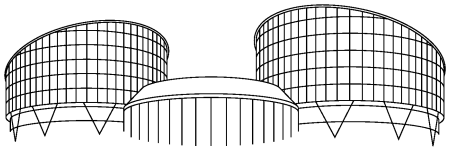

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ČAKAREVIĆ v. CROATIA

(Application no. 48921/13)

JUDGMENT

STRASBOURG

26 April 2018

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Čakarević v. Croatia,

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

Linos-Alexandre Sicilianos, *President,*
Aleš Pejchal,
Krzysztof Wojtyczek,
Ksenija Turković,
Pauliine Koskelo,
Tim Eicke,
Jovan Ilievski, *judges,*

and Abel Campos, *Section Registrar,*

Having deliberated in private on 16 January, 13 February and 27 March 2018,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 48921/13) 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") by a Croatian national, Ms Ilinka Čakarević ("the applicant"), on 9 July 2013.

2. The applicant was represented by Mr E. Bradamante, a lawyer practising in Rijeka. The Croatian Government ("the Government") were represented by their Agent, Ms Š. Stažnik.

3. The applicant alleged in particular that her right to peaceful enjoyment of her possessions had been violated, as well as her right to respect for her private life, when she had been ordered to repay unduly received unemployment benefits.

4. On 20 October 2015 these complaints were communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1954 and lives in Rijeka.

6. On 10 December 1995 the applicant's employment as an unqualified worker was terminated as a result of her employer becoming insolvent. At that time she had twenty-four years and ten months of service (*radni staž*) recorded in her "employment book" (*radna knjižica*).

7. The medical documentation submitted by the applicant shows that since 1993 she has been suffering from a psychiatric condition – depression and neurosis. The medical documents from various dates show her continuous incapacity of working.

A. Administrative proceedings

8. On 5 November 1996 the Regional Office of the Croatian Employment Bureau in Rijeka (*Hrvatski zavod za zapošljavanje, Područna služba u Rijeci*, hereinafter "the Rijeka Employment Bureau") granted the applicant unemployment benefits in the amount of 410.89 Croatian kunas (HRK – about 55 euros (EUR)) for 468 days, starting from 11 December 1995. There was no appeal, so that decision became final.

9. On 17 June 1997 the applicant lodged an application with the Rijeka Employment Bureau for the extension of the duration of unemployment benefits due to her ongoing temporary inability to work. She submitted a medical certificate that she had been ill and thus temporarily incapable of working.

10. On 27 June 1997 the Rijeka Employment Bureau, relying on section 25(1)(2) of the Employment Act, renewed her entitlement to unemployment benefits until further notice. She was to receive HRK 441 (about EUR 59) per month. This entitlement was to continue unless any legally prescribed conditions for withholding the payments occurred before the entitlement period expired, or until her right to compensation ceased to exist.

11. In December 1997 two additional pensionable years of service (*staž osiguranja*) were entered into the applicant's employment book. However, that did not mean that the applicant was actually employed, but only that contributions for her pension and invalidity insurance had been paid. Such contributions are regularly paid by employers. However, since the applicant was not employed, these contributions were paid by the Croatian Employment Bureau.

12. On 26 May 1999 the Rijeka Employment Bureau provided the applicant with an "employment benefit card" (*kartica korisnika novčane naknade*).

13. On 27 March 2001 the Rijeka Employment Bureau terminated the applicant's entitlement to unemployment benefits with effect from 10 June 1998. It held that the deadline prescribed in section 25(1)(2) of the Employment Act had expired on 9 June 1998.

14. On 3 April 2001 the Rijeka Employment Bureau established that the applicant was to repay it the amount of HRK 19,451.69 (about EUR 2,600).

15. The applicant lodged appeals against both decisions with the Central Office of the Croatian Employment Bureau (*Hrvatski zavod za zapošljavanje, Središnja služba*, hereinafter "the Central Employment Bureau"). She argued that she had the right to unemployment benefits until she retired. She also relied on her family circumstances and submitted that she was married and that her husband's pension was HRK 1400 (about EUR 188), and that they had a child of school age and an older son who was employed. However, that body dismissed both her appeals as unfounded on 11 May 2001 and 15 May 2001. It held that she had been entitled to unemployment benefits for as long as she had been unable to work, but subject to a limit of twelve months.

16. On 25 July 2001 the applicant then lodged two administrative actions with the Administrative Court, seeking the annulment of the Central Employment Bureau's decisions of 11 and 15 May 2001. She claimed that she had twenty-seven years of service, and as such was entitled to unemployment benefits until she was next employed or until she retired.

17. On 22 September 2004 the Administrative Court dismissed the claim concerning the decision of 11 May 2001 upholding the decision of 27 March 2001 (see paragraph 10 above) as ill-founded, endorsing the arguments and conclusions of the lower bodies.

18. In a separate judgment of the same day the Administrative Court quashed the decision of 15 May 2001 which upheld the decision of 3 April 2001 by which the applicant had been ordered to repay the sum of HRK 19,451.69 (see paragraph 14 above). It instructed the parties to seek relief in civil proceedings before a competent municipal court.

19. On 25 March 2005 the Rijeka Employment Bureau contacted the applicant by letter, proposing to reach an out-of-court settlement within fifteen days regarding the repayment of the unemployment benefits which she had received between 9 June 1998 and 27 March 2001, in total HRK 19,451.69. She was cautioned that the Rijeka Employment Bureau would otherwise be compelled to institute civil proceedings against her for repayment of the amount claimed.

20. The applicant replied that she was in poor health, unemployed and without any income, and that in these circumstances she could not accept the obligation to repay the money sought.

21. On 14 April 2009 the applicant lodged an application with the Rijeka Employment Bureau, seeking to overturn its 27 March 2001 decision to terminate her entitlement to unemployment benefits. It was dismissed on 29 June 2009 and this decision was upheld on appeal on 10 July 2009 as well as by the High Administrative Court on 5 July 2012.

22. A subsequent constitutional complaint by the applicant was declared inadmissible on 19 December 2012.

B. Civil proceedings

23. On 3 August 2005 the Rijeka Employment Bureau brought a civil action against the applicant for unjust enrichment, seeking repayment of HRK 19,451.69, together with statutory interest, on the basis of the unemployment benefits she had received between 10 June 1998 and 27 March 2001.

24. On 16 November 2005 the applicant responded to the civil action, alleging, *inter alia*, that the Rijeka Employment Bureau's actions violated her human rights. She also submitted medical documentation demonstrating her fragile state of health, numerous health problems caused by her difficult personal situation due to long-term unemployment, the poverty in which she and her family lived, and her inability to work. She also brought a counterclaim against the Rijeka Employment Bureau, seeking payment of unemployment benefits from 31 January 2011 to the date of her future retirement, in the amount of HRK 55,680.15.

25. On 26 June 2006 the Rijeka Municipal Court (*Općinski sud u Rijeci*) dismissed the Rijeka Employment Bureau's claim as unfounded, relying on section 55 of the Employment Mediation and Unemployment Rights Act (see paragraph 36 below). It held that the applicant could not be held responsible for the bureau's errors and negligence, particularly bearing in mind that she had not concealed any fact or misled it. The same court also rejected the applicant's counterclaim, given that a final and binding decision on her entitlement to unemployment benefits had already been adopted in the administrative proceedings, and that such a decision could not be contested in the context of civil proceedings.

26. Both the applicant and the Rijeka Employment Bureau lodged appeals against the first-instance judgment.

27. On 25 February 2009 the Rijeka County Court (*Županijski sud u Rijeci*) dismissed the applicant's appeal and upheld the first-instance judgment with regard to her counterclaim. It also allowed the Rijeka Employment Bureau's appeal and, relying on section 210 of the Civil Obligations Act, reversed the first-instance judgment in respect of the unjust enrichment claim, and ordered the applicant to pay HRK 19,451.69 plus statutory interest running form 3 August 2005 (the date of lodging the claim against the applicant) to the Rijeka Employment Bureau. It held that the applicant was obliged to return the amount in dispute in view of the fact that a legal basis for the unemployment benefits had ceased to exist on 10 June 1998.

28. The applicant then lodged both an appeal on points of law and a constitutional complaint.

29. On 28 April 2010 the Supreme Court declared her appeal on points of law inadmissible. The applicant then lodged a constitutional complaint against that decision.

30. On 14 March 2013 the Constitutional Court dismissed both of her constitutional complaints as unfounded. It served its decision on the applicant's representative on 27 March 2013.

31. Meanwhile, on 5 December 2012 the applicant had replied to the Rijeka Employment Bureau's letter offering her an out-of-court settlement for the amount owed to be reimbursed in sixty instalments. She had stated that she was not able to repay the amount due because she was unemployed, in ill health and had no income. She asked the Rijeka Employment Bureau for debt relief.

C. Enforcement proceedings

32. On 22 April 2013, before the Rijeka Municipal Court, the Rijeka Employment Bureau lodged an application to enforce the Rijeka County Court's judgment of 25 February 2009 against the applicant.

33. On 20 June 2013 the Rijeka Municipal Court issued a writ of execution in respect of the applicant's bank account(s).

34. On 26 June 2013 the first-instance court ordered the applicant to pay court fees in the amount of HRK 540 (about EUR 72), on account of the enforcement application and the writ of execution.

35. By a letter of 14 August 2013 the Financial Agency (FINA) informed the first-instance court that there were no records of the applicant's active bank accounts.

36. By a conclusion (*zaključak*) of 30 September 2013 the Rijeka Municipal Court informed the Rijeka Employment Bureau about the Financial Agency's letter and ordered it to give the court information about the applicant's bank account or make a further proposal.

37. On 22 October 2013 the Rijeka Employment Bureau lodged an application to change the object of the enforcement (*prijedlog za promjenu predmeta i sredstva ovrhe*), and requested enforcement in relation to the applicant's movable property, given that she was unemployed and had no income, real property or motor vehicle.

38. By a decision taken on 8 December 2014 the Rijeka Municipal Court declared the application of 22 October 2013 inadmissible on the basis that it was premature, since changing the object of enforcement is not possible before a writ of execution becomes final.

39. The enforcement proceedings are still ongoing.

II. RELEVANT DOMESTIC LAW

40. The relevant part of the Employment Act (*Zakon o zapošljavanju*, Official Gazette no. 59/1996), as in force at the material time, provided:

Section 23

"...

(3) An unemployed person (a man) who was employed for thirty years, or an unemployed person (a woman) who was employed for twenty-five years, is entitled to unemployment benefits until [he or she is] next employed ...

..."

Section 25

"The duration of the right to unemployment benefit ... shall be extended in respect of the unemployed person ...:

...

2. during the period of temporary incapacity to work, within the meaning of health insurance regulations, while this incapacity is ongoing, but for no longer than twelve months;

..."

41. The relevant part of the Employment Mediation and Unemployment Rights Act (*Zakon o posredovanju pri zapošljavanju i pravima za vrijeme nezaposlenosti*, Official Gazette no. 32/2002, with its subsequent amendments), as in force at the material time, provided:

Section 55

"(1) An unemployed person granted an allowance to which he or she was not entitled ... shall pay this back if:

1) [all or part of the allowance was] granted on the basis of false or inaccurate data which he or she knew or ought to have known to be false or inaccurate, or [granted] in some other unlawful manner;

2) he or she was granted an allowance because he or she failed to report a change affecting [his or her entitlement] or the scope of the entitlement, and he or she knew or ought to have known about this change.

..."

42. The relevant part of the Employment Mediation and Unemployment Rights Act as amended in 2017 (*Zakon o posredovanju pri zapošljavanju i pravima za vrijeme nezaposlenosti*, Official Gazette no. 16/2017) reads as follows:

Section 65

"(1) An unemployed person granted an allowance at the expense of the [Employment] Bureau to which he or she was not entitled shall pay this back to the [Employment] Bureau on the basis of unjust enrichment.

..."

43. The relevant part of the Civil Obligations Act (*Zakon o obveznim odnosima*, Official Gazette nos. 53/1991, 73/1991, 3/1994, 7/1996 and 112/1999), as in force at the material time, provided:

UNJUST ENRICHMENT
GENERAL RULE

Section 210

"(1) When a part of the property of one person passes, by any means, into the property of another person, and such a transfer has no basis in a legal transaction or law, the acquirer shall return that property. If this is not possible, the acquirer shall provide compensation for the value of the benefit received.

(2) The transfer of property also includes any benefit obtained by someone performing an action.

(3) The obligation to return the property or provide compensation for its value shall arise even when something is received on account of a cause which did not exist or which subsequently ceased to exist."

RULES OF REIMBURSEMENT

When a reimbursement may not be requested
Section 211

"A person who has made payment knowing that he was not obliged to pay is not allowed to seek reimbursement, unless he has retained a right to seek reimbursement or has made payment in order to avoid duress."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

44. The applicant complained that the Rijeka County Court's judgment of 25 February 2009 ordering her to repay HRK 19,451.69 with interest to the Rijeka Employment Bureau had resulted in her being deprived of her possessions. She relied on Article 1 of Protocol No. 1 to the Convention, which reads:

"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."

A. Scope of the case

45. As to the scope of the case, the Court considers it appropriate to point out at the outset that the applicant's communicated complaint does not concern the Employment Bureau's decision to terminate her entitlement to unemployment benefits and administrative proceedings related to that decision. Rather, it refers to the domestic civil courts' judgments which characterized the amounts she had received after her right to employment benefits ceased as unjust enrichment and obliged her to repay that money together with interests to the State.

46. The Court notes, however, that the administrative proceedings concerning the applicant's right to unemployment benefits ran in part concurrently with the civil proceedings for unjust enrichment instituted against her by the State. The administrative proceedings were terminated by the Constitutional Court's decision of 19 December 2012. At that point, the civil proceedings were still ongoing and were finally concluded by the Constitutional Court's decision of 14 March 2013, served on the applicant on 27 March 2013. The two proceedings were to a certain extent interrelated. In the administrative proceedings, her right to receive the employment benefits was terminated retroactively. However, no final court decision as to whether the applicant was obliged to return the payments made to her after the date when her right to unemployment benefits ceased was adopted in these proceedings since the issue of unjust enrichment falls under the jurisdiction of civil courts (see paragraph 18 above). Only after the civil proceedings were finally concluded was the applicant's position as to her obligation to repay the money she had received finally decided at national level.

47. Thus, in order to assess whether the applicant's obligation to repay the State the money she should not have received satisfied the requirements of Article 1 of Protocol No. 1 the Court must look at all circumstances surrounding that issue.

B. Admissibility

1. The parties' submissions

48. The Government argued that the applicant had not had a "possession" within the meaning of Article 1 of Protocol No. 1 to the Convention, because the amount she had been ordered to pay back had been the possession of the State. Further to this, section 25(1)(2) of the Employment Act had been publicly available, clear and precise, and the applicant should have been aware that, upon the expiry of the twelve-month period, her right to unemployment benefits would end. In addition, the applicant could not have had "legitimate expectations" of keeping those amounts.

49. The applicant argued that she had received the unemployment benefits on the basis of the Rijeka Employment Bureau's final decision of 27 June 1997.

2. The Court's assessment

(a) General principles

50. The Court reiterates at the outset that the concept of "possessions" referred to in the first part of Article 1 of Protocol No. 1 has an autonomous meaning which is not limited to the ownership of physical goods and is independent from the formal classification in domestic law: certain other rights and interests constituting assets can also be regarded as "property rights", and thus as "possessions" for the purposes of this provision (see, among many authorities, *Iatridis v. Greece* [GC], no. 31107/96, § 54, ECHR 1999-II, and *Depalle v. France* [GC], no. 34044/02, § 62, ECHR 2010).

51. Although Article 1 of Protocol No. 1 applies only to a person's existing possessions and does not create a right to acquire property in certain circumstances a "legitimate expectation" of obtaining an asset may also enjoy the protection of Article 1 of Protocol No. 1 (see, among many authorities, *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, § 65, ECHR 2007-I; and *Béláné Nagy v. Hungary* [GC], no. 53080/13, § 74, ECHR 2016).

52. A legitimate expectation must be of a nature more concrete than a mere hope and be based on a legal provision or a legal act such as a judicial decision. The hope that a long-extinguished property right may be revived cannot be regarded as a "possession"; nor can a conditional claim which has lapsed as a result of a failure to fulfil the condition. Further, no "legitimate expectation" can be said to arise where there is a dispute as to the correct interpretation and application of domestic law and the applicant's submissions are subsequently rejected by the national courts. The mere fact that a property right is subject to revocation in certain circumstances does not prevent it from being a "possession" within the meaning of Article 1 of Protocol No. 1, at least until it is revoked (see *Béláné Nagy*, cited above, § 75; *Beyeler v. Italy* [GC], no. 33202/96, § 105, ECHR 2000-I; and *Krstić v. Serbia*, no. 45394/06, § 83, 10 December 2013).

53. The Court recalls that in each case the issue that needs to be examined is whether the circumstances of the case, considered as a whole, conferred on the applicant title to a substantive interest protected by Article 1 of Protocol No. 1 (see *Depalle*, cited above, § 62, with further references).

(b) Application of these principles in the present case

54. The question whether the circumstances of the present case come within the scope of application of Article 1 of Protocol No. 1, i.e. whether the applicant's right to peaceful enjoyment of her possessions is engaged, must be assessed with a view to the fact that between 10 June 1998 and 27 March 2001 the applicant had received payments on the basis of an administrative decision granting her unemployment benefits (see paragraph 10 above). In other words, the competent administrative authority had made regular disbursements of money (cash), which the applicant had obtained the effective enjoyment of in reliance on the underlying administrative decision in her favour. Subsequently, however, the domestic courts made a finding to the effect that the payments had taken place without a legal basis and ordered the applicant to refund the respective amounts as unjust enrichment (see paragraph 27 above). The Court therefore finds that the issue of whether Article 1 of Protocol No. 1 is applicable *ratione materiae* should be analysed by considering whether, under those specific circumstances, the applicant can be said to have had a legitimate expectation, within the autonomous meaning of the Convention, of being able to retain the funds already received as unemployment benefits without her entitlement to those past disbursements being called into question retrospectively.

55. The Court notes that the grant of the benefit in question depended on various statutory conditions, the assessment of which was the sole responsibility of the social security authority. In the present case, the competent authority had taken a decision to extend the applicant's entitlement to unemployment benefits (see paragraph 10 above) and subsequently continued to make the respective payments beyond the date on which such an entitlement was, according to the applicable statutory limit, due to expire.

56. In this respect, the Court considers that an individual should in principle be entitled to rely on the validity of a final (or otherwise enforceable) administrative decision in his or her favour, and on the implementing measures already taken pursuant to it, provided that neither the beneficiary nor anyone on his or her behalf has contributed to such a decision having been wrongly made or wrongly implemented. Thus, while an administrative decision may be subject to revocation for the future (*ex nunc)*, an expectation that it should not be called into question retrospectively (*ex tunc)* should usually be recognised as being legitimate, at least unless there are weighty reasons to the contrary in the general interest or in the interest of third parties (compare *Kopecký v. Slovakia* [GC], no. 44912/98, § 47, ECHR 2004-IX; *Pressos Compania Naviera S.A. and Others v. Belgium*, 20 November 1995, §§ 34 and 39, Series A no. 332).

57. The Court has held that, as a rule, a legitimate expectation of being able to continue having peaceful enjoyment of a possession must have a "sufficient basis in national law" (see ibid., § 52; see also *Depalle*, cited above, § 63). It has, however, also held that the fact that the domestic laws of a State do not recognise a particular interest as a "right" is not always decisive, in particular in circumstances where the lapse of time justifies concluding that the individual's interest in the "status quo" had become vested in a sufficiently established manner for being recognised as capable of engaging the application of Article 1 of Protocol No. 1 (see, *mutatis mutandis*, *Depalle*, cited above, § 68).

58. In the present case, the Court considers that although the domestic courts found that as a matter of domestic law, the applicant had no protection against the authorities' reclaim of the funds already received, which according to them constituted unjust enrichment (see paragraph 27 above), several circumstances speak in favour of recognising the applicant's legal position as protected by a "legitimate expectation" for the purposes of the application of Article 1 of Protocol No. 1.

59. Firstly, there is no indication or even allegation that the applicant had in any way contributed to the impugned situation, namely that the disbursement of the benefits had been continued beyond the applicable statutory time-limit. The Government accepted that payment of the unemployment benefits beyond the prescribed time-limit was the sole responsibility of the authorities (see paragraph 70 below).

60. Secondly, the applicant's good faith in receiving the contested unemployment benefits is not contested.

61. Thirdly, the administrative decision in reliance on which the applicant had received the payments had not contained any express mention of the fact that under the relevant statutory provisions the entitlement would expire on a certain date, i.e. after twelve months.

62. Fourthly, there was a long lapse of time, amounting to over three years, after the expiry of the statutory time-limit during which the authorities failed to react while continuing to make the monthly payments.

63. The Court finds that these circumstances were capable of inducing in the applicant a belief that she was entitled to receive those payments (compare *Chroust v. the Czech Republic* (dec.), no. 4295/03, 20 November 2006).

64. Moreover, the Court considers that, taking into account in particular the nature of the benefits as current support for basic subsistence needs, the question of whether the situation was capable of giving rise to a legitimate expectation that the entitlement was duly in place must be assessed with a view to the situation prevailing at the time when the applicant was in receipt of the payments and consumed the proceeds. The fact that the administrative courts subsequently established that the payments had taken place without a legal basis in domestic law is under these circumstances not decisive from

the point of view of determining whether at the time when the payments were received for the purpose of covering the applicant's living costs she could entertain a legitimate expectation that her presumed entitlement to those funds would not be capable of being called into question retrospectively (see, *mutatis mutandis*, *Pine Valley Developments Ltd and Others v. Ireland*, 29 November 1991, § 51, Series A no. 222; and *Stretch v. the United Kingdom*, no. 44277/98, § 35, 24 June 2003).

65. The Court therefore concludes that in the circumstances of the present case, the applicant had a legitimate expectation of being able to rely on the payments she had received as rightful entitlements and that Article 1 of Protocol No. 1 is applicable *ratione materiae* to her complaint.

3. Conclusion as to the admissibility

66. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

C. Merits

1. The parties' submissions

(a) The applicant's submissions

67. The applicant alleged that the Rijeka Employment Bureau had adopted a decision granting her unemployment benefits "until further notice". Moreover, on 26 May 1999, that is one year after her right to unemployment benefits had allegedly ceased, the Rijeka Employment Bureau had provided her with an "unemployment benefit card", which had stated that she was entitled to unemployment benefits until 31 December 2010. She alleged that she had had no reason to doubt that the payments were legitimate. In her opinion, she had received the unemployment benefits legally, and there was no legal basis for repaying the amount at issue, as had been established by the Rijeka Municipal Court. Moreover, section 211 of the Civil Obligations Act had been totally disregarded by the courts (see paragraph 43 above). The Rijeka Employment Bureau had known that she would not be entitled to the unemployment benefits after 10 June 1998, because it had stated that in its decision of 27 March 2001. Therefore, the Rijeka Employment Bureau had not retained its right to seek reimbursement.

68. As to the Government's allegations that she had failed to respond to the Rijeka Employment Bureau's proposals regarding repayment of the amount due in sixty instalments, the applicant argued that this was not true, because it could be seen from the documents she had submitted to the Court

that she had replied and informed the Rijeka Employment Bureau about her difficult economic and health situation. In this connection, the applicant maintained that dividing the burden between the Rijeka Employment Bureau, whose negligence and misconduct had created the situation, and herself, an unemployed person with no income and in poor health, would not be fair, and would impose a burden on her as a result of the State organ's error.

(b) The Government's submissions

69. The Government argued, were the Court to find that the applicant had possession, that the interference with the applicant's rights under Article 1 of Protocol No. 1 was lawful. The judgment ordering the applicant to repay the unemployment benefits had had its legal basis in section 210 of the Civil Obligation Act, which had been clear, foreseeable and publicly available. Further to this, it had been in the general interest for the unduly received benefits to be paid back.

70. In conclusion, the Government stated that depriving the applicant of the amount at issue had been necessary for the protection of State's finances and the principle of rule of law, and had not imposed an excessive individual burden on her because she had been not entitled to this amount. They pointed out that, just as it could not be expected that the mistakes of the State would be remedied at the expense of citizens, it was not fair to allow the unlawful acquisition of property by citizens as a result of those mistakes. In this context, the Government pointed out that the Rijeka Employment Bureau had been fully aware of its own mistake. That is why the Rijeka Employment Bureau had proposed an agreement whereby the applicant would repay the amount due in sixty individual instalments, in order to share the burden of the situation. However, the applicant had failed to respond to this proposal. In view of the foregoing, the Government were of the opinion that there had been no violation of the applicant's rights protected by Article 1 of Protocol No. 1 to the Convention.

2. The Court's assessment

(a) As regards the issue of the existence of an interference

71. The Government does not contest that the impugned judgment adopted in the civil proceedings against the applicant amounted to an interference with her rights under Article 1 of Protocol No. 1, and the Court sees no reason to hold otherwise.

72. In the circumstances of the present case, the Court considers that the applicant's complaint should be examined under the general rule enunciated in the first sentence of the first paragraph of Article 1 of Protocol No. 1, especially as the situations envisaged in the second sentence of the first paragraph and in the second paragraph are only particular instances of

interference with the right to peaceful enjoyment of property as guaranteed by the general rule set forth in the first sentence (see *Beyeler*, cited above, § 106; and *Perdigão v. Portugal* [GC], no. 24768/06, § 62, 16 November 2010). The Court will now assess whether that interference was prescribed by law, whether it pursued a legitimate aim, and whether there was a reasonable relationship of proportionality between the means employed and the aim pursued (see *Broniowski v. Poland* [GC], no. 31443/96, §§ 147-151, ECHR 2004-V).

(b) Whether the interference was based in law

73. The Court reiterates that any interference by a public authority with the peaceful enjoyment of possessions must be lawful. In particular, the second paragraph of Article 1 of Protocol No. 1, while recognising that States have the right to control the use of property, subjects their right to the condition that it be exercised by enforcing "laws". Moreover, the principle of lawfulness presupposes that the applicable provisions of domestic law are sufficiently accessible, precise and foreseeable in their application (see, *Konstantin Stefanov v. Bulgaria*, no. 35399/05, § 54, 27 October 2015).

74. The parties' views differed as to whether the interference with the applicant's property right was lawful (see paragraphs 49 and 68 above).

75. The Court notes that the Rijeka County Court's judgment relied on section 210 of the Civil Obligations Act related to unjust enrichment (see paragraphs 28 and 44 above). However, it did not give any explanation as to why section 55 of the Employment Mediation and Unemployment Rights Act was not to be applied in the applicant's case since that rule appears to be a more specific one as regards the applicant's situation. That provision obliged an unemployed person granted an allowance to which he or she had not been entitled to pay this back if it had been granted on the basis of false or inaccurate data which he or she had known to be false or inaccurate, or if it had been granted in some other unlawful manner (see paragraph 41 above). This question can nevertheless be left open, as in the present case it is more essential to decide on the proportionality of the interference.

(c) Whether the interference pursued a legitimate aim

76. The Court reiterates that the domestic court's judgment in this case was based on the general rules of civil law governing unjust enrichment and not on the legislation governing unemployment benefits. The Court considers therefore that the interference pursued a legitimate aim since it is in the public interest that property received on a basis which does not exist or which has ceased to exist should be returned to the State. In particular, the interference was aimed at correcting a mistake of the social security authority.

(d) Whether the interference was proportionate

77. The Court must examine whether the interference struck the requisite fair balance between the demands of the general interest of the public and the requirements of the protection of the applicant's right to the peaceful enjoyment of her possessions, and whether it imposed a disproportionate and excessive burden on the applicant (see, among other authorities, *Béláné Nagy*, cited above, § 115).

78. The Court finds it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one, and will respect the legislature's judgment as to what is "in the public interest" unless that judgment is manifestly without reasonable foundation (ibid., § 113). However, that margin may be narrower in cases such as the present one, where the mistake is attributable solely to the State authorities.

79. The Court has held, in the context of the discontinuation of a social benefit, that bearing in mind the importance of social justice, public authorities should not be prevented from correcting their mistakes, even those resulting from their own negligence. Holding otherwise would be contrary to the doctrine of unjust enrichment. It would also be unfair to other individuals contributing to the social security fund, in particular those denied a benefit because they failed to meet the statutory requirements. Lastly, it would amount to sanctioning an inappropriate allocation of scarce public resources, which in itself would be contrary to the public interest (see *Moskal v. Poland*, no. 10373/05, § 73, 15 September 2009).

80. The present case, however, stands to be distinguished from the situation prevailing in *Moskal*, because unlike the latter case, what is at issue now is not the discontinuation of the applicant's unemployment benefit but an obligation imposed on her to repay benefits already received in reliance on an administrative decision. In the present context, it is therefore more pertinent to recall the Court's case-law to the effect that mistakes solely attributable to State authorities should in principle not be remedied at the expense of the individual concerned, especially where no other conflicting private interest is at stake (see, *mutatis mutandis*, *Platakou v. Greece*, no. 38460/97, § 39, ECHR 2001-I; *Radchikov v. Russia*, no. 65582/01, § 50, 24 May 2007; *Freitag v. Germany*, no. 71440/01, §§ 37-42, 19 July 2007; *Gashi*, cited above, § 40; and *Šimecki v. Croatia*, no. 15253/10, § 46, 30 April 2014). The Court has also held that where an issue in the general interest is at stake, it is incumbent on the public authorities to act in good time, in an appropriate and consistent manner (see *Tunnel Report Limited v. France*, no. 27940/07, § 39, 18 November 2010, and *Zolotas v. Greece (no. 2)*, no. 66610/09, § 42, ECHR 2013 (extracts)).

81. In assessing compliance with Article 1 of Protocol No. 1, the Court must carry out an overall examination of the various interests in issue (see *Perdigão,* cited above, § 68), bearing in mind that the Convention is

intended to safeguard rights that are "practical and effective" (see, for example, *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, § 100, ECHR 1999‑III). It must look behind appearances and investigate the realities of the situation complained of (see *Broniowski*, cited above, § 151; *Hutten-Czapska v. Poland* [GC], no. 35014/97, § 168, ECHR 2006-VIII; and *Zammit and Attard Cassar v. Malta*, no. 1046/12, § 57, 30 July 2015). That assessment may involve the conduct of the parties, including the means employed by the State and their implementation. In that context, it should be stressed that uncertainty – be it legislative, administrative or arising from practices applied by the authorities – is a factor to be taken into account in assessing the State's conduct. Indeed, where an issue in the general interest is at stake, it is incumbent on the public authorities to act in good time, in an appropriate and consistent manner (see *Tunnel Report Limited v. France*, no. 27940/07, § 39, 18 November 2010, and *Zolotas v. Greece (no. 2)*, no. 66610/09, § 42, ECHR 2013 (extracts)).

82. As to the applicant's conduct, the Court notes that the applicant has not been alleged to have contributed to the receipt of benefits beyond her legal entitlement by false submissions or other acts which would not have been in good faith.

83. As the competent authority had taken a decision in the applicant's favour and continued to make the respective payments, the applicant had a legitimate basis for assuming that the payments received were legally correct. While it is true that section 25 of the Employment Act clearly provides that a woman employed for less than twenty-five years has the right to unemployment benefits in respect of a temporary incapacity to work, for a maximum period of twelve months (see paragraph 41 above), the decision issued to the applicant had not contained any express mention of that time-limit, and the applicant was thus not put on notice of it. Moreover, given that two additional years of service had been entered into the applicant's employment book (see paragraph 11 above), it appears that she, as an unqualified worker, was not without grounds for believing that she met the requirements set out in section 23(3) of the Employment Act (see paragraph 40 above). Under these circumstances, the Court does not find it reasonable to conclude that the applicant was required to realise that she was in receipt of unemployment benefits beyond the statutory maximum period.

84. As to the conduct of the authorities, the Court notes at the outset that, in the context of property rights, particular importance must be attached to the principle of good governance. In the instant case, the Court considers that the authorities failed in their duty to act in good time and in an appropriate and consistent manner (see *Moskal*, cited above, § 72).

85. It is established that the Rijeka Employment Bureau made a mistake when it did not define the period during which the applicant was entitled to

further unemployment benefits in its decision of 27 June 1997. That mistake was further perpetuated when unemployment benefits were paid to the applicant for a period of almost three years following the expiry of the maximum period set out in section 25(2)(1) of the Employment Act.

86. The Court also notes that, even though the unemployment benefit payments which the applicant should not have received were entirely the result of an error of the State, the applicant was ordered to repay the overpaid amount in full, together with statutory interest. Therefore, no responsibility of the State for creating the situation at issue was established, and the State avoided any consequences of its own error. The whole burden was placed on the applicant only.

87. The Court acknowledges that the applicant was offered to repay her debt in sixty instalments. However, the fact remains that the sum the applicant was ordered to repay to the State which included the statutory interests as well represented a significant amount of money for her given that she was deprived of her only source of income at the same time as well as her overall financial situation (see paragraphs 15, 24 and 31 above).

88. As to the applicant's personal situation, the Court notes that the sum she received on account of unemployment benefits is a very modest one and as such has been consumed for satisfying the applicant's necessary basic living expenses, that is to say for her subsistence.

89. The national courts in deciding on unjust enrichment did not take into consideration the applicant's health and economic situation. She has been suffering from a psychiatric condition since 1993 and has become incapable of working. She has been unemployed for a long period of time, since 1995. At the time her employment was terminated as a result of her employer becoming insolvent she was only two months short of qualifying for unemployment benefits until next employment or retirement under Section 23 of the Employment Act (see paragraphs 6 and 40, see also *mutatis mutandis Béláné Nagy*, cited above, § 123). The information from the enforcement proceedings suggests that she has no bank accounts, no income of any sort, and no property of any significance. In these circumstances paying her debt even in sixty instalments would put at risk her subsistence.

90. In view of the above considerations, the Court finds that under the circumstances of the present case, the requirement imposed on the applicant to reimburse the amount of the unemployment benefits paid to her in error by the competent authority beyond the statutory maximum period entails an excessive individual burden on her.

91. It follows that there has been a violation of Article 1 of Protocol No. 1 to the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

92. The applicant complained that the national authorities had violated her right to respect for her private life as provided for in Article 8 of the Convention, which reads:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

93. The Government contested that argument.

94. The Court notes that this complaint is linked to the one examined above, and must therefore likewise be declared admissible.

95. Having regard to the fact that the arguments advanced by the parties are the same as those examined in the context of Article 1 of Protocol No. 1 to the Convention, the Court does not consider it necessary to examine this complaint separately.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

96. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

97. The applicant claimed HRK 83,801.69 (about 11,150 euros (EUR)) in respect of pecuniary damage. According to her, this figure was equivalent to the sum of HRK 19,451.69 (about EUR 2,600) with accrued default interest from 3 August 2005 until the date of payment, and the sum of HRK 64,350.00 (about EUR 8,560) in respect of lost employment benefits between April 2001 and December 2010, with accrued default interest on each instalment of HRK 550 (about EUR 75) from the month when compensation had to be paid until the date of payment. She also claimed HRK 435,650.00 (about EUR 57,700) in respect of non-pecuniary damage.

98. The Government contested these claims.

99. As regards pecuniary damage, it appears from the documents submitted by the parties that the applicant has not paid the amount she was ordered to pay to the Rijeka Employment Bureau, and that the enforcement proceedings are still ongoing (see paragraphs 32-39 above). As to the sum

of HRK 64,350.00 in respect of lost employment benefits between April 2001 and December 2010, the Court finds no causal link between the amount claimed and the finding of a violation (see also paragraph 45 above). It therefore rejects the claim in respect of pecuniary damage.

100. In respect of non-pecuniary damage, having regard to all the circumstances of the present case, the Court accepts that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 2,600 in respect of non-pecuniary damage, plus any tax that may be chargeable to her.

B. Costs and expenses

101. The applicant also claimed HRK 18,906.25 for costs and expenses incurred before the domestic courts and HRK 9,875.00 for those incurred before the Court.

102. The Government contested this claim.

103. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 830 for costs and expenses incurred in the proceedings before the Constitutional Court, and EUR 1,300 for those incurred in the proceedings before the Court, plus any tax that may be chargeable to the applicant.

C. Default interest

104. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

3. *Holds* that there is no need to examine the complaint under Article 8 to the Convention;

4. *Holds*,

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Croatian kunas at the rate applicable at the date of settlement:

(i) EUR 2,600 (two thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 2,130 (two thousand one hundred and thirty euros), plus any tax that may be chargeable, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 26 April 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos
Registrar

Linos-Alexandre Sicilianos
President