



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

FIRST SECTION

CASE OF ZADRO v. CROATIA

(Application no. 25410/02)

JUDGMENT

STRASBOURG

26 May 2005

FINAL

26/08/2005

*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 Zadro v. Croatia,

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

Mr C.L. ROZAKIS, *President*,

Mr L. LOUCAIDES,

Mr P. LORENZEN,

Mrs N. VAJIĆ,

Mr A. KOVLER,

Mrs E. STEINER,

Mr K. HAJIYEV, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 3 May 2005,

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

PROCEDURE

1. The case originated in an application (no. 25410/02) 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, Ms Nevenka Zadro (“the applicant”), on 13 June 2002.

2. The applicant was represented by Ms T. Burjačenko-Grubiša, a lawyer practising in Zagreb. The Croatian Government (“the Government”) were represented by their Agents, firstly Ms L. Lukina-Karajković and then by Ms Š. Stažnik.

3. On 3 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.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1942 and lives in Zagreb.

5. On 14 April 1992 the applicant's house in Vinkovci, Croatia was blown up by unknown perpetrators.

6. On 12 July 1993 the applicant, together with her husband, filed a civil action with the Vinkovci Municipal Court (*Općinski sud u Vinkovcima*) against the State seeking damages in the amount of 847,671 Croatian kunas

(HRK) for her destroyed property. She relied on section 180 of the Civil Obligations Act.

7. The court held hearings on 15 December 1993, 5 January and 22 March 1994 and 6 February 1996.

8. On 3 February 1996 the Amendment to the Civil Obligations Act (“the 1996 Amendment”) entered into force. It provided that all proceedings concerning actions for damages resulting from terrorist acts were to be stayed pending enactment of new legislation on the subject.

9. On 25 July 1996 the applicant's husband applied to the administrative authorities for reconstruction assistance in order to obtain financial means to reconstruct their destroyed house. On 9 August 1996 the competent administrative authority granted his request. The reconstruction was completed on 26 May 1997. The total amount the State spent on the reconstruction of the house amounted to HRK 234,040.

10. On 27 March 2002 the Vinkovci Municipal Court stayed the above mentioned civil proceedings pursuant to the 1996 Amendment.

11. On 31 July 2003 the Act on Liability for Damage Resulting from Terrorist Acts and Public Demonstrations (“the 2003 Liability Act”) entered into force.

12. Pursuant to the 2003 Liability Act, on 14 January 2004 the Municipal Court resumed the proceedings and, on 19 February 2004, dismissed the applicant's action finding that it no longer had jurisdiction in the matter. It appears that the applicant did not appeal against that decision.

II. RELEVANT DOMESTIC LAW AND PRACTICE

13. 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 terrorist acts 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.”

14. 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.”

15. 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 and 117/03) provides:

Section 212

“Proceedings shall be stayed:

...

(6) where another statute so prescribes.”

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.

17. 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.

18. In its decision Rev-905/04-2 of 4 November 2004 the Supreme Court held that a tort claim for damages directed against the State in civil proceedings and a request for reconstruction assistance in administrative proceedings, since based on different legal grounds, were to be considered separate claims even though they both aimed at obtaining compensation for the damage incurred due to a terrorist act.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

19. The applicant complained that Parliament's enactment of the 1996 Amendment violated her 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

20. The Government argued that, since the State had reconstructed the applicant's house, she cannot claim to be a victim within the meaning of Article 34 of the Convention of the violation alleged.

The applicant disagreed with the Government.

The Court notes that in their observations the parties put forward the same arguments concerning the applicant's victim status and the merits of the application (see below). It therefore decides to join to the merits the question of the applicant's victim status.

21. 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

22. The Government submitted that no violation of the applicant's right of access to a court had taken place because the destroyed family house, for which she sought damages in the civil proceedings, had been reconstructed by 26 May 1997 out of State funds in accordance with the Reconstruction Act. They argued that the applicant and her husband had attempted to obtain double compensation for the same damage relying on two different, mutually exclusive, legal grounds: in civil proceedings relying on section 180 of the Civil Obligations Act, and in administrative proceedings relying on the Reconstruction Act. The applicant has realised her right to damages for the destroyed family house in the administrative proceedings (which were instituted by her husband, but also on her behalf). It follows that her civil claim was actually decided in these proceedings. Consequently, she must be taken to have access to a court in respect of her claim.

23. The applicant submitted that the reconstruction assistance which she had received constituted only partial compensation for the damage incurred

since, *inter alia*, it did not cover the value of the destroyed movable property in the house. For this reason, she had maintained her claim for damages in civil proceedings seeking full compensation. Therefore, she had sufficient legal interest to institute these proceedings separately from the administrative proceedings and to obtain a decision on the merits.

24. 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).

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. Turning to the present case, the Court firstly notes that the Supreme Court has already pronounced that under domestic law a tort claim against the State for damage incurred as a result of a terrorist act was to be considered a claim separate from a reconstruction request made under the Reconstruction Act (see paragraph 18 above under Relevant domestic law and practice). The Court sees no reason to hold otherwise. Accordingly, for the Court, the applicant was entitled to obtain a decision on the merits of her tort claim in the civil proceedings complained of.

27. 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.

28. 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 her 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

29. 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

30. The applicant claimed HRK 613,631 in respect of pecuniary damage. She explained that this sum represents the amount needed to repair the house completely since the State arranged for only partial reparation. She also claimed HRK 90,000 in respect of non-pecuniary damage.

31. The Government deemed the amount claimed by the applicant excessive.

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

33. 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, in particular the fact that her house had been reconstructed, the Court awards the applicant 1,000 euros (EUR) as compensation for non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

34. The applicant also claimed EUR 1,100 for the costs and expenses incurred before the Court.

35. 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, regard being had to the information in its possession and the above criteria as well as the fact that the applicant was represented by an advocate only at a very late phase of the proceedings, the Court considers it reasonable to award the sum of EUR 750 for the proceedings before the Court, plus any tax that may be chargeable.

C. Default interest

36. 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 1,000 (one thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 750 (seven hundred and fifty 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 26 May 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President