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. 56773/00
by Ilija RAJČEVIĆ
against Croatia

The European Court of Human Rights (First Section), sitting on 29 November 2001 as a Chamber composed of

Mr C.L. ROZAKIS, *President*,
Mrs F. TULKENS,
Mr P. LORENZEN,
Mrs N. VAJIĆ,
Mr E. LEVITS,
Mr A. KOVLER,
Mr V. ZAGREBELSKY, *judges*,
and Mr E. FRIBERGH, *Section Registrar*,

Having regard to the above application lodged on 19 February 1999 and registered on 20 April 2000,

Having regard to the partial decision of 8 February 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 Ilija Rajčević, is a Croatian citizen, who was born in 1930 and lives in Karlovac. The respondent Government are represented by their Agent Ms 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 September 1992 the applicant filed a civil action with the Karlovac Municipal Court (*Općinski sud u Karlovcu*), seeking damages for his destroyed property from an insurance company - "C. O.". The applicant claimed that an unknown person had set fire in his summer house in Pirovac, Croatia and had also appropriated his property from the house.

Before 5 November 1997, i.e., the date of the entry of the Convention into force in respect of Croatia, the first instance court held three hearings.

At the hearing on 2 December 1997 the defendant asked the court to order the Šibenik Police Department (*Policijska uprava Šibenska*) to submit a report concerning the applicant's claim.

On 5 December the court ordered the Šibenik Police Department and the defendant's office in Šibenik to submit information relevant for the applicant's claim. Furthermore, the court ordered the Šibenik Public Prosecutor's Office (*Općinsko državno odvjetništvo u Šibeniku*) to inform it about criminal reports on arson submitted in the period relevant for the applicant's claim.

The defendant's office in Šibenik replied on 22 December 1997, the Šibenik Public Prosecutor's Office on 2 January 1998 and the Šibenik Police Department on 12 January 1998.

According to the Government the hearing scheduled for 12 May 1998 was adjourned because the applicant's counsel had not received the notice of the hearing date.

According to the applicant the hearing on 12 May 1998 was held in his presence. The defendant repeated its request from the previous hearing that the court order the Šibenik Police Department to submit a report relevant for the applicant's claim. The applicant replied that the defendant was already in possession of that report and accused the defendant's counsel of lying. The judge left the courtroom.

According to the Government, since neither the applicant nor his counsel, although notified, appeared at the hearing scheduled for 6 October 1998 the court stayed the proceedings (*mirovanje postupka*).

According to the applicant he had never been notified of the hearing date.

On 12 January 1999 the applicant's counsel requested the court to resume the proceedings.

On 21 January 1999 the Karlovac Municipal Court struck out the applicant's claim. On 3 February 1999 the applicant appealed against that decision. On 17 March 1999 the Karlovac County Court (*Županijski sud u Karlovcu*) quashed the first instance decision and remitted the case to the Karlovac Municipal Court.

It appears that the applicant filed a motion requesting that the presiding judge be removed from the case. On 5 July 1999 the President of the Karlovac Municipal Court rejected the request.

At the hearing on 5 October 1999 the court invited the defendant to submit its observation on the County Court's decision of 17 March 1999 within 30 days.

On 12 October 1999 the defendant filed its further submissions.

On 14 February 2000 the applicant increased the sum sought.

At the next hearing on 17 May 2000 the court decided that it would order the Šibenik Public Prosecutor's Office to submit further information concerning the arson in the applicant's house.

On 9 June 2000 the Šibenik Public Prosecutor's Office submitted the requested information.

According to the Government, on 21 July 2000 the court scheduled the next hearing for 10 October 2000, but the applicant failed to collect the notice of the hearing date sent to him by registered mail. On 25 August 2000 the court unsuccessfully attempted another delivery of the notice of the hearing date to the applicant.

According to the applicant, he had never received the notices for the above hearings.

On 25 September 2000 the defendant filed additional submissions.

On 27 September 2000 the court sent the defendant's submissions to the applicant and invited him to file his reply within eight days.

On 8 October 2000 the applicant filed his reply.

On 16 November 2000 the applicant filed his additional submissions. According to the Government, since he had failed to submit a copy for the defendant, on 3 January 2001 the court ordered him to submit another copy.

According to the applicant he had already sent a copy of his submissions directly to the defendant.

On 9 February 2001 the applicant sent a letter to the court refusing to submit another copy of his submissions of 16 November 2000.

On 19 March 2001 the court invited the defendant to submit its inner regulations and other information concerning the applicant's claim.

The proceedings are pending before the first instance court.

B. Relevant domestic law

Section 59 (4) of the Constitutional Act on the Constitutional Court (entered into force on 24 September 1999 - hereinafter "the Constitutional Court Act" - *Ustavni zakon o Ustavnom sudu*) read as follows:

> "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 act a party will risk serious and irreparable consequences."

COMPLAINT

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

THE LAW

The applicant complains that the proceedings concerning his civil action for damages have not been concluded within a reasonable time as required by 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..."

a) The Government submit firstly 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.

b) The Government invite the Court to reject the application on the ground that the applicant failed to exhaust domestic remedies. In this respect they allege that the applicant has not lodged a constitutional complaint pursuant to Section 59 (4) of the Constitutional Court Act which exceptionally allows the Constitutional court to examine a constitutional complaint before exhaustion of other available remedies in cases where it is satisfied 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 disagrees with the Government.

The Court recalls that on 26 July 2001 in the case of Horvat v. Croatia it found that the complaint pursuant to Section 59 (4) of the 1999 Constitutional Court Act was not an effective remedy in respect of the length of the proceedings in Croatia (see *Horvat v. Croatia*, no. 51585/99, §§ 34-48, 26 July 2001, unpublished). The Court sees no reason to depart from this decision in the present case.

It follows that the Government's objection as to the exhaustion of domestic remedies must be rejected.

c) 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, in particular having in mind the time which has elapsed after the entry into force of the Convention in respect of Croatia. They submit that the subject matter of the applicant's case did not call for particular urgency in deciding it. They refer to the Court's case-law arguing that the cases that do call for special urgency are those that relate to family law matters or to payment of damages to the victims of traffic accidents, those that involve the interests of a great number of persons and the so-called "dismissal cases".

The Government contend also that the behaviour of the applicant contributed to the delays. In particular, they point out that the proceedings were twice stayed because the applicant, although notified, failed to appear at the hearings. Furthermore, he refused to submit additional copy of his submissions to the court.

The applicant disagrees with the Government. He claims that he had not received the notice of the hearing when the court stayed the proceedings due to his absence. Also, he did not file another copy of his submissions because he had already sent a copy directly to the defendant and informed the court about it.

With respect to the behaviour of domestic authorities, the Government claim that the domestic courts showed diligence in the conduct of the proceedings. Furthermore, the proceedings partly took place during the war in Croatia when the normal operation of courts was impaired.

The applicant claims that the first instance court twice requested the same information from the Šibenik Public Prosecutor's Office. Furthermore, some of the requested information were entirely unnecessary for the proceedings. The whole proceedings have been deliberately delayed.

The Court considers, in the light of the criteria established in its case-law on the question of "reasonable time" (the complexity of the case, the applicant's conduct and that of the competent authorities), and having regard to all the information in its possession, that an examination of the merits of this complaint is required.

For these reasons, the Court unanimously

Declares the application admissible, without prejudging the merits of the case.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President