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

Press Release
issued by the Registrar of the Court

ECHR 097 (2015)
26.03.2015

Condition in Croatian law obliging parents to attempt a friendly settlement before bringing a compensation claim for the death of their daughter was compatible with the European Convention

In today's **Chamber** judgment[1] in the case of Momčilović v. Croatia (application no. 11239/11) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 6 (access to court) of the European Convention on Human Rights.

The case concerned the condition in Croatian law making access to a civil court dependent on a prior attempt to settle the claim.

Mr and Mrs Momčilović and their son – the applicants – complained that the domestic courts had refused to examine the merits of their compensation claim against the State for the death of their relative because they had not attempted to settle the claim with the responsible authorities before introducing the contentious proceedings. According to the terms of the Civil Procedure Act, a claimant intending to bring a civil claim against the Republic of Croatia must first submit a request for settlement to the competent State Attorney's Office.

The Court found in particular that the restriction on the applicants' access to court, namely the obligation to go through a friendly settlement procedure before bringing their claim for damages against the State, was provided by law (the Civil Procedure Act) and pursued the legitimate aim of avoiding a multiplication of claims and proceedings against the State in the domestic courts, thus promoting the interests of judicial economy and efficiency. Even with the domestic courts refusing to try the applicants' civil claim for failing to have the case settled with the State Attorney's Office, it still remained open to them to comply with the friendly-settlement requirement and, in the event of a failure to reach a settlement, to file a fresh civil claim with a domestic court within the time-limit provided by domestic law. The applicants had failed to use this possibility and had thus essentially brought about a situation in which they had effectively prevented the domestic courts from determining the merits of their case.

This judgment is interesting as it refers to Council of Europe statements on the desirability of encouraging alternative dispute resolution procedures to prevent and reduce excessive workload in the courts.

Principal facts

The applicants, three Croatian nationals, are Barica and Nikola Momčilović, husband and wife, who were both born in 1938 and Darko Momčilović, their son, who was born in 1963. They all live in Karlovac (Croatia).

On 1 April 1993 the applicants' daughter and sister was killed in a bar by a soldier in the Croatian army. The solider was subsequently found guilty of murder and sentenced to eight years' imprisonment; this judgment was later upheld on appeal in February 1994 and the sentence increased to nine years.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In January 1998 the applicants Barica and Nikola Momčilović sought to settle their compensation claim for the killing of their daughter with the State Attorney's Office, as required under the Military Service Act in force at the time. When this request was refused, they brought a first set of civil proceedings before the national courts which, due to the applicants' representative not appearing at several hearings on the case and the applicants not ensuring their own participation in the proceedings, ended in a decision that the applicants' civil action was to be considered withdrawn. In May 2005 they brought another set of civil proceedings before the courts claiming damages against the State and their daughter's murderer. However, their claim was ultimately dismissed in April 2013 by the Supreme Court, because they had not attempted to settle the claim with the responsible authorities before introducing the contentious proceedings. According to the terms of the Civil Procedure Act introduced in 2003, a claimant intending to bring a civil claim against the Republic of Croatia must first submit a request for settlement to the competent State Attorney's Office.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (access to court), the applicants maintained that the condition imposed by the Civil Procedure Act had amounted to a disproportionate restriction on their right of access to a court. They submitted in particular that they had already sought a friendly settlement with the Attorney's Office in 1998 – before bringing both sets of civil proceedings – and that it had been unreasonable to expect them to seek a friendly settlement again concerning the same claim.

The application was lodged with the European Court of Human Rights on 22 December 2010.

Judgment was given by a Chamber of seven judges, composed as follows:

Isabelle **Berro** (Monaco), *President*,
Mirjana **Lazarova Trajkovska** ("the Former Yugoslav Republic of Macedonia"),
Julia **Laffranque** (Estonia),
Paulo **Pinto de Albuquerque** (Portugal),
Linos-Alexandre **Sicilianos** (Greece),
Erik **Møse** (Norway),
Ksenija **Turković** (Croatia),

and also André **Wampach**, *Deputy Section Registrar.*

Decision of the Court

The Court reiterated that the rule of law in civil matters could not be conceived without there being a possibility of having access to the courts. However, the right of access to court is not absolute and may be subject to legitimate restrictions.

The restriction in the applicants' case, the obligation to go through a friendly settlement procedure before bringing their claim for damages against the State, was provided by law (the Civil Procedure Act) and, as argued by the Government, pursued the legitimate aim of avoiding a multiplication of claims and proceedings against the State in the domestic courts, thus promoting the interests of judicial economy and efficiency. In that connection, the Court referred in particular to Council of Europe statements on the desirability of encouraging alternative dispute resolution procedures to prevent and reduce excessive workload in the courts.

Indeed, the applicants themselves had not disputed that the restriction at issue pursued a legitimate aim but argued that it was unreasonable to require them to lodge a request for a friendly settlement twice concerning a claim with the same legal and factual background. The Court observed that the applicants' friendly settlement attempt in 1998 was made under the provisions of the Military Service Act in force at the time and not under the provisions introduced in 2003 under the Civil

Procedure Act. In the intervening five years various social and legal considerations governing the work of the State Attorney's office could have changed, making it impossible for the Court to speculate what could have been the result of the friendly settlement negotiations had the applicants attempted them before bringing their second set of civil proceedings.

In any event, the Court found that there was no legal prejudice for the applicants' claim during the friendly settlement procedure. Even with the domestic courts refusing to try the applicants' civil claim for failing to have the case settled with the State Attorney's Office, it still remained open to them to comply with the friendly-settlement requirement – which interrupted the running of the statutory prescription period – and, in the event of a failure to reach a settlement, to file a fresh civil claim with a domestic court within the time-limit provided by domestic law. Nor had the applicants specified in what manner the requirement of instituting the friendly settlement procedure had adversely affected their rights, apart from the possible inconvenience of having to take an additional procedural action. The applicants had failed to use this possibility and had thus essentially brought about a situation in which they had effectively prevented the domestic courts from determining the merits of their case.

The Court therefore found no arbitrariness or unfairness in the decisions of the domestic courts and considered that the applicants' right of access to court had not been restricted. There had accordingly been no violation of Article 6 § 1.

The judgment is available only in English.

Press contacts
echrpress@echr.coe.int | tel.: +33 3 90 21 42 08

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)
Céline Menu-Lange (tel: + 33 3 90 21 58 77)
Nina Salomon (tel: + 33 3 90 21 49 79)
Denis Lambert (tel: + 33 3 90 21 41 09)