



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

FIRST SECTION

CASE OF FREIMANN v. CROATIA

(Application no. 5266/02)

JUDGMENT

STRASBOURG

24 June 2004

FINAL

24/09/2004

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 Freimann 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 F. TULKENS,

Mrs N. VAJIĆ,

Mrs E. STEINER,

Mr K. HAJIYEV, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 3 June 2004,

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

PROCEDURE

1. The case originated in an application (no. 5266/02) 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 national of Croatia and Germany, Ms Anica Freimann (“the applicant”), on 5 July 2001.

2. The Croatian Government were represented by their Agent, Ms Lidija Lukina-Karajković.

3. On 13 March 2003 the Court decided to communicate the application to the Croatian Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

4. In view of the applicant’s German nationality, on 19 January 2004 the Court invited the German Government to state whether they wished to submit written comments on the case pursuant to Article 36 § 1 of the Convention and Rule 44 of the Rules of Court. The German Government did not submit any comments.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1941 and lives in Berlin, Germany.

6. On 7 August 1992 her house in Slavonski Brod, Croatia, was blown up by unknown perpetrators.

7. On 4 October 1995 she instituted civil proceedings before the Slavonski Brod Municipal Court (*Općinski sud u Slavonskom Brodu*) seeking damages from the Republic of Croatia for her damaged property.

8. Pursuant to the Civil Obligations (Amendments) Act 1996 (*Zakon o izmjeni Zakona o obveznim odnosima*), the Slavonski Brod Municipal Court stayed the proceedings on 28 September 2000.

9. Pursuant to the Damage from Terrorist Acts and Public Demonstrations Act 2003 (*Zakon o odgovornosti za štetu nastalu uslijed terorističkih akata i javnih demonstracija*), the proceedings resumed on 4 December 2003.

II. RELEVANT DOMESTIC LAW

10. The relevant part of the Civil Obligations Act (*Zakon o obveznim odnosima*, Official Gazette of the Republic of Croatia nos. 53/1991, 73/1991, 3/1994, 7/1996 and 112/1999) read 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.”

11. The relevant parts of the Civil Obligations (Amendments) Act 1996 (*Zakon o izmjeni Zakona o obveznim odnosima*, Official Gazette of the Republic of Croatia no. 7/1996, hereinafter “the 1996 Act”) read as follows:

Section 1

“Section 180 of the Civil Obligations Act ... 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.”

12. The relevant part of the Civil Procedure Act (*Zakon o parničnom postupku*, Official Gazette of the Republic of Croatia nos. 53/1991, 91/1992, 112/1999 and 117/2003) provides:

Section 212

“Proceedings shall be stayed:

...

(6) where another statute so prescribes.”

13. The Damage from Terrorist Acts and Public Demonstrations Act 2003 (*Zakon o odgovornosti za štetu nastalu uslijed terorističkih akata i*

javnih demonstracija, Official Gazette of the Republic of Croatia no. 117/2003, hereinafter “the 2003 Act”) provides, *inter alia*, that the Republic of Croatia is to provide compensation in relation to damage resulting from bodily injury, impairment of health or a death. All compensation for damage to property is to be sought under the Reconstruction Act.

14. The relevant parts of the Reconstruction Act (*Zakon o obnovi*, Official Gazette of the Republic of Croatia nos. 24/1996, 54/1996, 87/1996 and 57/2000) provide, *inter alia*, that the means for reconstruction are to be granted to persons whose property was destroyed in the war, under certain conditions. The request is to be submitted to the Ministry for Public Works, Reconstruction and Construction (*Ministarstvo za javne radove, obnovu i graditeljstvo*).

THE LAW

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

15. The applicant complained that the enactment of the 1996 Act violated her right of access to court guaranteed by Article 6 § 1 of the Convention, which reads as follows:

Article 6 § 1

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

A. Admissibility

1. *Compatibility* *ratione temporis*

16. The Croatian Government (hereinafter “the Government”) maintained that the domestic authorities could be held responsible only for the events which occurred after 5 November 1997 when the Convention entered into force in respect of Croatia.

17. The applicant argued that her lack of access to court continued until 4 December 2003, when her proceedings before the Slavonski Brod Municipal Court resumed.

18. The Court notes that the applicant’s proceedings were *de facto* stayed on 3 February 1996, when the 1996 Act entered into force. Pursuant to that Act the Slavonski Brod Municipal Court was not able to continue with the proceedings. Indeed, the Slavonski Brod Municipal Court formally took its decision to stay the proceedings on 28 September 2000. Her proceedings resumed only on 4 December 2003 pursuant to the 2003 Act. It

follows that the situation of which the applicant complained continued after the ratification of the Convention by Croatia on 5 November 1997. Accordingly, the Court does have competence *ratione temporis* to examine the application in so far as it concerns the stay on the applicant's proceedings after 5 November 1997, due account being taken of the length of time they had been stayed prior to ratification (see *Kutić v. Croatia* (dec.), no. 48778/99, 4 October 2001).

2. *Exhaustion of domestic remedies*

19. The Government also submitted that the applicant failed to exhaust domestic remedies because she did not submit a constitutional claim challenging the 1996 Act.

20. The applicant contested the effectiveness of that remedy.

21. The Court recalls that it has found that a constitutional complaint challenging the legislation in question did not constitute a remedy to be exhausted (see *Crnojević v. Croatia*, (dec.), no. 71614/01, 29 April 2003). The Court sees no reason to depart from this decision in the present case. In such circumstances, the Court considers that the application cannot be rejected for failure to exhaust domestic remedies.

3. *Conclusion*

22. The Court considers that the application raises questions of law which are sufficiently serious for its determination to depend on an examination of the merits, no other ground for declaring it inadmissible having been established. The Court therefore declares the application admissible. In accordance with its decision to apply Article 29 § 3 of the Convention (see paragraph 3 above), the Court will immediately consider the merits of the application.

B. Merits

23. 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 court as she had instituted civil proceedings before the Slavonski Brod Municipal Court. The fact that the court had temporarily stayed the proceedings pursuant to the 1996 Act did not affect her right of access to a court. The 2003 Act now afforded her access to court.

24. The applicant argued that her right of access to court was violated as she was prevented from pursuing her case in Croatia during the period prior to the entry into force of the 2003 Act.

25. The Court recalls that Article 6 § 1 of the Convention embodies the "right to a court" of which the right of access, namely the right to institute proceedings before a court in civil matters, constitutes one aspect.

26. 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, § 50).

27. In the present case, the Court notes that the applicant's proceedings against the Republic of Croatia were *de facto* stayed on 3 February 1996, when the 1996 Act entered into force. The 2003 Act entered into force on 31 July 2003 and the proceedings resumed pursuant to that Act on 4 December 2003. The applicant was therefore prevented for more than seven years, more than five of which after the ratification of the Convention by Croatia, from having her claim decided by domestic courts as a result of the 1996 Act.

28. The Court finds, in accordance with its case-law (see *Kutić v. Croatia*, no. 48778/99, § 33, ECHR 2002-II and *Multiplex v. Croatia*, no. 58112/00, § 55, 10 July 2003), that the long period for which the applicant was prevented from having her civil claim determined by 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

29. 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."

30. In respect of pecuniary damage, the applicant claimed the value of her damaged house in the sum of 70,000 euros (EUR). She did not claim compensation for non-pecuniary damage nor did she seek reimbursement of costs and expenses. The Government considered the amount claimed by the applicant excessive.

31. The Court recalls that the violation found relates solely to the applicant's access to court, not to the destruction of her house. Consequently, no causal link has been established between the violation found and the compensation claimed. In particular, it is not for the Court to speculate what the outcome of the proceedings would be if they were in conformity with the requirements of Article 6 § 1 of the Convention (see, *inter alia*, *Göçer v. the Netherlands*, no. 51392/99, § 37, 3 October 2002). No award of pecuniary damage is therefore made.

32. Since the applicant did not claim compensation for non-pecuniary damage nor reimbursement of costs and expenses, the Court makes no award in these respects (see, *inter alia*, *Radoš and Others v. Croatia*, no. 45435/99, 7 November 2002).

33. In such circumstances, the Court makes no award of just satisfaction.

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. *Dismisses* the applicant's claim for just satisfaction.

Done in English, and notified in writing on 24 June 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President