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

Press Release
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ECHR 183 (2015)
04.06.2015

Case brought by Slovenian bank against Croatia declared inadmissible as the bank is government-controlled and has no standing to lodge an application

In its decision in the case of **Ljubljanska banka d.d. v. Croatia** (application no. 29003/07) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case essentially concerned the enforcement proceedings brought by the Ljubljanska banka d.d. against a Croatian sugar factory for recovery of debt. The bank complained in particular about the non-enforcement of two writs of execution in its favour.

The Court reiterated its rule that governmental bodies or public companies under the strict control of a State are not entitled to bring an individual application before the European Court of Human Rights. It found that, although Ljubljanska banka was a separate legal entity, it did not have sufficient institutional and operational independence from the State and therefore had to be regarded as a governmental organisation. As such, Ljubljanska banka had no standing to lodge an individual application before the European Court. This was regardless of the fact that Ljubljanska banka was not a governmental organisation of Croatia, the defending State in the present case.

Principal facts

The applicant bank, Ljubljanska banka d.d., is a joint stock company incorporated under Slovenian law. Its head office is in Ljubljana. The applicant bank was nationalised shortly after Slovenia's declaration of independence in June 1991 and was restructured in 1994. It is now controlled by a Slovenian Government agency – the Succession Fund. It has a branch in Zagreb which was re-registered as a business unit of the applicant bank without legal personality in January 1990.

The case concerns the suspension of enforcement proceedings brought by the applicant bank against a Croatian sugar factory for recovery of debt.

The applicant bank brought before the Croatian commercial courts, in 1991 and 1994 respectively, two sets of enforcement proceedings against the sugar factory for outstanding debts. In September 1992 and July 1994 respectively, the courts issued two writs of execution ordering the sugar factory to pay the amounts due.

However, in September 1994 the applicant bank signed an agreement with the sugar factory acknowledging that the factory was unable to repay its debts because its facilities had been substantially damaged during the Croatian War of Independence and its production capacities had been significantly reduced. Under the agreement the applicant bank also undertook not to seek enforcement of its claims against the sugar factory until an inter-State agreement regulating the status of its Zagreb Branch had been concluded.

In October 2003 the sugar factory started to make a profit again and the applicant bank requested the commercial courts to proceed with enforcement of both writs of execution. In December 2003 the two sets of enforcement proceedings were, however, stayed on the ground that the inter-State agreement to regulate the status of the Zagreb branch had not yet been concluded. These first-instance decisions were upheld on appeal in June 2006 and the applicant bank's constitutional complaints declared inadmissible in December 2006.

The applicant bank submits that, as of June 2007, they are owed a total of 422,041,634.40 Croatian kunas, a sum calculated by a court appointed expert.

The bank also submits that, according to reports in the Croatian media, the decisions to stay the proceedings had been made under the influence of a former Deputy Prime Minister of Croatia.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 21 June 2007.

The applicant bank essentially complained about the non-enforcement of the two writs of execution issued in its favour. It further alleged that the related enforcement proceedings were unfair, notably that the Croatian courts had not been independent as they had been influenced by the former Deputy Prime Minister of Croatia and that they had not been given the opportunity to comment on certain submissions made by the sugar factory during the proceedings. Lastly, it complained that it had been discriminated against as a foreign (Slovenian) company. The applicant bank relied in particular on Article 6 § 1 (right to a fair hearing), Article 1 of Protocol No. 1 (protection of property) and Article 14 (prohibition of discrimination).

The decision was given by a Chamber of seven, composed as follows:

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

and also Søren **Nielsen**, *Section Registrar.*

Decision of the Court

Under Article 34 (individual applications) of the European Convention, the Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation of the European Convention by one of the Contracting States. A legal entity such as Ljubljanska banka may only therefore lodge an individual application if it is a non-governmental organisation.

The Court reiterated its findings in the case *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and "The former Yugoslav Republic of Macedonia"* (application no. 60642/08) concerning the inability to recover "old" foreign-currency savings – deposited with two banks in what is now Bosnia and Herzegovina – following the dissolution of the former Socialist Federal Republic of Yugoslavia (SFRY). In that case the Court confirmed that Slovenia and Serbia had been responsible for the debts owed to the applicants, two nationals of Bosnian and Herzegovina, by the two banks, Ljubljanska banka Sarajevo and the Tuzla branch of the Investbanka, pointing out that it was not a standard case of rehabilitation of an insolvent private bank, the banks in question having always been either State- or socially-owned, Ljubljanska banka in particular having been State-owned and controlled by a Slovenian Government Agency – the Succession Fund.

The Court therefore found that, although Ljubljanska banka was a separate legal entity, it did not have sufficient institutional and operational independence from the State and therefore had to be regarded as a governmental organisation. As such, the bank had no standing to lodge an individual application before the European Court of Human Rights.

This was regardless of the fact that Ljubljanska banka was not a governmental organisation of Croatia, the defending State in the present case.

The application was therefore declared inadmissible.

The decision is available only in English.

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