CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF MEŽNARIĆ v. CROATIA (no. 2)

(Application no. 10955/03)

JUDGMENT

STRASBOURG

6 October 2005

FINAL

06/01/2006

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 Mežnarić v. Croatia (no. 2),

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

Mr C.L. ROZAKIS, *President*,
Mr P. LORENZEN,
Mrs N. VAJIĆ,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV, *judges*,
and Mr S. QUESADA, *Deputy Section Registrar*,

Having deliberated in private on 15 September 2005,

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

PROCEDURE

1. The case originated in an application (no. 10955/03) 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 Ivan Mežnarić ("the applicant"), on 13 February 2003.

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

3. On 7 July 2004 the Court decided to communicate the application 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 1954 and lives in Zagreb.

5. On 29 November 1991 the Croatian army requisitioned a vehicle belonging to the applicant. The vehicle was damaged beyond repair in a traffic accident on 16 May 1993.

6. On 19 January 1996 the applicant instituted civil proceedings before the Zagreb Municipal Court (*Općinski sud u Zagrebu*) seeking damages from the Republic of Croatia. He based his claim on section 180 of the Civil Obligations Act.

7. On 6 November 1999 Parliament introduced amendments to the Civil Obligations Act ("the 1999 Amendments"). The amended legislation provided that all proceedings for damages against the State for the acts of members of the Croatian Army and the police in the performance of their official duties during the Homeland War in Croatia were to be stayed.

8. On 3 July 2000 the Zagreb Municipal Court stayed the proceedings pursuant to the above legislation.

9. On 14 July 2003 Parliament passed new legislation on the liability of the State for damage caused by members of the Croatian Army and police in the performance of their official duties during the Homeland War ("the 2003 Liability Act").

10. On 18 December 2003 proceedings resumed.

II. RELEVANT DOMESTIC LAW AND PRACTICE

11. Section 184 (a) of the 1999 Amendments (*Zakon o dopunama Zakona o obveznim odnosima*, Official Gazette no. 112/1999) provides that all proceedings instituted against the State for damage caused by members of the Croatian Army and police in the performance of their official duties during the Homeland War in Croatia from 7 August 1990 to 30 June 1996 are to be stayed.

12. The 1999 Amendments also imposed an obligation on the Government to submit special legislation to Parliament regulating liability for such damage within six months of the Act entering into force.

13. The 2003 Liability Act (*Zakon o odgovornosti Republike Hrvatske za štetu uzrokovanu od pripadnika hrvatskih oružanih i redarstvenih snaga tijekom Domovinskog rata*, Official Gazette no. 117/2003) regulates the conditions under which the State is liable to pay compensation for damage caused by members of the army and the police during the Homeland War. It also provides that all proceedings stayed pursuant to the 1999 Amendments are to be resumed.

14. 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, "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."

15. Article 29 § 1 of the Constitution (*Ustav Republike Hrvatske*, Official Gazette no. 41/2001) reads as follows:

> "1. 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."

16. On 24 March 2004 the Constitutional Court gave decision no. U-III-829/2004 in the case of Mr N., who had filed a constitutional complaint under section 63 of the Constitutional Court Act alleging a breach of Article 29 § 1 of the Constitution. He complained about the length of the proceedings and of 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 trial 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 § 1 OF THE CONVENTION

17. The applicant complained that he had not had access to a court because the Zagreb Municipal Court had stayed his proceedings pursuant to the 1999 Amendments. He relied on Article 6 § 1 of the Convention, the relevant part of which reads as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time ... by [a] ... tribunal..."

A. Admissibility

1. Compatibility ratione temporis

18. The Government submitted that the domestic authorities were responsible only for events which occurred after 5 November 1997, the date on which the Convention entered into force in respect of Croatia.

19. The Court notes that the applicant's proceedings were *de facto* stayed on 6 November 1999, when the 1999 Amendments entered into force. Pursuant to those Amendments, the Zagreb Municipal Court was not able to continue the proceedings. It formally decided to stay the proceedings on 3 July 2000, and they resumed only on 18 December 2003, pursuant to the 2003 Liability Act. It follows that the situation of which the applicant complained occurred after the ratification of the Convention by Croatia on 5 November 1997. Accordingly, the Court has competence *ratione temporis* to examine the application in so far as it concerns the stay of the applicants' proceedings after 5 November 1997. It follows that the Government's objection must be dismissed.

2. The applicant's victim status

20. The Government further claimed that the applicant could no longer claim to be a victim within the meaning of Article 34 of the Convention since on 14 July 2003 Parliament enacted the 2003 Liability Act which provided that the proceedings stayed under the 1999 Amendments were to be resumed.

21. The applicant disagreed with the Government.

22. The Court considers that an applicant's status as a victim may depend on compensation being awarded at domestic level on the basis of the facts about which he or she complains before the Court (see *Andersen v. Denmark*, no. 12860/87, and *Frederiksen and Others v. Denmark*, no. 12719/87, Commission decisions of 3 May 1988; *Normann v. Denmark* (dec.), no. 44704/98, 14 June 2001; and *Jensen and Rasmussen v. Denmark* (dec.), no. 52620/99, 20 March 2003) and on whether the domestic authorities have acknowledged, either expressly or in substance, the breach of the Convention. Only when those two conditions are satisfied does the subsidiary nature of the protective mechanism of the Convention preclude examination of an application (see *Eckle v. Germany*, judgment of 15 July 1982, Series A no. 51, p. 32, §§ 69 *et seq*., and *Jensen v. Denmark* (dec.), no. 48470/99, ECHR 2001-X).

23. The Court observes that the fact that the applicant was deprived of access to a court in the period between November 1999 and July 2003 was not disputed by the parties. However, the alleged violation was not recognised by any decision of domestic courts, nor was the applicant awarded any compensation for it.

24. In such circumstances, the applicant may claim to be a victim of a violation of the rights guaranteed by the Convention (see, for example, *Lulić and Becker v. Croatia*, no. 22857/02, § 34, 24 March 2005).

25. Accordingly, the Government's objection must be dismissed.

3. Exhaustion of domestic remedies

26. The Government also invited the Court to reject the application on the ground that the applicant had failed to exhaust domestic remedies as required under Article 35 § 1 of the Convention.

27. They produced a copy of the decision of the Constitutional Court of 24 March 2004 where it was held that there had been a violation of the right of access to a court in a similar case. In the Government's opinion, the change in the Constitutional Court's case-law created a new domestic remedy for alleged violations of the right of access to a court.

28. The Government went on to stress that the proceedings in the applicant's case were still pending and that consequently he could have lodged a constitutional complaint in line with the new case-law. Since the latter permitted the Constitutional Court not only to award compensation but also to set a time-limit for the competent court to decide the case, the Government contended that such a complaint was an effective remedy and that the Court should make an exception to the general rule of exhaustion of domestic remedies, according to which an applicant is required to exhaust only the remedies available at the moment of the introduction of an application with the Court.

29. The applicant contested that view. He maintained that he lodged his application with the Court before the change in the jurisprudence of the Constitutional Court.

30. The Court recalls that, in light of the new case-law referred to by the Government, a complaint to the Constitutional Court was to be regarded as an effective domestic remedy for issues of access to court, which needs to be exhausted before addressing the Court in all applications lodged subsequent to the first decision establishing such new practice (see *Pikić v. Croatia*, no. 16552/02, § 29, 18 January 2005). However, the Court also ruled that there existed no special circumstances which would justify a departure from the general non-exhaustion rule in respect of applications introduced prior to the occurrence of the new case-law (see *Pikić*, cited above, § 32). The Court sees no reason to depart from this conclusion.

31. In the present case the application with the Court was lodged on 13 February 2003, whereas the new domestic remedy became available only on 24 March 2004.

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

4. Conclusion

33. The Court notes that the application 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

34. The Government submitted that the applicant had had access to a court in that he had instituted civil proceedings for damages in the Zagreb Municipal Court. The fact that the court had stayed the proceedings pursuant to the 1999 Amendments had not affected the applicant's right of access to a court because the proceedings were stayed only temporarily, pending the introduction of new legislation. By the enactment of the 2003 Liability Act the applicant had been granted access to a court.

35. The Government acknowledged that four years had elapsed between the successive enactments of the 1999 Amendments and the 2003 Liability Act. However, they pointed out that that period was substantially shorter than in the *Kutić* case, in which the Court found a violation of the applicants' right of access to a court (see *Kutić v. Croatia*, no. 48778/99, ECHR 2002-II).

36. The applicant contested those views. He maintained that by failing to adopt new legislation within the set time-limit, the State had prevented him from obtaining compensation for his vehicle.

37. The Court reiterates that Article 6 § 1 of the Convention embodies the "right to a court" of which the right of access, namely the right to institute proceedings before a court in civil matters, constitutes one aspect (see *Golder v. the United Kingdom*, judgment of 21 February 1975, Series A no. 18, pp. 13-18, §§ 28-36).

38. However, this right is not absolute, but may be subject to limitations. These are permitted by implication since the right of access by its very nature calls for regulation by the State. In this respect, the Contracting States enjoy a certain margin of appreciation, although the final decision as to the observance of the Convention's requirements rests with the Court. It must be satisfied that the limitations applied do not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means

employed and the aim sought to be achieved (see *Stubbings and Others v. the United Kingdom*, judgment of 22 October 1996, *Reports* 1996-IV, § 50).

39. The Court further stresses that in the *Kutić* and *Multiplex* cases it found a violation of the applicant's right of access to a court, under Article 6 § 1 of the Convention, in that, as a result of legislative intervention, he had been denied the possibility of having his claim determined by a court for a lengthy period of time (see *Kutić v. Croatia*, cited above, § 33; *Multiplex v. Croatia*, no. 58112/00, § 55, 10 July 2003).

40. In the instant case, the proceedings were stayed *de facto* since 6 November 1999 when the 1999 Amendments were enacted. As a result of those Amendments, the Zagreb Municipal Court was not able to proceed with the examination of the applicant's claim at least until July 2003 when new legislation was passed.

41. The Court considers, in accordance with its case-law (see *Multiplex v. Croatia*, cited above; and *Aćimović v. Croatia*, no. 61237/00, ECHR 2003-XI), that the fact that the applicant was prevented by legislation for a prolonged period from having his civil claim determined by the domestic courts constitutes a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. 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

43. The applicant claimed a total of 615,000 Croatian kunas (approximately 83,100 euros (EUR) in respect of pecuniary and non-pecuniary damage.

44. The Government considered the claimed amount excessive.

45. The Court finds no causal link between the violation complained of and the pecuniary damage alleged. In particular, it is not for the Court to speculate what the outcome of the proceedings would be if they were in conformity with the requirements of Article 6 § 1 of the Convention (see, *inter alia, Göçer v. the Netherlands*, no. 51392/99, § 37, 3 October 2002). No award of pecuniary damage is therefore made.

46. However, the Court finds that the applicant sustained non-pecuniary damage, which cannot be compensated for by the mere finding of a violation. Making its assessment on an equitable basis and having regard to the circumstances of the case, the Court awards the applicant EUR 4,000 as

compensation for non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

47. The applicant also claimed HRK 7,700 (approximately EUR 1,040) for the costs and expenses incurred before the domestic courts.

48. The Government contested that claim.

49. The Court reiterates that an award can be made in respect of costs and expenses only in so far as they have been actually and necessarily incurred by the applicant and are reasonable as to the quantum (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI). In the present case, on the basis of the information in its possession and the aforementioned criteria, the Court observes that there is nothing in the file to suggest that the applicant was put to extra costs or expenses in the domestic proceedings because of his lack of access to a court (see, for example, *Kastelic v. Croatia*, no. 60533/00, § 44, 10 July 2003). Accordingly, the Court makes no award under this head.

C. Default interest

50. 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*
   (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 amount which should be converted into Croatian kunas at the rate applicable at the date of settlement:
      (i) EUR 4,000 (four thousand euros) in respect of non-pecuniary damage;
      (ii) any tax that may be chargeable on the above amount;
   (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 6 October 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Deputy Registrar

Christos ROZAKIS
President