CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF VAJAGIĆ v. CROATIA

(Application no. 30431/03)

JUDGMENT

STRASBOURG

20 July 2006

FINAL

11/12/2006

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Vajagić v. Croatia,

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

Mr C.L. ROZAKIS, *President*,
Mr L. LOUCAIDES,
Mrs F. TULKENS,
Mrs N. VAJIĆ,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr D. SPIELMANN, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 29 June 2006,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 30431/03) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Croatian nationals, Mr Mirko Vajagić and Mrs Ružica Vajagić ("the applicants"), on 4 September 2003.

2. The applicants were represented by Mr V. Domitrović, a lawyer practising in Virovitica. The Croatian Government ("the Government") were represented by their Agent, Mrs Š. Stažnik.

3. On 8 December 2004 the Court decided to communicate the complaints concerning the length of the proceedings, property and the lack of a remedy in that respect to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1937 and 1942, respectively, and live in Virovitica.

5. In 1976 the local authorities expropriated the applicants' property with a view to building a road. The property consisted of 622 square metres of land with a house, shed, garage, toilet, well and fence.

6. The proceedings concerning compensation for that property were pending before the competent judicial authority since 1977. Due to a change in legislation, in 1994 the case was transferred to the administrative authorities.

7. On 1 December 1995 the Property Affairs Office of the Town of Virovitica (*Ured za imovinsko-pravne poslove*; "the Virovitica Office") acting as the first-instance authority granted the applicants compensation for their property in the amount of 158,049 Croatian kunas (HRK), including interests payable as of the date of the decision. On appeal, on 10 December 1996 the Ministry of Justice (*Ministarstvo pravosuđa*; "the Ministry") quashed that decision and remitted the case.

8. On 5 May 1997 the Virovitica Office gave a new decision awarding the applicants compensation in the amount of HRK 184,763 with interests payable as of the date on which the decision on expropriation became final.

9. The Town of Virovitica filed an appeal against that decision, which the Virovitica Office declared inadmissible on 10 June 1997 because it had been submitted outside the statutory time-limit. However, on 2 July 1997 the Office admitted the appeal and reinstated the case. Subsequently, on 14 April 1998 the Ministry reversed the first-instance decision, determining a lower amount of compensation payable to the applicants. Both parties filed administrative actions against that decision.

10. On 13 October 1999 the Administrative Court (*Upravni sud Republike Hrvatske*) quashed the Ministry's decision of 14 April 1998 and remitted the case. Consequently, on 12 March 2000 the Ministry quashed the first-instance decision of 5 May 1997 and remitted the case to the first administrative instance. It found that the amount of compensation was to be calculated in line with the current market prices of the expropriated property.

11. In the resumed proceedings, the Virovitica Office obtained an expert opinion assessing the value of the property and held a hearing. On 20 November 2000 the Virovitica Office gave a new decision determining the amount of compensation payable to HRK 197,097. On 12 March 2001 the Ministry again quashed that decision and remitted the case, ordering the first-instance authority to obtain an additional expert opinion on the value of the property.

12. The Virovitica Office accordingly obtained a new expert opinion and held another hearing. On 9 October 2001 it gave a new decision, awarding the applicants HRK 209,352 in view of compensation. On 15 October 2002 the Ministry quashed that decision, finding that the first-instance authority failed to determine the correct amount of compensation.

13. On 11 March 2004 the Virovitica Office gave a new decision awarding the applicants HRK 209,107. The applicants appealed and on 11 November 2004 the Ministry quashed that decision yet another time and

remitted the case. The proceedings are still pending before the first-instance authority.

14. Meanwhile, on 22 April 2002 the applicants filed a motion for review of constitutionality (*prijedlog za ocjenu ustavnosti*) of certain provisions of the 1994 Expropriation Act. It appears that the Constitutional Court (*Ustavni sud Republike Hrvatske*) has not yet adopted a decision on their motion.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitutional Court Act

15. Section 63 of the Constitutional Act on the Constitutional Court (*Ustavni zakon o Ustavnom sudu Republike Hrvatske*) as amended on 15 March 2002, Official Gazette nos. 29/2002 of 22 March 2002 and. 49/2002 (consolidated text) – "the Constitutional Court Act") reads as follows:

> "(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 individual'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."

B. Constitutional Court's practice

16. In case no. U-IIIA/635/2004 of 25 November 2004, the Constitutional Court was seized under Section 63 of the Constitutional Court Act to examine the length of administrative proceedings instituted in July 1996 when the complainant had brought an action in the Administrative Court for the Ministry of Defence's failure to give a decision in his case. In October 1998 the Administrative Court ordered the Ministry to give a decision within 30 days. The Ministry gave a negative decision in July 1999. The complainant then brought a second administrative action, challenging that decision. In September 2000 the Administrative Court quashed the impugned decision and remitted the case. The Ministry again gave a negative decision and served it on the complainant in January 2004.

On 18 February 2004 the complainant had brought a third administrative action, which was dismissed by the Administrative Court in June 2004. Meanwhile, on 25 February 2004 he lodged his constitutional complaint arguing that the Constitutional Court should, like the European Court of Human Rights, take into consideration the overall length of administrative proceedings when examining whether or not they exceeded a reasonable time.

Following its previous practice (decisions no. U-III-2467/2001 of 27 February 2002, and U-IIIA/3638/2003 of 18 February 2004), the Constitutional Court held that only the inactivity of the judicial authorities was relevant for a breach of Article 29 § 1 of the Constitution. In its view it was not possible for proceedings before the administrative authorities to last unreasonably long because the statutes regulating those proceedings contained the presumption that the application had been dismissed if the administrative authorities failed to give a decision within the statutory time-limits (see paragraphs 25 and 26 above). The Constitutional Court therefore examined only the length of the proceedings in their part between the introduction of the complainant's third action in the Administrative Court and the lodging of the constitutional complaint. It dismissed the constitutional complaint finding that the proceedings had lasted only seven days.

C. The statute governing expropriation

17. The 1957 Expropriation Act (*Zakon o ekproprijaciji*, Official Gazette of SFRY no. 12/1957), which was a federal law of the former Yugoslavia, provided that a hearing should be held with a view to determining the amount of compensation only after the property had already been expropriated. The 1978 Expropriation Act (*Zakon o ekproprijaciji*, Official Gazette no. 30/1978), which was a law of Croatia as a federal unit within the former Yugoslavia, contained provisions on just satisfaction for expropriated property.

The 1994 Expropriation Act (*Zakon o izvlaštenju*, Official Gazette nos. 9/94, 35/94 and 114/01), adopted after Croatia's independence, provides that the decision on compensation should be given at the same time the actual expropriation takes place. Sections 8 and 33 provide that compensation for expropriated property should equal the market value of that property at the time of the issuance of the first-instance decision in the expropriation proceedings.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO.1 TO THE CONVENTION

18. The applicants complained that the continuing failure of the domestic authorities to decide on the amount of compensation payable to them for an expropriation measure that had occurred in 1976 violated their property rights as guaranteed by Article 1 of Protocol No. 1 to the Convention, which 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."

19. The Government contested that argument.

A. Admissibility

1. Compatibility ratione temporis

20. The Government maintained that the Court had no jurisdiction *ratione temporis* to examine the applicants' property complaint.

21. The Government submitted that the deprivation of property was an instantaneous act and did not produce a continuing situation. They pointed out that it was the former Yugoslav legislation that allowed for the applicants' property to be expropriated without at the same having determined or awarded them compensation. The subsequent 1994 Croatian legislation amended those rules, but could not have changed the applicants' situation. In any event, all of these facts having occurred prior to Croatia's ratification of the Convention, i.e. 5 November 1997, the Court is not competent *ratione temporis* to entertain the present application.

22. The applicants maintained that there was a continuing interference with their property rights, because the compensation due had never been paid to them.

23. The Court notes that the applicants' complaint does not concern the deprivation of property, but the failure to pay them final compensation. While it is true that in the present case the Court is not empowered to examine questions linked to the deprivation of the property as such, these

questions clearly being beyond its jurisdiction *ratione temporis*, the same does not apply to the delays in the assessment and payment of final compensation (see *Almeida Garrett, Mascarenhas Falcão and Others v. Portugal*, nos. 29813/96 and 30229/96, § 43, ECHR 2000-I).

24. In the present case, the applicants complain about the failure of the Croatian authorities to determine the appropriate amount of compensation due, a claim which they had since the actual expropriation measure took place. Therefore, in so far as the applicants' complaint is directed against the acts and omissions of the State in relation to the implementation of an entitlement to a compensatory measure vested in them under Croatian law - an entitlement which continued to exist after 5 November 1997 and still exists today - the Court has temporal jurisdiction to entertain the application (see, *mutatis mutandis*, *Broniowski v. Poland* (dec.) [GC], no. 31443/96, §§ 75-76, ECHR 2002-X).

25. The Government's objection must therefore be dismissed.

2. Exhaustion of domestic remedies

26. The Government further invited the Court to reject the application on the ground that the applicants had failed to exhaust domestic remedies as required under Article 35 § 1 of the Convention. They submitted that the applicants had an opportunity to lodge a constitutional complaint under section 63 of the Constitutional Court Act and complain about the length of the proceedings, but have never done so.

27. The applicants contested the effectiveness of a constitutional complaint in their case.

28. The Court reiterates that under Article 35 § 1 of the Convention it may only deal with a matter after all domestic remedies have been exhausted. The purpose of the exhaustion rule is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to it (see, among many other authorities, *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-IV). The obligation to exhaust domestic remedies requires that an applicant make normal use of remedies which are effective, sufficient and accessible in respect of his Convention grievances.

29. The Court further recalls that as of 22 March 2002 a constitutional complaint under section 63 of the Constitutional Court Act is considered an effective remedy in respect of the length of proceedings still pending in Croatia (see *Slaviček v. Croatia* (dec.), no. 20862/02, ECHR 2002-VII). The Court sees no reason to depart from this established case-law in respect of civil and criminal proceedings. However, in the light of the subsequent practice of the Constitutional Court (see paragraph 16 above), it finds it necessary to review that case-law in respect of administrative proceedings (see *Jeftić v. Croatia* (dec.), no. 57576/00, 3 October 2002, and *Barbača v. Croatia* (dec.), no. 63779/00, 18 September 2003).

30. The Court observes, on the basis of the above-cited case-law (see paragraph 16 above), that the Constitutional Court only considers the length of proceedings incurred before domestic courts, but not before the administrative authorities. It also transpires from the wording of section 63 of the Constitutional Court Act that a constitutional complaint under that provision could only be lodged when "the competent court fails to decide...within a reasonable time".

31. In the present case, the applicants' proceedings were pending before a court, i.e. the Administrative Court, between April 1998 and October 1999, whereas a constitutional complaint under section 63 became available in the Croatian legal system only on 22 March 2002. It follows that they did not have an opportunity to lodge a constitutional complaint with reasonable prospects of success. The Government's objection in this respect must therefore be dismissed.

3. Conlusion

32. The Court further notes that the applicant's complaint concerning the delay in fixing the amount of compensation for the expropriated property is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It also notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Applicability of Article 1 of Protocol No. 1

33. The Government argued at the outset that the applicants' claim for compensation was not sufficiently established so as to fall within the scope of Article 1 of Protocol No. 1. They admitted that the applicants' entitlement to compensation was undisputable, however, its exact amount has to date not been established.

34. The Court observes that an applicant can allege a violation of Article 1 of Protocol No. 1 only in so far as the impugned decisions related to his "possessions" within the meaning of this provision. "Possessions" can be either "existing possessions" or assets, including claims, in respect of which the applicant can argue that he or she has at least a "legitimate expectation" of obtaining effective enjoyment of a property right. When the proprietary interest is in the nature of a claim it may be regarded as an "asset" only where it has a sufficient basis in national law (see *Kopecký v. Slovakia* [GC], no. 44912/98, § 52, ECHR 2004-....). The relevant moment for establishing whether the applicants had a "possession" is the date of the entry into force of Protocol No. 1 in regard to Croatia i.e. 5 November 1997 (see *Slivenko v. Latvia* (dec.) [GC], no. 48321/99, ECHR 2002-II (extracts)).

35. In the instant case, ever since the applicants' property had been expropriated, they had a claim to compensation clearly established in domestic law. Pursuant to the 1994 Expropriation Act, on 5 November 1997 it was certain that the applicants were entitled to compensation in the amount of the market value of their property at the time of the first-instance authority's decision. In these circumstances, the Court considers the applicants' claim sufficiently established so as to qualify as an "asset" within the meaning of Article 1 of Protocol No.1.

2. Compliance with Article 1 of Protocol No. 1

36. The Court recalls that Article 1 of Protocol No. 1 comprises three distinct rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest.

37. In the present case, the interference with the applicants' right to enjoyment of possessions relates to the continuing failure to pay the compensation and not the expropriation measure itself (see paragraph 23 above). The interference cannot, therefore be interpreted as a deprivation of possession, but rather falls to be examined under the first sentence of the first paragraph of Article 1 of Protocol No.1, which lays down the principle of peaceful enjoyment of property in general terms (see *Almeida Garrett, Mascarenhas Falcão and Others*, cited above, § 48).

38. The Court must therefore establish whether a fair balance was struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. In the circumstances of the instant case, the Court is called upon to determine whether the time necessary for the domestic authorities to decide on the amount and pay the applicants compensation to which they are entitled disturbed that balance and whether it placed an excessive burden on them.

39. The Government submitted that no excessive burden had been placed on the applicants since they were certain of the facts, which domestic authorities were competent and which criteria would be used to calculate the amount of compensation in their case. Moreover, the applicants suffered no real damage because their property was situated in the area directly affected by the war. Since the prices of real property have grown immensely only in the past several years, the applicants will eventually receive a higher amount than they would have received, for example, ten years ago.

40. The applicants maintained that they have been unable to obtain any compensation for their property for almost 30 years. They also submitted that the value of their property today equals its value at the time it had been

expropriated. However, they have suffered excessive damage in that they have been unable to obtain compensation, which they could have meanwhile invested.

41. The Court reiterates that the States have a wide margin of appreciation to determine what is in the public interest, especially where compensation for a nationalisation or expropriation is concerned, as the national legislature has a wide discretion in implementing social and economic policies. However, that margin of appreciation is not unlimited and its exercise is subject to review by the Convention institutions (see *Lithgow and Others v. the United Kingdom*, judgment of 8 July 1986, Series A no. 102, pp. 50-51, §§ 121-22).

42. In the present case, 29 years have passed without the applicants having been paid any compensation, of which more than eight and a half years fall within the Court's competence *ratione temporis*.

43. The Government submitted that the proceedings were very complex because the administrative authorities were called upon to determine the market value of property, which had been expropriated a long time ago. Given that there existed clear legal rules in the domestic law on the calculation of the compensation (see para. 35 above), the Court does not find this argument particularly convincing, bearing in mind that it was the authorities' inactivity that caused for such a long passage of time between the expropriation measure and the evaluation of the property.

44. The Government further argued that the domestic authorities acted without undue delay and that many decisions have been taken. The applicants disagreed, pointing out the many unsuccessful remittals of their case to the first-instance authority. The Court observes that the delays in the proceedings were caused mainly by the successive remittals. Given that a remittal of a case for re-examination is usually ordered as a result of errors committed by lower instances, the Court considers that the repetition of such orders within one set of proceedings discloses a deficiency in the procedural system as applied in the present case (see, *mutatis mutandis*, *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003).

45. In conclusion, the Government have not produced any convincing evidence to justify the failure of the domestic authorities for so many years to determine the final amount of the compensation due. This fact has resulted in an interference with the applicants' property rights, which in the Court's view was such as to have placed an excessive burden on them.

46. In light of all the circumstances, the Court considers that there has therefore been a violation of Article 1 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

47. The applicants further complained about the fairness of the proceedings, in particular about the decision of 2 July 1997 to admit the

belated appeal of the Town of Virovitica. The applicants also complained about the overall length of the administrative proceedings. They relied on Article 6 § 1 of the Convention.

A. Admissibility

48. In so far as the applicants complain about the fairness of the proceedings, the Court observes that the proceedings are still pending before the competent administrative authority. It follows that this complaint must be rejected as premature pursuant to Article 35 §§ 1 and 4 of the Convention.

49. The Court notes that the applicants' length complaint is linked to the property complaint examined above and must therefore likewise be declared admissible.

B. Merits

50. Having regard to its finding of a violation of the applicants' right to peaceful enjoyment of their possessions (see paragraph 46 above), the Court does not consider it necessary to examine the same length complaint under Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

51. Lastly, the applicants complain about the lack of an effective remedy in order to obtain a final decision awarding them compensation. They rely on 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."

A. Admissibility

52. The Court notes that this complaint is linked to the property complaint examined above and must therefore likewise be declared admissible.

B. Merits

53. The Court recalls that Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be

secured in the domestic legal order (see *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI).

54. In the light of the above considerations regarding the exhaustion of domestic remedies (see paragraph 31 above), the Court observes that, at the time when they lodged their application, there was no remedy under domestic law, which would have enabled the applicants to obtain a decision determining the amount of their compensation.

55. Consequently, the Court considers that in the present case there has been a violation of Article 13 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

56. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

57. The applicants claimed 458,810 euros (EUR) in respect of pecuniary and EUR 100,000 non-pecuniary damage. They also sought approximately EUR 9,600 in respect of costs and expenses.

58. The Government contested these claims.

59. In the circumstances of the case, the Court considers that the issue of the application of Article 41 is not ready for decision. Accordingly, it shall be reserved and the subsequent procedure fixed in the light of any agreement between the respondent State and the applicants (Rule 75 § 1 of the Rules of Court).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning the delay in receiving compensation, the length of the proceedings and the existence of an effective remedy admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

3. *Holds* that it is unnecessary to examine the length complaint under Article 6 of the Convention;

4. *Holds* that there has been a violation of Article 13 of the Convention;

5. *Holds* that the question of the application of Article 41 is not ready for decision; accordingly,
(a) *reserves* the said question in whole;
(b) *invites* the Government and the applicant to submit, within the forthcoming six months, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;
(c) *reserves* the further procedure and *delegates* to the President of the Chamber the power to fix the same if need be.

Done in English, and notified in writing on 20 July 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President