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. 12775/02
by Željko KOVAČEVIĆ
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 S. BOTOUCHAROVA,
Mr A. KOVLER, *judges*,
and Mr S. NIELSEN, *Deputy Section Registrar*,

Having regard to the above application lodged on 4 March 2002,

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

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Željko Kovačević, is a Croatian citizen who was born in 1949 and lives in Zagreb. He is represented before the Court by Mr B. Spiz, 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 29 July 1997 the applicant instituted civil proceedings before the Zagreb Municipal Court (*Općinski sud u Zagrebu*) against the Republic of Croatia seeking damages he had allegedly suffered as a member of the Croatian army where he had been infected by Hepatitis B and C due to being vaccinated with a contagious needle.

On 6 November 1999 Parliament introduced an amendment to 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 and police when acting in their official capacity during the homeland war in Croatia were to be stayed.

On 18 January 2000 the Zagreb Municipal Court stayed the proceedings.

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 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 applicant maintained that Parliament's enactment of the 1999 legislation interfered with his right of access to a court and his right to an effective remedy within the meaning of Article 6 § 1 and Article 13 of the Convention.

THE LAW

The applicant maintained that he was deprived of his right of access to a court and his right to an effective remedy because the changes of the Civil Obligations Act from 1999 had prevented him from having his claim for compensation decided by the domestic courts. He 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 applicant had failed to exhaust domestic remedies because he had not submitted a constitutional claim challenging the legislation in question.

The applicant argued that several other persons in the same position did file a constitutional complaint challenging the legislation in question and that the Constitutional Court had not decided on these complaints.

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 applicant's 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 applicant did enjoy access to a court because he had instituted civil proceedings for damages before the Zagreb Municipal Court. The fact that the court had stayed the proceedings pursuant to the 1999 legislation did not affect the applicant's right of access to a court because the proceedings were stayed only temporarily. When in July 2003 the new legislation was enacted the applicant again enjoyed access to a court.

The applicant contended that the prolonged period for which he had been unable to have his civil claim decided before the domestic courts violated his 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 applicant's right of access to a court excluded the application of the applicant's right to an effective remedy under Article 13 because there was no separate issue in that respect.

The applicant maintained that he had no effective remedy in the domestic legal system to enforce his 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