



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

FIRST SECTION

CASE OF TOMAŠIĆ v. CROATIA

(Application no. 21753/02)

JUDGMENT

STRASBOURG

19 October 2006

FINAL

19/01/2007

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 Tomašić 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,

Mrs N. VAJIĆ,

Mr A. KOVLER,

Mrs E. STEINER,

Mr K. HAJIYEV, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 28 September 2006,

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

PROCEDURE

1. The case originated in an application (no. 21753/02) 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 Nenad Tomašić ("the applicant"), on 18 May 2002.

2. The Croatian Government ("the Government") were represented by their Agents, first Mrs L. Lukina-Karajković and subsequently Mrs Š. Stažnik.

3. On 11 December 2003 the Court declared the application partly inadmissible and decided to communicate the complaints concerning access to a court and effective remedy 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 1950 and lives in Bjelovar.

5. On 26 February 1992 the applicant's summer house in Velika Pisanica was blown up by unknown perpetrators.

6. On 24 February 1995 the applicant together with his wife brought a civil action against the State in the Zagreb Municipal Court (*Općinski sud u*

Zagrebu) seeking damages. They relied on section 180 of the Civil Obligations Act.

7. 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.

8. On 23 February 1996 the Municipal Court stayed the proceedings pursuant to the 1996 Amendment.

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

10. Pursuant to the 2003 Liability Act, on 17 February 2004 the Municipal Court resumed the proceedings. On 26 April 2004 it declared the applicant's action inadmissible finding that it no longer had jurisdiction in the matter.

11. The applicant appealed to the Zagreb County Court (*Županijski sud u Zagrebu*). It appears that the proceedings are currently pending before that court.

12. Meanwhile, on 24 April 2002 the applicant, represented by an attorney, lodged a constitutional complaint about the length of proceedings under section 63 of the Constitutional Court Act. On 7 July 2004 the Constitutional Court accepted the applicant's complaint. Relying on the Court's case law (*Kutić v. Croatia*, no. 48778/99, ECHR 2002-II), it found violations of the applicant's constitutional rights to a hearing within a reasonable time and of access to a court. It ordered the Zagreb Municipal Court to give a decision in the applicant's case within a year and awarded him compensation in the amount of 4,400 Croatian kunas (HRK).

II. RELEVANT DOMESTIC LAW

13. The relevant part of the Civil Obligations Act (*Zakon o obveznim odnosima*, Official Gazette, nos. 53/91, 73/91, 3/94, 7/96 and 112/99) 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. 24/96, 54/96, 87/96 and 57/00) 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. 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. The relevant part 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:

Section 63

“(1) The Constitutional Court shall examine a constitutional complaint whether or not all legal remedies have been exhausted if the competent court 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 competent court 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.”

Section 23 provides that, in proceedings before the Constitutional Court, each participant shall pay its own costs unless the court decides otherwise. The term “costs of proceedings” does not include the court fees since no such fees are payable in the proceedings before the Constitutional Court. Under the case-law of the Constitutional Court the issue of the recovery of the costs of proceedings is to be decided by that court if a participant makes a request to that end. For example, in case no. U-III-1384/2000 of 30 November 2000 the Constitutional Court denied the complainant's request for recovery of costs since the constitutional complaint had been dismissed.

20. The 1993 Tariff for Attorneys' Fees (*Tarifa o nagradama i naknadi troškova za rad odvjetnika*, Official Gazette nos. 69/93, 87/93, 16/94, 11/96), as in force at the material time (i.e. when the applicant lodged his constitutional complaint), provided that the fee for drafting a constitutional complaint amounted to HRK 400.

21. According to the 2004 Tariff for Attorneys' Fees (*Tarifa o nagradama i naknadi troškova za rad odvjetnika*, Official Gazette nos. 91/04, 37/05), the fee for drafting a constitutional complaint amounts to HRK 5,000.

THE LAW

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

22. The applicant complained that Parliament's enactment of the 1996 Amendment violated his 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

1. *The parties' arguments*

23. The Government submitted that the applicant could no longer 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. Moreover, the Constitutional Court had accepted the applicant's constitutional complaint, found a violation of his constitutional right of access to a court, and awarded him compensation. The violation complained of had, therefore, been remedied before the domestic authorities and the applicant had lost his victim status.

24. The applicant submitted that, in spite of the Constitutional Court's decision of 7 July 2004, he was still a “victim” within the meaning of Article 34 of the Convention. He argued that the amount of compensation was insufficient and significantly lower than amounts awarded by the Court in similar cases (see *Kutić v. Croatia*, no. 48778/99, § 39, ECHR 2002-II).

25. He further argued that, under the 2004 Tariff for Attorneys' Fees, the fee for drafting a constitutional complaint amounted to HRK 5,000. The Constitutional Court Act did not provide for the recovery of such fee in case of a favourable outcome of the proceedings before it. Accordingly, the compensation awarded to him had not been sufficient to cover even the costs of the legal representation, let alone the non-pecuniary damage incurred by the violation.

2. *The Court's assessment*

26. The Court recalls that in cases raising similar issues on the merits as the present case it found that long periods for which the applicants were prevented from having their civil claims determined as a consequence of the 1996 Amendment constituted violations of Article 6 § 1 of the Convention (see, for example, *Kutić v. Croatia*, cited above, § 33; and *Freimann v.*

Croatia, no. 5266/02, § 28, 24 June 2004). It has also held that even after the entry into force of the 2003 Liability Act and the resultant resumption of the proceedings, the applicants could still claim to be victims of violations of their right of access to a court because their proceedings had been stayed for a long time whereas the alleged violations had not been recognised by any decision of the domestic authorities, nor had they been awarded any compensation (see, for example, *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).

27. However, in the present case, the applicant's complaint concerning access to a court was examined by the Constitutional Court which adjudicated on it in its decision of 7 July 2004. Making an assessment on an equitable basis, it provided for redress of compensatory nature by awarding the applicant just satisfaction in respect of non-pecuniary damage in the amount of HRK 4,400. It also ordered the Municipal Court to decide the applicant's case within a year. However, at the time when the Constitutional Court ruled on the applicant's complaint, the Municipal Court had already done so.

28. The Court reiterates that a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status of a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see, as the most recent authority, *Cocchiarella v. Italy* [GC], no. 64886/01, § 71, to be published in ECHR 2006).

29. The Court observes that the Constitutional Court, expressly relying on the case-law of the Court, acknowledged that there had been a violation of the applicant's constitutional right of access to a court. The Court considers that such acknowledgment satisfies in substance the first condition laid down in the Court's case law.

30. The applicant's status of a victim then depends on whether the redress afforded was adequate and sufficient having regard to just satisfaction as provided for under Article 41 of the Convention (see, *mutatis mutandis*, *Dubjaková v. Slovakia* (dec.), no. 67299/01, 19 October 2004).

31. The Court notes that in the instant case the compensation awarded to the applicant was substantially lower than what the Court has awarded in similar cases (see, for example, *Kastelic v. Croatia*, no. 60533/00, § 41, 10 July 2003; *Crnojević v. Croatia*, no. 71614/01, § 29, 21 October 2004). However, adequacy of the redress falls to be assessed in the light of all the circumstances of the case (see, *mutatis mutandis*, *Dubjaková v. Slovakia* (dec.), cited above).

32. In this connection, the Court recalls that in the length-of-proceedings cases one of the characteristics of sufficient redress which may remove a litigant's victim status relates to the amount awarded. The amount depends, in particular, on the characteristics and effectiveness of the remedy. Thus,

the States which, like Croatia, opted for a remedy designed both to expedite proceedings and afford compensation is free to award amounts which – while being lower than those awarded by the Court – are not unreasonable (see *Cocchiarella v. Italy* [GC], cited above, §§ 93 and 96-97). This is so not only because such a remedy is closer and more accessible to an applicant than an application to the Court, but also because it is faster and is processed in the applicant's own language. It thus offers advantages that need to be taken into consideration (see *Cocchiarella v. Italy* [GC], cited above, § 139).

In the Court's view, these principles apply *mutatis mutandis* to the alleged violations of the right of access to a court in the circumstances similar to those of the present case.

33. The Court notes that in the present case Parliament enacted the legislation envisaged in the 1996 Amendment – the 2003 Liability Act – which now regulates all issues concerning damages from terrorist acts. The new legislation also put an end to the impugned legal situation providing that all proceedings stayed pursuant to the 1996 Amendment were to be resumed. Moreover, pursuant to the new legislation, the Municipal Court delivered a decision in the applicant's case. The Court also observes that, apart from awarding compensation to the applicant, in its decision the Constitutional Court was also willing to order the Municipal Court to expedite the proceedings. The part of its decision ordering the Municipal Court to decide the applicant's case within a year proved to be inoperative only because that court had already delivered a decision in the applicant's case.

34. As to the issue of attorney's fees, the Court reiterates that excessive procedural costs (including the attorney's fees) may significantly hamper an applicant's efforts to obtain compensation (see *Cocchiarella v. Italy* [GC], cited above, § 102). Given that in the proceedings before the Constitutional Court each participant, in principle, pays its own costs (see paragraph 19 above), the substantial raise of attorneys' fees (see paragraph 21 above) is a factor that should be taken into consideration in determining the amount of compensation. Otherwise, the domestic authorities risk reaching a paradoxical result that they take away with one hand what they awarded with the other (see, *mutatis mutandis*, *Cocchiarella v. Italy* [GC], § 92). However, the Court notes that in the instant case the attorney's fees did not exceed HRK 400 at the time the applicant lodged his constitutional complaint. Furthermore, the applicant did not submit any evidence proving that he had ever requested the Constitutional Court to compensate him for the costs of the proceedings, an option existing under section 23 of the Constitutional Court Act.

35. Nevertheless, taking into account all circumstances of the case, the Court considers that the amount of compensation which is approximately

15 % of what it generally awards in similar Croatian cases is manifestly unreasonable having regard to its case-law.

36. It follows that the redress afforded to the applicant cannot be regarded as adequate and sufficient. Accordingly, the applicant can still claim to be a “victim” of a breach of his right of access to a court, and the Government's objection must therefore be dismissed.

37. The Court further notes that this complaint 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

38. 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).

39. 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. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

40. The applicant also complained that they had no effective remedy at their disposal as guaranteed by 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.”

41. The Government contested that argument.

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

43. Having regard to the finding relating to Article 6 § 1 (see paragraph 39 above), the Court considers that it is not necessary to examine whether, in this case, there has also been a violation of Article 13 since its requirements are less strict than, and are here absorbed by, those of Article 6 § 1 (see, for example, *Dražić v. Croatia*, no. 11044/03, § 43, 6 October 2005).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. 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

45. The applicant claimed EUR 22,880 in respect of pecuniary damage and EUR 74,000 in respect of non-pecuniary damage.

46. The Government deemed the amounts claimed by the applicant excessive.

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

48. As to the non-pecuniary damage sought, the Court reiterates that where an applicant had resorted to an available domestic remedy and thereby obtained a finding of a violation and was awarded compensation, but can nevertheless still claim to be a “victim”, the amount to be awarded under Article 41 may be less than the amounts the Court was awarding in similar cases. In that case an applicant must be awarded the difference between the amount obtained from the Constitutional Court and an amount that would not have been regarded as manifestly unreasonable compared with the amounts awarded by the Court (see, *mutatis mutandis*, *Cocchiarella v. Italy* [GC], cited above, §§ 139-140).

49. The Court considers that, in the absence of domestic remedies, in the present case it would have awarded the sum of EUR 4,000. It has already found (see paragraph 35 above) that the applicant was awarded EUR 600 by the Constitutional Court, which is approximately 15 % of what the Court would have awarded him.

50. Having regard to the circumstances of the present case, the characteristics of the constitutional complaint as well as the fact that, notwithstanding this domestic remedy, the Court has found a violation, it considers, ruling on an equitable basis, that the applicant should be awarded EUR 1,200 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

51. The applicant also claimed EUR 2,620 for the costs and expenses incurred before the domestic courts.

52. The Government contested the claim.

53. 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, the Court considers it reasonable to award the sum of EUR 60 for costs and expenses in the domestic proceedings, plus any tax that may be chargeable on that amount.

C. Default interest

54. 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* that there is no need to examine the 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, 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 1,200 (one thousand two hundred euros) in respect of non-pecuniary damage;
 - (ii) EUR 60 (sixty euros) in respect of costs and expenses;
 - (iii) any tax that may be chargeable on the above amounts;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 19 October 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President