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

FIRST SECTION

DECISION

Application no. 59816/12
Ljubica and Dragan VILIĆ
against Croatia

The European Court of Human Rights (First Section), sitting on 12 December 2017 as a Committee composed of:

Kristina Pardalos, *President,*
Ksenija Turković,
Pauliine Koskelo, *judges,*

and Renata Degener, *Deputy Section Registrar,*

Having regard to the above application lodged on 26 August 2012,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

The applicants, Ms Ljubica Vilić and Mr Dragan Vilić, are Croatian nationals, who were born in 1955 and 1949 respectively and live in Zemun. They were represented before the Court by Mr L. Sikirica, a lawyer practising in Zagreb.

The Croatian Government ("the Government") were represented by their Agent, Ms Š. Stažnik.

I. THE CIRCUMSTANCES OF THE CASE

1. The facts of the case, as submitted by the parties, may be summarised as follows.

2. The applicants own a house in Glina. During the armed conflict the applicants fled Croatia.

3. On 19 September 1995 the Glina Municipality Housing Commission (*Stambena Komisija Glina*) authorised a certain M.I. to temporarily use the applicants' house. On the same date M.I. moved into the house.

4. On 27 September 1995 the Temporary Takeover and Administration of Certain Property Act ("the Takeover Act") entered into force. It provided that property belonging to persons who had left Croatia after 17 October 1990 was to be sequestered, that is, taken into the care of and controlled by the State. It also authorised local housing commissions to temporarily accommodate other persons in such property.

5. In 1997 the second applicant requested re-possession of his house from the Glina Municipality Housing Commission, which on 7 April 2000 annulled its decision of 19 September 1995 and ordered M.I. to vacate the premises within 5 days of receiving notification from the Housing Commission concerning alternative accommodation for him and his family.

6. On 7 November 2000 the applicants moved back into their house.

7. On an unknown date the applicants brought a civil action in the Glina Municipal Court (*Općinski sud u Glini*) seeking 152,000 Croatian kunas (HRK) in compensation for the non-availability of their house between 1 October 1995 and 1 November 2000. On 18 June 2004 the Glina Muncipal Court dismissed the applicants' claim as unfounded and this judgment was upheld by the Sisak County Court (*Županijski sud u Sisku*) on 1 September 2005 and by the Supreme Court on 29 June 2006.

8. The applicants then lodged a constitutional complaint. On 16 September 2009 the Constitutional Court quashed all three judgments and ordered a fresh examination of the case.

9. In the re-trial the first-instance and second-instance courts again ruled against the applicants, on 26 March 2010 and 27 September 2010 respectively. They held that the applicants had not presented any relevant evidence in support of their claim on the basis of which the amount of compensation could be assessed, in particular there was no evidence indicating the value of their property and the amount of damage they had sustained. In these circumstances the national courts also found that the applicants had not proven that the restriction on the use of their house had imposed an excessive burden on them.

10. A subsequent appeal on points of law lodged by the applicants was declared inadmissible *ratione valoris* by the Supreme Court on 9 March 2011.

11. The applicants then lodged a fresh constitutional complaint on 25 July 2011, arguing that the decisions of the lower courts denying them the right to compensation for the use of their house by third parties had been unfounded. On 16 February 2012 the Constitutional Court declared the applicants' constitutional complaint inadmissible as manifestly ill-founded.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Constitution

Relevant provisions

12. The relevant part of the Constitution of the Republic of Croatia (*Ustav Republike Hrvatske*, Official Gazette no. 85/2010 (consolidated text)) reads as follows:

Article 29

"In the determination of their rights and obligations or of any criminal charge against them, everyone is entitled to a fair hearing within a reasonable time by an independent and impartial court established by law.

..."

Article 140

"International agreements concluded and ratified in accordance with the Constitution and made public, and which are in force, are a part of the internal legal system of the Republic of Croatia and rank, in terms of their legal effects, above statutes. ..."

B. The Constitutional Court's jurisprudence

13. In its decisions nos. U-I-892/1994 of 14 November 1994 (Official Gazette no. 83/1994) and U-I-130/1995 of 20 February 1995 (Official Gazette no. 112/1995) the Constitutional Court held that all rights guaranteed in the Convention and its Protocols were also to be considered constitutional rights having legal force on a par with the provisions of the Constitution.

C. The Courts Act

14. The relevant part of the Courts Act (*Zakon o sudovima*, Official Gazette no. 150/2005) provides as follows:

Section 5

"1. The courts shall adjudicate cases on the basis of the Constitution and statutes.

2. The courts shall adjudicate cases also on the basis of the international agreements which are the part of the [internal] legal order of the Republic of Croatia ..."

D. The Civil Procedure Act

15. The relevant part of the Civil Procedure Act (*Zakon o parničnom postupku*, Official Gazette nos. 53/1991, 91/1992, 112/1999, 81/2001, 117/2003, 88/2005, 84/2008, 96/2008, 23/2008, 57/2011, 148/2011 - consolidated text), as in force at the material time, provided as follows:

Section 219

"Each party is obliged to provide facts and present evidence on which his or her claim is based or to refute the statements and evidence of his or her opponent.

..."

E. The Supreme Court's jurisprudence

16. In its decisions nos. Rev 742/05-2 of 12 February 2009; Rev 588/08-2 of 12 February 2009; Rev 234/08-2 of 25 March 2009; Rev 1038/08-2 of 21 January 2010; Rev1170/10-2 of 9 March 2011; and Rev 1512/09-2 of 31 August 2011 the Supreme Court held that persons whose property had been used by the housing commissions for temporary accommodation of other persons had the right to compensation.

COMPLAINTS

17. The applicants complained under Article 6 § 1 and Article 13 of the Convention about the refusal of the Supreme Court to examine the merits of their appeal on points of law in the renewed proceedings.

18. They also complained that their right to peaceful enjoyment of their possession had been violated contrary to Article 1 of Protocol No. 1.

THE LAW

I. ARTICLE 6 § 1 OF THE CONVENTION

19. The applicants complained that their right of access to a court had been violated because in the second round of proceedings the Supreme Court, contrary to its previous decision, had refused to examine their appeal on points of law on the merits. They relied on Article 6 § 1 and Article 13 of the Convention. The complaint was communicated under Article 6 § 1 which, in so far as relevant, reads as follows:

"In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing ... by [a] ... tribunal ..."

A. The parties' arguments

20. The Government argued that the applicants had not exhausted the domestic remedies because they had not raised any such complaint in their constitutional complaint.

21. The applicants contended that they had exhausted all available remedies.

B. The Court's assessment

22. In accordance with Article 35 § 1 of the Convention, the Court may only deal with a matter after all domestic remedies have been exhausted. The purpose of Article 35 is to afford the Contracting States the opportunity of preventing or putting right violations alleged against them before those allegations are submitted to the Court (see, for example, *Gherghina v. Romania* (dec.) [GC], no. 42219/07, § 84, 9 July 2015). Thus, a complaint submitted to the Court should first have been made to the appropriate national courts, at least in substance, in accordance with the formal requirements of domestic law and within the prescribed time-limits (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 72, 25 March 2014).

23. The Court has already held that, in respect of applications lodged against Croatia, applicants were in principle required to exhaust remedies before the domestic courts and ultimately to lodge a constitutional complaint (see *Mađer v. Croatia*, no. 56185/07, § 136, 21 June 2011). The right to fair trial is guaranteed by Article 29 of the Croatian Constitution, which corresponds to Article 6 of the Convention. Furthermore, the Convention forms an integral part of the Croatian legal system, where it takes precedence over statutes (Article 140 of the Constitution, see above paragraph 12) and is directly applicable (Section 5 of the Courts Act, see above paragraph 13 and *Habulinec and Filipović v. Croatia* (dec.), no. 51166/10, § 30, 4 June 2013).

24. The Court notes that on 25 July 2011 the applicants did lodge a constitutional complaint. In that complaint, however, they did not rely, even in substance, on the same grounds that they have submitted to the Court. Before the Court they raised the issue of their appeal on points of law having been declared inadmissible *ratione valoris* by the Supreme Court. In their constitutional complaint they did not raise that issue at all but instead complained that the decisions of the lower courts denying them the right to compensation for the use of their house by third persons had been unfounded (see paragraph 11 above).

25. Hence, contrary to the principle of subsidiarity, the applicants did not provide the Constitutional Court with an opportunity to afford them a remedy in respect of their complaint concerning their right of access to the Supreme Court.

26. Accordingly, this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

II. ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

27. The applicants also complained that, by refusing to compensate them for the use of their house by other persons, the national courts had violated their right to the peaceful enjoyment of their possessions, as guaranteed under Article 1 of Protocol No. 1 which reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
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> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. The parties' arguments

28. The Government argued that the applicants had not exhausted domestic remedies because they had not relied on Article 48 of the Constitution, which guaranteed the right to property, but only on Article 29 of the Constitution, which guaranteed the right to a fair trial. Nor had they complained in essence about their right to peaceful enjoyment of their possessions. They further submitted the practice of the Supreme Court, showing that a person in the applicants' situation had the right to compensation. The Government contended that the national courts had dismissed the applicants' claim against the State because the applicants had not submitted any relevant evidence in support of that claim.

29. The applicants argued that they had exhausted the domestic remedies. Furthermore, they maintained that that their right to the peaceful enjoyment of their possessions had been violated because the national courts had dismissed their claim for compensation.

B. The Court's assessment

30. The Court does not have to address all issues raised by the parties because this complaint is in any event inadmissible on the following grounds.

31. In situations comparable to that of the applicants, the Court has already found violations of Article 1 of Protocol No. 1 to the Convention (see *Kunić v. Croatia*, no. 22344/02, 11 January 2007; *Radanović v. Croatia*, no. 9056/02, 21 December 2006; *Brajović-Bratanović v. Croatia*, no. 9224/06, October 2008; and *Vučak v. Croatia*, no. 889/06, 23 October 2008) on the following grounds (*Radanović*, §§ 49 and 50):

> "49. The Court recognises that the Croatian authorities faced an exceptionally difficult task in having to balance the rights of owners against those of temporary occupants in the context of the return of refugees and displaced persons, as this involved dealing with socially sensitive issues. Those authorities had, on the one hand, to secure the protection of the property rights of the former and, on the other, to respect the social rights of the latter, both of them often being socially vulnerable individuals. The Court therefore accepts that a wide margin of appreciation should be accorded to the respondent State. However, the exercise of the State's discretion cannot entail consequences which are at variance with Convention standards (see *Broniowski v. Poland* [GC], no. 31443/96, § 182, ECHR 2004-V). In this connection the Court reiterates that a situation as the one in the present case calls for a fair distribution of the social and financial burden involved. This burden cannot be placed on a particular social group or a private individual alone, irrespective of how important the interests of the other group or the community as a whole may be (see, *mutatis mutandis*, *Hutten-Czapska v. Poland* [GC], no. 35014/97, § 225, to be published in ECHR 2006). However, in the instant case the applicant was forced to bear the burden – which should have been borne by the State – of providing the temporary occupant with a place to stay, a burden she eventually had to carry for more than six years.
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> 50. Notwithstanding the State's margin of appreciation, and in the absence of adequate compensation (see paragraph 25 above), the Court considers that the Croatian authorities failed to strike the requisite fair balance between the general interest of the community and the protection of the applicant's right to property. As a result thereof the applicant had to bear an excessive individual burden; therefore the interference with her right to property cannot be considered proportionate to the legitimate aim pursued."

32. The Court takes note of the domestic courts' case-law developed after the violations found by the Court in the case mentioned in the preceding paragraph, submitted by the Government, indicating that compensation had been awarded at national level (see paragraph 16 above). However, in the applicants' case the domestic courts had concluded that the applicants had failed to adduce sufficient evidence to prove their claim since they had not presented any relevant evidence in support of their claim on the basis of which the amount of compensation could be assessed, in particular evidence indicating the value of their property and showing the amount of damage they had sustained (see paragraph 9 above).

33. In the Court's view, it is a normal feature of civil proceedings that the plaintiff must prove his or her claim. Since the national courts found that the applicants had not satisfied the burden of proof, their conclusions when dismissing the applicants' claim do not appear arbitrary or manifestly

unreasonable (compare *Treskavica v. Croatia*, no. 32036/13, § 78, 12 January 2016).

34. Accordingly, the complaint under Article 1 of Protocol No. 1 is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 11 January 2018.

Renata Degener Deputy Registrar	Kristina Pardalos President