



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

FIRST SECTION

**CASE OF VARIĆAK v. CROATIA**

*(Application no. 78008/01)*

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 Varićak 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. 78008/01) 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, Ms Marica Varićak (“the applicant”), on 8 March 2001.

2. The applicant was represented by Ms M. Manojlović Motušić, a lawyer practising in Zadar, Croatia. The Croatian Government (“the Government”) were represented by their Agent, Ms L. Lukina-Karajković.

3. The applicant alleged that her right of access to court guaranteed by Article 6 § 1 of the Convention and her right to an effective remedy guaranteed by Article 13 of the Convention were violated by legislation staying her proceedings.

4. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). On 19 December 2002 a Chamber of that Section declared the application partly inadmissible and decided to communicate the complaints indicated in paragraph 3 above.

5. By a decision of 11 December 2003 the Court declared the communicated complaints admissible.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1934 and lives in Belgrade, Serbia and Montenegro.

7. On 21 or 22 February 1992 her house and business premises in Zadar, Croatia, were blown up by unknown perpetrators.

8. On 11 August 1994 she instituted civil proceedings before the Zadar Municipal Court (*Općinski sud u Zadru*) against the Republic of Croatia and an insurance company.

9. On 20 September 2002 the Zadar Municipal Court stayed the proceedings in respect of the Republic of Croatia. It based its decision on the Civil Obligations (Amendments) Act 1999 (*Zakon o dopunama Zakona o obveznim odnosima*). Both the applicant and the Republic of Croatia appealed. They argued that the Civil Obligations (Amendments) Act 1996 (*Zakon o izmjeni Zakona o obveznim odnosima*) should have been applied instead.

10. On 6 November 2002 the Zadar Municipal Court decided to separate the proceedings in respect of the insurance company. It would appear that the proceedings against the insurance company are pending.

11. On 31 July 2003 the “Damage from Terrorist Acts and Public Demonstrations Act 2003” and the “Damage Caused by Members of the Croatian Army and Police during the Homeland War Act 2003” entered into force.

12. On 17 December 2003 the Zadar County Court (*Županijski sud u Zadru*) quashed the decision of 20 September 2002 and remitted the case to the Zadar Municipal Court for a retrial. It would appear that the proceedings against the Republic of Croatia are also pending.

### II. RELEVANT DOMESTIC LAW

13. 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.”

14. 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.”

15. The Civil Obligations (Amendments) Act 1999 (*Zakon o dopunama Zakona o obveznim odnosima*, Official Gazette no. 112/1999, hereinafter “the 1999 Act”) entered into force on 6 November 1999. It introduced, *inter alia*, section 184 (a) to the Civil Obligations Act which provided that all proceedings instituted against the Republic of Croatia for damage caused by members of the army and the police during the war were to be stayed until the matter has been regulated by special legislation. The Act also imposed an obligation on the Government to submit to the Parliament such special legislation no later than 6 May 2000.

16. 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.”

17. 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 first 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.

18. 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, hereinafter “the second 2003 Act”) entered into force also on 31 July 2003. It provides that proceedings which were stayed pursuant to the 1999 Act will also resume and defines circumstances in which the Republic of Croatia is liable for damage caused by the army and the police during the war.

## THE LAW

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

19. 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...”

20. 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 Zadar Municipal Court. The fact that the court had temporarily stayed the proceedings pursuant to the 1999 Act did not affect her right of access to a court. The two 2003 Acts now afforded her access to court.

21. The applicant argued that her right of access to court was violated as she was prevented from pursuing her case against the Republic of Croatia from the entry into force of the 1996 Act until the entry into force of the two 2003 Acts.

22. 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.

23. 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).

24. In the present case, the Court notes that the applicant and the Government disagreed as to whether the applicant’s proceedings against the Republic of Croatia were *de facto* stayed on 3 February 1996, when the 1996 Act entered into force, or on 6 November 1999, when the 1999 Act entered into force. In either case, the Zadar Municipal Court was not able to continue with the proceedings until 31 July 2003, when the two 2003 Acts entered into force. The applicant was therefore prevented for at least three

and a half years from having her claim decided by domestic courts as a result of the legislation indicated above.

25. 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 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. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

26. The applicant also complained that the same legislation violated her 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.”

27. 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.

28. The applicant did not respond to that particular submission of the Government.

29. The Court notes that the complaint under Article 13 arises out of the same facts as those it examined when dealing with the complaint 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

30. 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

31. In respect of pecuniary damage, the applicant claimed the value of her damaged house and other property in the sum of 2,946,826 euros (EUR). She further claimed EUR 10,000 in respect of non-pecuniary damage.

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

33. The Court recalls that the violation found relates solely to the applicant's access to court and not to the destruction of her property. Consequently, no causal link has been established between the violation found and her 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.

34. On the other hand, the Court notes the long period for which the applicant was prevented from having her 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 applicant EUR 4,000, plus any tax that may be chargeable (see *Multiplex* cited above, § 63, *Kastelic v. Croatia*, no. 60533/00, § 41, 10 July 2003, and *Aćimović v. Croatia*, no. 61237/00, § 46, ECHR 2003-XI).

## **B. Costs and expenses**

35. The applicant claimed EUR 10,000 for the costs and expenses incurred before the domestic courts and the Court.

36. The Government considered the claimed amount excessive.

37. 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 applicant has demonstrated that she has incurred, before the domestic courts, any extra costs and expenses because of the stay on her proceedings (see *Kastelic* cited above, § 44).

38. As to the legal costs and expenses incurred before it, the Court notes that the applicant was legally represented. Making its own assessment, the Court considers it reasonable to award the applicant EUR 2,000, plus any tax that may be chargeable (see *Kastelic* cited above, § 44).

## **C. Default interest**

39. 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 applicant's complaint under Article 13 of the Convention;
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 Croatian kunas at the 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; 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 applicant's 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