



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

FIRST SECTION

CASE OF PAPUK TRGOVINA D.D. v. CROATIA

(Application no. 2708/03)

JUDGMENT

STRASBOURG

6 October 2005

FINAL

06/01/2006

*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 Papuk Trgovina d.d. 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. BOTOUCHAROVA,

Mr A. KOVLER,

Mrs E. STEINER,

Mr K. HAJIYEV, *judges*,

and Mr S. QUESADA, *Deputy Section Registrar*,

Having deliberated in private on 15 September 2005,

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

PROCEDURE

1. The case originated in an application (no. 2708/03) 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 Papuk Trgovina d.d. (“the applicant company”) on 10 December 2002.

2. The applicant company was represented by Mr B. Posavčić, a lawyer practising in Kutina. The Croatian Government (“the Government”) were represented by their Agent, Ms Š. Stažnik.

3. On 11 October 2004 the Court decided to communicate the complaint concerning the right of access to a court 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 company is a joint stock company with its seat in Pakrac, Croatia.

5. On 21 and 23 August 1991 the Croatian police requisitioned several vehicles belonging to the applicant company.

6. In March 1995 the applicant company instituted civil proceedings in the Zagreb Municipal Court (*Općinski sud u Zagrebu*) seeking damages

from the Republic of Croatia. It based its claim on section 180 of the Civil Obligations Act.

7. On 6 November 1999 Parliament introduced amendments to the Civil Obligations Act (“the 1999 Amendments”). The amended legislation provided that all proceedings 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.

8. On 21 January 2000 the Zagreb Municipal Court stayed the proceedings pursuant to the above legislation.

9. 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”).

10. The proceedings resumed on 5 November 2003 and are still pending.

II. RELEVANT DOMESTIC LAW AND PRACTICE

11. 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.

12. 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.

13. 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. 117/2003) 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.

14. The relevant part of section 63 of the Constitutional Act on the Constitutional Court (*Ustavni zakon o Ustavnom sudu Republike Hrvatske*, Official Gazette no. 49/2002, “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.”

15. Article 29 § 1 of the Constitution (*Ustav Republike Hrvatske*, Official Gazette no. 41/2001) 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.”

16. 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 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

17. The applicant company complained that it had not had access to a court because the Zagreb Municipal Court had stayed its proceedings pursuant to the 1999 Amendments. It 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

1. *Compatibility* *ratione personae*

18. The Government acknowledged that legal entities may in principle have the status of victims of alleged violations of the Convention. However, the name under which the present application was lodged (*Papuk trgovina, d.o.o.*, a limited liability company), was not an existing company registered under Croatian law. Moreover, the Government submitted that the domestic

proceedings had been conducted by a joint stock company (*Papuk trgovina, d.d.*).

19. In response, the applicant company's lawyer submitted an excerpt from the Court Registry of the Slavonski Brod Commercial Court (*Izvadak iz sudskog registra Trgovačkog suda u Slavonskom Brodu*). It can be established from the excerpt that the applicant company was indeed a joint stock company. The lawyer further admitted to have made a mistake in the application form and requested the Court to take into account the corrected version of the applicant company's name.

20. The Court observes that the same joint stock company filed the civil action in the domestic courts and the application with the Court. In these circumstances, the Court does not attach importance to the clerical mistake made by the applicant company's lawyer when submitting the application form to the Court. This objection of the Government must therefore be dismissed.

2. The applicant company's victim status

21. The Government further submitted that the applicant company could no longer 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 the proceedings stayed under the 1999 Amendments were to be resumed.

22. The applicant company disagreed with the Government.

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 company was deprived of access to a court in the period between November 1999 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 company awarded any compensation for it.

25. In such circumstances, the applicant company may claim to be a victim of a violation of the rights guaranteed by the Convention (see, for example, *Lulić and Becker v. Croatia*, no. 22857/02, § 34, 24 March 2005).

26. Accordingly, the Government's objection must be dismissed.

3. *Exhaustion of domestic remedies*

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

28. 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.

29. The Government pointed out that the proceedings in the applicant company's case were still pending and that consequently it could have lodged 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 such a complaint 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.

30. The applicant company contested that view. It maintained that it lodged the application with the Court before the change in the jurisprudence of the Constitutional Court.

31. The Court recalls that, in light of the new case-law referred to by the Government, a complaint to the Constitutional Court was to be regarded as an effective domestic remedy for issues of access to court, which needs to be exhausted before addressing the Court in all applications lodged subsequent to the first decision establishing such new practice (see *Pikić v. Croatia*, no. 16552/02, § 29, 18 January 2005). However, the Court also ruled that there existed no special circumstances which would justify the departure from the general non-exhaustion rule in respect of applications introduced prior to the occurrence of the new case-law (see *Pikić*, cited above, § 32). The Court sees no reason to depart from this conclusion.

32. In the present case the application with the Court was lodged on 10 December 2002, whereas the new domestic remedy became available only on 24 March 2004.

33. Accordingly, the Government's objection must be dismissed.

4. Conclusion

34. The Court notes that this complaint 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

35. The Government submitted that the applicant company had had access to a court in that it had instituted civil proceedings for damages in the Zagreb Municipal Court. The fact that the court had stayed the proceedings pursuant to the 1999 Amendments had not affected its 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 company 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 company contested those views. It maintained that by failing to adopt new legislation within the set time-limit, the State had prevented it from obtaining compensation for the requisitioned vehicles.

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 recalls that in the *Kutić* and *Multiplex* cases it found a violation of the applicants' right of access to a court, under Article 6 § 1 of the Convention, in that, as a result of legislative intervention, they had been denied the possibility of having their claim determined by a court for a lengthy period of time (see *Kutić v. Croatia*, cited above, § 33; *Multiplex v. Croatia*, no. 58112/00, § 55, 10 July 2003).

41. In the instant case, the proceedings were stayed *de facto* since 6 November 1999 when the 1999 Amendments were enacted. As a result of those Amendments, the Zagreb Municipal Court was unable to proceed with the examination of the applicants' claim at least until July 2003 when new legislation was passed.

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 company was prevented by legislation for a prolonged period from having its civil claim determined by the domestic courts constitutes a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

43. The applicant company further complained that the State deprived it of its property without providing for adequate compensation. It relied on Article 1 of Protocol No. 1 to the Convention, which reads as follows:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

44. The Court observes that the alleged taking of the property occurred in August 1991 and that it was an instantaneous act, which did not create any continuous situation. On the other hand, the Convention entered into force in respect of Croatia on 5 November 1997.

45. The Court notes further that although the legislative interference took place after the Convention had entered into force in respect of Croatia, it was so closely related to the events that gave rise to the applicant's claim that divorcing the two would amount to giving retroactive effect to the Convention which would be contrary to general principles of international

law (see, for example, *Aćimović v. Croatia* (dec.), no. 61237/00, 7 November 2002)

46. It follows that this complaint is incompatible *ratione temporis* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

47. 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

48. The applicant company claimed 300,000 Croatian kunas (HRK) (approximately 40,540 euros (EUR)) in respect of pecuniary damage and HRK 80,000 (approximately EUR 10,810) in respect of non-pecuniary damage.

49. The Government deemed the amounts claimed excessive.

50. 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 would be if they were in conformity with the requirements of Article 6 § 1 of the Convention (see, *inter alia*, *Göçer v. the Netherlands*, no. 51392/99, § 37, 3 October 2002). No award of pecuniary damage is therefore made.

51. However, the Court finds that the applicant company 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 company EUR 4,000 under this head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

52. The applicant company did not make any claims in respect of costs or expenses. Accordingly, no award is made under this head.

C. Default interest

53. 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 complaint concerning access to court admissible and the remainder of the application inadmissible;
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 company, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amount which should be converted into Croatian kunas at the rate applicable at the date of settlement:
 - (i) EUR 4,000 (four thousand euros) in respect of non-pecuniary damage;
 - (ii) any tax that may be chargeable on the above amount;
 - (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 company's claim for just satisfaction.

Done in English, and notified in writing on 6 October 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Deputy Registrar

Christos ROZAKIS
President