CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF PIKIĆ v. CROATIA

(Application no. 16552/02)

JUDGMENT

STRASBOURG

18 January 2005

FINAL

18/04/2005

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 Pikić 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.E. JEBENS, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 14 December 2004,

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

PROCEDURE

1. The case originated in an application (no. 16552/02) 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 Lazo Pikić ("the applicant"), on 15 March 2002.

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

3. The applicant alleged that the enactment of the 1999 Amendments to the Civil Obligations Act had violated his right of access to a court, as guaranteed by Article 6 § 1 of the Convention.

4. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. On 12 May 2003 the Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of that complaint at the same time as its admissibility.

6. On 8 June 2004 the Government filed additional observations on the admissibility of the application. Following a decision of the Chamber of 8 July 2004, these observations were included in the case file and sent to the applicant for comments (Rule 38 § 1). The applicant replied on 2 August 2004.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1935 and lives in Dubrovnik.

8. On 13 August 1992 the Croatian Military Police requisitioned the applicant's vehicle for use by the Croatian Army.

9. By a letter of 1 August 1996 the Dubrovnik Defence Office (*Ured za obranu Dubrovnik*) informed the applicant that the vehicle had been damaged beyond repair.

10. On 26 May 1998 the applicant instituted civil proceedings in the Dubrovnik Municipal Court (*Općinski sud u Dubrovniku*) seeking compensation for the loss of his vehicle from the State.

11. On 6 November 1999 Parliament introduced amendments to the Civil Obligations Act ("the 1999 Amendments"). The amended legislation provided that all actions for damages against the State for the acts of members of the Croatian Army and the police in the performance of their official duties during the Homeland War in Croatia were to be stayed.

12. On 2 May 2000 the Dubrovnik Municipal Court stayed the proceedings pursuant to the above legislation.

13. On 1 September 2000 the Dubrovnik County Court (*Županijski sud u Dubrovniku*) dismissed the applicant's appeal against that decision.

14. On 21 May 2003 the applicant lodged a motion with the Constitutional Court (*Ustavni sud Republike Hrvatske*) seeking a review of the constitutionality of the 1999 Amendments. These proceedings are still pending.

15. On 14 July 2003 Parliament passed new legislation on the liability of the State for damage caused by members of the Croatian Army and police in the performance of their official duties during the Homeland War ("the 2003 Liability Act").

16. In 2004 the applicant's proceedings resumed pursuant to the above legislation. The proceedings are still pending.

II. RELEVANT DOMESTIC LAW AND PRACTICE

17. Section 184 (a) of the 1999 Amendments (*Zakon o dopunama Zakona o obveznim odnosima*, Official Gazette no. 112/1999) provides that all proceedings instituted against the State for damage caused by members of the Croatian Army and police in the performance of their official duties during the Homeland War in Croatia from 7 August 1990 to 30 June 1996 are to be stayed.

18. The 1999 Amendments also imposed an obligation on the Government to submit special legislation to Parliament regulating liability for such damage within six months of the Act entering into force.

19. The 2003 Liability Act (*Zakon o odgovornosti Republike Hrvatske za štetu uzrokovanu od pripadnika hrvatskih oružanih i redarstvenih snaga tijekom Domovinskog rata*, Official Gazette no. 117/03) regulates the conditions under which the State is liable to pay compensation for damage caused by members of the army and the police during the Homeland War. It also provides that all proceedings stayed pursuant to the 1999 Amendments are to be resumed.

20. The relevant part of section 63 of the Constitutional Act on the Constitutional Court (*Ustavni zakon o Ustavnom sudu Republike Hrvatske*, Official Gazette no. 49/02, "the 2002 Constitutional Court Act") reads as follows:

> "(1) The Constitutional Court shall examine a constitutional complaint whether or not all legal remedies have been exhausted if the court with jurisdiction fails to decide a claim concerning the applicant's rights and obligations or a criminal charge against him or her within a reasonable time ...
>
> (2) If a constitutional complaint ... under paragraph 1 of this section is upheld, the Constitutional Court shall set a time-limit within which the court with jurisdiction must decide the case on the merits...
>
> (3) In a decision issued under paragraph 2 of this section, the Constitutional Court shall assess appropriate compensation for the applicant for the violation of his or her constitutional rights ... The compensation shall be paid out of the State budget within three months from the date a request for payment is lodged."

21. Article 29 § 1 of the Constitution (*Ustav Republike Hrvatske*, Official Gazette no. 41/01) reads as follows:

> "1. In the determination of his rights and obligations or of any criminal charge against him, everyone is entitled to a fair hearing within a reasonable time by an independent and impartial court established by law."

22. On 24 March 2004 the Constitutional Court gave a decision no. U-III-829/2004 in the case of Mr N., who had filed a constitutional complaint under section 63 of the 2002 Constitutional Court Act alleging a breach of Article 29 § 1 of the Constitution. He complained about the length of the proceedings and of lack of access to a court because his action in the domestic courts had been stayed by statute for an extended period. In its decision, the Constitutional Court held that there had been a violation of the constitutional rights to a trial within a reasonable time and to access to a court. It ordered the court concerned to give a decision in Mr N.'s case within one year and awarded him compensation.

THE LAW

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

23. The applicant complained that he had not had access to a court because the Dubrovnik Municipal Court had stayed the proceedings pursuant to the 1999 Amendments to the Civil Obligations Act. He relied on Article 6 § 1 of the Convention, the relevant part of which reads as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a... hearing within a reasonable time ... by [a] ... tribunal..."

A. Admissibility

24. The Government invited the Court to reject the application on the ground that the applicant had failed to exhaust domestic remedies as required under Article 35 § 1 of the Convention.

25. They produced a copy of the decision of the Constitutional Court of 24 March 2004 where it was held that there had been a violation of the right of access to a court in a similar case. In the Government's opinion, the change in the Constitutional Court's case-law created a new domestic remedy for alleged violations of the right of access to a court.

26. The Government pointed out that the proceedings in the applicant's case were still pending and that consequently he could lodge a constitutional complaint in line with the new case-law. Since the latter permitted the Constitutional Court not only to award compensation but also to set a time-limit for the competent court to decide the case, the Government contended that it was an effective remedy and that the Court should make an exception to the general rule of exhaustion of domestic remedies.

27. The applicant maintained that his application had been filed with the Court prior to the change in the Constitutional Court's case-law. Should the Court dismiss his application on the ground that he failed to exhaust domestic remedies, the subsequent Constitutional Court proceedings would only protract his case.

28. The Court reiterates that under Article 35 § 1 of the Convention it may only deal with a matter after all domestic remedies have been exhausted. The purpose of the exhaustion rule is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to it (see, among many other authorities, *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-IV). The obligation to exhaust domestic remedies requires that an applicant make normal use of remedies which are effective, sufficient and accessible in respect of his Convention grievances. Remedies available to a

litigant at domestic level are considered effective if they prevent the alleged violation or its continuation, or provide adequate redress for any violation that has already occurred (see *Mifsud v. France* (dec.) [GC], no. 57220/00, § 17, ECHR 2002-VIII).

29. Having regard to the developments in the case-law to which the Government referred, the Court accepts that, after 24 March 2004, in cases similar to the present one (see *Multiplex v. Croatia*, no. 58112/00, 10 July 2003), the Constitutional Court, in line with its new case-law, awards compensation for the violation of the right of access to a court already sustained and sets a time-limit for the competent court to decide the complainant's case. The Court therefore holds that, for the purposes of these cases, a complaint to the Constitutional Court can be considered an effective remedy, which needs to be exhausted before the applicants address the Court with their complaints concerning lack of access to a court.

30. The Court reiterates, however, that the issue whether domestic remedies have been exhausted is normally determined by reference to the date when the application was lodged with the Court (see *Baumann v. France*, no. 33592/96, § 47, ECHR 2001-V (extracts)). This rule is subject to exceptions which may be justified by the specific circumstances of each case (see *Nogolica v. Croatia* (dec.), no. 77784/01, ECHR 2002-VIII).

31. In the instant case, the applicant did not file a constitutional complaint, but instead, he lodged his application with the Court. It was not until two years later that the Constitutional Court held for the first time that there had been a violation of the right of access to a court in a similar case (see § 22). Accordingly, the applicant could not have been expected to file such a complaint, which at that time did not offer him any reasonable prospect of success.

32. Therefore, as to the Government's proposal to depart from the general rule of non-exhaustion, the Court reaches the conclusion that – unlike in the *Nogolica* case and having regard to the subsidiary character of the Convention machinery – there are no special circumstances which would justify making an exception to that rule with regard to applications lodged with it before 24 March 2004.

33. It follows that the present application cannot be rejected for non-exhaustion of domestic remedies. Accordingly, the Government's objection must be dismissed.

34. The Court further 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.

B. Merits

35. The Government submitted that the applicant had had access to a court in that he had instituted civil proceedings for damages in the Dubrovnik Municipal Court. The fact that the court had stayed the proceedings pursuant to the 1999 Amendments had not affected the applicant's right of access to a court because the proceedings were stayed only temporarily, pending the introduction of new legislation. By the enactment of the 2003 Liability Act the applicant had been granted access to a court.

36. The Government acknowledged that four years had elapsed between the successive enactments of the 1999 Amendments and the 2003 Liability Act. However, they pointed out that that period was substantially shorter than in the *Kutić* case, in which the Court found a violation of the applicants' right of access to a court (see *Kutić v. Croatia*, no. 48778/99, ECHR 2002-II).

37. The applicant contested those views. He maintained that by failing to adopt new legislation within the set time-limit, the State had prevented him from obtaining compensation for his vehicle.

38. The Court reiterates 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 (see *Golder v. the United Kingdom*, judgment of 21 February 1975, Series A no. 18, pp. 13-18, §§ 28-36).

39. 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* 1996-IV, § 50).

40. The Court further stresses that in the *Multiplex* case it found a violation of the applicant's right of access to a court, under Article 6 § 1 of the Convention, in that, as a result of legislative intervention, he had been denied all possibility of having his claim determined by a court for a lengthy period (see *Multiplex v. Croatia*, cited above).

41. In the instant case, the proceedings were stayed by virtue of the Dubrovnik Municipal Court's decision of 2 May 2000. However, they had been stayed *de facto* since 6 November 1999 when the Amendments to the

Civil Obligations Act were enacted. As a result of the 1999 Amendments, the Dubrovnik Municipal Court was not able to proceed with its examination of the applicant's claim at least until July 2003 when new legislation was brought in.

42. The Court considers, in accordance with its case-law (see *Multiplex v. Croatia*, cited above; and *Aćimović v. Croatia*, no. 61237/00, ECHR 2003-XI), that the fact that the applicant was prevented by legislation for a prolonged period from having his civil claim determined by the domestic courts constitutes a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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

44. The applicant claimed 3,600 German marks (approximately 1,840 euros (EUR)) as compensation for pecuniary damage incurred through the loss of his vehicle. He also requested 100,000 Croatian kunas (HRK) (approximately EUR 14,000) for non-pecuniary damage.

45. The Government deemed the amount claimed by the applicant excessive. In the event of a finding of a violation, they requested the Court to assess just satisfaction on the basis of its case-law in similar cases.

46. The Court finds no causal link between the violation complained of and the pecuniary damage alleged. In particular, it is not for the Court to speculate what the outcome of the proceedings will be or whether compliance with Article 6 § 1 of the Convention throughout might have made a difference (see, *inter alia, Göçer v. the Netherlands*, no. 51392/99, § 37, 3 October 2002).

47. However, the Court finds that the applicant sustained non-pecuniary damage, which cannot be compensated for by the mere finding of a violation. Making its assessment on an equitable basis and having regard to the circumstances of the case, the Court awards the applicant EUR 4,000 as compensation for non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

48. The applicant also claimed HRK 3,250 (approximately EUR 450) for the legal costs incurred in the proceedings before the domestic courts.

49. The Court reiterates that an award can be made in respect of costs and expenses only in so far as they have been actually and necessarily incurred by the applicant and are reasonable as to the quantum (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI). In the present case, on the basis of the information in its possession and the aforementioned criteria, the Court observes that there is nothing in the file to suggest that the applicant was put to extra costs and expenses in the domestic proceedings because of his lack of access to a court.

50. The applicant did not seek an award for costs incurred in the proceedings before the Court. Consequently, no award is made under this head.

C. Default interest

51. 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 applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 4,000 (four thousand euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;

(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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 18 January 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President