The applicant left Croatia some time in the autumn of 1991 and went to live in Bosnia and Herzegovina.

On 13 January 1992 the company sent him a letter informing him that they had terminated his contract of employment as of 30 September 1991 since the Croatian Health Insurance Fund had refused to pay his sick-leave allowance.

On 22 January 1992 the applicant claimed a sick-leave allowance as from 1 October 1990 before the Croatian Health Insurance Fund, Grubišno Polje Office (*Republički fond zdravstvenog osiguranja i zdravstva Hrvatske - Ispostava Grubišno Polje*). He relied on the Kutina Health Insurance Fund's certificate.

This request was rejected on 10 March 1992 by the Croatian Health Insurance Fund in Grubišno Polje. It was found that the applicant received sick-leave allowance for the period from 29 May 1991 until 30 September 1991. The last time he had attended an examination before a medical experts' commission in charge of grating sick-leave was on 10 September 1991. After that he had left for Bosnia and Herzegovina. The Fund did not accept medical certificates from Bosnia and Herzegovina because, according to Croatian laws, the applicant had to present himself in person before a medical experts' commission in Croatia in order to have his sick-leave prolonged.

On 16 March 1992 the applicant appealed against that decision to the Appellate Commission of the Croatian Health Insurance Fund (*Direkcija republičkog fonda zdravstvenog osiguranja i zdravstva Hrvatske*).

According to the applicant, on 18 November 1997 and 19 February 1999, respectively, he lodged requests with the Appellate Commission for speeding up the proceedings. He received no reply.

As the above Commission failed to decide upon the applicant's appeal, on 3 June 1999 he instituted administrative proceedings in the Administrative Court (*Upravni Sud Republike Hrvatske*) asking it to decide the matter. On 9 December 1999 he lodged a request for speeding up the proceedings, but received no reply. It appears that the proceedings are still pending before that court.

According to the Government on 17 June 1992 the Appellate Commission of the Croatian Health Insurance Fund rejected the applicant's appeal of 16 March 1992. Since the postal services with Bosnia and Herzegovina at that time were interrupted, the decision was placed on the Fund's public notice-board.

As regards the applicant's claim before the Administrative Court, the Government submit that on 21 November 2001 the court invited the applicant to inform it whether he wished to extend his claim against the second instance decision.

B. Relevant domestic law

Section 26 (1) of the Administrative Disputes Act (*Zakon o upravnim sporovima*) allows an applicant to lodge a claim in the Administrative Court if an appellate body does not issue a decision upon his appeal within 60 days followed by an additional period of seven days upon the applicant's repeated request.

Section 42 of the same Act provides that the Administrative Court must either instruct the lower bodies on how to resolve the case or resolve the case itself.

Section 26 of the Constitutional Act on the Changes of the Constitutional Act on the Constitutional Court (entered into force on 15 March 2002, published in the Official Gazette no. 29 of 22 March 2002 - hereinafter "The Act of 15 March 2002" - *Ustavni zakon o izmjenama i dopunama Ustavnog zakona o Ustavnom sudu Republike Hrvatske*) introduced a new Section 59 (a), which subsequently became Section 63 of the 2002 Constitutional Act on the Constitutional Court. The relevant parts of that Section read as follows:

> (1) The Constitutional Court shall examine a constitutional complaint even before all legal remedies have been exhausted in cases when a competent court has not decided within a reasonable time a claim concerning the applicant's rights and obligations or a criminal charge against him ...
>
> (2) If the constitutional complaint ... under paragraph 1 of this Section is accepted, the Constitutional Court shall determine a time-limit within which a competent court shall decide the case on the merits...

(3) In a decision under paragraph 2 of this Article, the Constitutional Court shall fix appropriate compensation for the applicant in respect of the violation found concerning his constitutional rights ... The compensation shall be paid from the State budget within a term of three months from the date when the party lodged a request for its payment.

COMPLAINTS

The applicant complains under Article 6 § 1 of the Convention about the length of the proceedings before the administrative bodies and the Administrative Court.

He also complains, under Article 13 of the Convention, that he has no effective remedy to accelerate the proceedings concerning his claim for sick-leave allowance.

The applicant also complains under Article 1 of Protocol No. 1 taken alone and in conjunction with Article 14 of the Convention claiming that his right to property was violated because he has not received his sick-leave allowance and that he was discriminated against because he is not a Croat.

THE LAW

1. The applicant complains that the proceedings concerning his claim for sick-leave allowance before the administrative bodies and the Administrative Court have not been concluded within reasonable time as required under Article 6 § 1 of the Convention, the relevant parts read as follows:

"In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

The Government contend firstly that the part of the application relating to the events which took place prior to 5 November 1997, when the Convention entered into force in respect of Croatia, is outside the Court's competence *ratione temporis*.

As to the applicability of Article 6 the Government maintain that the law regulating the applicant's right to sick-leave allowance had a public character. Furthermore, there is no dispute over a civil right since the issue is not whether the applicant has the right to sick-leave allowance but only as to the validity of medical reports from another country. Therefore, in the Government's opinion, Article 6 is not applicable to the present case.

As to the exhaustion of domestic remedies the Government argue that, pursuant to the relevant provisions of the Administrative Dispute Act, the applicant may file a claim before the Administrative Court if an appellate

body does not issue a decision upon his appeal within 60 days followed by an additional period of seven days upon the applicant's repeated request. They stress that the applicant filed such a claim only in 1999, seven years after he had submitted his initial claim to have his sick-leave allowance paid. The Government submit that the proceedings before the Administrative Court are still pending and that therefore, the application is premature.

Furthermore, the Government submit that on 15 March 2002 Parliament introduced changes to the Constitutional Act on the Constitutional Court which allow that a complaint about the length of proceedings be submitted to the Constitutional Court without any further requirements.

In the alternative, the Government invite the Court to conclude that the application does not disclose any appearance of a violation of Article 6 of the Convention in respect of the complaint raised. They submit that while it is true that the case does not disclose any particular factual or legal complexity, the fact that the applicant lives in another State has significantly contributed to the length of the proceedings.

The mailing services between Croatia and Bosnia and Herzegovina were interrupted for a long period of time which prevented the domestic authorities to serve on the applicant the decision on his appeal. Therefore, that decision was placed on the public notice board. The applicant then filed his administrative claim only in 1999 and the proceedings had been concluded within three months.

The Government argue that the domestic authorities could not be held responsible for the delays occurred between 1992 and 1999.

Furthermore, all communication between the domestic authorities and the applicant has to be conducted through diplomatic means which takes much longer than normal means of communication.

With respect to the behaviour of the domestic authorities, the Government claim that they showed diligence in the conduct of the proceedings. In particular, they point out that the first instance decision was issued within nineteen days and the second instance decision within three months.

As to the length of the proceedings before the Administrative Court, the Government submit that these proceedings have so far lasted for about three years, which does not appear excessive having in mind all the circumstances of the case and the fact that the proceedings are pending before the court of the highest instance in respect of administrative matters.

The applicant disagrees with the Government and asserts that the mailing service between Croatia and Derventa, the place where he lives in Bosnia and Herzegovina, have never been interrupted. He also claims that he has exhausted all available domestic remedies.

The Court has firstly examined whether the applicant has complied with the rule of exhaustion of domestic remedies as required under Article 35 § 1 of the Convention.

The Court recalls that in the Horvat case (see *Horvat v. Croatia* no. 51585/99, 26 July 2001, §§ 41-43, 45, ECHR - 2002...), it found that the proceedings pursuant to Section 59(4) of the 1999 Constitutional Court's Act could not be considered as an effective remedy in respect of complaints concerning the length of proceedings.

The Court notes that, following the Horvat judgment, on 15 March 2002 the Croatian Parliament enacted the Act on Changes of the Constitutional Court's Act, which was published in the Official Gazette no. 29 of 22 March 2002. It introduced a new Section 59(a) which later became Section 63 of the 2002 Constitutional Act on the Constitutional Court.

The Court recalls that in the Slaviček case (see *Slaviček v. Croatia* (dec.), no. 20862/02, 4 July 2002, ECHR - 2002...), it found that the above provision represented an effective domestic remedy in respect of alleged unreasonable length of proceedings in Croatia.

The Court notes that the applicant in the present case has not lodged such a complaint. It is true that he introduced the application with the Court on 21 October 1999, while the legislation providing for an effective remedy in respect of his complaint under Article 6 of the Convention was introduced on 15 March 2002.

The question therefore arises whether under Article 35 § 1 of the Convention it can be required that the applicant exhausts this remedy before this Court examines his complaint.

The Court recalls that the issue whether domestic remedies have been exhausted shall normally be determined by reference to the date when the application was lodged with the Court. This rule is however subject to exceptions which might be justified by the specific circumstances of each case (see *Baumann v. France*, no 33592/96, 22 May 2001, § 47, unreported). The Court has found in respect of a large number of applications against Italy raising similar issues that there were special circumstances justifying a departure from the general rule (see *Brusco v. Italy*, (dec.), no. 69789/01, ECHR 2001-IX).

Subsequently, on 5 September 2002 in the Nogolica case, the Court found that there existed a number of elements militating in favour of an exception also in respect of the Croatian cases (see *Nogolica v. Croatia* (dec.), no. 77784/01, 5 September 2002, ECHR - 2002...).

The Court sees no reason to depart in the present case from the view expressed in the Nogolica case.

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

2. The applicant further complains that in respect of his complaint about the length of the proceedings he has no effective remedy as required under 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."

The Government repeat their argument concerning the issue of exhaustion of domestic remedies and maintain that the applicant's complaint to the Administrative Court is an effective remedy in respect of the length of the proceedings before the administrative authorities. Furthermore, the applicant could have filed a complaint to the Constitutional Court pursuant to Section 63 of the 2002 Constitutional Court Act.

The applicant disagrees with the Government.

As explained above, the Court finds that the newly introduced Section 63 of the 2002 Constitutional Act on the Constitutional Court does provide the applicant with an effective remedy in respect of the length of the proceedings.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

3. The applicant also complains under Article 1 of Protocol No. 1 taken alone and in conjunction with Article 14 of the Convention. He explains that his right to property has been violated because he has not received sick-leave allowance that he is claiming before the domestic authorities. He also claims that he has been discriminated against because he is not of Croatian origin.

The Court notes that the proceedings concerning the applicant's claim for sick-leave allowance are still pending.

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

For these reasons, the Court unanimously

Declares the remainder of the application inadmissible.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President