



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

FIRST SECTION

CASE OF DRAGIČEVIĆ v. CROATIA

(Application no. 11814/02)

JUDGMENT

STRASBOURG

9 December 2004

FINAL

09/03/2005

*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 Dragičević v. Croatia,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,

Mr L. LOUCAIDES,

Mrs F. TULKENS,

Mr P. LORENZEN,

Mrs N. VAJIĆ,

Mr D. SPIELMANN,

Mr S. JEBENS, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 18 November 2004,

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

PROCEDURE

1. The case originated in an application (no. 11814/02) 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 Ljuban Dragičević (“the applicant”), on 31 January 2002.

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. On 19 December 2002 the Court declared the application partly inadmissible and decided to communicate the complaints concerning the right of access to court and the right to an effective remedy 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 applicant was born in 1938 and lives in Crikvenica, Croatia.

5. On 6 July 1992 his weekend house in Nin, Croatia, was blown up by unknown perpetrators.

6. On 18 May 1993 he instituted civil proceedings before the Zadar Municipal Court (*Općinski sud u Zadru*) seeking damages from the Republic of Croatia for his damaged property.

7. Pursuant to the Civil Obligations (Amendments) Act 1996 (*Zakon o izmjeni Zakona o obveznim odnosima*), the Zadar Municipal Court stayed the proceedings on 17 December 1998.

8. The proceedings resumed on 24 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*).

9. On 20 February 2004 the Zadar Municipal Court rejected the applicant’s claim for damages. The applicant appealed and the case is now apparently pending before the Zadar County Court (*Županijski sud u Zadru*).

II. RELEVANT DOMESTIC LAW

10. 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.”

11. 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.”

12. 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.”

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 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

14. The applicant complained that the enactment of the 1996 Act violated his 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*

15. 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.

16. The applicant argued that his lack of access to court continued until 31 July 2003, when the 2003 Act entered into force.

17. 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 Zadar Municipal Court was not able to continue with the proceedings. The 2003 Act entered into force on 31 July 2003 providing for the resumption of the proceedings. 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

18. The Government also submitted that the applicant failed to exhaust domestic remedies because he did not submit a petition for constitutionality review to the Constitutional Court challenging the constitutionality of the 1996 Act.

19. The applicant contested the effectiveness of that remedy.

20. The Court recalls that it has found that the remedy indicated above 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

21. 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

22. 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 he had instituted civil proceedings before the Zadar Municipal Court. The fact that the court had temporarily stayed the proceedings pursuant to the 1996 Act did not affect his right of access to court.

23. The applicant argued that his right of access to court was violated as he was prevented from pursuing his case from the entry into force of the 1996 Act until the entry into force of the 2003 Act.

24. 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.

25. 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).

26. In the present case, the Court notes that the applicant’s proceedings 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 24 October 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 his claim decided by domestic courts as a result of the 1996 Act.

27. 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 his 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

28. The applicant also complained that the same legislation violated his 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.”

29. 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.

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

31. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

32. Having regard to the finding relating to Article 6 § 1 (see paragraph 27 above), the Court considers that it is not necessary to examine whether, in this case, there has been a violation of Article 13 since its requirements are less strict than, and are here absorbed by those of Article 6 § 1 (see, among other authorities, *Osu v. Italy*, no. 36534/97, § 43, 11 July 2002).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. 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

34. In respect of pecuniary damage, the applicant claimed the value of his damaged house and other property in the sum of 62,800 euros (“EUR”). He further claimed EUR 10,000 in respect of non-pecuniary damage.

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

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

37. On the other hand, the Court notes the long period for which the applicant was prevented from having his 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.

B. Costs and expenses

38. The applicant claimed 3,000 Croatian kunas [approximately EUR 400] for the costs and expenses incurred before the domestic courts and the Court.

39. The Government considered the claimed amount unfounded.

40. The Court recalls that in order for costs and expenses to be included in an award under Article 41, it must be established that they were 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 he has incurred, before the domestic courts, any extra costs and expenses because of the stay on his proceedings. As to the legal costs and expenses incurred before it, the Court considers that the sum claimed was actually and necessarily incurred, and reasonable as to quantum. Accordingly, it awards the applicant EUR 400 under this head, plus any tax that may be chargeable (see *Multiplex* cited above, § 65).

C. Default interest

41. 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* that there is no need to examine the complaint under Article 13 of the Convention;
4. *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 400 (four 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;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 9 December 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President