



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

FIRST SECTION

CASE OF KOVAČEVIĆ v. CROATIA

(Application no. 12775/02)

JUDGMENT
(Friendly settlement)

STRASBOURG

1 July 2004

This judgment is final but it may be subject to editorial revision.

In the case of Kovačević 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. QUESADA, *Deputy Section Registrar*,

Having deliberated in private on 10 June 2004,

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

PROCEDURE

1. The case originated in an application (no. 12775/02) 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 Croatian national, Mr Željko Kovačević (“the applicant”), on 4 March 2002.

2. The applicant was represented by Mr Bruno Spiz, a lawyer practising in Zagreb. The Croatian Government (“the Government”) were represented by their Agent, Ms Lidija Lukina-Karajković.

3. The applicant complained that the enactment of the Civil Obligations (Amendments) Act 1999 violated his right of access to court guaranteed by Article 6 § 1 of the Convention and his right to an effective remedy guaranteed by Article 13 of the Convention.

4. By a decision of 16 December 2003 the Court declared the applicant’s complaints admissible.

5. In March 2004 the Government and the applicant submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

6. The applicant was born in 1949 and lives in Zagreb.

7. The applicant alleged that he was infected with Hepatitis B and C following a vaccination while he was in the army.

8. On 29 July 1997 the applicant instituted civil proceedings before the Zagreb Municipal Court (*Općinski sud u Zagrebu*) seeking damages from the Republic of Croatia.

9. Pursuant to the Civil Obligations (Amendments) Act 1999 (*Zakon o dopunama Zakona o obveznim odnosima*, Official Gazette no. 112/1999), the Zagreb Municipal Court stayed the proceedings on 18 January 2000.

10. The proceedings resumed on 7 November 2003 pursuant to the Damage Caused by Members of the Croatian Army and Police during the Homeland War Act 2003 (*Zakon o odgovornosti Republike Hrvatske za štetu uzrokovanu od pripadnika Hrvatskih oružanih i redarstvenih snaga tijekom Domovinskog rata*, Official Gazette no. 117/2003).

THE LAW

11. On 17 March 2004 the Court received the following declaration on the Government's behalf:

"I declare that, with a view to securing a friendly settlement of the above-mentioned case, the Government of Croatia offer to pay *ex gratia* EUR 6,000 to Mr Željko Kovačević. This sum is to cover any pecuniary and non-pecuniary damage as well as costs and expenses, converted into the national currency on the date of payment and free of any taxes that may be applicable. It will be payable within three months from the date of delivery of the judgment by the Court pursuant to the Article 39 of the European Convention on Human Rights. This payment will constitute the final resolution of the case.

In the event of failure to pay this sum within the said three-month period, the Government undertake to pay, until settlement, simple interest on the amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

The Government further undertake not to request that the case be referred to the Grand Chamber under Article 43 § 1 of the Convention."

12. On 24 March 2004 the Court received the following declaration signed by the applicant:

"I note that the Government of Croatia are prepared to pay *ex gratia* the sum of EUR 6,000 covering pecuniary and non-pecuniary damage as well as costs and expenses, converted into national currency on the date of payment and free of any taxes that may be applicable, to Mr Željko Kovačević with a view to securing a friendly settlement of the above-mentioned case pending before the European Court of Human Rights.

The applicant accepts the proposal and waives any further claims against Croatia in respect of the facts of this application. The applicant declares that this constitutes a final settlement of the case.

This declaration is made in the context of a friendly settlement which the Government and the applicant have reached.

The applicant further undertakes not to request that the case be referred to the Grand Chamber under Article 43 § 1 of the Convention after delivery of the Court's judgment."

13. The Court takes note of the agreement reached between the parties (Article 39 of the Convention). It is satisfied that the settlement is based on respect for human rights as defined in the Convention or its Protocols (Article 37 § 1 *in fine* of the Convention and Rule 62 § 3 of the Rules of Court).

14. Accordingly, the case should be struck out of its list of cases.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the case out of its list of cases;
2. *Takes note* of the parties' undertaking not to request a rehearing of the case before the Grand Chamber.

Done in English, and notified in writing on 1 July 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Deputy Registrar

Christos ROZAKIS
President