

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

FIRST SECTION

DECISION

Application no. 53004/08
Jozefina LEŽAJA
against Croatia

The European Court of Human Rights (First Section), sitting on 17 April 2012 as a Chamber composed of:

Anatoly Kovler, *President,*
Nina Vajić,
Elisabeth Steiner,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*

and André Wampach, *Deputy Section Registrar,*

Having regard to the above application lodged on 25 September 2008,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Ms Jozefina Ležaja, is an Croatian national, who was born in 1937 and lives in Semeljci. She is represented before the Court by Ms J. Novak, a lawyer practising in Zagreb.

2. The Croatian Government ("the Government") are represented by their Agent, Ms Š. Stažnik.

The circumstances of the case

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. During the night of 16-17 September 1992 the applicant's summer house in Zadar was blown up by an unknown perpetrator.

5. On 3 February 1996 the Amendment to the Obligations Act (*Zakon o izmjeni Zakona o obveznim odnosima*, Official Gazette no. 7/1996 of 26 January 1996 - "the 1996 Amendment") entered into force. It repealed section 180 of the Obligations Act - which provided that the State was liable for damage resulting from "acts of violence or terrorist acts" - and stayed all proceedings instituted on the basis of that provision, pending enactment of new legislation.

6. On 14 March 2001 the applicant and her husband brought a civil action against the State in the Zadar Municipal Court (*Općinski sud u Zadru*) seeking 742,000 Croatian kunas (HRK) as compensation for pecuniary damage sustained as a result of the destruction of their house, with the accrued statutory default interest.

7. On 5 November 2001 the Municipal Court gave judgment dismissing the claim of the applicant and her husband and ordered them to reimburse the State the costs of the proceedings in the amount of HRK 7,720. It held that after section 180 of the Obligations Act had been repealed there was no longer a legal basis for the State to be held liable for damage resulting from terrorist acts.

8. The applicant submits that she paid the costs of the proceedings to the State, as ordered by the Municipal Court. The Government submitted that the applicant had never paid the costs at issue.

9. On 3 December 2001 the applicant and her husband appealed to the Zadar County Court (*Županijski sud u Zadru*) against that judgment, arguing that the Municipal Court had wrongly applied the relevant substantive law and erred in their assessment of the facts of the case. They did not forward any arguments as to the costs of the proceedings.

10. In 2003 the applicant's husband died.

11. On 31 July 2003 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 of the Republic of Croatia no. 117/2003) of 23 July 2003 – "the Liability Act 2003") entered into force. It provided that the State was liable in tort for damage caused by death, bodily injury or impairment of health resulting from terrorist acts, whilst damage to property was to be compensated through reconstruction assistance, obtainable before the competent administrative authorities, under the Reconstruction Act. The Act also provided that all proceedings stayed on the basis of the 1996 Amendment were to be resumed in accordance with its provisions.

12. On 9 June 2005 the Zadar County Court dismissed the appeal by the applicant and her husband and upheld the first-instance judgment.

13. On 29 July 2005 the applicant lodged an appeal on points of law with the Supreme Court. She argued that the lower courts had erred in the application of both procedural and substantive law when they had dismissed her compensation claim. She did not forward any arguments concerning the costs of the proceedings.

14. On 24 January 2006 the Supreme Court dismissed the appeal.

15. On 2 July 2007 the applicant lodged a constitutional complaint against the Supreme Court's judgment, alleging, *inter alia*, violations of her constitutional rights to equality, equality before the law and ownership. Again, she did not forward any arguments concerning the cost of the proceedings.

16. On 24 June 2008 the Constitutional Court (*Ustavni sud Republike Hrvatske*) dismissed the applicant's constitutional complaint and served its decision on her representative on 17 July 2008.

COMPLAINTS

17. The applicant complained under Article 6 § 1 of the Convention about the lack of fairness of the civil proceedings at issue; about their length; and also that she had had no access to court in the period between 14 March 2001 and 31 July 2003.

18. The applicant also invoked Article 13 of the Convention.

19. The applicant further complained under Article 14 that she had been discriminated against on the basis of her place of residence.

20. Lastly, she complained under Article 1 of Protocol No. 1 to the Convention that the State had extinguished her existing claim for compensation of damage resulting from terrorist acts by legislation (the 2003 Liability Act) which had entered into force after the damage had occurred.

THE LAW

A. Alleged violation of Article 6 § 1 of the Convention on account of the lack of fairness of the civil proceedings at issue

21. The applicant complained that the proceedings in question had been unfair in that she had to reimburse the costs of the proceedings to the State although, in her view, she had only lost the case owing to the enactment of

new legislation. She relied on Article 6 § 1 of the Convention, the relevant part of which reads:

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

22. The Government argued that the applicant had not exhausted all available remedies because she had not raised the issue of payment of the costs of the proceedings at issue in her appeals before the national courts. They further contended that the applicant had never actually paid the costs at issue.

23. As to the exhaustion issue, the applicant argued that in her appeal against the first-instance judgment, her further appal on points of law as well as in her constitutional complaint she had challenged the impugned judgment as a whole, including the decision on the costs.

24. The Court confirms at the outset that decisions concerning the costs of proceedings do fall within the ambit of Article 6 of the Convention (see *Robins v. the United Kingdom*, 23 September 1997, §§ 28 and 29, *Reports of Judgments and Decisions* 1997-V; and *Nikolay Matveyev v. Russia*, no. 10418/04, § 31, 25 November 2010).

25. As to the exhaustion of domestic remedies, the Court reiterates that the purpose of Article 35 is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court (see, for example, *Hentrich v. France*, 22 September 1994, § 33, Series A no. 296-A, and *Remli v. France*, 23 April 1996, § 33, *Reports* 1996-II). Thus, the complaint submitted to the Court must first have been made to the appropriate national courts, at least in substance, in accordance with the formal requirements of domestic law and within the prescribed time-limits. To hold otherwise would be to duplicate the domestic process with proceedings before the Court, which would hardly be compatible with the subsidiary character of the Convention (see *Gavril Yosifov v. Bulgaria*, no. 74012/01, § 42, 6 November 2008).

26. As to the present case the Court notes that the applicant did not in any of the remedies used before the national courts, namely her appeal against the first instance judgment, a further appeal on points of law with the Supreme Court and in her constitutional complaint, put forward any arguments concerning the costs of the proceedings at issue.

27. In these circumstances the Court considers that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

B. Other alleged violations of the Convention

28. The applicant also complained under Article 6 § 1 of the Convention about the length of the civil proceedings at issue and that she had no access to court in the period between 14 March 2001 and 31 July 2003. She further invoked Article 13 of the Convention without further substantiation. She also complained under Article 14 of the Convention that she was discriminated against on the basis of her place of residence. Lastly, she complained under Article 1 of Protocol No. 1 that the entry into force of the 2003 Liability Act had violated her right to peaceful enjoyment of possessions as it had retroactively extinguished her civil claims for damages.

29. In the light of all the material in its possession, and in so far as the matters complained of are within its competence (see in particular *Milašinović v. Croatia* (dec.), no. 26659/08, 1 July 2010), the Court considers that this part of the application does not disclose any appearance of a violation of the Convention. It follows that it is inadmissible under Article 35 § 3(a) as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

André Wampach
Deputy Registrar

Anatoly Kovler
President