



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

FIRST SECTION

CASE OF VAJAGIĆ v. CROATIA

(Application no. 30431/03)

JUDGMENT
(Just satisfaction)

STRASBOURG

16 October 2008

FINAL

16/01/2009

This judgment 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:

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 25 September 2008,

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. In a judgment delivered on 29 June 2006 (“the principal judgment”), the Court held that there had been a violation of Article 1 of Protocol No. 1 to the Convention and Article 13 thereof and that it was unnecessary to examine the length complaint under Article 6 of the Convention (see *Vajagić v. Croatia*, no. 30431/03, 20 July 2006).

3. Under Article 41 of the Convention the applicants sought just satisfaction in respect of pecuniary and non-pecuniary damage and 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 applicants to submit, within six months, their written observations on that issue and, in particular, to notify the Court of any agreement they might reach (*ibid.*, § 59, and point 5 of the operative provisions).

5. The applicants and the Government each filed observations.

THE FACTS

6. On 20 February 2006 the Office for Property Affairs of the Town of Virovitica (*Ured državne uprave u Virovitičko-podravskoj županiji, Služba*

za opću upravu i imovinsko-pravne poslove – “the Virovitica Office”) adopted a new decision in the case and awarded the applicants 214,982.70 Croatian kunas (HRK) in compensation for their expropriated property.

7. Following an appeal by the applicants, on 19 May 2006 the Ministry of Justice (*Ministarstvo pravosuđa*), acting as the second-instance administrative authority, quashed the first-instance decision and remitted the case. It instructed the Virovitica Office to establish what had been the use of the property (residential, business or agricultural) at the time of expropriation, and then determine the contemporary market value as if the property was today being used for the same purpose, whereupon a new expert opinion should be obtained. As regards the contemporary market value of the property, the first-instance authority was directed to obtain the relevant data from the tax authorities. However, in its decision the Ministry also decided to award the applicants the above amount of HRK 214,982.70 as advance payment of compensation together with the statutory default interest accruable from 20 February 2006.

8. Both the applicants and the Town of Virovitica then brought an action in the Virovitica County Court (*Županijski sud u Virovitici*) against that decision, but on 21 May 2007 that court gave judgment whereby it dismissed both actions and upheld the Ministry’s decision. The applicants submitted that they had received the above amount of HRK 214,982.70 only after the judgment became final.

9. A subsequent appeal by the applicants on points of law (*revizija*) against that judgment was dismissed by the Supreme Court (*Vrhovni sud Republike Hrvatske*) on 23 October 2007.

THE LAW

10. 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. Pecuniary damage

1. *The parties’ submissions*

(a) *The applicants*

11. The applicants claimed EUR 60,550 for their expropriated land, submitting that the current market value of land suitable for construction in

the town of Virovitica was EUR 97.22 per square metre. They submitted that the land was situated in the street that represented a part of the national road that connects Hungary with the Adriatic coast. It was located on the border between construction zones I and II of the town of Virovitica, only 250 metres from the town centre. According to the applicants, the land was suitable for construction of a large commercial and/or residential building and commencement of a very profitable business activity. In support of their claim regarding the correct market value of the construction land in Virovitica, the applicants submitted a sale contract concluded in September 2000 whereby the town of Virovitica sold land to Croatian Telecom (*Hrvatski Telekom*) at a price some EUR 61 per square metre. They also submitted that in 2004 a certain Ž.D. sold his land to the town of Virovitica for some EUR 79 per square metre. They referred to two other sale contracts according to which the price was some EUR 63 and EUR 72 per square metre respectively.

12. The applicants further sought EUR 20,250 for the house, arguing that the current market value of a house or flat in Virovitica was EUR 900 per square metre. Lastly, they asked for EUR 7,432 for other construction on the property (toilet, well, shed, fence and garage).

13. In sum, the applicants claimed a total amount of EUR 88,232, together with the statutory default interest from the date of expropriation, namely 19 August 1976.

14. In reply to the Government's arguments (see paragraph 18 below) the applicants first submitted that the compensation they had received represented a small and symbolic amount compared to the just compensation due for their property expropriated thirty-two years ago.

15 As regards the Government's argument that the exact market value of their property had to be assessed by the competent domestic authorities (see paragraph 19 below), the applicants considered it rather hypocritical as those authorities had not managed to do so for more than thirty years. They therefore viewed the Court's judgment on just satisfaction as the only option for receiving the appropriate compensation for their expropriated property.

16. Finally, the applicants disputed the data relied on by the Government (see paragraph 20 below). They first labelled the fiscal authorities which had furnished the information as biased and their information as "pure bureaucratic data". They also emphasised that in the sale contracts they had submitted to the Court the prices per square metre were considerably higher than those provided by the fiscal authorities. The applicants also challenged the expert opinion relied on by the Government, pointing out that it was only one out of six expert opinions obtained during the proceedings. In their view that expert opinion was "the worst" and the expert who prepared it "the most incompetent" as he used unreliable data and was not familiar with the real estate market in Virovitica.

(b) The Government

17. The Government considered the applicants' claim excessive. They argued that there was no causal link between the applicants' financial expectations and the violation found.

18. Relying on the Court's case-law and in particular the judgment in the case of *Holy Monasteries (The) v. Greece* (9 December 1994, § 71, Series A no. 301-A), the Government pointed out that Article 1 of Protocol No. 1 did not guarantee a right to full compensation in all circumstances, since legitimate objectives of "public interest" may call for reimbursement of less than the full market value. That being so, and having regard to the fact that the applicants had received compensation which in the Government's view in large proportion corresponded to the market value of their property, the Government argued that the applicants were not entitled to any pecuniary damage under Article 41 of the Convention.

19. Apart from awarding the applicants a large portion of compensation for their property, the Ministry had given clear instructions to the first-instance administrative authority as to how the remaining part of the compensation should be determined. Thus, the Government deemed that under the domestic law the applicants might obtain full compensation for the market value of their property. However, it was for the competent domestic authorities to assess that value, the determination of which involved expert examination of all relevant parameters. It was also for these reasons that the Government considered that the applicants' claim for pecuniary damages should be rejected.

20. Lastly, the Government argued that the market value of the applicants' property could not be established by simply referring to the highest prices received for land suitable for construction and applying them to the applicants' property. They thus rejected the applicants' claim that the market value of the property corresponded to the sum of EUR 60,550, that is, EUR 97 per square metre (see paragraph 11 above). Instead, they submitted information collected by the fiscal authorities (letter of the Ministry of Finance of 17 March 2008) according to which the current market value of the land suitable for construction in the town of Virovitica amounted to EUR 23 per square metre. Taking into account that information as well as the opinion of the expert J.H. of 10 November 2005 and its supplement of 26 January 2006, obtained in the context of the relevant administrative proceedings by the Virovitica Office, the Government asserted that the actual market value of the applicants' property did not exceed the amount they had already received as advance payment.

2. The Court's assessment

21. The Court reiterates that a judgment in which it finds a breach imposes on the respondent State a legal obligation to put an end to the

breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach. If national law does not allow – or allows only partial – reparation to be made, Article 41 empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, §§ 32-33, ECHR 2000-XI).

22. In the principal judgment the Court found a violation of Article 1 of Protocol No. 1 for the following reasons:

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 Court finds] ... 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 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.

23. The Court has first to determine whether, as the Government argued, national law allows for reparation to be made for the consequences of the violation found by the principal judgment (see *Almeida Garrett, Mascarenhas Falcão and Others v. Portugal* (just satisfaction), nos. 29813/96 and 30229/96, § 19, 10 April 2001). It notes in this connection that on 20 February 2006 the Virovitica Office had given a new decision in the case and awarded the applicants HRK 214,982.70 in compensation for their expropriated property but that on 19 May 2006 the Ministry of Justice - following an appeal by the applicants - quashed that decision and remitted the case. The Court also takes note of the fact that in its decision the Ministry decided to award the applicants HRK 214,982.70 as advance payment of compensation together with the statutory default interest accruable from 20 February 2006 and that the applicants received that amount. However, the Ministry's decision was further challenged by the applicants before the Varaždin County Court and, later on, the Supreme Court. While the case was pending before these courts, the Virovitica Office - despite the fact that the Ministry's decision was definitive (*konačna*) and enforceable in terms of administrative law - took no action upon it, that is it

failed to use that time to collect the information the Ministry had instructed it to obtain.

24. That being so, the Court cannot but conclude that - despite the partial compensation paid to the applicants - the situation on account of which it found a violation of Article 1 of Protocol No. 1 to the Convention and Article 13 thereof in the principal judgment has not substantially improved. It is sufficient to note that yet another quashing and remittal occurred, resulting in the case being again pending before the first-instance administrative authority and that the applicants still have not received full compensation for their expropriated property. In these circumstances, to ask the applicants to await the final outcome of the relevant administrative proceedings, which have so far lasted more than ten years and eight months after the ratification, would scarcely be in keeping with the idea of the effective protection of human rights and would lead to a situation incompatible with the aim and object of the Convention (see *De Wilde, Ooms and Versyp v. Belgium* (Article 50), 10 March 1972, § 16, Series A no. 14; *Almeida Garrett, Mascarenhas Falcão and Others v. Portugal* (just satisfaction), cited above, § 20; and *Jalloh v. Germany* [GC], no. 54810/00, § 129, 11 July 2006).

25. The Court thus finds that the national law allows, at most, only for partial reparation to be made for the consequences of the violation found and, consequently, considers that it has to afford the applicants just satisfaction (see *Almeida Garrett, Mascarenhas Falcão and Others v. Portugal* (just satisfaction), cited above, § 21) corresponding to the difference between the value of their property and the compensation they obtained at national level.

26. The Court further reiterates that in many cases of lawful expropriation, such as an expropriation of land with a view to building a road or for other purposes “in the public interest”, only full compensation can be regarded as reasonably related to the value of the property (see *Former King of Greece and Others v. Greece* [GC] (just satisfaction), no. 25701/94, § 36, 28 November 2002). However, as correctly pointed out by the Government, legitimate objectives of “public interest”, such as those pursued by measures of economic reform or measures designed to achieve greater social justice, may call for less than reimbursement of the full market value (*ibid.*). Nonetheless, the present case concerns the expropriation which was neither carried out as part of a process of economic, social or political reform nor linked to any other specific circumstances. Moreover, it would appear that even the relevant domestic law requires that the compensation due to the applicants has to reflect the contemporary market value of the property, having regard to its use at the time of the expropriation (see paragraph 7 above). Accordingly, in this case, the Court does not discern any legitimate objective “in the public interest” capable of justifying less than reimbursement of the market value (see,

mutatis mutandis, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 102, to be published in ECHR 2006).

27. In this connection the Court observes that the applicants' property consisted of 622 square metres of land suitable for construction with a house of 25.73 square metres, shed, garage, toilet, well and fence (see paragraph 5 of the principal judgment).

28. Having regard to the fact that the applicants' property had been expropriated in 1976 and taking into account the information submitted by the parties, in particular several expert opinions obtained during the domestic proceedings, and the amount of compensation already received at the domestic level, the Court considers it reasonable to award the applicants jointly EUR 11,000 in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

B. Non-pecuniary damage

29. The applicants claimed EUR 100,000 in respect of non-pecuniary damage.

30. The Government contested the claim as excessive and unsubstantiated.

31. The Court finds that the applicants must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards each applicant EUR 4,000 under that head, plus any tax that may be chargeable on that amount.

C. Costs and expenses

1. The parties' submissions

32. The applicants claimed, in particular, 3,810 Croatian kunas (HRK) for the costs and expenses incurred before the domestic authorities and HRK 75,880 for those incurred before the Court, of which HRK 67,920 for their legal representation and HRK 7,960 for translation expenses.

33. The Government contested these claims. They noted, in particular, that the applicants had not shown any evidence that they had actually incurred any costs for their representation before the Court.

2. The Court's assessment

34. According to the Court's case-law, an applicant is entitled to reimbursement of his 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.

35. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 530 for costs and expenses in the domestic proceedings, plus any tax that may be chargeable on that amount.

36. As regards the applicants' claim for costs and expenses incurred before it, the Court notes that they failed to submit any relevant supporting documents for the costs of their legal representation, although they were invited to do so. It follows that in respect of that part of their claim the applicants failed to comply with the requirements set out in Rule 60 § 2 of the Rules of Court. The Court therefore rejects it (Rule 60 § 3). On the other hand, it awards the applicants EUR 1,100 for translation expenses, plus any tax that may be chargeable on that amount.

C. Default interest

37. 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, 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 Croatian kunas at the rate applicable at the date of settlement:

- (i) to the applicants jointly EUR 11,000 (eleven thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage;
- (ii) to each applicant EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
- (iii) to the applicants jointly EUR 1,630 (one thousand six hundred and thirty 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* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 16 October 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Christos Rozakis
President