



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

FIRST SECTION

CASE OF LULIĆ AND BECKER v. CROATIA

(Application no. 22857/02)

JUDGMENT

STRASBOURG

24 March 2005

FINAL

24/06/2005

*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 Lulić and Becker v. Croatia,

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

Mr C.L. ROZAKIS, *President*,

Mr P. LORENZEN,

Mrs N. VAJIĆ,

Mrs S. BOTOCHAROVA,

Mr A. KOVLER,

Mrs E. STEINER,

Mr K. HAJIYEV, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 3 March 2005,

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

PROCEDURE

1. The case originated in an application (no. 22857/02) 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, Ms Branka Lulić and Ms Martina Becker (“the applicants”), on 15 May 2002.

2. The applicants were represented by Mr B. Kozjak, a lawyer practising in Virovitica. The Croatian Government (“the Government”) were represented by their Agent, Ms L. Lukina-Karajković.

3. The applicants alleged that the entry into force of the 1996 Amendment to the Civil Obligations Act had violated their 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 1 December 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.

6. On 27 May 2004 the Government filed additional observations on the admissibility of the application. The applicant replied on 28 July 2004. Following a decision of the Chamber of 23 September 2004, these observations were included in the case file (Rule 38 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicants were born in 1954 and 1979, respectively, and live in Suhopolje, Croatia.

8. On 18 January 1992 the applicants' house in Suhopolje was blown up by unknown perpetrators.

9. On 17 March 1995 the applicants instituted civil proceedings against the State in the Virovitica Municipal Court (*Općinski sud u Virovitici*) seeking damages. They based their claim on section 180 of the Civil Obligations Act.

10. On 14 December 1995 the Municipal Court gave judgment dismissing the applicants' claim on its merits.

11. On 18 December 1995 the applicants appealed to the Bjelovar County Court (*Županijski sud u Bjelovaru*).

12. 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 the enactment of new legislation on the subject.

13. On 29 February 1996 the County Court stayed the proceedings pursuant to the 1996 Amendment.

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

15. It appears that the proceedings resumed on 3 October 2003, pursuant to the 2003 Liability Act.

16. On 4 December 2003 the case was transferred to the Virovitica County Court (*Županijski sud u Virovitici*) as the appellate court, due to changes in jurisdiction.

It appears that the proceedings are still pending.

II. RELEVANT DOMESTIC LAW

17. 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.”

18. 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.

19. 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.”

20. 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 from 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.

21. 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.

22. 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 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.”

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

“ 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.”

24. On 24 March 2004 the Constitutional Court gave decision no. U-III-829/2004 in the case of Mr N., who had filed a constitutional complaint under section 63 of the 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 a long 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

25. The applicants complained that the entry into force of the 1996 Amendment violated their right of access to a court as provided in Article 6 § 1 of the Convention, which in its relevant part reads as follows:

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

26. The Government contested that argument.

A. Admissibility

1. *Compatibility* *ratione temporis*

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

28. The applicants did not comment on this issue.

29. The Court notes that the applicants' proceedings were *de facto* stayed on 3 February 1996, when the 1996 Amendment entered into force.

Pursuant to the Amendment, the Bjelovar County Court was not able to continue the proceedings. It formally decided to stay the proceedings on 29 February 1996. The applicants' proceedings resumed only on 3 October 2003, pursuant to the 2003 Liability Act. It follows that the situation of which the applicants 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 of the applicants' proceedings after 5 November 1997.

2. *The applicants' victim status*

30. The Government submitted that the applicants could not claim to be victims within the meaning of Article 34 of the Convention since on 31 July 2003 the Liability Act, which provided that the proceedings stayed under the 1996 Amendment were to be resumed, entered into force.

31. The applicants disagreed with the Government. They pointed out that the proceedings had been stayed for seven years and seven months before they resumed and that their resumption could not remedy the violation of their right of access to a court during that period.

32. 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).

33. The Court observes that the fact that the applicants were 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 were the applicants awarded any compensation for it.

34. In such circumstances, the Court finds that the applicants may claim to be the victims of a violation of their 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. *Exhaustion of domestic remedies*

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

36. 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 (see paragraph 24 above). 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.

37. The Government pointed out that the proceedings in the applicants' case were still pending and that consequently they 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 (according to which an applicant is required to exhaust only the remedies available at the moment of the introduction of an application with the Court).

38. The applicants maintained that their application had been filed with the Court prior to the change in the Constitutional Court's case-law.

39. 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).

40. Having regard to the developments in the domestic case-law to which the Government referred, the Court observes that, after 24 March 2004, the Constitutional Court may, in cases similar to the present one (see *Kutić v. Croatia*, no. 48788/99, ECHR 2002-II), award compensation for the violation of the right of access to a court already sustained and set a time-limit for the competent court to decide the complainant's case. The Court is therefore satisfied 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.

41. 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).

42. In the instant case, the applicants did not file a constitutional complaint, but instead, they lodged their 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 paragraph 24 above). Accordingly, the applicants cannot be expected to have filed such a complaint, which at that time did not offer them any reasonable prospect of success.

43. 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.

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

4. Conclusion

45. 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

46. The Government submitted that the applicants had had access to a court in that they had instituted civil proceedings for damages in the Virovitica Municipal Court. The fact that the proceedings were stayed pursuant to the 1996 Amendment did not put at risk the very essence of the right of access to a court because the stay was only temporary. By the enactment of the 2003 Liability Act, the applicants were again granted access to a court.

47. The applicants contested those views. They maintained that, in the period in which the proceedings were stayed, they had not had an effective access to a court and that this period had been excessive.

48. 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).

49. 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).

50. The Court further stresses that in the *Kutić* case it found a violation of the applicants' right of access to a court, under Article 6 § 1 of the Convention, because, as a result of legislative intervention, the applicants' had been denied the possibility of having their claim determined by a court for a long period (see *Kutić v. Croatia*, cited above).

51. In the instant case, the proceedings were stayed by virtue of the Bjelovar County Court's decision of 29 February 1996. However, they had been *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.

52. The Court considers, in accordance with its case-law (see *Kutić v. Croatia*, cited above, and *Kastelic v. Croatia*, no. 60533/00, 10 July 2003) that the long period for which the applicants were prevented from having their civil claim determined by domestic courts as a consequence of a legislative measure constitutes a violation of Article 6 § 1 of the Convention.

II.. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. 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

54. The applicants claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

55. The Government deemed the amount claimed by the applicants excessive.

56. The Court finds that the applicants 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 applicants jointly EUR 8,000 as compensation for non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

57. The applicants also claimed EUR 3,000 for costs and expenses. However, they gave no particulars of this claim, as required by Rule 60 of the Rules of Court, although they were invited to do so. In these circumstances, the Court makes no award under this head.

C. Default interest

58. 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 jointly, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 8,000 (eight thousand euros) in respect of non-pecuniary damage, which should 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* unanimously the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 24 March 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President