



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

FIRST SECTION

CASE OF ORLIĆ v. CROATIA

(Application no. 48833/07)

JUDGMENT

STRASBOURG

21 June 2011

FINAL

21/09/2011

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

In the case of Orlić v. Croatia,

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

Anatoly Kovler, *President*,

Nina Vajić,

Peer Lorenzen,

Elisabeth Steiner,

Khanlar Hajiyev,

George Nicolaou,

Mirjana Lazarova Trajkovska, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 31 May 2011,

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

PROCEDURE

1. The case originated in an application (no. 48833/07) 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 Petar Orlić (“the applicant”), on 3 September 2007.

2. The applicant was represented by Mr M. Zrilić, a lawyer practising in Rijeka. The Croatian Government (“the Government”) were represented by their Agent, Ms Š. Stažnik.

3. On 27 August 2010 the President of the First Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1950 and lives in Punat, on the Krk island in Croatia.

1. Background to the case

5. The applicant was in active military service with the former Yugoslav People’s Army (hereinafter: “the YPA”) for almost twenty-three years, until

25 June 1991, when he voluntarily left the YPA and moved from Postojna, Slovenia, where he held a specially protected tenancy of a flat given to him by the YPA, to Rijeka, Croatia.

6. The applicant made himself available for service in the Croatian army. He was unemployed until December 1991, when he found civilian employment. He then served in the Croatian army between October 1993 and October 1994 and eventually retired on 31 December 2007.

7. In the meantime, on 17 July 1991 the Government adopted the Decree on the Prohibition of All Real Estate Transactions in Croatia (*Uredba o zabrani raspolaganja nekretninama na teritoriju Republike Hrvatske* – “the Decree”, published in Official Gazette no. 36/1991 of 24 July 1991), which banned all transactions in respect of immovable property situated in Croatia and belonging to the Former Yugoslavia’s federal institutions or legal entities having their seat in one of its former federal units. The Decree entered into force on 24 July 1991.

8. The applicant had a specially protected tenancy of a flat in Postojna, Slovenia. On 22 August 1991 the applicant returned that flat to the YPA, in order to obtain priority for the allocation of another flat.

9. On 5 September 1991 the applicant was given the right to purchase a flat in Rijeka by the YPA and moved into the flat with his family.

10. Pursuant to the Government’s Decree of 2 October 1991, all possessions of the former YPA came under the ownership of the Republic of Croatia.

11. On 8 October 1991 the Republic of Croatia declared its independence.

12. On 8 November 1991 the Croatian Government and the YPA Rijeka Corps entered an agreement by which the Croatian Government guaranteed the personal safety of those members of the Rijeka Corps of the YPA who did not wish to leave the Rijeka area and to respect their acquired rights.

13. On 22 November 1991 the Croatian Government and the YPA entered into a further agreement by which the Croatian Government guaranteed the personal safety of those members of the YPA who did not wish to leave Croatia upon the termination of their service in the YPA and accepted to respect the inviolability of their private property and their continuing right to occupy the flats given to them by the YPA.

14. From January 1992 until his eviction in October 2004 the applicant paid the rent and all the charges in respect of the flat in Rijeka to the Croatian Ministry of Defence. Until June 2000 the bills were issued in the name of G.R., the previous holder of a specially protected tenancy of the same flat. From June 2000 the bills were issued in the applicant’s name.

15. In 1997 the applicant received part of a house in Punat on the island of Krk, Croatia by way of a gift from his father.

2. Civil proceedings

16. In 1996 the State brought a civil action against the applicant in the Rijeka Municipal Court (*Općinski sud u Rijeci*), seeking his eviction. The State argued that, as the owner of the flat, it had the right to seek the eviction of the applicant because the decision issued by the YPA, granting the applicant the right to purchase the flat in question, had been contrary to the Decree. The State sought repossession of the flat.

17. In his defence dated 16 November 1996 the applicant maintained that he had served as a YPA officer and that the YPA had allocated the flat in question to him and that, therefore, he had had a valid legal basis for occupying the flat. He further argued that he had had a specially protected tenancy of a flat in Postojna which he had given up in order to obtain a specially protected tenancy of a flat in Rijeka. He also submitted that he, at the invitation of the Croatian authorities, had made himself available to serve in the Croatian army and that he had two schoolchildren.

18. On 24 October 2000 the Municipal Court found in the State's favour and ordered the applicant to vacate the flat. The court found that the State owned the flat and that the applicant had no legal entitlement to occupy it. The relevant part of the judgment reads as follows:

"It is disputed between the parties whether the defendant's occupancy is based on a valid legal entitlement.

It is to be noted in that connection that the defendant had moved into the flat in question on the basis of a decision of the [YPA] Garrison Command (*Komanda garnizona*) no. 499-154-5 of 5 September 1991. Under sections 1 and 3 of the Decree on the Prohibition of All Real Estate Transactions in Croatia (Official Gazette 36/91), the [aforesaid] decision is null and void, and cannot serve as a valid legal basis for acquiring a specially protected tenancy, as [the grounds for doing so] are those listed in section 59 § 1 of the Housing Act. The above-mentioned Decree entered into force on 17 July 1991, while the decision of the Garrison Command was not issued until 5 September 1991, which was after the entry into force of the above-mentioned Decree. Since a ... legal act contrary to the provisions of the Decree is null and void ... which entails a requirement that the legal position of the parties to such a contract has to be the same as before the contract was concluded ... the plaintiff's claim is to be granted ..."

19. The applicant lodged an appeal whereby he argued that before it had declared its independence, the Republic of Croatia had had no authority to enact any decrees concerning the assets of the YPA. He also relied on the agreement between the Croatian Government and the YPA. He reiterated his argument that he, when leaving the YPA, had acted at the invitation of the Croatian authorities and had made himself available to serve in the Croatian army.

20. On 19 September 2001 the Rijeka County Court (*Županijski sud u Rijeci*) upheld the first-instance judgment, endorsing the reasoning of the first-instance court, and dismissing the applicant's argument that the

Republic of Croatia had had no authority to adopt the Decree. The relevant part of the judgment reads as follows:

“... the first-instance court established that the defendant had occupied the flat in Rijeka, Mihanovićeve 2, on the basis of a decision of the Garrison Command ... which is null and void under sections 1 and 3 of the Decree ... and therefore cannot be considered as a valid legal basis for acquiring a specially protected tenancy, [in contrast to] the [grounds] listed in section 59 § 1 of the Housing Act ... The Decree entered into force on 17 July 1991, while the decision of the Garrison Command was not issued until 5 September 1991, which was after the entry into force of the above-mentioned Decree. In view of the nullity of the said decision, the plaintiff’s claim was granted ...

The factual findings and legal standpoints of the first-instance court are accepted by this court as correct.

The defendant argued that, before it had declared its independence, the Republic of Croatia had had no authority to enact any decrees concerning the assets of the YPA because these had been federal assets given to the YPA by a federal statute, namely, the YPA Assets and Financing Act (*Zakon o sredstvima i financiranju JNA*). Therefore, the Republic of Croatia had had no authority to enact the Decree on the Prohibition of All Real Estate Transactions in Croatia ...

These arguments are, however, ill-founded. The Decree is based on Article 140 § 2 of the Constitution of the Republic of Croatia, which provides that “where an act or action by a federal body or by another federal republic ... goes against the territorial integrity of the Republic of Croatia or its interests or where such an act places it in a position of inequality within the Federation, the bodies of the Republic [of Croatia] shall, on the basis of the right to self-determination and the sovereignty of the Republic of Croatia established by this Constitution, adopt necessary decisions in order to protect the interests of the Republic of Croatia. ...

Hence, the first-instance court correctly applied sections 1 and 3 of the Decree ... by declaring the decision of the Garrison Command ... null and void, since it was issued after the said Decree had entered into force. Accordingly the defendant does not have a valid legal basis for occupying the flat in Rijeka ... and his reliance on the Agreement between the Republic of Croatia and the YPA of 22 November 1991 is irrelevant.

...”

21. The applicant brought a constitutional complaint on 1 February 2002. In that complaint, the applicant argued that the flat in question had been allocated to him by the former YPA on the basis of a federal statute before the Republic of Croatia had declared its independence. He again reiterated his arguments that he had left the YPA at the invitation of the Croatian authorities and had made himself available to serve in the Croatian army.

22. On an unspecified date, the applicant asked the Ministry of Defence, as owner of the flat, to conclude a contract for the sale of the flat between the Ministry as seller and himself as buyer. On 19 April 2004 the applicant

lodged another request with the Ministry of Defence, in order to legalise his occupancy of the flat. He claimed that he had a specially protected tenancy of the flat and the right to buy the flat under Article 2 of Annex G to the Agreement on Succession Issues (*Ugovor o pitanjima sukcesije*). On 27 July 2004 the Ministry of Defence dismissed his request, finding that the Agreement cited by the applicant was inapplicable in the applicant's case.

23. On 12 April 2007 the Constitutional Court dismissed the applicant's complaint, endorsing the lower courts' reasoning.

3. Enforcement proceedings

24. On 9 July 2002 the Rijeka Municipal State Attorney's Office (*Općinsko državno odvjetništvo u Rijeci*) sought an enforcement order in the Rijeka Municipal Court for the eviction of the applicant. The enforcement order was issued on 30 December 2002. The applicant lodged an appeal, arguing that his eviction from the flat would cause him irreparable damage because he and his family would be rendered homeless. He also sought the adjournment of the eviction until a decision by the Constitutional Court on his constitutional complaint had been issued.

25. On 10 February 2004 the Rijeka Municipal Court dismissed the applicant's request for an adjournment, finding that the grounds adduced were not those listed in the Enforcement Act (*Ovršni zakon*), and that the applicant had not specified the damage he would suffer if evicted.

26. The applicant lodged an appeal, arguing, *inter alia*, that the Rijeka Municipal Court had disregarded his argument that the eviction would render him and his family homeless.

27. On 26 May 2004 the Rijeka County Court dismissed the applicant's appeals against the enforcement order and the decision on adjournment of the eviction, finding that the pending constitutional complaint and the irreparable damage claimed did not constitute valid grounds for successfully challenging the enforcement order.

28. The eviction was initially scheduled for 14 September 2004. On that occasion, representatives of the Rijeka Municipal State Attorney's Office agreed with the applicant's request to adjourn the eviction until 28 October 2004. The applicant complied with the enforcement order and vacated the flat on 28 October 2004.

II. RELEVANT DOMESTIC LAW AND PRACTICE

29. The relevant part of the Agreement of 8 November 2001 concluded between the Croatian Government and the YPA Rijeka Corps reads:

II

“The Republic of Croatia guarantees the personal safety and respect for the acquired rights, including those from employment, of the members of the YPA Rijeka Corps who do not wish to leave the territory of Rijeka by the date [noted in] section XII of this Agreement at the latest. This guarantee also concerns the members of their families ...”

XII

“... leaving the Croatian territory by the members of the Rijeka Corps is to be completed by 10 December 1991 at the latest.”

30. The relevant part of the Agreement of 22 November 2001 concluded between the Croatian Government and the YPA reads:

IV

“The Republic of Croatia guarantees the personal safety, [and to respect the] inviolability of private property and continuing right to use flats, of the members of divisions, institutions and commands of the YPA who do not wish to leave the territory of Zagreb or the territory of the Republic of Croatia upon the termination of their service in the YPA, as well as [that] of the members of their families ...”

31. Article 34 of the Constitution (*Ustav Republike Hrvatske*, Official Gazette nos. 41 and 55) reads as follows:

“The home is inviolable.

A search of a person’s home or other premises shall be ordered by a court in the form of a reasoned written warrant based on law.

The occupier, or his or her representative, shall be entitled to be present during a search of a home or other premises. The presence of two witnesses shall be obligatory.

Under the conditions prescribed by law and where it is necessary to execute an arrest warrant or to apprehend a person who has committed a criminal offence or in order to remove serious danger to the life or health of people, or to property of a high value, the police may enter a person’s home or other premises and carry out a search without a court warrant or the occupier’s consent and without any witnesses being present.

Where there is a probability that evidence may be found in the home of a person who has committed a criminal offence, a search shall be carried out only in presence of witnesses.”

32. The relevant part of the Housing Act (Official Gazette nos. 51/1985, 42/1986, 22/1992 and 70/1993) reads:

Section 59

“A specially protected tenancy is acquired on the date of moving into the flat on the basis of a final decision allocating the flat or on another valid legal basis, unless otherwise provided by this Act.”

33. The Specially Protected Tenancies (Sale to Occupier) Act (Official Gazette nos. 27/1991, 33/1992, 43/1992, 69/1992 25/1993, 26/1993, 48/1993, 2/1994, 44/1994, 47/1994, 58/1995, 11/1996, 11/1997 and 68/1998, *Zakon o prodaji stanova na kojima postoji stanarsko pravo*) regulates the conditions for the sale of flats let under specially protected tenancies. In general, the Act entitles the holder of a specially protected tenancy of a publicly owned flat to purchase it under favourable conditions of sale.

The relevant provision of the Act provides as follows:

Section 4

“Every holder of a specially protected tenancy (hereinafter ‘the tenant’) may submit a written application to purchase a flat to the ... owner (‘the seller’) ... and the seller shall be obliged to sell the flat.

...”

34. Section 161 paragraph 1 of the Property Act (*Zakon o vlasništvu i drugim stvarnim pravima*, Official Gazette no 91/1996) reads as follows:

“An owner has the right to seek repossession of his or her property from a person in whose possession it is.”

35. 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 the 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.”

36. The relevant part of Constitutional Court decision no. U-III/408/2003 of 18 February 2004 reads as follows:

“As regards the alleged violation of the constitutional right guaranteed under Article 34 of the Constitution, it is to be said that that a violation of that right cannot occur in enforcement proceedings, as Article 34 of the Constitution guarantees the inviolability of the home, which concerns the conduct of the police during entries and searches of homes in the execution of arrest warrants or in order to apprehend a perpetrator of a criminal offence or to remove serious risk to the lives and health of persons or to valuable assets. Therefore, the provision in question is not applicable to the proceedings at issue.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

37. The applicant complained that, by ordering and enforcing his eviction, the domestic courts had violated his right to respect for his home guaranteed under Article 8 of the Convention, the relevant part of which reads as follows:

“1. Everyone has the right to respect for ... his home ...

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.”

A. Admissibility

1. *Exhaustion of domestic remedies*

38. The Government firstly maintained that the applicant had failed to exhaust domestic remedies, arguing that he had not, in the proceedings before the national courts and, especially, in his constitutional complaint, alleged any violation of his right to respect for his home.

39. The applicant disputed these arguments

40. The Court reiterates that the rule of exhaustion of domestic remedies contained in Article 35 § 1 of the Convention requires that normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain – not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in both theory and practice at the relevant time, that is to say, that it was accessible, was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see, among other authorities, *Akdivar and Others v. Turkey*, 16 September 1996, §§ 65 and 68, *Reports of Judgments and Decisions* 1996-IV).

41. Turning to the present case, the Court observes that the wording of Article 34 of the Constitution does not expressly guarantee the right to respect for one's home within the meaning of Article 8 of the Convention, but is aimed at securing protection from unjustified searches only. In this connection, the Court observes that the Constitutional Court itself has so held in its decisions (see § 33 above). However, and leaving that question aside, the Court notes that the applicant lodged a constitutional complaint in which he, at least in substance, complained that as a result of the lower courts' decision ordering his eviction he had lost his home. In these circumstances, the Court is satisfied that the applicant exhausted domestic remedies in respect of his complaint under Article 8 of the Convention concerning his right to respect for his home. Accordingly, that complaint cannot be dismissed for failure to exhaust domestic remedies.

2. Compliance with the six-month time-limit

42. The Government contended that the application had been lodged after the expiration of the six-month time-limit, which ought to be counted from the date when the judgment ordering the applicant's eviction had become final (19 September 2001) and not from the date when the Constitutional Court's decision had been adopted.

43. The applicant disputed these arguments.

44. The Court reiterates that the object of the six-month time-limit under Article 35 § 1 is to promote legal certainty, by ensuring that cases raising issues under the Convention are dealt with in a reasonable time and that past decisions are not continuously open to challenge. It marks out the temporal limits of supervision carried out by the organs of the Convention and signals to both individuals and State authorities the period beyond which such supervision is no longer possible (see, amongst other authorities, *Walker v. the United Kingdom* (dec.), no. 34979/97, ECHR 2000-I).

45. As a rule, the six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies. Article 35 § 1

cannot be interpreted in a manner which would require an applicant to inform the Court of his complaint before his position in connection with the matter has been finally settled at the domestic level.

46. The Court notes that before bringing complaints against Croatia to the Court, in order to comply with the principle of subsidiarity, applicants are in principle required to afford the Croatian Constitutional Court, as the highest Court in Croatia, a possibility of remedying their situation.

47. As explained above, in his constitutional complaint the applicant challenged the lower courts' decision ordering his eviction and put forward some relevant arguments. Therefore, he gave the Constitutional Court the opportunity to examine the same issues he is now presenting before the Court. The application was lodged with the Court on 3 September 2007, within six months from the adoption of the Constitutional Court's decision on 12 April 2007. It follows that the Government's objection must be dismissed.

3. Conclusion

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

B. Merits

1. The parties' arguments

49. The applicant argued that his right to respect for his home had been violated by his eviction from his home and that the national courts' assessment as to the validity of the legal basis for his occupation of the flat at issue had been incorrect. He maintained that during his service in the YPA he had paid contributions into a pension fund; that, prior to leaving the YPA in 1991, he had had a specially protected tenancy of a flat in Postojna, Slovenia; and that he had left the YPA at the beginning of the escalation of conflict in the former Yugoslavia and had offered to serve in the Croatian army.

50. He further argued that, before it had declared its independence, the Republic of Croatia had had no authority to enact the Decree, because it had concerned the assets of the YPA – which had been federal assets given to the YPA by a federal statute.

51. The Government maintained that there had been no interference with the applicant's right to respect for his home, because at the time of his eviction from the flat at issue the applicant had already become the owner of a house in Punat, situated in the same county.

52. Furthermore, the applicant had not asserted before the national courts that the flat in question had been his home and that his right to respect for his home had been violated. The courts had therefore been absolved from applying the proportionality test under Article 8 of the Convention.

2. The Court's assessment

(a) Whether a right protected by Article 8 is in issue

53. The first question the Court has to address is whether the applicant may arguably claim that he had a right protected by Article 8 and – more specifically in the present case – whether the flat in question may be considered as the applicant's home.

54. The Convention organs' case-law is clear on the point that the concept of "home" within the meaning of Article 8 is not limited to those premises which are lawfully occupied or which have been lawfully established. "Home" is an autonomous concept which does not depend on classification under domestic law. Whether or not a particular premises constitutes a "home" which attracts the protection of Article 8 § 1 will depend on the factual circumstances, namely, the existence of sufficient and continuous links with a specific place (see *Buckley v. the United Kingdom*, 25 September 1996, *Reports* 1996-IV, §§ 52-54, and Commission's report of 11 January 1995, § 63; *Gillow v. the United Kingdom*, 24 November 1986, § 46, Series A no. 109; *Wiggins v. the United Kingdom*, no. 7456/76, Commission decision of 8 February 1978, DR 13, p. 40; and *Prokopovich v. Russia*, no. 58255/00, § 36, ECHR 2004-XI (extracts)). Thus, whether a property is to be classified as a "home" is a question of fact and does not depend on the lawfulness of the occupation under domestic law (see *McCann v. the United Kingdom*, no. 19009/04, § 46, 13 May 2008).

55. As to the present case, it is undisputed that the applicant and his family had lived in the flat in question between November 1991 and 28 October 2004 when they were evicted. Thus, at the time when the interference with the applicant's right to respect for his home occurred, he had lived in the flat in question with his family. Having regard to the factual circumstances outlined above, the Court finds that the applicant had sufficient and continuing links with the flat at issue for it to be considered his "home" for the purposes of Article 8 of the Convention, despite the fact that according to the national courts' findings he had no legal basis for occupying it.

(b) Whether there has been an interference with the applicant's right to respect for his home

56. The Court has so far adopted several judgments where it assessed the issue of an interference with an applicant's right to respect for his or her

home in the circumstances where an eviction order had been issued. In the case of *Stanková v. Slovakia* (no. 7205/02, 9 October 2007) the Court held as follows:

“57. The Court notes, and it has not been disputed between the parties, that the obligation on the applicant to leave the flat amounted to an interference with her right to respect for her home which was based on the relevant provisions of the Civil Code and the Executions Order 1995 ...”

57. Subsequently the Court held in the *McCann v. the United Kingdom* (no. 19009/04, 13 May 2008):

“47. It was further agreed that the effect of the notice to quit which was served by the applicant’s wife on the local authority, together with the possession proceedings which the local authority brought, was to interfere with the applicant’s right to respect for his home.”

58. Further, the Court has held in *Ćosić v. Croatia* (no. 28261/06, 15 January 2009):

“18. The Court considers that the obligation on the applicant to vacate the flat amounted to an interference with her right to respect for her home, notwithstanding the fact that the judgment ordering the applicant’s eviction has not yet been executed.”

59. The Court sees no reason to depart from this approach in the present case. It considers that the eviction issued and enforced against the applicant to leave the flat amounted to an interference with his right to respect for his home.

(c) Whether the interference was prescribed by law and pursued a legitimate aim

60. The applicant was ordered to vacate the flat in question by the national courts under Croatian laws regulating ownership, which allow an owner to seek repossession of his or her property when the possessor has no legal grounds for possession (see above the relevant provision of the Property Act).

61. In this connection the Court first reiterates that it is in the first place for the national authorities, notably the courts, to interpret and apply the domestic law, even in those fields where the Convention “incorporates” the rules of that law since the national authorities are, in the nature of things, particularly qualified to settle the issues arising in this connection (see, *mutatis mutandis*, *Winterwerp v. the Netherlands*, 24 October 1979, § 46, Series A no. 33). The Court will not substitute its own interpretation for theirs in the absence of arbitrariness (see, for example, *Tejedor García v. Spain*, 16 December 1997, § 31, *Reports of Judgments and Decisions* 1997-VIII).

62. The Court is thus satisfied that the national courts’ decisions ordering the applicant’s eviction were in accordance with domestic law, in particular, the Housing Act and the Property Act (see above, paragraphs 32

and 34). The interference in question therefore pursued the legitimate aim of the economic well-being of the country.

(d) Whether the interference was “necessary in a democratic society”

63. The central question in this case is, therefore, whether the interference was proportionate to the aim pursued and thus “necessary in a democratic society”. It must be recalled that this requirement under paragraph 2 of Article 8 raises a question of procedure as well as one of substance. The Court set out the relevant principles in assessing the necessity of an interference with the right to “home” in the case of *Connors v. the United Kingdom*, (no. 66746/01, §§ 81–84, 27 May 2004) which concerned summary possession proceedings. The relevant passage reads as follows:

“81. An interference will be considered ‘necessary in a democratic society’ for a legitimate aim if it answers a ‘pressing social need’ and, in particular, if it is proportionate to the legitimate aim pursued. While it is for the national authorities to make the initial assessment of necessity, the final evaluation as to whether the reasons cited for the interference are relevant and sufficient remains subject to review by the Court for conformity with the requirements of the Convention ...

82. In this regard, a margin of appreciation must, inevitably, be left to the national authorities, who by reason of their direct and continuous contact with the vital forces of their countries are in principle better placed than an international court to evaluate local needs and conditions. This margin will vary according to the nature of the Convention right in issue, its importance for the individual and the nature of the activities restricted, as well as the nature of the aim pursued by the restrictions. The margin will tend to be narrower where the right at stake is crucial to the individual’s effective enjoyment of intimate or key rights On the other hand, in spheres involving the application of social or economic policies, there is authority that the margin of appreciation is wide, as in the planning context where the Court has found that ‘[i]n so far as the exercise of discretion involving a multitude of local factors is inherent in the choice and implementation of planning policies, the national authorities in principle enjoy a wide margin of appreciation’ The Court has also stated that in spheres such as housing, which play a central role in the welfare and economic policies of modern societies, it will respect the legislature’s judgment as to what is in the general interest unless that judgment is manifestly without reasonable foundation It may be noted however that this was in the context of Article 1 of Protocol No. 1, not Article 8 which concerns rights of central importance to the individual’s identity, self-determination, physical and moral integrity, maintenance of relationships with others and a settled and secure place in the community Where general social and economic policy considerations have arisen in the context of Article 8 itself, the scope of the margin of appreciation depends on the context of the case, with particular significance attaching to the extent of the intrusion into the personal sphere of the applicant

83. The procedural safeguards available to the individual will be especially material in determining whether the respondent State has, when fixing the regulatory framework, remained within its margin of appreciation. In particular, the Court must examine whether the decision-making process leading to measures of interference was

fair and such as to afford due respect to the interests safeguarded to the individual by Article 8 ...”

64. The Court notes that when it comes to the decisions of the domestic authorities in the present case, their findings were restricted to the conclusion that under applicable national laws the applicant had no legal entitlement to occupy the flat. The national courts thus confined themselves to finding that occupation by the applicant was without legal basis, but made no further analysis as to the proportionality of the measure to be applied against the applicant, namely his eviction from a State-owned flat. However, the guarantees of the Convention require that the interference with an applicant’s right to respect for his home be not only based on the law but also be proportionate under paragraph 2 of Article 8 to the legitimate aim pursued, regard being had to the particular circumstances of the case. Furthermore, no legal provision of domestic law should be interpreted and applied in a manner incompatible with Croatia’s obligations under the Convention (see *Stanková v. Slovakia*, cited above, § 24, 9 October 2007).

65. In this connection the Court reiterates that any person at risk of an interference with his right to home should in principle be able to have the proportionality and reasonableness of the measure determined by an independent tribunal in the light of the relevant principles under Article 8 of the Convention, notwithstanding that, under domestic law, he or she has no right to occupy a flat (see, *mutatis mutandis*, *McCann v. the United Kingdom*, no. 19009/04, § 50, 13 May 2008).

66. The Court, however, emphasises that such an issue does not arise automatically in each case concerning an eviction dispute. If an applicant wishes to raise an Article 8 defence to prevent eviction, it is for him to do so and for a court to uphold or dismiss the claim. As previously held, the Court does not accept that the grant of the right to an occupier to raise an issue under Article 8 would have serious consequences for the functioning of the domestic systems or for the domestic law of landlord and tenant (see, *McCann v. the United Kingdom*, cited above, §§ 28 and 54).

67. The Court notes that in the present case the applicant raised the issue of his right to respect for his home, which was not taken up by the national courts. They ordered the eviction of the applicant from his home without having determined the proportionality of the measure. In this connection, the Court notes that the applicant presented before the national courts arguments linked to the proportionality of his eviction, such as that on leaving his service in the YPA he had answered a call by the Croatian authorities and had made himself available to serve in the Croatian army, and that, prior to moving to Rijeka, he had been the holder of a specially protected tenancy of a flat in Postojna.

68. The Court is also mindful of the applicant’s arguments presented before it that he had lived in the flat in question for over thirteen years and

had paid charges to the Ministry of Defence during that time. He had also worked for that Ministry between October 1993 and October 1994.

69. Another element of importance is the following. In circumstances where the national authorities, in their decisions ordering and upholding the applicant's eviction, have not given any explanation or put forward any arguments demonstrating that the applicant's eviction was necessary, the State's legitimate interest in being able to control its property comes second to the applicant's right to respect for his home. Moreover, where the State has not shown the necessity of the applicant's eviction in order to protect its own property rights, the Court places a strong emphasis on the fact that no interests of other private parties are likewise at stake.

70. The Court considers further that a clear distinction has to be made between the applicant in the present case and those who simply squat in others' flats and occupy them. Thus, the Court, without putting into question the national courts' conclusions as to the validity of the legal basis for the applicant's occupation of the property, cannot completely ignore that the circumstances of the allocation of the flat to the applicant are closely linked to the specific situation of the Homeland War in Croatia. While the respondent State certainly enjoys a wide margin of appreciation in creating its social, and housing, policy, the Court notes that the proceedings for the applicant's eviction only started in 1996, five years after the applicant had moved into the flat. Thus, in addition to the applicant's occupancy of the flat for a long period of time, the Court also notes that the authorities did not initially take a firm standpoint as regards his title to occupy the flat.

71. By not examining the above arguments, the national courts did not afford the applicant adequate procedural safeguards.

72. There has, therefore, been a violation of Article 8 of the Convention in the instant case.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

73. The applicant further complained under Articles 6 and 13 of the Convention about the interpretation of the laws by the national court and that he had no effective remedy at his disposal.

74. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court considers that this part of the application does not disclose any appearance of a violation of the Convention. It follows that it is inadmissible under Article 35 § 3 (a) as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention.

III. 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.”

A. Damage

76. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage. He also claimed pecuniary damage. As regards pecuniary damage, he explained that, had he been granted a specially protected tenancy of the flat in question, he would have been able to buy it for 62,502.45 Croatian kuna (HRK). The market value of such a flat in Rijeka was HRK 563,464.50. Therefore, he claimed the difference in the amount of HRK 473,962.05.

77. The Government deemed the sums claimed unsubstantiated and excessive.

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 to make reparation for its consequences. If the 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 under section 428a of the Civil Procedure Act an applicant may file a petition for reopening of the civil proceedings in respect of which the Court has found a violation of the Convention. Given the nature of the applicant’s complaint under Article 8 of the Convention and the reasons for which it has found a violation of that Article, the Court considers that in the present case the most appropriate way of repairing the consequences of that violation is to reopen the proceedings complained of. As it follows that domestic law allows such reparation to be made, the Court considers that there is no call to award the applicant any sum in respect of pecuniary damage (see *Trgo v. Croatia*, no. 35298/04, § 75, 11 June 2009).

79. On the other hand, the Court finds that the applicant must have sustained non-pecuniary damage. It therefore awards the applicant under that head EUR 2,000, plus any tax that may be chargeable on that amount.

B. Costs and expenses

80. The applicant also claimed HRK 93,495.43 for costs and expenses incurred before the domestic courts and the Court.

81. The Government deemed the sum claimed excessive and unsubstantiated.

82. 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 60 for costs and expenses in the domestic proceedings and EUR 2,000 for the proceedings before the Court.

C. Default interest

83. 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 complaint concerning the applicant's right to respect for his home admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 8 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, to be converted into Croatian kuna at the rate applicable at the date of settlement:
 - (i) EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 2,060 (two thousand sixty euros), plus any tax that may be chargeable to the applicant, 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 June 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Anatoly Kovler
President