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. 70446/01
by Jovan and Milka JORGIĆ
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. BOTOUCHAROVA, *judges*,
and Mr S. NIELSEN, *Deputy Section Registrar*,

Having regard to the above application lodged on 23 March 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, Mr Jovan Jorgić and Ms Milka Jorgić, are Croatian citizens, who were born in 1937 and 1939, respectively, and live in Krušedol, Serbia. 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 27 October 1997 the applicants filed an action seeking damages from the Republic of Croatia for their destroyed summer house in Lončarica, with the Grubišno Polje Municipal Court (*Općinski sud u Grubišnom Polju*).

On 6 November 1999 Parliament introduced a change of the Civil Obligations Act (*Zakon o obveznim odnosima*) which provided that all proceedings concerning actions for damages resulting from acts of members of the Croatian army or 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 31 May 2000 the proceedings were stayed.

The first applicant then filed a constitutional complaint. Whereas he did not challenge the legislation as such, he complained about the decision to stay the proceedings. On 19 September 2001 the Constitutional Court declared the complaint inadmissible because it was not filed against a final decision.

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 and 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.

COMPLAINT

The applicants maintained that Parliament's enactment of the 1999 legislation interfered with their right of access to a court.

THE LAW

The applicants complained, without invoking any specific provision of the Convention, that they were prevented from having access to a court in so far as the domestic court stayed the proceedings concerning their action for damages. The Court will examine the applicants' complaint under Article 6 § 1 of the Convention, which, in so far as relevant reads as follows:

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

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 argued that they had exhausted all domestic remedies.

The Court recalls that in similar circumstances it has held in the Aćimović case that a constitutional complaint challenging the legislation in question did not represent a remedy to be exhausted (see *Aćimović v. Croatia*, (dec.), no. 61237/00, 7 November 2002). 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. 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 Grubišno Polje Municipal Court. The fact that the court had stayed proceedings pursuant to the 1999 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 passed the applicants again enjoyed access to a court.

The applicants argued that the fact that the proceedings were stayed for a prolonged period violated their right of access to a court.

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