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. 32668/02
by Biserka ULJAR and others
against Croatia

The European Court of Human Rights (First Section), sitting on 5 July 2005 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mr P. LORENZEN,
Ms N. VAJIĆ,
Ms S. BOTOUCHAROVA,
Ms E. STEINER,
Mr K. HAJIYEV,
Mr S.E. JEBENS, *judges*,

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

Having regard to the above application lodged on 17 July 2002,

Having deliberated, decides as follows:

THE FACTS

The applicants, Ms Biserka Uljar, Mr Ratomir Brnabić, Ms Lolita Dabelić and Ms Eleonora Tijanić are Croatian nationals who were born in 1951, 1947, 1970 and 1971 respectively and live in Rijeka. They are represented before the Court by Ms B. Uljar.

A. The circumstances of the case

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

The applicants are heirs of the late A.B. who died on14 December 1995. The first and the second applicant are his children, and the third and the fourth applicants are his grandchildren.

1. The inheritance proceedings

The inheritance proceedings in the Krk Municipal Court (*Općinski sud u Krku*) commenced in 1996. On 17 March 1998 the court stayed the inheritance proceedings, pending the outcome of civil proceedings concerning A.B.'s will and the co-ownership of his house, as outlined below.

a. Interim measure

On 12 August 1996 the Krk Municipal Court issued an interim measure sealing A.B.'s house.

In 1999 the applicants requested the court on several occasions to set aside the interim measure in order to enable them to repair the roof of the house. The court dismissed their request. On appeal, on 21 September 2000 the Rijeka County Court (*Županijski sud u Rijeci*) quashed the first instance decision and remitted the case.

In the resumed proceedings, on 7 May 2001 the court set aside the interim measure sealing the house for a period of one month, and allowed the reparation of the roof. However, because the house is situated in a tourist area, no reparations were allowed from May until September. On appeal, on 23 August 2001 the Rijeka County court upheld the first instance decision**.**

Apparently, at the applicants' renewed request, on 7 December 2001 the Krk Municipal Court issued a new decision setting aside the interim measure for a period of two months. On appeal, on 7 August 2002 the

Rijeka County Court reversed the first instance decision setting aside the interim measure until the complete reparation of the roof.

The applicants have not yet repaired the roof of the house because they have no financial means to do so.

b. Perpetuation of evidence

On 22 September 1999 the applicants filed a request for perpetuation of evidence (*osiguranje dokaza*) with the Krk Municipal Court. They requested the court to establish the state of the roof and any damage that may have occurred.

The court scheduled an on-site inspection for 25 February 2000, which was performed without the presence of an expert. On 18 May 2000 the court dismissed the applicants' request.

On appeal, on 11 October 2000 the Rijeka County Court remitted the case. In the resumed proceedings, the Krk Municipal Court scheduled a new on-site inspection in the presence of an expert, who subsequently submitted her opinion regarding the condition of the roof.

On 7 May 2001 the court appointed an additional expert and scheduled yet another on-site inspection. On 11 May 2001, 15 January 2002 and 21 March 2002 the inspection by the additional expert was postponed, pending the Rijeka County Court's decision on the interim measure. The case appears to be still pending.

2. The proceedings concerning the will

On 14 November 1997 the applicants instituted civil proceedings against A.LJ.K., the late A.B.'s daughter from another marriage, claiming that the document signed by the late A.B. was not his will. Alternatively, if the court was to reject their first claim, the applicants requested the court to declare the will null and void.

On 16 April 1998 the Krk Municipal Court ruled that the impugned document was not A.B.'s will. On appeal, on 31 March 1999 the Rijeka County Court quashed the first instance judgment and remitted the case.

In the resumed proceedings on 24 August 2000 the Municipal Court dismissed the applicants' claim concluding that the document at issue was indeed the late A.B.'s will. At the same time it decided to examine the applicants' alternative claim once this judgment became final. On 5 June 2002 the County Court dismissed the applicants' appeal and the first instance judgment became final.

On 11 November 2002 the applicants filed a constitutional complaint against the County Court's judgment. On 11 December 2003 the Constitutional Court (*Ustavni sud Republike Hrvatske*) dismissed their complaint on its merits, finding no violation of their constitutional rights.

The first instance court has so far not decided on the applicants' alternative claim, by which they sought annulment of the will.

3. The proceedings concerning the co-ownership

On 16 August 1996 the late A.B.'s ex-wife, M.K., filed a civil action against the applicants and A.LJ.K in the Krk Municipal Court seeking her share of co-ownership of the house.

On 3 December 2001 the court decided in favour of the plaintiff, finding that she was a co-owner of the house. On the applicants' appeal, on 1 October 2003 the Rijeka County Court quashed the first instance judgment and remitted the case.

Meanwhile, in 2003 the applicants filed a constitutional complaint concerning the length of the proceedings. On 16 January 2004 the Constitutional Court dismissed their complaint as inadmissible because the County Court had meanwhile given its decision on their case.

In the resumed proceedings the court held hearings on 12 February 2004 and 17 June 2004. The case appears to be presently pending before the first instance court.

B. Relevant domestic law and practice

The relevant part of section 63 of the Constitutional Act on the Constitutional Court (*Ustavni zakon o Ustavnom sudu Republike Hrvatske* – Official Gazette no. 49/2002) ("the Constitutional Court Act") reads 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."

Section 272 § 1 of the Civil Procedure Act (*Zakon o parničnom postupku*, Official Gazette nos. 53/91, 91/92, 58/93, 112/99a and 88/01) provides that a party may request the court to take evidence, during or before the beginning of the proceedings, if there exists a justified fear that the evidence may not be available in the future or that its obtaining may be more difficult.

COMPLAINTS

1. The applicants complain under Article 6 § 1 of the Convention about the length and the fairness of the inheritance proceedings, including the interim measure and the perpetuation of evidence, as well as the two sets of civil proceedings. They further complain under Article 1 of Protocol No. 1 to the Convention that the unreasonable length of the inheritance proceedings amounted to a violation of their property rights.

2. The applicants complain under Article 13 of the Convention about the lack of an effective remedy in respect of the proceedings concerning the will, the interim measure and the perpetuation of evidence.

THE LAW

1. The applicants complain that the inheritance proceedings, including the proceedings concerning the interim measure and the perpetuation of evidence and the two sets of civil proceedings, have not been fair and have not been concluded within a "reasonable time". The applicants 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 fair... hearing within a reasonable time by an independent and impartial tribunal established by law..."

a. In respect of the overall length of the inheritance proceedings and the proceedings concerning the will, 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.

As to the fairness of those proceedings, the Court observes that they are still pending before the domestic courts and that this complaint is premature.

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

b. As to the proceedings concerning the interim measure, the Court recalls that issues concerning protective proceedings in which interim relief is sought fall outside of the scope of Article 6 § 1 of the Convention (see *Maillard Bous v. Portugal*, no. 41288/98, § 19, 28 June 2001).

Furthermore, in respect of the proceedings for perpetuation of evidence, the Court observes that under the domestic law the purpose of such proceedings is solely to obtain evidence as may not be available to the court at a later stage. In the present case the court was called to determine the

state of the roof on the late A.B.'s house. Consequently, such proceedings cannot in any way be interpreted as concerning determination of the applicants' civil rights or obligations.

It follows that both the length and the fairness complaints concerning these proceedings are incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4.

c. In respect of the length of the proceedings concerning co-ownership, the Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint 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.

As regards the fairness of those proceedings, the Court observes that they are still pending before the domestic courts. It follows that this complaint is premature and must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

2. The applicants further complain that they had no effective remedy at their disposal in respect of the length of the proceedings concerning the will, the interim measure and the perpetuation of evidence. They rely on Article 13, 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."

a. In respect of the proceedings concerning the will, the Court observes that those proceedings are still pending before the first instance court. Given the availability of a constitutional complaint under section 63 of the Constitutional Court Act (see *Slaviček v. Croatia*, cited above), the Court considers that the applicants had and still have at their disposal an effective domestic remedy for the length of those proceedings.

It follows that this complaint is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention

b. As to the proceedings concerning the interim measure and the perpetuation of evidence, in light of the conclusions under Article 6 § 1, the Court considers that the applicants' complaints under Article 13 in respect of those proceedings are also incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4.

3. Lastly, the applicants complain that the unreasonable length of the inheritance proceedings prevented them from enjoying their property rights contrary to Article 1 of Protocol 1, 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 the proceedings determining the applicants' inheritance rights are still pending at the domestic level. Therefore, in so far as the applicants rely on Article 1 of Protocol No. 1 to the Convention, the Court considers that it would be premature to take a position on the substance of this complaint. Moreover, in so far as the applicants may be understood to complain about the length of the inheritance proceedings, in light of its conclusions under Article 6 § 1 above, the Court considers that this limb of the complaint under Article 1 of Protocol No. 1 is also inadmissible for non-exhaustion of domestic remedies and must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicants' complaint concerning the length of the proceedings concerning co-ownership;

Declares the remainder of the application inadmissible.

Santiago QUESADA
Deputy Registrar

Christos ROZAKIS
President