



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

FIRST SECTION

CASE OF MULTIPLEX v. CROATIA

(Application no. 58112/00)

JUDGMENT

STRASBOURG

10 July 2003

FINAL

10/10/2003

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 Multiplex v. Croatia,

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

Mr C.L. ROZAKIS, *President*,

Mr P. LORENZEN,

Mr G. BONELLO,

Mrs N. VAJIĆ,

Mrs S. BOTOUCHAROVA,

Mr V. ZAGREBELSKY

Mrs E. STEINER, *judges*,

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

Having deliberated in private on 19 June 2003,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 58112/00) 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 the company Multiplex (“the applicant”), registered in Banja Luka, Republic of Bosnia and Herzegovina, on 16 March 2000.

2. The applicant, who had been granted legal aid, was represented by Mr Zoran Butorac, a lawyer practising in Banja Luka. The Croatian Government (“the Government”) were represented by their Agent, Ms Lidija Lukina-Karajković.

3. The applicant company alleged, in particular, that it had no access to a court in so far as it was prevented from having its civil claim for damages decided due to the enactment in 1999 of legislation which ordered that all proceedings concerning claims for damages caused by the members of the Croatian army or police when acting in their official capacity during the Homeland War in Croatia from 7 August 1990 to 30 June 1996 were to be stayed. It also complained that the proceedings had exceeded the “reasonable time” requirement.

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1).

6. By a decision of 26 September 2002, the Court declared the application partly admissible.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant company is owned by Mr Smail Smailagić who lived in Banja Luka, which is situated on the territory of the present day Republika Srpska, a part of Bosnia and Herzegovina, until 15 May 1992 when he fled to Croatia and went to live in Porat-Červar.

9. On 13 August 1992 the Croatian Military Police requisitioned a vehicle belonging to the applicant company.

10. According to the Government the vehicle had been requisitioned by the military authorities from Bosnia and Herzegovina. Upon the request by the military authorities from Bosnia and Herzegovina for the return of vehicles which had been requisitioned in Bosnia and Herzegovina for military purposes, in case that they were located in Croatia, the Croatian Ministry of Defence conferred the applicant company's vehicle after having found it. The vehicle was conferred to the Bosnian authorities on 19 August 1993 and has ever since been in their possession.

11. According to the applicant the vehicle was requisitioned by the Croatian authorities and conferred to the Croatian para-military forces in Bosnia and Herzegovina, the so-called Croatian Defence Council (*Hrvatsko vijeće obrane*). The applicant company repeatedly requested the Croatian Defence Council to return the vehicle, but to no avail.

12. On 11 October 1993 the applicant company filed a civil claim for damages in the amount of 15,600 German Marks (DEM) against the Republic of Croatia, with the Zagreb County Commercial Court (*Okružni privredni sud u Zagrebu*). It appears that the case was subsequently transferred to the Zagreb Municipal Court (*Općinski sud u Zagrebu*).

13. On 15 May 1995 the Republic of Croatia filed its reply denying the plaintiff's claim. It requested the court to stay the proceedings until the end of war in Croatia. It stated further that the vehicle had been requisitioned only temporarily for needs of the army and would be returned to the applicant company after the war.

14. At the hearing on 14 September 1995 the applicant company specified the claim for damages seeking 58,000 Croatian Kunas (HRK).

15. On 12 March 1998 the applicant company requested the Ministry of Justice to speed up the proceedings.

16. On 13 July 1998 the court decided that an expertise be carried out in order to establish the value of the vehicle in question. The applicant company was invited to pay an advance for the costs of the expertise.

17. On 31 August 1998 the case-file was assigned to an expert who submitted his opinion on 5 October 1998.

18. It appears that the defendant asked the court to stay the proceedings claiming that it was uncertain whether the applicant company still existed

because the excerpt from the Banja Luka Court registry on the applicant company's legal status was quite old.

19. On 4 May 1999 the court invited the company's representative to submit a new excerpt from the relevant registry.

20. The applicant company's legal representative informed the court that he no longer represented the applicant.

21. On 5 July 1999 the applicant company requested the court to schedule a hearing.

22. On 19 July 1999 the applicant company's representative submitted an uncertified excerpt from the Banja Luka Court's registry dating from 1990.

23. On 25 August 1999 the court invited the applicant to submit a new excerpt, not older than six months, showing that Mr Smailagić was entitled to represent the applicant company.

24. On 6 November 1999 Parliament introduced a change of the Civil Obligations Act which provided that all proceedings concerning actions for damages resulting from acts of members of the Croatian army or police when acting in their official capacity during the war in Croatia were to be stayed.

25. On 10 December 1999 the court stayed the proceedings pursuant to the above change in law.

26. On 29 December 1999 the applicant company appealed against the above decision claiming that the Zagreb Municipal Court erred in its application of the law as the vehicle in question was not taken by any member of the Croatian army or police acting in an official capacity but exclusively for the needs of the Croatian Defence Council, a military formation of Bosnia and Herzegovina, operating in that country.

27. It appears that on 15 November 2000 a party in some other proceedings concerning the same matter filed a constitutional claim challenging the above legislation. However, the Constitutional Court has not yet adopted any decision.

28. On 8 May 2001 the Zagreb County Court (*Županijski sud u Zagrebu*) upheld the Zagreb Municipal Court decision of 10 December 1999.

29. On 16 June 2001 the applicant company filed a request for revision with the Zagreb Municipal Court, repeating its arguments from the earlier appeal. On 28 June 2001 the Zagreb Municipal Court rejected the above request as inadmissible. It found that the Civil Procedure Act (*Zakon o parničnom postupku*) allows a party to file a request for revision only against a final decision of an appellate court while the decision of the Zagreb County Court did not represent a final decision in that case.

30. On 21 July 2001 the applicant company appealed against the Municipal Court's decision.

31. On 2 October the Zagreb County Court dismissed the appeal.

II. RELEVANT DOMESTIC LAW

32. Section 184 (a) of the 1999 Act on Changes of the Civil Obligations Act (*Zakon o dopunama Zakonu o obveznim odnosima*, Official Gazette no. 112/1999) provides that all proceedings instituted against the Republic of Croatia for damages caused by the members of the Croatian army or police when acting in their official capacity during the Homeland War in Croatia from 7 August 1990 to 30 June 1996 are to be stayed.

33. The Act also imposed an obligation on the Government to submit to Parliament special legislation, regulating the responsibility for such damages, at the latest within six months from the entry into force of the present Act. So far no new legislation has been introduced.

THE LAW

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

34. The applicant company alleged two violations of Article 6 which provides as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing within a reasonable time ... by [a] ... tribunal...”

35. In the first place it complained that it was deprived of its right of access to a court because the Zagreb Municipal Court stayed the proceedings pursuant to the legislative amendments to the Civil Obligations Act.

36. Secondly, it complained that the length of the proceedings concerning its claim for payment of damages in the Zagreb Municipal Court, instituted on 11 October 1993, had exceeded a “reasonable time”.

A. Access to a court

37. The Government submitted that the applicant company did enjoy access to court because it had instituted civil proceedings for damages before the Zagreb Municipal Court. The fact that the court had stayed proceedings pursuant to the 1999 legislation did not affect the applicant company's right of access to court because the proceedings were stayed only temporarily until the enactment of new regulation on the war-related damage.

38. In their further arguments the Government relied on the Court's case-law and stated that in principle the legislature was not precluded in civil matters from adopting new retrospective provisions to regulate rights arising under existing laws.

39. As to the instant case, the Government argued further that the question of war-related damage involved very complex legal issues including the State's liability for war damage. The existing laws in Croatia were not adequate to resolve that issue and therefore the 1999 legislation obliged the courts to stay all proceedings concerning war-related damage until new regulation on that matter. The very character of that measure was not to prevent the persons in the applicant company's position from their right of access to court, but only temporarily postpone the final resolution of such disputes.

40. The applicant company claimed that its right of access to a court was just formal because there was no possibility for the applicant company to have its civil claim decided on the merits.

41. The Court reiterates that the procedural guarantees laid down in Article 6 secure to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal; in this way it embodies the "right to a court", of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect (see *Golder v. the United Kingdom*, judgment of 21 February 1975, Series A no. 18, pp. 13-18, §§ 28-36).

42. It has also held in the Kutić case that the inability to have civil claims determined by a court for a long period as a consequence of a legislative measure, amounts to a violation of Article 6 § of the Convention (see *Kutić v. Croatia*, no. 48778/99, ECHR 2002-II).

43. The Court notes that the applicant company in the present case had the possibility of bringing legal proceedings; it availed itself of it by suing the State in the Zagreb Municipal Court for damages in respect of its requisitioned vehicle.

44. This in itself does not satisfy all the requirements of Article 6 § 1. It must also be established that the degree of access afforded under the national legislation was sufficient to secure the individual's "right to a court", having regard to the rule of law in a democratic society (see *Ashingdane v. the United Kingdom*, judgment of 28 May 1985, Series A no. 93, pp. 24-25, § 57). The Court recalls that the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective (see, *mutatis mutandis*, *Airey v. Ireland*, judgment of 9 October 1979, Series A no. 32, pp. 12-14, § 24 and *Garcia Manibardo v. Spain*, no. 38695/97, 15 February 2000, § 43, unreported).

45. In this connection the Court reiterates that Article 6 § 1 of the Convention guarantees the right of access to a court for the determination of civil disputes. The Court considers that this right of access to a court does not only include the right to institute proceedings, but also the right to obtain a "determination" of the dispute by a court. It would be illusory if a Contracting State's domestic legal system allowed an individual to bring a civil action before a court without securing that the case would be determined by a final decision in the judicial proceedings. It would be inconceivable that Article 6 § 1 should describe in detail procedural guarantees afforded to litigants - proceedings that are fair, public and

expeditious - without guaranteeing the parties to have their civil disputes finally determined (see, *mutatis mutandis*, *Hornsby v. Greece*, cited above, p. 510, § 40).

46. Section 184 (a) of the 1999 Act on Changes of the Civil Obligations Act hindered the applicant company's right to have its civil claim for damages decided by a civil court in so far as it ordered that all proceedings concerning claims for damage caused by the members of the Croatian army or police when acting in their official capacity during the Homeland War in Croatia from 7 August 1990 to 30 June 1996 were to be stayed until new provisions were enacted to regulate that matter.

47. Thus, the applicant company was prevented from pursuing its claim by operation of law.

48. The Court reiterates that in the case of Kutić it found a violation of the applicants' right of access to a court, under Article 6 § 1 of the Convention in so far as the possibility to have their claim determined by a court was stayed for a long laps of time as a result of the intervention of the legislature (see *Kutić v. Croatia*, cited above and, *mutatis mutandis*, *Immobiliare Saffi v. Italy*, judgment of 28 July 1999, *Reports* 1999-V, p. 95, § 70).

49. In the present case, as in the Kutić case, the Court notes that the proceedings were stayed even before the first-instance court had adopted any judgment concerning the applicant company's civil claim for damages.

50. The proceedings were stayed by virtue of the Zagreb Municipal Court's decision of 10 December 1999. However, the proceedings have been *de facto* stayed ever since 6 November 1999 when the Act on Changes of the Civil Obligations Act was enacted providing that all proceedings for damage caused by the members of the Croatian army or police when acting in their official capacity during the Homeland War in Croatia from 7 August 1990 to 30 June 1996 were to be stayed. Pursuant to that Act the Zagreb Municipal Court was not able to continue examining the applicant company's claim and no procedural steps have been taken ever since.

51. Having regard to the time which has elapsed since the enactment of the Act on Changes of the Civil Obligations Act and to the fact that no subsequent legislation has been enacted until the present, the Court cannot agree with the Government's contention that the applicant company's inability to have its claim decided has revealed to be only temporary.

52. The Court acknowledges that a situation where a significant number of legal suits claiming large sums of money are lodged against a State may call for some further regulation by the State and that in respect of that matter the States enjoy a certain margin of appreciation. However, the measures taken must still be compatible with Article 6 § 1 of the Convention.

53. In the present case the proceedings have so far been stayed for over three years and seven months and no new legislation has been passed in the meantime that would enable the applicant company to have its civil claim determined.

54. In these circumstances the Court cannot accept that the degree of access afforded under the national legislation was sufficient to secure the applicant company a “right to a court”.

55. The Court finds, therefore, that the long period for which the applicant company has been prevented from having its civil claim determined by domestic courts as a consequence of a legislative measure constitutes a violation of Article 6 § 1 of the Convention.

B. The length of proceedings

56. The Government claimed that until 1999 when the proceedings were stayed the applicant company had significantly contributed to the length of proceedings because it had paid the court fees only a year and a half after it had submitted its claim. Furthermore, the applicant company had not submitted relevant documentation about its legal status. To the contrary, the domestic authorities had shown due diligence in conducting the case since hearings had been held at regular intervals.

57. The applicant company disagreed with the Government and stressed that the domestic authorities were entirely inactive in the proceedings.

58. The Court considers that, having found a violation of the applicant company's right of access to a court, no separate issue arises in respect of the length of the proceedings and that it must be regarded as having been absorbed by the preceding complaint.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

59. 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.”

A. Damage

60. The applicant company requested a sum of HRK 38,642.88 [approximately 5,160 euros.] for the loss of its vehicle and other economic damage that it suffered in that connection and HRK 466,829.39 [approximately 62,400 euros.] in interest. It also requested DEM 1080 and 24,000 euros (EUR) for non-pecuniary damage.

61. The Government deemed the amount claimed by the applicant company excessive. They argued that the applicant company's request was unfounded because there was no causal link between the violations complained of and the applicant company's financial expectations.

62. The Court finds no causal link between the violation complained of and the pecuniary damage alleged. It cannot speculate about the outcome of the proceedings had they been in conformity with Article 6.

63. However, it finds that the violation found cannot be compensated by the mere finding of a violation. Making its assessment on an equitable basis and having regard to the circumstances of the case, the Court awards the applicant company EUR 4,000 as compensation for non-pecuniary damage.

B. Costs and expenses

64. For the costs incurred before the domestic courts the applicant company requested HRK 24,813.39 [approximately 3.300 euros.]. It also requested for HRK 3,697.25 [approximately 500 euros.] for the costs incurred before the Court, for its legal representation and photocopying of documents, although it has been granted legal aid.

65. The Court reiterates that an award can be made in respect of costs and expenses only in so far as they have been actually and necessarily incurred by the applicant and are reasonable as to the quantum. In the present case, on the basis of the information in its possession and the above-mentioned criteria, the Court observes that there is no element in the file suggesting that the applicant company incurred, before the domestic courts, any extra costs and expenses because of its lack of access to a court. As to the legal costs and expenses incurred before it, the Court considers that the sum claimed, in addition to legal aid, was actually and necessarily incurred, and reasonable as to quantum. Accordingly, it awards the applicant company EUR 500 under this head.

C. Default interest

66. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the applicant company's right of access to a court;
2. *Holds* that no separate issue arises under Article 6 § 1 of the Convention in respect of the length of the proceedings;
3. *Holds*
 - (a) that the respondent State is to pay the applicant company, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention], the following amounts:
 - (i) EUR 4,000 (four thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 500 (five hundred euros) in respect of costs and expenses;

- (b) that the above amounts are to be converted into the national currency of the respondent State at the rate applicable at the date of settlement together with any tax that may be chargeable on the above amounts;
- (c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 10 July 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Deputy Registrar

Christos ROZAKIS
President