



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

FIRST SECTION

CASE OF MARINKOVIĆ v. CROATIA

(Application no. 9138/02)

JUDGMENT

STRASBOURG

21 October 2004

FINAL

21/01/2005

*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 Marinković 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 30 September 2004,

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

PROCEDURE

1. The case originated in an application (no. 9138/02) 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 two Croatian nationals, Mr Mile Marinković and Ms Milena Marinković (“the applicants”), on 20 December 2001.

2. The Croatian Government (“the Government”) were represented by their Agent, Ms L. Lukina-Karajković.

3. The applicants alleged that the enactment of the Civil Obligations (Amendments) Act 1996 violated their right of access to court guaranteed by Article 6 § 1 of the Convention and their right to an effective remedy guaranteed by Article 13 of the Convention.

4. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). On 17 October 2002 a Chamber of that Section decided to give notice of the application to the Government.

5. By a decision of 16 December 2003 the Court declared the application admissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants were born in 1946 and 1955, respectively and live in Boleč, Serbia and Montenegro.

7. On 6 or 7 May 1992 their house in Novska, Croatia, was set ablaze by unknown perpetrators.

8. On 11 November 1996 they instituted civil proceedings before the Novska Municipal Court (*Općinski sud u Novskoj*) seeking damages from the Republic of Croatia for their damaged property.

9. Pursuant to the Civil Obligations (Amendments) Act 1996 (*Zakon o izmjeni Zakona o obveznim odnosima*), the Novska Municipal Court stayed the proceedings on 24 October 1997.

10. The proceedings resumed on 22 October 2003 pursuant to the “Damage from Terrorist Acts and Public Demonstrations Act 2003” (*Zakon o odgovornosti za štetu nastalu uslijed terorističkih akata i javnih demonstracija*).

II. RELEVANT DOMESTIC LAW

11. The relevant part of the Civil Obligations Act (*Zakon o obveznim odnosima*, Official Gazette 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.”

12. The Civil Obligations (Amendments) Act 1996 (*Zakon o izmjeni Zakona o obveznim odnosima*, Official Gazette no. 7/1996, hereinafter “the 1996 Act”) entered into force on 3 February 1996. The relevant parts of that 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 resume after the enactment of special legislation governing responsibility for damage resulting from terrorist acts.”

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

Section 212

“Proceedings shall be stayed:

...

(6) where another statute so prescribes.”

14. The “Damage from Terrorist Acts and Public Demonstrations Act 2003” (*Zakon o odgovornosti za štetu nastalu uslijed terorističkih akata i javnih demonstracija*, Official Gazette no. 117/2003, hereinafter “the 2003 Act”) entered into force on 31 July 2003. It provides that proceedings which were stayed pursuant to the 1996 Act will resume and defines circumstances in which the Republic of Croatia is liable for damage resulting from terrorist acts and public demonstrations.

THE LAW

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

15. The applicants complained that the enactment of the 1996 Act violated their 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...”

16. 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 applicants had enjoyed access to court as they had instituted civil proceedings before the Novska Municipal Court. The fact that the court had temporarily stayed the proceedings pursuant to the 1996 Act did not affect their right of access to court.

17. The applicants argued that their right of access to court was violated as they were prevented from pursuing their case from the entry into force of the 1996 Act until the entry into force of the 2003 Act.

18. 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.

19. 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).

20. In the present case, the Court notes that the applicants’ 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 22 October 2003. The applicants were therefore prevented for more than seven years, more than five of which after the ratification of the Convention by Croatia, from having their claim decided by domestic courts as a result of the 1996 Act.

21. The Court finds, in accordance with its case-law (see, *inter alia*, *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 applicants were prevented from having their civil claim determined by domestic courts as a consequence of a legislative measure constitutes a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

22. The applicants also complained that the same legislation violated their right to an effective remedy guaranteed by Article 13 of the Convention which reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

23. The Government submitted that the complaint under Article 13 did not need to be examined separately as it was absorbed by the complaint under Article 6 § 1.

24. The applicants did not respond to that particular submission of the Government.

25. The Court notes that the complaint under Article 13 arises out of the same facts as those it examined under Article 6 of the Convention. Having regard to its decision on Article 6 § 1, the Court considers that it is not necessary to examine the case under Article 13 since its requirements are less strict than, and are here absorbed by those of Article 6 § 1 (see, notably, *Osu v. Italy*, no. 36534/97, § 43, 11 July 2002).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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

27. In respect of pecuniary damage, the applicants claimed the value of their damaged house and other property and the loss of income in the sum of 294,620 euros (“EUR”). They further claimed EUR 100,000 in respect of non-pecuniary damage.

28. The Government considered the claimed amounts unfounded and, in any case, excessive.

29. The Court recalls that the violation found relates solely to the applicants’ access to court and not to the destruction of their property. Consequently, no causal link has been established between the violation found and their claim for pecuniary damage. 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.

30. On the other hand, the Court notes the long period for which the applicants were prevented from having their civil claims determined and considers that some feelings of frustration and anxiety must have arisen which justify an award of non-pecuniary damage. Making its assessment on an equitable basis and having regard to the circumstances of the case, the Court awards the applicants EUR 8,000, plus any tax that may be chargeable.

B. Costs and expenses

31. For the costs incurred before the domestic courts the applicants claimed EUR 1,000. They also claimed EUR 500 for the costs and expenses incurred before the Court.

32. The Government considered the claimed amounts excessive.

33. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court does not consider that the applicants have demonstrated that they have incurred, before the domestic courts, any extra costs and expenses because of the stay on their proceedings (see *Multiplex* cited above, § 65).

34. As to the legal costs and expenses incurred before it, the Court considers that the sum claimed was actually and necessarily incurred and was reasonable as to quantum. Accordingly, it awards the applicants EUR 500, plus any tax that may be chargeable (see *Multiplex* cited above, § 65).

C. Default interest

35. 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* that it is unnecessary to examine the applicants' complaint under Article 13 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicants, 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 Croatian kunas at the rate applicable at the date of settlement:
 - (i) EUR 8,000 (eight thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 500 (five hundred euros) in respect of costs and expenses;
 - and

- (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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 21 October 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Deputy Registrar

Christos ROZAKIS
President