



Undue Delay in the case-law of the European Court of Human Rights

Varicak Marica v. Croatia Osiguranje

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INTRODUCTION

This report was written in connection with the case *Varicak Marica v. Croatia Osiguranje*, which is pending in the Municipal Court of Zadar, Croatia. Before bringing a case before the European Court of Human Rights, local remedies must be exhausted on the ground of Article 35 of the European Convention on Human Rights¹ (hereafter: "ECHR"). This means that recourse should be made to all legal remedies available under the local law that are in principle capable of providing an effective and sufficient means of redressing the wrongs for which, on the international plane, the respondent State is alleged to be responsible.² However, there are grounds to deem Article 35 not applicable.

From previous research in this case, it has been concluded that there are two relevant grounds for non-exhaustion of the local remedies, being the ineffectiveness of the remedy, and the undue delay of the procedure.³

This report confines itself to the second ground for non-exhaustion of local remedies, that of an unduly delayed procedure. According to article 6(1) of the European Convention on Human Rights, everyone is entitled to a fair and public hearing within a reasonable time. The ground of undue delay might offer a good chance for this case to be proceeded before the European Court of Human Rights immediately, without exhaustion of local remedies ex Article 35 of the Convention.

To examine an (un)reasonable time, the Court first has to establish whether the case in question concerns civil rights, as examined in chapter 1 of this report. Chapter 2 deals with the way the Court measures the period of time to be taken into consideration.

The report concludes that in view of the lack of diligence on the part of the municipal court of Zadar, Croatia, and the applicant's human need for housing and possible continuance of her

¹ European Convention for the Protection of Human Rights and Fundamental Freedoms.

² *Nielsen v. Denmark*, 343/57, 2/9/1959, *Report of the Commission*, (1961) at 37.

³ See previous report of the Amsterdam International Law Clinic on exhaustion of local remedies of 14 July 2001, para. 4, p. 3.



profession, the delay appears unreasonable and the requirement of exhaustion of local remedies does no longer apply.

STATEMENT OF FACTS

On 11 August 1994, the applicant initiated proceedings against the insurance company Croatia Osiguranje before the municipal Court in Zadar. She considered the defendant to be responsible for damages to her family house and office established therein.⁴ The defending party stated that it was not required to compensate the property damage to the plaintiff, since they incurred in the process of war. In the only hearing held in this case, the Municipal Court stated that the damages in the case were not due to a state of war, but due to an act of terror. It ruled that the defendant should submit a report and that the defense authorities in Zadar should provide the Court with information. It continued stating that, after receiving the requested materials, or after the passage of the deadline of one month for submission of the materials, the Court would decide on the further steps regarding the process. Since this hearing in 1994, there has been no sign of any further steps taken by the municipal court in this case.

⁴ She held the defendant, "Croatia" Ltd. office in, liable for damages to the house, office building with equipment, furniture and interest from the day of the complaint to the day of compensation, within 15 days.



Chapter 1 UNDUE DELAY

1.1 Examining the (un)reasonable time

An improperly delayed procedure is an exhaustion of local remedies.⁵ The Court has stressed that the right of everyone to obtain a judgment within a reasonable time is of "extreme importance for a good administration of justice".⁶ Article 6(1) of the ECHR states that everyone is entitled to a fair and public hearing within a reasonable time (..). In the present case it needs to be established whether the period of time lapsed between the filing of the initial complaint and the current situation results in an undue delay of the proceedings.

From the examination of prior considerations in the case law of the European Court of Human Rights, several criteria can be deduced. Even though the Court has undergone some institutional changes after Protocol 11 of 1998, a certain consistency in its approach towards the admissibility of cases concerning undue delay can be distinguished since that time. Therefore, besides recent jurisprudence, case-law developed prior to 1998 is of considerable relevance as well.

Normally, the Court first examines whether the case can be considered a civil case⁷ and naturally, it always measures the time frame under scrutiny. These points are discussed in the remainder of this chapter. Further, the assessment of the delay was in most cases based on the specific circumstances of the case.⁸ The relevant criteria are discussed in chapter two of this report.

⁵ Cançado Trindade, *Exhaustion of local remedies in the <travaux preparatoires> of the european convention on human rights*, 58 *Revue de Droits Internationale* 79 (1980).

⁶ *Guincho v. Portugal*, judgment, 8990/80, 10/7/84, Series A no. 81, at 18, *Union Alimentaria Sanders S.A. v. Spain*, judgment, 11681/85, 7/7/1989, Series A. no. 157, p. 15, 40 *in fine*.

⁷ In all cases studied that concerned Article 6 (1) ECHR on undue delay, the Court examined these points. For an example of how the Court first determines this, see *Darnell v.U.K.*, 15058/89, 10/04/91.

⁸ E.g. *Cerin v. Croatia*, no. 54727/00, 08/03/01 para.2. In this case the Croatian government submitted that the Court should limit its examination to the period subsequent to the entry into force of the Convention in respect of Croatia and contend furthermore that the subject matter of the applicant's case did not call for particular urgency in deciding it. (case: 15 years, 7 months, 9 days out of which 1 year, 10 months 24 days fall within the Court's jurisdiction; no judgment as of yet). Also relevant here: *Kemmache* judgment of 27 November 1991, Series A no. 218, p. 27. 60. *Rajak v. Croatia*, 49706/99, 28 June 2001. 39, *Humen v. Poland* (GC), 26614/95.60, unpublished, and *Comingersoll S.A. v. Portugal* (GC), 35382/97, ECHR 2000-IV.



1.2 Civil Case

The Court first has to establish whether the case-law concerning a reasonable time is applicable. This is only so if the case is of a *civil* nature.⁹ The *Mavronichis v. Cyprus* case gives a clear example of a decision in which the Commission ruled that the only set of proceedings to be considered for the purposes of its assessment of the reasonable time requirement under Article 6 (1) ECHR is the civil action.¹⁰ It is enough that the outcome of the proceedings should be “decisive for private rights and obligations.”¹¹ “Civil” does not imply a strict distinction between a public and a private nature of the case. Recent case law of the Court shows a broader acceptance of claims based on Article 6 (1) ECHR.

In this case, the character of the law, rights and obligations at issue, namely the right to compensation of damage for property, and the fact that defendant is a private insurance company, establishes a civil nature. The requirements of a ‘civil’ case seem clearly fulfilled.

1.3. Measuring the Period of Delay

1.3.1. The starting point of measuring the delay

Article 6 (1) of the Convention does not itself specify any starting point to determine the exact reasonable time to be measured in a case. Assessing the delay itself should be based on the time frame between the date of the filing of the complaint¹² and the moment the (national) judgment becomes final.¹³ Unless the length of the action formed the subject matter of the applicant’s complaint, earlier recourse action is to be excluded from the assessment.¹⁴ For the present case, this means that the time frame between the actual occurrence of the damage and

⁹ *König v. Federal Republic of Germany*, judgment, 28 June 1978, Series A no. 27, pp. 31-32, paras 91-95; *Zimmermann and Steiner v. Switzerland*, judgment, 8737/79, 13/7/1983, Series A no. 66, p.10, para.22.

¹⁰ *Mavronichis v. Cyprus*, 28054/95, 47/1997/831/1037, decision of 26/06/1996. 10, partly admissible. (“Earlier recourse action is to be excluded from the assessment”).

¹¹ *Ringeisen v. Austria (merits)*, judgment, 2614/65, 16/7/1971, Series A no. 13, at 39.

¹² A.M.L. Jansen, *De redelijke termijn, met name in het bestuursrecht*, Boom, 28 (2000).

Judge Sir Gerald Fitzmaurice, in a dissenting opinion to the *Golder* judgment, agrees with this. In this predominantly criminal case, Fitzmaurice stated that, to determine the reasonable time, “the same principle must apply *mutatis mutandis* to civil proceedings, not only because otherwise a serious degree of incommensurate treatment would be introduced between the two types of proceedings, but for practical reasons also. In civil proceedings, the period of reasonable time must begin to run from the moment the complaint is formalized by the issue of a writ, summons or other official instrument under, or in accordance with, which the defendant is notified of the action.” He does agree that any period previous to that, is irrelevant or too indeterminate to serve; *Golder v. U.K.*, judgment, 6289/73, 09/10/79, para. 47 (iv).

¹³ Jansen, *Ibid*, at 43.



the moment the applicant decided to file the complaint can not be taken into account by the Court.

1.3.2 *A trend in accepted undue delays?*

From the *Golder* case, it appears that the Court has to determine the relevant time period *ad hoc* for, and in, each particular case.¹⁵ In a case concerning the application for custody, the Commission found the period of delay itself, which was less than two years, persuasive to declare the case admissible.¹⁶ However, time periods of cases declared admissible by the Commission varied from 1 year and 11 months in an extreme case,¹⁷ (and more representatively from 4 years and 9 months)¹⁸ to 12 years and 10 months, the latter being the longest time period found in the cases examined that concerned undue delay and were declared admissible by the Commission or Registry.¹⁹ Even though the majority of cases had a delay period of 5-7 year, no general trend can be established hereof.

1.3.3 *Croatia's reservation to the ECHR*

In principle, a treaty is not applicable to situations that have occurred before the treaty entered into force and was ratified by the State.²⁰ Thus, the period in which the European Court of Human Rights has jurisdiction *rationae temporis* starts when the right of individual petition (Article 25 ECHR) takes effect for the State in question.²¹ Croatia has excluded the possibility of the retroactive application of the Convention in a reservation it made in connection to Article 25 of the Convention.²² It 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

¹⁴ *Mavronichis v. Greece*, judgment, 28054/95, 24/4/98, Report 98-II, para.37 and on admissibility *Mavronichis* case, *supra* n.10, para. 10.

¹⁵ *Golder v. U.K.*, *supra* n. 24. In his ‘different opinion’ Fitzmaurice states that this is the effect of the Court’s views in this case. He finds the situation that would exist, in which governments could never know in advance within what precise period causes must be brought to trial in order to satisfy the requirements of the Article 6 (1), a wholly unacceptable situation. (end of para. 47 (iv)).

¹⁶ *Buchholz v. Germany*, judgment, 7759/77, 6/5/1981, Series A no. 42, at 16, para.49. and *M.M. v. UK*, 13228/87, 13/02/90.

¹⁷ *Meier-Sax v. Switzerland*, 12421/86 : 1 year, 11 months and 19 days, 11/05/1988 (admissible).

¹⁸ *Kurzac v. Poland*, 31382/96, 25/05/2000 (admissible).

¹⁹ *Ikon Industriële konsulenten in marketing-management B.V.; Martin v. The Netherlands*, 00017240/90, 08/07/1991 : 12 years and 10 months.

²⁰ See art. 28 of the Vienna Convention on the Law of Treaties.

²¹ *Mavronichis*, admissibility, *supra* n.10, para.10, *Mavronichis* judgment of 24/4/98, para.37, *supra* n.14

²² On 17 October 1997, Croatian Sabor (Parliament) adopted the Law on ratification of the Convention for Protection of Human Rights and Fundamental Freedoms as well as Protocols 1,4,6,7 and 11. of the Convention.



through any act, decision or event occurring after 5 November 1997.”²³ It follows that the period to be taken into consideration by the Court starts on this date. However, in order to determine the reasonableness of the length of time in question, the Court can (and in many cases stated it would) have regard to the state of the case on that date.²⁴ In the present case, the proceedings are currently pending before the court of first instance. Thus, they have so far lasted for more than seven years, out of which a period of four years and nearly three months falls to be examined by the Court. In *Horvat v. Croatia*, the Court referred to an earlier case in which it was noted that, “in order to determine the reasonableness of the length of time in question, regard must be had to the state of the case on 5 November 1997.”²⁵ In respect of the present case, it can be assumed that, at the moment of the entry into force of the Convention in respect of Croatia, the proceedings had lasted for about three years and three months.

1.3.4. *Continuous denial of access*

The limitation to the period after entry into force of the Convention could be avoided if it can be established that there is a continuing breach of the right to access to a (domestic) court. A continuing violation is “the breach of an international obligation by an act of a subject of international law extending in time and causing a duration or continuance in time of that breach.”²⁶ When addressing the concept of a continuing violation, the European Court of Human Rights can be distinguished from other institutions dealing with this matter. Rather than to focus on the objective qualification of the act as such or the subjective intentions of its author (the State), the ECtHR focuses on the *effects on the victim* of the act, thereby taking into account *all relevant circumstances of the case*.²⁷ Pauwelyn argues that, since all human rights violations affect the ‘status’ of the victim, they can be signified as continuing violations.²⁸

²³The reservation reads: “The Republic of Croatia recognizes (...) jurisdiction of the European Commission for Human Rights to receive appeals (...) but only if the facts on which the alleged violation of rights is based were created after the Convention and additional Protocols become effective in the Republic of Croatia.” See *Horvat v. Croatia*, Judgment of 26 July 2001, Application no. 51585/99, para.50, referring to *Foti and Others v. Italy* judgment of 10 December 1982, Series A no. 56, p.18, para.53.

²⁴ *Podbielski v. Poland*, no. 27916/95, para. 31, ECHR 1998-VIII, *Proszak v. Poland*, judgment of 16/12/97, Reports 1997-VIII, p.2772, para.31, and *Mavronichis*, judgment of 24/4/98, para.37.

²⁵ *Horvat v. Croatia*, Judgment of 26 July 2001, Application no. 51585/99, para.51, referring to *Styranoski v. Poland*, 28616/95, para.46, ECHR 1998-VIII.

²⁶ Joost Pauwelyn, *The Concept of a 'continuing violation' of an international obligation: selected problems*, 66 BYIL, 415 (1996).

²⁷ The criteria relevant here are those elaborated upon in chapter 2 of this report.

²⁸ Pauwelyn, *supra* n. 26 at 421 and 424.



In *Agrotexim and Others v. Greece*, the European Court of Human Rights ruled that a preliminary study of the case lead it to conclude that there was a possibility to regard the successive actions of the relevant authority as a series of steps amounting to a continuing violation.²⁹ From the examination for this report, no case-law establishing a continuing breach deriving from undue delay was found. However, in order to assess whether there is a situation of continuing breach in the present case, examination of the initial claim is required. It goes beyond the scope of this report to do so at this point.

²⁹ *Agrotexim and Others v. Greece*, judgment, 24/10/95, Series A 330-A, para.58.



Chapter 2 CRITERIA

In its assessment of an (un)reasonable time, the Court considers six criteria. They are the complexity of the case, the conduct of the applicant, the conduct of the competent authorities, what is at stake for the applicant in the proceedings and the state of those proceedings.

2.1 Complexity of the Case

One of the criteria used by the Court in order to assess the delay is the *complexity of the case*. If, based on unusual circumstances, the case proves to be of a complex nature, this could mitigate the responsibility of the relevant authorities to manage the case within a certain time. The fact alone that two issues need to be considered (separately) is not enough to establish a particularly complex nature of the case.³⁰ In *Duclos v. France* the Court found that calculation of daily allowances to be paid to applicant as well as complication due to conflicting documentary evidence submitted to the judicial authorities are insufficient to constitute complexity. It ruled that the case was not a particularly complex one especially as it was explained at first instance by a *specialised tribunal* experienced in dealing with such matters.³¹ Length of the proceedings, authorisation to be renewed automatically and the inactivity of the relevant authority were found legitimate conditions for the commission to require examination of the merits of the case based on complex issues of fact and law.³² In *Mavronichis v. Cyprus* it was held that the length of the proceedings could not be explained in terms of the complexity of the issues involved since domestic courts had the *benefit of settled case law*.³³

Based on the information at present, this case does not seem to involve more than one issue. The case was filed at an institution of first instance, namely the municipal court. Applicant's case essentially raised issues of liability and quantum of damages. If this remains the main base for her claim, it could be assumed that the municipal court had the benefit of settled case law. However, in order to establish whether the length of the proceedings in this case can be explained in terms of the complexity of the issues involved, this criterion needs to be examined based on all specific details of this case.

³⁰ *Duclos v. France, 2nd case, 23667/94.*

³¹ *Duclos v. France, para.81 (3rd case).*

³² *Müller v. Switzerland, 15269/89 5/12/90, referred to P v. Switzerland, 9299/81, 12/3/84, D.R. 36 p.20.*

³³ *Mavronichis v. Cyprus, supra n. 10, 47/1997/831/1037, paras. 22 and 39.*



2.2 Conduct of the Applicant

When assessing the reasonableness of the length, another point to be taken into account is the *conduct of the applicant in the proceedings*.³⁴ In case the delay was caused due to a request of the defendant, it should be examined whether applicant has objected thereto in order to prevent a possible delay.³⁵ In *Ikon v. The Netherlands*, the Commission considered that, although the first applicant could have raised the issue of the length of the proceedings in the course of these proceedings, the outcome would not have been different. It was therefore not established that this would have constituted an effective remedy.³⁶ However, even if the national court itself is responsible for the delays in the procedure, applicant has to have objected thereto in order to prove undue delay. Thus, based on the case-law of the Court, it can be concluded that applicant is required to file a complaint with the institution concerned, based on the stages of the delayed procedure, in order to prove that he can not be held responsible for the delay.³⁷

In the case of *Duclos v. France*, applicant, in his national proceedings, was not represented by a lawyer. The fact that there was a five-month gap between appeal on points of law and the filing of his supplementary pleadings could not be regarded as excessive considering that he was not represented by a lawyer.³⁸ In the second case of *Duclos v. France*, applicant was late with filing pleadings since he had to wait eight months before being awarded legal aid. He also refused to take medical examination ordered by the Court. The Court stated that it would further examine this case on the merits since it had to be examined how much delay his behaviour gave to the process.³⁹

The applicant does not need to exercise remedies, which, although theoretically of a nature to constitute a remedy, do not in reality offer any chance of redressing the alleged breach.⁴⁰ In examining the (primary but not sole) responsibility of the applicant for the conduct of the

³⁴ *Thillemenos v. Greece* 34369/97 (partially admissible) 12/01/1998.

³⁵ *Mavronichis v. Cyprus*, *supra* n. 10.

³⁶ The Commission therefore found that the application could not be rejected on the ground that the applicants have not exhausted the domestic remedies within the meaning of Art. 26 of the Convention. *Ikon Industriële konsulenten in marketing-management B.V.; Martin v. The Netherlands*, 17240/90, 08/07/1991.

³⁷ *Darnell v. U.K.* 15058/89, 10/04/91. The proceedings were decisive for the applicant's continued employment even though salary continued. Dismissal made it difficult/impossible to work in his field. Examination of the merits was needed, admissible.

³⁸ *Duclos v. France*, para. 60 (in case: reasonableness of the length of proceedings before special tribunals can be assessed in the same way as before ordinary civil courts).

³⁹ *Duclos, second case*, *supra* n.30.



proceedings, the conduct of the attorney can also be of some importance.⁴¹ Length of proceedings can also be due to numerous remedies lodged by applicant⁴² and to the fact that applicant failed to request another hearing.⁴³

It is not established whether applicant in this case has formally objected to the length of the proceedings before the municipal court of Zadar. It is advantageous for applicant to do so, even if the Court itself can be held responsible for the delay. Applicant seems to have filed a clear complaint with a single request for remedies. In order to assess applicant's behaviour in this case, it is relevant to apply the criteria examined above. Based on all exact circumstances of the present case, it shall be established whether applicant, by her behaviour, can or cannot be held responsible for (part of) the delay of this procedure.

2.3. Conduct of the Relevant Authorities

When assessing the reasonableness of the length, another point to be taken into account is the *conduct of the competent judicial authorities*. These are the national institutions where the domestic remedies should be exhausted. In order to assess to what extent these authorities are responsible for the delay of the proceedings, the conduct of the domestic courts that heard the case at first instance and on appeal should be closely examined.⁴⁴ Article 6 (1) imposes on Contracting States the duty to organize their judicial systems in such a way that their courts can meet each of its requirements, including the obligation to hear cases within a reasonable time.⁴⁵ The argument of temporary backlog of business such as workload of the Supreme Court can generally not be a justification for delays. However, no liability is involved on the

⁴⁰ Cf. 9248/81, Dec. 10.10.83 D.R. 34 p. 78, , also see *M.M. v. UK* 13228/87, 13/02/90.

⁴¹ In this case, applicant took no steps (formally or informally) seeking the expedition of the proceedings and - she consented both to decision for further investigation and for a hearing-date. However: the Official Solicitor in particular expressed concern over the time taken in the proceedings and took steps to have the case treated urgently by the court., *M.M. v. UK*, *supra* n.40, para.2.

⁴² *Maas v. Federal Republic of Germany*, 14365/88, 07/05/1990. The length of the proceedings in this case was particularly due to the numerous remedies lodged by applicant, including hierarchical complaints, requests for disciplinary proceedings, official liability proceedings, motions to challenge judges for bias.

⁴³ *F v. Austria*, 12628/87, 07/09/1990 (divorce) The case was on 31 December 1987 struck off the role. It was not until 26 august 1988 that the applicant requested another hearing.

⁴⁴ *Mavronichis v. Cyprus*, 47/1997/83, 1/103. Also see *Thillemenos v. Greece*, *supra* n.34, in which there were periods of inactivity of a total duration of almost three years for which the Government could not offer any explanation other than caseload.

⁴⁵ *Rajak v. Croatia*, 49706/99, 28 June 2001, para. 48, *Philis v. Greece (no.2)*, judgment, 27/6/97, *Reports 1997-IV*, p. 1084, para. 40. *Francesco Lombardo v. Italy*, para. 23, *Duclos, Erik Karlsson v. Sweden*, 12782/87, *Mavronichis v Cyprus*.



part of the Contracting States if established that they have taken reasonably prompt remedial action to deal with an exceptional situation of this kind.⁴⁶

In the *Mavrimonichis* case no steps were taken by the registry of the Supreme Court to process the appeal.⁴⁷ In case the applicant declares that the State has failed to organise the judicial system in a proper way, the burden of proving the existence of the availability of adequate domestic remedies lies upon the State invoking the rule.⁴⁸ Thus, delay should be attributable to the State.⁴⁹

In *H. v. Austria*, applicant submitted that the necessary evidence could have been obtained in less time. Further, he questioned the reasonableness of the two replacements of the presiding judge, considering that it was unacceptable for the parties to have a new judge decide the case on the basis of the contents of the file only. The court thought it necessary to consider the case at the merits.⁵⁰ In *M.M. v. U.K.*, it was held that criticism could not be levelled at the Court when it caused a long delay due to further examination of the admissibility of the case and a long vacation of the Court.⁵¹

The conduct of the relevant authority, namely the municipal court of Zadar, does not meet the requirements as described above. A temporary backlog due to workload of the Municipal Court does not appear. It should be examined whether the authorities have taken effective measures to deal with the delay of the proceedings. If this can be established, it might be the case that Croatia cannot be held responsible for this delay. However, there are no indications of any actions of this kind taken by the municipal court. Croatia has to prove that it does provide for adequate procedure and legislation. This includes a reasonable time to obtain necessary evidence and other information as it committed to do, within a month, in 1994.

⁴⁶ *Proszak v. Poland*, judgment 16/12/97, *Reports* 1997-VIII, p.2772, para.32; *Robins v. UK*, judgment of 23/9/97, *Reports* 1997-V, p.1810, para.33; *Duclos v. France*, judgment, 17/12/96, *Reports* 1996-VI, pp. 2180-81, para.55; *Mavronichis v. Cyprus*, *supra* n. 10, para. 9.

In the latter case it was also stated that delay in processing the appeal is imputable to the State (para. 9). See also *Kurzac v. Poland*, 31382/96, 22 February 2001, para.34 and the *Buchholz v. Germany*, *supra* n. 16, at 16, para. 51, at 20-21, para. 61 and at 22, para. 63.

⁴⁷ *Mavronichis v. Cyprus*, *supra* n. 10. No procedural measures were taken to list the case for hearing or to deal with interlocutory motions during that time.

⁴⁸ Cf. *Deweere v. Belgium*, judgment, 6903/75, 27/02/1980, para.26; also see *M.M. v. UK*, *supra* n. 40.

⁴⁹ *M.M. v. UK*, *supra* n.28, *Buchholz* judgment, *supra* n. 16, *Darnell v. U.K.*, *supra* n. 37.

⁵⁰ *H. v. Austria*, 16103/90, 31/05/1991 (partly admissible).



2.4 What is at stake for the applicant in the proceedings?

When assessing the reasonableness of the length, the Court examines the importance of *what is at stake for the applicant in the proceedings*.⁵² The reason why this criterion should be examined is that the interests of the applicant can require a quick settlement of the case.⁵³ Domestic courts should show special diligence in handling cases in which basic human needs are at stake.⁵⁴ Disputes on family law can require a quick settlement of the case.⁵⁵ In case the national proceedings concerned the professional future of the applicant, an expeditious decision may be required.⁵⁶

In the present case, applicant lost her family house, practice and furniture. Since these are basic human needs, the Croatian court is obliged to handle this case with special diligence. Further examination is needed to establish whether the office on the first floor of applicant's house was a condition for her possibility to pursue her profession. If this appears to be the case, it is a valid argument before the European Court.

2.5 State of the Proceedings

A last separate criterion, utilized by the Court in its examination of the delay is the *state of the proceedings* at the time the complaint was filed. Assessing this state of the proceedings signifies that the Court considers the way in which the national court handled the procedure and that it examines what has already been dealt with. In the context of the present case, this means that the Court would take into consideration the time frame between the beginning of the national procedure and the filing of the complaint before the ECtHR. In *Mavronichis v. Cyprus*, the 'state of the proceedings' was used as a separate argument to prove an unreasonable delay.⁵⁷ In *Fütterer v. Croatia*, the Court held that "the period to be taken into consideration by the Court starts on 5 November 1997. However, in order to determine the

⁵¹ *M.M. v. UK*, supra. n. 40.

⁵² E.g. *Duclos v. France*, also see *Phocas v. France*, 17869/91, 29/11/1993, para. 71.

⁵³ A.M.L. Jansen, *De Redelijke Termijn, met name in het Bestuursrecht*, Boom 148 (2000).

⁵⁴ Case of *Dewicka v. Poland*, 38670/97, 4 /4/2000, para.55, The Court agrees that what was at stake in the litigation in issue was undoubtedly of crucial importance to the applicant. Indeed, her age, her disability and the fact that the outcome of the case was of vital significance for her basic human needs, in particular, the need to maintain essential contact with the outside world, required that the domestic courts show special diligence in handling her case. In case the applicant is disabled and unemployed, this calls for a special expedition. *Duclos v. France*, para.77.

⁵⁵ Commission has above all had regard to the importance of what was at stake for the applicant (decisive for future relationship children, important evidence) --> proceedings complained of did not exceed a "reasonable time" within the meaning of Article 6 (1) ECHR. See *M.M. v. UK*, supra n.40.

⁵⁶ E.g. *Thillemenos v. Greece*, supra n.34.



reasonableness of the length of time in question the Court will have regard to the state of the case on that date".⁵⁸

This case is still pending in the municipal court of Zadar, and since 1994 the court has shown no initiative to take up the proceedings.

⁵⁷ *Mavronichis v. Cyprus*, *supra* n.14, paragraph 9 under B.1. "Arguments before the Court."

⁵⁸ *Fütterer v. Croatia*, 52634/99, 7/12/00, 'the law', para.a. Referred to the *Podbielski v. Poland*, 27916/95, para. 31, ECHR 1998-VIII).



CONCLUSION

This case seems fit to be tried before the European Court of Human Rights in Strasbourg. After the litigant in her application to the Court has stated the facts constituting the violation of provisions of the Convention (article 6(1)), and after she mentions the remedy sought, she will have to show that local remedies are exhausted ex article 35 ECHR.

It will be clear that her case is of a civil nature. The time period subject to scrutiny, as established by the European Court of Human Rights, depends on whether the Court would consider the present violation to be a continuous one. The particular circumstances of the case are decisive here.

The success of the application before the ECtHR of this case depends on the question as to whether an undue delay can be established. On the issue of the applicant's conduct, it should be noted that, based on the available facts, she could not be held responsible for the delay of the proceedings. In the present case, the conduct of the authorities seems to be critical for an assessment whether the delay was unreasonable. The municipal court of Zadar does not seem to be acting with diligence, taking that there has been no initiative of proceeding with the case since 1994. In this case, applicant has lost her own house, office space and all furniture therein. Much is at stake for her, as the before mentioned can be considered human needs. In order to determine the reasonableness of the length of time in question, regard must be had to the state of the case on 5 November 1997. At this time it was still pending before the Croatian court, after 4 years and 3 months since the initiation of the proceedings. Currently, the total length of time taken by the impugned civil action was 7 years and almost 3 months.

Based on the above findings, it can be concluded that neither the complexity of the case nor the applicant's behaviour had any marked influence on the length of the proceedings, which resulted mainly from the way in which the relevant authorities conducted the case. The "reasonable time" referred to in Article 6 (1) of the Convention has accordingly been exceeded. This provides applicant with a good chance of success in a case before the European Court of Human Rights on the basis of undue delay.