CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIFTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 42165/02
by Dana HADRABOVÁ and Lenka HADRABOVÁ

Application no. 466/03
by Hedvika HADRABOVÁ, Zdeňka KŘIVÁNKOVÁ, Dušan KŘIVÁNEK, Lenka HORKÁ and Miloš HORKÝ

against the Czech Republic

The European Court of Human Rights (Fifth Section), sitting on 25 September 2007 as a Chamber composed of:

Mr P. LORENZEN, *President*,
Mrs S. BOTOUCHAROVA,
Mr K. JUNGWIERT,
Mr R. MARUSTE,
Mr J. BORREGO BORREGO,
Mrs R. JAEGER,
Mr M. VILLIGER, *judges*,
and Mrs C. WESTERDIEK, *Section Registrar*,

Having regard to the above applications lodged on 22 November 2002 and 19 December 2002 respectively,

Having regard to the decision to apply Article 29 § 3 of the Convention and examine the admissibility and merits of the cases together.

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

Having deliberated, decides as follows:

THE FACTS

The applicants, Ms Dana Hadrabová, born in 1956, Ms Lenka Hadrabová, born in 1983, Ms Zdenka Křivánková, born in 1945, Mr Dušan Křivánek, born in 1949, Ms Lenka Horká, born in 1947, and Mr Miloš Horký, born in 1944, are Czech nationals and live in Omice and Brno respectively. They are represented before the Court by Mr J. Brož, a lawyer practising in Brno. Another applicant, Ms Hedvika Hadrabová, born in 1921, died on 21 August 2004. The second applicant became her legal successor. The Czech Government ("the Government") were represented by their Agent, Mr V.A. Schorm from the Ministry of Justice.

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

On 24 May 1990 the first, third, fourth, fifth, sixth and seventh applicants and two other persons lodged an action for damages with the Brno-venkov District Court (*okresní soud*) against Waterworks (*Vodohospodářské stavby, s.p.*), a State owned company, requesting the court to order the defendant to cease operating a stone quarry and to pay them damages.

On 13 March 2002 the District Court, following two successive inheritance proceedings, admitted the second applicant, as approved heir, to the proceedings. On 18 November 2002 the court decided that the fourth applicant was the legal successor of another original claimant who had meanwhile died.

On 5 August 2004 the District Court discontinued the proceedings. On 30 September 2004 the applicants appealed against this decision. It appears that the proceedings are still pending before the appellate court.

COMPLAINTS

The applicants complained under Article 6 § 1 of the Convention that the length of the proceedings had been excessive and, under Article 13 of the Convention, that they had no effective remedies at their disposal in respect of the delays in the proceedings.

THE LAW

The Court considers that, in accordance with Rule 42 § 1 of the Rules of Court, the applications should be joined, given their common factual and legal background.

On 4 May 2006 the Government submitted complementary observations concerning the introduction of a new domestic remedy in cases relating to

the length of proceedings. In a letter of 22 June 2006 the applicants' representative informed the Court that the applicants did not wish to use the new remedy and insisted in pursuing their applications before the Court.

On 6 June 2007, in reply to the Government's information on the functioning of the new compensatory remedy which had been sent to them on 25 May 2007, the applicants referred to their previous observations.

In a letter of 3 August 2007 the Government reported that the applicants had applied for compensation on 16 April 2007 and that the Ministry of Justice had granted their application on 23 July 2007, having awarded the applicants the following amounts:

- Mrs Dana Hadrabová : CZK 193,000 (EUR 6,964[1]);
- Mrs Lenka Hadrabová: CZK 44,000 (EUR 1,588);
- Mrs Lenka Horká and Mr Miloš Horký: CZK 193,000 (EUR 6,694)
- Mrs Zdenka Křivánková: CZK 193,000 (EUR 6,964) and
- Mr Dušan Křivánek: CZK 193,000 (EUR 6,964)

The Government further noted that in their application for compensation to the Ministry of Justice, the applicants had expressly referred to the proposals prepared by the Registry with a view to securing a friendly settlement. The Government submitted copies of the relevant documents.

The Court recalls that according to Rule 47 § 6 of the Rules of Court applicants shall keep the Court informed of all circumstances relevant to the application. It further recalls that an application may be rejected as abusive under Article 35 § 3 of the Convention, among other reasons, if it was knowingly based on untrue facts (see *Varbanov v. Bulgaria* no. 31365/96, § 36, ECHR 2000-X; *Popov v. Moldova (no. 1)* no. 74153/01, § 48, 18 January 2005; *Řehák v. Czech Republic* (dec.), no. 67208/01, 18 May 2004; *Kérétchachvili v. Georgia* (dec.), no. 5667/02, 2 May 2006).

Incomplete and therefore misleading information may also amount to abuse of the right of application, especially if the information concerns the very core of the case and no sufficient explanation is given for the failure to disclose that information (*Poznanski and Others v. Germany* (dec.), no. 25101/05, 3 July 2007). In the circumstances of the present case, the applicants, represented by legal counsel in the domestic proceedings and the proceedings before the Court, have not furnished any plausible explanation for the failure to inform the Court about the fact that they had applied for compensation one month and two weeks before they submitted their comments on the Government's information on the functioning of the new domestic remedy. Having regard to the importance of the information at issue for the proper determination of the present cases, the Court finds that

[1] 1 EUR = 27.75 CZK

the applicants' conduct was contrary to the purpose of the right of individual petition, as provided for in Article 34 of the Convention.

The Court further recalls that, according to Article 38 § 2 of the Convention, friendly-settlement negotiations are confidential and that Rule 62 § 2 of the Rules of Court further stipulates that no written or oral communication and no offer or concession made in the framework of the attempt to secure a friendly settlement may be referred to or relied on in contentious proceedings. The Court reiterates the importance of the principle that friendly settlement negotiations are confidential and that communications made by the parties within the context of such negotiations are not to be relied upon in contentious proceedings. Moreover, it cannot be excluded that a breach of the principle could, in certain circumstances, justify the conclusion that an application is inadmissible on grounds of abuse of the right of petition (*Popov v. Moldova*, no. 74153/01, § 48).

The Court finds that, on the basis of the documents submitted by the Government, it is clear that in their application for compensation, the applicants explicitly referred to the Registry's proposal prepared within the framework of friendly-settlement negotiations. It considers that this behaviour constitutes a breach of the above mentioned rule of confidentiality which must also be considered as an abuse of the right of application.

In view of the above, it is appropriate to discontinue the application of Article 29 § 3 of the Convention and to reject the applications as a whole as an abuse of the right of application pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Decides to join the applications;

Declares the applications inadmissible.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President