



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

FIRST SECTION

CASE OF DRAGOVIĆ v. CROATIA

(Application no. 5705/02)

JUDGMENT

STRASBOURG

28 October 2004

FINAL

28/01/2005

*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 Dragović 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 7 October 2004,

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

PROCEDURE

1. The case originated in an application (no. 5705/02) 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 Ranko Dragović and Ms Ružica Dragović (“the applicants”), on 11 December 2001.

2. The applicants were represented by Mr Ivan Šalina, a lawyer practising in Zadar, Croatia. The Croatian Government (“the Government”) were represented by their Agent, Ms Lidija Lukina-Karajković.

3. On 9 January 2003 the Court declared the application partly inadmissible and decided to communicate the complaint concerning access to court to the 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.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicants were born in 1933 and 1936, respectively and live in Zadar, Croatia.

A. Proceedings concerning the second applicant’s vehicle

5. In September 1991 the second applicant’s vehicle was requisitioned by the Croatian Army.

6. In August 1992 she was informed that the vehicle had been destroyed.

7. On 18 August 1995 she instituted civil proceedings before the Zadar Municipal Court (*Općinski sud u Zadru*) seeking damages from the Republic of Croatia for her damaged vehicle.

8. Pursuant to the Civil Obligations (Amendments) Act 1999 (*Zakon o dopunama Zakona o obveznim odnosima*, Official Gazette no. 112/1999, hereinafter “the 1999 Act”), the Zadar Municipal Court stayed the proceedings on 23 November 1999.

9. The proceedings resumed on 24 October 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, hereinafter “the 2003 Act”).

B. Proceedings concerning the applicants’ house

10. The applicants claimed that members of the Croatian Army damaged their house in Vodice, Croatia, in mid-1992.

11. On 22 August 1995 they instituted civil proceedings before the Šibenik Municipal Court (*Općinski sud u Šibeniku*) seeking damages from the Republic of Croatia for their damaged house.

12. On 20 May 1999 the Šibenik Municipal Court rejected their claim.

13. The applicants appealed against that judgment.

14. Pursuant to the 1999 Act, the Šibenik Municipal Court stayed the proceedings on 10 December 1999. The applicants appealed against that decision. On 6 March 2000 the Šibenik County Court (*Županijski sud u Šibeniku*) rejected their appeal.

15. The proceedings resumed on 2 September 2003 pursuant to the 2003 Act.

16. On 31 May 2004 the Šibenik County Court quashed the judgment of 20 May 1999 and remitted the case to the Šibenik Municipal Court for a retrial.

II. RELEVANT DOMESTIC LAW

17. 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 provided, *inter alia*, 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.

18. 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.”

19. 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 2003 Act”) entered into force on 31 July 2003. It provides that proceedings which were stayed pursuant to the 1999 Act will 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**

20. The applicants complained that the enactment of the 1999 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...”

A. Admissibility*1. Exhaustion of domestic remedies*

21. The Government submitted that the applicants failed to exhaust domestic remedies because they did not submit a petition to the Constitutional Court challenging the constitutionality of the 1999 Act.

22. The applicants contested the effectiveness of that remedy.

23. The Court recalls that it has found that a petition challenging the constitutionality of the 1999 Act did not constitute a remedy to be exhausted (see *Aćimović v. Croatia* (dec.), no. 61237/00, 7 November 2002). The Court sees no reason to depart from that decision in the present case. In such circumstances, the Court considers that the application cannot be rejected for failure to exhaust domestic remedies.

2. Conclusion

24. 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

25. 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 two sets of civil proceedings before the Zadar Municipal Court and the Šibenik Municipal Court. The fact that the courts had temporarily stayed the proceedings pursuant to the 1999 Act did not affect their right of access to court. The 2003 Act now afforded them such access.

26. The applicants argued that their right of access to court was violated as they were prevented from pursuing their cases in Croatia during the period prior to the entry into force of the 2003 Act.

27. 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.

28. 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).

29. In the present case, the Court notes that the applicants’ proceedings against the Republic of Croatia were *de facto* stayed on 6 November 1999, when the 1999 Act entered into force. The 2003 Act entered into force on 31 July 2003 and the proceedings resumed pursuant to that Act on 24 October 2003 and 2 September 2003. The applicants were therefore prevented for almost four years from having their claims decided by domestic courts as a result of the 1999 Act.

30. The Court finds, in accordance with its case-law (see, *inter alia*, *Kutić v. Croatia*, no. 48778/99, § 33, ECHR 2002-II, *Multiplex v. Croatia*, no. 58112/00, § 55, 10 July 2003 and *Aćimović v. Croatia*, no. 61237/00, § 42, ECHR 2003-XI), that the long period for which the applicants were prevented from having their civil claims determined by domestic courts as a consequence of a legislative measure constitutes a violation of the access to court guarantee of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. 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

32. The applicants claimed 100,000 euros (EUR) in respect of non-pecuniary damage.

33. The Government considered the claimed amount excessive.

34. 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 – in particular, the number of domestic proceedings in which the applicants are parties – the Court awards the first applicant EUR 4,000 and the second applicant EUR 5,000, plus any tax that may be chargeable (see, *Multiplex* and *Aćimović* cited above, § 63 and § 46, respectively).

B. Costs and expenses

35. The applicants also claimed EUR 2,350 and 5,950 Croatian kunas for the costs and expenses incurred before the domestic courts. They did not seek reimbursement of costs and expenses incurred before 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 observes that the applicants have not incurred, before the domestic courts, any extra costs and expenses because of the stay on their proceedings (see, *inter alia*, *Rajak v. Croatia*, no. 49706/99, § 59, 28 June 2001 and *Kastelic v. Croatia*, no. 60533/00, § 44, 10 July 2003). Since the applicants did not claim reimbursement of

costs and expenses incurred before it, the Court makes no award in that respect (see, *inter alia*, *Radoš and Others v. Croatia*, no. 45435/99, 7 November 2002 and *Ćimović* cited above, § 47).

C. Default interest

38. 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. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 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 4,000 (four thousand euros) to the first applicant and EUR 5,000 (five thousand euros) to the second applicant in respect of non-pecuniary damage; and
 - (ii) 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 amount 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 28 October 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President