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“It cannot ... be said that the obligation of the plaintiffs to seek settlement of the claim ... before lodging an action ... represents an unreasonable restriction of access to a competent court”

European Court of Human Rights
FIRST SECTION

CASE OF MOMČILOVIĆ v. CROATIA

(Application no. 11239/11)

JUDGMENT
STRASBOURG
26 March 2015

FINAL
26/06/2015

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Momčilović v. Croatia,
The European Court of Human Rights (First Section), sitting as a Chamber composed of:
Isabelle Berro, President,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Paulo Pinto de Albuquerque,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković, judges,
and André Wampach, Deputy Section Registrar,
Having deliberated in private on 3 March 2015,
Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 11239/11) 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 three Croatian nationals, Ms Barica Momčilović, Mr Nikola Momčilović and Mr Darko Momčilović (“the applicants”), on 22 December 2010.

2. The applicants were represented by Ms L. Kušan, a lawyer practising in Ivanić Grad. The Croatian Government (“the Government”) were represented by their Agent, Ms Š. Stažnik.

3. The applicants alleged that their right of access to court as regards their claim for compensation against the State had been impaired by the decisions adopted by the national courts.
4. On 13 November 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The first and second applicants were born in 1938 and the third applicant in 1963. They all live in Karlovac.

A. Background to the case

6. On 1 April 1993 the first and the second applicants' daughter, who was the third applicant's sister, was killed in a bar by Z.R., who at the time served as a soldier in the Croatian army.
7. By a judgment of the Karlovac Military Court (Vojni sud u Karlovcu) Z.R. was found guilty of murder and sentenced to eight years' imprisonment.
8. On appeal, the Supreme Court (Vrhovni sud Republike Hrvatske) on 17 February 1994 upheld the conviction, which thereby became final, but increased the sentence to nine years' imprisonment.

B. The applicants' first set of civil proceedings

9. On 15 January 1998 the applicants submitted a request to the State Attorney's Office for their claim for damages to be settled in connection with the unlawful killing of their relative by a soldier, as required under the Military Service Act, in force at the material time (see paragraph 26 below).
10. On 5 March 1998, after their request was refused, the applicants brought a civil action in the Zagreb Municipal Court (Općinski sud u Zagrebu), seeking compensation from the State and Z.R. in connection with the killing of their relative.
11. During the proceedings, the State Attorney's Office raised a number of substantive and procedural objections to the applicants' claim against the State.
12. Meanwhile, on 4 October 1999 the applicants withdrew their civil action against Z.R. but maintained their action against the State.
13. Owing to the failure of the applicants' representative to appear at several hearings, of which the first applicant was informed, on 14 March 2003 the Zagreb Municipal Court found that the civil action was considered to have been withdrawn (see paragraph 24 below; section 216 § 4 of the Civil Procedure Act).
14. As no appeal was lodged by the parties, on an unspecified date this decision became final. The applicants later in 2005 attempted to have the statement of finality quashed and to lodge a belated appeal, but this was dismissed by the competent court.

C. The applicants' second set of civil proceedings

15. On 9 May 2005 the applicants brought their claim for damages before the Karlovac Municipal Court (Općinski sud u Karlovcu), which meanwhile had acquired competence to hear the case, against the State and Z.R. related to the killing of their family member.

16. During the proceedings, the State Attorney's Office challenged the applicants' claim on several procedural grounds, arguing in particular that they had failed to seek to have their claim against the State settled before lodging their civil action, as required under the relevant domestic law (see paragraph 24 below).

17. On 17 March 2010 the Karlovac Municipal Court declared the applicants' civil action against the State inadmissible, on the grounds that before they lodged their civil action the applicants had failed to attempt to have the case settled with the competent State Attorney's Office, as required under the relevant domestic law.

18. The applicants challenged the decision of the Karlovac Municipal Court by lodging an appeal before the Karlovac County Court. On 29 July 2010 the Karlovac County Court dismissed their appeal, holding as follows:

"Section 186(a) of the Civil Procedure Act (Official Gazette, nos. 117/2003 and 88/2005) provides that a person intending to bring a civil suit against the Republic of Croatia must first submit a request for a settlement to the competent State Attorney's Office. When there is no doubt that before lodging the civil claim the claimant has failed to settle the case with the competent State Attorney's Office, the first-instance court is correct to declare such a claim lodged directly before it inadmissible (VS Rev-1124/056 of 14 March 2007).

The duty to seek settlement with the State Attorney's Office is a procedural requirement for lodging a civil action which must be complied with at the moment when the action is lodged.

Section 186(a) of the Civil Procedure Act is inapplicable to claims for damages lodged before the courts prior to 1 December 2003.

It is not in dispute that the plaintiffs on 5 March 1998 lodged an identical claim against the same defendants before the Zagreb Municipal Court ... It is also not disputed that on 14 March 2003, after the conditions for the stay of proceedings had been met twice, a decision was adopted finding that the claim against the first defendant, the Republic of Croatia, was withdrawn.

However, these undisputed facts do not mean that the plaintiffs were released from their obligation under section 186(a) of the Civil Procedure Act because they had previously submitted an identical claim. With the amendments to the Civil Procedure Act (Official Gazette no. 117/2003) the duty to seek settlement with the State Attorney's Office is a procedural requirement for lodging a civil action which must be complied with at the moment when the action is lodged. Further amendments to the Civil Procedure Act (Official Gazette nos. 84/2008 and 123/2008) did not [alter this obligation] with regard to the actions against the Republic of Croatia."

19. On 27 October 2010 the applicants lodged an appeal on points of law before the Supreme Court, challenging the decision of the Karlovac County Court on the grounds that it unreasonably restricted their right to access to court. They argued that before they brought their civil action of 5 March 1998 before the Zagreb Municipal Court they had attempted to settle the matter with the State Attorney's Office. However, their request had been refused, and later during the proceedings the State Attorney's Office had also challenged their claim in the court. The applicants therefore considered that there was no reason to seek another settlement

concerning the identical claim brought before the court after it was decided that it had been withdrawn.

20. The applicants also lodged a constitutional complaint before the Constitutional Court (Ustavni sud Republike Hrvatske) on 5 November 2010, reiterating their above arguments.

21. On 23 March 2011 the Constitutional Court declared the applicants' constitutional complaint inadmissible on the grounds that the decisions of the lower courts did not concern individual acts deciding on their civil rights and obligations.

22. On 3 April 2013 the Supreme Court dismissed the applicants' appeal on points of law, endorsing the reasoning of the Karlovac County Court that the applicants had been obliged to seek settlement with the State Attorney's Office before lodging their action of 9 May 2005. The Supreme Court pointed out:

"It should be noted that the procedural requirement for the admissibility of an action under section 186(a) of the Civil Procedure Act, and the reliance of the lower courts on that provision, do not represent a violation of a plaintiff's right of access to court. This is because the plaintiff, by complying with that provision, does not lose any of their rights to claim [damages] since, for example, the lodging of a request for settlement interrupts the running of the statutory prescription period ([Article 186(a)] § 3) and the plaintiff may lodge an action in the court if the State Attorney's Office refuses the request [for settlement] or does not decide on it within three months of the date it was lodged ([Article 186(a)] § 5).

It cannot therefore be said that the obligation of the plaintiffs to seek settlement of the claim with the State Attorney's Office before lodging an action against the Republic of Croatia represents an unreasonable restriction of access to a competent court which can decide the case on the merits as required under Article 6 § 1 of the European Convention on Human Rights (Official Gazette-International Contracts, nos. 18/1997, 6/1999-consolidated text, 8/1999-rectification, 14/2002 and 1/2006). This is because section 186 of the Civil Procedure Act neither impaired the right to lodge a civil action nor the right to have the case decided on the merits ... (see the European Court of Human Rights in Ačimović v. Croatia of 9 October 2003 and Kutić v. Croatia of 1 March 2002)."