CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 13848/02
by Ivan and Milka DOBROTINIĆ
against Croatia

The European Court of Human Rights (First Section), sitting on 13 February 2003 as a Chamber composed of

Mr C.L. ROZAKIS, *President*,
Mrs F. TULKENS,
Mr P. LORENZEN,
Mrs N. VAJIĆ,
Mr E. LEVITS,
Mr A. KOVLER,
Mr V. ZAGREBELSKY, *judges*,

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

Having regard to the above application lodged on 27 February 2002,

Having deliberated, decides as follows:

THE FACTS

The applicants, Mr Ivan Dobrotinić and Ms Milka Dobrotinić, are Croatian citizens, who live in Bjelovar, Croatia. They are represented before the Court by Ms Tatajana Burjačenko Grubiša, a lawyer practising in Zagreb.

A. The circumstances of the case

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

On 14 January 1992 the applicants' summer house in Gornje Plavnice, Croatia was mined by an unknown perpetrator.

The responsibility for damages resulting from terrorist acts was regulated by Section 180 of the Civil Obligations Act (*Zakon o obveznim odnosima*) providing that the responsibility lay with the authority whose officers were under duty to prevent such damages.

On 26 May 1995 the applicants instituted civil proceedings before the Zagreb Municipal Court (*Općinski sud u Zagrebu*), seeking damages from the Republic of Croatia on the basis of Section 180 of the Civil Obligations Act.

On 17 January 1996 the Croatian 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. So far the Croatian authorities have not enacted any new legislation regulating the matter.

On 4 June 1996 the court stayed the proceedings pursuant to the above legislation.

B. Relevant domestic law

The relevant part of the Civil Obligations Act (*Zakon o obveznim odnosima*) 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 provides:

Section 212

"Proceedings shall be stayed:

...

(6) where another statute so prescribes."

COMPLAINTS

1. The applicants firstly complain under Article 6 § 1 and Article 13 of the Convention that the enactment of the 1996 legislation violated their right of access to court and/or their right to an effective remedy.

2. The applicants also complain that they are not able to obtain any compensation for their destroyed property contrary to Article 1 of Protocol No. 1.

THE LAW

1. The applicants firstly complain that the 1996 legislation prevented the domestic courts to proceed with deciding on their claim for damages and thus violated their right of access to court and/or their right to an effective

remedy. They rely 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."

The Court considers that it cannot, on the basis of the case file, determine the admissibility of this part of the application and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

2. The applicants also complain that their property rights are violated because their property has been destroyed and they have not obtained any compensation, contrary to Article 1 of Protocol No. 1.

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, X. v. Portugal, application no. 9453/81, Commission decision of 13 December 1982, Decisions and Reports (DR) 31 pp. 204, 208 and *Kadikis v. Latvia* (dec.), no. 47634/99, 29 June 2000).

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 not competent to examine the present application in so far as it refers to facts occurring before the date of the ratification of the Convention.

The Court notes that the applicants' property was destroyed in 1992, before Croatia ratified the Convention. The Court sees that as an instantaneous act of deprivation of property which did not create any continuous situation.

The Court notes further that the legislative interference also took place before the Convention entered into force in respect of Croatia.

Therefore, the Court is not competent to examine the applicants claim under Article 1 of Protocol No. 1. Finding to the contrary 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 *Kadikis v. Latvia*, cited above, and the Stamulakatos v. Greece judgment of 30 September 1993, Series A no. 271, p. 14, § 33).

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

Decides to adjourn the examination of the applicants' complaints that they have been deprived of their right of access to court and/or their right to an effective remedy;

Declares the remainder of the application inadmissible.

Søren NIELSEN
Deputy Registrar

Christos ROZAKIS
President