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

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ECHR 111 (2018)
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Grand Chamber finds no violation in two Croatian adverse possession cases

In today's **Grand Chamber** judgment[1] in the case of **Radomilja and Others v. Croatia** (application nos. 37685/10 and 22768/12) the European Court of Human Rights held:

by a majority, that the applicants' complaints in so far as they related to the period between 6 April 1941 and 8 October 1991 were inadmissible, **and**

by fourteen votes to three, that there had been **no violation of Article 1 of Protocol No. 1 (protection of property)** to the European Convention on Human Rights;

The case concerned the domestic courts' refusal to recognise the ownership of land the applicants' claimed to have acquired by adverse possession.

In June 2016 two Chamber judgments found a violation of the applicants' property rights, relying on the Court's case-law in an earlier case, *Trgo v. Croatia.*

The Grand Chamber held that before the Chamber the applicants had not relied on the period between 6 April 1941 and 8 October 1991, thus excluding it from the factual basis of their complaints. By taking that period into account the Chamber had decided beyond the scope of the case. The applicants were permitted to subsequently rely on that period before the Grand Chamber. However, that amounted to raising a new complaint, which was inadmissible as it had been made outside the six-month time-limit.

The Grand Chamber considered that the rest of the complaints made by the applicants were related to the domestic courts' application and interpretation of the law and their assessment of the facts. Neither of those grounds allowed for their claims to be treated as possessions under the Convention, meaning that there had been no violation of their property rights.

Principal facts

The applicants are all Croatian nationals. In application no. 37685/10 they are Mladen Radomilja, Ivan Brčić, Vesna Radomilja,Nenad Radomilja, and Marin Radomilja, living in Stobreč. In application no. 22768/12 they are Jakov Jakeljić and Ivica Jakeljić, living in Split.

In the former Yugoslavia, it was prohibited to acquire ownership of "socially owned"[2] land by adverse possession. Croatian law subsequently took this past prohibition into account by providing that anyone seeking to acquire ownership by adverse possession of such land could not rely on the period between 6 April 1941 and 8 October 1991. A provision derogating from that rule was briefly in force between 1997 and 1999, but the provision was later declared unconstitutional.

The applicants in both cases went to court in April 2002, claiming adverse possession of plots of land in social ownership. The applicants argued that the property had been in the possession of their legal predecessors for more than 70 years (in the first case) and 100 years (in the second case). The first-instance court ruled in their favour in September 2004 and June 2007, respectively, but the judgments were reversed on appeal.

1. Grand Chamber judgments are final (Article 44 of the Convention).
All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

2 Social ownership was a type of ownership which did not exist in other socialist countries but was developed in the former Yugoslavia.

The appeal court held in particular that the only way to acquire the land in question by adverse possession was if the applicants had held it for the required legal period of 40 years by April 1941. However, that condition had not been met as their predecessors had only had possession (continuously and in good faith) from 1912.

Constitutional complaints by the applicants were dismissed in September 2009 and 2011.

Complaints, procedure and composition of the Court

Relying on Article1 of Protocol No. 1 to the Convention, the applicants complained that their right to the peaceful enjoyment of their possessions had been violated because the domestic courts had refused to acknowledge their ownership of property acquired by adverse possession.

The application was lodged with the European Court of Human Rights on 17 May 2010.

In Chamber judgments of 28 June 2016, the Court held, by six votes to one, that there had been a violation of Article 1 of Protocol No. 1, relying on *Trgo v. Croatia.* In the *Trgo* case the Court had found that Mr Trgo, who had made a claim in 1997, had still been justified in relying on the provision which had temporarily allowed the period between 6 April 1941 and 8 October 1991 to be taken into account when calculating the time necessary to acquire ownership of socially owned land by adverse possession. That was because the Constitutional Court's decision which had invalidated that provision after about three years had not had retroactive effect.

The Chamber followed *Trgo* in the applicants' case. It found that unless third parties' interests were involved, it was not justified to exclude the period between 6 April 1941 and 8 October 1991 from the time necessary to acquire ownership by adverse possession. In the absence of any prejudice to the rights of others, the applicant should not have had to bear the consequences of the State's own mistake in enacting an unconstitutional provision.

The Government requested that the case be referred to the Grand Chamber under Article 43 (referral to the Grand Chamber) and on 28 November 2016 the panel of the Grand Chamber accepted that request[3].

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Guido **Raimondi** (Italy), *President*,
Angelika **Nußberger** (Germany),
Linos-Alexandre **Sicilianos** (Greece),
Ganna **Yudkivska** (Ukraine),
Robert **Spano** (Iceland),
Branko **Lubarda** (Serbia),
Vincent A. **De Gaetano** (Malta),
Julia **Laffranque** (Estonia),
Erik **Møse** (Norway),
Helen **Keller** (Switzerland),
Faris **Vehabović** (Bosnia and Herzegovina),
Ksenija **Turković** (Croatia),
Egidijus **Kūris** (Lithuania),
Iulia **Motoc** (Romania),

3. Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer..

Síofra **O'Leary** (Ireland),
Mārtiņš **Mits** (Latvia),
Pere **Pastor Vilanova** (Andorra),

and also Søren **Prebensen**, *Deputy Grand Chamber Registrar.*

Decision of the Court

Article 1 of Protocol No. 1

The Court first noted that it could only base decisions on matters that had been referred to it. The applicants' complaints had referred to periods of adverse possession of 70 or 100 years. However, in the proceedings before the Chamber they had explicitly excluded the period between 6 April 1941 and 8 October 1991 from their complaints.

However, the Chamber, applying *Trgo*, had taken that 50-year period into account, therefore going beyond the scope of the case as set down in the applicants' complaints. The applicants could expand the factual basis of their case to include that period, which they had eventually done before the Grand Chamber, but that had amounted to a new complaint. That new complaint, formulated in February 2017, had been made out of time as it was more than six months after the end of the domestic proceedings in 2009 and 2011. It was therefore inadmissible.

The applicants had also complained that the domestic courts had misapplied the relevant domestic law and raised questions about the domestic courts' findings of fact. The Court held that its power to review compliance with domestic law was limited as it was in the first place for the national courts to interpret and apply such law. It also stated that it was sensitive to the subsidiary nature of its role and that it had to be careful in taking on the role of a first-instance tribunal, unless that was rendered necessary by the circumstances of a case.

The Court found no reason to disagree with the domestic courts' findings of fact or the application of domestic law and their resultant conclusion that the applicants had not satisfied the conditions for acquiring ownership of the land by adverse possession. The Court therefore concluded that the applicants' claim to be declared the owners of the land had not had a sufficient basis in national law and was thus not protected by Article 1 of Protocol No. 1.

Separate opinions

Judges Yudkivska, Vehabović and Kūris expressed a joint partly dissenting and partly concurring opinion. Judges De Gaetano, Laffranque and Turković expressed a joint dissenting opinion. These opinions are annexed to the judgment.

The judgment is available in English and French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.