

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

SECOND SECTION

CASE OF ZDJELAR v. CROATIA

(Application no. 58566/19)

JUDGMENT

STRASBOURG

22 October 2024

This judgment is final but it may be subject to editorial revision.



In the case of Zdjelar v. Croatia,

The European Court of Human Rights (Second Section), sitting as a Committee composed of:

Lorraine Schembri Orland*, President*,
Frédéric Krenc,
Davor Derenčinović*, judges*,
and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 58566/19) 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") on 6 November 2019 by two Croatian nationals, Ms Cena Zdjelar and Mr Robert Zdjelar ("the applicants"), who were born in 1952 and 1974 respectively, live in Villingen-Schwenningen and Dauphingen (Germany) respectively and were represented by Ms L. Horvat, a lawyer practising in Zagreb;

the decision to give notice of the complaints concerning the right of access to a court and the right to property to the Croatian Government ("the Government"), represented by their Agent, Ms Š. Stažnik, and to declare inadmissible the complaints concerning the length of the civil proceedings and discrimination;

the parties' observations;

Having deliberated in private on 1 October 2024,

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

SUBJECT MATTER OF THE CASE

1. The application concerns the applicants' claim for compensation for unlawful sequestration of their flat, claim which was eventually dismissed because they had sued the local authorities and not the State.

2. The first applicant has lived in Germany since 1972 where her son (the second applicant) was born in 1974. In 1984 they bought a flat in Karlovac (Croatia), which they used during holidays.

3. In fall 1991, during the war in Croatia, a certain I.B. and his family, internally displaced persons, broke into and occupied the applicants' flat. By a decision of 14 April 1992, the relevant authority of the Karlovac Township allocated the flat to that family for temporary use. That decision was set aside on 5 July 1996.

4. On 27 September 1995 the Temporary Takeover and Administration of Certain Property Act ("the Sequestration Act") entered into force. It provided that property situated in the previously occupied territories of Croatia and belonging to persons who had left Croatia after 17 October 1990 was to be sequestered – that is to say, taken into the care of and controlled by the State. It also provided that local authorities would take possession of such property

and entitled their sequestration commissions to temporarily accommodate other persons in it.

5. By a decision of 27 September 1996, the Karlovac Township's Sequestration Commission allocated the applicants' flat for temporary use to a certain Ms Đ.V. who lived in an inadequate flat.

6. On 1 March 1999 the applicants applied for repossession of their flat. On 16 October 2000, the Karlovac Township Housing Commission set aside the decision of 27 September 1996 and ordered Đ.V. to vacate the flat. Since Đ.V. failed to do so, the Housing Commission instituted civil proceedings for her eviction. On 30 July 2001 the Commission handed the flat over to the applicants.

7. On 25 April 2002 the applicants brought a civil action in the Karlovac Municipal Court against the Karlovac Township seeking compensation for the damage sustained by unlawful disposals with their flat. They submitted that both decisions of 14 April 1992 and 27 September 1996 (see paragraphs 3 and 5 above) had been unlawful and that the Township was therefore liable both for the physical damage to the flat caused by the temporary occupants and for the lost rent. The Township replied that it was not liable for the damage sustained, without indicating who was.

8. During the proceedings the Municipal Court, at the applicants' initiative, invited the State to intervene in the proceedings, which the State declined on 11 May 2009.

9. After a remittal, by a judgment of 27 May 2013, the Municipal Court dismissed the applicants' action.

10. Following an appeal by the applicants, on 8 January 2014 the Karlovac County Court overturned the first-instance judgment in part. It allowed their claim for the period between 5 July 1996 and 30 July 2001 (see paragraphs 3 and 6 above). The court held that the second decision allocating the applicants' flat for temporary use dated 27 September 1996 had been unlawful because the town of Karlovac had never been occupied, the applicants had not left Croatia after 17 October 1990 nor had Đ.V. been eligible for accommodation in sequestered property (see paragraph 4 above). The Township was therefore together with the State jointly and severally liable for the damage sustained. The court at the same time upheld the first-instance judgment in so far as it concerned the period between 14 April 1992 and 4 July 1996 finding that the initial decision of 14 April 1992 had been lawful (see paragraph 3 above).

11. On 17 February 2014 the Township paid the applicants HRK 240,163.89 (EUR 31,875.26) as the judgment debt.

12. The Township, but not the applicants, lodged an appeal on points of law. The applicants replied to it, but the Municipal Court did not forward their reply to the Supreme Court.

13. By a judgment of 24 June 2014, the Supreme Court reversed the County Court's judgment and dismissed the applicants' claim for the period

between 5 July 1996 and 30 July 2001. It held that, based on section 13 of the of State Administration System Act, the State was solely liable for the damage caused not only by its own bodies but also by the bodies of the local authorities in administrative matters conferred on them, it being understood that the State had conferred some of its powers under the Sequestration Act, such as possession of sequestered property and its allocation for temporary use, on the local authorities. Since the applicants only sued the Karlovac Township, their claim had to be dismissed.

14. On 18 April 2019 the Constitutional Court dismissed the applicants' subsequent constitutional complaint, and on 6 May 2019 notified their representative of its decision.

15. Meanwhile, the Karlovac Township brought a civil action for unjust enrichment against the applicants. By a judgment of 12 April 2017, which became final on 30 January 2020, the applicants were ordered to pay back the amount they had received on the basis of the County Court's judgment of 8 January 2014 (see paragraphs 10-11 above).

16. Before the Court the applicants complained that the Supreme Court's judgment dismissing their civil action on the ground that they had directed it against the Karlovac Township rather than against the State, had been in breach of their rights under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 thereto.

THE COURT'S ASSESSMENT

I. PRELIMINARY ISSUES

A. Characterisation of the applicants' complaint

17. The Court has examined similar complaints either under Article 6 § 1 of the Convention as access-to-a-court complaints (see *Spasovski v. the former Yugoslav Republic of Macedonia*, no. 45150/05, §§ 29-33, 10 June 2010, and *Kostadin Mihaylov v. Bulgaria*, no. 17868/07, §§ 37-43, 27 March 2008), or under Article 1 of Protocol No. 1 (see *Tarnawczyk v. Poland*, no. 27480/02, §§ 104-110, 7 December 2010; *Sierpiński v. Poland*, no. 38016/07, 3 November 2009; and *Plechanow v. Poland*, no. 22279/04, §§ 98-112, 7 July 2009).

18. Having examined all the material submitted to it, the Court considers that in the present case it cannot speculate as to whether the Supreme Court would have ruled for the applicants if they had sued the State (see *Kostadin Mihaylov*, cited above, § 49). Their complaint must therefore be examined under Article 6 § 1 of the Convention alone as an access-to-court complaint.

B. Scope of the case

19. The Government submitted that, in so far as the applicants might have been understood to complain of the dismissal of their compensation claim for the period between 14 April 1992 and 4 July 1996, they had failed to exhaust domestic remedies because they had not lodged an extraordinary appeal on points of law against the part of the County Court's judgment dismissing that part of their claim (see paragraph 10 above).

20. The Court notes that that part of the applicants' claim was dismissed by the lower courts and that it was not dismissed because they had sued the wrong defendant (see paragraph 10 above). The Supreme Court did not even deal with that part of their claim as the applicants had not attempted to challenge its dismissal before that court (see paragraph 12 above).

21. Given that the applicants complained against the Supreme Court's judgment (see paragraphs 13 and 16 above), it cannot but be concluded that the period between 14 April 1992 and 4 July 1996 falls outside the scope of the present case, which is determined by the applicants' complaint (see, for example, *Fu Quan, s.r.o. v. the Czech Republic* [GC], no. 24827/14, § 137, 1 June 2023).

22. This finding is further corroborated by the fact that, in their claim for just satisfaction under Article 41 of the Convention, the applicants did not seek compensation for pecuniary damage for that period but claimed only the amount they had received as compensation for the subsequent period between 5 July 1996 and 30 July 2001 on the basis of the County Court's judgment (see paragraph 34 below).

23. Consequently, the Court does not find it necessary to examine the Government's non-exhaustion objection (see paragraph 19 above).

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE LACK OF ACCESS TO A COURT

24. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

25. It further notes that the sole reason relied on by the Supreme Court for reversing the County Court's judgment and dismissing the applicants' compensation claim for the period between 5 July 1996 and 30 July 2001 was that they had not directed their claim against the proper defendant. While the County Court held that the Karlovac Township and the State had been jointly and severally liable, the Supreme Court held that only the State could have been held liable for the damage sustained by unlawful sequestration of property under the Sequestration Act, but that the applicants had only sued the Township (see paragraphs 10 and 13 above).

26. It follows that the applicants' compensation claim for the period in question was not subject to a genuine examination as the Supreme Court dismissed it without touching upon the substance of the dispute.

27. The Court has already found a violation of Article 6 § 1 of the Convention in cases raising similar issues (see *Spasovski*, cited above, §§ 29-33, and *Kostadin Mihaylov*, cited above, §§ 37-43) and has not found any fact or argument capable of persuading it to reach a different conclusion in the present case as the situation in which the applicants found themselves was a result of insufficiently clear legislation and divergent practice of the domestic courts at the relevant time.

28. In particular, even though the Sequestration Act provided that certain property was to be sequestered (taken into the care of and controlled) by the State, it also provided that such property was to be taken into possession of the local authorities and entitled their commissions to temporarily accommodate other persons in it (see paragraph 4 above). Given that those commissions were also entitled to sue temporary occupants for eviction (see paragraph 6 above), the Court considers that it was reasonable for the applicants to assume that the local authorities, namely the Karlovac Township, were liable (either solely or jointly and severally with the State) for the damage sustained by the unlawful sequestration of their flat.

29. The domestic case-law examples submitted by the parties suggest that there was a divergent practice of the domestic courts on that issue. It was only on 28 September 2005 that the Supreme Court in its judgment no. Rev-719/05-2 for the first time held that the powers of local authorities under the Sequestration Act had been conferred on them by the State and that therefore the State was solely liable for unlawful sequestrations.

30. That clarification came three years and some five months after the applicants brought their civil action (see paragraph 7 above). At that time, they could no longer successfully bring a new civil action against the State as the three-year subjective statutory limitation period had elapsed (compare and contrast *Gerdzhikov and Château Vallée des Roses EOOD v. Bulgaria* (dec.), no. 8947/05, §§ 44-50, 13 September 2011). While the applicants could have at that stage still amended their civil action by joining or substituting the defendant, they could not have done so without the consent of the State as the new defendant. The State's attitude in that regard may be inferred from its later refusal to intervene in the proceedings (see paragraph 8 above) whereby it breached its positive obligation to facilitate identification of the correct defendant in situations where a public entity is liable for damage (see, in the context of Article 1 of Protocol No. 1, *Plechanow*, cited above, § 109).

31. The foregoing considerations are sufficient for the Court to conclude that there has been a violation of Article 6 § 1 of the Convention in the present case.

III. OTHER ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

32. The applicants also complained under Article 6 § 1 of the Convention about the outcome of the proceedings and that the principle of equality of arms had not been respected because their reply to the appeal on points of law had not been forwarded to the Supreme Court (see paragraph 12 above). The Court considers that this complaint must be regarded as absorbed by the applicants' access-to-court complaint.

33. In those circumstances, the Court considers that it has dealt with the main legal question raised by the case and that there is no need to examine this remaining complaint (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. The applicants claimed 240,163.89 Croatian kunas (HRK) in respect of pecuniary damage, that is, the amount they had received on the basis of the County Court's judgment of 8 January 2014 (see paragraphs 10-11 above). They also claimed 15,000 euros (EUR) each in respect of non-pecuniary damage, and HRK 87,009 jointly in respect of costs and expenses incurred before the domestic courts and for those incurred before the Court.

35. The Government contested these claims.

36. The Court reiterates that under domestic law the applicants may request reopening of the civil proceedings in respect of which the Court has found a violation of the Convention and considers that in the given circumstances this is the most appropriate way for them to obtain compensation for any pecuniary damage they might have sustained. Therefore, there is no call to award the applicants any sum on that account.

37. On the other hand, the Court awards each applicant EUR 10,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

38. As regards the costs and expenses, the Court considers it reasonable to award the applicants jointly EUR 830 for the costs of their constitutional complaint, plus any tax that may be chargeable to them. The remainder of the applicants' claim for costs and expenses incurred before the domestic courts must be rejected, given that they will be able to have them reimbursed should the proceedings complained of be reopened (see, for example, *Stojanović v. Croatia*, no. 23160/09, § 84, 19 September 2013).

39. As regards the costs and expenses incurred before it, the Court considers it reasonable to award the applicants jointly EUR 3,680, plus any tax that may be chargeable to them.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 6 § 1 of the Convention concerning the right of access to a court admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the lack of access to a court;

3. *Holds* that there is no need to examine the remaining complaint under Article 6 § 1 of the Convention;

4. *Holds,*
   (a) that the respondent State is to pay, within three months, the following amounts:
      (i) EUR 10,000 (ten thousand euros) to each applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 4,510 (four thousand five hundred and ten euros) to the applicants jointly, plus any tax that may be chargeable to them, 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;

5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 22 October 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Dorothee von Arnim Deputy Registrar	Lorraine Schembri Orland President