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

SECOND SECTION

DECISION

Application no. 29688/20
Ivančica KNEZ
against Croatia

The European Court of Human Rights (Second Section), sitting on 15 October 2024 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. 29688/20) 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 4 July 2020 by a Croatian national, Ms Ivančica Knez ("the applicant"), who was born in 1966, lives in Zagreb and was represented by Mr S. Babić, a lawyer practising in Zagreb;

the decision to give notice of the complaint concerning the peaceful enjoyment of possessions to the Croatian Government ("the Government"), represented by their Agent, Ms Š. Stažnik, and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns the unlawful revocation of the applicant's building permit and the subsequent dismissal by the domestic courts of her civil action for damages.

A. Administrative proceedings

2. In 2003, the relevant authority of the City of Zagreb issued a building permit for the reconstruction of the applicant's house, and on 29 December 2005 approved the changes to the main design which formed an integral part of the building permit ("the approval"). The approval became final on 18 January 2006 ("the final building permit").

3. Upon the inspection carried out by an inspector of the Ministry of the Environment, Spatial Development and Construction ("the Ministry"), on 29 August 2006 the latter, in supervisory review proceedings (*po pravu nadzora*), revoked the approval, finding that it had been issued in breach of the relevant provisions of the Building Act ("the Ministry's decision").

4. The applicant then lodged an action for judicial review against the Ministry's decision. By a judgment of 15 January 2010, which became final the same day, the Administrative Court quashed the Ministry's decision. It relied on the Constitutional Court's practice according to which a final building permit constituted "property" protected by Article 48 of the Croatian Constitution and Article 1 of Protocol No. 1 to the Convention. Moreover, such a final administrative act could be revoked only in the proceedings and subject to the conditions provided for by law; however, neither the Building Act nor the Administrative Procedure Act provided for the possibility of revoking a final building permit by supervisory review. It thus followed that the right to build established by a final decision had to be respected. The State was not authorised, by supervisory review, to interfere with such a right by revoking a final administrative act establishing it, unless that was in the interest of the State and if the person concerned was paid compensation in the amount of the market value of the property they had thus been deprived of [it being understood that the final building permit constituted "property"]. As the applicant had been deprived of her right to build without the State's interest for such an interference having been determined or compensation paid, the Ministry's decision was unlawful.

B. Civil proceedings for compensation

5. In 2010, the applicant brought a civil action against the State based on legislation providing for State liability for unlawful acts of the State authorities, claiming compensation for the damage sustained due to the Ministry's unlawful decision. In particular, she argued that she had been prevented from continuing the reconstruction works on her house for more than three years, in which period her house had deteriorated because of adverse weather conditions to which it had been exposed. She also claimed lost profits arguing that, had it not been for the Ministry's decision, she could have finished the reconstruction works and rented her house.

6. By a judgment of 22 December 2014, the Zagreb Municipal Civil Court dismissed the applicant's action. It found that, while the applicant had not proved the loss of profits, she had sustained pecuniary damage on account of the deterioration of her house during the time when she had been prevented from carrying out reconstruction works. However, the State could not be held responsible for that damage, as the Ministry had been authorised to revoke the approval by supervisory review and had done so within the statutory time-limit. The Administrative Court's finding that the Ministry's decision had been unlawful could not in itself prove the malpractice of the Ministry.

7. On 3 January 2017 the Zagreb County Court dismissed the applicant's appeal and upheld the first-instance judgment. It held that the Ministry acted within its competence and that its conduct in the decision-making process, in which it had applied and interpreted the law according to its conscience and belief, could not be considered unlawful only because the Administrative Court found that the legal standpoint expressed in the decision it had rendered had been erroneous.

8. The applicant then lodged a constitutional complaint. She relied on the relevant provisions of the Constitution guaranteeing equality before the law, that the decisions of the administrative authorities shall be grounded in law and that their lawfulness shall be subject to judicial review, as well as on the right to fair proceedings. After paraphrasing the Administrative Court's judgment and the Constitutional Court's practice that it had referred to (see paragraph 4 above), she argued that the domestic courts had erred in their finding that the Ministry had acted within its competence when it had revoked the final building permit by supervisory review. On the contrary, the Administrative Court had confirmed that the Ministry had not been authorised to do so and that its decision had thus been unlawful. In adopting its decision, the Ministry had committed a gross mistake, thereby preventing her in continuing the reconstruction works, which had caused her damage for which the State was liable.

9. Having examined her constitutional complaint under the relevant Article of the Constitution guaranteeing the right to fair proceedings, the Constitutional Court dismissed it by a decision of 26 February 2020, and on 6 March 2020 notified her representative thereof.

C. Complaint

10. Before the Court, the applicant complained, under Article 1 of Protocol No. 1 to the Convention, about the breach of her right to peaceful enjoyment of her possessions and of the prohibition of deprivation thereof. In particular, she argued that by dismissing her compensation claim the domestic courts wrongly upheld the Ministry's decision whereby she had been unlawfully prevented from building her home and denied the right to

own a house she would have so acquired, thus depriving her in advance of her possessions and of the right to peaceful enjoyment thereof.

THE COURT'S ASSESSMENT

11. The Government raised several inadmissibility objections arguing, *inter alia*, that in her constitutional complaint the applicant did not invoke Article 1 of Protocol No. 1 to the Convention or the corresponding Article 48 § 1 of the Constitution, either explicitly or in substance. Since in her constitutional complaint she had not complained of a violation of her right to the peaceful enjoyment of possessions, the Government argued that the application should be rejected as inadmissible for failure to exhaust the available domestic remedies.

12. The applicant did not address the above objection.

13. The Court reiterates that in order to properly exhaust domestic remedies it is not sufficient that a violation of the Convention is "evident" from the facts of the case or the applicant's submissions. Rather, he or she must actually complain (expressly or in substance) of such a violation in a manner which leaves no doubt that the same complaint that was subsequently submitted to the Court had indeed been raised at the domestic level (see, for example, *Fu Quan, s.r.o. v. the Czech Republic* [GC], no. 24827/14, § 172, 1 June 2023).

14. In the present case the applicant, who was represented by a lawyer, indeed did not rely in her constitutional complaint on Article 1 of Protocol No. 1 to the Convention, nor did she rely on the relevant provision of the Constitution which guarantees the right of ownership. Instead, she referred to Articles 14 § 2, 19, 26 and 29 § 1 of the Constitution, which are the provisions that correspond to Articles 6 and 14 of the Convention and Article 1 of Protocol No. 12 thereto. More importantly, as pointed out by the Government, she did not complain about the violation of her right to property even in substance despite the Administrative Court's finding that the final building permit constituted "property" and that the issue of its revocation fell within the scope of the above-mentioned provisions of the Convention and the Constitution. Indeed, the Court notes that such a complaint cannot be inferred from a mere paraphrasing of the Administrative Court's judgment in her constitutional complaint (see paragraph 8 above).

15. Instead, the applicant complained about the outcome of the civil proceedings for damages arguing that the domestic courts erroneously held that the Ministry's conduct had not been unlawful and that the State was thus not liable for the damage incurred (see paragraph 8 above). The Constitutional Court thus examined her complaint from the standpoint of the right to fair proceedings (see paragraph 9 above), and did not address her property rights of its own motion – which in any event it is not required to do under Croatian law (see *Merot d.o.o. and Storitve Tir d.o.o. v. Croatia* (dec.),

nos. 29426/08 and 29737/08, § 36, 10 December 2013). What is more, in reply to the Government's non-exhaustion objection, the applicant did not even attempt to argue that in her constitutional complaint she had in fact complained about the breach of her right to property (see paragraph 12 above).

16. In these circumstances, the Court finds that in her constitutional complaint the applicant did not complain of the violation of her right to the peaceful enjoyment of possessions in a manner which leaves no doubt that the same complaint was subsequently submitted to the Court (compare also *Merot d.o.o. and Storitve Tir d.o.o.*, cited above, §§ 34-38, and paragraph 13 above).

17. It follows that the Government's objection must be upheld. The present application is therefore inadmissible under Article 35 § 1 of the Convention for non-exhaustion of domestic remedies and must therefore be rejected pursuant to Article 35 § 4.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 14 November 2024.

Dorothee von Arnim
Deputy Registrar

Lorraine Schembri Orland
President