



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

FOURTH SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 59138/00
by Jovan MOMČILOVIĆ
against Croatia

The European Court of Human Rights (Fourth Section), sitting on 27 September 2001 as a Chamber composed of

Mr G. RESS, *President*,
Mr I. CABRAL BARRETO,
Mr V. BUTKEVYCH,
Mrs N. VAJIĆ,
Mr J. HEDIGAN,
Mr M. PELLONPÄÄ,
Mrs S. BOTOUCHAROVA, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having regard to the above application introduced on 30 May 2000 and registered on 20 July 2000,

Having deliberated, decides as follows:

THE FACTS

The applicant, Jovan Momčilović, claims to be a Croatian citizen. He was born in 1935 in Plaški, Croatia, and is now living in Belgrade. He is represented before the Court by Mr Marko Baletić, a lawyer practising in Belgrade.

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

The applicant was a holder of a specially protected tenancy on a flat in Split, Croatia, where he had lived with his wife until July 1991 when they went to Tuzla (on the territory of the former Socialist Republic of Bosnia and Herzegovina - at the time a part of the Socialist Federal Republic of Yugoslavia - hereinafter the "SFRY") to visit their daughter. During that visit the armed conflict escalated in broader parts of Dalmatia, resulting in a traffic suspension of that area, including the town of Split. Soon the war spread to other parts of Croatia and Bosnia. The applicant and his wife fled to Belgrade. All their possessions were left behind in the flat in Split.

In March 1993 P. S., a member of the Croatian Army, broke into the applicant's flat which he still occupies.

Meanwhile, the Croatian authorities instituted civil proceedings with the Split Municipal Court for termination of the applicant's specially protected tenancy. In those proceedings the applicant was represented by a special representative appointed by the Split Municipal Court, as he was deemed to be of unknown address.

On 15 May 1996 the Split Municipal Court pronounced judgment terminating the applicant's specially protected tenancy. There was no appeal against the judgment and it became final.

On 20 December 1999 the applicant and his wife filed a request for the re-opening of the proceedings with the Split Municipal Court. No decision has yet been taken in this respect.

On 18 March 1999 the applicant filed a request with the Ministry of Defence, for recognition of his right of a specially protected tenancy on the flat in Split and his right to buy the flat.

On 31 March 1999 the Ministry of Defence informed the applicant that his specially protected tenancy on the flat in question was terminated by the Split Municipal Court's judgment of 15 May 1996.

In the meantime, on 29 March 1999 the applicant filed an application for his return to Croatia, pursuant to the "Procedure for the Individual Return of the Persons who Left Croatia" (hereinafter the "Procedure for the Return"), with the Croatian Embassy in Belgrade. The Procedure for the Return regulates the return to Croatia of persons who do not have Croatian identification documents. As the applicant left the territory of the present day Croatia in July 1991, shortly before the independence of Croatia, the Croatian documents such as passport or identity card have never been issued to him. In the above application the applicant stated that he is a Croatian citizen as he was born on the territory of the present day Croatia and had lived there until 1991. No decision has yet been taken in this respect.

COMPLAINTS

1. The applicant complains that the Split Municipal Court's judgment of 15 May 1996 to terminate his specially protected tenancy on the flat in Split where he had lived until July 1991 violated his right to peaceful enjoyment of his property and his right to respect for his home under Article 1 of Protocol No. 1 and Article 8 of the Convention, respectively, as well as Article 14 of the Convention. He complains also under Article 6 § 1 of the Convention about unfairness in respect of the proceedings concerning the termination of his specially protected tenancy as he was not able to participate in those proceedings.

2. He complains further under Article 1 of Protocol No. 1 alone and in conjunction with Article 14 of the Convention that a member of the Croatian Army, with the acquiescence of the Croatian authorities, broke into his flat in 1993 and has been using the applicant's personal property.

3. Finally, he complains under Article 3 § 2 of Protocol No. 4 that, due to the fact that he has not been issued any documents to enter Croatia, his right to enter the territory of his country has been violated.

THE LAW

1. The applicant complains, in respect of the civil proceedings to terminate his specially protected tenancy, that his right to property as well as the right to respect for his home and family life were violated. He also complains that the proceedings were unfair as he was not able to participate in those proceedings. He invokes Article 1 of Protocol No. 1 and Articles 8, 14 and 6 § 1 of the Convention.

The Court notes that the final decision in the proceedings concerning the termination of the applicant's specially protected tenancy was given on 15 May 1996 by the Split Municipal Court, while the Convention entered into force in respect of Croatia on 5 November 1997. The Court notes further that the applicant's request for the re-opening of the proceedings lodged after the date of entry into force of the Convention in respect of Croatia cannot be taken into consideration as it is not a remedy within the meaning of Article 35 § 1 of the Convention which would bring the above proceedings within the Court's competence *ratione temporis*.

It follows that this part of the application is incompatible *ratione temporis* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

2. The applicant complains further, under Article 1 of Protocol No. 1 alone and in conjunction with Article 14 of the Convention, that in

March 1993 P. S., a member of the Croatian Army, with the acquiescence of the Croatian authorities broke into the flat where the applicant's personal possessions as well as the furniture and valuables belonging to the applicant were left and that P. S. has continued to use the applicant's possessions.

The Court notes that the applicant failed to institute any proceedings for redress before domestic authorities in this respect.

It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

3. Finally, the applicant complains that, although he claims to be a Croatian citizen, and has filed an application pursuant to the Program for the Return, with the Croatian Embassy in Belgrade, the Croatian authorities have not reached any decision upon his request and have, therefore, prevented him from entering the territory of his country, contrary to Article 3 § 2 of Protocol No. 4, which reads as follows:

“No one shall be deprived of the right to enter the territory of the state of which he is a national.”

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 § 3 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaint that he is prevented from entering the territory of his country;

Declares inadmissible the remainder of the application.

Vincent BERGER
Registrar

Georg RESS
President