CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 9505/03
by Šefko MAHMUTOVIĆ and others
against Croatia

The European Court of Human Rights (First Section), sitting on 8 December 2005 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mr L. LOUCAIDES,
Mrs F. TULKENS,
Mr P. LORENZEN,
Mrs N. VAJIĆ,
Mr D. SPIELMANN,
Mr S.E. JEBENS, *judges*,

and Mr S. QUESADA, *Deputy Section Registrar*,

Having regard to the above application lodged on 26 February 2003,

Having deliberated, decides as follows:

THE FACTS

The applicants, Mr Šefko Mahmutović, Ms Alojzija Mahmutović and Mr Šefko Mahmutović Jr. are Croatian nationals, who were born in 1922, 1930 and 1949, respectively, and live in Požega.

A. The circumstances of the case

The facts of the case, as submitted by the applicants, father, mother and son, may be summarised as follows.

1. The first set of proceedings

On 23 May 1995 the Požega Municipal Court (*Općinski sud u Požegi*) established that the first and second applicant's other son, A.M., had acquired ownership of one-fourth of their immovable property.

On 18 October 1996 the Požega County Court (*Županijski sud u Požegi*) dismissed the applicants' appeal against that decision. On 28 July 1999 the Supreme Court (*Vrhovni sud Republike Hrvatske*) dismissed their appeal on points of law (*revizija*).

Subsequently, on 28 January 2003 the Požega Municipal Court terminated the common co-ownership of the applicants and A.M. of the immovable property.

2. The second set of proceedings

On 28 July 2000 the Požega Municipal Court established that A.M. had acquired ownership of one-fourth of the applicants' movable property. On 26 November 2001 the Požega County Court dismissed the applicants' appeal.

Subsequently, on 25 November 2003 the Požega Municipal Court terminated the common co-ownership of the applicants and A.M. of the movable property.

3. The third set of proceedings

In 1991 the first applicant instituted civil proceedings in the Požega Municipal Court against a certain T.T. seeking damages for unperformed construction works. In 1996 T.T. filed a counterclaim seeking payment from the applicants.

On 18 September 2002 the court stayed the proceedings pending the outcome of criminal proceedings pending against T.T. In 2005 the court resumed the proceedings. The last hearing was scheduled for 25 July 2005.

The proceedings are still pending before the Municipal Court.

4. The fourth set of proceedings

On 13 July 1990 the third applicant lent a certain amount of money to T.T. who failed to pay it back within the agreed time-period. On 24 June 1992 the Požega Municipal Court gave judgment ordering T.T. to pay back the money lent.

As T.T. failed to pay, on 11 February 1998 the third applicant submitted a motion for enforcement (*prijedlog za ovrhu*). On 12 February 1998 the Požega Municipal Court issued an enforcement order (*rješenje o ovrsi*) with a view to seizing T.T.'s movable property. On 17 March 1998 T.T. filed an appeal against that order, which was dismissed by the Požega County Court on 10 November 1998.

On 2 December 1998 the Municipal Court decided to register and evaluate T.T.'s movables, including his car.

On 7 December 1998 T.T.'s wife, D.T., filed an objection with the court, claiming that she was the owner of the car which had been registered as T.T.'s property.

On 26 July 1999 the Municipal Court instructed D.T. to institute civil proceedings against the third applicant, in order to declare the enforcement on the car inadmissible. On 25 August 1999 D.T. filed a civil action against the third applicant to that end. The court accordingly stayed the enforcement proceedings. Subsequently, on 27 March 2001 D.T. withdrew her claim and the enforcement proceedings resumed.

On 27 May 2002 the Municipal Court scheduled an on-site inspection for 20 June 2002 with a view to seizing T.T.'s car. However, the court bailiff failed to seize the car.

On 26 November 2002 the court scheduled another on-site inspection for 17 December 2002. However, the court decision could not be served on T.T. because he had meanwhile changed his residence.

Subsequently, on 15 October 2003 the parties concluded a court settlement. On 5 May 2004 the third applicant's lawyer withdrew the enforcement request. Accordingly, on 6 May 2004 the Požega Municipal Court issued a decision terminating the enforcement proceedings.

B. Relevant domestic law and practice

The relevant parts 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") read as follows:

Section 62

"1. Everyone may lodge a constitutional complaint with the Constitutional Court if he or she deems that the individual act of a state body, a body of local and regional self-government, or a legal person with public authority, which decided about his or her rights and obligations, or about suspicion or accusation for a criminal act, has violated his or her human rights or fundamental freedoms guaranteed by the Constitution, or his or her right to local and regional self-government guaranteed by the Constitution (hereinafter: constitutional right)...

2. If another legal remedy is allowed against the violation of the constitutional rights [complained of], the constitutional complaint may be lodged only after this remedy has been exhausted.

3. In matters in which an administrative action or, in civil and non-contentious proceedings, a revision on points of law are allowed, remedies are exhausted only after the decision on these legal remedies has been given."

Section 63

"1. The Constitutional Court shall examine a constitutional complaint whether or not all legal remedies have been exhausted if the court with jurisdiction fails to decide a claim concerning the applicant's rights and obligations or a criminal charge against him or her within a reasonable time ...

2. If a constitutional complaint ... under paragraph 1 of this section is upheld, the Constitutional Court shall set a time-limit within which the court with jurisdiction must decide the case on the merits...

3. In a decision issued under paragraph 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 a request for payment is lodged."

COMPLAINTS

In respect of the first and the second set of proceedings, the applicants complain under Article 1 of Protocol No. 1 to the Convention that their property rights were violated. The applicants further complain under Article 6 § 1 of the Convention about the length of the third and fourth set of proceedings.

THE LAW

1. The applicants complain that the first and the second set of proceedings violated their property right guaranteed under Article 1 of Protocol No. 1 to the Convention, which reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The Court observes that, in respect of the first set of proceedings, the applicants never filed a constitutional complaint under section 62 of the Constitutional Court Act against the Supreme Court's decision of 28 July 1999. In respect of the second set of proceedings the applicants failed to lodge a constitutional complaint against the County Court's decision of 26 November 2001. The Court reiterates that in Croatia a constitutional complaint under section 62 of the Constitutional Court Act is an effective remedy which needs to be exhausted before addressing the Court (see *Debelić v. Croatia*, no. 2448/03, § 21, 26 May 2005).

It follows that these complaints must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

2. The applicants further complain that the third and the fourth set of the proceedings have not been concluded within a "reasonable time". They rely on Article 6 § 1, the relevant part of which reads as follows:

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

a. In respect of the third set of proceedings, the Court recalls that in Croatia there exists an effective domestic remedy for the length of proceedings still pending, namely a constitutional complaint to the Constitutional Court (see *Slaviček v. Croatia* (dec.), no. 20862/02, ECHR 2002-VII), of which the applicants did not avail themselves.

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

b. In respect of the fourth set of the proceedings, the Court firstly observes that only the third applicant was a party to those proceedings. It follows that the first and the second applicants' complaint in this respect are incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4.

As to the third applicant's complaint, the Court considers that it cannot, on the basis of the case file, determine its admissibility and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

For these reasons, the Court unanimously

Decides to adjourn the examination of the third applicant's complaint under Article 6 § 1 of the Convention concerning the length of the fourth set of proceedings;

Declares the remainder of the application inadmissible.

Santiago QUESADA
Deputy Registrar

Christos ROZAKIS
President