CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

Application no. 28646/03
by Nenad and Javorka TRKULJA
against Croatia

The European Court of Human Rights (First Section), sitting on 23 June 2005 as a Chamber composed of

Mr C.L. ROZAKIS, *President*,
Mr L. LOUCAIDES,
Mrs F. TULKENS,
Mr P. LORENZEN,
Ms N. VAJIĆ,
Mrs S. BOTOUCHAROVA,
Mr K. HAJIYEV, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having regard to the above application lodged on 30 June 2003,

Having regard to the decision to apply the procedure under Article 29 § 3 of the Convention and examine the admissibility and merits of the case together,

Having regard to the formal declarations accepting a friendly settlement of the case,

Having deliberated, decides as follows:

THE FACTS

The applicants, Mr Nenad Trkulja and Ms Javorka Trkulja are Croatian nationals, who were born in 1930 and 1959 and live in Zagreb and Toronto, respectively.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

In the period between December 1991 and March 1992 the applicants' house and estate in Vučjak Čečavački near Požega, Croatia burned down and the movables situated on the estate and in the house were stolen. Moreover, on 11 December 1991 M.T., the first applicant's wife and the second applicant's mother, was murdered. The applicants are convinced that the Croatian Army and the police were responsible for these events.

On 10 January 1996 the applicants brought a civil action in the Zagreb Municipal Court (*Općinski sud u Zagrebu*) against the State seeking damages.

On 6 November 1999 the Amendments to the Civil Obligations Act ("the 1999 Amendments") entered into force. The amended legislation provided that all proceedings instituted against the State for damage caused by members of the Croatian Army and police in the performance of their official duties during the Homeland War in Croatia were to be stayed.

On 27 October 2000 the Zagreb Municipal Court decided to stay the proceedings pursuant to the above legislation.

The applicants then filed a constitutional complaint against that decision. On 28 March 2003 the Constitutional Court declared their complaint inadmissible.

On 31 July 2003 new legislation on the liability of the State for damage caused by members of the Croatian Army and police in the performance of their official duties during the Homeland War entered into force ("the 2003 Liability Act"). It provides that all proceedings stayed pursuant to the 1999 Amendments are to be resumed.

The proceedings resumed pursuant to the 2003 Liability Act. They are still pending before the first-instance court.

COMPLAINT

The applicants complained under Article 6 § 1 of the Convention that the enactment of the 1999 Amendments and the prolonged stay of the proceedings had violated their right of access to a court.

THE LAW

By their letter of 5 May 2005 the applicants informed the Court that they accepted a proposal for a friendly settlement and waived any further claims against Croatia in respect of the facts of the present application.

On 17 May 2005 the Government informed the Court that the parties had reached a settlement whereby the Government would pay the applicants 8,500 euros in full and final settlement of the case, costs and expenses included.

The Court takes note of the friendly settlement reached between the parties. It is satisfied that the settlement is based on respect for human rights as defined in the Convention and its Protocols (Article 37 § 1 *in fine* of the Convention). Accordingly, Article 29 § 3 of the Convention should no longer apply to the case and it should be struck out of the list.

For these reasons, the Court unanimously

Decides to strike the application out of its list of cases.

Søren NIELSEN
Registrar

Christos ROZAKIS
President