CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF GASHI v. CROATIA

(Application no. 32457/05)

JUDGMENT
(Just satisfaction)

STRASBOURG

9 October 2008

FINAL

09/01/2009

This judgment may be subject to editorial revision.

In the case of Gashi v. Croatia,

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

Christos Rozakis, *President,*
Nina Vajić,
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyev,
Dean Spielmann,
Sverre Erik Jebens, *judges,*
and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 18 September 2008,

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

PROCEDURE

1. The case originated in an application (no. 32457/05) 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 a Croatian citizen, Mr Shani Gashi ("the applicant"), on 4 August 2005. The applicant died during the proceedings. His spouse, Mrs Katica Gashi, expressed the wish to proceed with the application both on her own behalf and on behalf of her minor son, Edon Gashi.

2. In a judgment delivered on 13 December 2007 ("the principal judgment"), the Court held that in annulling the sale contract concerning a flat in Pula concluded between the applicant and the Pula Municipality, the national authorities had violated the applicant's right to peaceful enjoyment of his possessions (see *Gashi v. Croatia*, no. 32457/05, 13 December 2007).

3. Under Article 41 of the Convention the applicant's widow and son sought 32,634.77 euros (EUR) in respect of pecuniary damage and EUR 35,000 in respect of non-pecuniary damage. They further claimed 12,593 Croatian kunas (HRK) in respect of costs and expenses.

4. Since the question of the application of Article 41 of the Convention was not ready for decision, the Court reserved it and invited the Government and the applicant to submit, within three months, their written observations on that issue and, in particular, to notify the Court of any agreement they might reach (ibid., § 49, and point 4 of the operative provisions).

5. The applicant and the Government each filed observations.

THE LAW

6. 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."

A. Damage

1. Pecuniary damage

7. The applicant's widow and son claimed a sum of EUR 32,634.77 in respect of pecuniary damage. They argued that the market value of the flat in question was HRK 7,300 per square metre and that the above sum in euros corresponded to the value of the flat.

8. The Government offered to pay the applicant's widow and son HRK 7,300 per square metre of the flat in question, which they saw as corresponding to their estimation of its market value.

9. In view of the parties' submissions the Court awards the applicant's widow and son jointly a sum of EUR 32,634.77, plus any tax that may be chargeable on that amount to them, in respect of pecuniary damage.

2. Non-pecuniary damage

10. The applicant's widow and son also claimed EUR 35,000 in respect of non-pecuniary damage. They argued that the domestic proceedings for the annulment of the sale contract in question had caused the applicant severe stress, resulting in a deterioration of his health and finally his death.

11. The Court considers that there is no causal link between the damage claimed and the violation found. It therefore rejects the claim for non-pecuniary damage.

B. Costs and expenses

12. The applicant's widow and son further claimed HRK 9,638 for the costs and expenses incurred before the Court and HRK 2,955 for the costs before the national courts.

13. According to the Court's case-law, an applicant is entitled to reimbursement of his or her costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers that the applicant's widow and son are entitled to the costs and expenses

incurred both before the national courts and before the Court. The Court considers it reasonable to award them EUR 1,750 under both heads plus any tax that may be chargeable on that amount.

C. Default interest

14. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds*

   (a) that the respondent State is to pay the applicant's widow and son jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:

      (i) EUR 32,634.77 (thirty-two thousand six hundred and thirty-four euros and seventy-seven cents), plus any tax that may be chargeable, in respect of pecuniary damage;

      (ii) EUR 1,750 (one thousand seven hundred and fifty euros), plus any tax that may be chargeable, in respect of costs and expenses;

   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

2. *Dismisses* unanimously the remainder of the claim for just satisfaction.

Done in English, and notified in writing on 9 October 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Christos Rozakis
President