CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 66894/01
by Ivica PEJIĆ
against Croatia

The European Court of Human Rights (First Section), sitting on 19 December 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 S. NIELSEN, *Deputy Section Registrar*,

Having regard to the above application lodged on 9 December 2000,

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 Ivica Pejić, is a Croatian citizen, who was born in 1967 and lives in Kundl, Austria. The respondent Government are represented by their Agent Ms Lidija Lukina-Karajković.

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

On 10 March 1995 the applicant drove a vehicle from Slovenia to Croatia, without passing through any customs checkpoint at the border. On the same day the Varaždin Police Department (*Policijska uprava varaždinska*) seized the applicant's vehicle.

Subsequently the applicant was charged with an attempt to smuggle the vehicle into Croatia contrary to Section 355 (1) of the Customs Act (*Carinski Zakon*). On 29 March 1995 the Koprivnica Customs Offences Commission (*Komisija za carinske prekršaje Carinarnice Koprivnica*) found the applicant guilty of a customs offence and fined him 8,000 Croatian kunas (HRK). The fine was to be replaced by a prison term if the applicant did not pay it. Moreover, the applicant's vehicle was confiscated.

The applicant appealed against the decision stating that he had not had any intention to smuggle the vehicle to Croatia, but that he had been lost and therefore missed the border checkpoint.

On 13 November 1995 the Custom Administration's Customs Offences Appellate Commission (*Komisija za carinske prekršaje u drugom stupnju carinske uprave Republike Hrvatske*) upheld the first instance decision.

On 22 December 1995 the applicant, represented by a counsel, instituted proceedings in the Administrative Court (*Upravni sud Republike Hrvatske*) claiming that the lower administrative bodies had wrongly assessed the facts.

The facts related to the subsequent proceedings are in dispute. According to the Government, on 28 August 1997 the applicant's claim was rejected by the Administrative Court. The judgment was served on the applicant's counsel on 26 February 1998. In support of this the Government have submitted a copy of the Administrative Court's judgment of 28 August 1997 and a copy of a receipt slip of an envelope addressed to the applicant's counsel indicating that it contained a copy of the said judgment. The receipt slip was signed by an illegible name on 26 February 1998. It was also stamped by the Administrative Court on 2 March 1998 thus indicating that the signed receipt slip was returned to the court on that date.

According to the applicant, on 25 February, 28 April, 15 June, 28 October and 19 November 1998 he asked the Administrative Court to speed up the proceedings. He maintains that no judgment upon his claim before the Administrative Court has ever been served either on him or his counsel. As to the receipt slip submitted by the Government the applicant alleges that it was signed by an unknown person.

COMPLAINTS

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

2. He also complains, under Article 13 of the Convention, that he has no effective remedy to accelerate the proceedings.

THE LAW

The applicant complains about the length of the administrative proceedings and that he has no effective remedy in that respect. He relies on Article 6 § 1 and Article 13 of the Convention.

The Government firstly submit that the applicant abused his right of petition. They argue that he submitted to the Court untrue facts since he claimed that the proceedings in question were still pending although the final decision was served on his counsel on 2 March 1998, more than three years before the applicant submitted his application to the Court. While the Government do not suggest that the applicant deliberately mislead the Court, they contend that the applicant ought to have been aware of the correct factual situation.

The Government leave it to the Court to decide whether Article 6 applies in the circumstance of the present case but invite the Court to reject the application as manifestly ill-founded because the length of the proceedings complained of did satisfy the reasonable time requirement.

As to the applicant's allegations in respect of Article 13 of the Convention, the Government submit that the applicant has no arguable claim to be a victim of a violation of the rights set forth in the Convention.

The applicant claims that neither he nor his counsel have ever received the Administrative Court's judgment upon the applicant's claim and that the receipt slip was signed by an unknown person. He maintains, therefore, that the proceedings were unreasonably long and that he had no effective remedy to rectify this.

The Court does not have to address all the issues raised by the parties since the application is in any event inadmissible for the following reasons.

The Court notes that the submissions of the parties differ as to whether the proceedings before the Administrative Court have been concluded and whether the decision of that court has ever been served on the applicant or his counsel.

The Court notes that the Government have submitted a copy of the Administrative Court's judgment, rejecting the applicant's claim. In these circumstances the Court finds it established that the proceedings before the Administrative Court came to an end on 28 August 1997.

The Government have also presented the Court with a copy of a receipt slip of a letter addressed to the applicant's counsel where it was clearly indicated on the envelope that it contained the said judgment, which was referred to by the case-file number and the date of the judgment.

Furthermore, the letter was stamped by the postal service on 26 February 1998 thus indicating that it was posted on that date. There was also a stamp from 2 March 1998, indicating the date when the signed receipt slip was returned to the Administrative Court. The Government have further submitted a copy of the acknowledgement of receipt signed by an illegible name on 26 February 1998 which indicates the date when the judgment was served.

In view of the evidence submitted by the Government, the Court finds it established that the applicant's counsel received the Administrative Court's judgment rejecting the applicant's claim on 26 February 1998 when the receipt slip was signed by a person who received the judgment.

The Court recalls that the applicant asked the Administrative Court to speed up the proceedings on 25 February, 28 April, 15 June, 28 October and 19 November 1998 but has not received any reply. The Court, therefore, cannot rule out that the applicant has never received a copy of the judgment in question.

In this respect, the Court recalls that the six months time-limit is to be calculated from the day on which a judgment, which was not pronounced in open court, is served (see *X. v. France*, no. 9908/82, Commission decision of 4 May 1983, Decisions and Reports (DR) 32, p. 266, 272). The Court recalls further that in a situation when a final decision is served on the applicant's counsel and not on the applicant, the six months period runs from the date on which the applicant's lawyer became aware of the decision notwithstanding the fact that the applicant only became aware of the decision later (see *Martinus Godefridus Aarts v. the Netherlands*, no. 14056/88, Commission decision of 28 May 1991, DR 70, p. 208, 212, 213).

The Court concludes that the final decision in the present case was taken by the Administrative Court on 28 August 1997, and it was served on the applicant's counsel on 26 Februry 1998, while the applicant introduced his application with the Court on 9 December 2000.

It follows that this complaint is introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court by a majority

Declares the application inadmissible.

Søren NIELSEN
Deputy Registrar

Christos ROZAKIS
President