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. 74470/01
by Slavica and Irma IBRULJ
against Croatia

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

Mr C.L. ROZAKIS, *President*,
Mr G. BONELLO,
Mr P. LORENZEN,
Mrs N. VAJIĆ,
Mrs S. BOTOUCHAROVA,
Mr V. ZAGREBELSKY,
Mrs E. STEINER, *judges*,

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

Having regard to the above application lodged on 20 September 2001,

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 Slavica Ibrulj and Ms Irma Ibrulj, are Croatian citizens who were born in 1941 and 1966, respectively, and live in Zagreb. They are represented before the Court by Mr Ranko Radović, 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.

The first applicant is the mother of the second applicant. On 15 December 1972 their husband and father, H.I. died in a hospital in Zagreb.

On 8 November 1976 the applicants instituted civil proceedings in the Zagreb Municipal Court (*Općinski sud u Zagrebu*) against the hospital, alleging that their husband and father had died due to the hospital personnel's negligence and sought non-pecuniary damages.

Before the Convention entered into force in respect of Croatia (i.e. before 5 November 1997) the case was several times decided at different levels. After the Supreme Court (*Vrhovni sud Republike Hrvatske*) quashed the first and second instance judgments on 16 November 1989, the case was remitted to the Zagreb Municipal Court as the court of first instance, which before to 5 November 1997 held three hearings.

On 5 November 1997 the court invited the applicants to pay an advance for the costs of an additional medical expertise.

On 25 May 1998 the Faculty of Medicine in Zagreb (*Medicinski fakultet u Zagrebu*) submitted its expertise to the court.

On 13 July and 18 September 1998 the parties submitted their comments on the medical expertise.

On 9 October 1998 the defendant filed additional submissions.

At the hearing on 13 April 1999 the applicants' counsel asked the court to adopt a partial judgment.

At the hearing on 21 February 2002 the court ordered that yet another additional medical expertise be carried out.

At the next hearing on 4 June 2002 the court heard two medical experts and adopted partial judgment awarding the applicants' claim in part and rejecting it in part.

On 5 July 2002 the defendant appealed against the judgment.

It appears that the proceedings are presently pending before the appellate court.

### B. Relevant domestic law

The relevant parts of Section 63 of the Constitutional Act on the Constitutional Court (entered into force on 15 March 2002, published in the Official Gazette no. 49 of 3 May 2002 - hereinafter "the 2002 Constitutional Act on the Constitutional Court" - *Ustavni zakon o Ustavnom sudu Republike Hrvatske iz 2002*) read as follows:

> (1) The Constitutional Court shall examine a constitutional complaint even before all legal remedies have been exhausted in cases when a competent court has not decided within a reasonable time a claim concerning the applicant's rights and obligations or a criminal charge against him ...
>
> (2) If the constitutional complaint ... under paragraph 1 of this Section is accepted, the Constitutional Court shall determine a time-limit within which a competent court shall decide the case on the merits...
>
> (3) In a decision under paragraph 2 of this Article, the Constitutional Court shall fix appropriate compensation for the applicant in respect of the violation found concerning his constitutional rights ... The compensation shall be paid from the State budget within a term of three months from the date when the party lodged a request for its payment.

## COMPLAINT

The applicants complain under Article 6 § 1 of the Convention about the length of civil proceedings.

## THE LAW

The applicants complain about the length of civil proceedings instituted before the Zagreb Municipal Court. They rely on Article 6 § 1 of the Convention, the relevant parts of which read as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

The Government firstly submit that the applicants failed to exhaust domestic remedies because they have not filed a constitutional complaint pursuant to the newly introduced Section 63 of the Constitutional Act on the Constitutional Court. They argue that such a complaint enables a party to

seek the constitutional protection in respect of the length of proceedings and empowers the Constitutional Court to award just satisfaction and to set a time limit for the competent authority to decide the case on the merits.

In the alternative the Government invite the Court to reject the application as manifestly ill-founded.

The applicants argue that the newly introduced remedy before the Constitutional Court does not represent an effective remedy in respect of the length of the proceedings.

In the applicants' opinion the excessive length of the proceedings in question resulted exclusively from the conduct of the court dealing with their case.

The Court has first examined whether the applicants have complied with the rule of exhaustion of domestic remedies as required under Article 35 § 1 of the Convention. Recalling its decisions in the Slaviček and Nogolica cases where it found that there exists an effective remedy in respect of the length of proceedings in Croatia, the Court sees no reason to depart in the present case from its view expressed in the above-mentioned cases (see *Slaviček v. Croatia* (dec.), no. 20862/02, 4 July 2002, ECHR - 2002... and *Nogolica v. Croatia* (dec.), no. 77784/01, 5 September 2002, ECHR - 2002...).

It follows that this complaint must be rejected under Article 35 §§ 1 et 4 of the Convention for non-exhaustion of domestic remedies.

For these reasons, the Court unanimously

*Declares* the application inadmissible.

Søren NIELSEN
Deputy Registrar

Christos ROZAKIS
President