



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

FIRST SECTION

CASE OF BREZOVEC v. CROATIA

(Application no. 13488/07)

JUDGMENT

STRASBOURG

29 March 2011

FINAL

29/06/2011

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Brezovec v. Croatia,

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

Anatoly Kovler, *President*,

Nina Vajić,

Peer Lorenzen,

Khanlar Hajiyeu,

George Nicolaou,

Mirjana Lazarova Trajkovska,

Julia Laffranque, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 8 March 2011,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 13488/07) 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, Mr Ivan Brezovec (“the applicant”), on 10 January 2007.

2. The applicant was represented by Mr S. Rožman, Mrs M. Oredić, Mr D. Bartolac and Mr H. Rožman, all from the Law Firm Rožman & Oredić, advocates practising in Karlovac. The Croatian Government (“the Government”) were represented by their Agent, Ms Š. Stažnik.

3. The applicant alleged, in particular, that by refusing his claim for the purchase of the flat at issue the domestic authorities had violated his right to the peaceful enjoyment of his possessions.

4. On 25 November 2008 the President of the First Section decided to communicate the complaint concerning the right to peaceful enjoyment of possessions to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1941 and lives in Vojnić.

6. In 1980 the applicant became the holder of a specially protected tenancy (*stanarsko pravo*) of a flat in Vojnić. He lived in the flat with his

family until 1 October 1991 when Vojnić was occupied. He then fled the occupying forces and went to live in Karlovac.

7. The applicant found a job in Karlovac and, as an internally displaced person, on 30 January 1992 he was awarded a flat there on a temporary basis. In July 1996 the competent authorities terminated his status as an internally displaced person. Following a civil action by Mr T.M., the applicant was forced to leave the flat in Karlovac on 21 January 1999.

8. The applicant claimed that – following the military operation “Storm” by which Croatia regained control of almost its entire territory in August 1995 – on 8 October 1995 he had visited Vojnić, where he had found the flat in respect of which he had the specially protected tenancy uninhabitable and in a very bad state of repair. This had been confirmed on 4 March 1996 by the findings of the Commission for the Assessment of War Damage. He further submitted that he had immediately commenced rebuilding work on the flat with a view to moving into it.

9. However, on 23 August 1996, while the applicant was working in Karlovac, the local authorities, accompanied by the police, entered into the flat, made a list of personal belongings, changed the locks and gave the keys of the flat to a certain Z.H., a local policeman. Five days later the Commission for Temporary Takeover and Use of Certain Property of the Municipality of Vojnić (*Komisija za privremeno preuzimanje i korištenje određene imovine Općine Vojnić* – “the Sequestration Commission”) issued a decision letting the flat to Z.H. and his family on a temporary basis.

10. On 20 December 1996 the applicant and his wife made a request for the purchase of the flat to the Municipality of Vojnić. In doing so they relied on the Specially Protected Tenancies (Sale to Occupier) Act, which entitled holders of specially protected tenancies of flats in social or state ownership to purchase their flats under favourable conditions (see paragraph 29 below). They received no reply.

11. On 7 August 1998 the Ministry of Reconstruction and Development (*Ministarstvo razvitka i obnove*) adopted a decision letting the flat to Z.H. and his family for their use.

12. On 16 October 2000 the Municipality of Vojnić issued a decision allowing the applicant to live in the flat. The applicant has been living in the flat ever since.

13. Meanwhile, on 12 May 2000, the applicant and his wife brought a civil action against the State in the Vojnić Municipal Court (*Općinski sud u Vojniću*) with a view to obtaining a judgment which would allow them to purchase the flat in accordance with the Specially Protected Tenancies (Sale to Occupier) Act. On 9 January 2001 the court dismissed their action. It found that the applicant's flat was owned by the State and not the Municipality of Vojnić and that therefore the plaintiffs should have directed their request for its purchase to the State and not to the Municipality. Following an appeal by the applicant and his wife, on 26 September 2001

the Karlovac County Court (*Županijski sud u Karlovcu*) quashed the first-instance judgment and remitted the case. It found, *inter alia*, that the fact that the plaintiffs had made their request for the purchase of the flat to the Municipality and not the State should not have been held against them.

14. In the resumed proceedings, on 11 September 2003 the Vojnić Municipal Court again dismissed the plaintiffs' action. The court first determined, as a preliminary issue, whether the plaintiffs had retained their specially protected tenancy of the flat in Vojnić, the existence of that tenancy being a statutory precondition for buying the flat under the Sale to Occupier Act. In this respect the court found that: (a) the plaintiffs had left the flat in October 1991 and (b) in the period between 5 August 1995, when Vojnić was liberated, and 23 August 1996, when the flat was awarded to Z.H., they had been living in Karlovac and had only occasionally visited and used the flat in Vojnić. That being so, the court concluded that since they had not used their flat permanently for living purposes, the plaintiffs' specially protected tenancy had been terminated. Consequently, they were not entitled to purchase the flat in question.

15. On 18 February 2004 the Karlovac County Court dismissed the plaintiffs' appeal and upheld the first-instance judgment, which thereby acquired the force of *res judicata*. Relying on the finding of the first-instance court that the plaintiffs had left the flat in 1991 and had not used it in the period between 5 August 1995 and 23 August 1996, the second-instance court expressly referred to section 2 of the Act on the Lease of Flats on the Liberated Territory (see paragraph 19 below) in holding that the plaintiffs' specially protected tenancy had been terminated *ex lege* because after the Act's entry into force they had not used their flat for a period longer than ninety days. As a result, they had no right to purchase it.

16. The applicant then lodged a constitutional complaint alleging, *inter alia*, infringements of his constitutional rights to equality before the law, to property and to a fair hearing.

17. On 29 June 2006 the Constitutional Court (*Ustavni sud Republike Hrvatske*) dismissed the constitutional complaint and served its decision on the applicant on 20 July 2006. The relevant part of the Constitutional Court's decision reads as follows:

“The [ordinary] courts established that the flat at issue in Vojnić had on 28 August 1996 been awarded to [Z.H.] for temporary use, and that the plaintiffs had in the period between August 1995 and 28 August 1996 only occasionally visited the flat, which could not be considered use of the flat. The first-instance court therefore dismissed the plaintiff's action in accordance with section 2 of the Act on the Lease of Flats on the Liberated Territory, according to which the specially protected tenancy of flats located in the previously occupied, now liberated, territory of the Republic of Croatia was to be terminated by the operation of law if the holder of the specially protected tenancy left the flat and did not use it for a period exceeding 90 days following the Act's entry into force. The court established that the complainant had not used the flat between August 1995 and 28 August 1996 and that his specially protected tenancy had [therefore] been terminated by the operation of law. Given that

his specially protected tenancy had been terminated by the operation of law after 5 January 1996, the complainant could no longer be considered the holder of a specially protected tenancy and therefore was not entitled to make a request for the purchase of the flat.

The County Court found that the first-instance judgment was correct and had been rendered on the basis of correctly and completely established facts and the correct application of the substantive law.

Assessing the arguments raised in the constitutional complaint in the light of Article 14 paragraph 2 of the Constitution, the Constitutional Court has found that the complainant's constitutional right to equality before the law was not breached by the contested judgments.

The legal views expressed in the contested judgments are based on the correct application of the relevant substantive law and on the constitutionally acceptable interpretation of that law. The Constitutional Court finds that the [ordinary] courts, relying on the facts established in the proceedings, gave reasons for their views expressed in the contested decisions, which undoubtedly do not result from the arbitrary interpretation or application of the relevant substantive law.

...

The content of the constitutional right to a fair hearing guaranteed by Article 29 paragraph 1 of the Constitution is limited to procedural guarantees of a fair hearing. Therefore, assessing the arguments raised in the constitutional complaint in the light of that constitutional right, as well as other constitutional rights guaranteed by Article 29 of the Constitution, the Constitutional Court examines possible procedural breaches in the proceedings before the courts and, on that basis and looking at the proceedings as a whole, ascertains whether the proceedings were conducted in a manner which secured a fair hearing to the complainant.

Having examined the contested decisions and the first-instance case file, the Constitutional Court finds that the complainant's constitutional right guaranteed by Article 29 paragraph 1 of the Constitution has not been breached.

As regards the complainant's argument concerning the breach of the constitutional right of ownership guaranteed by Article 48 paragraph 1 of the Constitution, it has to be noted that the Constitutional Court, on the basis of Article 48 of the Constitution, protects the right of ownership at the constitutional level in such a manner that it prevents restriction or taking of that right by the state authorities, unless a restriction or taking is provided for by law.

The Constitutional Court finds that the contested judgments are based on the relevant legislation and are well reasoned, and that the complainant's right of ownership guaranteed by Article 48 of the Constitution has not been breached.”

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Constitution

18. The relevant provisions of the Constitution of the Republic of Croatia (*Ustav Republike Hrvatske*, Official Gazette of the Republic of Croatia, nos. 56/1990, 135/1997, 8/1998 (consolidated text), 113/2000, 124/2000 (consolidated text), 28/2001 and 41/2001 (consolidated text), 55/2001 (corrigendum) and 76/2010) read as follows:

Article 14(2)

“All shall be equal before the law.”

Article 29(1)

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

Article 48(1)

“The right of ownership shall be guaranteed.”

B. The Act on the Lease of Flats on the Liberated Territory

1. Relevant provisions

19. The Act on the Lease of Flats on the Liberated Territory (*Zakon o davanju u najam stanova na oslobođenom teritoriju*, Official Gazette no. 73/95), which was in force between 27 September 1995 and 5 August 1998 provided, in its relevant part, as follows:

Section 1(1)

“This Act regulates the lease of flats of which the specially protected tenancy ... has been terminated pursuant to the provisions of this Act, and which are located in the previously occupied, now liberated, territory of the Republic of Croatia.”

Section 2(1)

“The specially protected tenancy of the flats referred to in section 1 of this Act shall be terminated by the operation of law [i.e. *ex lege*] if the holder of the specially protected tenancy leaves the flat and does not use it for a period exceeding 90 days following this Act's entry into force.”

Section 3(1) and (2)

“(1) Flats referred to in section 1 of this Act which are in state ownership shall be let by the Ministry of Reconstruction and Development.

(2) Other flats [i.e. those in social ownership] shall be let by the [Sequestration] Commission established on the basis of the Temporary Takeover and Administration of Certain Property Act.”

Section 4(2) and (3)

“(2) The Ministry of Reconstruction and Development or the [Sequestration] Commission shall issue a decision ... on the lease of a flat.

(3) Against the Commission's decision referred to in the preceding paragraph one may lodge an appeal to the [competent] Ministry ... within eight days.

(4) The appeal does not suspend the enforcement of the decision.”

2. The case-law of the Constitutional Court

20. On 3 June 2003 the Constitutional Court adopted a decision in case no. U-III-1701/2000 (published in Official Gazette no. 122/2003 of 30 July 2003) where the complainant, the holder of the specially protected tenancy of a flat in Benkovac, brought an action against the local authorities in order to be allowed to purchase the flat in question. The second-instance court ruled against him, finding that his specially protected tenancy had been terminated *ex lege* because he had left the flat in 1991 when the town had come under the control of the occupying forces, and had returned to it only after the expiry of the time-limit set forth in section 2(1) of the Act on the Lease of Flats on the Liberated Territory. It found that he was therefore not entitled to purchase the flat at issue. The Constitutional Court ruled for the complainant and quashed the contested judgment. In so doing it held as follows:

“... [T]he Act on the Lease of Flats on the Liberated Territory refers to persons who left the previously occupied territory of the Republic of Croatia after the liberation in 1995.

The complainant did not leave Benkovac after its liberation in 1995 but was expelled therefrom in 1991. Therefore, in the view of the Constitutional Court, the complainant does not belong to the category of persons to which the Act on the Lease of Flats on the Liberated Territory applies.

The second-instance court erroneously applied to the complainant's particular legal situation ... the Act on the Lease of Flats on the Liberated Territory. Consequently, that court wrongly held in the contested judgment that the complainant's specially protected tenancy of the flat in Benkovac was terminated by the operation of section 2(1) of the Act on the Lease of Flats on the Liberated Territory after the expiry of the ninety-day time-limit following its entry into force (that is, on 5 January 1996).

For these reasons, the complainant's constitutional right to equality before the law guaranteed by Article 14 paragraph 2 of the Constitution, as well as his constitutional right to a fair hearing guaranteed by Article 29 paragraph 1 of the Constitution, was violated by the contested judgment."

21. On 9 December 2004 the Constitutional Court adopted a decision in case no. U-III-1451/2004 (published in Official Gazette no. 187/2004 of 29 December 2004) where the complainant, the holder of the specially protected tenancy of a flat in Petrinja, brought an action against the local authorities in order to be allowed to purchase the flat in question. The ordinary courts ruled against her, finding that her specially protected tenancy had been terminated *ex lege* because she had left the flat and gone to live abroad in August 1995 when the Croatian authorities regained control of Petrinja following the military operation "Storm", and had returned to Croatia only in 2001, that is, after the expiry of the time-limit set forth in section 2(1) of the Act on the Lease of Flats on the Liberated Territory. It found that she was therefore not entitled to purchase the flat at issue. The Constitutional Court firstly referred to its interpretation of the Act on the Lease of Flats on the Liberated Territory provided in decision no. U-III-1701/2000 of 3 June 2003 (see the preceding paragraph), according to which that Act applied:

"... to persons who left the previously occupied territory of the Republic of Croatia after the liberation in 1995."

Having established that the complainant had indeed left her flat in Petrinja in August 1995 and had returned to Croatia only in 2001, the Constitutional Court dismissed her constitutional complaint.

22. On 6 May 2005 the Constitutional Court adopted a decision in case no. U-III-2174/2002 (published in Official Gazette no. 65/2005 of 25 May 2005) where the complainant, the holder of the specially protected tenancy of a flat in Pakrac, brought an action against the local authorities in order to be allowed to purchase the flat in question. The ordinary courts ruled against her, finding that her specially protected tenancy had been terminated *ex lege* because she had left the flat in 1991 when Pakrac had come under the control of the occupying forces, and had returned to it only in spring 1996, that is, after the expiry of the time-limit set forth in section 2(1) of the Act on the Lease of Flats on the Liberated Territory. They found that she was therefore not entitled to purchase the flat at issue. The Constitutional Court ruled for the complainant and quashed the contested judgments of the ordinary courts. In so doing it held as follows:

"... [T]he Act on the Lease of Flats on the Liberated Territory refers to persons who left the previously occupied territory of the Republic of Croatia after the liberation in 1995.

The complainant left the flat in Pakrac in August 1991. Therefore, in the view of the Constitutional Court, the complainant does not belong to the category of persons to which the Act on the Lease of Flats on the Liberated Territory applies.

The [ordinary] courts erroneously applied to the complainant's particular legal situation ... the Act on the Lease of Flats on the Liberated Territory. Consequently, the [ordinary] courts in the contested judgments wrongly held that the complainant's specially protected tenancy of the flat in Pakrac was terminated by the operation of section 2(1) of the Act on the Lease of Flats on the Liberated Territory after the expiry of the ninety-day time-limit following its entry into force (that is, 5 January 1996).

For these reasons, the complainant's constitutional right to equality before the law guaranteed by Article 14 paragraph 2 of the Constitution, as well as his constitutional right to a fair hearing guaranteed by Article 29 paragraph 1 of the Constitution ..., was violated by the contested judgments."

C. The Housing Act

1. Relevant provisions

23. The Housing Act (*Zakon o stambenim odnosima*, Official Gazette nos. 51/1985, 42/1986, 22/1992 and 70/1993), which was in force between 25 December 1985 and 5 November 1996 provided, in its relevant part, as follows:

Section 97

"1. The provider of the flat may terminate the specially protected tenancy... [*inter alia*] if the tenant does not pay the rent or the utility charges for three consecutive months, or for three months over the last twelve months.

2. Termination of the specially protected tenancy for the reasons enunciated in paragraph 1 may be effected if the tenant does not pay the rent or the utility charges due... within a reasonable time after being warned by registered mail to do so."

Section 99

"1. A specially protected tenancy may be terminated if the tenant [...] ceases to occupy the flat for an uninterrupted period exceeding six months.

2. A specially protected tenancy shall not be terminated under the provisions of paragraph 1 of this section in respect of a person who does not use the flat on account of undergoing medical treatment, performance of military service or other justified reasons.

3. It shall also be considered that the flat has not been used for an uninterrupted period when the tenant only occasionally visits the flat ..."

24. Under section 105(1) the provider of the flat had to bring a civil action in order to terminate the specially protected tenancy.

2. The case-law of the Supreme Court

25. In its decision no. Rev-616/1988 of 11 October 1988 the Supreme Court interpreted section 99 of the Housing Act in the following way:

“The specially protected tenancy is not lost *ex lege* by the mere fact of non-use of the flat for a period exceeding six months. Rather, that is a ground for termination of a specially protected tenancy that can be terminated only by the provider of the flat.”

26. The tenancy was terminated as soon as the court's judgment upholding the claim of the provider of the flat became *res judicata* (see, *inter alia*, the Supreme Court's decision no. Rev-1009/1993-2 of 15 June 1994).

27. In a series of decisions (for example, in cases nos. Rev-152/1994-2 of 23 February 1994, Rev-1780/1996-2 of 10 March 1999, Rev-1606/00-2 of 1 October 2003, Rev-998/03-2 of 4 December 2003, and Rev-590/03-2 of 17 December 2003) starting with decision no. Rev-155/1994-2 of 16 February 1994, the Supreme Court interpreted another aspect of section 99(1) of the Housing Act as follows:

“The fact that a flat that is not being used by its tenant is illegally occupied by a third person does not, *per se*, make the non-use [of the flat by the tenant] justified. In other words, if the tenant fails to take the appropriate steps to regain possession of the flat within the statutory time-limits set forth in section 99(1) of the Housing Act ..., then the [illegal occupation of the flat by a third person] is not an obstacle to the termination of the specially protected tenancy.”

D. The Lease of Flats Act

28. The Lease of Flats Act (*Zakon o najmu stanova*, Official Gazette no. 91/1996 of 28 October 1996), which entered into force on 5 November 1996, abolished the specially protected tenancy as such (section 30 paragraph 1) but provided that proceedings instituted under the Housing Act should be concluded under the provisions of that Act (section 52 paragraph 1).

E. The Specially Protected Tenancies (Sale to Occupier) Act

29. The Specially Protected Tenancies (Sale to Occupier) Act (*Zakon o prodaji stanova na kojima postoji stanarsko pravo*, Official Gazette no. 27/91 with subsequent amendments – “the Sale to Occupier Act”), which entered into force on 19 June 1991, entitled the holder of the specially protected tenancy of a flat in social or state ownership to purchase it from the provider of the flat under favourable conditions.

30. Section 4(2) provided that a written request for the purchase of a flat had to be made within one year of the date of the Act's entry into force (this

time-limit was by subsequent amendments to the Act extended until 31 December 1996 for the flats located on the liberated territory).

F. The Civil Procedure Act

31. The relevant part of the Civil Procedure Act (*Zakon o parničnom postupku*, Official Gazette of the Socialist Federal Republic of Yugoslavia nos. 4/1977, 36/1977 (corrigendum), 36/1980, 69/1982, 58/1984, 74/1987, 57/1989, 20/1990, 27/1990 and 35/1991, and Official Gazette of the Republic of Croatia nos. 53/1991, 91/1992, 58/1993, 112/1999, 88/2001, 117/2003, 88/2005, 2/2007, 84/2008 and 123/2008) provides as follows:

Reopening of proceedings following a final judgment of the European Court of Human Rights in Strasbourg finding a violation of a fundamental human right or freedom

Section 428a

“(1) When the European Court of Human Rights has found a violation of a human right or fundamental freedom guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms or additional protocols thereto ratified by the Republic of Croatia, a party may, within thirty days of the judgment of the European Court of Human Rights becoming final, file a petition with the court in the Republic of Croatia which adjudicated in the first instance in the proceedings in which the decision violating the human right or fundamental freedom was rendered, to set aside the decision by which the human right or fundamental freedom was violated.

(2) The proceedings referred to in paragraph 1 of this section shall be conducted by applying, *mutatis mutandis*, the provisions on the reopening of proceedings.

(3) In the reopened proceedings the courts are required to respect the legal opinions expressed in the final judgment of the European Court of Human Rights finding a violation of a fundamental human right or freedom.”

THE LAW

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

32. The applicant complained that in refusing his claim to purchase the flat the domestic authorities had infringed his right to peaceful enjoyment of his possessions. He relied on 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.

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.”

33. The Government contested that argument.

A. Admissibility

34. The Government disputed the admissibility of this complaint on three grounds. They argued that it is incompatible *ratione temporis* and *ratione materiae* with the provisions of the Convention, and that the applicant had failed to exhaust domestic remedies.

1. Compatibility ratione temporis and ratione materiae

(a) The arguments of the parties

(i) The Government

35. The Government, firstly, argued that the applicant's complaint under Article 1 of Protocol No. 1 was incompatible *ratione temporis* because he had lost his specially protected tenancy before the entry into force of the Convention in respect of Croatia.

36. The Government explained that, unlike in the *Blečić* and *Mrkić* cases (see *Blečić v. Croatia* [GC], no. 59532/00, ECHR 2006-III, and *Mrkić v. Croatia* (dec.), no. 7118/03, 8 June 2006), where the judgments terminating the specially protected tenancy, based on section 99 of the Housing Act, had had a constitutive effect, the court judgments in the instant case had been of a declaratory nature because they had been based on the Act on the Lease of Flats on the Liberated Territory, which had provided for *ex lege* termination of the specially protected tenancy if its holder had not used the flat for a period exceeding ninety days following the Act's entry into force. Therefore, the applicant in the present case had lost his specially protected tenancy by the operation of law on 5 January 1996, that is, before the Convention had entered into force in respect of Croatia on 5 November 1997. In other words, the applicant's tenancy had not been terminated by the subsequent court judgments applying the Act on the Lease of Flats on the Liberated Territory, but *ipso jure*, when the period of ninety days following the Act's entry into force had expired.

37. The Government further argued that the complaint was incompatible *ratione materiae* with the provisions of the Convention. Relying on the *Gaćeša* case (see *Gaćeša v. Croatia* (dec.), no. 43389/02, 1 April 2008), they averred that the applicant's right to purchase the flat was a “claim” rather than an “existing possession” within the meaning of Article 1 of Protocol No. 1 to the Convention and the Court's case-law. However, in their view, the applicant could not have had a legitimate expectation that his claim would be granted, that is, that he would have become the owner of the flat, as he had lost his specially protected tenancy *ex lege* before making the request for the purchase of the flat.

(ii) *The applicant*

38. The applicant submitted that under the case-law of the Constitutional Court the Act on the Lease of Flats on the Liberated Territory applied only to those persons who had left the previously occupied territory of Croatia after the liberation in 1995 (see paragraphs 20-22 above). Since he had left Vojnić in 1991 in order to flee the occupying forces and had returned in October 1995, the legislation in question could not have applied to him and his specially protected tenancy could not have been terminated *ex lege*. That being so, and given that he had made the request for the purchase of the flat within the time-limit stipulated in section 4(2) of the Sale to Occupier Act (see paragraphs 10 and 30 above), he had had a legitimate expectation that his claim for the purchase of the flat would be granted.

(b) *The Court's assessment*

39. The Court reiterates that an applicant may allege a violation of Article 1 of Protocol No. 1 only in so far as the impugned decisions relate to his or her “possessions” within the meaning of that provision. “Possessions” can be “existing possessions” or claims that are sufficiently established to be regarded as “assets”. Where, as in the present case, a proprietary interest is in the nature of a claim, it may be regarded as an “asset” only if there is a sufficient basis for that interest in national law (for example, where there is settled case-law of the domestic courts confirming it), that is, when the claim is sufficiently established to be enforceable (see *Kopecký v. Slovakia* [GC], no. 44912/98, §§ 48-49 and 52, ECHR 2004-IX, and *Stran Greek Refineries and Stratis Andreadis v. Greece*, 9 December 1994, § 59, Series A no. 301-B).

40. The Court notes that persons wishing to purchase a flat under the Sale to Occupier Act had to satisfy two conditions: (a) they had to submit their request for purchase of the flat within the time-limit fixed in section 4(2) of that Act, and (b) they had to be holders of the specially protected tenancy of the flat they wanted to buy, that is, their tenancy should not have been terminated before the expiry of that time-limit (see paragraphs 29-30 above).

41. Turning to the present case, the Court first notes that the domestic courts dismissed the applicant's claim for purchase of the flat because they found that his specially protected tenancy – the existence of which was a statutory precondition for buying the flat under the Sale to Occupier Act – had been terminated. In particular, the second-instance court, in its judgment of 18 February 2004, expressly referred to section 2 of the Act on the Lease of Flats on the Liberated Territory and held that the applicant's specially protected tenancy had been terminated *ex lege* because after the Act's entry into force he had not used his flat for a period longer than ninety days (see paragraph 15 above).

42. However, the Court further notes that in its decisions nos. U-III-1701/2000 of 3 June 2003, U-III-1451/2004 of 9 December 2004 and U-III-2174/2002 of 6 May 2005 the Constitutional Court held that the Act on the Lease of Flats on the Liberated Territory applied only to those holders of a specially protected tenancy who had left the previously occupied territory of Croatia after the liberation in 1995 (see paragraphs 20-22 above). Having found in two of those cases (no. U-III-1701/2000 of 3 June 2003 and no. U-III-2174/2002 of 6 May 2005) that the complainants, who were the holders of a specially protected tenancy, had left that territory in 1991, the Constitutional Court held that the Act in question could not be applied to them (see paragraphs 20 and 22 above).

43. Having regard to the fact that the domestic courts established that the applicant had left Vojnić on 1 October 1991 (see paragraphs 14-15 above), the Court is of the view that he was entitled to consider, in the light of the case-law of the Constitutional Court (see paragraphs 20-22 above), that he retained his specially protected tenancy because the Act on the Lease of Flats on the Liberated Territory, according to the interpretation provided by that court, did not apply to him.

44. Furthermore, given that the applicant made the request for the purchase of the flat on 20 December 1996 (see paragraph 10 above), that is, within the statutory time-limit set forth in section 4(2) of the Sale to Occupier Act (see paragraph 30 above), it follows that all the conditions for acquiring the right to purchase the flat were met in the applicant's case.

45. The Court therefore considers that, in contrast to the *Gaćeša* case relied on by the Government (see *Gaćeša*, cited above), on the day of the Convention's entry into force in respect of Croatia on 5 November 1997, the applicant's claim to purchase the flat in the present case had a sufficient basis in national law to qualify as an “asset” and therefore a “possession” protected by Article 1 of Protocol No. 1 to the Convention.

46. It follows that the Government's objections as to incompatibility *ratione temporis* and *ratione materiae* must be dismissed.

2. *Non-exhaustion of domestic remedies*

(a) **The arguments of the parties**

47. The Government noted that the applicant had argued that he was unable to use the flat in question, *inter alia*, because Z.H. had broken into it. However, they pointed out that the applicant had not availed himself of any remedies in order to challenge Z.H.'s right to use the flat in question and/or to seek his eviction.

48. The applicant replied that he had not been a party to the administrative proceedings leading to the decision of 28 August 1996 (see paragraph 9 above) whereby the Sequestration Commission had let the flat to Z.H. and his family on a temporary basis. That decision had never been served on him and therefore he had not been able to use any remedies against it.

(b) **The Court's assessment**

49. The Court reiterates that the domestic courts found that the applicant's specially protected tenancy had been terminated *ex lege* by the application of section 2(1) of the Act on the Lease of Flats on the Liberated Territory because he had not used the flat at issue in the period between 5 August 1995 and 23 August 1996 (see paragraph 15 above), that is, in the period before the local authorities had entered into his flat on the last-mentioned date and allocated it to Z.H. on 28 August 1996 (see paragraph 9 above). The Court therefore does not see how resorting to available domestic remedies with a view to contesting Z.H.'s right to use the flat and/or seeking his eviction could have prevented or remedied the termination of the applicant's specially protected tenancy.

50. It follows that the Government's objection concerning non-exhaustion of domestic remedies must also be dismissed.

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

B. Merits

1. *Whether there was an interference with the peaceful enjoyment of "possessions"*

52. Relying on their above argument that the applicant's specially protected tenancy had been terminated *ex lege* before the entry into force of the Convention in respect of Croatia, (see paragraph 36), the Government submitted that the subsequent domestic court judgments refusing his claim

to purchase the flat could not have amounted to an interference with his right to peaceful enjoyment of his possessions because at the time they were rendered he did not have a sufficient proprietary interest to constitute a “possession” within the meaning of Article 1 of Protocol No. 1 to the Convention.

53. The applicant did not make any specific comments on this issue. However, it follows from his submissions that he considered that there had been an interference with his right to the peaceful enjoyment of his possessions.

54. In the light of its above finding that the applicant's claim for the purchase of the flat was sufficiently established to qualify as an “asset” attracting the protection of Article 1 of Protocol No. 1 (see paragraphs 39-46 above), the Court considers that the refusal of the domestic courts to grant that claim undoubtedly constituted an interference with his right to the peaceful enjoyment of possessions. This interference occurred on 18 February 2004 when the Karlovac County Court upheld the first-instance judgment of the Vojnić Municipal Court of 11 September 2003, which thereby acquired the force of *res judicata*.

55. The Court must further examine whether that interference was justified, that is, whether it was provided for by law, whether it was in the public or general interest and whether it was proportional.

2. Whether the interference was “provided for by law”

(a) The arguments of the parties

(i) The Government

56. The Government submitted that it was undisputed that the domestic courts' decisions were based on law, in particular the Act on the Lease of Flats on the Liberated Territory.

57. They further argued that in its decision of 29 June 2006, delivered following the applicant's constitutional complaint, the Constitutional Court had not departed from the previous case-law established by its decision U-III-1701/2000 of 3 June 2003 (see paragraph 20 above). In the last-mentioned decision the Constitutional Court had also held that the Act on the Lease of Flats on the Liberated Territory, including section 2 of that Act, which had provided for the *ex lege* termination of specially protected tenancies, applied to all persons who had left the previously occupied territory of Croatia after its liberation in 1995, that is, to those holders of a specially protected tenancy who had not used their flats for a period exceeding ninety days following the Act's entry into force. In the present case, the Constitutional Court had found that the applicant had not used the flat in Vojnić in the period between August 1995 and August 1996, that is,

after the liberation of the previously occupied territory. Therefore, the Act on the Lease of Flats on the Liberated Territory was applicable to him. The Constitutional Court had taken the same view in its decision no. U-III-1451/2004, by which it had dismissed a constitutional complaint in a case that was factually and legally identical to that of the applicant (see paragraph 21 above).

(ii) *The applicant*

58. The applicant reiterated his arguments (see paragraph 38 above) that the Act on the Lease of Flats on the Liberated Territory could not be applied to him.

(b) *The Court's assessment*

59. The Court reiterates that the first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful (see *Iatridis v. Greece* [GC], no. 31107/96, § 58, ECHR 1999-II). In this connection, the Court agrees with the Government that the decisions of the domestic courts in the present case had a legal basis in domestic law as their refusal to grant the applicant's claim for purchase of the flat was based on section 2 of the Act on the Lease of Flats on the Liberated Territory.

60. However, the Court further reiterates that the existence of a legal basis is not in itself sufficient to satisfy the principle of lawfulness. When speaking of “law”, Article 1 of Protocol No. 1 alludes to a concept which comprises statutory law as well as case-law and implies qualitative requirements, notably those of accessibility and foreseeability (see, for example, *Mullai and Others v. Albania*, no. 9074/07, § 113, 23 March 2010; *Špaček, s.r.o. v. the Czech Republic*, no. 26449/95, § 54, 9 November 1999; and *Carbonara and Ventura v. Italy*, no. 24638/94, § 64, ECHR 2000-VI).

61. In this connection, the Court first notes that the application by the ordinary courts of the Act on the Lease of Flats on the Liberated Territory to the applicant's case was not in line with the interpretation and practice of the Constitutional Court, according to which that Act could not be applied to situations similar to that of the applicant (see paragraphs 20 and 22 above).

62. The Court further notes that, following the applicant's constitutional complaint, the Constitutional Court had an opportunity to quash the judgments of the ordinary courts, which were contrary to its previous decisions. However, it did not do so. Instead, it dismissed the applicant's constitutional complaint.

63. Therefore, in the applicant's case not only the judgments of the ordinary courts but also the decision of the Constitutional Court itself were contrary to that court's earlier case-law.

64. At this juncture the Court finds it appropriate to address the Government's argument that in dismissing the applicant's constitutional

complaint the Constitutional Court did not depart from its previous case-law established in decisions nos. U-III-1701/2000 of 3 June 2003, U-III-1451/2004 of 9 December 2004 and U-III-2174/2002 of 6 May 2005. The Court notes that in those decisions the Constitutional Court clearly stated that the Act on the Lease of Flats on the Liberated Territory applied only to those holders of a specially protected tenancy who had left the previously occupied territory of Croatia after August 1995. Therefore, in two of those cases the Constitutional Court held that the legislation in question could not be applied to the complainants, as they had left their flats before 1995. It thus allowed their constitutional complaints (see paragraphs 20 and 22 above). In the remaining case it dismissed the constitutional complaint because it found that the complainant in that case, unlike the applicant in the present case, had left her flat in August 1995 (see paragraph 21 above). Having regard to the fact that in the applicant's case the ordinary courts established that the applicant had left Vojnić on 1 October 1991 (see paragraphs 14-15 above), which finding was not contested by the Constitutional Court, the Court does not find that his case was different from those mentioned above. Accordingly, the Court cannot accept the Government's argument that the Constitutional Court's decision in the applicant's case was consistent with that court's previous case-law.

65. The Court further notes that in its decision dismissing the applicant's constitutional complaint the Constitutional Court did not attempt to distinguish the applicant's case from its previous decisions, nor did it indicate its intention to depart from its interpretation of the Act on the Lease of Flats on the Liberated Territory. What is more, the Government did not furnish any relevant decisions that would indicate a change in the Constitutional Court's practice or otherwise enable the Court to ascertain why the applicant's case was decided differently. Therefore, it cannot be discerned whether in the applicant's case the Constitutional Court simply neglected its previous jurisprudence or whether it consciously departed from it and, if so, why.

66. The Court has already held, in the context of Article 6 § 1 of the Convention, that the Contracting States have an obligation to organise their legal system so as to avoid the adoption of discordant judgments (see *Vrioni and Others v. Albania*, no. 2141/03, § 58, 24 March 2009, and *Mullai and Others*, cited above, § 86), and that conflicting decisions in similar cases stemming from the same court which, in addition, is the court of last resort in the matter, may, in the absence of a mechanism which ensures consistency, breach the principle of legal certainty inherent in that Article (see, for example, *Beian v. Romania (no. 1)*, no. 30658/05, §§ 36-39, ECHR 2007-XIII; *Tudor Tudor v. Romania*, no. 21911/03, § 29, 24 March 2009; and *Iordan Iordanov and Others v. Bulgaria*, no. 23530/02, §§ 47-53, 2 July 2009).

67. The Court has also held that where such manifestly conflicting decisions interfere with the right to peaceful enjoyment of possessions and no reasonable explanation is given for the divergence, such interferences cannot be considered lawful for the purposes of Article 1 of Protocol No. 1 to the Convention because they lead to an inconsistent case-law which lacks the required precision to enable individuals to foresee the consequences of their actions (see *Carbonara and Ventura*, cited above, § 65; *Mullai and Others*, cited above, §§ 115-117; and *Saghinadze and Others v. Georgia*, no. 18768/05, §§ 116-118, 27 May 2010).

68. Having regard to the foregoing considerations, it follows that the impugned interference in the form of the Vojnić Municipal Court's judgment of 11 September 2003 was not foreseeable for the applicant who, relying on the existing case-law of the Constitutional Court, could reasonably have expected that his claim for the purchase of the flat would be granted. The interference was therefore incompatible with the principle of lawfulness and hence contravened Article 1 of Protocol No. 1 to the Convention. This finding makes it unnecessary to examine whether a fair balance has been struck between the demands of the general interest of the community and the requirements of the protection of the applicant's fundamental rights.

There has, accordingly, been a violation of Article 1 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

69. The applicant further complained under Article 8 of the Convention that by breaking into his flat and letting it to Z.H. the domestic authorities had violated his right to respect for his home. Article 8 of the Convention reads as follows:

“1. Everyone has the right to respect for ... 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.”

70. In so far as the applicant may be understood to complain about the actual entering into his flat on 23 August 1996 and the decision of the Sequestration Commission of 28 August 1996 (see paragraph 9 above) whereby it let the flat to Z.H., the Court notes that these events took place before the Convention entered into force in respect of Croatia on 5 November 1997.

71. To the extent that the applicant complains of the decision of the Ministry of Reconstruction and Development of 7 August 1998 (see

paragraph 11 above), the Court notes that the applicant could have challenged it before the Administrative Court, but he did not do so.

72. It follows that this complaint is, in its respective aspects, inadmissible as incompatible *ratione temporis* with the provisions of the Convention within the meaning of Article 35 § 3 of the Convention and for non-exhaustion of domestic remedies under Article 35 § 1 thereof and must therefore be rejected pursuant to Article 35 § 4.

III. ALLEGED VIOLATIONS OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION

73. Lastly, the applicant complained under Articles 6 § 1 and 13 of the Convention that he had not had access to a court nor an effective remedy in order to challenge the forcible entry into his flat or the domestic authorities' decisions of 28 August 1996 and 7 August 1998 to let his flat to Z.H. Articles 6 and 13 read as follows:

Article 6 § 1

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

Article 13

“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.”

74. The Court refers to its above findings (see paragraphs 70-72), according to which the applicant's complaint under Article 8 of the Convention is inadmissible as incompatible *ratione temporis* and for non-exhaustion of domestic remedies. It follows that in so far as the applicant's complaints under Article 6 § 1 and 13 concern the alleged lack of access to a court and an effective remedy in respect of the break-in of his flat on 23 August 1996, and the decision of the Sequestration Commission of 28 August 1996, they are also inadmissible as incompatible *ratione temporis* with the provisions of the Convention. To the extent that these complaints concern the decision of the Ministry of Reconstruction and Development of 7 August 1998 they are inadmissible as manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. They must therefore be rejected pursuant to Article 35 § 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

75. 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.”

76. In his application form the applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage and EUR 1,200 in respect of costs and expenses. However, he did not submit a just satisfaction claim, nor did he resubmit (even by referring to them) the claims made in the application form within the time-limit fixed for submission of his Article 41 claims, that is, within the time-limit for submission of his observations (Rule 60 § 3 of the Rules of Court). The applicant failed to (re)submit the just satisfaction claims within the time allowed even though he was reminded that he had to do so even if he had indicated his wishes concerning just satisfaction at an earlier stage of the proceedings.

77. The Government noted that the applicant had not submitted a claim for just satisfaction in his observations but they nevertheless contested the claims made in the application form.

78. The Court reiterates that a judgment in which it finds a breach imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences. If national law does not allow – or allows only partial – reparation to be made, Article 41 empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, §§ 32-33, ECHR 2000-XI). In this connection, the Court notes that the applicant can now file a petition under section 428a of the Civil Procedure Act (see paragraph 31 above) with the Vojnić Municipal Court for the reopening of the civil proceedings in respect of which the Court has found a violation of Article 1 of Protocol No. 1 to the Convention.

79. Given the nature of the applicant's complaint and the reasons for which it has found a violation of Article 1 of Protocol No. 1 to the Convention, the Court considers that in the present case the most appropriate form of redress would be to reopen the proceedings complained of in due course (see, *mutatis mutandis*, *Trgo v. Croatia*, no. 35298/04, § 75, 11 June 2009, and *Vrbica v. Croatia*, no. 32540/05, §§ 83-85, 1 April 2010).

80. Having regard to the foregoing, and given that the applicant did not submit a claim for just satisfaction at the time prescribed, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the right to peaceful enjoyment of possessions admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention.

Done in English, and notified in writing on 29 March 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Anatoly Kovler
President