



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

FIRST SECTION

CASE OF RADIVOJ NOVAKOVIĆ v. CROATIA

(Application no. 43446/02)

JUDGMENT

STRASBOURG

12 April 2007

FINAL

12/07/2007

*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 Radivoj Novaković v. Croatia,

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

Mr L. LOUCAIDES, *President*,

Mrs N. VAJIĆ,

Mr A. KOVLER,

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 22 March 2007,

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

PROCEDURE

1. The case originated in an application (no. 43446/02) 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 Radivoj Novaković (“the applicant”), on 11 October 2002.

2. The applicant was 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 19 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 applicant was born in 1938 and lives in Zagreb.

5. On 30 May 1992 the applicant's house in Velika Črešnjevica, was blown up by unknown perpetrators.

6. On 22 February 1995 the applicant brought a civil action against the State in the Zagreb Municipal Court (*Općinski sud u Zagrebu*) seeking damages. He 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 15 March 1996 the Zagreb 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, the Municipal Court resumed the proceedings.

11. Meanwhile, on 17 April 2002 the applicant lodged a constitutional complaint about the length of proceedings under section 63 of the Constitutional Court Act. On 24 March 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).

12. On 12 May 2004 the Zagreb Municipal Court declared the applicant's action inadmissible finding that it no longer had jurisdiction in the matter.

13. The applicant appealed against the judgment to the Zagreb County Court (*Županijski sud u Zagrebu*). It would appear that the proceedings are currently pending before that court.

II. RELEVANT DOMESTIC LAW

14. 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.”

15. 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.”

16. 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.”

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.”

THE LAW

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

20. 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

21. 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.

22. The applicant submitted that, in spite of the Constitutional Court's decision of 24 March 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).

23. 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. The applicant

having received the same amount in the present case, the Court observes that his situation does not differ in any way from the *Tomašić* case and finds no reason to depart from its conclusion therein. 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.

24. 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

25. 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).

26. 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

27. The applicant also complained that Parliament's enactment of the 1996 Amendment also violated his 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.”

28. The Government contested that argument.

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

30. Having regard to the finding relating to Article 6 § 1 (see paragraph 26 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

31. 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

32. The applicant claimed EUR 29,859.44 in respect of pecuniary damage and EUR 30,000 in respect of non-pecuniary damage.

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

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

35. 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).

36. The Court recalls that the 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 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

37. The applicant also claimed HRK 24,436.60 for the costs and expenses incurred the Court.

38. The Government contested that claim.

39. 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 1,500 for costs and expenses, plus any tax that may be chargeable on that amount.

C. Default interest

40. 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 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 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 12 April 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Loukis LOUCAIDES
President