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

FIRST SECTION

CASE OF OREB v. CROATIA

(Application no. 9951/06)

JUDGMENT

STRASBOURG

23 October 2008

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Oreb v. Croatia,

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

Anatoly Kovler, *President,*
Nina Vajić,
Khanlar Hajiyev,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni,
George Nicolaou, *judges,*

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 2 October 2008,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 9951/06) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Croatian nationals, Mr Ivan Oreb and Mr Željko Oreb ("the applicants"), on 8 February 2006.

2. The applicants were represented by Mr M. Budimir, a lawyer practising in Split. The Croatian Government ("the Government") were represented by their Agent, Mrs Š. Stažnik.

3. On 18 September 2007 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1953 and 1962 respectively and live in Bromma, Sweden.

5. On 10 April 1980 the applicants sought the recognition of their co-ownership of certain real estate in a civil action they brought in the Split Municipal Court (*Općinski sud u Splitu*) against two persons, also living in Sweden.

6. On 16 April 2003 the applicants petitioned the Constitutional Court about the length of proceedings. On 14 February 2005 the Constitutional Court found a violation of the applicants' right to a trial within a reasonable time and awarded each applicant the sum of 8,600 Croatian kunas (HRK) in compensation. It also ordered the Split Municipal Court to adopt its decision in the shortest time possible but no later than ten months from the publication of the decision in the Official Gazette. The decision was published in the Official Gazette no. 32 of 9 March 2005.

7. The Government submitted that after the Constitutional Court's decision the Split Municipal Court had scheduled four hearings, all of which were adjourned. In that connection they submitted that the defendants lived in Sweden and that it had been necessary to send them the court summonses via the Croatian Embassy in Stockholm. The summonses for the hearings scheduled for 29 August 2005 and 13 January 2006 were not served on the defendants and the Embassy had provided no information as to why this was so. As regards the summons in relation to the hearing scheduled for 18 September 2006 the Embassy informed the Municipal Court that the documents had been returned in the post without having been served on the defendants. Lastly, the Embassy informed the Municipal Court that the defendants had refused to take delivery of the summons which related to the hearing scheduled for 28 May 2007.

The proceedings are still pending before the Split Municipal Court.

II. RELEVANT DOMESTIC LAW

8. Article 29 § 1 of the Constitution (*Ustav Republike Hrvatske)*, Official Gazette no. 41/2001 of 7 May 2001) reads as follows:

> "In the determination of his rights and obligations or of any criminal charge against him, everyone is entitled to a fair hearing within a reasonable time by an independent and impartial court established by law."

9. The relevant part 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") reads as follows:

Section 63

> "(1) The Constitutional Court shall examine a constitutional complaint whether or not all legal remedies have been exhausted if the competent court 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 competent court 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."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

10. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement laid down in Article 6 § 1 of the Convention, which 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. Admissibility

11. The Government submitted that the Constitutional Court had accepted the applicants' constitutional complaint, found a violation of their constitutional right to a hearing within a reasonable time, and awarded them appropriate compensation. The violation complained of had, therefore, been remedied before the domestic authorities and the applicants had lost their victim status as a result.

12. The applicants replied that they could still be considered victims of the violation complained of.

13. The Court notes that at the time when the Constitutional Court's decision was given the proceedings had been pending for 7 years and three months at one level of jurisdiction, after the ratification of the Convention by Croatia. The just satisfaction awarded by the Constitutional Court does not correspond to what the Court would have been likely to award under Article 41 of the Convention in respect of the same period, due account being taken of the fact that the case was pending for about seventeen years and seven months before the ratification. It therefore cannot be regarded as adequate in the circumstances of the case (see the principles established under the Court's case-law in *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 65-107, ECHR 2006-..., or *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 178-213, ECHR 2006 - ...). In these circumstances, in respect of the period covered by the Constitutional Court's finding, the applicants have not lost their status as victims within the meaning of Article 41 of the Convention.

14. The Court notes further that the proceedings are still pending and that, therefore, it is called upon to examine the overall length of proceedings.

15. Having regard to the above facts the Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It also notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

16. The Government submitted that the State could not be held responsible for the delays which occurred after the Constitutional Court's decision since the Split Municipal Court scheduled four hearings which were adjourned because the defendants, who lived in Sweden, did not receive the court summons.

17. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicants and the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

18. The Court considers that the period to be taken into consideration began on 6 November 1997, the day after the entry into force of the Convention in respect of Croatia. However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time. In this connection the Court notes that the proceedings commenced on 10 April 1980, when the applicants brought their civil action. Thus, they were pending for about seventeen years and seven months before the ratification.

19. The proceedings are still pending. Thus, in total, the case has been pending for more than twenty-eight years, of which more than ten years were after the ratification of the Convention, for one level of jurisdiction.

20. Having examined all the material submitted to it, the Court concurs with the Constitutional Court that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

21. As regards the period subsequent to the delivery of the Constitutional Court's decision, the Court cannot accept the Government's arguments that the delays which occurred were not attributable to the State because the defendants, who live in Sweden, had not received the court's summons in respect of four hearings. The Court notes that the circumstances relied on by the Government cannot be imputed to the applicants.

22. As to the refusal of the defendants to accept the delivery of the court's summonses, the Court considers that it cannot be attributed to the authorities. The Court finds that the fact that the defendants live abroad might, in principle, justifiably contribute to the difficulties in processing a case. However, due account is to be taken of this factor by domestic authorities in the management of the case. In the present case the Court notes that after the Constitutional Court's decision the proceedings have been pending for about three years and seven months at one level of jurisdiction and are still pending before the same court of first instance. In the Court's view the national courts should have conducted the proceedings in question in a manner compatible with the reasonable time requirement and complied with the time-limit imposed by the Constitutional Court. Having regard to the circumstances of the present case and to the overall length of the proceedings, the Court considers that the applicants have not been afforded a trial within a reasonable time.

23. In view of the above considerations, the Court concludes that there has been a breach of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

24. The applicants also complained under Article 13 of the Convention, taken in conjunction with Article 6 § 1 thereof, that the Split Municipal Court had not complied with the Constitutional Court's order to deliver a decision within the prescribed time-limit. Article 13 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."

25. The Government contested that argument.

A. Admissibility

26. The Government invited the Court to reject this complaint on the grounds that the applicants had failed to exhaust domestic remedies. They argued that the applicants should have lodged another constitutional complaint, which would have enabled the Constitutional Court to assess the significance of the County Court's failure to comply with its decision.

27. The applicants did not comment on this issue.

28. In this respect the Court refers to its judgment in the case of *Vaney v. France* (no. 53946/00, § 53, 30 November 2004) where, in the context of Article 6 § 1 of the Convention, it rejected a similar non-exhaustion objection raised by the Government, as accepting it would have led to the applicant being caught in a vicious circle where the failure of one remedy would have constantly given rise to an obligation to make use of another

one. It considers that this reasoning applies with equal force in the context of Article 13 in the circumstances such are those prevailing in the present case. Thus, the Government's objection must be dismissed.

29. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It also notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' arguments

30. The Government admitted that the Split Municipal Court had exceeded the time-limit set forth in the Constitutional Court's decision. However, they considered that this factor alone could not lead to a conclusion that the constitutional complaint had not been an effective remedy in the applicants' case.

31. Firstly, they submitted that, pursuant to the Constitutional Court Act, all state authorities, including courts, are bound by the Constitutional Court's decisions and have a duty to implement them. In the vast majority of cases, the courts in Croatia respected the orders of the Constitutional Court and delivered their decisions in due time. It was however possible that the courts sometimes did not comply fully with those orders. For that reason, and in order to monitor compliance with its own decisions, the Constitutional Court had set up a system of supervision by requesting all courts in Croatia to submit reports on the timely implementation of those decisions. In particular, since 1 January 2005 every Constitutional Court's decision ordering a lower court to decide a case within a certain time-limit, in its operative provisions contained an order to the President of that court to provide information by a certain date on the delivery and service of the decision the adoption of which had been ordered by the Constitutional Court.

32. Secondly, as regards the circumstances of the present case, the Government reiterated that the Constitutional Court had decided in the applicants' favour, expressly acknowledged a violation of their right to a hearing within a reasonable time, and awarded them compensation. Furthermore, the Split Municipal Court was unable to comply with the time-limit imposed by the Constitutional Court because the court summons could not be delivered to the defendants in the proceedings, since they live in Sweden and all attempts of delivery failed.

33. The applicants considered that the mere fact that the Municipal Court had "ignored" the Constitutional Court's decision sufficiently indicated that no effective remedy existed in Croatia in relation to the length of proceedings in such circumstances.

2. The Court's assessment

34. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI). The "effectiveness" of a "remedy" within the meaning of Article 13, however, does not depend on the certainty of a favourable outcome for the applicant. (see *Kudła*, cited above, § 157).

35. The Court has already accepted that a complaint to the Constitutional Court under section 63 of the Constitutional Court Act represented an effective remedy for length-of-proceedings cases still pending in Croatia (see *Slaviček v. Croatia* (dec.), no. 20862/02, ECHR 2002-VII). In the present case, the Constitutional Court accepted the applicants' constitutional complaint, found a violation of their constitutional right to a hearing within a reasonable time and awarded them compensation. The mere fact that the compensation awarded to the applicants at the domestic level does not correspond to the amounts awarded by the Court in comparable cases does not render the remedy ineffective (see for example, *Jakupović*, cited above, § 28, and *Rišková v. Slovakia*, no. 58174/00, § 100, 22 August 2006).

36. However, the Court considers that the obligation of the States under Article 13 encompasses also the duty to ensure that the competent authorities enforce remedies when granted and notes that it has already found violations on account of a State's failure to observe that requirement (see *Iatridis v. Greece* [GC], no. 31107/96, § 66, ECHR 1999-II). For the Court, it would be inconceivable that Article 13 provided the right to have a remedy, and for it to be effective, without protecting the implementation of the remedies afforded. To hold the contrary would lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention (see, by analogy, *Hornsby v. Greece*, 19 March 1997, § 40, *Reports of Judgments and Decisions* 1997-II).

37. In so holding the Court does not exclude the possibility that there may be instances where delayed implementation or even non-implementation of the Constitutional Court's decisions may be justified and thus may not lead to a breach of Article 13 of the Convention. However, in the present case the Government's submissions in respect of the delays in complying with the Constitutional Court's decision cannot be accepted (see § 21 above) in view of the fact that the time-limit in question has so far been exceeded by more than three years. Therefore, the Government's justification cannot be considered decisive in the present case. In particular, as already found above (see paragraph 13 above), the compensation awarded to the applicants was too low and thus insufficient. While it is true that this factor alone does not normally render the remedy ineffective, the Court notes that in the present case it was reinforced by the failure of the

competent court to execute the Constitutional Court's decision in a timely fashion; it being understood that the cessation of an ongoing violation is for the Court an important element of the right to an effective remedy (see, implicitly, *Cocchiarella*, cited above, § 74).

38. The Court is therefore of the view that in the instant case, where the applicants did not receive sufficient compensation for the inordinate length of their proceedings and where the competent court has failed to comply with the time-limit set in relation to it and thereby has failed to implement the Constitutional Court's decision thus far, it cannot be argued that the constitutional complaint the applicants resorted to was an effective remedy for the length of those proceedings. The combination of these two factors in the particular circumstances of the present case rendered an otherwise effective remedy ineffective.

39. This conclusion, however, does not call into question the effectiveness of the remedy as such or the obligation to lodge a constitutional complaint under section 63 of the Constitutional Court Act in order to exhaust domestic remedies concerning complaints about the length of proceedings.

There has accordingly been a breach of Article 13 in the present case.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

41. The applicants did not submit a claim for just satisfaction or for any costs and expenses incurred. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds* that there has been a violation of Article 13 of the Convention;

Done in English, and notified in writing on 23 October 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach Deputy Registrar	Anatoly Kovler President