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

SECOND SECTION

DECISION

Application no. 40422/17
Dragutin TVRDINIĆ
against Croatia

The European Court of Human Rights (Second Section), sitting on 23 May 2023 as a Committee composed of:

Pauliine Koskelo*, President*,
Lorraine Schembri Orland,
Davor Derenčinović*, judges*,

and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 40422/17) 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 31 May 2017 by a Croatian national, Mr Dragutin Tvrdinić, who was born in 1943 and lived in Karlovac ("the applicant") and who was represented by Ms R. Dozet Daskal, a lawyer practising in Karlovac;

the decision to give notice of the application to the Croatian Government ("the Government"), represented by their Agent, Ms Š. Stažnik;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns an allegedly arbitrary dismissal of a civil action the applicant brought against his relatives with a view to being declared a co-owner of a plot of land.

2. On 23 October 2012 the applicant brought a civil action in the Karlovac Municipal Court against his relatives seeking to be declared a co-owner with a share of 1/4 of a plot of land which was recorded in their name in the land register. He claimed to have acquired co-ownership of that land by adverse possession. When bringing his civil action, the applicant also had a corresponding entry made in the land register indicating that proceedings

were pending in respect of that land (*zabilježba spora*). Under domestic law that entry has the effect of rendering invalid all subsequent changes of ownership in the land register if the related civil action is granted.

3. Meanwhile, in 2010 the national public water management company, Hrvatske Vode, took some preparatory steps with a view to expropriating the land in question. On 9 October 2013 the applicant's brother, who was one of the registered co-owners of the land, sold his share (4/8) to Hrvatske Vode for 69,601.35 Croatian kunas (HRK, that is, some 9,238 euros (EUR)) whereupon, on 18 October 2013, that company instituted expropriation proceedings before the relevant administrative authority with a view to expropriating the ownership share of the remaining co-owners.

4. On 12 December 2013 a hearing was held in those administrative proceedings. Because of the above-mentioned land register entry (see paragraph 2 above), the applicant was, along with the registered co-owners, also invited to attend the hearing at which he was asked to specify which and whose share of co-ownership he was contesting. However, the applicant did not reply to that query and left the hearing. At the end of the hearing the remaining co-owners concluded a settlement whereby they accepted HRK 69,601.35 (that is, the same amount for which the applicant's brother sold his share beforehand, see the previous paragraph) as compensation for the expropriation of their share in the ownership of the land in question.

5. On 18 March 2014 the applicant's representative informed the relevant administrative authority that he withdrew all his objections in the expropriation proceedings, that his share of ownership was secured by the above-mentioned entry in the land register and that another settlement would have to be concluded after the civil courts ruled on his action (see paragraph 2 above).

6. By a decision of 15 April 2014, the relevant administrative authority accepted the expropriation request by Hrvatske Vode and expropriated the remaining share of the ownership of the land in question. The land was thereby transferred into State ownership and became a property in the public domain.

7. By a judgment of 25 February 2015, upheld by the Karlovac County Court on 18 May 2016, the Municipal Court dismissed the applicant's civil action. The courts rejected the applicant's argument based on the above-mentioned entry in the land register (see paragraph 2 above) and held that, after the expropriation of the land, the applicant had no longer had a legal interest in pursuing his declaratory action but only in obtaining his share of the compensation for that expropriation.

8. On 23 November 2016 the Constitutional Court declared inadmissible the applicant's subsequent constitutional complaint because the case did not raise any constitutional issue. On 14 December 2016 it notified his representative of its decision.

9. On 23 November 2016 the applicant brought a civil action against his brother and Hrvatske Vode seeking payment of HRK 34,800.67, that is, a half of the price for which his brother had sold his share in the ownership of the land in question to the said company (see paragraph 3 above). Those proceedings are still pending.

10. The applicant complained under Article 6 § 1 and Article 13 of the Convention that the civil courts' decision to dismiss his civil action had been arbitrary because those courts had failed to take into account the effects of the above-mentioned entry in the land register (see paragraph 2 above).

THE COURT'S ASSESSMENT

11. By a letter of 29 October 2018, the Government informed the Court that the applicant had died on 5 August 2017 and that his wife, Ms Dorica Tvrdinić, was his sole heir. The Government invited the Court to strike the application out of its list of cases under Article 37 § 1 (a) of the Convention since the applicant's wife had not expressed any interest in pursuing the application.

12. In a letter dated 12 November 2018, the applicant's representative informed the Court that the applicant's wife wished to pursue the application in his stead. Having regard to its case-law on the matter (see, for example, *Trivkanović v. Croatia (no. 2)*, no. 54916/16, §§ 44-47, 21 January 2021), the Court finds that in such circumstances the applicant's wife has standing to pursue the present application and that the Government's objection in this regard must be dismissed.

13. The Government contested the admissibility of the application on three grounds. They argued that the application was premature because the compensation proceedings were still pending (see paragraph 9 above). In the alternative, the Government considered that the applicant had abused the right of application because he had not informed the Court of those compensation proceedings. Lastly, they submitted that the application was in, any event, manifestly ill-founded.

14. The Court does not find it necessary to examine the Government's objection based on the abuse of the right of application (see paragraph 13 above) in view of the following.

15. The Court considers that the applicant's complaint about the arbitrariness of the civil courts' decision to dismiss his action seeking to be declared a co-owner of the land in question falls to be examined under Article 6 § 1 of the Convention. It finds that, by arguing that the domestic courts had failed to take into account the effects of the land register entry in question (see paragraph 10 above), the applicant in essence complained of a wrong application of the relevant domestic law. However, it is for the national authorities, notably the courts, to interpret and apply domestic law, and the Court cannot call into question their findings in that respect unless those

findings are arbitrary or manifestly unreasonable (see, among many other authorities, *Naït-Liman v. Switzerland* [GC], no. 51357/07, § 116, 15 March 2018).

16. The Court notes that in the present case the domestic courts expressed the view that the land register entry in question had been irrelevant because the applicant had no longer had a legal interest in pursuing his declaratory action after the expropriation of the land at issue (see paragraph 7 above). For the Court, even assuming that that view was not in line with the relevant domestic law, it cannot be seen as arbitrary or manifestly unreasonable.

17. The applicant did not complain, and there is nothing to suggest, that the proceedings were otherwise unfair. In particular, nothing suggests that the applicant did not have the benefit of adversarial proceedings, namely that he was unable to adduce the arguments and evidence he considered relevant to the case, or that he did not have the opportunity of challenging effectively the arguments and evidence adduced by the defendants. All his arguments which were relevant to the resolution of the case were duly heard and examined by the domestic courts.

18. It follows that the applicant's complaint under Article 6 § 1 of the Convention, which concerns the outcome of the proceedings, is inadmissible under Article 35 § 3 (a) of the Convention for being manifestly ill-founded, and that it must be rejected pursuant to Article 35 § 4 thereof.

19. In so far as the applicant may be understood to complain under Article 6 § 1 of a denial of access to court, it is to be noted that the domestic courts held that, while he had not had a legal interest to pursue his declaratory action, he had had a legal interest in obtaining his share of the compensation for the expropriation of the land in question (see paragraph 7 above). The applicant therefore instituted relevant civil proceedings for compensation, which are still pending (see paragraph 9 above).

20. It follows that, to the extent that the applicant's complaint under Article 6 § 1 of the Convention may be understood to concern the denial of access to a court, it is inadmissible for being premature. It must therefore be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

21. The Court further finds that the applicant's complaint under Article 13 of the Convention (see paragraph 10 above) is to be considered absorbed by his complaint under Article 6 § 1 (see *Kudła v. Poland* [GC], no. 30210/96, § 146, ECHR 2000-XI).

For these reasons, the Court, unanimously,

Holds that the applicant's wife, Ms Dorica Tvrdinić, has standing to pursue the application in his stead, and dismisses the Government's objection in that respect;

Declares the application inadmissible.

Done in English and notified in writing on 15 June 2023.

Dorothee von Arnim Deputy Registrar	Pauliine Koskelo President