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. 76687/01
by Marija PLAFTAK and Others
against Croatia

The European Court of Human Rights (First Section), sitting on 3 October 2002 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 E. FRIBERGH, *Section Registrar*,

Having regard to the above application lodged on 17 September 2001,

Having deliberated, decides as follows:

THE FACTS

The applicants, Ms Marija Plaftak, Mr Stjepan Oštrec, Mr Zvonko Grdan, Ms Marija Miljković, Mr Đuro Pišpek, Mr Franjo Miser, Mr Ivan Turek, Mr Marko Vugdragović, Mr Boris Štrukelj, Ms Zlata Strmečki, Mr Željko Derdić, Mr Branko Fuček, Mr Milan Dragičević, Mr Boris Barbarić, Mr Slavko Mladić, Ms Rezika Vraneković, Ms Marija Premuž, Ms Danica Zrinšćak-Klein, Ms Olga Andrun, Mr Slavko Oršić and Ms Marija Horvatin, are Croatian citizens, who were born in 1947, 1942, 1946, 1927, 1939, 1935, 1944, 1940, 1934, 1926, 1968, 1943, 1951, 1930, 1953, 1938, 1925, and 1949 respectively and live in Zagreb, Zelina, Bjelovar, Petrinja, Samobor, Čazma and Sveta Nedjelja. They are represented before the Court by Mr Zvonko Nogolica, 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.

During 1992 the applicants lent various sums of money to company M.J.B. in Zagreb at a high rate of interest (so-called financial engineering).

As the company failed to repay the loans, the applicants instituted civil proceedings on 30 March 1995 in the Zagreb Municipal Court (*Općinski sud u Zagrebu*) for re-payment of their loans.

The proceedings are pending before the court of first instance.

B. Relevant domestic law

Section 26 of the Constitutional Act on the Changes of the Constitutional Act on the Constitutional Court (entered into force on 15 March 2002, published in the Official Gazette no. 29 of 22 March 2002 - hereinafter "The Act of 15 March 2002" - *Ustavni zakon o izmjenama i dopunama Ustavnog zakona o Ustavnom sudu Republike Hrvatske*) introduced a new Section 59 (a), which subsequently became Section 63 of the 2002 Constitutional Act on the Constitutional Court. The relevant parts of that Section 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.

COMPLAINTS

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

2. Secondly, they complain that they had no effective remedy at their disposal in respect of the length of proceedings.

THE LAW

1. The applicants complain that the proceedings concerning their claims for damages before the Zagreb Municipal Court have not been concluded within reasonable time as required under Article 6 § 1 of the Convention, the relevant parts 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 Court has firstly examined whether the applicants have complied with the rule of exhaustion of domestic remedies as required under Article 35 § 1 of the Convention.

The Court recalls that in the Horvat case (see *Horvat v. Croatia* no. 51585/99, 26 July 2001, §§ 41-43, 45, ECHR - 2002...), it found that the proceedings pursuant to Section 59(4) of the 1999 Constitutional Court's Act could not be considered as an effective remedy in respect of complaints concerning the length of proceedings.

The Court notes that, following the Horvat judgment, on 15 March 2002 the Croatian Parliament enacted the Act on Changes of the Constitutional Court's Act, which was published in the Official Gazette no. 29 of 22 March 2002. It introduced a new Section 59(a) which later became Section 63 of the 2002 Constitutional Act on the Constitutional Court.

The Court recalls that in the Slaviček case (see *Slaviček v. Croatia* (dec.), no. 20862/02, 4 July 2002, ECHR - 2002...), it found that the above provision represented an effective domestic remedy in respect of alleged unreasonable length of proceedings in Croatia.

The Court notes that the applicants in the present case have not lodged such a complaint. It is true that they introduced the application with the Court on 4 September 2001, while the legislation providing for an effective remedy in respect of their complaint under Article 6 of the Convention was enacted on 15 March 2002.

The question therefore arises whether under Article 35 § 1 of the Convention it can be required that the applicants exhausts this remedy before this Court examines their complaint.

The Court recalls that the issue whether domestic remedies have been exhausted shall normally be determined by reference to the date when the application was lodged with the Court. This rule is however subject to exceptions which might be justified by the specific circumstances of each case (see *Baumann v. France*, no 33592/96, 22 May 2001, § 47, unreported). The Court has found in respect of a large number of applications against Italy raising similar issues that there were special circumstances justifying a departure from the general rule (see *Brusco v. Italy*, (dec.), no. 69789/01, ECHR 2001-IX).

Subsequently, on 5 September 2002 in the Nogolica case, the Court found that there existed a number of elements militating in favour of an exception also in respect of the Croatian cases (see *Nogolica v. Croatia* (dec.), no. 77784/01, 5 September 2002, ECHR - 2002...).

The Court sees no reason to depart in the present case from the view expressed in the Nogolica case.

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

2. The applicants further complain that in respect of their complaint about the length of the proceedings they have no effective remedy as required under Article 13 of the Convention, which reads as follows:

> "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."

As explained above, the Court finds that the newly introduced Section 63 of the 2002 Constitutional Act on the Constitutional Court does provide the applicants with an effective remedy in respect of the length of the proceedings.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President