



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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 16837/02
by Dragan OSTOJIĆ
against Croatia

The European Court of Human Rights (First Section), sitting on
26 September 2002 as a Chamber composed of

Mr C.L. ROZAKIS, *President*,

Mrs F. TULKENS,

Mr G. BONELLO,

Mr P. LORENZEN,

Mrs N. VAJIĆ,

Mr E. LEVITS,

Mr A. KOVLER, *judges*,

and Mr E. FRIBERGH, *Section Registrar*,

Having regard to the above application lodged on 11 April 2002,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Dragan Ostojić, is a Croatian citizen of Serbian origin, who was born in 1936 and lives in Barajevo, Yugoslavia. He is represented before the Court by Mr Nenad Stanković, a lawyer practicing in Borče, Yugoslavia.

A. The circumstances of the case

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

The applicant owned a house where he lived with his family and adjacent stable and wooden house in the village Ostojići, Croatia. On 5 August 1995 the applicant, due to a military action by the Croatian Army, left Croatia and went to live in Yugoslavia.

The applicant alleges that after his departure his property in Croatia was devastated sometime between 5 August 1995 and 30 June 1996 by the members of the Croatian Army.

The applicant alleges further that the Croatian authorities impeded his return to Croatia. He was able to obtain Croatian identity documents only in 1999 and to enter Croatia only in March 2000.

In the meantime Parliament introduced two changes to the law governing compensation for damage caused by terrorist acts and the war-related damage.

Firstly, on 17 January 1996 the Croatian parliament introduced a change of the Civil Obligations Act which provided that all proceedings concerning actions for damages resulting from terrorist acts were to be stayed pending the enactment of new legislation on the subject and that before the enactment of such new legislation damages for terrorist acts may not be sought. So far the Croatian authorities have not enacted any new legislation regulating the matter.

Secondly, on 6 November 1999 Parliament introduced a change of the Civil Obligations Act which provided that all proceedings concerning actions for damages resulting from acts of members of the Croatian army or police when acting in their official capacity during the war in Croatia were to be stayed.

B. Relevant domestic law

The relevant part of the Civil Obligations Act (*Zakon o obveznim odnosima*) reads as follows:

Section 180 (1)

“Responsibility for damages caused by death, bodily injury or by abstraction or destruction of another person’s property, when it results from violent acts or terror or from public demonstrations or manifestations, lies with the authority whose officials were, according to the laws in effect, under a duty to prevent such damages.”

The relevant parts of the Act on Changes of the Civil Obligations Act read (*Zakon o izmjenama i dopunama Zakona o obveznim odnosima* - Official Gazette no. 7/1996) as follows:

Section 1

“Section 180 of the Civil Obligations Act (the Official Gazette nos. 53/91, 73/91 and 3/94) is to be repealed.”

Section 2

“Proceedings for damages instituted pursuant to Section 180 of the Civil Obligations Act are to be stayed.

Proceedings referred to in § 1 of this section will be continued after enactment of a special legislation that will regulate responsibility for damages resulting from the terrorist acts.”

Section 184 (a) of the Act on Changes of the Civil Obligations Act (*Zakon o dopunama Zakonu o obveznim odnosima*, Official Gazette no. 112/1999) provides that all proceedings instituted against the Republic of Croatia for damages caused by members of the Croatian army or police when acting in their official capacity during the Homeland War in Croatia from 7 August 1990 to 30 June 1996 are to be stayed.

COMPLAINTS

1. The applicant complains under Article 6 § 1 of the Convention that he has been deprived of his right of access to court because the legislative changes in 1996 and 1999 ordered that all proceedings concerning claims for compensation of damage caused either by terrorist acts or by acts of members of the Croatian Army or police in connection with the Homeland War in Croatia, be stayed.

2. The applicant also complains under Article 13 that he has no remedy at his disposal by which he would be able to seek compensation for his destroyed property.

3. He further complains under Article 8 of the Convention and Article 1 of Protocol No. 1, taken alone and in conjunction with Article 14 of the Convention. In this respect he claims that the destruction of his house violated his right to respect for his home and family life and his right to

peaceful enjoyment of his property. He also claims that the acts of violence were committed because of his Serbian origin.

THE LAW

1. The applicant complains that he has not been able to seek compensation for his destroyed property from the domestic authorities because of the legislative changes in 1996 and 1999. Furthermore, prior to these changes he had been prevented from filing a civil suit for compensation because he had not been able to enter Croatia as he had no Croatian identity documents. He relies on Article 6 of the Convention, the relevant parts of which read as follows:

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

The Court recalls that in the Kutić judgment it found a violation of Article 6 § 1 of the Convention because the proceedings instituted by the applicants, who sought compensation for their property, destroyed by terrorist acts, on the basis of Section 180 of the Civil Obligations Act, were stayed pursuant to the 1996 changes of that Act.

The Court found that the long period for which the applicants have been prevented from having their civil claims determined by domestic courts as a consequence of a legislative measure did not afford the applicants the degree of access sufficient to secure the applicants’ a “right to a court” (see *Kutić v. Croatia*, no. 48778/99, 1 March 2002, ECHR - 2002 ...)

As to the present case, the Court notes that the applicant has never instituted any proceedings for compensation of damages in connection with the destruction of his property, although he had such a possibility until 1999, when the legislative changes ordered that all proceedings concerning claims for compensation for damages caused, *inter alia*, by members of the Croatian Army in connection with the Homeland War in Croatia were to be stayed.

As to the applicant’s contention that he was not in a position to file a civil suit in Croatia because he was not able to enter Croatia, the Court notes that even assuming that the applicant himself was prevented from entering Croatia, he could have engaged the services of another person who could have represented him before the Croatian authorities or corresponded with the Croatian authorities by mail.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. The applicant further complains that he has no remedy at his disposal to protect his property rights, contrary to Article 13 of the Convention which reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

The Court notes that until November 1999 the applicant was able to file a civil suit for damages, but he failed to do so.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

3. The applicant also complains that the destruction of his property, including the house where he lived with his family, which occurred sometime between 5 August 1995 and 30 June 1996, violated his right to respect for his home and family life, his right to peaceful enjoyment of his possession and that the acts of violence were committed due to his Serbian origin, relying on Article 8 of the Convention and on Article 1 of Protocol No. 1, taken alone and in conjunction with Article 14 of the Convention. The relevant Articles read as follows:

Article 8

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

Article 1 of Protocol No. 1

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

Article 14

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

The Court notes that the events complained of took place from August 1995 until 30 June 1996, while the Convention entered into force in respect of Croatia on 5 November 1997.

It follows that this part of the application is incompatible *ratione temporis* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court unanimously

Declares the application inadmissible.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President