CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

FINAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 59532/00
by Krstina BLEČIĆ
against Croatia

The European Court of Human Rights (First Section), sitting on 30 January 2003 as a Chamber composed of

Mr C.L. ROZAKIS, *President*,
Mrs F. TULKENS,
Mr P. LORENZEN,
Mrs N. VAJIĆ,
Mr E. LEVITS,
Mr V. ZAGREBELSKY,
Mrs E. STEINER, *judges*,
and Mr S. NIELSEN, *Deputy Section Registrar*,

Having regard to the above application lodged on 6 May 2000,

Having regard to the partial decision of 6 December 2001,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Ms Krstina Blečić, is a Croatian citizen, who was born in 1926 and lives in Rome, Italy. She is represented before the Court by Mr Toni Vukičević, a lawyer practising in Split, Croatia. The respondent Government are represented by their Agent, Ms Lidija Lukina-Karajković.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

In 1953 the applicant, together with her husband, acquired the specially protected tenancy on a flat in Zadar. After her husband's death in 1989 the applicant became the sole holder of the specially protected tenancy.

On 3 June 1991, Parliament enacted the Specially Protected Tenancies (Sale to Occupier) Act (*Zakon o prodaji stanova na kojima postoji stanarsko pravo*) which regulates the sale of publicly-owned flats previously let under specially protected tenancy.

On 17 July 1991 the applicant went to visit her daughter who lived in Rome, Italy, where she intended to stay for the summer. However, by the end of August 1991 the armed conflict escalated in Dalmatia, resulting in severe travel difficulties in that area, including the town of Zadar.

In October 1991 the Croatian authorities ended payments of the applicant's pension since, at that time, she was not a Croatian citizen. She also lost the right to medical insurance she previously had held. At 65 years of age and not in the best of health, the applicant decided to remain in Rome.

From 15 September 1991 the town of Zadar was exposed to constant shelling and the supply of electricity and water was disrupted for over a hundred days.

In November 1991 M.F. with his wife and two children broke into the applicant's flat in Zadar.

On 12 February 1992 the Zadar Municipality (*Općina Zadar*) brought a civil action against the applicant for termination of her specially protected tenancy on the flat in Zadar, before the Zadar Municipal Court (*Općinski sud u Zadru*). The Zadar Municipality claimed that the applicant had been absent from the flat for a period longer than six months without justified reason. The applicant claimed that she stayed with her daughter in Rome from July 1991 until May 1992 because she was not able to return to Zadar since she had no means of subsistence, no health insurance and was in bad

health. Furthermore, during her stay in Rome she learned from a neighbour that M.F. had broken into her flat with his family. When she had inquired about her flat and her possessions in the flat M.F. had threatened her over the telephone.

On 9 October 1992 the Zadar Municipal Court terminated the applicant's specially protected tenancy. That court assessed the facts relevant for the period from July 1991 until May 1992 and found that the applicant's reasons for not living in the flat were not justified.

Following the applicant's appeal against the judgment, it was quashed by the Zadar County Court on 10 March 1993. That court found that the first instance court failed to assess all relevant facts and remitted the case for re-trial.

On 18 January 1994 the Zadar Municipal Court pronounced judgment granting the plaintiff's claim and terminating the applicant's specially protected tenancy. It found again that the applicant had been absent from the flat for over six months without justified reason.

The applicant appealed. On 19 October 1994 the Zadar County Court (*Županijski sud u Zadru*) reversed the first instance judgment and rejected the plaintiff's claim. It found that the escalation of war and the applicant's health situation justified her absence from the flat in question.

On 10 April 1995 the Zadar Municipality filed a request for revision on points of law (*zahtjev za reviziju*) with the Supreme Court (*Vrhovni sud Republike Hrvatske*).

On 15 February 1996 the Supreme Court granted the request for revision and reversed the County Court's judgment. It found that the reasons for the absence from the flat submitted by the applicant were not justified.

On 8 November 1996 the applicant filed a constitutional complaint with the Constitutional Court (*Ustavni sud Republike Hrvatske*). She claimed that her right to respect for her home, her right to property and her right to life had been violated and that she had been deprived of a fair trial.

On 8 November 1999 the Constitutional Court rejected the applicant's complaint. It found that the Supreme Court had correctly applied the relevant legal provisions to the factual background established by the lower courts when it found that the applicant's absence from the flat for more than six months was unjustified and that, therefore, the applicant's constitutional rights were not violated.

B. Relevant domestic law

Section 99 (1) of the Housing Act (*Zakon o stambenim odnosima*, Official Gazette nos. 51/1985, 42/1986, 22/1992 and 70/1993) provides that the specially protected tenancy can be terminated if the holder does not occupy the flat for a period of six months or more without any justified reason.

The Specially Protected Tenancies (Sale to Occupier) Act (Official Gazette no. 27/1991) regulates the conditions of sale of flats let under specially protected tenancies. In general, the Act entitles the holder of a specially protected tenancy on a publicly-owned flat to purchase it under favourable conditions.

COMPLAINTS

1. The applicant complains under Article 8 of the Convention that her right to respect for her home was violated.

2. She also complains under Article 1 of Protocol No. 1 that her right to property was violated because she was deprived of a possibility to buy the flat in question under favourable conditions, as all other holders of the specially protected tenancy.

THE LAW

1. Preliminary question

In the Court's view, although the respondent Government has not raised any objection as to the Court's competence *ratione temporis*, this issue calls for a consideration by the Court.

It recalls that in accordance with the generally recognised rules of international law, the Convention only governs, for each Contracting Party, facts subsequent to its entry into force with regard to that Party (see, for example, X. v. Portugal, application no. 9453/81, Commission decision of 13 December 1982, Decisions and Reports (DR) 31 pp. 204, 208 and *Kadikis v. Latvia* (dec.), no. 47634/99, 29 June 2000 and *Jovanović v. Croatia* (dec.), no. 59109/00, 28 February 2002, ECHR - 2002 ...).

The Court recalls that Croatia recognised the competence of the Court to receive applications "from any person, non-governmental organisation or group of individuals claiming to be a victim of a violation by Croatia of the rights recognised in the Convention through any act, decision or event occurring after 5 November 1997." Accordingly, the Court is not competent to examine the present application in so far as it refers to facts occurring before the date of the ratification of the Convention.

The Court notes that in June 1991 the applicant left the flat in Zadar where she had lived. However, her specially protected tenancy was not terminated by the fact that she had left the flat, but by virtue of the subsequent decisions of the domestic courts. In this respect the present

application differs significantly from the Jovanović case where the events complained of presented a single instantaneous act and the subsequent proceedings were instituted by the applicant in order to challenge that act, i.e. the decision of his dismissal from work (see Jovanović, cited above).

Furthermore, it cannot be said that in the proceedings before the domestic courts the applicant's specially protected tenancy was terminated by a single decision, but was subject to proceedings before the domestic courts as a whole.

The Court notes that the first instance judgments were pronounced on 9 October 1992 and 18 January 1994 by the Zadar Municipal Court, the judgment upon the applicant's appeal on 19 October 1994 by the Zadar County Court and the judgment upon the plaintiff's request for revision on 15 February 1996 by the Supreme Court, all prior to the entry into force of the Convention in respect of Croatia.

While it is true that the above part of the proceedings concerning the termination of the applicant's specially protected tenancy took place prior to the entry into force of the Convention in respect of Croatia, the final decision was given by the Constitutional Court on 8 November 1999, i.e. after the Convention had entered into force in respect of Croatia.

The Court finds that the outcome of the Constitutional Court proceedings was directly decisive for the applicant's rights protected by the Convention because the Constitutional Court was called upon to decide whether the lower courts' judgments violated the applicant's right to respect for her home and/or her property rights, the same issues that are now pending before the Court.

The Court considers, therefore, that the present application falls within its competence *ratione temporis*.

2. The applicant complains that the decision of the domestic courts to terminate her specially protected tenancy 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."

The Government argue that the applicant, after the death of her husband in 1989 had not lived in the flat in Zadar continually, but had spent up to more than five months per year visiting her daughter in Rome. In July 1991 the applicant abandoned the flat completely and did not return to Zadar until May 1992. Although the applicant meanwhile learned that M.F. occupied

her flat in her absence, she failed to notify the owner of the flat or to institute any proceedings to have him evicted. She also failed to notify the owner that she was in Rome and that she was not able to return to Zadar due to her illness and the war.

The Government maintain that in view of the above facts, it cannot be said that the flat in question could be considered as the applicant's home for the purposes of Article 8 of the Convention.

The Government state further that there has been no interference with the applicant's right to respect for her home since no eviction of the applicant from the flat in question took place. On the contrary, the applicant herself left the flat several years before the termination of her specially protected tenancy in the proceedings before the domestic courts.

They submit further that, even if the Court finds that there was an interference, it was prescribed by law, namely Section 99 of the Housing Act, which allowed termination of the specially protected tenancy when the tenants did not use the flat for a period exceeding six months with no justified reason.

The Government argue that in the relevant period, in spite of the attacks on Zadar, there existed no immediate need to leave the city at any time and that a number of displaced persons from the surrounding area moved into the town. The applicant, however, chose to leave Zadar and went to live in Rome with her daughter.

The Government stress further that the applicant was not an owner of the flat but had only obtained the specially protected tenancy to live in the flat. By terminating the applicant's specially protected tenancy the domestic authorities pursued a legitimate aim because by abandoning the flat she showed that her need for the flat ceased to exist which enabled the authorities to give the flat to another person who needed it.

The applicant argues that she did not abandon the flat in question but only went to visit her daughter in Rome. During her visit, the war in Croatia escalated and she was not able to return. Afterwards she fell ill and had to stay in Rome. Furthermore, since M.F. occupied her flat she was not able to return. When she returned in May 1992 she was not able to stay in the flat in question and therefore, she was forced to go back to Rome to stay with her daughter.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

3. The applicant also complains that her right to property was violated because she was deprived of a possibility to buy the flat in question. She relies on Article 1 of Protocol No. 1 which reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The Government submit that this provision is not applicable to the present case because the applicant was not the owner of the flat in question while the right of the applicant to live in the flat which was not her property does not fall within the ambit of Article 1 of Protocol No. 1. Furthermore, that provision does not guarantee the right to buy property.

The applicant argues that her specially protected tenancy was a basis for the acquisition of property rights. She explains that all holders of specially protected tenancy were able to buy under very favourable conditions the flats they occupied. However, because her specially protected tenancy was terminated the applicant lost that opportunity.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

For these reasons, the Court unanimously

Declares the remainder of the application admissible.

Søren NIELSEN	Christos ROZAKIS
Deputy Registrar	President