



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

FIRST SECTION

CASE OF NOVKOVIĆ v. CROATIA

(Application no. 43437/02)

JUDGMENT

STRASBOURG

5 April 2007

FINAL

05/07/2007

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 Novković 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 N. VAJIĆ,

Mr K. HAJIYEV,

Mr D. SPIELMANN,

Mr S.E. JEBENS,

Mr G. MALINVERNI, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 15 March 2007,

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

PROCEDURE

1. The case originated in an application (no. 43437/02) 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 two Croatian nationals, Mr Milan Novković and Mrs Ivanka Novković (“the applicants”), on 25 October 2002.

2. The applicants were represented by Mr M. Mihočević, a lawyer practising in Zagreb. The Croatian Government (“the Government”) were represented by their Agents, first Mrs L. Lukina-Karajković and subsequently Mrs Š. Stažnik.

3. On 29 January 2004 the Court decided to give notice of the application to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1952 and 1951 respectively and live in Karlovac.

5. In the period between 11 September 1991 and 13 April 1992 the applicants' restaurant in Karlovac was blown up four times by unknown perpetrators.

6. On 11 April 1995 the applicants brought a civil action against the State in the Zagreb Municipal Court (*Općinski sud u Zagrebu*) seeking pecuniary and non-pecuniary 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 (*prekid postupka*) pending the enactment of new legislation on the subject.

8. On 25 June 2001 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 26 September 2003 the Municipal Court resumed the proceedings.

11. Meanwhile, on 24 April 2002 the first applicant lodged a constitutional complaint under section 63 of the Constitutional Court Act complaining about the length of the above civil proceedings and the lack of access to a court. On 26 October 2004 the Constitutional Court (*Ustavni sud Republike Hrvatske*) accepted the first applicant's complaint. Relying on the Court's case law (*Kutić v. Croatia*, no. 48778/99, ECHR 2002-II), it found violations of his constitutional rights to a hearing within a reasonable time and of access to a court. It awarded him 4,400 Croatian kunas (HRK) in compensation, and ordered the Zagreb Municipal Court to give a decision in the case in the shortest time possible but no later than a year following the publication of the decision in the Official Gazette. The Constitutional Court's decision was published on 18 November 2004 and its correction on 6 January 2005.

12. On 31 May 2004 the Municipal Court found that it no longer had jurisdiction in respect of the applicants' claim for pecuniary damages and thus declared that part of their action inadmissible. On 2 November 2004 the Zagreb County Court (*Županijski sud u Zagrebu*) accepted the applicant's appeal, quashed the first-instance decision and remitted the case.

13. In the resumed proceedings, the Zagreb Municipal Court scheduled a hearing for 2 December 2004. Since no one appeared at that hearing on the side of the plaintiffs, the court decided to temporarily suspend the proceedings (*mirovanje postupka*). The applicants appealed against that decision to the Zagreb County Court. On 11 October 2005 that court dismissed the appeal and upheld the first-instance decision.

14. On 7 March 2005 the applicants requested the continuation of the proceedings. Their request was granted and a hearing was held on 19 January 2006. At that hearing the court invited the applicants to specify their claim within 90 days. The applicants did so on 15 April 2006.

15. It appears that the proceedings are still pending before the Municipal Court.

II. RELEVANT DOMESTIC LAW

16. The relevant part of the Civil Obligations Act (*Zakon o obveznim odnosima*, Official Gazette, nos. 53/1991, 73/1991, 3/1994, 7/1996 and 112/99) 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.”

17. 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.”

18. The relevant part of the Civil Procedure Act (*Zakon o parničnom postupku*, Official Gazette nos. 53/1991, 91/1992, 58/1993, 112/1999, 88/2001 and 117/2003) provides:

Section 212

“Proceedings shall be stayed:

...

(6) where another statute so prescribes.”

19. 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.

20. 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.

21. 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.”

22. 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.”

THE LAW

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

23. The applicants complained that Parliament's enactment of the 1996 Amendment violated their 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...”

24. The Government contested that argument.

A. Admissibility

1. *The parties' arguments*

25. As regards the first applicant, the Government submitted that the Constitutional Court had accepted his 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.

26. As regards the second applicant, the Government argued that she had never lodged a constitutional complaint and therefore had failed to exhaust domestic remedies as required under Article 35 § 1 of the Convention.

27. The applicants replied that the constitutional complaint was not an effective remedy for alleged violations of the right of access to a court. In particular, the Constitutional Court had not responded to the first applicant's complaint regarding access to a court, but solely to his length complaint. Furthermore, 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). For these reasons, the first applicant was still a “victim” within the meaning of Article 34 of the Convention of the alleged violation, and the second applicant had not had to lodge a constitutional complaint in order to exhaust domestic remedies.

2. *The Court's assessment*

28. As regards the first applicant's victim status, the Court recalls that in the *Tomašić* case (see *Tomašić v. Croatia*, no. 21753/02, §§ 26-36, 19 October 2006), it found manifestly unreasonable the amount of compensation, which was approximately 15 % of what the Court was generally awarding in similar Croatian cases. Since the first applicant received the same amount in the present case, the Court finds no reason to depart from its conclusion reached in the *Tomašić* case that in such

circumstances an applicant can still claim to be a “victim” of a breach of his right of access to a court. Accordingly, the Government's first objection must be dismissed.

29. As regards the alleged failure of the second applicant to exhaust domestic remedies, the Court recalls that in similar circumstances it held that a constitutional complaint did not constitute a remedy to be exhausted in respect of applications alleging violations of the right of access to a court lodged before 24 March 2004 (see, notably, *Pikić v. Croatia*, no. 16552/02, §§ 24-33, 18 January 2005). The present application was lodged on 25 October 2002. Thus, the Government's second objection must also be dismissed.

30. 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

31. 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).

32. 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

33. The applicants complained that Parliament's enactment of the 1996 Amendment also violated their right to an effective remedy 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.”

34. The Government contested that argument.

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

36. Having regard to the finding relating to Article 6 § 1 (see paragraph 32 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

37. 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

38. The applicants claimed 298,818.98 euros (EUR) in respect of pecuniary damage and EUR 20,000 in respect of non-pecuniary damage.

39. The Government deemed the amounts claimed by the applicants excessive.

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

41. 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 *Tomašić v. Croatia*, cited above, § 48).

42. The Court recalls that the first applicant was awarded approximately EUR 600 by the Constitutional Court. 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 applicants should be awarded jointly EUR 2,400 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

43. The applicants also claimed 86,367 Croatian kunas (HRK) for the costs and expenses incurred before the Court.

44. The Government contested the claim.

45. 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 applicants jointly the sum of EUR 1,500 for the proceedings before the Court, plus any tax that may be chargeable on that amount.

C. Default interest

46. 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 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 applicants jointly, 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 2,400 (two thousand four hundred euros) in respect of non-pecuniary damage;
- (ii) EUR 1,500 (one thousand five hundred 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 5 April 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President