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

SECOND SECTION

DECISION

Application no. 49817/19
Darijo UJHAZI and Igor UJHAZI
against Croatia

The European Court of Human Rights (Second Section), sitting on 4 February 2025 as a Committee composed of:

Jovan Ilievski*, President*,
Péter Paczolay,
Davor Derenčinović*, judges*,
and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 49817/19) 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 17 September 2019 by two Croatian nationals, Mr Darijo Ujhazi and Mr Igor Ujhazi ("the applicants"), who were born in 1975 and 1968 respectively, live in Rovinj and Valpovo, and were represented by Mr H. Krivić, a lawyer practising in Osijek;

the decision to give notice of the complaint concerning the protection of property 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 inability of the applicants to recover possession and move into a house they claim to be in their ownership, and which has been subject to the protected lease scheme (see *Statileo v. Croatia*, no. 12027/10, §§ 39-56 and 123-32, 10 July 2014), as well as the inadequate level of protected rent they have been entitled to receive under that scheme for lease of the flat located in the house.

2. In 1948 the Communist authorities confiscated from the applicants' predecessor Ms E.U. a house in Osijek consisting of a single flat.

3. The house then remained in various forms of public, notably social ownership. In the 1960s a certain Mr A.V. acquired the specially protected tenancy (*stanarsko pravo*) of the flat located in the house.

4. By a decision of 9 November 2009, the relevant administrative authorities in restitution-related administrative proceedings transferred the ownership of the house to the applicants as E.U.'s heirs. A.V. and his son M.V. had the right to remain living in the flat located in the house as protected lessees (*zaštićeni najmoprimci*).

5. Under the Lease of Flats Act, as in force at the time, such lessees were subject to a number of protective measures, such as the duty of landlords to enter into a lease of indefinite duration; the payment of protected rent, the amount of which was set by the Government and was significantly lower than the market rent; and better protection against termination of the lease.

6. In April 2010 the applicants invited M.V. to vacate the flat. He replied that, as a member of his late father's household, he had the right to remain living in the flat as a protected lessee. He therefore invited the applicants to conclude with him a lease contract stipulating protected rent (*zaštićena najamnina*).

A. The proceedings at issue

7. Since the applicants did not answer to M.V.'s proposal to enter into a lease contract stipulating protected rent, on 13 August 2010 M.V. brought a civil action against the applicants in the Osijek Municipal Court with a view to obtaining a judgment in lieu of such contract. The applicants lodged a counterclaim asking the court to order M.V. to vacate the flat in question and pay them the market rent until then.

8. By a judgment of 13 October 2014, the Municipal Court found in favour of M.V. On 3 February 2016 the Osijek County Court dismissed an appeal by the applicants and upheld the first-instance judgment.

9. On 6 March 2019 the Constitutional Court dismissed the applicants' subsequent constitutional complaint, and on 21 March 2019 notified their representative of its decision.

B. Subsequent developments

10. Meanwhile, on 28 May 2018 M.V. brought a civil action against the applicants in the Osijek Municipal Court asking the court to declare that he had become the owner of the house in question through construction. He relied on *inaedificatio* (*stjecanje vlasništva građenjem na tuđem zemljištu*), a legal concept which allows acquisition of ownership by construction of a building on land that does not belong to the builder.

11. By a judgment of 22 October 2021, the Municipal Court found in favour of M.V. Having obtained an opinion from a construction expert, the court established that over the years M.V. and his late father had, with the approval of the local authorities (which had at the time exercised some *quasi*-ownership rights over the house which had been socially owned), made so extensive construction works that they had actually built a new house in place of the old one. As builders acting in good faith, M.V. and his father had thereby become the owners of the house by the operation of law at the latest in 2005, when the construction works had been completed. This further meant that the new house they had built was not the same as the one that had been confiscated from the applicants' predecessor in 1948, the ownership of which had by a decision of 9 November 2009 been transferred to the applicants (see paragraphs 2 and 4 above). Since at the time of the adoption of that decision the old house had no longer existed, that decision had been without effect on the ownership of the new house M.V. and his father had built in place of the old one.

12. On 24 May 2023 the Rijeka County Court dismissed an appeal by the applicants and upheld the first-instance judgment, which thereby became final and effective under domestic law.

13. The applicants did not lodge a petition to appeal on points of law, or a constitutional complaint against the second-instance judgment.

C. Complaints

14. Before the Court the applicants complained, under Article 1 of Protocol No. 1 to the Convention, that they had been unable to use their house or charge adequate rent.

THE COURT'S ASSESSMENT

15. The Government argued that the applicants had not exhausted domestic remedies because they had not brought a civil action for compensation against the State seeking the difference between the protected rent and the market rent. In the alternative, the Government argued that the application was premature because, at the time they submitted their observations, the second set of proceedings was still pending (see paragraphs 10-12 above).

16. The Court reiterates that the issue whether a particular Article of the Convention or a Protocol thereto is applicable or not is a matter that goes to the Court's jurisdiction *ratione materiae*, which it must examine of its own motion (see, for example, *Grosam v. the Czech Republic* [GC], no. 19750/13, § 107, 1 June 2023).

17. In this connection the Court notes that, after giving notice of the application to the respondent Government and the exchange of the parties'

observations, M.V. obtained a final judgment declaring him the owner of the house in question (see paragraphs 11-12 above). Accordingly, the applicants are not the owners of the house and the flat in it, and, consequently, Article 1 of Protocol No. 1 to the Convention is not applicable in the present case.

18. It follows that the present application is inadmissible for being incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a), and that it must be rejected, pursuant to Article 35 § 4 thereof.

19. In the light of this conclusion, the Court does not find it necessary to rule on the Government's inadmissibility objections (see paragraph 15 above).

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 6 March 2025.

Dorothee von Arnim Deputy Registrar	Jovan Ilievski President