CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

FINAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 49706/99
by Rajko RAJAK
against Croatia

The European Court of Human Rights (Fourth Section), sitting on 12 October 2000 as a Chamber composed of

Mr G. Ress, *President*,
Mr A. Pastor Ridruejo,
Mr V. Butkevych,
Mrs N. Vajić,
Mr J. Hedigan,
Mr M. Pellonpää,
Mrs S. Botoucharova, *judges*,
and Mr V. Berger, *Section Registrar*,

Having regard to the above application introduced on 23 February 1999 and registered on 20 June 1999,

Having regard to the partial decision of 16 March 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 is a Croatian citizen of Serbian origin, born in 1933 and living in Zagreb (Croatia). He is represented before the Court by Mr Zoran Novaković, a lawyer practising in Zagreb. The respondent Government are represented by their Agent Mrs Lidija Lukina-Karajković.

A. The circumstances of the case

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

On 18 June 1975 the applicant filed with the Rijeka District Court (*Okružni sud Rijeka*) a civil action against "Broadograđevna industrija 3. Maj", a publicly-owned company in Rijeka, seeking payment for technical improvements and rationalisation of the working process. That Court held hearings on 15 January 1976 and 8 June 1976.

On 16 December 1977 the case file was transmitted to a court expert.

On 5 January 1981 the court expert submitted the expert findings.

On 9 December 1981 the Rijeka District Court decided that it did not have jurisdiction and consequently transferred the case to the Rijeka District Commercial Court (*Okružni privredni sud u Rijeci*). As that court had also denied its jurisdiction, a conflict of jurisdiction arose and on 24 March 1982 the Supreme Court of Croatia (*Vrhovni sud Republike Hrvatske*) transferred the case to the Rijeka Basic Court of Associated Labour (*Osnovni sud udruženog rada*).

On 26 October 1982 the Rijeka Basic Court of Associated Labour held a hearing and on the same day delivered a judgment rejecting the applicant's claim. The applicant appealed that decision, and on 11 May 1984 the Court of Associated Labour of Croatia (*Sud udruženog rada Hrvatske*) quashed the first instance judgment and remitted the case to the Rijeka Basic Court of Associated Labour.

That court held hearings on 2 April 1985 and 11 June 1985. On the latter date the court delivered its judgment, partly granting the applicant's request. Both the applicant and the defendant appealed that decision, and on 27 December 1985 the Court of Associated Labour of Croatia again quashed the first instance decision and remitted the case to the Rijeka Basic Court of Associated Labour, instructing it to allow the parties to question the expert at an oral hearing.

The Rijeka Basic Court of Associated Labour held hearings on 1 April 1986, 11 November 1986, 22 December 1986 and 20 January 1987.

According to the Government the Samobor Social Welfare Centre (*Centar za socijalni rad u Samoboru*) appointed to the applicant a guardian *ad litem* and instituted proceedings for a guardianship order. In those proceedings an expert opinion was asked from a neuro-psychiatrist working in the Vršac hospital. However, the expert died and the request for the guardianship order had been withdrawn. The applicant then moved to Zagreb.

The applicant contests the Government's submissions and claims that the presiding judge in his case before the Rijeka Basic Court of Associated Labour was the one who initiated proceedings for the guardianship order and that it had not been due to the death of the expert appointed in that case that the proceedings were terminated, but that on 30 September 1988 the Zagreb Municipal Court rejected the request to issue a guardianship order, as there had been no evidence presented before that court that had put into question the applicant's capacity to represent his interests.

On 22 June 1986 the applicant unsuccessfully sought exemption of the Rijeka Basic Court of Associated Labour in his case.

The next hearing took place on 13 January 1989.

After the hearing on 17 March 1987 the court delivered a judgment granting the applicant's request in part. Both the applicant and the defendant appealed that decision, and on 18 January 1990 the Court of Associated Labour of Croatia quashed once more the first instance decision and remitted the case to the Rijeka Basic Court of Associated Labour.

The applicant then sought exemption of all basic courts of associated work as well as of the Court of Associated Labour of Croatia from his case. On 18 October 1991 the Croatia Court of Associated Labour of Croatia rejected his request.

When in 1991 all courts of associated work were abolished, the case was transferred to the Rijeka Municipal Court (Općinski sud u Rijeci).

During the hearing held on 30 June 1992 the applicant specified his claim seeking USD 280,000 for technical improvements of the defendant's working process and inventions at a rate of interest of 7.5 % per year as from 18 June 1975 and USD 1,500,000 for non-pecuniary damage caused to him by mental suffering. He also claimed USD 500,000 for pecuniary damage caused by the defendant's failure to make use of his patents which would have brought the applicant US 500,000 per year and USD 60,000 for loss of earnings during seven years of his unemployment caused by the defendant and for further seven years during which period he was employed but received a lower salary and consequently, after his retirement, a lower pension.

During the hearing held on 15 September 1992 the Rijeka Municipal Court, upon the applicant's request, decided that it had no jurisdiction for the part of the applicant's request concerning his claims related to the copyright and technical improvements of the working process.

On 11 February 1993 the Supreme Court of Croatia quashed that decision.

At the next hearing before the Rijeka Municipal Court on 1 April 1996, the court considered that a new expert opinion was needed and invited the respondent to pay the advance for expenses.

By letter of 21 March 1998 the applicant again specified his claim.

During the next hearing on 18 May 1998 the court decided that the decision appointing an expert would be issued in writing.

On 22 July 1999 the court adjourned the hearing until 1 October 1999 as the applicant's counsel was on annual leave. During the hearing held on 1 October 1999 the defendant was ordered to submit further documentation to the case file.

During the hearing on 1 March 2000 the court concluded the trial.

On 12 May 2000 the court adopted a judgment rejecting the applicant's claim due to his failure to pay the advance for expenses for the new expert opinion.

On 29 May 2000 the applicant appealed that decision.

B. Relevant domestic law

Article 59 § 4 of the 1999 Constitutional Act on the Constitutional Court (Constitutional Court Act)

> "The Constitutional Court may, exceptionally, examine a constitutional complaint prior to exhaustion of other available remedies, if it is satisfied that a contested act, or failure to act within a reasonable time, grossly violates a party's constitutional rights and freedoms and that if it does not institute proceedings a party will be at risk of serious and irreparable consequences."

COMPLAINTS

The applicant complains under Article 6 § 1 of the Convention about the length of the proceedings.

He further complains that the failure of domestic courts to decide his case is due to his Serbian origin and invokes Article 14 of the Convention.

THE LAW

1. The applicant complains that the proceedings in his case were not concluded within a reasonable time, contrary to Article 6 § 1 of the Convention, which insofar 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..."

2. The Government submit that the part of the application relating to 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*.

In this connection, the Court recalls that Croatia recognised the competence of the Court to receive applications "from any person, non-governmental organisation or group of individuals claiming to be a victim of a violation by Croatia of the rights recognised in the

Convention through any act, decision or event occurring after 5 November 1997." It follows that the period to be taken into consideration by the Court starts on 5 November 1997. However, in order to determine the reasonableness of the length of time in question the Court will have regard to the state of the case on that date (see, among other authorities, the *Podbielski v. Poland*, no. 27916/95, § 31, ECHR 1998-VIII).

3. The Government invite the Court to declare the application inadmissible on the ground that the applicant failed to exhaust domestic remedies. In this respect they allege that the applicant failed to lodge a constitutional complaint pursuant to Article 59 § 4 of the newly revised Constitutional Court Act (*Ustavni Zakon o Ustavnom sudu Republike Hrvatske*). That act exceptionally allows the Constitutional Court to examine a constitutional complaint before exhaustion of other available remedies in cases where it is evident that there is a serious risk that the party's constitutional rights and freedoms may be violated and that serious and irreparable consequences may arise from the failure of the relevant authorities to reach a decision.

The applicant argues that Article 59 § 4 has been introduced only as from 29 September 1999, while his application has been introduced with the Court on 27 February 1999 and registered on 20 July 1999. It follows that he has been unable to submit a request pursuant to Article 59 § 4 of the Constitutional Court Act.

The question, therefore, arises as to whether Article 59 § 4 of the new Constitutional Court Act applies to the present case. In this respect the Court notes with regard to the present case that the new legislation was enacted on 29 September 1999 and is thus posterior to the introduction of the application before the Court, i.e. on 27 February 1999 and that it has not been established that the Constitutional Court could examine delays having occurred prior to the entry into force of the new Constitutional Court Act (see, *mutatis mutandis*, *Chapus v. France* (dec.), no 46693/99, ECHR 2000).

Accordingly, the exception of non-exhaustion of domestic remedies raised by the Government cannot be accepted.

4. The Government further invite the Court to declare the application inadmissible on the ground that it is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. In this connection, they contend that the subject matter of the applicant's case did not call for particular urgency in deciding it. Furthermore, the Government submit that the case involved both factual and legal complexity. In particular, they pointed out the necessity of getting several expert opinions which contributed to the complexity of the proceedings.

The Government also contend that the behaviour of the applicant contributed to the delays as the applicant had changed his claim several times and lodged two requests for exemption of the courts that were dealing with his case. Furthermore, the applicant asked that an institution from Slovenia should give its expert opinion and that either the defendant or the court pay the expertise expenses.

With respect to the behaviour of domestic authorities, the Government claim that the domestic courts showed diligence in the conduct of the proceedings. In particular, the Government point out that the courts of first instance had reached several decisions, but those decisions were repeatedly quashed by the appellate courts.

Finally, the Government submit, in the alternative, that the facts of the case did not disclose a violation of Article 6 § 1 of the Convention at all.

The applicant disagrees with the Government. Firstly, he disagrees as to the contention that the case involves either factual or legal complexity. He points out that the subject matter of the case falls within the area of technical improvements, rationalisation of working process and inventions, and as such it only requires relevant expert opinions.

The applicant also contests the Government's claim that he has contributed to the delay as he has changed his claim several times, sought an expert opinion from a foreign institution and twice sought exemption of the courts that were dealing with his case. He claims that the legal issues involved have always been the same, and that the changes of his claim refer only to the amount of money sought, which had to be adjusted according to the expert opinions submitted.

In addition, he argues that there was in fact only one expert opinion submitted, which afterwards was supplemented with additional analysis. The expert, however, has never been invited before the court.

Furthermore, the applicant stresses that the hearings were held rarely, with delays that have no justification. He specifies as follows: between 22 June 1986 and 13 January 1989 there was no activity of the courts as well as between 18 October 1990 and 30 June 1992 and between 11 February 1993 and 1 April 1996. The same is true for the period between 18 May 1998 and 22 July 1999. He also points out that it took nine months before the Supreme Court of Croatia resolved the conflict of jurisdiction, which is an entirely legal issue. He argues that the length of the proceedings have now amounted to about twenty-five years and that the domestic courts in that period held altogether twenty hearings, which amounts to less than one hearing per year.

Finally, the applicant submits that what has been at stake in the proceedings for him is of high importance for his interests as the failure of the defendant to make payments on the basis of the applicant's claim directly threatens his livelihood.

The Court considers, in the light of the parties' submissions, that the above complaint raises complex issues of law and fact under the Convention, the determination of which should depend on an examination of the merits. The Court concludes, therefore, that the application is not manifestly ill-founded, within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring it inadmissible have been established.

5. The applicant further complains that the domestic courts failed to proceed with his case within a reasonable time due to his Serbian origin and, therefore, discriminated against him, contrary to Article 14 of the Convention, which reads as follows:

> “The enjoyment of the rights and freedoms set forth in the Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

The Government contend that the domestic courts involved in the present case have applied the laws that refer equally to all citizens regardless of their political opinion or national origin.

The Government further argue that Article 14 may be applied only insofar as the Court finds a violation of a substantive provision of the Convention. As in the present case, in the Government's view, there is no violation of Article 6 of the Convention, Article 14 is not applicable.

The applicant contests the Government's claims and argues that the domestic courts failed to decide his case within a reasonable time due to his political opinions, as to the period before the independence of Croatia, and afterwards, due to his Serbian origin, in view of the fact that persons of Serbian origin fought against Croatia.

The Court notes that the applicant failed to substantiate his claim under Article 14 of the Convention.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and, as such, must be rejected pursuant to Article 35 § 4.

For these reasons, the Court, unanimously,

DECLARES ADMISSIBLE, without prejudging the merits, the applicant's complaint concerning length of the proceedings;

DECLARES INADMISSIBLE the remainder of the application.

Vincent Berger
Registrar

Georg Ress
President