CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

FINAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 75545/01
by Đuro KRESOVIĆ
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 28 May 2001,

Having regard to the partial decision of 9 July 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 Đuro Kresović, is a Croatian citizen, who was born in 1937 and lives in Modrino Selo, Croatia. 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 9 March 1992 the applicant's house in Sveti Petar, Croatia, was destroyed, following an explosion.

On 17 January 1996 the Croatian Parliament introduced an amendment to the Civil Obligations Act (*Zakon o obveznim odnosima*) which provided that all proceedings concerning actions for damage 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.

The Act also imposed an obligation on the Government to submit to Parliament special legislation, regulating the responsibility for such damages, at the latest within six months from the entry into force of the present Act.

On 3 June 1999 applicant lodged an action for damages against the Republic of Croatia with the Biograd Municipal Court (*Općinski sud u Biogradu*).

On 4 December 2000 the court stayed the proceedings pursuant to the above legislation.

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 akat 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 damges resulting in bodily injuries, impairment of health or death. All material damges 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 applicant complained under Article 6 § 1 of the Convention that he was deprived of his right of access to court because the changes of the Civil Obligations Act prevented domestic courts from deciding his claim for damages on the merits.

THE LAW

The applicant complained that he had no access to court in respect of his civil claim for damages because the proceedings instituted by him were stayed pursuant to the 1996 legislation. He relied on Article 6 § 1 of the Convention, the relevant parts of which read as follows:

> "1. In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing by [a] ... tribunal established by law.

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 maintained that the remedies invoked by the Government did not apply to his case.

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 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 Biograd 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 passed the applicant again enjoyed access to a court.

The applicant disagreed with the Government.

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

Søren NIELSEN
Deputy Registrar

Christos ROZAKIS
President