Information Note on the Court’s case-law No. 121

July 2009

Zavoloka v. Latvia - 58447/00

Judgment 7.7.2009 [Section III]

Article 13

Effective remedy

Absence of statutory remedy for non-pecuniary damage resulting from death in accident caused by private individual: no violation

*Facts*: The applicant’s twelve-year-old daughter was run over in the street and killed by a car driven by a private individual. When charged, the driver spontaneously paid the applicant about 2,600 euros to cover the cost of her daughter’s funeral. The court of first instance found the driver guilty as charged and sentenced him to three years’ imprisonment. The applicant then brought a civil action against the driver in the court of first instance for financial compensation for the non-pecuniary damage sustained as a result of her daughter’s death. Her application was dismissed as there was no provision in the Civil Code for compensation for non-pecuniary damage in the event of the death of a close relative. The applicant lodged an appeal with the regional court, which found that she was entitled to full compensation from the driver. The driver appealed on points of law. The Senate of the Supreme Court, considering that the case raised a serious problem of interpretation of the Civil Code, suspended the examination of the appeal and convened a plenary sitting of the Supreme Court, which, in a preliminary ruling, held that the general provisions of the Civil Code provided only for compensation for pecuniary damage suffered by the victim, while compensation for non-pecuniary damage was provided for only in a provision of the Civil Code which was not applicable to the applicant’s case. The Senate quashed and annulled the judgment of the regional court and remitted the case to the appeal court, which accepted the Senate’s findings in substance and dismissed the appeal. The Senate rejected the applicant’s subsequent appeal and upheld the judgment.

*Law*: The applicant’s only quarrel with the national courts was that they had refused to award her compensation for the non-pecuniary damage she had allegedly suffered; her complaint thus concerned only the ineffectiveness of the compensation procedure. It was therefore to be examined under Article 13 in conjunction with Article 2 of the Convention.At the material time the compensation of family members of accident victims was regulated by the Civil Code. One provision covered only pecuniary damage, while another provided for compensation for non-pecuniary damage only in certain cases, which did not include that of the applicant. Concerning the substantive limb of Article 2, the applicant’s daughter had been killed in a road accident caused by the negligence of a private individual at the wheel of a motor vehicle. The authorities had therefore not been in a position to foresee the risk of such a random event occurring, so they could not be held liable in any way. Furthermore, there was no appearance of any violation of the procedural limb of Article 2, as the authorities had effectively set in motion the criminal-justice machinery provided for in the domestic law. The applicant thus had no arguable claim under Article 13 in so far as neither aspect of Article 2 applied. Concerning the compensation for non-pecuniary damage claimed by the applicant, in view of the great diversity that reigned in the legal orders of the different contracting States in the field of compensation in the event of death, the Court could not infer that there was a general and absolute obligation to award pecuniary compensation for non-pecuniary damage in situations similar to that of the applicant. Furthermore, the applicant could have joined the criminal proceedings as a civil party to claim the reimbursement of her medical and funeral expenses, but instead had preferred to accept the sum offered by the driver responsible for the accident. Lastly, a new law had amended the general provisions of the Civil Code, which henceforth provided expressly for the possibility of compensation for non-pecuniary damage as part of the general right to compensation. In addition, it created the presumption that non-pecuniary damage existed in the event of criminal offences against life. Although it noted with approval this change in the law, the Court did not consider the previous situation to have been incompatible with Article 13. So, in the light of all the relevant circumstances of the case, there was no arguable claim of a violation of Article 2 in this case in respect of compensation for the damage suffered by the applicant.

*Conclusion*: no violation (six votes to one).

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