



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

FIRST SECTION

CASE OF LB INTERFINANZ A.G. v. CROATIA

(Application no. 29549/04)

JUDGMENT

STRASBOURG

27 March 2008

FINAL

27/06/2008

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 LB Interfinanz A.G. v. Croatia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 6 March 2008,

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

PROCEDURE

1. The case originated in an application (no. 29549/04) 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 Swiss company, LB Interfinanz A.G. (“the applicant company”), on 8 July 2004.

2. The applicant company was represented by Mr D. Štivić, a lawyer practising in Županja. The Croatian Government (“the Government”) were represented by their Agent, Mrs Š. Stažnik.

3. On 19 March 2007 the Court decided to communicate the complaint concerning the applicant company’s right to a fair trial 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 is a company based in Zurich, Switzerland.

5. Following the institution of bankruptcy proceedings before the Osijek Commercial Court (*Trgovački sud u Osijeku*) against the Županijska Bank, d.d. Županja, on 3 May 1999, creditors were invited to lodge their claims against the said bank. Pursuant to that invitation, the applicant company lodged its claim. On 9 September 1999 a notice was placed on the court’s public noticeboard informing all interested persons that a list of claims to be

examined in the bankruptcy proceedings could be consulted in the court's registry. The list included a claim submitted on behalf of the State Agency for the Insurance of Savings Deposits (*Državna agencija za osiguranje štednih uloga* – hereinafter the “Agency”).

6. The applicant company's representative was present at an examination hearing (*ispitno ročište*) held on 15 September 1999 where the bankruptcy administrator assigned to the case (*stečajni upravitelj*) was to accept or reject each of the claims. No objections were raised as to the accepted claims. The relevant parts of the transcript of the hearing read as follows:

“It is established that the following creditors' representatives are present at today's hearing:

... attorney Dražen Štivić for LB Interfinanz Switzerland ... Maja Špoljarić for DABA [short for *Državna agencija za osiguranje štednih uloga*] ...

After having announced the subject matter of the case, the president of the bankruptcy panel informs the creditors in attendance that a list of creditors' claims available to everyone exists and after that [the creditors] agree that there is no need to write down individual claims since the amount of each claim is going to be announced orally by the bankruptcy administrator and the creditors will be able to comment on it.

...

After that the claims are examined under sections 155 and 157 of the Bankruptcy Act and the bankruptcy administrator presents the amounts of the claims of the creditors in attendance in the order established in the list of claims.

...

At the bankruptcy president's inquiry whether the creditors wish to contest any of the claims examined today no objections are raised.

...

The hearing is concluded.

A decision on the creditors' claims examined today will be issued in writing.”

7. Immediately afterwards a report hearing was also held (*izvještajno ročište*), where the applicant company's representative was appointed as a representative of all foreign creditors in the board of creditors. The Agency, being the creditor claiming the highest sum, was also included in the board of creditors, a body designed to represent the creditors' interests in the bankruptcy proceedings. In the subsequent course of the proceedings two meetings of the board of creditors were held, on 27 September 1999 and 20 June 2000 respectively, the applicant company's representative being present at both.

8. A decision concerning the claims examined at the hearing of 15 September 1999 was subsequently issued where, *inter alia*, the claim submitted on behalf of the Agency was accepted.

9. In its submission of 26 February 2001 the applicant company opposed the claim filed by the Agency, arguing that although the Agency's claim had been listed in the decision of 15 September 1999 it had not been subject to examination at the hearing held on the same day as the claim in question had not yet become due. On 25 April 2001 the Osijek Commercial Court declared the applicant company's submission inadmissible. It held that creditors' claims in the context of bankruptcy proceedings could only be opposed at the examination hearing and that the contested claim had been accepted by the bankruptcy administrator as stated in her decision of 15 September 1999.

10. On 10 May 2001 the applicant company appealed against the above decision contending that during the examination hearing held on 15 September 1999 the bankruptcy administrator had not stated whether she accepted or rejected the Agency's claim and that therefore it had had no opportunity of contesting that claim.

11. On 12 June 2001 the High Commercial Court (*Visoki trgovački sud Republike Hrvatske*) dismissed the appeal, finding that the contested claim had been accepted in the bankruptcy administrator's decision of 15 September 1999 and that the applicant company could have filed an appeal against that decision. Since the applicant company had failed to file a timely appeal it had no right to oppose the contested claim at a later stage.

12. The applicant company then filed a constitutional complaint whereby it argued that the Agency's claim had not been subject to examination at the hearing held on 15 September 1999 as it had not yet become due at that time. Furthermore, it contended that the decision of 15 September 1999 had not been served on it. On 14 May 2004 the Constitutional Court dismissed the applicant's complaint, finding that it did not concern the merits of the case.

13. The applicant company submitted a letter of the Osijek Municipal Court of 5 February 2007 whereby it replied to its enquiry and stated that the decision of 15 September 1999 had been filed in the court's registry the same day and kept there for a further fifteen days. In their further letter of 8 February 2007 it was stated that the former bankruptcy administrator in the proceedings had informed the court that a notice had been posted on the court's public noticeboard informing all interested parties that the decision of 15 September 1999 could be consulted in the court's registry within the following fifteen days. There was no mention of the date when this notice had been posted on the court's noticeboard and for how long it had stayed there. The decision itself had not been posted on the noticeboard because it had comprised eighty-two pages.

II. RELEVANT DOMESTIC LAW

14. The Bankruptcy Act (*Stečajni zakon*, Official Gazette nos. 44/96, 29/99, 129/00, 123/03, 197/03, 187/04 and 82/06) in its relevant part provides as follows:

Section 8 allows for court decisions addressed to a large number of persons to be placed on a court's public noticeboard. These decisions are considered as being served on parties three days after they are posted on the noticeboard. The courts are to maintain registers of documents placed on their public noticeboards, containing, *inter alia*, the date of the posting of each decision on the noticeboard.

Sections 297 and 350 impose on commercial courts a duty to furnish supplementary registers, including a list of documents posted on their public noticeboards.

Section 175 provides for an examination hearing before the competent commercial court at which the bankruptcy administrator shall either accept or reject each of the reported claims. Likewise, a creditor can oppose a claim reported by another creditor.

Section 177 provides that a claim is deemed to have been accepted if no objection has been raised by either the bankruptcy administrator or another creditor. The commercial court shall prepare a schedule of examined claims on the basis of which it shall issue a decision (*rješenje*) showing which claims were accepted and which were rejected, and setting out the amount and priority of each claim.

Section 181(1) provides that a final decision establishing the claim and its priority, or establishing that a claim does not exist, shall be effective against the bankrupt and all its creditors.

THE LAW

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

15. The applicant complained that the principle of adversarial hearing was violated in so far as it had been unable to contest the claim submitted on behalf of the State Agency for the Insurance of Savings Deposits in the bankruptcy proceedings conducted against the Županjska Bank in the Osijek Commercial Court, contrary to Article 6 § 1 of the Convention, which reads as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal...”

16. The Government contested that argument.

A. Admissibility

17. The Government argued that Article 6 § 1 of the Convention was not applicable in the present case because the bankruptcy proceedings had not involved a dispute and that in such proceedings the courts did not adjudicate on confronted claims submitted by the parties, but only established the debtor's assets. They contended that the applicant company's contestation of the claim submitted by another creditor in the bankruptcy proceedings had represented an *actio popularis*, since the applicant company had challenged the other creditor's position under the then valid laws.

18. The applicant company disagreed with these arguments.

19. The Court reiterates at the outset that the applicability of Article 6 § 1 to bankruptcy proceedings is beyond doubt (see *S.p.r.l. ANCA and Others v. Belgium*, no. 10259/83, Commission decision of 10 December 1984, Decisions and Reports 40, p. 170; *Interfina and Christian della Faille d'Huyse v. Belgium*, no. 11101/84, Commission decision of 4 May 1987, unreported; *Ceteroni v. Italy*, judgment of 15 November 1996, *Reports of Judgments and Decisions* 1996-V; *Bassani v. Italy*, no. 47778/99, §§ 13 and 14, 11 December 2003; *Capital Bank AD v. Bulgaria*, no. 49429/99, § 86, ECHR 2005-... (extracts); and *Sukobljević v. Croatia*, no. 5129/03, § 37, 2 November 2006). Furthermore, the Court notes that under Croatian law if bankruptcy proceedings are opened against a bank its creditors are entitled to realise their claims against it only in bankruptcy proceedings where a bankruptcy administrator, at the examination hearing in the bankruptcy proceedings, either accepts or rejects the claims reported by the creditors.

20. The Court therefore considers that in the bankruptcy proceedings conducted before the Osijek Municipal Court against the Županjska Bank the applicant company, being one of the creditors of the said bank, had its civil rights and obligations determined within the meaning of Article 6 § 1 of the Convention, and the Government's objection must consequently be dismissed.

21. The Court notes that this complaint 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

22. The applicant company admitted that its representative had known about the Agency's claim being submitted, but not that it had been accepted by the bankruptcy administrator, and thus had had no opportunity of contesting that claim. It further argued that the claim at issue could not have been accepted since it had not become due at the time of the hearing held on 15 September 1999.

23. The Government submitted that the applicant company's representative had been present at a hearing held on 15 September 1999 when the bankruptcy administrator had accepted the Agency's claim and that the applicant company's representative had hence been in a position to contest the claim.

24. The Court reiterates that according to its case-law the principle of equality of arms requires that each party should be afforded a reasonable opportunity to present his case under conditions that do not place him at a substantial disadvantage *vis-à-vis* his opponent (*Dombo Beheer B.V. v. the Netherlands*, judgment of 27 October 1993, Series A no. 274, p. 19, § 33, and *Ankerl v. Switzerland* judgment of 23 October 1996, *Reports* 1996-V, pp. 1567-68, § 38). The right to adversarial proceedings means in principle the opportunity for the parties to have knowledge of and to comment on all the evidence adduced or observations filed with a view to influencing the court's decision (see *Lobo Machado v. Portugal*, judgment of 20 February 1996, *Reports* 1996-I, § 31; *Nideröst-Huber v. Switzerland*, judgment of 18 February 1997, *Reports* 1997-I, p. 108, § 24; and *K.S. v. Finland*, no. 29346/95, § 21, 31 May 2001).

25. Article 6 § 1 is intended above all to secure the interests of the parties and those of the proper administration of justice (*Acquaviva v. France*, judgment of 21 November 1995, Series A no. 333-A, p. 17, § 66, and *Nideröst-Huber*, cited above, p. 109, § 30). What is at stake is the litigants' confidence in the workings of justice, which is based on, *inter alia*, the knowledge that they have had the opportunity to express their views on every document in the file (*Nideröst-Huber*, cited above, p. 108, § 29, and *Beer v. Austria*, no. 30428/96, § 18, 6 February 2001).

26. The Convention does not lay down rules on evidence as such. It is for the national courts to assess the evidence they have obtained and the relevance of any evidence that a party wishes to have produced. The Court has nevertheless to ascertain whether the proceedings considered as a whole, including the way in which the evidence was taken, were fair as required by Article 6 § 1 (see *Schenk v. Switzerland*, judgment of 12 July 1988, Series A no. 140, p. 29, § 46).

27. As to the present case, the Court firstly notes that the applicant company admitted that it had knowledge of the claim submitted by the Agency in the bankruptcy proceedings opened against the Županijska Bank before the Osijek Commercial Court. The applicant company complained, however, that it had had no knowledge that the claim at issue had been accepted by the bankruptcy administrator and thus had been prevented from contesting that claim.

28. The Court notes that the decision adopted at the hearing held on 15 September 1999 where the Agency's claim was accepted by the bankruptcy administrator was not served on the applicant company's representative, which is not disputed. Moreover, the decision itself was not

posted on the Osijek Commercial Court's public noticeboard. Arguably, only a notice that the decision could be consulted in the court's registry was posted on the public noticeboard, although there is no evidence as to the dates on which it was posted or taken down.

29. In the Court's view such lack of evidence that a notice giving instructions on consulting the decision of 15 September 1999 was actually posted on the Osijek Commercial Court's public noticeboard presents a procedural defect falling under the ambit of Article 6 § 1 of the Convention which might have affected the applicant company's right to a fair trial as to its opportunity to challenge the Agency's claim in the bankruptcy proceedings at issue.

30. However, the Court has examined all the relevant facets of the proceedings in question taken as a whole. In this connection the Court notes that a list of creditors' claims was available in the Osijek Commercial Court's registry prior to the hearing scheduled for 15 September 1999 and that everyone could have consulted it. The list contained, *inter alia*, the claim submitted by the Agency. Thus, the applicant company's representative could and should have known about the Agency's claim, which he does not dispute.

31. The Court notes further that at the examination hearing held before the Osijek Commercial Court on 15 September 1999 both the applicant company's and the Agency's representatives were present. The transcript of the hearing shows that the bankruptcy administrator accepted all the claims of the creditors in attendance, save for those that she expressly rejected or those in respect of which a decision on acceptance was postponed. Since she did not expressly reject the Agency's claim or state that the decision on it had to be adjourned, it was clear in the Court's view that the Agency's claim was accepted. However, the applicant's company representative, although present, did not challenge the acceptance of the Agency's claim, nor did he make any other comments in that connection.

32. The Court also notes that the bankruptcy administrator informed the creditors in attendance that a written decision on the claims submitted would follow. Thus, all the creditors present at the hearing, including the applicant company's representative, must have known about the decision at issue. In these circumstances the Court finds the fact that the decision itself was not posted on the Osijek Commercial Court's public noticeboard acceptable since the decision contained eighty-two pages. In the Court's view, even if there had been no notice informing the interested parties that the decision could be consulted in the Court's registry, this would not have prevented the applicant company's representative from contacting the registry of the Osijek Commercial Court in person or by telephone in order to inform himself about the decision in question. In this connection the Court reiterates that the case concerned a civil law matter, where the national authorities enjoy greater latitude than in the criminal sphere (see

Dombo Beheer B.V., cited above, and *Levages Prestations Services v. France*, judgment of 23 October 1996, *Reports* 1996-V, p. 1544, § 46).

33. In these circumstances the Court considers that it cannot be said that the applicant company did not have the opportunity of challenging the Agency's claim. On the contrary, it could already have done so at the hearing held on 15 September 1999 and afterwards in a timely appeal against the decision of 15 September 1999, which its representative should have known about, since the bankruptcy administrator had expressly informed the creditors that it would be issued.

34. The foregoing considerations are sufficient to enable the Court to conclude that the procedural defect in the bankruptcy proceedings conducted against the Županijska Bank in the Osijek Commercial Court did not prevent the applicant company from challenging the Agency's claim and thus did not interfere with the applicant company's right to a fair trial.

There has accordingly been no violation of Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

35. The applicant company also complained under Article 13 of the Convention that it had had no effective remedy against the decision accepting the Agency's claim, under Article 14 of the Convention that it had been discriminated against and also under Article 3 of Protocol No. 7 that it had had no right to compensation for wrongful conviction.

36. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court considers that this part of the application does not disclose any appearance of a violation of the Convention. It follows that this part of the application is inadmissible under Article 35 § 3 as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the alleged violation of the principle of adversarial hearing admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 6 § 1 of the Convention;

Done in English, and notified in writing on 27 March 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President