CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 35670/03
by Dušan SARATLIĆ
against Croatia

The European Court of Human Rights (First Section), sitting on 24 October 2006 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mr L. LOUCAIDES,
Mrs F. TULKENS,
Mrs N. VAJIĆ,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV, *judges*,
and Mr S. QUESADA, *Deputy Section Registrar*,

Having regard to the above application lodged on 25 June 2003,

Having regard to the decision to apply Article 29 § 3 of the Convention and examine the admissibility and merits of the case together.

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

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Dušan Saratlić, is a Croatian national, who was born in 1950 and lives in Belanovica, Serbia. He was represented before the Court by Mr M. Mihočević, a lawyer practising in Zagreb. The Croatian Government ("the Government") were represented by their Agent, Mrs Š. Stažnik.

A. The circumstances of the case

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

The applicant owned a house in Okučani, where he lived until May 1995, when he left Croatia, due to military operations in the area.

On 28 November 1995, in line with the applicable legislation, the Croatian authorities gave the applicant's house for temporary use to P.R. and his family, refugees from Bosnia and Herzegovina.

On 20 October 2000 the applicant filed a request for repossession of his property with the competent administrative authority.

On 1 March 2001 the Okučani Housing Commission (*Stambena komisija Okučani*) ("the Housing Commission") set aside its decision of 28 November 1995, establishing the right of the applicant to repossess his house. In its decision, the Housing Commission established that P.R. enjoyed a right to stay in the applicant's house until he was provided with adequate housing by the State.

On 4 December 2002 the Ministry of Public Works, Reconstruction and Construction (*Ministarstvo za javne radove, obnovu i graditeljstvo*) ("the Ministry") issued a decision allowing the applicant to repossess his house.

On the same day the Ministry invited the applicant to contact its competent regional office in order to repossess his house and/or receive compensation for the prolonged inability to use it, in accordance with the relevant legislation.

On 24 February 2002 the applicant instituted civil proceedings before the Nova Gradiška Municipal Court (*Općinski sud u Novoj Gradiški*) requesting the court to order P.R. and his family to vacate his house.

On 14 March 2003 the Municipal Court issued a judgment ordering P.R. to vacate the house. The defendant appealed against the judgment.

On 13 May 2003 the Ministry sent a letter to the applicant with a proposal to settle the case in respect of the damage suffered by the applicant.

The Government submitted that on 10 June 2003 the applicant's representative, Ms K.V., a lawyer practicing in Vukovar, Croatia, signed a sale contract in respect of the applicant's house with the Agency for Real Property Transactions (*Agencija za pravni promet i posredovnaje nekretninama*, hereinafter "the Agency"). She received the settled price and also stated that the applicant had renounced all claims for damages in respect of the use of his house.

On 14 August 2003 the Slavonski Brod County Court (*Županijski sud u Slavonskom Brodu*) upheld the first instance judgment of 14 March 2003.

On 23 September 2003 the applicant filed an application with the Nova Gradiška Municipal Court seeking enforcement of the judgment adopted by the same court and ordering the eviction of P.R.

The enforcement order was issued on 9 October 2003.

However, on 27 October 2003 the applicant's representative, Ms M.T., a lawyer practicing in Slavonski Brod, withdrew the application for an enforcement order stating that the applicant had no further interest in pursuing these proceedings and therefore sought that the proceedings be terminated.

The applicant states that the above sale contract of 10 June 2003 was signed without his knowledge or consent. However, he did not dispute that he himself had hired Ms K.V. as his legal representative.

On 13 May 2005 the Agency filed a criminal complaint with the Osijek Municipal State Attorney's Office (*Općinsko državno odvjetništvo u Osijeku*) stating that the power of attorney presented by Ms K.V. was falsified.

On an unspecified date the applicant left Croatia allegedly because he had received death threats. He moved to Serbia.

B. Relevant domestic law

Section 2 of the Takeover Act (*Zakon o privremenom preuzimanju i upravljanju određenom imovinom*, Official Gazette nos. 73/1995, 7/96) provides that property, situated in the previously occupied territories and belonging to persons who had left Croatia, should be in the possession and under the control of the State.

The relevant part of the Act on Termination of the Temporary Takeover and Control of Certain Property Act (*Zakon o prestanku važenja Zakona o privremenom preuzimanju i upravljanu određenom imovinom*, Official Gazette no.101/98) provides that persons, whose property was given to others for accommodation during their absence from Croatia, are to file a request for repossession of their property with the competent local authority.

The Act on the Areas of Special State Care (*Zakon o područjima od posebne državne skrbi*, Official Gazette nos. 44/96, 57/96 (correction),

124/97, 73/00, 87/00 (correction), 69/01, 94/01, 88/02, 26/03 (consolidated text)), as amended by the 2002 Amendments, provides as relevant:

Sections 8, 9 and 17 provide that a temporary occupant has the right to housing.

Section 27 provides that the Ministry shall compensate the damage suffered by the owner who has submitted a request for repossession of his property prior to 30 October 2002 but to whom the property has not been returned by that date.

COMPLAINTS

The applicant complained under Article 1 of Protocol No. 1 to the Convention taken alone and in conjunction with Article 14 of the Convention about the inability to repossess his house. He also claimed that the Takeover Act and the 2002 Amendments were aimed at preventing people of Serbian origin from returning to their homes in Croatia.

THE LAW

The applicant complained under Article 1 of Protocol No. 1 taken alone and in conjunction with Article 14 of the Convention. He claimed that he was prevented by domestic authorities to repossess his house and also that the Takeover Act was aimed at preventing people of Serbian origin from returning to Croatia. The invoked provisions read as follows:

Article 14

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Article 1 of Protocol no. 1

"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.

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."

The Government submitted firstly that the application was incompatible *ratione temporis* with the Convention in respect of all the facts that occurred prior to 5 November 1997 when the Convention was ratified by Croatia.

The Government further claimed that the applicant had no victim status because he had sold his house and then withdrew his application for the enforcement order. Furthermore, he had renounced all claims in respect of the use of his house.

The Government also argued that the applicant failed to exhaust domestic remedies because he did not file any complaint against the Housing Commission decision of 1 March 2001 where it was, *inter alia*, established that P.R. enjoyed a right to stay in the applicant's house until he was provided with adequate housing by the State. In addition they stressed that the applicant did not seek compensation before domestic courts for the use of his house. The applicant also failed to file a constitutional claim in respect of the length of the proceedings.

As to the merits of the application, the Government asserted that the measure aimed at the restriction of the applicant's property rights had a basis in domestic law and pursued a legitimate aim. Concerning the proportionality of the measure taken, the Government contended that the domestic authorities did not overstep their margin of appreciation in imposing limited restrictions on the applicant's property rights.

The applicant contested all the Government's objections and opposed the Government's views as to the merits of the application. He further stated that he had no knowledge of the sale contract of his house and that he did not give power of attorney to Ms K.V. to conclude any such contract. He alleged that he left Croatia because he had received death threats by unknown persons.

The Court does not find it necessary to examine all the issues raised by the Government as the application is in any event inadmissible for the following reasons.

The Court firstly recalls that it has already found a violation of Article 1 of Protocol No. 1 in connection with the unreasonable length of civil proceedings (see *Erkner and Hofauer* v. Austria, judgment of 23 April 1987, Series A no. 117.)

The Court further recalls that in a number of cases it has found a violation of Article 1 of Protocol No. 1 due to delays in enforcing final courts' judgments (see, for example, *Immobiliare Saffi v. Italy* [GC], no. 22774/93, ECHR 1999-V; *Burdov v. Russia*, no. 59498/00, § 34, ECHR 2002-III; *Roşca v. Moldova*, no. 6267/02, 22 March 2005; *Dubenko v. Ukraine*, no. 74221/01, 11 January 2005 and *Matheus v. France*, no. 62740/00, 31 March 2005).

However, the present case differs from the above-mentioned cases in crucial respects.

As to the proceedings preceding the enforcement proceedings, the Court notes that the applicant's first request for the repossession of his house was filed with the domestic authorities on 20 October 2000 and that in 2001 and 2002, respectively, two decisions were taken by the competent administrative authorities reaffirming the applicant's right to repossess his house. However, due to the fact that the occupant was not provided with alternative housing, the applicant did not obtain a final and enforceable decision which would enable him to seek judicial enforcement of an eviction order.

As to the conduct of the administrative authorities in ensuring the repossession of the house in question to the applicant, the Court observes firstly that the State had a legitimate interest in housing displaced persons in the property left behind by persons who left Croatia during the war. Furthermore, the system which allows such persons to remain in the occupied property before they have been provided with adequate housing, is not in itself in contradiction with the guarantees contained in Article 1 of Protocol No. 1, providing that it ensures sufficient safeguards for the protection of the applicant's property rights. In this respect it is crucial to note that the applicant has never instituted any proceedings for compensation in respect of the use of his house by occupants placed there by the State authorities.

As to the civil proceedings preceding the enforcement order, the Court notes that in February 2002 the applicant instituted separate judicial proceedings with the Nova Gradiška Municipal Court seeking that an eviction order be issued.

The case was decided before two instances in a period of about one year and five months. The proceedings ended in a final and binding judgment confirming the applicant's right to the possession of his house and ordering the occupant to leave the applicant's property within fifteen days. Having in mind the period in question, it cannot be said that these proceedings in any unreasonable respect delayed the applicant's repossession of his house.

Furthermore, in the present case it could not be said that the enforcement proceedings themselves caused delays in enabling the applicant to repossess his house. The Court notes that the enforcement proceedings were instituted on 23 September 2003 and the enforcement order was issued as early as 9 October 2003. However, it has never been carried out because on 27 October 2003 the applicant's representative asked the court to terminate the proceedings stating that the applicant had no further interest in pursuing his application. The applicant never asked that the proceedings be resumed or that the enforcement order be carried out.

As to the applicant's allegations about misconduct of his legal representative, it is to be noted that it is not for this Court to investigate such allegations. Although legal remedies to address such issues have been envisaged in the domestic legal system, the applicant has not indicated that

he has made use of any of such remedies. For example, the applicant has not filed a criminal complaint against his legal representative on his own behalf.

As to the applicant's allegations about the alleged death threats, the Court notes that the applicant has not alerted the national authorities of any such threats.

In conclusion, the applicant's failure to seek that the enforcement order be carried out and his failure to seek compensation before national courts for the use of his house coupled with the timely conduct of the applicant's case by the national judicial authorities do not show that there is any issue to be considered by the Court under Article 1 of Protocol No. 1 taken alone or in conjunction with Article 14 of the Convention.

It follows that the application is manifestly ill-founded and must be rejected as inadmissible in accordance with Article 35 §§ 3 and 4 of the Convention. Therefore, the Court decides to discontinue the application of Article 29 § 3 of the Convention.

For these reasons, the Court by a majority

Declares the application inadmissible.

Santiago QUESADA
Deputy Registrar

Christos ROZAKIS
President