

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

FIRST SECTION

CASE OF HEGEDIŠ v. CROATIA

(Application no. 41306/18)

JUDGMENT

STRASBOURG

23 June 2022

This judgment is final but it may be subject to editorial revision.



In the case of Hegediš v. Croatia,

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

Krzysztof Wojtyczek, *President,*
Lorraine Schembri Orland,
Ioannis Ktistakis, *judges,*
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 41306/18) 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") on 24 August 2018 by a Croatian national, Ms Melita Hegediš, born in 1968 and living in Zagreb ("the applicant") who was represented by Ms A. Gruber, a lawyer practising in Zagreb;

the decision to give notice of the complaint concerning the applicant's property rights to the Croatian Government ("the Government"), represented by their Agent, Ms Š. Stažnik, and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 31 May 2022,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the applicant's inability to use her flat occupied by a protected lessee.

2. In particular, the applicant is the owner of a flat in Zagreb with a surface area of 71.30 square metres occupied by a protected lessee (*zaštićeni najmoprimac*). Under the Lease of Flats Act, which has been in force since 5 November 1996, such lessees are subject to a number of protective measures, such as the duty of landlords to enter into a lease of indefinite duration; the payment of protected rent, the amount of which is set by the Government and is significantly lower than the market rent; and better protection against termination of the lease. In particular, under section 40 of the Lease of Flats Act a landlord who intends to move into the flat or install his children, parents or dependants in it is entitled to terminate the protected lease only if (1) the landlord does not have other accommodation for himself or herself and for his or her family, and is either entitled to permanent social assistance or is over sixty years of age, or (2) the lessee owns a suitable habitable flat in the same municipality or township.

3. In 2012 the applicant brought a civil action seeking eviction of the protected lessee and a member of her household. She submitted (a) that she intended to move into the flat with her husband because she had no other accommodation and lived illegally in a State-owned flat with a surface area

of 31 square metres, and (b) that she was entitled to permanent social assistance. On 23 May 2016 her action was dismissed by a judgment of the first-instance court, which was upheld on 11 October 2016 by a judgment of the second-instance court. Those courts established that the applicant was not entitled to permanent, but only to one-time social assistance and thus did not satisfy that statutory requirement for termination of the protected lease.

4. The applicant then lodged a constitutional complaint, which the Constitutional Court dismissed on 26 February 2018.

5. Before the Court the applicant complained, under Article 1 of Protocol No. 1 to the Convention, that the domestic decisions refusing to order the lessee's eviction had imposed a disproportionate burden on her because she had not owned any other property that would meet her housing needs. Moreover, the costs of the condominium fee that she had been obliged to pay as the owner of the flat occupied by the protected lessee and the rent for the flat in which she had been living exceeded the amount of protected rent she had been entitled to receive.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

6. The Court notes at the outset that, unlike other cases (see *Statileo v. Croatia*, no. 12027/10, 10 July 2014, and *Bego and Others v. Croatia* [Committee], nos. 35444/12 and four others, 15 November 2016) concerning restrictions on landlords' rights imposed by the protected lease scheme, the applicant in the instant case complained only of her inability to evict the protected lessee and move into her flat, rather than of the inadequate level of (protected) rent. However, those two restrictions on landlords' rights are inextricably linked as the level of protected rent is a crucial element in determining whether the restriction in respect of the termination of protected leases strikes the requisite fair balance between the general interests of the community and landlords' property rights.

A. Admissibility

7. The Government argued that the applicant had not exhausted domestic remedies because she had not raised the issue of inadequate level of protected rent in the eviction proceedings nor instituted separate civil proceedings for compensation against the State seeking the difference between the protected rent and the market rent. Moreover, in the eviction proceedings she had failed to raise the relevant arguments concerning the alleged violation of her right to property in her constitutional complaint (see paragraph 4 above).

8. In reply to similar arguments in earlier cases the Court has held that the alleged violations stemmed from the national legislation itself and that the applicants therefore could not have effectively challenged the level of protected rent or their inability to recover possession of their flats (see *Statileo*, cited above, §§ 96 and 165, and *Skelin-Hrvoj and Đuričić v. Croatia* [Committee], nos. 23414/15 and 52161/15, §§ 50-53, 10 June 2021).

9. This however does not prevent the Court from taking into account subsequent case-law development at the domestic level. It notes in that regard that landlords can now seek compensation for the difference between the protected rent and the market rent before civil courts. However, the relevant evidence of that case-law development are not the two judgments of the second-instance courts from November 2017 and January 2018 on which the Government relied, but the Supreme Court's judgment of 19 December 2018 to which the Government referred in their revised action plan of 30 September 2021 submitted to the Committee of Ministers in the process of execution of the judgments in the *Statileo*-group. That is so because it cannot be said that there has indeed been a shift in the existing case-law until the views expressed by lower courts are endorsed by the Supreme Court or the Constitutional Court.

10. Moreover, in cases like the present one, where the remedy in question was the result of interpretation by the courts, it normally takes six months for such a development of the case-law to acquire a sufficient degree of legal certainty before the public may be considered to be effectively aware of the domestic decision which had established the remedy and the persons concerned be enabled and obliged to use it (see, for example, *Kirinčić and Others v. Croatia*, no. 31386/17, § 115, 30 July 2020).

11. Given that the applicant lodged her application with the Court on 24 August 2018 and the case-law establishing the compensatory remedy relied on by the Government acquired a sufficient degree of legal certainty six months after the Supreme Court's judgment of 19 December 2018 (see paragraph 9 above), the applicant could not have benefited from it.

12. In the present case the Government did not submit case-law examples of a similar case-law development regarding a civil action for eviction. The Court therefore refers to its conclusion in earlier cases (see paragraph 8 above) and finds that at the relevant time the applicant could not have effectively challenged domestically the level of protected rent or her inability to recover possession of her flat.

13. Since a civil action for eviction was thus not an effective remedy to be exhausted for the purpose of Article 35 § 1 of the Convention, the alleged shortcomings in the applicant's constitutional complaint lodged in the eviction proceedings (see paragraph 7 above) are therefore inconsequential. In any event, the Court notes that the applicant in her constitutional complaint did complain about the inability to move into her flat and mentioned that she had not owned any other property that would meet her housing needs. She

therefore expressed the same grievances she subsequently submitted to the Court (see paragraph 5 above).

14. The Government's objections regarding the exhaustion of domestic remedies must therefore be rejected.

15. The Court further notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

16. The Court has already found a violation of Article 1 of Protocol No. 1 to the Convention in a case raising similar issues to the present one (see *Statileo*, cited above, §§ 116-45). Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion on the merits of the present application.

17. There has accordingly been a breach of Article 1 of Protocol No. 1 to the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

18. The applicant claimed 50,000 euros (EUR) in respect of pecuniary damage which corresponded to the damage to her flat caused by the protected lessee, the costs of the repair and maintenance of the flat which she had borne, and the condominium fee paid by her. She also claimed EUR 30,000 in respect of non-pecuniary damage and EUR 1,040 in respect of costs and expenses incurred before the domestic courts.

19. The Government contested these claims.

20. The Court finds that there is no causal link between the applicant's claim for pecuniary damage and the violation found. As the owner of the flat she would in any event have to pay the condominium fee and carry out the required repairs. If the damage to the flat was indeed caused by the protected lessee, she could have brought a civil action for compensation against the lessee under section 15 of the Lease of Flats Act.

21. The applicant did not claim compensation for the difference between protected rent and adequate rent. Nor did she claim compensation for the difference between the condominium fee and the rent she had to pay for the flat in which she has been living, on the one side, and the protected rent, on the other side (see paragraph 5 above). The Court therefore rejects the applicant's claim for pecuniary damage. By way of observation, it also notes that she can now seek such compensation before the domestic courts (see paragraph 9 above).

22. However, the Court finds that the applicant must have sustained non-pecuniary damage (see *Statileo*, cited above, § 159). Ruling on an

equitable basis, it awards her EUR 5,000 under that head, plus any tax that may be chargeable.

23. As regards the claim for the costs and expenses the applicant incurred before the domestic courts, the Court notes, having regard to its above findings (see paragraphs 8-13 above), that the costs claimed were not incurred in order to seek, through the domestic legal order, prevention or redress of the violation found by the Court (see *Statileo*, cited above, §§ 20 and 162). It therefore rejects the applicant's claim for costs and expenses.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

3. *Holds,*
   (a) that the respondent State is to pay the applicant, within three months, EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State 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 remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 23 June 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt Deputy Registrar	Krzysztof Wojtyczek President