



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

FIRST SECTION

CASE OF MARINOVIĆ v. CROATIA

(Application no. 24951/02)

JUDGMENT

STRASBOURG

22 September 2005

FINAL

22/12/2005

*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 Marinović 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,

Ms N. VAJIĆ,

Mr D. SPIELMANN,

Mr S.E. JEBENS, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 1 September 2005,

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

PROCEDURE

1. The case originated in an application (no. 24951/02) 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 Dijana Marinović (“the applicant”), on 13 May 2002.

2. The applicant was represented by Mr D. Rajić and Mr M. Bruketa, lawyers practising in Požega. The Croatian Government (“the Government”) were represented by their Agents, firstly by Ms L. Lukina-Karajković and subsequently by Ms Š. Stažnik.

3. On 28 January 2004 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 1965 and lives in Požega.

5. On 20 June 1991 the applicant sustained an injury in a traffic accident caused by a certain A.P., member of the Yugoslav People’s Army (“the YPA”).

6. On 10 August 1993 the applicant brought a civil action against the State in the Požega Municipal Court seeking non-pecuniary damages in the amount of 150,000 Croatian kunas (HRK).

7. On 21 June 1995 the Požega Municipal Court partly ruled in the applicant's favour by awarding her HRK 26,530. The State appealed.

8. In August 1996 the Požega County Court (*Županijski sud u Požegi*) quashed the first instance judgment and remitted the case.

9. In the resumed proceedings, on 6 February 1998 the Požega Municipal Court delivered an interim judgment (*međupresuda*) finding the State liable for the damage. It held that the State had taken over not only the rights and property of the former Yugoslavia, but also its obligations. The State appealed.

10. On 9 July 1998 the Požega County Court reversed the interim judgment finding that the State was not liable for the damage as it was not a legal successor of the former Yugoslavia and had not taken over any liability for damages caused by members of the YPA.

11. On 9 September 1999 the applicant lodged an appeal on points of law (*revizija*) with the Supreme Court (*Vrhovni sud Republike Hrvatske*) alleging that the County Court wrongly applied the substantive law.

12. On 6 November 1999 the Amendments to the Civil Obligations Act ("the 1999 Amendments") entered into force.

13. On 23 January 2002 the Supreme Court returned the case-file to the Požega Municipal Court with the instruction to stay the proceedings, pursuant to the above Act.

14. On 10 May 2002 the Požega Municipal Court decided to stay the proceedings. On 18 July 2002 the Požega County Court dismissed the applicant's appeal against that decision.

15. On 31 July 2003 the Act on the Liability of the Republic of Croatia for Damage Incurred in the Former Yugoslavia for which the Former Yugoslavia was Liable ("the 2003 Liability Act") entered into force.

16. Pursuant to the 2003 Liability Act, the proceedings resumed.

17. On 3 September 2003 the Supreme Court upheld the applicant's appeal on points of law, quashed the County Court judgment of 9 July 1998 and the Municipal Court's judgment of 6 February 1998 and remitted the case to the first instance court.

18. In the resumed proceedings, on 28 April 2004 the Municipal Court gave judgment partly accepting the applicant's claim and awarded her HRK 101,000. The applicant appealed.

19. On 15 February 2005 the County Court dismissed the applicant's appeal and upheld the first instance judgment, which thereby became final.

20. Meanwhile, on 14 May 2002 the applicant lodged a constitutional complaint concerning the length of the proceedings. On 27 May 2004 the Constitutional Court (*Ustavni sud Republike Hrvatske*) dismissed the applicant's complaint.

II. RELEVANT DOMESTIC LAW

21. Section 184 (b) of the Amendments to the Civil Obligations Act (*Zakon o dopunama Zakona o obveznim odnosima*, Official Gazette no. 112/1999 of 29 October 1999) provided that all proceedings concerning compensation for damage incurred in the former Yugoslavia and instituted against the State, as one of its legal successors, were to be stayed pending the enactment of new legislation on the subject.

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.

22. 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), as in force at the material time, provided:

Section 212

“Proceedings shall be stayed:

...

(6) where another statute so prescribes.”

Section 382 (1)

“Parties may lodge an appeal on points of law [*revizija*] against *res judicata* judgment given by the second instance court within 30 days following the date of service of a copy of the judgment.”

Section 384

“An appeal on points of law shall not postpone the enforcement of *res judicata* judgment against which it has been lodged.”

Section 385 provides that an appeal on points of law may be lodged on grounds of certain procedural errors or wrong application of the substantive law but not for factual shortcomings.

Sections 394 - 396 specify the cases, in which the Supreme Court may, if it finds an appeal on points of law well-founded, quash the second instance judgment and remit the case, as well as those in which it may reverse such a judgment.

23. The 2003 Act on the Liability of the Republic of Croatia for Damage Incurred in the Former Yugoslavia for which the Former Yugoslavia was Liable (*Zakon o odgovornosti Republike Hrvatske za štetu nastalu u bivšoj SFRJ za koju je odgovarala bivša SFRJ*, Official Gazette no. 117/2003 of 23 July 2003) regulates circumstances in which compensation for such damage may be claimed from the State.

THE LAW

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

24. The applicant complained that the entry into force of the 1999 Amendments violated her right of access to a court. She relied on Article 6 § 1, 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...”

A. Admissibility

1. *Compatibility* *ratione temporis*

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

26. The applicant did not comment on that issue.

27. The Court notes that the applicant’s proceedings were *de facto* stayed on 6 November 1999, when the 1999 Amendments entered into force. The applicant’s proceedings resumed on 31 July 2003, pursuant to the 2003 Liability Act. Accordingly, the Court has competence *ratione temporis* to examine the application.

2. *The applicant’s victim status*

28. The Government submitted that the applicant could not claim to be the victim 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 1999 Amendments were to be resumed, entered into force.

29. The applicant did not comment on that issue.

30. 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).

31. The Court observes that the present complaint concerns a situation where the applicant's proceedings were stayed between November 1999 and July 2003 i.e. for about three years and nine months – a situation that may raise an issue under Article 6 § 1 of the Convention. However, the alleged violation was not recognised by any decision of the domestic authorities, nor was the applicant awarded any compensation for it.

32. In such circumstances, the Court finds that the applicant may claim to be the victim of a violation of her 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.

4. Conclusion

33. 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

34. The Government submitted that the applicant had had access to a court in that she had instituted the civil proceedings herself. The fact that the proceedings were stayed pursuant to the 1999 Amendments 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 applicant was again granted access to a court and the Supreme Court gave decision on her appeal on points of law in the shortest possible time.

35. They further submitted that in the present case, unlike in the *Aćimović* case (see *Aćimović v. Croatia*, no. 61237/00, ECHR 2003-XI) and *Kutić* and *Multiplex* cases (see *Kutić v. Croatia*, no. 48778/99, ECHR 2002-II; *Multiplex v. Croatia*, no. 58112/00, 10 July 2003), the proceedings were stayed at a time when the applicant's civil rights had already been determined by the judgment of the Požega County Court of 9 July 1998, constituting *res judicata*, and the case was pending before the Supreme Court following the applicant's appeal on points of law – an extraordinary remedy against that judgment. Therefore, the degree of uncertainty concerning the determination of the applicant's civil claim was not the same as that of the applicants in the above-cited cases in which the proceedings were stayed while pending before the first or second instance courts.

36. The applicant contested those views. She maintained that the period in which the proceedings were stayed had been excessive.

37. The Court notes that the proceedings were stayed by the Požega Municipal Court's decision of 10 May 2002. However, they were *de facto*

stayed from 6 November 1999, the day on which the 1999 Amendments entered into force, until at least 31 July 2003, when the 2003 Liability Act entered into force, i.e. for a period of about three years and nine months.

38. The Court recalls that in the *Multiplex* and other cases 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 the same legislative intervention, the applicants had been denied the possibility of having their claim determined by a court for a long period (see *Multiplex v. Croatia*, cited above). Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case.

39. The Court notes the Government's argument that the mere fact that the proceedings were stayed in their phase before the Supreme Court did not amount to depriving the applicant of her right of access to a court, since the second instance decision was in any event binding, an appeal on points of law having no suspending effect. However, the Court observes that the applicant's claim was dismissed by the second instance court and that the Supreme Court eventually quashed this decision and remitted the case.

In these circumstances it cannot be argued that the degree of uncertainty concerning the determination of the applicant's civil claim was different from that experienced by the applicants in the cases relied on by the Government.

40. Having regard to its case-law on the subject (see *Multiplex v. Croatia*, cited above; and *Aćimović v. Croatia*, cited above), the Court considers that the fact that the applicant was prevented by legislation for a prolonged period from having her civil claim determined by the domestic courts constitutes a violation of her right of access to a court.

There has accordingly been a breach of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

41. The applicant complained of a violation of her right to an effective remedy. She relied on Article 13 of the Convention which reads as follows:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

42. The Government contested that argument.

43. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

44. It further notes that the complaint under Article 13 arises out of the same facts as those it examined when dealing with the complaint under Article 6 of the Convention. Having regard to its decision on Article 6 § 1, the Court considers that it is not necessary to examine the case under

Article 13 since its requirements are less strict than, and are here absorbed by those of Article 6 § 1 (see, notably, *Osu v. Italy*, no. 36534/97, § 43, 11 July 2002).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. 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

46. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

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

48. 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 4,000 euros as compensation for non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

49. The applicant also claimed HRK 7,000 for the costs and expenses incurred before the Court. However, she gave no particulars of this claim, as required by Rule 60 of the Rules of Court, although she was invited to do so. In these circumstances, the Court makes no award under this head.

C. Default interest

50. 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* that it is unnecessary to examine the applicant's complaint under Article 13 of the Convention;
4. *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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 September 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President