



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

FIRST SECTION

CASE OF PIBERNIK v. CROATIA

(Application no. 75139/01)

JUDGMENT

STRASBOURG

4 March 2004

FINAL

04/06/2004

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

In the case of Pibernik v. Croatia,

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

Mr P. LORENZEN, *President*,

Mr G. BONELLO,

Mrs F. TULKENS,

Mrs N. VAJIĆ,

Mr E. LEVITS,

Mrs S. BOTOUCHAROVA,

Mr A. KOVLER, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 12 February 2004,

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

PROCEDURE

1. The case originated in an application (no. 75139/01) 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 citizen, Ms Zdenka Pibernik (“the applicant”), on 5 October 2001.

2. The applicant was represented by Mr R. Radović, a lawyer practising in Zagreb. The Croatian Government (“the Government”) were represented by their Agent, Ms Lidija Lukina-Karajković.

3. The applicant alleged that the prolonged inability to re-possess her flat in Split violated her rights under Article 6 § 1 and Article 8 of the Convention.

4. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 4 September 2003, the Court declared the application partly admissible.

6. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The Chamber decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*).

THE FACTS

7. The applicant was born in 1965 and lives in Zagreb.

8. The applicant lived with her parents in a flat in Zagreb. Her father had a protected tenancy of the flat. The flat was owned by the Ministry of

Defence. In 1991 the parents left Croatia and the applicant stayed in the flat with her husband and children.

9. On 25 September 1995 S.Ž. broke into and occupied the flat.

10. On 4 October 1995 the applicant filed an action in the Zagreb Municipal Court (*Općinski sud u Zagrebu*) against S.Ž. for disturbance of her possession of the flat.

11. On 11 October 1997 the Zagreb Municipal Court allowed the applicant's claim and ordered S.Ž. to vacate the flat finding that he was living there without any legal ground.

12. Upon S.Ž.'s appeal the Zagreb County Court (*Županijski sud u Zagrebu*) upheld the first instance decision on 26 January 1999.

13. On 6 April 1999 the applicant requested the Zagreb Municipal Court to issue an eviction order.

14. On 18 May 1999 the court requested the applicant to submit the decision on which she based her request together with a stamped endorsement certifying final adjudication (hereinafter "the endorsement").

15. On 21 June 1999 the applicant's counsel informed the court that the presiding judge in the civil proceedings refused to endorse the decision and that he had asked the Zagreb Municipal Court's Enforcement Department to request the civil case-file from the Civil Department of the same court.

16. On 2 November 1999 the applicant's counsel asked the court to speed up the proceedings.

17. On 3 February 2000 the court issued the eviction order.

18. On 16 February 2000 the defendant filed an appeal against the eviction order with a request that the order should not be executed.

19. On 17 February 2000 the Ministry of Defence (*Ministrastvo obrane Republike Hrvatske*), as the third party in the proceedings, also appealed against the eviction order.

20. On 2 March 2000 the court invited the applicant's counsel to reply to the above appeals.

21. On 13 March 2000 the Ministry of the Homeland War Veterans (*Ministarstvo hrvatskih branitelja Domovinskog rata*) asked the court to postpone the eviction of the defendant until he had found alternative accommodation.

22. On 20 March 2000 the applicant's counsel filed his reply to the defendant's appeal.

23. On 19 May 2000 the court invited the applicant's counsel to reply to the third party's appeal. The court renewed its request on 28 June 2000.

24. On 29 June 2000 the applicant's counsel submitted a reply.

25. On 3 July 2000 the court rejected the request to postpone the eviction.

26. On 4 July 2000 the court instructed the third party to institute separate proceedings to have the eviction order cancelled.

27. On 18 July 2000 the applicant was granted a protected tenancy on the flat at issue by the Zagreb City Administration, Trnje Office (*Gradska uprava Zagreb, Područni ured Trnje*).

28. On 27 September 2000 the Ministry of Defence again asked the court to postpone the eviction because it had instituted proceedings for the cancellation of the eviction order.

29. On 28 September 2000 the Ministry of the Homeland War Veterans asked the court to postpone the eviction.

30. On 3 October 2000 S.Ž. asked the court to postpone the eviction alleging that both he and his wife were in bad health.

31. On 6 October 2000, when the execution officer of the court attempted to carry out the eviction order, S.Ž. asked that the eviction be postponed because of both his and his wife's bad health and as he was to be shortly provided with another flat. The applicant's counsel agreed to the postponement of the eviction until the end of 2000.

32. On 15 January 2001 the applicant's counsel asked the court to continue the enforcement proceedings.

33. On 18 January 2001 the court invited the applicant to pay an advance on the costs of the eviction. On 13 February 2001 the applicant's counsel informed the court that she had paid the costs.

34. On 25 May 2001 the applicant's counsel asked the court to speed up the proceedings.

35. On 13 November 2001 the Ministry of the Homeland War Veterans asked the court to postpone the eviction.

36. According to the Government, when the execution officer of the court attempted to carry out the eviction order on 14 November 2001, S.Ž. asked that the eviction be postponed until 1 February 2002 since he was supposed to be given another flat on that date. The applicant's counsel, who was also present, agreed to that request.

37. According to the applicant the eviction order was not carried out because S.Ž. and a number of war veterans who were in the flat at the time obstructed the eviction.

38. On 1 February 2002, when the execution officer of the court attempted to carry out the eviction order, S.Ž. again asked that the eviction be postponed until 15 April 2002 since he would be moving into another flat sometime before that date. The applicant's counsel, who was also present, agreed to that request.

39. On 18 March 2002 S.Ž. submitted to the court a written request for the postponement of the eviction. On 25 March 2002 the court asked the applicant to reply to that request. On 5 April 2002 the applicant's counsel opposed the request.

40. On 25 April 2002 the execution officer of the court attempted to carry out the eviction order. The Government submit that it was not carried out because neither the applicant nor her counsel were present. The applicant submits that the eviction order was not executed because the assistance of the police had not been ensured and because of the presence in the flat of a number of war veterans who had obstructed the eviction.

41. On 23 July 2002 the court scheduled the eviction for 17 October 2002.

42. On 10 September 2002 the applicant asked the court to ensure the availability of at least two execution officers and to block the passage to the flat in order to prevent persons from obstructing the eviction.

43. The Government submit that the eviction scheduled for 17 October 2002 was not carried out because the applicant and her representative were not present.

44. The applicant submits that she and her representative were not present because the court did not comply with her request of 10 September 2002.

45. The eviction scheduled for 25 February 2003 was not carried out.

46. The eviction was carried out on 21 March 2003.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

47. The applicant complained that the proceedings instituted by her on 4 October 1995 before the Zagreb Municipal Court for eviction of S.Ž. from her flat and terminated on 21 March 2003 when she re-gained the possession of the flat lasted unreasonably long contrary to Article 6 § 1 of the Convention, the relevant parts of which read as follows:

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

A. Period to be taken into consideration

48. The Court notes that the proceedings started on 4 October 1995 when the applicant filed an action with the Zagreb Municipal Court seeking eviction of S.Ž. from her flat. However, the period which falls within the Court's jurisdiction did not begin on that date, but on 6 November 1997, after the Convention entered into force in respect of Croatia (see *Horvat v. Croatia*, no. 51585/99, § 50, ECHR - 2001-VIII). The proceedings were concluded on 21 March 2003 when the applicant regained possession of the flat. In this respect the Court reiterates that execution of a final decision given by any court must be regarded as an integral part of the “trial” for the purposes of Article 6 (see *Hornsby v. Greece*, judgment of 19 March 1997, *Reports of Judgments and Decisions* 1997-II, p. 511, § 40). They therefore lasted seven years, five months and seventeen days of which a period of five years, four months and fifteen days falls to be examined by the Court.

49. The Court reiterates that in order to determine the reasonableness of the length of time in question, regard must be had to the state of the case on 5 November 1997 (see, among other authorities, *Styranowski v. Poland*, no. 28616/95, § 46, ECHR 1998-VIII). In this connection the Court notes

that at the time of the entry into force of the Convention in respect of Croatia the proceedings had lasted two years, one month and two days.

B. Applicable criteria

50. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the criteria established by its case-law, particularly the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

C. The parties' submissions

51. The Government argued that eviction proceedings were by their nature complex because court officers were faced with many obstacles when attempting to carry out eviction orders. They observed also that in the present case, both S.Ž. and the Ministry of the Homeland War Veterans had asked on several occasions for the postponement of the eviction order and had filed appeals against it.

52. Although the Government accepted that the proceedings in question were of importance for the applicant, they considered that they were not urgent.

53. As to the applicant's behaviour, the Government alleged that she had contributed to the length of the proceedings because she had failed to submit a copy of the judgment to be enforced. Furthermore, each time her opponent had requested a postponement the applicant acceded to the request. Moreover, the applicant and her counsel had failed to appear at the appointment scheduled for 25 April 2002.

54. As to the conduct of the domestic authorities the Government stressed that the Zagreb Municipal Court had about 200,000 cases per year. Given this workload, they considered that the court had dealt with the applicant's case with due diligence.

55. The applicant disagreed with the Government and stressed that the length of the proceedings had been excessive.

D. The Court's assessment

56. As to the complexity of the case the Court firstly notes that in the period after the ratification of the Convention by Croatia the case was examined upon S.Ž.'s appeal before the Zagreb County Court as the appellate court and the rest of the proceedings concerned the execution of the court's final judgment ordering the eviction of S.Ž. from the applicant's flat. As to the appellate proceedings, the Court notes that the proceedings for disturbance of possession were only concerned with the actual

possession of the flat in question and that there was no factual or legal issue that might be considered complex. As to the enforcement proceedings, the Court considers that there were no special issues to be determined during the enforcement proceedings and that the proceedings were not complex in any respect.

57. As to the behaviour of domestic authorities the Court cannot accept that the circumstance invoked by the Government, such as the fact that S.Ž. and the Ministry of the Homeland War Veterans had asked on several occasions for the postponement of the eviction order and had filed appeals against it, or the excessive workload of the Zagreb Municipal Court, were of such a nature as to justify the delays in carrying out the eviction order. In this respect the Court reiterates that Article 6 § 1 imposes on the Contracting States the duty to organise their judicial systems in such a way that their courts can meet each of its requirements, including the obligation to hear cases within a reasonable time (see, among many other authorities, *Kyrtatos v. Greece*, ECHR-2003..., 22 May 2003, § 42).

58. Furthermore, the Court notes that the Ministry of the Homeland War Veterans on 13 March 2000 asked the Zagreb Municipal Court to postpone the enforcement of the eviction order. Although the court rejected such a request, it did so only on 3 July 2000 by which the enforcement of the eviction order was postponed for a period of about four months.

59. As to the applicant's behaviour the Court notes that the applicant did not submit a copy of the judgment to be enforced because the presiding judge in the civil proceedings refused to endorse the decision, which in the Court's view, cannot be held against the applicant. The Court notes further that the applicant agreed that the enforcement of the eviction order scheduled for 6 October 2000 be postponed until the end of the year 2000. However, such an agreement was obviously motivated by the applicant's expectation that the illegal occupants of her flat would vacate the flat of their own will which follows from the fact that on 15 January 2001 the applicant asked the Court to continue the proceedings. Even if the Court accepts the Government's assertion that on two more occasions, i.e., 14 November 2001 and 1 February 2002, the applicant's counsel agreed that the enforcement of the eviction order be postponed, he did so for only a limited period of time. These circumstances together with the fact that the applicant and her counsel were not present on one single occasion, 25 April 2002, when the court scheduled the eviction of S.Ž. cannot in any respect justify the duration of the proceedings as a whole.

60. Having regard to the duration of the appellate proceedings before the Zagreb County Court and the fact that the eviction order was not enforced for a period of about four years and that the responsibility for such a long duration of the proceedings falls on the domestic authorities, the Court finds that there has been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

61. The applicant contented that her inability to live in her flat for more than seven years violated her right to respect for her home. She relied on Article 8 of the Convention which reads as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

62. The Government agreed that the flat in question was the applicant's home. However, they argued that there had been no interference with the applicant's right to respect for her home. On the contrary, the domestic courts had protected her by establishing her right to re-possess the flat in the civil proceedings and assisting her in regaining possession in the context of the enforcement proceedings.

63. The applicant disagreed with the Government.

64. The Court accepts the Government's contention that the circumstances of the present case do not reveal any active endeavour on behalf of the domestic authorities that might be considered as an interference with the applicant's right to respect for her home. It is true that the domestic authorities recognised the applicant's right to occupy the flat in question and consequently ordered the eviction of S.Ž. However, the Court reiterates that while the essential object of Article 8 is to protect the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference: in addition to this negative undertaking, there may be positive obligations inherent in an effective respect for the applicant's rights protected under Article 8 of the Convention (see, *mutatis mutandis*, *Botta v. Italy*, judgment of 24 February 1998, *Reports* 1998-I, p. 422, § 33).

65. However, the boundaries between the State's positive and negative obligations under Article 8 do not lend themselves to precise definition. The applicable principles are nonetheless similar. In determining whether or not such an obligation exists, regard must be had to the fair balance which has to be struck between the general interest and the interests of the individual; and in both contexts the State enjoys a certain margin of appreciation (see, for instance, *Nuutinen v. Finland*, judgment of 27 June 2000, *Reports* 2000-VIII, p. 83, § 127).

66. The Court reiterates that its task is not to substitute itself for the competent Croatian authorities in determining the most appropriate methods for execution of final domestic judgments, but rather to review under the Convention the decisions that those authorities have taken in the exercise of their power of appreciation. The Court will therefore examine whether Croatia, in handling the applicant's case, has been in breach of its positive

obligation under Article 8 of the Convention (see, *mutatis mutandis*, *Handyside v. the United Kingdom*, judgment of 7 December 1976, Series A no. 24, p. 23, § 49 and *Hokkanen v. Finland*, judgment of 23 September 1994, Series A no. 299-A, p. 20, § 55).

67. As to the facts of the present case, the Court firstly notes that the flat in question was the applicant's home where she had lived before S.Ž. moved in and thus prevented the applicant from living there. The Court notes further that S.Ž. forcefully broke into the applicant's flat and was living there without any legal ground, as it was established by the domestic courts (see § 11 above).

68. Although the Zagreb Municipal Court recognised the applicant's right to live in her home and ordered eviction of S.Ž., the judgment of that court was not enforced for a very long period of time as it has been established under the Court's assessments concerning violation of Article 6 § 1 of the Convention. The Court has found that the delays in carrying out the execution order were entirely attributable to the domestic authorities (see §§ 56-60 above). In the present case the only avenue by which the applicant could have repossessed her flat was through judicial proceedings before a civil court, since the occupiers refused to comply with the court's judgment ordering their eviction.

69. The Court notes that due to the fact that the Zagreb Municipal Court's judgment ordering the eviction of S.Ž. was not executed for a prolonged period of time, the applicant was prevented from living in her home for a period of more than three years after the Convention entered into force in respect of Croatia.

70. As it has already been established under the assessment under Article 6 § 1 of the Convention, the Court does not find that there existed any special circumstances which would have justified non-execution of the Zagreb Municipal Court's judgment for such a long period of time. To the contrary, it is evident that the Contracting State did not show that it organised its legal system in such a way that it would prevent obstruction of the execution of the final judgments of its courts. Such a failure on the part of the Contracting State in the present case created or at least enabled a situation where the applicant was prevented from enjoying her home for a very long period of time. Thus, it cannot be said that the Contracting State complied with its positive obligations under Article 8 of the Convention to secure to the applicant respect for her home.

Accordingly there has been a violation of Article 8 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

71. 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

72. The applicant sought a sum of 500 German Marks (DEM) per month from 1 July 1999 until 21 March 2003 for alternative accommodation in that period and submitted a lease contract. She also sought EUR 5,000 for the disproportional length of proceedings and of EUR 4,500 for interference with her right to respect for her home.

73. The Government objected to the amounts sought.

74. As to the applicant's request for pecuniary damage the Court accepts that the applicant had to pay for the alternative accommodation and awards her EUR 11, 250 under this head.

75. As to the non-pecuniary damage, the Court accepts that it is reasonable to assume that in the present case, the applicant suffered anxiety and frustration as a result of the delays in carrying out the eviction order found by the Court to have been attributable to the State and also in her inability to enjoy the respect for her home. On an equitable basis, the Court decides to award her EUR 5,000 under this head.

B. Costs and expenses

76. The Court notes that the applicant has not made any claim in this respect. Therefore, it makes no awards under this head.

C. Default interest

77. The Court considers it appropriate that the default interest 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. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
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 which are to be converted into the national currency of the respondent State at a rate applicable at the date of settlement:
 - (i) EUR 11,250 (eleven thousand, two hundred and fifty euros) in respect of pecuniary damage;
 - (ii) EUR 5,000 (five thousand euros) in respect of non-pecuniary damage;

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

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

Done in English, and notified in writing on 4 March 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Peer LORENZEN
President