



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

FIRST SECTION

CASE OF ČOSIĆ v. CROATIA

(Application no. 28261/06)

JUDGMENT

STRASBOURG

15 January 2009

FINAL

05/06/2009

This judgment may be subject to editorial revision.

In the case of Ćosić v. Croatia,

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

Christos Rozakis, *President*,

Nina Vajić,

Elisabeth Steiner,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 11 December 2008,

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

PROCEDURE

1. The case originated in an application (no. 28261/06) 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, Mrs Katarina Ćosić (“the applicant”), on 31 May 2006.

2. The applicant was represented by Mrs S. Pavić, a lawyer practising in Požega. The Croatian Government (“the Government”) were represented by their Agent, Mrs Š. Stažnik.

3. On 16 October 2007 the Court decided to communicate the complaint concerning the applicant’s right to respect for her home to the Government. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1943 and lives in Požega.

1. Background to the case

5. The applicant has served as a teacher in various elementary schools in Croatia. In 1966 she began her service in an elementary school in Čaglin. In 1970 she gave birth to a son who remained living with her until 2004. As a

single mother she was granted a specially protected tenancy (*stanarsko pravo*) of a flat in Čaglin. In 1984 the applicant was transferred to an elementary school in Požega, a town in the same region. The school provided her with a flat, which it had temporarily leased from its then owner, the Yugoslav People's Army (YPA).

6. The lease expired in 1990. In 1991 the State took over all property of the YPA, thereby becoming the owner of the flat. The school then asked on several occasions for the lease to be extended but these requests were ignored by the competent authorities. However, since no request for her eviction was made and no other flat was provided for her by her employer, the applicant remained living in the flat and continued paying a monthly rent to the State.

2. Proceedings for the applicant's eviction

7. On 7 January 1999 the State brought a civil action against the school and the applicant in the Požega Municipal Court (*Općinski sud u Požegi*), seeking the applicant's eviction. The State argued that since the applicant's lease had expired she had no further legal entitlement to occupy the flat.

8. On 30 October 2002 the court granted the State's claim and ordered the applicant to vacate the flat within fifteen days even though, as it noted, the applicant had no other place to stay. The court did so because it was satisfied that the State owned the flat and the applicant had no legal entitlement to occupy it. The judgment concluded as follows:

“The evidence presented in the proceedings lead this court to finding the plaintiff's claim to be well-founded.

The Government's Decree of 2 October 1991 resulted in all possessions of the former YPA [Yugoslav Peoples Army] coming into the ownership of the Republic of Croatia ...

Before the above Decree had been enacted, a contract in relation to the lease of the flat in question was concluded ... between the YPA ... and the school ... The contract was concluded to last for a limited period of time - until 31 December 1990 when the school was obliged to return the flat ... The contract was concluded pursuant to section 36 of the then valid Act on Financing of the YPA ... That Act allowed the YPA to lease its property ... On the basis of the contract [between the YPA and the school], the school ... entered into further contracts with the second respondent Katarina Ćosić allowing her to temporarily occupy the flat and obliging her to pay rent as well as all other expenses connected with the use of the flat, while maintaining the second respondent's obligation to return the flat to the YPA after the expiry of the contract.

Neither the [initial] contract nor the additional contracts between the school and the second respondent are a basis for acquiring a specially protected tenancy of the flat in question. ... Thus, irrespective of the time [the second respondent] has occupied the flat and irrespective of the fact that the respondents continued to be in possession of the flat even after all contracts [concerning the flat] had expired, there is no legal basis for the second respondent to have acquired any rights on the flat in question ...

Although this court is aware of the respondent's unenviable position, it has to adopt its decisions exclusively on the basis of the laws and therefore, relying on the facts of the case, it has decided as in the operative part of this judgment."

9. The first-instance judgment was upheld by the Požega County Court (*Županijski sud u Požegi*) on 13 March 2000 and by the Constitutional Court (*Ustavni sud Republike Hrvatske*) on 9 February 2006. Both these courts endorsed the reasoning of the first-instance court that the applicant had no legal entitlement to occupy the flat.

II. RELEVANT DOMESTIC LAW

10. Section 161, paragraph 1 of the Act on Ownership and other Rights *in Rem* (*Zakon o vlasništvu i drugim stvarnim pravima*, Official Gazette no 91/1996) reads as follows:

"The owner has the right to seek repossession of his or her property from the person in whose possession it is."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

11. The applicant complained that the national courts' judgments ordering her eviction violated her right to respect for her home, contrary to 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."

12. The Government contested that argument.

A. Admissibility

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

B. Merits

1. Submissions by the parties

14. The applicant argued that the domestic authorities had violated her right to respect for her home by ordering her eviction from the flat where she had been living at that time for more than eighteen years. She maintained that she had been given the right to occupy the flat in question when she, as an elementary school teacher, had been transferred to work in Požega from Čaglin, where she had had a specially protected tenancy of a publicly owned flat. The applicant argued that the domestic courts had not taken all those circumstances into account when ordering her eviction, but had reached that decision only on the ground that she no longer had a right to occupy the flat.

15. The Government argued that there had been no interference with the applicant's right to respect for her home since she was still living in the flat and although her eviction had been ordered by a court's judgment, proceedings for the enforcement of that judgment had not been instituted.

16. Furthermore, the Government contended that were the Court to find that there had been an interference, it was based on the laws regulating ownership. The decision ordering the applicant's eviction also pursued a legitimate aim, namely the right of the State to claim possession of its property.

17. As to the proportionality of the interference, the Government claimed that they enjoyed a wide margin of appreciation and that the applicant was no longer legally entitled to occupy the flat. Furthermore, she had not asked that the flat be leased to her.

2. The Court's assessment

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 (see, *mutatis mutandis*, *Stanková v. Slovakia*, no. 7205/02, § 7, 9 October 2007).

19. 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 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. The Court further considers that the interference in question pursued the legitimate aim of protecting the rights of the State as the owner of the flat.

20. 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 ...”

21. In the present case, the Court notes that when it comes to the decisions of the domestic authorities, their findings were limited to the

conclusion that under applicable national laws the applicant had no legal entitlement to occupy the flat. The first-instance court expressly stated that while it recognised the applicant's difficult position, its decision had to be based exclusively on the applicable laws. 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. However, the guarantees of the Convention require that the interference with an applicant's right to respect for her 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).

22. In this connection the Court reiterates that the loss of one's home is a most extreme form of interference with the right to respect for the home. Any person at risk of an interference of this magnitude 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, his or her right of occupation has come to an end (see *McCann v. the United Kingdom*, no. 19009/04, § 50, 13 May 2008).

23. However, in the circumstances of the present case the applicant was not afforded such a possibility. It follows that, because of such absence of adequate procedural safeguards, there has been a violation of Article 8 of the Convention in the instant case.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 AND ARTICLE 14 OF THE CONVENTION

24. The applicant complained that the proceedings before the national courts had been unfair and that she had been discriminated against. She relied on Article 6 § 1 and Article 14 of the Convention.

25. 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 as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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

27. The applicant claimed 60,300 euros (EUR) in respect of pecuniary damage and EUR 10,000 in respect of non-pecuniary damage.

28. The Government submitted that there was no causal link between the applicant’s claims and the pecuniary damage claimed. As to the claim in respect of non-pecuniary damage, the Government deemed it excessive.

29. As regards pecuniary damage, the Court notes that the applicant has not supplied any evidence capable of supporting her claim which could be causally linked to the violation of the Convention it has found. It is therefore not appropriate to award any compensation under that head (see also *Angelova and Iliev v. Bulgaria*, no. 55523/00, § 125, 26 July 2007, and *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, § 130, ECHR 1999-III).

30. On the other hand, although the Court has found Article 8 violated in its procedural aspect only, it considers that the applicant suffered some non-pecuniary damage, in particular feelings of frustration and injustice, not sufficiently compensated by the finding of a violation of the Convention (see *Connors v. the United Kingdom*, no. 66746/01, § 114, 27 May 2004). Deciding on an equitable basis, it awards the applicant EUR 2,000 under this head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

31. The applicant also claimed EUR 369,97 for the costs and expenses incurred before the Court.

32. The Government made no comments.

33. 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 were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum claimed, plus any tax that may be chargeable to the applicant on that amount.

C. Default interest

34. 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. *Declares* the complaint under Article 8 of the Convention concerning the applicant's right to respect for her 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 in accordance with Article 44 § 2 of the Convention, the following amounts which are to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 2,000 (two thousand euros) in respect of non-pecuniary damage, plus any taxes that may be chargeable to the applicant;
 - (ii) EUR 369,97 (three hundred and sixty-nine euros and ninety-seven cents) in respect of costs and expenses, plus any taxes that may be chargeable to the applicant;
 - (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 15 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President