



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

FIRST SECTION

CASE OF BREŽEC v. CROATIA

(Application no. 7177/10)

JUDGMENT

STRASBOURG

18 July 2013

FINAL

18/10/2013

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

In the case of Brežec v. Croatia,

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

Isabelle Berro-Lefèvre, *President*,
Elisabeth Steiner,
Khanlar Hajiyeu,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 29 January, 28 May and 25 June 2013,

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

PROCEDURE

1. The case originated in an application (no. 7177/10) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Croatian national, Ms Jadranka Brežec (“the applicant”), on 19 January 2010.

2. The applicant was represented by Ms D. Košta, a lawyer practising in Split. The Croatian Government (“the Government”) were represented by their Agent, Ms Š. Stažnik.

3. The applicant alleged, in particular, that her right to respect for her home was violated, contrary to Article 8 of the Convention.

4. On 18 May 2011 the application was communicated 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****A. Background to the case**

5. The applicant was born in 1952 and lives in Mlini.

6. The applicant was an employee of the publicly-owned enterprise Mlini Hotels. In 1970 the applicant moved into a flat in Mlini, Dubrovnik, situated in a publicly-owned building.

7. On 9 July 1997 the Republic of Croatia sold the building where the flat the applicant occupied was situated to Mlini Hotels, which had in the meantime become a private enterprise.

B. Civil proceedings

8. On 9 May 2005 Mlini Hotels brought a civil action in the Dubrovnik Municipal Court, seeking the applicant's eviction on the ground that she had no legal basis to occupy the flat.

9. On 19 October 2005 the applicant lodged a counterclaim, requesting the Dubrovnik Municipal Court to recognise her protected tenancy on the flat she occupied and to issue a judgment which would replace the contract on the sale of the flat.

10. On 25 October 2005 the applicant entered a sale contract, purchasing another flat in Dubrovnik.

11. On 28 December 2005 the Dubrovnik Municipal Court reached a decision on the basis of documentary evidence. It accepted the plaintiff's claim and dismissed the applicant's counterclaim and ordered the applicant to vacate the flat. The relevant part of the judgment reads:

"This court has established in the first place that the premises in dispute are not a flat within the meaning of section 6 § 1(1) of the Housing Act ... which prescribes that a flat is a unit of premises, designed for permanent dwelling, with the necessary pertinent premises, which in principle constitutes a single construction unit and has a separate main entrance. The plaintiff's submissions, uncontested by the defendant, indicate that the defendant is occupying premises measuring 43 square metres and consisting of four rooms and a communal bathroom with a toilet and hall. It is thus clear that this is not a single construction unit, in other words, that the said premises are not a flat within the meaning of the Housing Act.

Besides, it is undisputed between the parties that the premises in question are situated in the plaintiff's personnel's building, as is shown in the documents submitted by the defendant with her counterclaim. Since this building was intended to provide temporary accommodation for the plaintiff's employees, the defendant could not acquire a protected tenancy of these premises, pursuant to section 8 § 1(1) of the Housing Act ... which provides that a protected tenancy may not be acquired in respect of flats intended for temporary occupation. Besides, since the premises in question are not a flat within the meaning of the Housing Act, the defendant could not acquire a protected tenancy on the basis of section 91 of the Housing Act ... as she stated in her counterclaim, asserting that she had a protected tenancy of the 'flat' in question, allegedly given to her by the plaintiff for her occupation until another flat became available, since no other flat had subsequently been given to her. The defendant has not provided documentary proof of her assertion ... nor could this assertion be proved by evidence from witnesses – former tenants in the 'personal [*sic*] building' who had been given other flats - or by testimony from the defendant, as she

suggested in her counterclaim, and therefore this court rejects the proposed evidence as superfluous and aimed at delaying the proceedings.

... the defendant could not acquire a protected tenancy of the premises in question because they had been allocated to her, on the same basis as to the plaintiff's other employees, for temporary occupation without a decision granting the flat for occupation, or any other valid legal basis for acquiring a protected tenancy...

...

Since it has been established that the plaintiff is the owner of the premises object of these proceedings, which premises are occupied by the defendant without a valid legal basis, this court has adopted a decision under point 1 of this judgment [order that the defendant vacate the flat], on the basis of section 161 of the Property Act."

12. In her appeal of 20 January 2006 the applicant argued that, owing to the passage of time and the war in Croatia, she had lost [her copy of] the decision granting her the right to occupy the flat. However, she alleged that her entitlement could be proved by evidence from witnesses and by her testimony. The witnesses she proposed would also testify to other relevant matters, for example that the plaintiff had held meetings with tenants at which they had tried to find an optimal solution and it was suggested that another flat would be allocated to her; certain steps were even taken in that direction. One of the tenants had been allocated another flat. Another option discussed was alterations to the building in question, and the plaintiff had even presented a project in that respect. She further argued that the premises she occupied were a single unit, and therefore a flat, since the Housing Act provided that the premises comprising a flat 'in principle [constituted] a single construction unit'. She further argued that she had lived in the flat for over thirty-five years and that it could not be considered as a place she was occupying on a temporary basis. She argued that the first-instance court, before reaching its conclusion, should have heard relevant evidence and then made an assessment of all relevant matters.

13. On 31 October 2006 the applicant finalised the purchase of another flat in Dubrovnik (see paragraph 10 above). Her ownership of that flat was entered in the Land Registry of the Dubrovnik Municipal Court in 2007.

14. On 31 January 2008 the Dubrovnik County Court dismissed the applicant's appeal against the first-instance judgment. The relevant part of the judgment reads:

"The first-instance court rejected a request by the defendant to hear evidence from the parties and to carry out an on-site inspection, and gave necessary and valid reasons within the meaning of section 8 of the Civil Procedure Act, which reasons are endorsed by this court ...

A party's testimony is not evidence capable of proving a right to a protected tenancy, especially in a situation where [the first-instance] court has established that the premises have been designated as temporary accommodation and allocated to the defendant as such.

As regards the allegation that by hearing evidence from the defendant the [first-instance] court would have learned that the documentation had been lost during the war and would have known from whom to seek the documentation, it should be noted that the burden of proof is on the defendant and if she knew where the documentation was to be found she should have [obtained] it herself. A court is not obliged or even authorised to [obtain such documentation] of its own motion.

The defendant's request that evidence be heard from witnesses, former tenants of the same building ... is unclear and does not amount to evidence within the meaning of section 241 of the Civil Procedure Act.

That provision requires that a party who calls for a witness to give evidence must indicate what the witness would testify about, as well as the name, address and occupation of the witness to be called.

...

The case file shows that:

- the plaintiff is registered as the owner of the ... building in which the disputed premises are located;
- the premises in question were designated as temporary occupation for the plaintiff's employees;
- the defendant is occupying those premises without a decision by the plaintiff granting her the right to occupy them either temporarily or permanently (as a unit of premises defined as a flat within the meaning of section 6 paragraph 1 of the Housing Act ...);
- the defendant has refused to vacate the premises ...

On the basis of the above facts, the first-instance court correctly concluded that the defendant had not acquired protected tenancy on the premises she occupied and that there was no other ground for denying the plaintiff's request for re-possession of his property."

15. The applicant then lodged a constitutional complaint whereby she reiterated the arguments from her appeal (see paragraph 12 above), which was dismissed on 30 June 2009. The Constitutional Court entirely endorsed the lower courts' reasoning, limiting its assessment to the non-existence of a legal basis for the applicant to occupy the flat. That decision was served on the applicant on 20 July 2009.

C. Enforcement proceedings

16. On 18 July 2008 Mlini Hotels applied to the Dubrovnik Municipal Court, requesting that it enforce its judgment ordering the applicant's eviction. The writ of execution to that effect was issued on 7 August 2008. The applicant lodged an appeal on 5 November 2008.

17. On 10 December 2010 the Dubrovnik Municipal Court terminated the enforcement proceedings on the ground that on 25 November 2010 Mlini Hotels had informed that court that the applicant had moved out of the flat.

18. According to the Government, in 2009 the applicant moved to the flat she had bought in 2006.

19. According to the applicant, she was forcibly evicted from the flat owned by Mlini Hotels on 19 November 2010.

II. RELEVANT DOMESTIC LAW AND PRACTICE

The Property Act

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

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

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

21. The applicant complained that the national courts had violated her right to respect for her home. She relied on Article 8 of the Convention, the relevant part of which provides:

“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. *The parties' arguments*

22. The Government argued that the part of the application concerning any events before 5 November 1997, when Croatia had ratified the Convention, was incompatible *ratione temporis*.

23. They further argued that the applicant had failed to exhaust domestic remedies in that, they alleged, she had not presented any complaint concerning her right to respect for her home before the national courts.

24. They also argued that the application had been lodged out of the six-month time-limit because the final domestic decision, namely the Constitutional Court's decision of 30 June 2009, had been served on the applicant on 20 July 2009, while the date on the Court's receipt stamp was 25 January 2009.

25. The applicant replied that she had insisted on the protection of her right to respect for her home before the domestic courts, and that her application to the Court had been lodged within the prescribed time-limit.

2. *The Court's assessment*

(a) Exhaustion of domestic remedies

26. 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).

27. Turning to the present case, the Court observes that the applicant in her submissions before the national courts, in substance, complained about her eviction from the place where she had resided from 1970 until she was allegedly evicted. In these circumstances, the Court is satisfied that the applicant exhausted domestic remedies in respect of her complaint under Article 8 of the Convention concerning her right to respect for her home (see, by way of comparison, *Paulić v. Croatia*, no. 3572/06, §§ 25 and 26, 22 October 2009; and *Orlić v. Croatia*, no. 48833/07, §§ 40 and 41, 21 June

2011). Accordingly, that complaint cannot be dismissed for failure to exhaust domestic remedies.

(b) Compliance with the six-month rule

28. The Court reiterates that it may only deal with an application if it is lodged with the Court within the six-month time-limit. The purpose of the six-month rule is to promote legal certainty and to ensure that cases raising issues under the Convention are dealt with within a reasonable time as well as to protect the authorities and other persons concerned from being under any uncertainty for an extended period of time. Finally, it should ensure the possibility of ascertaining the facts of the case before the chance to do so fades away, making the fair examination of the question at issue next to impossible (see *Kelly v. the United Kingdom*, no. 10626/83, Commission decision of 7 May 1985, Decisions and Reports (DR) 42, p. 205, and *Baybora and Others v. Cyprus* (dec.), no. 77116/01, 22 October 2002).

29. As to the date when the application is lodged with the Court, the Court has already held that the date of the postmark recording on which day the application was sent is treated as the date of the application, and not the date of receipt stamped on the application (see, for example, *Kipritçi v. Turkey*, no. 14294/04, § 18, 3 June 2008).

30. The Court notes that the date on the postmark recording when the application was sent is 19 January 2010. Since the final domestic court's decision, namely the decision of the Constitutional Court of 30 June 2009, was served on the applicant on 20 July 2009, it follows that the application was lodged with the Court within the six-month time-limit. Thus the Government's objection must be dismissed.

(c) Conclusion

31. 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

32. The applicant argued that the flat at issue was a socially-owned flat which had been given to her within the system of specially protected tenancies in the former Yugoslavia. She paid rent to the State and was considered to have her housing needs met. Her problems arose when Mlini Hotels was privatised in dubious circumstances. The Government, however, had submitted no responses as to the privatisation process. The applicant

contended that a State-run agency continued to own a 49% stake in Mlini Hotels. On 19 November 2010 she had been forcefully evicted from the flat at issue, in which she had previously lived from 1970 until 2010, a duration which demonstrated that it had been her home. She further contended that the fact that she had become co-owner of another flat in 2006 had no bearing on her rights in respect of the flat in Mlini. She had purchased another flat only because of the aggressive attitude of the new owner of Mlini Hotels, and had had to take out a bank loan for that purchase, placing her in a precarious position and leaving her with scarce resources for subsistence.

33. The Government argued that there had been no interference with the applicant's right to respect for her home, because the flat at issue had not been her home, in that she had never obtained a protected tenancy on it. The flat had been given to her only temporarily. Furthermore, on 31 October 2006 the applicant bought another flat in the same municipality and her ownership of that flat had been registered in the land registry in 2007. She had moved to that flat in 2009 of her own free will.

2. *The Court's assessment*

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

34. The first question the Court has to address is whether the applicant may arguably claim that she 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.

35. 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 premise 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).

36. As to the present case, it is undisputed that the applicant had lived in the flat in question between 1970 and 2009, according to the Government, or 2010, according to the applicant. Having regard to this, the Court finds

that the applicant had sufficient and continuous links with the flat at issue for it to be considered her “home” for the purposes of Article 8 of the Convention.

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

37. 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 ...”

38. Subsequently the Court held in *McCann*, cited above:

“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.”

39. 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.”

40. The Court sees no reason to depart from this approach in the present case. It notes that an eviction order was issued against the applicant and it became final on 31 January 2008 when the Dubrovnik County Court upheld the first instance judgment (see paragraph 14 above). The Court considers that the eviction order issued against the applicant to leave the flat amounted to an interference with her right to respect for her home, irrespective of whether she moved out of her own motion after the eviction order had become final or was forcefully evicted and whether she owned another flat.

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

41. 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 the relevant provision of the Property Act in paragraph 20 above).

42. 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).

43. The possession order in question was issued 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 the possession. The national courts relied on section 161 of the Property Act when ordering the applicant’s eviction. The Court, noting that its power to review compliance with domestic law is limited (see, among other authorities, *Allan Jacobsson v. Sweden* (no. 1), 25 October 1989, Series A no. 163, p. 17, § 57), is thus satisfied that the national courts’ decisions ordering the applicant’s eviction were in accordance with domestic law (see *Ćosić*, cited above, § 19). The interference in question therefore pursued the legitimate aim of the protection of the rights of the owner of the flat (see *Orlić*, cited above, § 62).

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

44. The central question in this case is, therefore, whether the interference was proportionate to the aim pursued and thus “necessary in a democratic society”. The Court reiterates that whilst Article 8 contains no explicit procedural requirements, the decision-making process involved in measures of interference must be fair and such as to afford due respect to the interests safeguarded by Article 8 (see *Giacomelli v. Italy*, no. 59909/00, § 82, ECHR 2006-XII; *Maumousseau and Washington v. France*, no. 39388/05, § 62, 6 December 2007; *V.C. v. Slovakia*, no. 18968/07, § 141, ECHR 2011 (extracts); and *Hardy and Maile v. the United Kingdom*, no. 31965/07, § 219, 14 February 2012). In that respect the Court held as follows in the case of *Connors v. the United Kingdom*, (no. 66746/01, §§ 81–84, 27 May 2004) which concerned summary possession proceedings:

“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 ...”

45. In this connection the Court reiterates that any person at risk of an interference with his or her 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*, cited above, § 50; and *Orlić*, cited above, § 65).

46. 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 or her to do so and for a court to uphold or dismiss the claim.

47. The Court notes that in the present case the applicant raised the issue of her right to respect for her home. Before the national courts she presented arguments linked to the proportionality of her eviction, such as the fact that she had moved into the flat on the basis of a contract concluded between her and the-then owner which was subsequently lost during the war in Croatia; that she had not been allocated the flat on a merely temporary basis; that the case concerned an existential issue for her; that she had been living in the flat for about forty years; and that several meetings had been organised between the tenants and the representatives of Mlini Hotels, at which the latter promised to provide accommodation for the tenants; that she had fulfilled her obligations as a tenant.

48. The Court also notes that the flat at issue was allocated to the applicant in the specific circumstances which existed in the former Yugoslavia, where employees paid obligatory monthly contributions to housing funds and where a large proportion of employed persons were allocated socially-owned flats. It is to be noted that when the applicant was allocated the flat at issue, it was socially-owned. While the respondent State certainly enjoys a wide margin of appreciation in drawing up its social and housing policies, the Court notes that the proceedings for the applicant's eviction started only in 2005, about eight years after Mlini Hotels had purchased the building where the flat is situated. Thus, in addition to noting the applicant's longstanding occupancy of the flat and the fact that she paid the rent for it, the Court also observes that the new owner did not initially take a firm standpoint as regards the applicant's title to occupy the flat.

49. However, 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 her eviction from the flat she had occupied between 1970 and 2010.

50. By failing to examine the above arguments, the national courts did not afford the applicant adequate procedural safeguards. The decision-making process leading to the measure of interference was in such circumstances not fair and did not afford due respect to the interests

safeguarded to the applicant by Article 8 (see, by way of comparison, *Ćosić*, cited above; *Paulić v. Croatia*, no. 3572/06, 22 October 2009; *Orlić*, cited above; and *Bjedov v. Croatia*, no. 42150/09, 29 May 2012).

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

52. The applicant further complained under Article 6 of the Convention about the outcome of the proceedings at issue and under Article 1 of Protocol No. 1 to the Convention that she was not able to purchase the flat at issue. She also relied on Articles 14 and 17 of the Convention, without substantiating those complaints by any relevant arguments.

53. 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

54. 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

55. In her initial application the applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage. However, she did not seek any damage when she was invited to do so, together with her reply to the Government’s observations.

56. The Government contested that claim.

57. 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 428(a) 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.

58. As regards the applicant's claim for just satisfaction mentioned in the application form, the Court notes that under Rule 60 of the Rules of Court an applicant has to submit a just satisfaction claim within the time-limit fixed for the submission of his or her observations on the merits. The applicant did not claim any damage when invited to do so by the Court. Thus, the Court is not in a position to award her any amount in that respect.

B. Costs and expenses

59. The applicant claimed EUR 1,500 for the costs and expenses incurred before the Court.

60. The Government contested that claim.

61. 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 1,500 covering costs under all heads, plus any tax that may be chargeable to the applicant on that amount.

C. Default interest

62. 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 right to respect for the applicant's 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, EUR 1,500 (thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be converted into Croatian kuna at the rate applicable at the date of settlement;

(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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 18 July 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Dedov is annexed to this judgment.

I.B.L.
S.N.

CONCURRING OPINION OF JUDGE DEDOV

My opinion is intended to strengthen the arguments for finding a violation of Article 8 of the Convention, since the Chamber's arguments as expressed in paragraphs 48 and 49 of the judgment could be contested in the following way.

The Court presumed that "employees paid obligatory monthly contribution to housing funds", without pointing out any legal consequences of such contributions and providing no legal basis why such contributions would give rise to purchasing rights. The same doubts should apply to the fact that the flat was occupied between 1970 and 2010, as there is no legal analysis based on relevant domestic law as to whether this would automatically grant the applicant property rights. I cannot find reasons why the domestic court should have considered this issue and on what legal basis. The applicant did not claim title to ownership, nor did she challenge the privatisation of the properties by Mlini Hotels before a court, with the State as defendant. Further, the use of social housing concerns the relationship between the State and citizens, but after privatisation the new private owner was not subject to the State's social obligations.

In such a borderline case it is difficult to choose which approach would be best applied by the Court in determining which set of conflicting interests (those of the new private owner or those of the tenant) should prevail. In particular, I see a problem with the proportionality test, as there is no area where the new owner's rights could be limited in favour of the applicant. The domestic courts examined this issue, finding that the applicant had another flat to live in. Moreover, when the Court indicates that the domestic courts did not take certain circumstances into account in assessing the legal nature of the relationship between the conflicting parties, it risks going beyond its competence and acting as a court of fourth instance in relation to the merits of the case.

I would not describe the domestic court's decision to satisfy the private owner's claims as interference, because had it done otherwise this would have amounted to interference with the owner's rights and such interference would be arbitrary from the very outset, since the private owner cannot be responsible for the State's social obligations.

Given the uncertainty of the applicant's legal status, I would prefer to base my conclusion on the State's failure to take care of its former employee, a resident in social housing, and to provide her with another publicly-owned flat before entering into a privatisation transaction. In other words, the State failed to fulfil its positive obligation to take measures to protect the applicant's legal entitlement to social housing and to avoid any potential conflict between the private owner and the tenant in respect of a right to the premises. The State should have foreseen the existence of such

an obligation, arising from the change in the flat's legal status following its privatisation.

Another aspect of the State's positive obligations is its duty to maintain the quality of domestic law by ensuring a complete and comprehensive response to the issue of what should happen with regard to tenants' status after privatisation.