



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

FIRST SECTION

CASE OF KRIVOKUĆA v. CROATIA

(Application no. 38770/02)

JUDGMENT

STRASBOURG

23 March 2006

FINAL

23/06/2006

*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 Krivokuća 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,

Mrs N. VAJIĆ,

Mr D. SPIELMANN,

Mr S.E. JEBENS, *judges*,

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

Having deliberated in private on 2 March 2006,

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

PROCEDURE

1. The case originated in an application (no. 38770/02) 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, Mr Milan Krivokuća (“the applicant”), on 4 October 2002.

2. The Croatian Government (“the Government”) were represented by their Agent, Ms Š. Stažnik.

3. On 25 November 2004 the Court declared the application partly inadmissible and 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.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1929 and lives in Maastricht, the Netherlands.

5. In May 1995 a certain A.Š. broke in and occupied the applicant’s summer house in Sabunike near Zadar. Following the applicant’s successful civil action, on 8 October 2001 A.Š. vacated the house.

6. 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 or acts of violence were to be stayed pending the enactment of new legislation on the subject.

7. On 20 March 1999 the applicant brought a civil action against the State and the County of Zadar (*Županija Zadarska* – “the County”) with the Zadar Municipal Court seeking damages. He argued that the State and the County were liable for A.Š.’s breaking into his house and the ensuing damage. In particular, the applicant sought compensation for the rent lost due to the prolonged inability to let the house to tourists and for the value of the stolen movable property.

8. On 25 May 2000 the Municipal Court dismissed the applicant’s claim. It found that A.Š.’s act was not to be qualified as an act of violence for which the State or the County was liable. Accordingly, there was no need to stay the proceedings pursuant to the 1996 Amendment. The applicant appealed.

9. On 17 April 2002 the Zadar County Court quashed the first-instance judgment and remitted the case. It found that the subject-matter of the case was to be considered an act of violence for which the State or the County was liable. Accordingly, it instructed the Municipal Court to stay the proceedings pursuant to the 1996 Amendment.

10. On 30 April 2002 the Municipal Court stayed the proceedings.

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 15 February 2005 the Municipal Court resumed the proceedings and scheduled a hearing for 11 April 2005.

II. RELEVANT DOMESTIC LAW

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. 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.”

19. 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.”

20. 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 a hearing 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 OF THE CONVENTION

21. The applicant complained about the prolonged inability to obtain compensation for his property. He relied on Article 1 of Protocol No. 1 to the Convention.

In its partial decision on inadmissibility (see *Krivokuća v. Croatia* (dec.), no. 38770/02, 25 November 2004) the Court held that this situation was due to the 1996 legislation, which had prevented the courts from deciding on the merits of the applicant’s action for damages. It therefore decided to examine the case under Article 6 § 1 which, in the 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*

22. The Government submitted that the applicant could not claim to be a 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 1996 Amendment were to be resumed.

Observing that the Municipal and the County Court had differed in the legal qualification of the facts of the case and that the proceedings are still pending, the Government also expressed their doubts as to the applicability of the 1996 Amendment to the proceedings complained of. That being so, they argued, if the Court finds for the applicant he could obtain just satisfaction for a violation stemming from the legislation which should not have been applied to his case in the first place.

Lastly, they noted that in the present case, unlike in the *Kutić* case and similar cases (see *Kutić v. Croatia*, no. 48778/99, ECHR 2002-II) the alleged act of violence had not been committed by unknown perpetrators but by an easily identifiable individual. Therefore, in their view, the applicant had an alternative to suing the State since he could have directly sued A.Š. for damages.

23. The applicant disagreed with the Government.

24. The Court has held that an applicant could 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 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).

25. The Court has also held that its task is not to deal with errors of law that domestic courts may have committed unless and in so far as they may have infringed the rights and freedoms protected by the Convention (see, *inter alia*, *mutatis mutandis*, *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I). Therefore, it is irrelevant whether the 1996 Amendment should have been applied to the applicant's case. Rather, what is important is whether it was actually applied and whether its application resulted in proceedings being stayed for a long time (see, by converse implication, *Gregurinčić v. Croatia* (dec.), no. 12833/02, 1 September 2005, *Marinković v. Croatia* (dec.), no. 13854/02, 16 June 2005 and *Bijelić v. Croatia* (dec.), no. 33250/02, 19 May 2005).

26. The Court observes that the proceedings complained of were stayed by the Zadar Municipal Court's decision of 30 April 2002. However, they had been *ex lege* stayed from 20 March 1999, the day on which the applicant had brought his civil action, until at least 31 July 2003, when the

2003 Liability Act entered into force, that is, for about four years and four months. The alleged violation was not recognised by any decision of domestic courts, nor was the applicant awarded any compensation for it.

27. Lastly, the Court notes that even though they both aim at obtaining compensation for the same damage and are contingent, a tort claim for damages directed against a perpetrator of an act of violence and a similar claim directed against the State are separate claims, since they are based on different legal grounds and different criteria of liability. Rather than complaining about the violation of his right of access to a court in respect of his tort claim against A.Š., the applicant complained about such a violation in respect of his tort claim against the State – a “civil right” clearly recognised in domestic law.

28. In these circumstances, the Court finds that the applicant may claim to be the victim of a violation of his 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.

2. Exhaustion of domestic remedies

29. 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. In their opinion, the decision of the Constitutional Court of 24 March 2004 (see paragraph 20 above) created a new domestic remedy for the alleged lack of access to court.

30. The applicant did not comment on this issue.

31. 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, for example, *Papuk Trgovina d.d. v. Croatia*, no. 2708/03, § 31, 6 October 2005, and *Pikić v. Croatia*, no. 16552/02, §§ 24-33, 18 January 2005). The present application was lodged on 4 October 2002.

32. Accordingly, the Government’s objection must be dismissed.

3. Conclusion

33. The Court further notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It also notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

34. The Court has frequently found violations of the applicants’ right of access to a court under Article 6 § 1 of the Convention in cases raising

issues similar to the one in the present case (see *Kutić v. Croatia*, cited above, and *Multiplex v. Croatia*, no. 58112/00, 10 July 2003).

35. 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.

II. 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 84,052 euros (EUR) in respect of pecuniary and non-pecuniary damage.

38. The Government deemed the amount of pecuniary damage excessive.

39. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 4,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

40. The applicant, who was not represented by a lawyer, did not make any claims under this head. Accordingly, the Court does not award him any.

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 remainder of 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 in accordance with 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 23 March 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Deputy Registrar

Christos ROZAKIS
President