



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

FIRST SECTION

CASE OF KASTELIC v. CROATIA

(Application no. 60533/00)

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 Kastelic 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. VAJIC,

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. 60533/00) 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 a Slovenian citizen, Mr Tomaz Kastelic (“the applicant”), on 16 March 2000.

2. The applicant was represented by Mr Brane Gorse, a lawyer practising in Ljubljana, Slovenia. The Croatian Government (“the Government”) were represented by their Agent, Ms Lidija Lukina-Karajkovic.

3. The applicant alleged, in particular, that he was deprived of his right of access to a court and fair trial in so far as he was prevented from having his civil claim for damages decided due to the enactment in 1996 of legislation which ordered that all proceedings concerning claims for damages resulting from terrorist acts were to be stayed. He also complains about the length of proceedings.

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 7 November 2002, the Court declared the application partly admissible.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The Chamber decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1950 and lives in Ljubljana, Slovenia.

9. On 24 April 1992 the applicant's restaurant and adjacent house in Novigrad (Croatia) were destroyed as the result of an explosion.

10. On 29 November 1994 the applicant filed an action for compensation with the Buje Municipal Court (*Opcinski sud u Bujama*), against the Republic of Croatia.

11. On 1 June 1995 the court pronounced judgment awarding the applicant 1,911,000.24 Croatian Kunas (HRK) in compensation together with interests and costs.

12. On 17 January 1996 Parliament introduced a change of the Civil Obligations Act which provided that all proceedings concerning actions for compensation for damage resulting from terrorist acts were to be stayed pending the enactment of new legislation on the subject and that before the enactment of such new legislation compensation for damage resulting from terrorist acts could not be sought. So far the Croatian authorities have not enacted any new legislation regulating the matter.

13. On 29 February 1996 the first instance judgment adopted on 1 June 1995 was sent to the parties.

14. On 11 March 1996 the Republic of Croatia appealed against the judgment of 1 June 1995 asking the court to stay the proceedings pursuant to the above changes in law.

15. On 14 October 1996 the Pula County Court (*Zupanijski sud u Puli*) quashed the first instance judgment and remitted the case for a re-trial. It found that the first instance court had not adequately assessed whether the applicant's property was destroyed by an act which might be deemed to be a terrorist act.

16. On 9 February 1998 the Buje Municipal Court decided to stay the proceedings in accordance with the above legislation.

17. On 3 March 1998 the applicant appealed against that decision. He claimed that the 1996 Act was applied retroactively in his case.

18. On 4 May 1998 the Pula County Court upheld the first instance decision.

19. On 20 June 1998 the applicant filed a constitutional complaint challenging the constitutionality of the lower courts' decisions to stay the proceedings. He also asked the Constitutional Court to institute proceedings in order to examine the constitutionality of the Act on Changes of the Civil Obligations Act.

20. On 17 January 2000 the Constitutional Court declared the applicant's complaint inadmissible. It found that the applicant had filed a constitutional complaint against the County Court's decision of 4 May 1998 which upheld the Buje Municipal Court's decision to stay the proceedings concerning the applicant's claim for compensation. However, according to the Constitutional Act on the Constitutional Court an applicant may file a

constitutional complaint only against a final decision concerning any proceedings. The court found that the contested decision was not final since it represented a mere procedural decision and since the proceedings were still pending. It did not give any reply to the applicant's request to institute proceedings in order to examine the constitutionality of the contested laws.

II. RELEVANT DOMESTIC LAW

21. The relevant part of the Civil Obligations Act (*Zakon o obveznim odnosima*) reads as follows:

Section 180(1)

“Responsibility for loss caused by death or bodily injury or by damage or destruction of another's property, when it results from violent acts or terror or from public demonstrations or manifestations, lies with the ... authority whose officers were under a duty, according to the laws in force, to prevent such loss.”

22. The relevant parts of the Act Amending the Civil Obligations Act (*Zakon o izmjenama i dopunama Zakona o obveznim odnosima* – Official Gazette no. 7/1996) read as follows:

Section 1

“Section 180 of the Civil Obligations Act (the Official Gazette nos. 53/91, 73/91 and 3/94) shall be repealed.”

Section 2

“Proceedings for damages instituted under section 180 of the Civil Obligations Act shall be stayed.

The proceedings referred to in sub-section 1 of this section shall be continued after the enactment of special legislation governing responsibility for damage resulting from terrorist acts.”

23. The relevant part of the Civil Procedure Act provides:

Section 212

“Proceedings shall be stayed:

...

(6) where another statute so prescribes.”

THE LAW

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

24. The applicant alleged several violations of Article 6 § 1 of the Convention, 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...”

25. In the first place he claimed that he was deprived of his right of access to a court and to a fair trial because the Buje Municipal Court had stayed the proceedings pursuant to the legislative amendments to the Civil Obligations Act.

26. Furthermore, he maintained that the length of the proceedings concerning his claim for payment of damages in the Buje Municipal Court, instituted on 29 November 1994 had exceeded a “reasonable time”.

A. Access to a court

27. The Government maintained that the applicant's right to a fair trial was not violated and that he had access to a court in respect of his claims for compensation of damage since he had been able to institute civil proceedings. In the course of these proceedings the first instance judgment had been adopted and the defendant's appeal had been examined by an appellate court. While it was true that after the enactment of the changes in the Civil Obligation Act the Buje Municipal Court had stayed the proceedings, that decision was only temporary until the enactment of new legislation regulating the responsibility for damages caused by terrorist acts.

28. In their further arguments the Government relied on the Court's case-law and stated that the right to court was not absolute, but could be a subject to limitations. In the present case, the very character of the limitation was not to prevent the persons in the applicant's position from their right of access to court, but only temporarily postpone the final resolution of such disputes. The measure applied had not impaired the applicant's right of access because the first instance judgment had not been quashed by the appellate court due to the new legislation, but because the appellate court had found that the first instance court had wrongly assessed the facts.

29. The applicant argued that he had no fair trial and that the fact that the domestic authorities had prevented his claim to be decided on the basis of former Section 180 of the Civil Obligations Act had interfered with his right of access to court.

30. The Court notes that the proceedings concerning the applicant's claim for damages caused by terrorist acts directed against the republic of Croatia were stayed by the Buje Municipal Court decision of 9 February 1998 pursuant to the 1996 legislation and that this fact is not disputed between the parties.

31. The Court recalls furthermore that in the same circumstances it found a violation of the applicants' right of access to a court in the *Kutic* case (see *Kutic v. Croatia*, no. 48778/99, ECHR-2002 II). The Court notes that the Croatian authorities have not yet adopted any legislation on the issue. Therefore, it sees no reason to depart from its conclusion reached in the *Kutic* case.

32. Accordingly the Court finds that there has been a violation of Article 6 § 1 of the Convention in respect of the applicant's right of access to a court.

B. The length of proceedings

33. The Court notes that at the time when the Convention came into force in respect of Croatia the Buje Municipal Court had been prevented from continuing to deal with the applicant's case pursuant to the 1996 legislation, although the decision to stay the proceedings was delivered only later.

34. It follows that all the delays in the proceedings within the period to be taken into account resulted from the 1996 legislation. The Court has already taken this aspect into account in its consideration of the applicant's right of access to a court above. Having regard to its findings in this respect (see paragraph 32 above), it finds that the issue of the length of the proceedings must be regarded as having been absorbed by the issue of access to a court.

35. The Court therefore finds that it is not necessary to examine separately the issue of the length of the proceedings.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. 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

37. The applicant requested a sum of HRK 1,929,000.24 together with interest from 1 April 1992 until the payment at a rate payable in Croatia in compensation for pecuniary damage. He submitted that that sum would cover the real damage to his property. He further requested a sum of HRK 18,000 together with interest from 1 July 1992 at a rate payable in Croatia and HRK 18,000 together with interest from 1 October 1992 at a rate payable in Croatia for lost profit.

38. Finally, he requested a sum of 50,000,000 Slovenian Tolars (SIT) in respect of non-pecuniary damage.

39. The Government did not comment on the applicant's request.

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

41. However, it accepts that the violation has caused the applicant non-pecuniary damage which cannot be made good 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 4,000 euros (EUR) as compensation for non-pecuniary damage.

B. Costs and expenses

42. The applicant requested a sum of HRK 267,748,60 for the costs incurred before the domestic courts and SIT 312,018 for the fees of his lawyer before the Court.

43. The Government made no comments.

44. According to the Court's case-law, 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 quantum (see, among other authorities, *Arvelakis v. Greece*, no. 41354/98, § 34, 12 April 2001, unpublished). 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 has incurred, before the domestic courts, any extra costs and expenses because of the lack of access to court. As to the legal costs and expenses incurred before it, the Court awards the applicant EUR 2,000.

C. Default interest

45. 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'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, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts which should be converted into the national currency of the respondent State at a rate applicable at the date of settlement:

- (i) EUR 4,000 (four thousand euros) in respect of non-pecuniary damage;
- (ii) EUR 2,000 (two thousand euros) in respect of costs and expenses;
- (iii) any tax that may be chargeable on the above amounts;
- (b) 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