



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

FIRST SECTION

CASE OF AĆIMOVIĆ v. CROATIA

(Application no. 61237/00)

JUDGMENT

STRASBOURG

9 October 2003

FINAL

09/01/2004

In the case of Aćimović 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 18 September 2003,

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

PROCEDURE

1. The case originated in an application (no. 61237/00) 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 Croatian national, Mr Ljubomir Aćimović (“the applicant”), on 16 August 2000.

2. The applicant, who had been granted legal aid, was represented by Ms M. Šimić, a lawyer practising in Rijeka. The Croatian Government (“the Government”) were represented by their Agent, Ms L. Lukina-Karajković.

3. The applicant alleged that his right of access to a court had been violated because the proceedings he had instituted concerning a compensation claim had been stayed as a consequence of a change in the law.

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court).

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). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. By a decision of 7 November 2002, the Chamber 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 1927 and lives in Zagreb.

9. From 1 August 1992 until 31 August 1995 the Croatian army used the applicant's cottage in Gospić, Croatia, for military purposes. After the members of the army had left, the applicant found that the house had been wrecked and his possessions removed.

10. On 20 March 1996 the applicant instituted civil proceedings for damages against the Republic of Croatia with the Zagreb Municipal Court (*Općinski sud*).

11. At the preliminary hearing on 18 November 1997 the applicant lodged an application to be exempted from payment of the court fees. The court heard the applicant, who stated that he lived with his daughter, son-in-law and grandchild in a flat in Zagreb which he owned. He also stated that he owned a small cottage and that his pension amounted to 1,624 kunas (HRK) per month. The court rejected the applicant's application for exemption from payment of the court fees and ordered him to pay the amount of HRK 6,780 within sixty days.

12. On 21 November 1997 the applicant appealed against the above decision to the Zagreb County Court (*Županijski sud*). He submitted a written copy of the appeal to the Zagreb Municipal Court. In the appeal he stated that his pension was his only income and that he had to support his daughter. Furthermore, his possessions were of no great value since his cottage had been wrecked. By paying the fees imposed, he would have jeopardised his own means of subsistence and those of the persons whom he supported.

13. However, the Zagreb Municipal Court did not forward the appeal to the Zagreb County Court, as the appellate court, because there was no written court decision on the applicant's application to be exempted from the court fees, which was a prerequisite for an appeal. On 31 December 1998 the statutory limitation period for non-payment of court fees expired and the issue thus became irrelevant.

14. On 6 November 1999 Parliament introduced a change to the Civil Obligations Act to the effect that all proceedings concerning claims in respect of damage resulting from acts carried out by members of the Croatian army and police in the performance of their duties during the Homeland War in Croatia were to be stayed.

15. On 28 November 2000 the proceedings were stayed.

16. In the meantime, on 24 August 2000, the applicant filed a constitutional complaint challenging the constitutionality of the above

legislation. The Constitutional Court has not yet adopted any decision on that complaint.

17. The applicant also filed a constitutional complaint about the length of the proceedings.

18. On 18 December 2000 the Constitutional Court dismissed the latter complaint, finding that the applicant's right to have his civil claim decided within a reasonable time had not been violated as the courts had not been in a position to proceed with his case on account of the changes in legislation.

19. On 14 July 2003 Parliament passed new legislation concerning liability for damage resulting from acts carried out by members of the Croatian army and police in the performance of their duties during the Homeland War in Croatia.

II. RELEVANT DOMESTIC LAW

20. Section 184 (a) of the 1999 Civil Obligations (Amendment) Act (*Zakon o dopunama Zakona o obveznim odnosima*, Official Gazette no. 112/1999) provided that all proceedings instituted against the Republic of Croatia in respect of damage caused by members of the Croatian army and police in the performance of their duties during the Homeland War in Croatia from 17 August 1990 to 30 June 1996 were to be stayed.

21. The Act also imposed an obligation on the government to submit to Parliament special legislation regulating liability for such damage within six months at the latest from the Act's entry into force.

22. The Act on the liability of the Republic of Croatia for damage caused by members of the Croatian army and police in the performance of their duties during the Homeland War (*Zakon o odgovornosti Republike Hrvatske za štetu uzrokovanu od pripadnika hrvatskih oružanih i redarstvenih snaga tijekom Domovinskog rata*, Official Gazette, no. 117/2003 – “the Liability Act”) now regulates the circumstances in which the Republic of Croatia is liable for damage caused by members of the army and the police during the Homeland War.

THE LAW

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

23. The applicant complained that he had been deprived of his right of access to a court because the Zagreb Municipal Court had stayed the proceedings pursuant to the legislative amendments to the Civil Obligations

Act. He relied on Article 6 § 1 of the Convention, the relevant parts of which read 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 ...”

24. The Government invited the Court to conclude that the application did not disclose any appearance of a violation of Article 6 § 1 of the Convention. In this connection they submitted that the applicant had enjoyed access to a court because he had instituted civil proceedings for damages before the Zagreb Municipal Court. The fact that the court had stayed the proceedings pursuant to the 1999 legislation did not affect the applicant's right of access to a court because the proceedings had been stayed only temporarily until the enactment of new legislation on the war-related damage.

25. As to the newly enacted legislation, the Government argued that it afforded the applicant access to a court.

26. 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.

27. The applicant argued that the fact that, during the period prior to the enactment of the new legislation, he had been prevented from pursuing his case before the domestic courts amounted to a violation of his right of access to a court. He maintained further that his prospects of winning his case under the new legislation were very poor.

28. As to the standards of protection guaranteed by Article 6 § 1, the Court reiterates that it embodies the “right to a court”, of which the right of access, that is, the right to institute proceedings before a court in civil matters, constitutes one aspect.

29. However, this right is not absolute, but may be subject to limitations; these are permitted by implication since the right of access by its very nature calls for regulation by the State. In this respect, the Contracting States enjoy a certain margin of appreciation, although the final decision as to the observance of the Convention's requirements rests with the Court. It must be satisfied that the limitations applied do not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see *Stubbings and Others v. the United Kingdom*, judgment of 22 October 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1502, § 50).

30. The Court is especially mindful of the dangers inherent in the use of retrospective legislation which has the effect of influencing the judicial

determination of a dispute to which the State is a party, including where the effect is to make pending litigation unwinnable. Respect for the rule of law and the notion of a fair trial require that any reasons adduced to justify such measures be treated with the greatest possible degree of circumspection (see *Stran Greek Refineries and Stratis Andreadis v. Greece*, judgment of 9 December 1994, Series A no. 301-B, p. 82, § 49, and *National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v. the United Kingdom*, judgment of 23 October 1997, Reports 1997-VII, p. 2363, § 112).

31. However, Article 6 § 1 cannot be interpreted as preventing any interference by the authorities with pending legal proceedings to which they are a party.

32. The Court observes that the proceedings concerning the applicant's claim for damages against the Republic of Croatia as a result of the acts of members of the Croatian army were stayed by the Zagreb Municipal Court's decision of 28 November 2000, pursuant to the 1999 legislation, and that the Croatian authorities adopted new legislation on the issue on 14 July 2003.

33. The Court notes further that until 6 November 1999 the applicant had a right, clearly recognised in domestic law, to seek compensation from the Republic of Croatia for damage caused to his property by members of the Croatian army. The applicant's rights were affected by two legislative measures, both of which had a retrospective effect on them. Firstly, as a result of the 1999 amendment, the applicant was prevented for approximately three years and eight months from having his civil claim decided by a court. Secondly, the Liability Act of 2003 enables a court to proceed with the applicant's case, but nevertheless interferes with the applicant's previously established right to compensation from the State by imposing new conditions under which the State is liable for damage caused to the applicant's property.

34. The Court notes that the conditions for liability are set in broad terms that give the courts scope as to their interpretation. It is yet to be seen how the courts applying the Liability Act will interpret its provisions. Certainly, they will have to assess in each individual case whether damages can be awarded. It is not for the Court, in any event, to speculate on the outcome of the domestic proceedings concerning the present case.

35. In view of the above circumstances it cannot be said that the new legislation impaired the applicant's rights under Article 6 § 1 of the Convention in a manner that would deprive him of his right of access to a court.

36. However, the Court points out that in *Kutić* and *Multiplex* 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 period of time as a result of the intervention of

the legislature (see *Kutić v. Croatia*, no. 48778/99, ECHR 2002-II, and *Multiplex v. Croatia*, no. 58112/00, 10 July 2003).

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

38. The proceedings were stayed by virtue of the Zagreb Municipal Court's decision of 28 November 2000. However, the proceedings had been stayed *de facto* since 6 November 1999, when the Civil Obligations (Amendment) Act was passed, which provided that all proceedings concerning damage caused by members of the Croatian army and police in the performance of their duties during the Homeland War in Croatia from 17 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's claim, at least until 14 July 2003, when new legislation was enacted.

39. The Court notes that the domestic authorities imposed on themselves an obligation to regulate the matter within six months, but that they failed to comply with this self-imposed time-limit and exceeded it by more than three years.

40. The Court considers that the applicant had a vital interest in having his claim decided by the domestic courts and that he was left in a prolonged state of uncertainty as to the outcome of the proceedings that he had instituted against the State. That uncertainty intensified after six months had passed, when new legislation was supposed to be adopted but was not. Once the self-imposed time-limit was exceeded by the domestic authorities, it became a matter of complete uncertainty when the obstacles preventing the applicant from having his civil claim decided by a court would be removed, if at all.

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

42. The Court finds, therefore, that the fact that, for a long period of time, the applicant was prevented from having his civil claim determined by the domestic courts as a consequence of a legislative measure constitutes a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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

44. The applicant claimed 80,000 Kunas for non-pecuniary damage.

45. The Government did not comment on the claim.

46. The Court considers that the violation found cannot be compensated for 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 as compensation for non-pecuniary damage.

B. Costs and expenses

47. The applicant, who received legal aid from the Council of Europe in connection with the presentation of his case, did not seek the reimbursement of costs and expenses. Accordingly, the Court does not award any sum under this head.

C. Default interest

48. 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;
2. *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, EUR 4,000 (four thousand euros) in

respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable on the date of settlement, plus any tax that may be chargeable;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 9 October 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Deputy Registrar

Christos ROZAKIS
President