CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 9520/02
by Živka and Milivoj DIVJAK
against Croatia

The European Court of Human Rights (First Section), sitting on 16 December 2003 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mr P. LORENZEN,
Mr G. BONELLO,
Mrs F. TULKENS,
Mrs N. VAJIĆ,
Mrs E. STEINER,
Mr K. HAJIYEV, *judges*,
and Mr S. NIELSEN, *Deputy Sectiion Registrar*,

Having regard to the above application lodged on 13 February 2002,

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 Živka Divjak and Mr Milivoj Divjak, are Croatian citizens who were born in 1932 and 1928 respectively and live in Sisak, Croatia. They are represented before the Court by Mr Anto Nobilo, a lawyer practising in Zagreb. 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.

On 8 May 1991 the applicants' house in Sukošani, Croatia was arsoned and on 1 July 1992 destroyed by a mine laid down by unknown perpetrator.

On 9 May 1995 the applicants instituted civil proceedings with the Zagreb Municipal Court (*Općinski sud u Zagrebu*), seeking damages from the Republic of Croatia.

On 17 January 1996 Parliament introduced an amendment to the Civil Obligations Act which provided that all proceedings concerning actions for damages resulting from terrorist acts were to be stayed pending the enactment of new legislation on the subject and that before the enactment of such new legislation damages for terrorist acts could not be sought.

On 6 December 1999 the Zagreb Municipal Court stayed the proceedings.

On 14 July 2003 Parliament passed the Act on Liability for Damage Resulting from Terrorist Acts and Public Demonstrations (*Zakon o odgovornosti za štetu nastalu uslijed terorističkih akata i javnih demonstracija*, Official Gazette no. 117/2003 of 23 July 2003).

B. Relevant domestic law

The relevant part of the Civil Obligations Act reads as follows:

Section 180(1)

> "Responsibility for loss caused by death or bodily injury or by damage or destruction of another's property, when it results from violent acts or terror or from public demonstrations or manifestations, lies with the ... authority whose officers were under a duty, according to the laws in force, to prevent such loss."

The relevant parts of the Act Amending the Civil Obligations Act (*Zakon o izmjenama i dopunama Zakona o obveznim odnosima* – Official Gazette no. 7/1996) read as follows:

Section 1

"Section 180 of the Civil Obligations Act (the Official Gazette nos. 53/91, 73/91 and 3/94) shall be repealed."

Section 2

"Proceedings for damages instituted under section 180 of the Civil Obligations Act shall be stayed.

The proceedings referred to in sub-section 1 of this section shall be continued after the enactment of special legislation governing responsibility for damage resulting from terrorist acts."

The relevant part of the Civil Procedure Act (*Zakon o parničnom postupku*) provides:

Section 212

"Proceedings shall be stayed:

...

(6) where another statute so prescribes."

The 2003 Act on Liability for Damage Resulting from Terrorist Acts and Public Demonstrations provides, *inter alia*, that the Republic of Croatia is to compensate only damages resulting in bodily injuries, impairment of health or death. All material damages could be sought pursuant to the Reconstruction Act.

The relevant parts of the Reconstruction Act (*Zakon o obnovi*, Offcial Gazette nos. 24/1996, 54/1996, 87/1996 and 57/2000) provide, *inter alia*, that the means for reconstruction are to be granted to persons whose property was destroyed in the war. The request is to be submitted to the Ministry for Public Works, Reconstruction and Construction (*Ministarstvo za javne radove, obnovu i graditeljstvo*).

COMPLAINT

The applicants complained that Parliament's enactment of the 1996 legislation interfered with their right of access to a court and their right to an effective remedy within the meaning of Article 6 § 1 and Article 13 of the Convention.

THE LAW

The applicants maintained that they were deprived of their right of access to a court and their right to an effective remedy because the changes of the Civil Obligations Act from 1996 had prevented them from having their claim for compensation decided by the domestic courts. They relied on Article 6 § 1 and Article 13 of the Convention, the relevant parts of which read as follows:

Article 6 § 1

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... 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."

a. The Government firstly maintained that the applicants had failed to exhaust domestic remedies because they had not submitted a constitutional claim challenging the legislation in question.

The applicants maintained that although they had not filed such a claim, some other person in the same position had. However, the Constitutional Court did not decide these claims.

The Court recalls that in similar circumstances it has held in the Crnojević case that a constitutional complaint challenging the legislation in question did not represent a remedy to be exhausted (see *Crnojević v. Croatia*, (dec.), no. 71614/01, 29 April 2003). The Court sees no reason to depart from this decision in the present case.

It follows that the applicants' complaint cannot be rejected for failure to exhaust domestic remedies.

b. The Government further maintained that they bear no responsibilities for the events that had taken place prior to 5 November 1997 when the Convention entered into force in respect of Croatia.

The applicants stressed that they had been deprived of their right of access to a court also after the Convention had entered into force in respect of Croatia.

The Court notes that the proceedings in question, concerning the applicants' civil claim for damages against the respondent State, were *de facto* stayed on 17 January 1996 although the Zagreb Municipal Court formally took its decision to stay the proceedings on 6 December 1999.

The Court further notes that the applicants complained that they were deprived of their right of access to a court at least until the enactment of the new legislation on 14 July 2003. It follows that the situation complained of continued even after the ratification of the Convention on the part of

Croatia, i.e. on 5 November 1997 and that the Court does have competence *ratione temporis* to examine the applicants' complaints.

c. In the alternative the Government invited the Court to conclude that the application did not disclose any appearance of a violation of Article 6 § 1 of the Convention. In this connection they submitted that the applicants did enjoy access to a court because they had instituted civil proceedings for damages before the Zagreb Municipal Court. The fact that the court had stayed proceedings pursuant to the 1996 legislation did not affect the applicants' right of access to a court because the proceedings were stayed only temporarily. When in July 2003 the new legislation was enacted the applicants again enjoyed access to a court.

The applicants contended that the prolonged period for which they had been unable to have their civil claim decided before the domestic courts violated their right of access to a court.

As to the Article 13 complaint, the Government argued that Article 13 did not apply to a situation where an application is directed against a law. Furthermore they asserted that the application of Article 6 § 1 of the Convention concerning the applicants' right of access to a court excluded the application of the applicants' right to an effective remedy under Article 13 because there was no separate issue in that respect.

The applicants maintained that they had no effective remedy in the domestic legal system to enforce their right of access to a court.

The Court considers, in the light of the parties' submissions, that 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 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.

For these reasons, the Court unanimously

Declares the application admissible, without prejudging the merits of the case.

Søren NIELSEN
Deputy Registrar

Christos ROZAKIS
President