



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

FIRST SECTION

CASE OF BADOVINAC v. CROATIA

(Application no. 9761/02)

JUDGMENT
(Friendly settlement)

STRASBOURG

22 December 2004

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

In the case of Badovinac v. Croatia,

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

Mr C.L. ROZAKIS, *President*,

Mrs F. TULKENS,

Mr P. LORENZEN,

Mrs N. VAJIĆ,

Mrs S. BOTOUCHAROVA,

Mr D. SPIELMANN,

Mr S.E. JEBENS, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 2 December 2004,

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

PROCEDURE

1. The case originated in an application (no. 9761/02) 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 Nikola Badovinac (“the applicant”), on 12 February 2002.

2. The applicant was represented by Mr J. Franceschi, a lawyer practising in Split, Croatia. The Croatian Government (“the Government”) were represented by their Agent, Ms L. Lukina-Karajković.

3. The applicant complained that the enactment of the Civil Obligations (Amendments) Act 1996 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 23 October 2003 the Court declared the applicant’s complaints admissible.

5. On 1 March and on 12 August 2004 the Government and the applicant, respectively submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

6. The applicant was born in 1932 and lives in Split, Croatia.

7. On 2 February 1992 his house in Kaštel Novi, Croatia, was blown up by unknown perpetrators.

8. On 9 January 1995 he instituted civil proceedings before the Split Municipal Court (*Općinski sud u Splitu*) seeking damages from the Republic of Croatia for his damaged property.

9. Pursuant to the Civil Obligations (Amendments) Act 1996 (*Zakon o izmjeni Zakona o obveznim odnosima*, Official Gazette no. 7/1996 of 26 January 1996), the Split Municipal Court stayed the proceedings on 15 September 1998.

10. The proceedings resumed on 20 November 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*, Official Gazette no. 117/2003 of 23 July 2003).

THE LAW

11. On 1 March 2004 the Court received the following declaration signed by the Government’s Agent:

“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 Nikola Badovinac. 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 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 12 August 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 Nikola Badovinac 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 22 December 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President