



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

FIRST SECTION

CASE OF SUBAŠIĆ v. CROATIA

(Application no. 18322/03)

JUDGMENT

STRASBOURG

1 December 2005

FINAL

01/03/2006

*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 Subašić v. Croatia,

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

Mr C.L. ROZAKIS, *President*,

Mrs F. TULKENS,

Mr P. LORENZEN,

Ms N. VAJIĆ,

Mrs E. STEINER,

Mr D. SPIELMANN,

Mr S.E. JEBENS, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 10 November 2005,

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

PROCEDURE

1. The case originated in an application (no. 18322/03) 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 a national of Bosnia and Herzegovina, Mr Edhem Subašić (“the applicant”), on 15 May 2003.

2. The applicant was represented by Mr A. Miličević, a lawyer practising in Makarska. The Croatian Government (“the Government”) were represented by their Agents, firstly by Ms L. Lukina-Karajković and subsequently by Ms Š. Stažnik.

3. On 16 September 2004 the Court decided to communicate the complaint concerning 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.

4. In addition, third-party comments were received from the Government of Bosnia and Herzegovina, which had exercised its right to intervene (Article 36 § 1 of the Convention and Rule 44 § 1 (b) of the Rules of Court). The parties replied to those comments (Rule 44 § 5).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1930 and lives in Sarajevo.

6. On 25 August 1993 the Military Police seized the applicant's car in front of his house in Mala Duba near Makarska, Croatia.

On 10 September 1993 the applicant brought a civil action in the Makarska Municipal Court (*Općinski sud u Makarskoj*) against the State seeking recovery of the seized car or, alternatively, pecuniary damages.

7. On 13 November 1997 the Municipal Court gave judgment by which it accepted the applicant's claim and awarded him the damages sought.

8. On 2 February 1998 the State lodged an appeal against the judgment with the Split County Court (*Županijski sud u Splitu*).

9. On 6 November 1999 the Amendments to the Civil Obligations Act ("the 1999 Amendments") entered into force. The amended legislation provided 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 were to be stayed.

10. After the enactment of the above legislation, the County Court returned the case-file to the Municipal Court with a view to staying the proceedings.

11. On 10 February 2003 the Municipal Court stayed the proceedings.

12. On 8 April 2003 the applicant appealed against that decision to the Split County Court. The proceedings are currently pending before that court.

13. On 31 July 2003 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") entered into force.

14. Meanwhile, on 8 August 2002 the applicant filed a constitutional complaint concerning the length of the proceedings. To date, the Constitutional Court has not given a decision on the applicant's complaint.

II. RELEVANT DOMESTIC LAW AND PRACTICE

15. Section 184 (a) 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 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 were to be stayed. 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.

16. The Act on the liability of the Republic of Croatia for damage caused by members of the Croatian army and police when acting in their official capacity during the Homeland war (*Zakon o odgovornosti Republike Hrvatske za štetu uzrokovanu od pripadnika hrvatskih oružanih i redarstvenih snaga tijekom Domovinskog rata*, Official Gazette no.

117/2003 of 23 July 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.

17. 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 of 3 May 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.”

18. Article 29 § 1 of the Constitution (*Ustav Republike Hrvatske*, Official Gazette no. 41/2001 of 7 May 2001) 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.”

19. On 24 March 2004 the Constitutional Court gave decision no. U-III-829/2004 in the case of Mr N., who had lodged a constitutional complaint under section 63 of the 2002 Constitutional Court Act alleging a breach of Article 29 § 1 of the Constitution. He complained about the length of proceedings and the 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 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

20. The applicant complained that the entry into force of the 1999 Amendments violated his right of access to a court. He 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. *The applicant's victim status*

21. 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 entered into force, which provided that the proceedings stayed under the 1999 Amendments were to be resumed.

22. The applicant and the third party invited the Court to reject that objection.

23. The Court has held, in similar circumstances, that an applicant might claim to be the victim of a violation of his right of access to a court on account that the proceedings were stayed for a long period of time and the alleged violation was not recognised by any decision of the domestic authorities, nor was the applicant awarded any compensation for it (see *Urukalo and Nemet v. Croatia*, no. 26886/02, §§ 23-27, 28 April 2005; and *Lulić and Becker v. Croatia*, no. 22857/02, §§ 30-34, 24 March 2005). The Court sees no reason to depart from its view expressed in these judgments.

24. It follows that the Government's objection must be dismissed.

2. *Exhaustion of domestic remedies*

25. The Government also submitted that the complaint was premature because the applicant's constitutional complaint was pending before the Constitutional Court. In the Government's opinion, the decision of the Constitutional Court of 24 March 2004 created a new domestic remedy for the alleged lack of access to court.

26. The applicant and the third party invited the Court to reject that objection. The third party noted that the proceedings before the Constitutional Court were instituted in August 2002 and are still pending i.e. they have already lasted more than three years. It follows, they argued, that these proceedings are unduly delayed and that the applicant should be exempted from awaiting their outcome.

27. The Court has held, in similar circumstances, that the remedy in issue does not constitute a remedy to be exhausted in respect of applications lodged before 24 March 2004 (see *Andrić v. Croatia* (dec.), no. 9707/02, 19 May 2005, unreported; and, *mutatis mutandis*, *Pikić v. Croatia*, no. 16552/02, §§ 24-33, 18 January 2005). The present application was lodged on 15 May 2003.

28. Accordingly, the Government's objection must be dismissed and the third party's argument need not be addressed.

3. Conclusion

29. 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

30. The Government submitted that the applicant had had access to a court in that he had instituted civil proceedings. 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.

31. The applicant and the third party contested those views. The third party argued that the present case does not differ from *Aćimović v. Croatia* (no. 61237/00, ECHR 2003-XI) in which the Court found a violation of the applicant's right of access to a court.

32. The Court notes that the proceedings were stayed by the Makarska Municipal Court's decision of 10 February 2003. 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.

33. 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, *inter alia*, *Multiplex v. Croatia*, 10 July 2003, no. 58112/00; and *Aćimović 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.

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

34. The applicant complained of a violation of his right to an effective remedy. He 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.”

35. The Court 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

36. 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

37. The applicant claimed 100,000 Croatian kunas (HRK) in respect of non-pecuniary damage.

38. The Government deemed the amount excessive.

39. 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 4,000 euros (EUR) as compensation for non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

40. The applicant also claimed HRK 12,200 for the costs and expenses incurred before the Court, and submitted itemised particulars of his claim. However, he did so outside the time-limit fixed for the submission of his observations and without enclosing any relevant supporting documents. It follows that the applicant failed to comply with the requirements set out in

Rule 60 § 2 of the Rules of Court. In these circumstances, the Court makes no award under this head (Rule 60 § 3).

C. Default interest

41. 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 a 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, 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 1 December 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President