CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 11508/05
by Ratko and Darinka VUKSANOVIĆ
against Croatia

The European Court of Human Rights (First Section), sitting on 5 April 2007 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mr L. LOUCAIDES,
Mrs N. VAJIĆ,
Mr A. KOVLER,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr G. MALINVERNI, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having regard to the above application lodged on 10 March 2005,

Having deliberated, decides as follows:

THE FACTS

The applicants, Mr Ratko Vuksanović and Mrs Darinka Vuksanović, are Croatian nationals who were born in 1944 and 1943 respectively and live in Zagreb. They are represented before the Court by Mrs T. Burjačenko Grubiša, a lawyer practising in Zagreb.

A. The circumstances of the case

1. Civil proceedings

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

On 19 July 1993 the applicants' summer house in the village of Mrežnički Brig near Duga Resa was blown up by unknown perpetrators.

On 3 February 1996 the Amendment to the Civil Obligations Act ("the 1996 Amendment") entered into force. It provided that all proceedings concerning actions for damages resulting from terrorist acts or acts of violence were to be stayed pending the enactment of new legislation on the subject.

On 10 July 1998 the applicants brought a civil action against the State in the Zagreb Municipal Court (*Općinski sud u Zagrebu*) seeking damages.

At the hearing held on 9 November 1999 the Municipal Court stayed the proceedings pursuant to the 1996 Amendment.

On 31 July 2003 the Act on Liability for Damage Resulting from Terrorist Acts and Public Demonstrations ("the 2003 Liability Act") entered into force.

Pursuant to the 2003 Liability Act, on 18 December 2003 the Municipal Court decided to resume the proceedings. Whereas the hearing scheduled for 23 November 2004 was adjourned owing to the illness of the judge appointed to hear the case, the hearings were held on 16 June and 19 July 2005. On 3 October 2005 the court dismissed the applicants' claim finding that they did not prove with the requisite degree of certainty that the damage to their property had been caused by a terrorist act. The judgment was served on the applicants' advocate on 12 October 2005. The applicants appealed.

On 7 February 2006 the Zagreb County Court (*Županijski sud u Zagrebu*) accepted the appeal, quashed the first-instance judgment for incomplete facts and remitted the case.

In the resumed proceedings, the Municipal Court held a hearing on 18 September 2006. It appears that the proceedings are currently pending before that court.

2. *Proceedings before the Constitutional Court*

Meanwhile, on 31 January 2003 the applicants lodged a constitutional complaint with the Constitutional Court (*Ustavni sud Republike Hrvatske*) complaining about the length of the above proceedings. On 24 September 2004 the Constitutional Court accepted their complaint. Relying on the Court's case law (*Kutić v. Croatia*, no. 48778/99, ECHR 2002-II), it found violations of the applicants' constitutional rights to a hearing within a reasonable time and of access to a court. It awarded the applicants 4,400 Croatian kunas (HRK) in compensation and ordered the Zagreb Municipal Court to give a decision in the case in the shortest time possible but no later than a year following the publication of the decision in the Official Gazette. The Constitutional Court's decision was published on 13 October 2004.

On 9 November 2004 the Ministry of Finance transferred HRK 4,400 to the second applicant's bank account. It would appear that no such transfer has been made in respect of the first applicant.

B. Relevant domestic law

1. *The Constitutional Court Act*

The relevant part of the Constitutional Act on the Constitutional Court (*Ustavni zakon o Ustavnom sudu Republike Hrvatske*, Official Gazette no. 49/2002 of 3 May 2002 – "the Constitutional Court Act") reads as follows:

Section 63

"(1) The Constitutional Court shall examine a constitutional complaint whether or not all legal remedies have been exhausted if the competent court fails to decide a claim concerning the applicant's rights and obligations or a criminal charge against him or her within a reasonable time ...

(2) If a constitutional complaint ... under paragraph 1 of this section is upheld, the Constitutional Court shall set a time-limit within which the competent court must decide the case on the merits...

(3) In a decision issued under paragraph 2 of this section, the Constitutional Court shall assess appropriate compensation for the applicant for the violation of his or her constitutional rights ... The compensation shall be paid out of the State budget within three months from the date a request for payment is lodged."

2. *The Civil Obligations Act and the 1996 Amendment*

The relevant part of the Civil Obligations Act (*Zakon o obveznim odnosima*, Official Gazette, nos. 53/91, 73/91, 3/94, 7/96 and 112/99) provided as follows:

Section 180(1)

"Liability for loss caused by death or bodily injury or by damage or destruction of another's property, when it results from acts of violence or terrorist acts 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 part of the Act Amending the Civil Obligations Act (*Zakon o izmjeni Zakona o obveznim odnosima*, Official Gazette no. 7/1996 – "the 1996 Amendment") provided 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 resumed after the enactment of special legislation governing liability for damage resulting from terrorist acts."

3. The Civil Procedure Act

The relevant part of the Civil Procedure Act (*Zakon o parničnom postupku*, Official Gazette nos. 53/91, 91/92, 58/93, 112/99, 88/01 and 117/03) provides:

Section 212

"Proceedings shall be stayed:

...

(6) where another statute so prescribes."

4. The 2003 Liability Act

The Act on Liability for Damage Resulting from Terrorist Acts and Public Demonstrations (*Zakon o odgovornosti za štetu nastalu uslijed terorističkih akata i javnih demonstracija*, Official Gazette no. 117/2003 – "the 2003 Liability Act") provides, *inter alia*, that the State is to compensate damage resulting from bodily injuries, impairment of health or death. All compensation for damage to property is to be sought under the Reconstruction Act. Section 10 provides that all proceedings stayed pursuant to the 1996 Amendment are to be resumed.

5. The Reconstruction Act

The relevant part of the Reconstruction Act (*Zakon o obnovi*, Official Gazette nos. 24/96, 54/96, 87/96 and 57/00) provides, *inter alia*, that the State shall grant a reconstruction assistance to the owners of property (flats and houses only) which has been damaged during the war. The assistance is subject to conditions such as the degree of damage to the property, residence in the property at the date of the beginning of the hostilities, and a statement that the owner will return to the house or flat after its reconstruction. The application is to be submitted to the competent administrative authorities.

COMPLAINTS

1. The applicants complain under Article 6 § 1 of the Convention that Parliament's enactment of the 1996 Amendment violated their right of access to a court.

2. The applicants also complain under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 that the 2003 Liability Act violated their right to a fair hearing and the right to peaceful enjoyment of their possessions.

THE LAW

A. Alleged violation of Article 6 § 1 of the Convention on account of the lack of access to a court

The applicants complain that Parliament's enactment of the 1996 Amendment violated their right of access to a court as provided in Article 6 § 1 of the Convention, which reads as follows:

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

The applicants submit that, in spite of the Constitutional Court's decision of 24 September 2004, they are still "victims" within the meaning of Article 34 of the Convention. They submit that the amount of compensation is insufficient and significantly lower than amounts awarded by the Court in similar cases (see *Kutić v. Croatia*, no. 48778/99, § 39, ECHR 2002-II).

The Court considers that it cannot, on the basis of the case-file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

B. Alleged violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 thereto on account of the legislative interference

The applicants further complain that the entry into force of the 2003 Liability Act violated their right to peaceful enjoyment of possessions and rendered the proceedings unfair. They rely on Article 6 § 1 of the Convention, Article 1 of Protocol No. 1 thereto and the Court's case-law (*Pressos Compania Naviera S.A. and Others v. Belgium*, judgment of 20 November 1995, Series A no. 332*)*. Article 1 of Protocol No. 1 reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest

> and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

In particular, the applicants complain that the 2003 Liability Act violated their property rights since their civil claim for damages was extinguished retroactively. Furthermore, the State's intervention in the lawsuit affecting it by means of retrospective legislation violated the principle of equality of arms.

The Court recalls that in the *Bogunović* case (see *Bogunović v. Croatia* (dec.) no. 18221/03, 11 July 2006) it declared similar complaints inadmissible as premature. The Court sees no reasons to reach a different conclusion in the present case since the proceedings complained of are still pending.

It follows that this part of the application is inadmissible under Article 35 § 1 for non-exhaustion of domestic remedies and must be rejected pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicants' complaint concerning access to a court;

Declares the remainder of the application inadmissible.

Søren NIELSEN
Registrar

Christos ROZAKIS
President