



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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 74309/01  
by Ivica BAŠIĆ  
against Croatia

The European Court of Human Rights (First Section), sitting on  
23 October 2003 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,  
Mr P. LORENZEN,  
Mr G. BONELLO,  
Mrs F. TULKENS,  
Mrs N. VAJIĆ,  
Mr E. LEVITS,  
Mrs S. BOTOCHAROVA, *judges*,

and Mr S. NIELSEN, *Deputy Section Registrar*,

Having regard to the above application lodged on 22 May 2001,

Having regard to the observations submitted by the respondent  
Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

## THE FACTS

The applicant, Mr Ivica Bašić, is a Croatian citizen, who was born in 1960 and lives in Cologne, Germany. The respondent Government are represented by their Agent Ms Lidija Lukina-Karajković.

### A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

In 1990 the applicant leased a site for the purposes of mushroom production. In December 1992 the mushroom production facility was destroyed in an explosion.

On 15 October 1997 the applicant filed in the Zagreb Municipal Court (*Općinski sud u Zagrebu*) a civil claim for damages in the amount of 15,689,155.48 Croatian Kunas (HRK) against the Republic of Croatia. He alleged that the mushroom production facility was destroyed by members of the Croatian army.

On 6 November 1999 Parliament introduced a change of the Civil Obligations Act which provided that all proceedings concerning actions for damages resulting from acts of members of the Croatian army and police when acting in their official capacity during the homeland war in Croatia were to be stayed pending the enactment of new legislation on the subject.

On 9 December 1999 the court stayed the proceedings pursuant to the above law.

On 11 December 2000 the applicant filed a constitutional claim challenging the above legislation. He has not yet received a reply.

On 14 July 2003 Parliament passed the Act on liability of the Republic of Croatia for damage caused by members of the Croatian army and police when acting in their official capacity during the homeland war (*Zakon o odgovornosti Republike Hrvatske za štetu uzrokovanu od pripadnika hrvatskih oružanih i redarstvenih snaga tijekom Domovinskog rata*, Official Gazette no. 117/2003 of 23 July 2003).

### B. Relevant domestic law

Section 184 (a) of the 1999 Act on Amending the Civil Obligations Act (*Zakon o dopunama Zakonu o obveznim odnosima*, Official Gazette no. 112/1999) provides that all proceedings instituted against the Republic of Croatia for damage caused by members of the Croatian army or police

when acting in their official capacity during the homeland war in Croatia from 7 August 1990 to 30 June 1996 are to be stayed.

The Act also imposed an obligation on the Government to submit to Parliament special legislation, regulating the responsibility for such damage, within six months at the latest from the Act's entry into force.

The relevant parts of the 2003 Act on liability of the Republic of Croatia for damage caused by members of the Croatian army and police when acting in their official capacity during the homeland war now regulate circumstances in which the Republic of Croatia is liable for damage caused by members of the army and the police during the homeland war.

## COMPLAINTS

1. The applicant maintained that Parliament's enactment of the 1999 legislation interfered with his right of access to court within the meaning of Article 6 § 1 of the Convention and his right to an effective remedy within the meaning of Article 13 of the Convention.

2. The applicant also complained under Article 1 of Protocol No. 1 alone and in conjunction with 14 of the Convention that his right to property was violated because he could not obtain damages for his destroyed property. He alleged that he was discriminated against because the 1999 legislation excluded persons whose property had been destroyed by the members of the Croatian Army and Police from obtaining damages.

## THE LAW

The applicant complained that the legislation from 1999 prevented him from having his claim for damages decided on the merits and thus deprived him of his right of access to court and his right to an effective remedy. He relies on Article 6 § 1 and Article 13 of the Convention, the relevant parts read as follows:

### Article 6 § 1

"1. In the determination of his civil rights and obligations ...everyone is entitled to a ... hearing ... by [a] ... tribunal ..."

### Article 13

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The Government submitted that the applicant did enjoy access to a court because he had instituted civil proceedings for damages before the Zagreb Municipal Court. The fact that the court had stayed the proceedings pursuant to the 1999 legislation did not affect the applicant's right of access to a court because the proceedings were stayed only temporarily. The legislator's intention had been neither to interfere with the essence of the right of access to a court nor its permanent prevention, but only to postpone the proceedings pending the enactment of the new *lex specialis* legislation.

The applicant argued that the prolonged period for which he had not been able to have his civil claim decided presented a violation of his right of access to a court.

The Court considers, in the light of the parties' submissions, that this part of the application raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

2. The applicant complained further that his right to property was violated because he could not obtain damages for his destroyed property. He alleged that he was discriminated against because the 1999 legislation excluded persons whose property had been destroyed by the members of the Croatian Army and Police from obtaining damages. He relied on Article 1 of Protocol No. 1 and Article 14 of the Convention which read as follows:

**Article 1 of Protocol No. 1**

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

**Article 14**

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

The Government firstly submitted that the Convention entered into force in respect of Croatia on 5 November 1997, and that all the events that had

taken place prior to that date were outside of the Court's competence *ratione temporis*.

The applicant argued that that he had been suffering financial damage and a violation of his rights even after the Convention had entered into force in respect of Croatia.

In the alternative the Government invited the Court to conclude that this part of the application was manifestly ill-founded. They argued that the applicant's claim before the domestic courts did not represent possessions within the meaning of Article 1 of Protocol No. 1 because it was not sufficiently established so as to be enforceable.

In the Government's opinion the applicant's claim for damages would fall within the ambit of Article 1 of Protocol No. 1 only if the domestic courts would establish the liability of the Republic of Croatia for the damages sustained.

The applicant argued that his property rights were violated because his property had been destroyed and he had not been able to obtain any damages in that respect.

As to Article 14 the Government argued that the applicant's complaint under that provision was not relevant because Article 1 of Protocol No. 1 was not applicable to the present case.

Furthermore, they maintained that a possible violation of Article 14 of the Convention should entail a difference in treatment based on one of the grounds expressly established in the text of that provision.

They pointed out that there had been no indication of a difference in treatment in respect of the applicant on any such ground as the legislation in question had been equally applied to all persons in the applicant's position.

The applicant disagreed with the Government.

The Court does not find it necessary to examine all the issues raised by the Government because the application is in any event inadmissible for the following reasons.

The Court firstly has to ascertain whether, and to what extent, it is competent *ratione temporis* to deal with the application. It reiterates that in accordance with the generally recognised rules of international law, the Convention only governs, for each Contracting Party, facts subsequent to its entry into force with regard to that Party (see, for example, *Kadikis v. Latvia* (dec.), no. 47634/99, 29 June 2000 and *Multiplex v. Croatia*, (dec.), no. 58112/00, 26 September 2002).

The Court recalls that Croatia recognised the competence of the Court to receive applications "from any person, non-governmental organisation or group of individuals claiming to be a victim of a violation by Croatia of the rights recognised in the Convention through any act, decision or event occurring after 5 November 1997." Accordingly, the Court is only competent to examine the present application in so far as it refers to facts occurring after the date of the ratification of the Convention.

The Court notes that the applicant alleges that his property was destroyed in 1993, before Croatia ratified the Convention. The Court considers that the destruction of property is an instantaneous act which does not create any continuing situation.

The Court notes further that, although the legislative interference took place after the Convention entered into force in respect of Croatia, such an interference was so closely related to the events that gave rise to the applicant's claim that divorcing the two would amount to giving retroactive effect to the Convention which would be contrary to general principles of international law. At the same time it would render Croatia's declaration recognising the Court's competence to receive individual applications nugatory (see *Stamoulakatos v. Greece*, judgment of 30 September 1993, Series A no. 271, p. 14, § 33 and *Multiplex v. Croatia*, cited above).

It follows that this part of the application is incompatible *ratione temporis* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court unanimously

*Declares* admissible, without prejudging the merits, the applicant's complaint concerning his right of access to a court;

*Declares* the remainder of the application inadmissible.

Søren NIELSEN  
Deputy Registrar

Christos ROZAKIS  
President

**Commented [Note1]:** Summarise the complaints without necessarily citing the invoked Convention Articles.