



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

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 42389/98
by Stojanka ILIĆ
against Croatia

The European Court of Human Rights (Fourth Section), sitting on 19 September 2000
as a Chamber composed of

Mr G. Ress, *President*,
Mr I. Cabral Barreto,
Mr V. Butkevych,
Mrs N. Vajić,
Mr J. Hedigan,
Mr M. Pellonpää,
Mrs S. Botoucharova, *judges*,

and Mr V. Berger, *Section Registrar*,

Having regard to the above application introduced with the European Commission of
Human Rights on 13 July 1998 and registered on 23 July 1998,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the
competence to examine the application was transferred to the Court,

Having deliberated, decides as follows:

THE FACTS

The applicant is a Yugoslav citizen, born in 1941 and living in Aschaffenburg
(Germany). She is represented before the Court by Ms Irmgard Möbus-Hohl, a lawyer
practising in Föhren.

A. The circumstances of the case

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

On 24 July 1987 the applicant, who had been living and working in the Federal
Republic of Germany, bought a house in Sumpetar (Omiš), Croatia. At that time Croatia was
one of the republics of the Socialist Federal Republic of Yugoslavia (SFRY) and the
applicant, as a citizen of that state, was legally entitled to buy property without restrictions in
the whole territory of Yugoslavia. Although she lived in the Federal Republic of Germany,
the applicant encountered no obstacles whatsoever to enter Croatia and use her property
there.

After the dissolution of Yugoslavia in 1991, the situation changed significantly for the applicant. As a citizen of Yugoslavia she is now a foreign citizen in Croatia and her entry and stay in the territory of Croatia are subject to some restrictions.

On 24 June 1992 the applicant requested and on 29 June 1992 obtained a permission for an extended stay in Croatia until 29 June 1993 from the Split Police Department.

Subsequently the applicant left Croatia and returned to Germany. In her absence the house was burgled and partly demolished.

On 29 January 1996 the applicant lodged a request for permanent residence in Croatia with the General Consulate of Croatia in Frankfurt, Germany. As by that time she had retired, she planned to live permanently in her house in Croatia. On 31 October 1996 the Croatian Ministry of Interior refused her request.

On 10 January 1997 the applicant instituted administrative proceedings with the Administrative Court, contesting the decision of the Ministry of Interior. On 25 September 1998 that court ruled against the applicant.

On 13 January 1999 the applicant lodged a constitutional complaint arguing that her right to property was violated as she was denied by the Croatian authorities access to her property in Croatia.

On 17 November 1999 the Constitutional Court rejected her complaint. It found that, although the applicant was the owner of a house in Croatia and despite the fact that she was in bad health, that she was single and with a residence in the Federal Republic of Germany where she had sufficient means for living, she did not satisfy conditions for a permanent residence in Croatia as set out in the Movement and Stay of Aliens Act (*Zakon o kretanju i boravku stranaca*).

B. Relevant domestic law

Movement and Stay of Aliens Act (1991)

Article 2

“A foreigner may enter the Republic of Croatia and stay in its territory if he is the holder of a valid passport issued according to the relevant legal provisions of a foreign state or of a valid travel document for foreign citizens issued by the State authority competent for issuing such documents. Such a passport or travel document should contain a visa, save where this Act provides otherwise.”

Article 14

“A visa is given to a foreign citizen for entering, leaving or passing through the territory of the Republic of Croatia.”

“The Government of the Republic of Croatia may decide that citizens of certain countries do not need visas to enter, leave or pass through the territory of the Republic of Croatia.”

“Visas may be issued for one entry or for an unlimited number of entries.”

“Visas shall be issued for a period of one year or until the expiration of a foreign passport, if that date falls within one year from the date of issue of visa.”

...

Article 22

“Stay of a foreign citizen in Croatia shall include: temporary stay, extended stay, stay with a business visa, stay on the basis of authorised permanent residence and stay on the basis of recognised refugee status.”

Article 23

“Under this Act as temporary stay is considered stay by a foreign citizen who is the holder of a transit visa, an entry visa for a tourist or business visit, or a border pass.

A foreign citizen who is the holder of a transit visa may stay in Croatia until the expiration date of such visa, but no longer than seven days after his entry into the Republic of Croatia.

A foreign citizen who is the holder of a visa for a tourist or business visit may stay in Croatia until the expiration date of such visa, but no longer than three months after his entry into the Republic of Croatia.

A border pass should expire after three months.”

...

Article 24

“A foreign citizen who wishes to stay in Croatia for more than three months, and who has entered the Republic of Croatia for the purposes of education, specialisation, scientific research, employment, carrying on a specific occupation, medical treatment or tourism, or who entered a marriage with a Croatian citizen or for another justified reason, is obliged to lodge a request for extended stay before expiration of the initial period of three months.

Permission for extended stay may be granted only for the purpose for which the initial visa was granted.”

Article 26

“Permission for extended stay may be prolonged...

A request for prolongation of the permission for extended stay shall be lodged before the expiration of the previous permission.”

Article 29

“The right of permanent residence may be granted to a foreign citizen who has been married, for at least one year, to a Croatian citizen or to another foreign citizen to whom the right of permanent residence has already been granted. It also may be granted to a foreign citizen who has been constantly employed for three years.

Exceptionally, the right of permanent residence may be granted to other foreign citizens for special personal reasons. It may also be granted if there is a business reason that serves an economic or other important interest of the Republic of Croatia.”

...

Article 30

“A foreign citizen who lodges a request for permanent residence must submit evidence that he has obtained a place to live and that he is gainfully employed or has another source of income.”

COMPLAINTS

The applicant complains under Article 6 § 1 of the Convention about the length of administrative proceedings concerning her request for a permanent residence in Croatia.

She further complains under Article 13 of the Convention that she had no remedy in respect of her request for a permanent residence in Croatia.

She also complains under Article 1 of Protocol No. 1 that she has been prevented from peacefully enjoying her property as she has been denied by the Croatian authorities access to her house in Croatia.

THE LAW

1. The applicant complains that the length of the proceedings regarding her request for permanent residence in Croatia had been excessive.

She invokes Article 6 § 1 of the Convention, the relevant part of which provides:

“In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing within a reasonable time by ... tribunal...”

The Court recalls that the Commission has consistently expressed the opinion that the decisions, regarding the entry, stay and deportation of an alien, taken in a country of which he is not a national do not entail any determination of his civil rights or obligations or of any criminal charge against him within the meaning of Article 6 § 1 of the Convention (see, for example: no. 8144/78, Dec. 5.1979, D.R. 17, p. 149; no. 9990/82, Dec. 15.5.1984, D.R. 39, p. 119; no. 31113/96, Dec. 5.12.1996, D.R. 87, p. 151; n° 32025/96, Dec. 25.10.1996, D.R. 87, p. 174).

The Court sees no reason to depart from this well-established case law in the present case.

It follows, as Article 6 § 1 is not applicable in the instant case, that this part of the application is incompatible *ratione materiae* with the provisions of the Convention.

2. The applicant further complains under Article 13 of the Convention which reads as follows:

“Everyone whose rights and freedoms as set forth in the Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

As to the applicant’s complaint under Article 13 of the Convention, the Court notes that the applicant had at her disposal administrative proceedings before the Administrative Court and a constitutional complaint. The applicant has exhausted both remedies. The Court further notes that guarantees under Article 13 of the Convention do not include the right for the applicant to have her case decided in her favour.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected as inadmissible pursuant to Article 35 § 4.

3. The applicant also complains that the Croatian authorities denied her permanent residence in Croatia, and thus, prevented her from using her property and violated her property rights under Article 1 of Protocol No. 1 that 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.

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 Court recalls that Article 1 of Protocol No. 1 contains three distinct rules: “the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest. The three rules are not, however, ‘distinct’ in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule” (see, among other authorities, the *James and Others v. the United Kingdom* judgment of 21 February 1986, Series A no. 98-B, pp. 29-30, § 37, partly following the terms of the Court’s analysis in the *Sporrong and Lönnroth v. Sweden* judgment of 23 September 1982, Series A no. 52, p. 24, § 61; see also the *Holy Monasteries v. Greece* judgment of 9 December 1994, Series A no. 301-A, p. 31, § 56; and *Iatridis v. Greece* [GC], no. 31107/96, § 55, ECHR 1999-II).

The Court notes that prior to the dissolution of the Socialist Federal Republic of Yugoslavia, the applicant had unlimited access to the territory of Croatia and was able to enjoy her possessions there without any restrictions. In 1991 Croatia became an independent state. Subsequently, the newly independent state enacted its own laws regulating various matters of private and public life, including the entry and stay of foreign citizens in Croatia.

The Court observes that the applicant, even as a foreign citizen, has not lost the ownership of her property, and that the applicant does not complain that there has been any interference on the part of the Croatian government with her property rights *per se*. The Court further notes that the applicant, as a foreign citizen, was granted permission for an extended stay in Croatia in the period between 29 June 1992 and 29 June 1993. After that she returned to Germany, and in 1996 sought permanent residence in Croatia, which was denied. The applicant argues that such a denial on the part of Croatian authorities constitutes a violation of her property rights, insofar as it prevents her from using her property.

The Court further observes that the applicant's property has not been taken from her nor has it been subject to any kind of restrictions. What became subject to restriction is the applicant's right to reside in Croatia. The Court observes that such a restriction is not absolute and permanent. Even after she became a foreign citizen, the applicant had continuously spent more than a year in the territory of Croatia on the basis of a permission for an extended stay. After that, the applicant voluntarily left Croatia and returned to Germany. Had the applicant wished to re-enter Croatia, she could have submitted a request for an entry visa with Croatian authorities, which would then decide whether to grant it or not. After entering Croatia as a tourist the applicant would have been able to stay there for three months, and after that, she might have sought a permission for an extended stay that may be given for a period up to one year.

Instead, the applicant lodged a request for a permanent residence in Croatia, which was denied as the applicant did not satisfy conditions set out in the Movement and Stay of Aliens Act: she is neither married to a Croatian citizen or a foreign citizen to whom a permission for an extended stay has been granted, nor has she worked permanently in Croatia for three years. The Court notes that it is common that each state regulates the entry and stay of foreign citizens in its territory and usually imposes similar restrictions as those prescribed by the above-said Act. Therefore, the Court considers that no special burden is placed upon the applicant in respect of her ability to enter Croatia and stay in its territory.

The Court recalls that the Convention does not guarantee as such any right to enter or to reside in a contracting State to persons who are not its nationals. The Court further considers that the rights entailed in the provisions of Article 1 of Protocol No. 1 do not encompass the right for a foreign citizen who owns property in another country to permanently reside in that country in order to use his property.

As the facts of this case show the applicant had stayed continuously in Croatia for more than one year and then returned to Germany. The applicant then failed to seek a new entry visa for Croatia. It is not for this Court to speculate whether the applicant, had she requested an entry visa for Croatia, would have been given such a visa and for how long. For the Court to be able to examine a complaint of this nature under Article 1 of Protocol No. 1 a person in the applicant's position would first have to establish that Croatian authorities denied her an entry visa and, therefore, access to her property as well as that she had subsequently exhausted domestic remedies.

In these circumstances it has not been established that the applicant has been denied access to her property, nor that she has effectively lost all control over, as well as all possibilities to use and enjoy, her property (see, *mutatis mutandis*, the Loizidou v. Turkey judgment of 18 December 1996 (Merits), Reports 1996-VI, § 63). Therefore, in the present case, there is no appearance of a violation of Article 1 of Protocol No. 1.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected as inadmissible pursuant to Article 34 § 4 of the Convention.

For these reasons, the Court, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Vincent Berger
Registrar

Georg Ress
President