



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

FIRST SECTION

CASE OF KLJAJIĆ v. CROATIA

(Application no. 22681/02)

JUDGMENT

STRASBOURG

17 March 2005

FINAL

17/06/2005

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 Kljajić 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,

Mrs N. VAJIĆ,

Mrs S. BOTOUCHAROVA,

Mr A. KOVLER,

Mr D. SPIELMANN, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 24 February 2005,

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

PROCEDURE

1. The case originated in an application (no. 22681/02) 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 Mirko Kljajić (“the applicant”), on 21 May 2002.

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

3. On 10 September 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 the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1951 and lives in Karlovac, Croatia.

5. On 11 November 1991 business premises in Karlovac leased by the applicant were blown up by unknown perpetrators.

6. On 10 November 1994 the applicant instituted civil proceedings against the State before the Zagreb Municipal Court (*Općinski sud u Zagrebu*) seeking damages. He based his claim on section 180 of the Civil Obligations Act.

7. On 17 January 1996 Parliament introduced an amendment to the Civil Obligations Act (“the 1996 Amendment”) which provided that all proceedings concerning actions for damages resulting from terrorist acts were to be stayed pending enactment of new legislation on the subject.

8. On 14 February 1996 the Municipal Court stayed the proceedings pursuant to the 1996 Amendment.

9. On 14 July 2003 Parliament introduced the Act on Liability for Damage Resulting from Terrorist Acts and Public Demonstrations (“the 2003 Liability Act”).

10. Pursuant to the 2003 Liability Act, on 19 November 2003 the Municipal Court resumed the proceedings and, at the same time, dismissed the applicant's action finding that it no longer had the jurisdiction in the matter. The applicant did not appeal against that decision.

II. RELEVANT DOMESTIC LAW

11. 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) provided as follows:

Section 180(1)

“Liability for loss caused by death or bodily injury or by damage or destruction of another's property, when it results from acts of violence 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.”

12. The relevant part of the Act Amending the Civil Obligations Act (*Zakon o izmjeni Zakona o obveznim odnosima* – Official Gazette no. 7/1996) (“the 1996 Amendment”) reads as follows:

Section 1

“Section 180 of the Civil Obligations Act (the Official Gazette nos. 53/91, 73/91 and 3/94) 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 be resumed after the enactment of special legislation governing liability for damage resulting from terrorist acts.”

This Act entered into force on 3 February 1996.

13. The relevant part of the Civil Procedure Act (*Zakon o parničnom postupku* – Official Gazette nos. 53/91, 91/92, 58/93, 112/99, 88/01) provides:

Section 212

“Proceedings shall be stayed:

...

(6) where another statute so prescribes.”

14. The Act on Liability for Damage Resulting from Terrorist Acts and Public Demonstrations (*Zakon o odgovornosti za štetu nastalu uslijed terorističkih akata i javnih demonstracija* – Official Gazette no. 117/2003) (“the 2003 Liability Act”) provides, *inter alia*, that the State is to compensate only damage resulting in bodily injuries, impairment of health or death. All compensation for damage to property is to be sought under the Reconstruction Act. Section 10 provides that all proceedings stayed pursuant to the 1996 Amendment are to be resumed.

This Act entered into force on 31 July 2003.

15. In its judgment Rev-276/04-2 of 8 April 2004 the Supreme Court held, while dismissing the plaintiff's claim on its merits, that, after the entry into force of the 2003 Liability Act, the State was no longer liable for the damage ensuing from the destruction of the plaintiff's business premises (attorney's office) that had been blown up by unknown perpetrators.

16. The relevant part of the Reconstruction Act (*Zakon o obnovi* – Official Gazette nos. 24/1996, 54/1996, 87/1996 and 57/2000) provides, *inter alia*, that the State shall grant, under certain conditions, reconstruction assistance to owners of property (flats and family houses only) which has been damaged during the war. The request is to be submitted to the competent ministry.

THE LAW

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

17. The applicant complained that Parliament's enactment of the 1996 Amendment violated his right of access to a court as provided in Article 6 § 1 of the Convention, which reads as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing ... by [a] ... tribunal...”

A. Admissibility

1. *Compatibility* *ratione temporis*

18. The Government maintained that the domestic authorities could be held responsible only for events that occurred after 5 November 1997, the date on which the Convention entered into force in respect of Croatia.

19. The applicant did not comment on this issue.

20. The Court notes that the applicant's proceedings were *de facto* stayed on 3 February 1996, when the 1996 Amendment entered into force. Pursuant to the Amendment, the Zagreb Municipal Court was not able to continue the proceedings. On 14 February 1996 the Zagreb Municipal Court formally took its decision to stay the proceedings. The applicant's proceedings resumed only on 19 November 2003, pursuant to the 2003 Liability Act. 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 has competence *ratione temporis* to examine the application in so far as it concerns the stay on the applicant's proceedings after 5 November 1997.

2. *The applicant's victim status*

21. The Government submitted that the applicant could not claim to be a victim within the meaning of Article 34 of the Convention since on 14 July 2003 Parliament enacted the 2003 Liability Act which provided that proceedings stayed under the 1996 Amendment were to be resumed.

22. The applicant disagreed with the Government. He pointed out that on 19 November 2003 the Municipal Court had dismissed his action for lack of jurisdiction and that, therefore, it could not be argued that, following the enactment of the 2003 Liability Act, he had enjoyed access to a court.

23. The Court considers that an applicant's status as a victim may depend on compensation being awarded at domestic level on the basis of the facts about which he or she complains before the Court (see *Andersen v. Denmark*, no. 12860/87, and *Frederiksen and Others v. Denmark*, no. 12719/87, Commission decisions of 3 May 1988; *Normann v. Denmark* (dec.), no. 44704/98, 14 June 2001; and *Jensen and Rasmussen v. Denmark* (dec.), no. 52620/99, 20 March 2003) and on whether the domestic authorities have acknowledged, either expressly or in substance, the breach of the Convention. Only when those two conditions are satisfied does the subsidiary nature of the protective mechanism of the Convention preclude examination of an application (see *Eckle v. Germany*, judgment of 15 July 1982, Series A no. 51, p. 32, §§ 69 *et seq.*, and *Jensen v. Denmark* (dec.), no. 48470/99, ECHR 2001-X).

24. The Court observes that the fact that the applicant was deprived of access to a court in the period between February 1996 and July 2003 was

not disputed by the parties. However, the alleged violation was not recognised by any decision of domestic courts, nor was the applicant awarded any compensation for it.

25. In such circumstances, the Court finds that the applicant may claim to be a victim of a violation of his right of access to a court as guaranteed by Article 6 § 1 of the Convention. It follows that the Government's objection must be dismissed.

3. Conclusion

26. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

27. The Government submitted that the fact that the court stayed the proceedings pursuant to the 1996 Amendment did not put at risk the very essence of the applicant's right of access to a court because the proceedings were stayed only temporarily, pending the enactment of new legislation. By the enactment of the 2003 Liability Act the applicant had been granted access to a court.

28. The applicant contested the Government's assertion that after the 2003 Liability Act had come into force he had been granted access to a court. In this regard he reiterated that on 19 November 2003 the Municipal Court had dismissed his action for lack of jurisdiction.

29. 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).

30. 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).

31. Turning to the present case, the Court observes that the applicant's proceedings were *de facto* stayed from 3 February 1996, the day on which the 1996 Amendment entered into force, until at least 31 July 2003, when the 2003 Liability Act entered into force, i.e. for a period of seven and a half years, of which some five years and six months occurred after the Convention's entry into force in respect of Croatia on 5 November 1997. It is true that subsequently the Municipal Court dismissed the applicant's claim finding that under the new legislation it lacked jurisdiction to entertain it. The Court, however, recalls that the applicant did not appeal against the Municipal Court's decision of 19 November 2003 and it cannot speculate as to the outcome of such an appeal.

32. In any event the Court considers, in accordance with its case-law (see *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.

There has accordingly been a violation of Article 6 of the Convention.

II. 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. The applicant claimed 242,659.86 euros (EUR) in respect of pecuniary damage. He explained that this sum should cover the actual damage to his property as well as the lost profit. He also claimed EUR 15,000 in respect of non-pecuniary damage.

35. The Government deemed the amount claimed by the applicant excessive. They requested the Court to assess the amount of just satisfaction to be awarded, if it found a violation, on the basis of its case-law in similar cases.

36. The Court does not discern any causal link between the violation found and the pecuniary damage alleged. It therefore rejects this claim.

37. On the other hand, the Court finds that the applicant sustained moral damage, which cannot be compensated by the mere finding of a violation of the Convention. Making its assessment on an equitable basis and having regard to the circumstances of the case, the Court awards the applicant

EUR 3,500 as compensation for non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

38. The applicant also claimed EUR 1,212.32 for the costs and expenses incurred before the domestic courts and EUR 1,500 for those incurred before the Court.

39. 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, on the basis of the information in its possession and the above-mentioned criteria, the Court observes that there is no element in the file suggesting that the applicant incurred, before the domestic courts, any extra costs and expenses because of his lack of access to a court (see *Multiplex v. Croatia*, cited above). The Court therefore rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the sum of EUR 500 for the proceedings before the Court, plus any tax that may be chargeable.

C. Default interest

40. 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, the following amounts which are to be converted into the national currency of the respondent State at a rate applicable at the date of settlement:
 - (i) EUR 3,500 (three thousand five hundred euros) in respect of non-pecuniary damage;
 - (ii) EUR 500 (five hundred euros) in respect of costs and expenses;
 - (iii) any tax that may be chargeable on the above amounts;

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

Done in English, and notified in writing on 17 March 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President