European Court of Human Rights : Croatian Radio-Television v. Croatia

IRIS 2023-4:1/22

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A recent judgment of the European Court of Human Rights (ECtHR) has confirmed and clarified under what conditions a public service broadcaster (PSB) has editorial independence and institutional autonomy, and therefore can claim locus standi before the ECtHR as a non-governmental organisation. The judgment revealed a remarkable position taken by the Croatian Government in defence of an interference with the rights of the Croatian public broadcasting organisation, the Croatian Radio-Television (CRT). The Croatian Government argued that the CRT, as a government institution, had no standing before the ECtHR.

The case concerned divergent decisions of Croatian courts in twenty sets of civil proceedings regarding unjust enrichment, which the CRT had instituted against various individuals to whom one of its employees had paid fees on its behalf for work they had never performed. The CRT lodged an application with the ECtHR, complaining that in the twenty sets of civil proceedings in question, the domestic courts had ruled against it. The ECtHR examined the complaint under Article 6 § 1 of the European Convention on Human Rights (ECHR) which entitles everyone a right of access to court and a fair hearing by a tribunal in the determination of his or her civil rights and obligations. The ECtHR however found no violation of the rights of the CRT under Article 6 § 1 ECHR.

Apart from this procedural aspect on the right to a fair trial at the domestic level, the judgment dealt in particular with the question of whether a public broadcasting institution as a legal entity has standing under Article 34 ECHR. According to Article 34 ECHR the ECtHR "may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto (..)". According to the established case law of the ECtHR a legal entity may submit an individual application to the ECtHR, provided that it is a "non-governmental organisation". The term "governmental organisations", as opposed to "non-governmental organisations" includes legal entities which participate in the exercise of governmental powers or run a public service under government control. Such governmental organisations have no standing under the ECHR. The term "governmental organisations" applies not only to the central organs of the State, but also to decentralised authorities that exercise "public functions", regardless of their autonomy vis-à-vis the central

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organs. In order to determine whether a legal person is a “governmental organisation” or “non-governmental organisation”, account must be taken of its legal status and, where appropriate, the rights that status gives it, the nature of the activity it carries out, the context in which it is carried out, and the degree of its independence from the political authorities. The term “governmental organisation” thus includes, inter alia, State-owned companies which do not enjoy “sufficient institutional and operational independence from the State”.

The Croatian Government argued before the ECtHR that the CRT did not enjoy sufficient institutional and operational independence from the State to be considered a non-governmental organisation within the meaning of Article 34 ECHR. Therefore the CRT, according to the Government, did not have locus standi to lodge an individual application with the ECtHR. As regards the structure of the CRT, the Government pointed out that Croatian Radio-Television was a public institution whose sole founder is the State, and that the founders’ rights were exercised by the Government of Croatia. Fourteen of the seventeen members of the Supervisory Board and the Programming Council were appointed and removed by the Croatian Parliament, which also appointed and removed the Director General. Moreover, the CRT’s operation and its general legal acts were supervised by the Ministry of Culture and the Media and by the Electronic Media Council. The main source of revenue of the CRT was not sponsored advertising, but almost exclusively State aid and State budget allocations: more than 85% of its financial resources in the past several years had come from public sources, namely from the mandatory licence fee, as a form of State aid, and direct allocations from the State budget. The Government further argued that the CRT was not only structurally and financially dependent on the State, but that this was to a large extent true also for its programming policy. The Government therefore submitted that the CRT was not sufficiently structurally, financially or in terms of the programmes it produced separate from the State to be considered a non-governmental organisation within the meaning of Article 34 ECHR. It therefore invited the ECtHR to declare the application inadmissible for lack of locus standi.

The ECtHR however dismissed this request by the Croatian Government. Indeed, the ECtHR had so far always held that public broadcasting organisations such as those in France, Switzerland, Austria and Belgium, had locus standi to lodge an individual application (see e.g. IRIS 2004-5/2; 2007-3/4; IRIS 2011-6/1; IRIS 2012-8/3; IRIS 2021-2/20 and 2023-2/17). What the ECtHR considered decisive was whether the legislature had devised a framework which was designed to guarantee the editorial independence and the institutional autonomy of the PSB. As to the CRT, the ECtHR was of the opinion that as a public-law entity it could be considered a “non-governmental organisation” as it did not exercise “governmental powers”, it was not established “for public-administration purposes” and it was independent of the State. The ECtHR noted that the electronic media in Croatia, including the CRT, was regulated by the Media Act

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and the Electronic Media Act, both of which contained provisions to ensure their impartiality and independence. Furthermore the Croatian Constitution and the Media Act guaranteed the freedom of the media, while the Electronic Media Act guaranteed the right to full programming freedom of the electronic media. That meant that the CRT within the bounds of the public-service requirements set out in the Croatian Radio-Television Act, did not come under the aegis of the State but enjoyed the freedom of the media and was independent in its operation. It operated under the control of the Electronic Media Council, an independent regulatory authority responsible for monitoring the application of the Electronic Media Act, including the provisions which aimed to ensure the impartiality and independence of the electronic media. The ECtHR also referred to the fact that the CRT did not have a monopoly over television or radio broadcasting and operated in a sector open to competition. It reiterated that even where a public broadcaster was largely dependent on public resources for the financing of its activities, this was not considered to be a decisive criterion, while the fact that a public broadcaster was placed in a competitive environment was an important factor.

The ECtHR concluded that, although the CRT had been entrusted with a public-service mission, and depended to a considerable extent on the State for its financing, the Croatian legislature had devised a framework designed to guarantee its editorial independence and its institutional autonomy. Therefore, it could not be said that the CRT was under “government control”. Consequently, the CRT qualified as a “non-governmental organisation” within the meaning of Article 34 ECHR and was therefore entitled to lodge an individual application with the ECtHR for alleged breach of its rights to a fair trial under Article 6 § 1.

Judgment by the European Court of Human Rights, First Section, Croatian Radio-Television v. Croatia, Applications nos. 52132/19 and 19 others, 2 March 2023

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