



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

FOURTH SECTION

CASE OF KOPRIVICA v. MONTENEGRO

(Application no. 41158/09)

JUDGMENT
(Just satisfaction)

STRASBOURG

23 June 2015

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Koprivica v. Montenegro,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Guido Raimondi, *President*,

Päivi Hirvelä,

George Nicolaou,

Ledi Bianku,

Nebojša Vučinić,

Paul Mahoney,

Faris Vehabović, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 2 June 2015,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 41158/09) against Montenegro lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Montenegrin national, Mr Veseljko Koprivica (“the applicant”), on 31 July 2009.

2. In a judgment delivered on 22 November 2011 (“the principal judgment”), the Court held that the interference with the applicant’s right to freedom of expression was not “necessary in a democratic society” as the award of damages and costs in the domestic proceedings against the applicant (7,667.50 euros (EUR) in total) was disproportionate to the legitimate aim served. The Court therefore found a violation of Article 10 of the Convention (*Koprivica v. Montenegro*, no. 41158/09, §§ 74-75).

3. Under Article 41 of the Convention the applicant sought just satisfaction of EUR 7,667.50 in respect of pecuniary damage, EUR 5,000 in respect of non-pecuniary damage, and EUR 593 for the costs and expenses incurred before the Court.

4. Since the question of the application of Article 41 of the Convention was not ready for decision, the Court reserved it and invited the Government and the applicant to submit, within three months from the date on which the principal judgment became final, their written observations on that issue and, in particular, to notify the Court of any agreement they might reach (*ibid.*, § 79, and point 3 of the operative provisions).

5. On 18 May and 10 July 2012 the applicant and the Government each filed observations, in view of which the Court decided to adjourn the proceedings in respect of the application of Article 41 of the Convention

case for six months, after which the parties were invited to provide the Court with further observations on the matter and a factual up-date.

6. On 14 May and 26 July 2013 the Court received the information requested from the parties, following which the proceedings in respect of Article 41 of the Convention were adjourned for additional six months.

7. On 7 April and 14 May 2014 both parties had submitted additional information. Finally, on 26 November 2014 the applicant filed subsequently requested factual up-date.

8. The parties submitted that, following a request by the applicant, on 5 April 2013 the Court of First Instance in Podgorica had quashed its judgment of 17 May 2004, which judgment had been found by the Court to be in violation of Article 10 of the Convention, and had re-opened the civil proceedings.

9. On 18 October 2013 the Court of First Instance rendered its judgment establishing that the plaintiff's claim against the applicant had been withdrawn and ordered the plaintiff to pay EUR 2,505 to the applicant for legal costs. On 2 July 2014 the High Court in Bijelo Polje upheld this decision and reduced the legal costs due to the applicant to EUR 2,175.

10. The applicant, in addition, submitted that he had effectively paid the plaintiff EUR 1,133.31 in compliance with the judgment found to be contrary to Article 10 of the Convention. The Government did not contest this.

THE LAW

11. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

12. The applicant claimed EUR 7,667.50 in respect of pecuniary damage and EUR 5,000 in respect of non-pecuniary damage. He admitted that he could seek the reimbursement of the amount paid to the plaintiff by means of a counter-claim in the enforcement proceedings, but only once the re-opened proceedings were concluded.

13. The Government contested the applicant's just satisfaction claim. In particular, they maintained that the applicant could and should have lodged a counter-claim before the domestic courts and thus seek the amount he had paid to the plaintiff.

14. The Court notes that out of EUR 7,667.50 awarded against the applicant domestically he effectively paid to the plaintiff EUR 1,133.31 (see paragraph 10 above). It is therefore this amount that represents his pecuniary loss. It is further observed that the Convention provides for a just satisfaction award only if the internal legislation does not allow for full reparation. It is noted in this regard that the internal law of the respondent State in the present case allows for full reparation of the amount the applicant paid to the plaintiff, that is of the pecuniary damage, by means of a counter-claim in the enforcement proceedings. The Court, however, reiterates that if the victim, after exhausting in vain the domestic remedies before complaining at Strasbourg of a violation of his rights, were obliged to do so a second time before being able to obtain from the Court just satisfaction, the total length of the procedure instituted by the Convention would scarcely be in keeping with the ideas of the effective protection of human rights. Such a requirement would lead to a situation incompatible with the aim and object of the Convention (see, for example, *De Wilde, Ooms and Versyp v. Belgium* (Article 50), 10 March 1972, § 16 *in fine*, Series A no. 14). The Court therefore awards the applicant EUR 1,133.31 for pecuniary damage.

15. The Court notes the applicant's claim in respect of non-pecuniary damage. It considers, however, that the finding of a violation of Article 10 of the Convention in the principal judgment constitutes in itself sufficient just satisfaction in this regard.

B. Costs and expenses

16. The applicant claimed EUR 593 for the costs incurred before the Court.

17. The Government made no comment in this regard.

18. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicant the entire sum claimed under this head.

C. Default interest

19. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) EUR 1,133.31 (one thousand one hundred and thirty three euros and thirty one cents), plus any tax that may be chargeable, in respect of pecuniary damage; and

(ii) EUR 593 (five hundred and ninety three euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

2. *Holds* that the finding of a violation of Article 10 of the Convention in the principal judgment constitutes in itself sufficient just satisfaction for any non-pecuniary damage suffered by the applicant;

3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 23 June 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Guido Raimondi
President