



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

FIRST SECTION

CASE OF DIVJAK v. CROATIA

(Application no. 9520/02)

JUDGMENT
(Friendly settlement)

STRASBOURG

16 December 2004

This judgment is final but it may be subject to editorial revision.

In the case of Divjak v. Croatia,

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

Mr C.L. ROZAKIS, *President*,

Mr L. LOUCAIDES,

Mrs F. TULKENS,

Mr P. LORENZEN,

Mrs N. VAJIĆ,

Mrs S. BOTOUCHAROVA,

Mr K. HAJIYEV, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 25 November 2004,

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

PROCEDURE

1. The case originated in an application (no. 9520/02) 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 two Croatian nationals, Ms Živka Divjak and Mr Milivoj Divjak (“the applicants”), on 13 February 2002.

2. The applicants were represented by Mr A. Nobilo, a lawyer practising in Zagreb. The Croatian Government (“the Government”) were represented by their Agent, Ms L. Lukina-Karajković.

3. The applicants complained that the enactment of the Civil Obligations (Amendments) Act 1996 violated their right of access to court guaranteed by Article 6 § 1 of the Convention and their right to an effective remedy guaranteed by Article 13 of the Convention.

4. By a decision of 16 December 2003 the Court declared the applicants’ complaints admissible.

5. On 11 March and on 21 June 2004 the Government and the applicants, respectively submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

6. The applicants were born in 1932 and 1928, respectively and live in Sisak, Croatia.

7. On 1 July 1992 the applicants’ weekend house in Sukošan, Croatia, was blown up by unknown perpetrators.

8. On 9 May 1995 the applicants instituted civil proceedings before the Zagreb Municipal Court (*Općinski sud u Zagrebu*) seeking damages from the Republic of Croatia for their damaged property.

9. Pursuant to the Civil Obligations (Amendments) Act 1996 (*Zakon o izmjeni Zakona o obveznim odnosima*, Official Gazette no. 7/1996 of 26 January 1996), the Zagreb Municipal Court stayed the proceedings on 6 December 1999.

10. On 7 November 2002 the applicants complained about the stay on their proceedings before the Zagreb Municipal Court to the Constitutional Court. It would appear that the proceedings before the Constitutional Court are still pending.

11. The proceedings before the Zagreb Municipal Court resumed on 4 December 2003 pursuant to the “Damage from Terrorist Acts and Public Demonstrations Act 2003” (*Zakon o odgovornosti za štetu nastalu uslijed terorističkih akata i javnih demonstracija*, Official Gazette no. 117/2003 of 23 July 2003).

12. On the same date the Zagreb Municipal Court dismissed the applicants’ claim on the basis of its lack of jurisdiction. The applicants appealed and the case is now apparently pending before the Zagreb County Court (*Županijski sud u Zagrebu*).

THE LAW

13. On 11 March 2004 the Court received the following declaration signed by the Government’s Agent:

“I declare that, with a view to securing a friendly settlement of the above-mentioned case, the Government of Croatia offer to pay *ex gratia* EUR 10,000 to Ms Živka Divjak and Mr Milivoj Divjak. This sum is to cover any pecuniary and non-pecuniary damage as well as costs and expenses, converted into the national currency on the date of payment and free of any taxes that may be applicable. It will be payable within three months from the date of delivery of the judgment by the Court pursuant to Article 39 of the European Convention on Human Rights. This payment will constitute the final resolution of the case.

In the event of failure to pay this sum within the said three-month period, the Government undertake to pay, until settlement, simple interest on the amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

The Government further undertake not to request that the case be referred to the Grand Chamber under Article 43 § 1 of the Convention.”

14. On 21 June 2004 the Court received the following declaration signed by the applicant:

“I note that the Government of Croatia are prepared to pay *ex gratia* the sum of EUR 10,000 covering pecuniary and non-pecuniary damage as well as costs and expenses, converted into national currency on the date of payment and free of any taxes that may be applicable, to Ms Živka Divjak and Mr Milivoj Divjak with a view to securing a friendly settlement of the above-mentioned case pending before the European Court of Human Rights.

The applicants accept the proposal and waive any further claims against Croatia in respect of the facts of this application. The applicants declare that this constitutes a final settlement of the case.

This declaration is made in the context of a friendly settlement which the Government and the applicant have reached.

The applicants further undertake not to request that the case be referred to the Grand Chamber under Article 43 § 1 of the Convention after delivery of the Court’s judgment.”

15. The Court takes note of the agreement reached between the parties (Article 39 of the Convention). It is satisfied that the settlement is based on respect for human rights as defined in the Convention or its Protocols (Article 37 § 1 *in fine* of the Convention and Rule 62 § 3 of the Rules of Court).

16. Accordingly, the case should be struck out of its list of cases.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the case out of its list of cases;
2. *Takes note* of the parties’ undertaking not to request a rehearing of the case before the Grand Chamber.

Done in English, and notified in writing on 16 December 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President