

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

FIFTH SECTION

CASE OF JANSONS v. LATVIA

(Application no. 1434/14)

JUDGMENT

Art 8 • Home • Failure to fulfil positive obligations through protecting applicant against new owner who unlawfully and forcibly entered his home and prevented further access to it • Unlawful eviction by bailiff, with domestic procedural safeguards rendered inoperative due to authorities' failure to adhere to them Art 13 (+ Art 8) • No effective domestic law remedy for arbitrary interference with applicant's right to respect for his home

STRASBOURG

8 September 2022

FINAL

30/01/2023

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



In the case of Jansons v. Latvia,

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

Síofra O'Leary, *President,*
Mārtiņš Mits,
Stéphanie Mourou-Vikström,
Lətif Hüseynov,
Arnfinn Bårdsen,
Kateřina Šimáčková,
Mykola Gnatovskyy, *judges,*
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 1434/14) against the Republic of Latvia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Latvian national, Mr Mārtiņš Jansons ("the applicant"), on 26 December 2013;

the decision to give notice to the Latvian Government ("the Government") of the complaints concerning the rights to respect for one's home and to an effective remedy, and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 5 July 2022,

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

INTRODUCTION

1. The case concerns a complaint under Article 8 of the Convention of an alleged failure to protect the applicant against private action to force him out of his home and the alleged interference with his right to respect for his home by a bailiff, resulting in his unlawful eviction. The applicant also complained, under Article 13, of the absence of effective domestic remedies for the protection of his rights.

THE FACTS

2. The applicant was born in 1979 and lives in Riga. He was represented by Mr L. Liepa, a lawyer practising in Riga.

3. The Government were represented by their Agent, Ms K. Līce.

4. The facts of the case may be summarised as follows.

I. THE RELEVANT EVENTS

A. The agreements on the right to use the apartment

5. On 27 August 2009 the applicant concluded an agreement on "the use of premises" with respect to an apartment in a residential building that belonged to SIA Aeron. The agreement was extended several times, with the last signed contract stating that it would run until 1 July 2011. The agreement granted the applicant priority in the conclusion of a new agreement, although the parties to the case disagree on whether this contractual provision entailed the right to request an extension of the agreement. The agreements were signed with companies delegated by SIA Aeron, although the parties to the case disagree on whether the most recent agreement had also been concluded with the proper authorisation. It is not, however, disputed that the applicant actually lived in that apartment as from the conclusion of the initial contract.

6. On 9 February 2011 the residential building was sold at a public auction to enforce a judgment debt owed by a bank. By a decision that took effect on 27 April 2011, the Riga Regional Court confirmed the memorandum of the auction sale, ruled that the new owner, SIA Ektornet Residential Latvia – an enterprise belonging to the same concern as the bank – was to be registered in the land register, and ordered its entry into possession (*ievest valdījumā*). An enforcement order with respect to this ruling was issued on 1 November 2011.

7. On 2 August 2011 SIA Aeron and SIA Ektornet Residential Latvia signed a certificate of delivery (*pieņemšanas-nodošanas akts*) which stated that the apartment, in which the applicant still lived, was not rented out and did not have other encumbrances. On 13 November 2012 SIA Aeron attested in writing that it had never concluded a lease or rental agreement with the applicant.

8. The applicant continued making payments for the use of the premises after the expiry of the agreement on 1 July 2011 on the premise that the agreement was *de facto* extended. From the autumn of 2011, the applicant and SIA Ektornet Residential Latvia engaged in communication concerning the conclusion of a new agreement. SIA Ektornet Residential Latvia offered the applicant a four-month tenancy agreement without the right to seek an extension, which he refused to sign. On 25 May 2012 SIA Ektornet Residential Latvia sent the applicant a letter requesting him to vacate the premises by 25 June 2012. In this period SIA Ektornet Residential Latvia no longer accepted the payments from the applicant, transferring them back to him with the note: "There is no tenancy agreement". As the applicant failed to move out, SIA Ektornet Residential Latvia cut off the supply of electricity and subsequently also the supply of water to the kitchen.

9. On 8 November 2012 the applicant brought civil proceedings against SIA Ektornet Residential Latvia seeking recognition of the fact that the

agreement on "the use of premises" had been a tenancy agreement and that there was therefore *de facto* a tenancy relationship between the applicant and SIA Ektornet Residential Latvia (see paragraphs 25-29 below). He relied on sections 6 and 8 of the Law on Residential Tenancy (see paragraph 31 below).

B. Preventing the applicant access to the apartment

10. On 8 November 2012 the representatives of SIA Ektornet Residential Latvia, with the help of armed private security guards, forced themselves past the apartment's first door into the hallway. The applicant locked the second door and called the State police. Once at the scene, the State police concluded that the situation was a private dispute and informed the applicant that a formal complaint could only be submitted at a police station, after which the police patrol left. The applicant then called the municipal police, which assessed the situation and left after explaining to the representatives of SIA Ektornet Residential Latvia that an eviction could only be carried out on the basis of a court order. The armed private security guards remained at the first door late into the night. During his repeated telephone calls to the police, the applicant was informed that he had to submit his complaint at the police station.

11. On 9 November 2012 at 5.30 a.m. the applicant left the apartment to lodge a formal complaint at the police station and to submit additional documents in the civil proceedings on the use of the apartment (see paragraph 9 above). During the applicant's absence, the lock on the outside door was changed and upon his return the armed private security guards prevented him from accessing the apartment. The applicant called the State police, which arrived at the scene and again informed the parties that a formal complaint could only be submitted at the police station.

12. Later that day, representatives of SIA Ektornet Residential Latvia fortified the first door and installed an alarm in the hallway between the first and second doors. In the evening, following persistent telephone calls by the applicant, a different State police patrol arrived on site but left after establishing that the delivery certificate signed by SIA Aeron and SIA Ektornet Residential Latvia (see paragraph 7 above) stated that the apartment was not leased.

13. Over the following weeks, the apartment's outside door remained guarded by the armed private security guards who prevented the applicant from entering. He was also refused access to retrieve his belongings, including his suit in order to attend his father's funeral. During this period, the police did not intervene despite the applicant's persistent pleas.

C. The entry into possession of the new owner

14. On 27 November 2012 a sworn bailiff, J.L., sent a notification to SIA Aeron requesting it to vacate the apartment by 10 December 2012 in view of the impending enforcement of the court order on entry into possession of SIA Ektornet Residential Latvia (see paragraph 6 above). The notification stated that if SIA Aeron were not present, the entry into possession would take place on 12 December 2012 by means of forcible entry.

15. On 12 December 2012 the bailiff enforced the order on entry into possession of SIA Ektornet Residential Latvia. The second door was opened by force in the presence of the State police. During the enforcement procedure, the police chief recalled the police unit after informing the bailiff that criminal proceedings had been instituted with respect to this situation (see paragraph 19 below). The private security guards remained at the scene.

16. The applicant arrived at the apartment after the State police had already left. He informed the bailiff of his identity and the fact that he was the tenant of the apartment. He offered to enter the computer password or to identify the location of specific items inside the apartment as proof. The bailiff responded that it was unnecessary to provide any proof and that he had to continue performing his direct duties.

17. The applicant called the State police, which established the identities of the parties involved and left. The applicant then called the municipal police, which verified the circumstances but did not intervene.

18. All the movable property and belongings that were in the apartment were described in an inventory, packed up and removed from the apartment in front of the applicant. They were taken to a storage facility, from where the applicant retrieved them on 5 January 2014; some of the items had allegedly been damaged or were never returned.

II. THE REMEDIES PURSUED

A. Criminal proceedings

19. On 11 December 2012, on the basis of the applicant's complaint of 9 November 2012 (see paragraph 11 above), criminal proceedings were instituted in respect of a property offence. On 12 December 2012 the applicant also complained about the actions of the bailiff when enforcing the entry into possession of the new owner. On 7 February 2013 the proceedings were classified as relating to a breach of the inviolability of the home and arbitrary actions contrary to an order prescribed by a law (see paragraph 37 below).

20. On 24 February 2015 the criminal proceedings were terminated owing to the expiry of the limitation period. On 16 April 2015 this decision was annulled as unlawful.

21. On 12 August 2016 the criminal proceedings were discontinued for the lack of elements of a crime with respect to the actions of both SIA Ektornet Residential Latvia and the bailiff. The police concluded that the inviolability of the home had not been breached because the text of the agreement with respect to the apartment stated that it had concerned "the use of premises". Therefore, there had been no tenancy agreement and the applicant had not been a tenant but "a person using the premises" (*telpu lietotājs*). The crime of arbitrariness had not been committed either, as both the bailiff and SIA Ektornet Residential Latvia had acted in accordance with the law. The bailiff had carried out the court order on entry into possession (see paragraph 6 above), and SIA Ektornet Residential Latvia prior to submitting the writ of execution to the bailiff had verified that there had been no liens, no valid lease or tenancy agreements, and that no person had registered his or her residence in the apartment. On 16 January 2017 this decision was upheld by a final decision of a chief prosecutor, who added that the apartment had not been the applicant's home owing to the type of agreement concluded, which was also confirmed by the fact that he had not registered his residence there. At the time the bailiff had carried out the entry into possession, the apartment had not been being used as a home.

B. Disciplinary proceedings

22. On 31 January 2013 the State police requested the Latvian Council of Sworn Bailiffs to examine the actions of the bailiff. The police informed the Council that on 12 December 2012 the bailiff had enforced the order on entry into possession of SIA Ektornet Residential Latvia by forcefully entering the apartment without the participation of the tenant. Even though the tenant had been present, he had not been allowed to enter the apartment despite the fact that he had lodged civil proceedings against SIA Ektornet Residential Latvia and a complaint with the police alleging arbitrary actions on the part of SIA Ektornet Residential Latvia for it having deprived him access to the apartment, in relation to which criminal proceedings had been instituted.

23. The Latvian Council of Sworn Bailiffs forwarded this letter to the Ministry of Justice, which on 26 July 2013 concluded that the bailiff's actions had been lawful and that there were no grounds for disciplinary liability.

C. Civil proceedings

1. Complaint about the actions of the bailiff

24. On 21 December 2012 the applicant lodged a complaint about the actions of the bailiff. On 21 March 2013 the Riga City Latgale District Court terminated the proceedings on the grounds that the applicant did not have standing to bring a complaint about the actions of the bailiff when enforcing the order on entry into possession of the new owner. That right could only be

exercised by the collector or the debtor. The applicant mistakenly regarded himself as the debtor. As the tenant, he was the apartment's *de facto* possessor (*turētājs*) and could not invoke his tenancy rights to bring a complaint about the entry into possession. The court also noted that as of 8 November 2012 the applicant no longer resided in the apartment and had also not resided there on 12 December 2012 during the entry into possession procedure. On 26 June 2013 this decision was upheld on a subsequent appeal by the Riga Regional Court.

2. Proceedings against SIA Ektornet Residential Latvia

25. On 23 November 2012 the applicant supplemented the claim he had brought against SIA Ektornet Residential Latvia concerning the recognition of the tenancy relationship (see paragraph 9 above) by seeking restoration of his physical possession of the apartment (*par traucētā faktiskā valdījuma atjaunošanu*).

26. On 12 November 2012 and on various dates thereafter, the applicant lodged requests to impose interim measures. He sought recognition of the tenancy relationship, an instruction for SIA Ektornet Residential Latvia to restore the supply of water and electricity, a prohibition for SIA Ektornet Residential Latvia to hamper his access to the apartment and to intervene in him using the apartment, as well as registration of a lien prohibiting the sale of the apartment.

27. On 30 January 2013 the initial request for interim measures was dismissed on the grounds that the applicant had not shown that the enforcement of the forthcoming judgment on his action to have the tenancy relationship recognised and his physical possession restored could in some way be hindered or become impossible. There were also no grounds for finding that it was prima facie more likely that the claim would be granted than that it would be dismissed. The repeated requests were dismissed with similar reasoning.

28. On 27 January 2014 the Riga City Kurzeme District Court dismissed the applicant's claim to have the tenancy relationship recognised, as the wording of the agreements showed that they had concerned the lease (*noma*) of the apartment, rather than its tenancy (*īre*), a fact that had not been altered by the applicant having resided there. The claim for restoration of physical possession was also dismissed because from 1 July 2011 the applicant had no longer had the right to stay in the apartment, his lease having expired and no new lease or tenancy agreement having been concluded. As for the events of 8 November 2012, the court noted that SIA Ektornet Residential Latvia had acted without legal grounds when entering the apartment in which the applicant had resided and that the applicant had grounds to defend his right to the inviolability of his home. However, that could not be achieved by seeking restoration of his physical possession but had to be pursued within

the criminal proceedings that had already been instituted and, in the event guilt was established, by bringing a claim for damages.

29. The applicant appealed against this judgment. At the appellate hearing on 13 October 2014, SIA Ektornet Residential Latvia was replaced in the proceedings by the physical person who had purchased the apartment. Therefore, the applicant withdrew his claim and the proceedings were terminated.

D. Ombudsman

30. On 27 February 2013 the Ombudsman gave its assessment of the situation, as described in the applicant's complaint. It found that under the Civil Procedure Law (*Civilprocesa likums*) only the debtor and his family members could be evicted when a new owner entered into possession of a property. Any other persons who were in the apartment, or their belongings, could only be evicted by a court judgment concerning their eviction. If the residential premises were being used by a tenant, the entry into possession had to stop at the tenant's door, as otherwise the inviolability of a person's home would be breached. The new owner was bound by the tenancy agreements concluded by the previous owner and, therefore, when entering the new owner into possession the tenants living in the dwelling could not be affected or evicted. The domestic case-law provided that the debtor's obligation to vacate the property could not be linked with a forced eviction of the persons living there. Latvian law did not allow for arbitrary eviction, and the Law on Residential Tenancy provided that the question of forced eviction had to be resolved in court. Even in cases where the new owner considered that the person did not have the right to use the residential premises, he or she could only be evicted by means of judicial proceedings. Only when a court had assessed the question of the person's right to use the residential premises and a judgment to that effect had come into force, could a person be evicted. Arbitrary eviction from residential premises was a criminal offence, and the existence of a civil-law dispute on the right to use the residential premises could not be invoked to deny access to this remedy. The State had an obligation not only to abstain from arbitrary interference but also to protect individuals from interferences by other persons.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW

31. At the relevant time, the renting of residential premises was regulated by the Law on Residential Tenancy (*Par dzīvojamo telpu īri*). Section 2 provided that residential premises could only be used on the basis of tenancy or sub-tenancy agreements, and section 5 required such agreements to be

concluded in a written form. Section 6 stated that tenancy agreements could be concluded either for a specified period or without a time-limit. If the tenancy period had expired, the tenant had to vacate the residential premises, unless the contract provided for the tenant's right to seek an extension of the tenancy, in which case it could only be refused in specific predefined situations (the tenants had not complied with their obligations, the residential premises were needed for the owner's personal use, or the residential building had to be demolished or subjected to extensive renovations). A refusal to extend the tenancy agreement could be challenged before a court. Section 8 of that Law provided that, if a residential house or an apartment was transferred into the ownership of another legal or natural person, the new owner was bound by the tenancy agreements entered into by the previous owner.

32. Section 28 of the Law on Residential Tenancy provided that landlords could give notice terminating tenancy agreements only in the circumstances provided for by this Law. If, in such a case, the tenant failed to move out, he or she could be evicted by means of judicial proceedings (*tiesas ceļā*). Section 44 provided that persons who were occupying the residential premises arbitrarily, that is to say without concluding a tenancy agreement, could be evicted by means of judicial proceedings without the provision of other residential premises; it was also possible in those proceedings to seek the recovery of any pecuniary damage caused by the unlawful occupancy and the eviction proceedings. In essence, that entailed the institution of civil proceedings on eviction, at the end of which a final judgment could order the eviction of specific persons. After obtaining an enforcement order, such a judgment could be enforced in the procedure provided for under chapter 74.[1] of the Civil Procedure Law concerning the eviction of persons and belongings from premises. Section 620.[1], which forms part of this chapter, provides that the notification on the obligation to comply with the ruling and to vacate the premises should be sent to the debtor, which in this case is the person mentioned in the judgment on eviction.

33. Chapter 74.[2] of the Civil Procedure Law sets out the entry into possession procedure. Section 620.[5], which forms part of that chapter, states that the notification on the obligation to comply with the court ruling on the entry into possession and to vacate the premises is to be sent to the debtor, which in this case is the previous owner of the property.

34. Section 1635 of the Civil Law (*Civillikums*) stipulates that any infringement of rights or unlawful activity *per se* gives the person who has suffered damage the right to claim compensation from the wrongdoer, to the extent that he or she may be held liable for such an act or failure. Under section 1779 of the Civil Law, everyone has a duty to compensate for losses caused through his or her acts or omissions.

35. Section 2112 of the Civil Law provides that lease and rental agreements are contracts on the use of property in exchange for payment.

Contracts that grant the right to make profit from the use of the property are leases (*noma*), but any other contracts granting the right of usage are rental agreements (*īre*). This section also states that specific provisions concerning the renting of residential premises (tenancy agreements) are included in a law on residential tenancies. Neither the Civil Law, nor the Law on Residential Tenancy sets out a definition of an agreement "on the use of premises."

36. Section 632 of the Civil Procedure Law provides that the actions of a bailiff when enforcing a judgment or refusing to enforce a judgment can be challenged by the collector or the debtor.

37. Section 143 of the Criminal Law (*Krimināllikums*) provides for criminal liability for breaches of the inviolability of a person's home. At the relevant time, it was defined as unlawful entry into an apartment against the will of the person living there. Section 279 provides for criminal liability for the crime of arbitrariness, which is defined as acting arbitrarily by circumventing the procedures prescribed by legislative provision, if the legality of this action is contested by a State or municipal institution or another person and it has caused substantial harm.

II. DOMESTIC PRACTICE

38. In 2013 the Riga Regional Court challenged section 8 of the Law on Residential Tenancy before the Constitutional Court (case no. 2013-17-01), arguing that it was incompatible with the right to property. On 7 July 2014 the Constitutional Court found the provision constitutional. It considered that the obligation placed on the new owners to recognise the tenancy agreements concluded by the previous owners ensured the tenants' right to live in their home without interference, which was an important guarantee in a democratic society. The bailiffs organising the auction sale and the person participating in that auction had the responsibility to verify whether the residential premises had any encumbrances.

39. On 18 February 2016 the Minister of Justice removed from office a bailiff who had arbitrarily evicted tenants, including a child, when enforcing an order on entry into possession of the new owner (administrative proceedings no. A420173316). In particular, the bailiff had not verified whether there were any tenancy agreements in place. He had forced the apartment door in the tenants' absence and, when the tenant had arrived, had prevented her from entering the apartment. The tenancy agreement she had wished to show the bailiff had been among the belongings that had already been packed up and removed from the apartment. On 30 September 2019 the Senate of the Supreme Court upheld this disciplinary punishment on appeal, noting that entry into possession was a legal procedure whereby the property was relieved from encumbrances that were dependent on the previous owner. This procedure did not result in the premises being vacated if they were occupied by persons who were not family members of the previous owner

and they invoked (i) a tenancy agreement; (ii) an uncorroborated purchase agreement; or (iii) another legal ground that called for verification. Eviction of tenants could not be carried out by enforcing the entry into possession of the new owner, as it required another type of court ruling and another type of enforcement order. The two distinct procedures were regulated by chapters 74.[1] and 74.[2] of the Civil Procedure Law respectively (see paragraphs 31-32 above). While the two procedures were similar, the proceedings on the entry into possession did not address the question of the tenancy rights of the persons living in the residential premises. This question had to be resolved by bringing proceedings on recognising the tenancy agreement void or seeking its termination. The judgment would then concern eviction from residential premises, and its operative part would rule on the eviction of specific persons and belongings. The enforcement order that had to be provided to the bailiff would then be formulated in the same manner. In this particular case, by forcing the apartment door, placing the tenants' belongings in bags and carrying them out of the apartment the bailiff had started evicting them without the requisite legal basis.

40. On 20 June 2016 the Supreme Court in civil proceedings concerning the premature termination of a tenancy agreement (proceedings no. C33265210/SKC-244/2016) stated that all situations concerning the termination of tenancy agreements and the procedure for the eviction of tenants were regulated by the Law on Residential Tenancy and could not be altered by an agreement, even if expressly agreed to by the tenant. All the situations for eviction provided for by law were linked with section 28 of the Law on Residential Tenancy, which was an imperative provision requiring that a tenant who did not vacate residential premises following the landlord's request could be evicted by means of judicial proceedings. The landlord's notice on termination of the tenancy did not terminate the agreement but only gave the landlord the right to bring proceedings before a court. Section 28 entailed a prohibition on evicting the tenant arbitrarily, and it was also prohibited to take matters into one's own hands to protect one's rights with respect to tenancies.

41. On 18 September 2014 the Supreme Court examined a civil case (no. SKC-2465/2014) brought by tenants against the new owner of the apartment and the bailiff. They were seeking protection against potential eviction upon the entering into possession of the new owner, as the bailiff kept requesting that the apartment be vacated, even though he had been informed about their tenancy agreement and the fact that the movable property in the apartment belonged to them. The Supreme Court refused to institute the proceedings, finding that the plaintiff's rights had not been interfered with or contested. The bailiff's notification on the forced entry into possession had been addressed to the previous owner and the court's ruling on the entry into possession concerned only the debtor; it did not affect the tenants or other persons residing in the apartment. Despite the change of

owner, the tenants maintained the right to hold and use the apartment and, in accordance with the Law on Residential Tenancy, the question of the eviction of tenants and of other persons had to be resolved before the court. In view of that, the tenants could not object against the bailiff's notification that the debtor had to comply with the court ruling on the entry into possession, as it did not affect their rights.

III. OTHER DOMESTIC MATERIAL

42. In his 2013 annual report, the Ombudsman dedicated a section to "The entry into possession", which reads as follows:

> "During the reporting period, the Ombudsman's Office was still receiving applications regarding alleged arbitrary evictions from dwellings or eviction attempts when entering the new owner into possession, with the actions being taken not only against the debtor, but also against the third parties living in the dwelling. The applications often revealed not only violations of the right to housing, but also violations of the inviolability of one's home and privacy. The State Police did not engage in such disputes, considering them to be of a private nature, while the bailiffs as representatives of the State authority allowed and sometimes even participated in such unlawful activities. ...
>
> The Ombudsman has already expressed the opinion that representatives of the State Police and sworn bailiffs should actively respond to and prevent violations of fundamental rights, by preventing arbitrariness by the new property owners and security firms."

The Ombudsman then referred in addition to a discussion between various governmental bodies with all involved parties acknowledging the problems in this field, in particular, with respect to the rights of the owners and the tenants not being properly balanced. The Ombudsman called for amendments to domestic laws and criticised the Ministries for none of them taking responsibility for the problem, instead passing it on among themselves.

43. In his 2014 annual report, the Ombudsman dedicated a section to "Balancing of the Rights of House Owners and Tenants", which reads as follows:

> "The continuing problematic relations between house owners and tenants became acute in the middle of the reporting year. The Ombudsman received alarming applications from individuals who pointed out the unlawful methods used by house owners to create inadequate living conditions, in particular, the failure to ensure basic services, such as sewage, heating, supply of electricity to a part of the apartment, the supply of warm or cold water, the removal of waste, and also dismantling of sewage pipes. The above-mentioned was done purposefully so that the residents of the house would vacate the apartments.
>
> The episodes described in some applications, for example, changing of door locks or the door, without providing a set of keys, the boarding [*aiznaglošana*] or welding up [*aizmetināšana*] of tenants' doors and installing a padlock, were akin to arbitrariness and infringement of the inviolability of a person's home.

> The tenants often complained that the above-described actions resulted in preventing their access to personal effects, documents, medicine, and cash. In some cases, a pet was left in the apartment, or the entrance door was replaced while the tenant was inside the apartment. Therefore, the tenants were in fact evicted without a court ruling, they were forced to live on the street, in a shelter house or a staircase, or seek refuge with their acquaintances. ...
>
> Initially it could be observed that the police frequently abstained from reacting to such situations, treating them as civil-law disputes.
>
> In the Ombudsman's opinion, no actions aimed at the infringement of the fundamental rights guaranteed by the [Constitution] are permissible, regardless of the circumstances. In that respect, the State's ability to react promptly to situations where the unlawful actions of house owners have jeopardised the rights of tenants, or vice versa, is important, as the mechanism for dispute settlement provided for in the Law on Residential Tenancy of bringing proceedings before a court is not sufficiently effective.
>
> The Committee for Human Rights and Social Affairs of the Latvian Parliament [*Saeima*] has held repeated discussions on the above-described issue. It is to be appreciated that such discussions have resulted in a change in the State Police's position: the police [now] acknowledge that entry by the owner into a tenant's dwelling against the tenant's will constitutes infringement of the inviolability of the person's home, and that the changing of door locks or doors preventing the tenant from entering the dwelling is bordering on arbitrariness on the part of house owners, and is subject to criminal liability. The State Police have developed guidelines for police staff to ensure the protection of tenants' rights against unlawful infringements by the property owners, to restore the tenants' right to freely handle their movable property, and to ensure the inviolability of the home, with their presence ensuring public order and tenants' ability to access their homes.
>
> Time will tell how these guidelines will be implemented in practice, though possibly they will change the previous practice where police abstained from any action, treating such situations as civil-law disputes, unless physical violence was observed."

44. On 27 June 2015 the Ombudsman sent a letter to the Minister of Economy, the Minister of Justice and the relevant department of the Riga City Council calling for urgent changes in domestic law to address typical problems with respect to the entry into possession of new owners who had acquired property following an auction sale. He described situations where the new owners claimed to not have been aware of the fact that the residential premises were occupied by tenants, though he questioned this lack of awareness with respect to credit institutions' daughter companies which were the biggest culprits with respect to infringements of the right to the inviolability of the home. In practice, it often meant that upon the new owner's entry into possession tenants were being evicted onto the street or subjected to inadequate living conditions to exert pressure on them to leave. Such dubious practices were carried out by subsidiaries of the credit institutions who often claimed to have bought the property without any encumbrances and not to be bound by contracts concluded by previous owners. Although sworn bailiffs and police officers were present during such evictions, they were not explaining to the parties the most appropriate legal solutions.

45. In his 2015 annual report, the Ombudsman reiterated the same findings as those indicated above, adding that the dispute settlement mechanism of bringing an action before a court, as laid down by the Law on Residential Tenancy at that time, was not sufficiently effective. Namely, in situations where the house owners endangered the rights of tenants, their fundamental rights were limited for a disproportionately long time – up to the moment of adjudication of the case in court. That could result in tenants' inability to use their dwellings.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

46. The applicant complained that he had been unlawfully evicted from his home. The law-enforcement authorities, when allowing the arbitrary conduct, and the bailiff, when opening his home and removing his belongings, had respectively prevented him from enjoying and had breached his right to private and family life, guaranteed in Article 8 of the Convention.

47. Being the master of the characterisation to be given in law to the facts of a case, the Court considers that this complaint is to be examined from the standpoint of the right to respect for the home, also guaranteed under 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."

A. Admissibility

48. The Government relied on three inadmissibility grounds. They argued that the apartment could not be considered the applicant's "home"; that the applicant could not claim to be a "victim" within the meaning of Article 34 of the Convention; and that the applicant had not exhausted the available domestic remedies.

1. Whether the apartment was the applicant's "home"

49. The Court considers that the question of whether the apartment constituted the applicant's home pertains to the applicability of Article 8 and therefore ought to be assessed at the admissibility stage (see *Denisov v. Ukraine* [GC], no. 76639/11, § 93, 25 September 2018).

(a) The parties' submissions

50. The Government submitted that the apartment had not been the applicant's "home", as his registered place of residence had been in a different municipality, including during the time periods when the agreements on the use of the apartment had been in force. In addition, the periods during which these agreements had authorised the use of the apartment had not exceeded one year and ten months. Lastly, the applicant had no longer resided in the apartment on 12 December 2012 when the alleged violation of his rights had taken place.

51. The applicant submitted that under the domestic law the fact that a person was living at the registered address was only a rebuttable presumption. He had actually resided in the apartment from September 2009 to November 2012, that is, for more than three years. This fact, aside from being demonstrated by various documents submitted to the Court and having been acknowledged by the domestic courts, had not even been contested by the Government. The reason he had not been residing there on 12 December 2012 had been the unlawful actions of SIA Ektornet Residential Latvia through which he had been forced out of the apartment, namely, precisely the infringement of his rights complained of.

(b) The Court's assessment

52. The Court has consistently held 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 premises 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, for example, *Sargsyan v. Azerbaijan* [GC], no. 40167/06, § 253, ECHR 2015, and *Prokopovich v. Russia*, no. 58255/00, § 36, ECHR 2004-XI (extracts)). Thus, the Court has considered a dwelling a "home" when it has been the applicants' actual place of residence, even when the registered address has been elsewhere (see *Prokopovich*, cited above, §§ 35-39, and *Yevgeniy Zakharov v. Russia*, no. 66610/10, §§ 29-32, 14 March 2017) and, in some situations, even when the applicants have not been living in the particular dwelling on a permanent basis or had not lived there for some period of time (see *McKay-Kopecka v. Poland* (dec.), no. 45320/99, 19 September 2006; *Khamidov v. Russia*, no. 72118/01, § 127, 15 November 2007; and *Bjedov v. Croatia*, no. 42150/09, § 58, 29 May 2012; see also *Sargsyan*, cited above, § 254).

53. The Court observes that neither in the domestic proceedings nor before the Court was it ever contested that the applicant had actually lived in the apartment, and no suggestion has been made that he had another home.

The apartment had been the applicant's actual place of residence for more than three years until November 2012 when he had been denied further access to it. It was also not disputed that at least for a certain period of time he had had a lawful basis to reside there, and that at the time of the interference a legal claim concerning his rights to reside there was pending before the domestic courts. The fact the applicant had been forced out of the apartment – one of the aspects complained of before the Court – cannot be invoked to argue that the apartment had thereby ceased to be his "home", as that would render the protection against arbitrary interferences meaningless. Also the absence of the registration is not sufficient to conclude that the applicant had not established his home there.

54. Accordingly, the applicant had sufficient and continuous links with the apartment for it to be regarded as his "home", and Article 8 is applicable to the complaint about his eviction.

2. Victim status

(a) The parties' submissions

55. The Government submitted that the applicant could not claim to be a victim for the purposes of Article 34 of the Convention. Firstly, after the expiry of the agreements concerning the use of the apartment on 1 July 2011 the applicant had no longer had a legal right to reside there. Secondly, the applicant mistakenly considered that on 12 December 2012 he had been evicted. The entry into possession had not concerned the applicant, as the obligation of the debtor – the previous owner of the apartment – to vacate the property did not cover eviction of a tenant. A person could only be evicted from residential premises on the basis of a court ruling that expressly ordered the eviction. No decision ordering the applicant's eviction had been adopted; therefore, he had never been evicted.

56. The applicant argued that he had had the right to reside in the apartment, as the agreements entered into had granted him the right to request an extension of the tenancy. In addition, there had been ongoing negotiations, with a draft tenancy agreement having been proposed. However, even if the applicant's stay in the apartment were to be deemed unlawful under the domestic law, this would entail no consequences for the determination of his victim status. There was no doubt that the applicant had personally been affected by the sequence of events that had led to his eviction. The Government's position disregarded the actual circumstances of the case, namely, him having been evicted unlawfully by coercive methods.

(b) The Court's assessment

57. The Court notes that victim status within the meaning of Article 34 of the Convention relates to the question of whether the applicant was directly or indirectly affected by the violation alleged (see, for example, *Vallianatos*

and Others v. Greece [GC], nos. 29381/09 and 32684/09, § 47, ECHR 2013 (extracts)). In the present case, there is no doubt that the applicant was directly affected by the alleged violations complained of. The Government's arguments about the absence of the legal right to reside in the apartment has no relevance for the determination of the applicant's victim status. However, the argument that the applicant was not in fact evicted pertains to the existence of the interference and will be analysed below (see paragraph 82 below).

3. Non-exhaustion of domestic remedies

(a) The parties' submissions

(i) The Government

58. The Government argued that the applicant had not exhausted the available domestic remedies, and that he should have: (i) pursued the civil proceedings against the owner of the apartment all the way to the final level of jurisdiction, and (ii) brought civil proceedings against the bailiff.

59. They argued that, as tenants did not have the right to lodge complaints about the entry into possession procedure, the applicant should have sought renewal of his *de facto* possession by bringing a claim against SIA Ektornet Residential Latvia. While he had initiated such proceedings, he had withdrawn them, and therefore the dispute on his right to reside in the apartment had remained unresolved. The criminal-law remedy could not be regarded as better suited for addressing the applicant's essential grievances, as it was only capable of providing pecuniary or non-pecuniary compensation, not of ensuring the possibility to continue renting the apartment.

60. Referring to the applicant's allegation that part of his property had been damaged or never returned, the Government submitted that the applicant could have sought compensation from the bailiff on the basis of sections 1635 and 1779 of the Civil Law. In support of this argument the Government initially submitted two judgments. The judgment of the Supreme Court of 30 December 2014 (in effect from 23 March 2016, case no. C04443711) concerned a partially granted claim for damages by a tenant who had argued that the bailiff, when enforcing the entry into possession, had unlawfully removed her movable property. The judgment of the Riga Regional Court of 26 September 2016 (in effect from 27 October 2016, case no. C04236114) concerned a dismissed claim for damages against the new owner and the bailiff with respect to the movable property left in the apartment after the entry into possession. The Government subsequently submitted an additional two judgments adopted in older cases against bailiffs for the damage caused in the performance of their duties that were unconnected with the entry into possession.

(ii) The applicant

61. The applicant argued that he had exhausted all available domestic remedies, as he had pursued three separate proceedings. Firstly, he had attempted to complain about the conduct of the bailiff when enforcing the entry into possession of the new owner, and the complaint had been rejected by a final decision settling the fact that the applicant as a tenant did not have standing to bring such a complaint.

62. Secondly, in the civil proceedings on having his tenancy relationship recognised, the applicant had indeed withdrawn his claim, as SIA Ektornet Residential Latvia had been replaced in the proceedings by a bona fide acquirer of the apartment. His rights having been infringed by, *inter alia*, SIA Ektornet Residential Latvia, the applicant had considered that more effective redress could be obtained in the parallel criminal proceedings. With respect to this third remedy, all avenues had been exhausted and the decision terminating the criminal proceedings could no longer be appealed against. The applicant having pursued the criminal proceedings, he could not be required, for the purposes of the exhaustion of domestic remedies, to have pursued both actions simultaneously.

63. With respect to the possibility of bringing an action against the bailiff, the examples provided by the Government dated from more than a year a half after he had lodged his application with the Court. Additionally, they did not indicate that such a practice was well established, especially as in the second case the claim had been dismissed.

(b) The Court's assessment

64. The Court reiterates that the rule of exhaustion of domestic remedies requires the applicant to have normal recourse to remedies which are available and sufficient to afford redress in respect of the breaches alleged (see, for example, *Akdivar and Others v. Turkey*, 16 September 1996, § 66, *Reports of Judgments and Decisions* 1996-IV).

65. The Court observes that the present case concerns the complaint that the applicant was arbitrarily evicted without a lawful eviction order and not the questions of whether the applicant was a "tenant" under Latvian law and whether he was entitled to move back to the flat on that basis, which formed the subject matter of the civil proceedings concerning the recognition of the tenancy relationship and restoration of *de facto* possession. Hence, the crux of the applicant's complaint before this Court is that he was evicted without his right to reside in the apartment – or the absence thereof – having first been determined by the domestic courts. Accordingly, a subsequent determination of whether the applicant did have the right to live in the apartment would not address the substantively different claim that he had been evicted arbitrarily and in breach of his right to respect for his home (as also noted by the Riga City Kurzeme District Court – see paragraph 28 above). In particular, a

conclusion that at the specific moment of eviction the applicant was or was not a tenant would have no consequence for the determination of the question of whether his eviction had complied with the domestic-law requirements for an occupant's eviction from residential premises (see paragraph 32 above). Furthermore, in situations of unlawful entry and inability to use one's home, a mere restoration of the right to use the dwelling does not amount to the restoration of the right to respect for one's home and private and family life (compare *Novoseletskiy v. Ukraine*, no. 47148/99, § 78, ECHR 2005-II (extracts)). Accordingly, the civil proceedings brought by the applicant were not capable of affording redress in respect of the breaches alleged before the Court, and the applicant was not required to pursue them for the purposes of exhaustion of domestic remedies with respect to his complaint under Article 8.

66. As to the possibility of lodging a claim for damages against the bailiff, the Court observes that the arguments of the Government, as well as the case-law examples provided by them, concern damage caused to movable property (see paragraph 60 above). Neither of those cases examined a claim that the bailiff, when enforcing an order on entry into possession, had unlawfully evicted a tenant or a person living there, thereby breaching his or her right to respect for the home. The Government have also not suggested that such a claim could be brought. At the same time, it has clearly been established that tenants have no standing to bring complaints about bailiffs' actions when enforcing the entry into possession of the new owner – an action that is directed against the previous owner (see paragraphs 24 and 36 above). Accordingly, the Court concludes that a claim against the bailiff for the damage caused to the applicant's movable property would not address the breaches of the right to respect for his home alleged before the Court, and the Government have not proposed a civil-law remedy which would address such grievances.

4. Conclusion

67. For the reasons laid out above, the Court dismisses the Government's objections regarding the use of the remedies they referred to. Additionally, the Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The applicant

68. The applicant submitted that there had undoubtedly been an interference with his right to respect for his home. In the summer of 2012, the electricity and water supply to the apartment had unlawfully been cut off. On

8 and 9 November 2012 the representatives of SIA Ektornet Residential Latvia had forcefully entered the apartment, changed the lock, and ordered armed security guards to prevent the applicant from entering his home. On 12 December 2012 the bailiff had forcefully enforced the order on the entry into possession of the new owner and had transferred the applicant's movable property to a treasurer. As a result, the applicant had been evicted from his home without a valid eviction order. He had thereby lost his home, which was the most extreme form of interference with the right to respect for one's home.

69. This eviction had not been in accordance with the law, as section 28 of the Law on Residential Tenancy imperatively provided that evictions could only be carried out on the basis of a valid eviction order, even if the residential premises were occupied unlawfully. Thus, even though the entry into possession had been enforced in accordance with the law, the resulting eviction of the applicant had been unlawful. The police had taken no action and had allowed this breach of his human rights to take place. In addition, they had assisted the bailiff in carrying out the forced entry into the apartment. The applicant disagreed with the Government's assertion that the bailiff had had no information that any person, other than the debtor, might be residing in the apartment. The alleged attempts by the bailiff to obtain this information had been formal checks with the aim of validating the pretence that the apartment was not inhabited. In reality, the bailiff could easily have obtained the information on the apartment's actual occupancy from SIA Ektornet Residential Latvia.

70. The interference had presumably pursued the legitimate aim of guaranteeing the rights of other individuals, that is to say, the rights of SIA Ektornet Residential Latvia to the peaceful enjoyment of its possessions. However, it had not been necessary in a democratic society, as it had lacked the requisite degree of proportionality. The Latvian authorities in both the civil and the criminal proceedings had restricted their assessment to the applicant's right to occupy the apartment and had failed to analyse the lawfulness, proportionality and reasonableness of his eviction. Adequate procedural safeguards had therefore not been available to the applicant.

2. The Government

71. The Government submitted that the case did not concern any action on the part of the State that could be regarded as an interference with the applicant's rights. The applicant had clearly misinterpreted the concept of the entry into possession procedure, which was carried out to ensure that the new owner would be able to exercise its *de facto* control over the property. The entry into possession was binding on the new owner (the collector) and the former owner (the debtor), and not on any other person that was not a party to the writ of execution. The applicant had never been evicted from the apartment, as no such decision or judgment had been issued in respect of him.

72. The bailiff had attempted to obtain all relevant information prior to the entry into possession – he had checked whether any person had registered their place of residence in the apartment or had concluded or registered any agreements with respect to the apartment, and he had sent the notification about the entry into possession to the property in question. No information at the bailiff's disposal had suggested that any person, other than the debtor, had been residing in the apartment during the entry into possession. Having regard to the legal framework regulating the entry into possession procedure, the State had discharged its obligation to strike a fair balance between the respective interests.

73. The domestic legal system also contained comprehensive and sufficient safeguards that ensured the applicant's right to respect for his home. Firstly, bailiffs bore no responsibility for the lawfulness of the contractual relationship between the new owner and the tenant, and any such disputes had to be resolved in civil proceedings. The applicant had lodged such a claim but had withdrawn it without the dispute on his tenancy rights having been settled. Secondly, criminal proceedings had been instituted to determine whether there had been any arbitrariness or breach of the inviolability of the home, and it had been established that the applicant had had no right to reside in the apartment and, therefore, the actions of SIA Ektornet Residential Latvia and the bailiff had not been unlawful. Thirdly, the conduct of the bailiff had been reviewed in disciplinary proceedings, and the Ministry of Justice had not established any circumstances that would have required the imposition of disciplinary liability.

3. The Court

(a) Alleged failure to abide by positive obligations to protect the applicant against the actions of the new owner

74. The Court reiterates that while Article 8 is primarily intended to protect the individual against arbitrary interference on the part of the public authorities, it may also require the adoption by the latter of measures to secure the rights even in the sphere of relations between individuals (see *Novoseletskiy*, cited above § 68; *Moldovan and Others v. Romania (no. 2)*, nos. 41138/98 and 64320/01, § 93, ECHR 2005-VII (extracts); and *Kapa and Others v. Poland*, nos. 75031/13 and 3 others, § 150, 14 October 2021). The applicable principles with respect to the assessment of the State's positive and negative obligations are broadly similar, calling for a determination of whether a fair balance has been struck between the competing interests of the individual and of the community as a whole (see *Hatton and Others v. the United Kingdom* [GC], no. 36022/97, § 98, ECHR 2003-VIII; *Lăcătuş and Others v. Romania*, no. 12694/04, § 84, 13 November 2012; and *Burlya and Others v. Ukraine*, no. 3289/10, §§ 162 and 169-70, 6 November 2018).

75. When addressing complaints about the destruction of homes, the Court has already held that the acquiescence or connivance of the authorities of a Contracting State in the acts of private individuals which violate the Convention rights of other individuals within its jurisdiction may engage the State's responsibility under the Convention (see *Moldovan and Others*, § 94, and *Lăcătuş and Others*, § 83, both cited above). Also the police's failure to intervene and take appropriate measures to end infringements by third parties in the right to respect for the applicant's home was found to constitute a failure to invest the efforts that could normally be expected of the competent authorities, and led to the finding of a violation of Article 8 (see *Surugiu v. Romania*, no. 48995/99, §§ 60-68, 20 April 2004). In assessing a State's compliance with its positive obligations, the Court has also taken into account the question of the effectiveness of a criminal investigation (see *Burlya and Others*, cited above, §§ 161 and 169-70).

76. On the basis of the Court's case-law, it transpires that, under certain circumstances, States have positive obligation to take appropriate measures to assist the individual who has sought such assistance in the face of an attack by a private person on the right to respect for one's home. Such an obligation must be considered to be triggered in particular when an individual calls the police to defend him against persons trying to evict him by force without any legal authorisation to do so. States enjoy a wide margin of appreciation regarding the choice of measures to put in place in the above regard, provided that they can be effective in the protection of the right to respect for one's home.

77. In the present case, SIA Ektornet Residential Latvia, a private entity who owned the apartment, acting on its own and without any decision by a public authority empowering it to do so, forced the door to the applicant's home, changed the door lock and used armed security guards to prevent the applicant further access to his home. The applicant called the police numerous times. They did come and inspect the scene, and were clearly able to observe that, in all likelihood, the applicant lived in the apartment in issue, and thus they were well aware of the situation as it was developing. The Court considers that, in these circumstances, the respondent State's positive obligation to ensure effective protection of the applicant's right to respect for his home was triggered. Nonetheless, the police failed to intervene, referring to the ongoing private dispute (see paragraph 10 above) or the allegation by the previous owner that the apartment was not leased (see paragraph 12 above).

78. As stated above, the protection of the right to respect for one's home is not limited to premises that are occupied lawfully (see paragraph 52 above, and the references cited therein). Also under the domestic law, as emphasised by the domestic authorities, including the police and the Government, no person could be evicted without a valid eviction order, and this requirement applied equally to persons occupying residential premises arbitrarily (see

paragraphs 10, 30, 31-32, 39-41 and 55 above). The municipal police even explained this fact to the representatives of SIA Ektornet Residential Latvia, without undertaking any further actions (see paragraph 10 above). There is no indication that the police ordered them to cease limiting the applicant's access to the apartment or warned them of the potential criminal liability for the breaches of the inviolability of the home. Instead, the applicant was informed of the possibility of lodging a complaint at the police station (see paragraphs 10-11 above). In view of the domestic legal requirement that the eviction could only take place on the basis of a court order, it should have been evident to the domestic authorities that the existence of a legal dispute could not be invoked to force a person out of his or her home and it could not exonerate the authorities from the failure to act in the face of an interference by third parties with the right guaranteed under Article 8 (compare *Surugiu*, cited above, § 63).

79. Furthermore, despite the applicant's pleas, the police failed to undertake any practical steps also at a later stage of the dispute, even though he remained permanently locked out of his home and even after the institution of the criminal proceedings (see paragraphs 13 and 19 above). Thus, the police failed to take any measures in a situation where the applicant was being denied access to his home by armed security guards without legal grounds under the domestic law (see paragraphs 28, 30 and 31-32 above). The Court considers that this inactivity not only failed to prevent but also indirectly encouraged further unlawful actions on the part of the private entity. The Court also refers in this connection to the findings of the Ombudsman that such passivity on the part of the police was a common practice at the given time and that only later were guidelines developed requiring the police to ensure public order in the face of property owners' unlawful actions and to ensure tenants' ability to access their homes (see paragraphs 42-44 above).

80. The Court reiterates that the choice of means for ensuring compliance with the positive obligations falls within the State's margin of appreciation. The Court's case-law does not suggest that the obligation to adopt measures designed to secure the right to respect for one's home in the sphere of relations between individuals necessarily requires the provision of a criminal-law remedy (see *Moldovan and Others*, cited above, § 96). Nonetheless, in the present case a criminal investigation was carried out to determine, *inter alia*, whether the offence of breaching the inviolability of home had been committed. This investigation was, in its relevant part, discontinued with the conclusion that the applicant had not been the tenant of the apartment but rather "the person using the premises" in view of the language used in the contract and the fact that he had not registered his residence there (see paragraph 21 above). The decisions included no analysis of whether the applicant had in fact lived in the apartment and whether it might have constituted his "home", meriting the protection of its inviolability (confer paragraphs 52-53 above). As the applicant's right to his home was not

considered to have been engaged, the lawfulness of SIA Ektornet Residential Latvia's actions when forcing the applicant out of his home were not assessed. Accordingly, the criminal investigation did not analyse all the pertinent facts of the case and therefore was too limited in its scope, effectively offering no protection in a situation where the tenancy rights with respect to the person's home were in dispute.

81. In view of the foregoing, the Court cannot conclude that the public authorities took the appropriate measures to secure the applicant's right to respect for his home despite his pleas to defend him against persons trying to evict him by force without any legal authorisation to do so. There has accordingly been a violation of Article 8 of the Convention.

(b) Alleged unlawful eviction from the applicant's home by the bailiff

82. The parties to the case disagreed on whether the circumstances of the case amounted to the applicant's eviction, with the Government reiterating that no eviction order had been issued and that the entry into possession procedure had not affected the applicant's rights. The Court observes, however, that during the entry into possession procedure the bailiff carried out a forced entry, changed the door lock, and removed the applicant's belongings. These actions effectively prevented the applicant from further accessing the apartment. Also the Government have not suggested that the applicant could have continued residing in the apartment following the events of 12 December 2012. Contrary to the Government's position, the fact that these actions were carried out without an eviction order clearly cannot be relied upon to conclude that no interference took place.

83. The Court also notes the Government's argument that the bailiff had verified the available data and no information at his disposal had suggested that any person, other than the debtor, would be residing in the apartment. However, the Court does not consider it plausible that the bailiff could have been unaware that the applicant was living in the apartment and of the ongoing dispute about his tenancy rights. In that connection, the Court refers to the bailiff's duty to verify the relevant circumstances when enforcing a court order; the negotiations and subsequently the conflict between the new owner and the applicant; and the ongoing civil and criminal proceedings (see paragraphs 9 and 19 above). In addition, the applicant presented himself at the apartment during the entry into possession procedure, submitting that he was the tenant. This fact did not cause the bailiff to suspend the enforcement procedure or to otherwise reconsider the situation (see paragraph 16 above). Furthermore, the material submitted to the Court suggests that the police also informed the bailiff of the ongoing criminal proceedings (see paragraphs 15 and 22 above). Nonetheless, the bailiff proceeded to carry out the enforcement, which amounted to the applicant's eviction, resulting in the loss of his home, which is the most extreme form of interference with the right to

respect for one's home (compare *Prokopovich*, cited above, §§ 41-42, see also *McCann v. the United Kingdom*, no. 19009/04, § 50, ECHR 2008).

84. While the Court has been primarily called upon to assess whether an interference with the right to respect for one's home was necessary in a democratic society (for the principles with respect to such an assessment, see *Connors v. the United Kingdom*, no. 66746/01, §§ 81-84, 27 May 2004), it has also been clearly established that such an interference will be in breach of Article 8 unless it can be justified as being "in accordance with the law" (see *Chapman v. the United Kingdom* [GC], no. 27238/95, § 78, ECHR 2001-I). This criterion requires that the impugned measure should have some basis in domestic law, and it also refers to the quality of the law in question, requiring that it should be accessible to the person concerned and foreseeable as to its effects (see *Slivenko and Others v. Latvia* (dec.) [GC], no. 48321/99, § 100, ECHR 2002-II (extracts)).

85. Nonetheless, the Government have not put forward any legal basis for the interference with the applicant's right to his home, arguing instead that the entry into possession procedure was not supposed to have any impact on tenants. The domestic law and material before the Court demonstrate that the removal of tenants – even if the tenancy relationship was in dispute – and their belongings during the entry into possession procedure was not compatible with Latvian law, which imperatively provided that a person could only be evicted on the basis of a court ruling ordering his or her eviction. In accordance with section 44 of the Law on Residential Tenancy, this requirement applied equally to situations where the residential premises were occupied arbitrarily, that is to say, without a valid tenancy agreement (see paragraphs 30, 31-32, 39-41 and 55 above).

86. The present case should be distinguished from those where the eviction was based on possession orders (see, for example, *McCann*, cited above, § 48, and *Ćosić v. Croatia*, no. 28261/06, § 19, 15 January 2009). In the present case, the order on entry into possession addressed only the relationship between the previous owner and the new one, the applicant's right to reside in the apartment having no relevance. While the Government argued that the bailiff bore no responsibility for the legality of the tenancy relationship and any disputes to that effect had to be resolved in civil proceedings, the Court notes that by removing the applicant and his belongings from the apartment, the bailiff did involve himself directly in the tenancy dispute. Moreover, he thereby acted in the interests of the property owner without the arguments of the dispute having been assessed by a court.

87. With respect to the Government's argument that the applicant could have sought restoration of his physical possession of the apartment by bringing civil proceedings, the Court considers that a mechanism whereby tenants can seek a subsequent determination of the fact that they had had the right to reside in the dwelling from which they have already been removed cannot be regarded as an adequate procedural safeguard capable of preventing

unjustified interference with the right to respect for one's home. It places a disproportionate burden on tenants who are forced to defend their rights through civil litigation after they have already lost their home. Whether the applicant would have succeeded in his argument or not, a legal dispute clearly existed between him and the new owner of the apartment (compare *Connors*, cited above, § 92), and domestic law required such disputes to be decided by a court prior to the eviction. The Court points out that in the present case the decisive question is not whether the applicant was evicted despite having the right to reside in the apartment – the question the Government have focused on – but rather that he was evicted without his right to reside in the apartment, or the absence thereof, having first been determined by a court, and therefore contrary to the requirements of domestic law.

88. In that respect, the present case should also be distinguished from the cases of *Vrzić v. Croatia* (no. 43777/13, 12 July 2016) and *F.J.M. v. the United Kingdom* ((dec.), no. 76202/16, 6 November 2018), where the Court analysed court-ordered evictions and clarified that the Convention did not require that tenants be entitled to seek a proportionality assessment where possession was being sought by private-sector property owners. In contrast, the present case concerns the applicant's complaint that he was evicted without the lawfulness of this interference having been determined, and in a situation where, moreover, the requirement of a prior judicial review was expressly laid out in domestic law (see paragraph 32 above).

89. The Court further emphasises the importance of procedural safeguards in the determination of whether the respondent State has, when fixing the regulatory framework, remained within its margin of appreciation. In particular, the Court examines whether the decision-making process leading to measures of interference with the right to respect for one's home was fair and such as to afford due respect to the interests safeguarded to the individual by Article 8 (see *Connors*, cited above, § 83). The Latvian regulatory framework did provide some procedural safeguards, most notably the above-mentioned imperative requirement that eviction could only be carried out on the basis of a court order on eviction. In addition, the presence of the police during the entry into possession procedure was also meant to protect against arbitrary interferences. In the present case, however, these procedural safeguards were effectively rendered inoperative, as the domestic authorities failed to adhere to them. The regulations created to protect the guaranteed rights serve little purpose if they are not duly enforced (compare *Oluić v. Croatia*, no. 61260/08, § 63, 20 May 2010). Furthermore, the mere existence of a regulatory framework for disciplinary and criminal liability cannot be viewed as a procedural safeguard capable of preventing unjustified interferences or ensuring that due respect is afforded to the interests protected by the Convention in the process leading to measures of interference.

90. Accordingly, the Court concludes that the interference with the applicant's rights leading to his eviction during the entry into possession

procedure had no lawful basis and that the procedural safeguards provided under domestic law failed to prevent this arbitrary interference. There has therefore been a violation of Article 8 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION IN CONJUNCTION WITH ARTICLE 8

91. The applicant complained that no effective remedy had been available to him with respect to the infringement of his right to his home, as provided in Article 13 of the Convention, which reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Admissibility

92. The Government argued that, as the applicant did not have an arguable claim under Article 8, his complaint could not fall under Article 13; or, alternatively, that it was manifestly ill-founded.

93. The applicant objected to this argument.

94. In the light of the above findings of violations of Article 8 (see paragraphs 81 and 90 above), the Court considers the applicant's complaint arguable. The Court also notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

95. The applicant argued that no effective remedy had been available to him that would have addressed his complaints about the infringement of his right to respect for his home guaranteed by Article 8 of the Convention.

96. The Government did not raise any further arguments.

97. The Court reiterates that Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms, allowing the competent national authority both to deal with an "arguable complaint" and to grant appropriate relief. The domestic remedy must be "effective" in practice as well as in law (see, for instance, *Lindstrand Partners Advokatbyrå AB v. Sweden*, no. 18700/09, § 117, 20 December 2016). The effectiveness requirement entails that the remedy is accessible, offers reasonable prospects of success and is capable of either preventing the alleged violation or its continuation, or provides adequate redress for any violation that has already occurred (see, for example, *Avanesyan v. Russia*, no. 41152/06, § 27, 18 September 2014).

98. Firstly, the Court observes that under the domestic law the applicant had no standing to bring a complaint against the bailiff, as he was neither the collector nor the debtor in relation to the enforcement of the order on entry into possession (see paragraphs 24 and 36 above). This domestic-law approach disregards the impact bailiffs' arbitrary actions during the entry into possession can have on the tenants of the property. By being prevented from complaining that the bailiff had exceeded the lawful limits of the entry into possession procedure and had breached his right to respect for his home, the applicant was deprived of the possibility of having the lawfulness of the bailiff's actions swiftly adjudicated at a stage where a favourable outcome could still have entailed a restoration of his right to reside in his home.

99. With respect to the availability of other civil-law remedies, the Government have not suggested that the applicant could have brought a claim about arbitrary interference with his right to respect for his home, either against the new owner or the bailiff. As noted above, claims for recognition of tenancy relationships, restoration of physical possession or reimbursement of damages caused by the removal of his belongings would not address the claim that the applicant was deprived of access to and evicted from his home without his right to reside there having first been determined by a court (see paragraphs 65-66 above). Also the domestic court examining the applicant's civil claim considered that with respect to the potential breaches of the inviolability of his home the criminal proceedings were the most appropriate remedy to pursue, linking the possibility to bring a civil claim with a finding of a guilt in those criminal proceedings (see paragraph 28 above). Accordingly, the Court has no grounds to consider that a civil-law remedy for the protection of his Convention rights was available to the applicant. In addition, the Court refers to the findings of the Ombudsman concerning the ineffectiveness of the civil-law remedy for addressing tenancy-related disputes (see paragraphs 43 and 45 above).

100. Lastly, there was a criminal-law remedy available, and the criminal proceedings did assess whether there had been a breach of the applicant's right to respect for his home in relation to the actions of both the private individuals and the bailiff. However, as concluded above, in relation to the State's positive obligation to assist the applicant against private actions seeking to deprive him of his home, the criminal investigation was too limited in its scope and offered no effective protection in a situation where the tenancy rights were in dispute (see paragraph 80 above). Similarly, with respect to the conduct of the bailiff, the assessment of the investigation was limited to the legality of the entry into possession procedure, without considering the lawfulness of the actions directed at the applicant as the person living there. Moreover, the very fact of the applicant having been forced out of his home by the apartment owner was used against him, as it was taken into account to conclude that at the time the bailiff had carried out

the entry into possession, the apartment had not been being used as a home (see paragraph 21 above).

101. Accordingly, the criminal proceedings, either in relation to the actions of private individuals or those of the bailiff, did not offer an effective protection of the applicant's rights. The Court does not consider that the applicant can be faulted for having pursued this remedy for the purposes of the determination of the six-month time-limit, as domestic law and its interpretation by the domestic authorities indicated that this remedy offered reasonable prospects of success (see paragraphs 28, 30 and 37 above). Nonetheless, owing to the domestic authorities' approach to the applicant's case, it did not prevent the alleged violation or its continuation and did not offer him redress, primarily owing to the ongoing civil dispute on the tenancy relationship between the apartment owner and the applicant. The Court additionally takes note of the Ombudsman's findings about the limited effectiveness of this remedy in other situations (see paragraphs 42-44 above).

102. In view of the above, the Court concludes that the applicant did not have an effective remedy for his complaint about the interference with his right to respect for his home. There has accordingly been a violation of Article 13 of the Convention taken in conjunction with Article 8.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

103. 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

104. The applicant claimed 5,211.40 euros (EUR) in respect of pecuniary damage for the movable property he had lost, and EUR 3,550 in lost income. He also claimed EUR 100,000 in respect of non-pecuniary damage.

105. The Government submitted that the claim for the damage to the applicant's movable property was inadmissible, as all movable property included in the inventory had been returned to the applicant. In addition, the applicant had the right to bring a claim for damages against the bailiff. They also submitted that no documents had been lodged to substantiate the claim for damages and that the claim in respect of non-pecuniary damage was manifestly unjustified and exorbitant.

106. The Court refers to its conclusions above about the distinction that ought to be drawn between the violation of the applicant's right to respect for his home and the damage caused to his movable property, as well as the respective relevant domestic remedies in relation to those claims (see

paragraph 66 above). Accordingly, the Court does not discern any causal link between the violations found and this head of the claim in respect of pecuniary damage and therefore rejects it.

107. With respect to the claim for lost income, the Court notes that it lacks any substantiation whatsoever. Therefore, no conclusion can be made that any such damage was caused by the violations found. The Court therefore rejects this claim.

108. On the other hand, the Court considers that the applicant must have suffered non-pecuniary damage and awards the applicant EUR 8,000 under this head, plus any tax that may be chargeable.

B. Costs and expenses

109. The applicant also claimed EUR 5,422.98 in respect of the costs and expenses incurred at the national level, of which EUR 1,316.47 concerned the costs for legal assistance and the payment of State fees; the remainder was not elaborated on. With respect to the legal costs incurred before the Court, the applicant claimed EUR 8,150.56, submitting a legal services agreement concerning representation before the Court and an invoice.

110. The Government argued that these claims were not supported by documents attesting that the payments had indeed been made, apart from the payment of the State fees in the amount of approximately EUR 400.

111. 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 were actually and necessarily incurred and are reasonable as to quantum. With respect to the domestic proceedings, having regard to the above criteria and the documents in its possession (invoices specifying the hours and the type of work performed, as well as the payment orders with respect to the State fees), the Court grants the claim for legal expenses and States fees in the amount of EUR 1,316.47. The Court rejects the remainder of the claims concerning the costs and expenses incurred at the national level for lack of substantiation.

112. With respect to the legal costs incurred before the Court, the Court reiterates that representative's fees are actually incurred if the applicant has paid them or is liable to pay them (see *Merabishvili v. Georgia* [GC], no. 72508/13, § 371, 28 November 2017). In the present case, the legal services agreement and the invoice submitted by the applicant demonstrate his obligation to pay the legal fees incurred. On the other hand, the documents submitted do not provide a breakdown of the sum invoiced and include no time sheets. Accordingly, in view of the considerable amount sought, this claim cannot be allowed in full and a reduction must be applied. Having regard to the nature of the case and making its assessment on an equitable basis, the Court awards the applicant EUR 4,000 in respect of the legal costs incurred before the Court.

C. Default interest

113. 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

1. *Declares*, by a majority, the application admissible;

2. *Holds*, by six votes to one, that there has been a violation of Article 8 of the Convention;

3. *Holds*, by six votes to one, that there has been a violation of Article 13 of the Convention taken in conjunction with Article 8;

4. *Holds*, by six votes to one,
   (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:
      (i) EUR 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 5,316.47 (five thousand three hundred and sixteen euros forty-seven cents), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (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;

5. *Dismisses*, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 8 September 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Síofra O'Leary President

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

S.O.L.
M.K.

DISSENTING OPINION OF JUDGE O'LEARY

I. INTRODUCTION

1. A majority of the Chamber has voted in favour of finding two violations of Article 8 of the Convention: the first due to the failure of the Latvian State to observe positive procedural obligations in relation to the applicant's right to respect for his "home"; the second due to the unlawfulness of the interference by the bailiff with that same right.

2. In addition, the Chamber has concluded that the applicant did not have at his disposal an effective remedy allowing him to vindicate his right to respect for his home, thus finding a further violation of Article 8 combined with Article 13.

3. I respectfully disagree with my colleagues.

4. Firstly, on the basis of the information provided to the Court in relation to the applicant's individual case and the remedies available pursuant to Latvian law, I consider that he has not complied with the exhaustion requirements.

5. Secondly, the case having been deemed admissible by my colleagues, I consider that the positive procedural obligations developed by the Chamber under Article 8 in relation to what is alleged to have been an "eviction" stemming from an undefined and unregulated private law relationship (an "agreement on the use of premises") are both vague and potentially far-reaching.

6. As regards the violation relating to the actions of the bailiff, although the finding of "unlawfulness" seeks to delimit the scope and effect of the judgment by attaching the right to a prior judicial assessment to the requirements of domestic law, the reasoning employed in the judgment risks going further.

II. FACTUAL BACKGROUND

7. Before addressing the admissibility and merits of the case, it is important to set out succinctly the facts and sequence of events on which the applicant's case turns.

8. The "agreement on the use of premises" on which the applicant relies appears to have been agreed with a series of companies authorised by SIA Aeron (although there is some dispute about whether all acts were so authorised) when the apartment was owned by the latter. Neither the Latvian Civil Law nor the Law on Residential Tenancy define an "agreement on the use of premises" (§ 35 of the judgment). Thus, both the applicant and the entit(ies) which concluded this agreement seem to have entered into some form of unregulated subletting.

9. According to the information in the case file, the applicant had registered his place of residence in another region for many years, as well as in other properties. The length of occupancy of the apartment which he claimed to be his "home" based on use of premises was 1 year and ten months.

10. According to the judgment, the "last signed contract" was to run until 1 July 2011. The question whether the last contract signed entailed the right to request an extension of the agreement is in dispute (see § 5). Even if such a right to request was envisaged, the circumstances in which a request had to be granted pursuant to the agreement on which the applicant relied are not explained. The circumstances in which the refusal of an extension request of a regulated "tenancy agreement" could be justified under the Law on Residential Tenancy are explained in the domestic law part of the judgment (§ 31). However, it also transpires from that law that a refusal to extend could be challenged before a court (idem, see further below).

11. The residential building in which the apartment was located was sold at public auction on 9 February 2011. On 27 April 2011, the Riga Regional court confirmed the memorandum of sale, ruled that the new owner (SIA Ektornet Residential Latvia) was to be registered in the land register and ordered its entry into possession. An enforcement order with respect to this ruling was issued on 1 November 2011.

12. On 2 August 2011, after the expiry of the applicant's "last signed contract" (leaving aside the contested issue of possible rights to request extensions and the disputed nature of that contract), the former and new owners signed a certificate of delivery having established that there were no liens, no valid lease or tenancy agreements (§§ 7 and 21 of the judgment). This legal position was later borne out by the first instance court in January 2014 in the civil proceedings (see § 28) and by the findings made when discontinuing the criminal proceedings in August 2016 (see § 21). A search in the population register in June 2012 revealed that no-one was declared to be living there.

13. Considering unilaterally that the "agreement for use of premises" was *de facto* extended after 1 July 2011, the applicant sought to make payments for such use, which payments were returned with an indication that there was no tenancy agreement (§ 8). Although the new owner, SIA Ektornet Residential Latvia, first indicated that the apartment should be vacated by June 2012, it did enter into talks with the applicant, offering him a four-month tenancy agreement, but without the right to seek an extension. The applicant refused. He was then advised to vacate the apartment, barring which he was told that supplies of electricity and water would be cut off.

14. When the police were asked by the applicant to intervene to stop the new owner and its private security from changing the locks on the apartment on 8 November 2012 they concluded that the dispute was a private one and left after establishing that the delivery certificate had indicated that the apartment was not leased. When the bailiff intervened later in December

2012, having notified the former owner in November and requested that the apartment be vacated, he acted pursuant to the enforcement of the court order on entry into possession (§§ 14-15).

III. RELEVANT PROVISIONS OF LATVIAN LAW AND PRACTICE

15. It is also necessary to set out what is known about the relevant provisions of Latvian law.

16. It is apparent from the information available in the file on domestic law and from the few decisions taken by the domestic authorities and courts in the applicant's case that Latvian law provides for a mix of criminal and civil law remedies in cases of this nature: criminal proceedings for breach of the inviolability of the home and arbitrariness (§§ 19 and 37 and ss. 143 and 279, respectively, of the Criminal Law); civil proceedings seeking recognition of a tenancy relationship (§§ 9, 25, 28); civil proceedings for restoration of physical possession of the apartment (§§ 25 and 28); interim measures or stays of enforcement (§ 26 and ss. 560 and 561 of the Civil Procedure Law); claims for damages (§§ 28, 34 and 60 and ss. 1635 and 1779 of the Civil Law), and civil proceedings to challenge a refusal to extend a tenancy agreement (§ 31 and s.6 of the Law on Residential Tenancy) or to ensure recognition of the tenancy agreements concluded by previous owners (§§ 31 and 38 and s. 8 of the Law on Residential Tenancy).

17. From the information on domestic practice provided in the judgment, it would also appear that administrative proceedings can eventually be instituted if a bailiff has not verified if any tenancy agreements are in place before enforcing entry into possession (§ 39).

18. In addition, as stated in § 39 of the judgment, referring to a 2019 judgment of the Senate of the Supreme Court: "proceedings on the entry into possession did not address the question of the tenancy rights of the persons living in the residential premises. *This question had to be solved by bringing proceedings on recognising tenancy agreement [as] void or seeking its termination*" (emphasis added).

IV. EXHAUSTION REQUIREMENT

19. It is a fundamental feature of the machinery of protection established by the Convention that it is subsidiary to the national systems safeguarding human rights. The Court should not take on the role of Contracting States, whose responsibility it is to ensure that the fundamental rights and freedoms enshrined therein are respected and protected at domestic level.

20. The rule of exhaustion of domestic remedies is based on the assumption – reflected in Article 13 of the Convention, with which it has close affinity – that there is an effective remedy available in respect of the alleged violation. It is an indispensable part of the functioning of the

Convention system of protection (see further *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014, for an overview of the above general principles and those which follow).

21. States are dispensed from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system, and those who wish to invoke the supervisory jurisdiction of the Court as concerns complaints against a State are thus obliged to use first the remedies provided by the national legal system. The Court is not a court of first instance. It is ill-placed to make findings of basic facts and not competent to interpret domestic law.

22. As regards the question to which remedies, if any, an applicant is required to have recourse, three things are worth noting. Firstly, there is no obligation to have recourse to remedies which are inadequate or ineffective. To be effective, a remedy must be capable of remedying directly the impugned state of affairs and must offer reasonable prospects of success. Secondly, the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust that avenue of redress (see *Scoppola v. Italy* (no. 2) [GC], no. 10249/03, § 70, 17 September 2009). Thirdly, if there are a number of domestic remedies which an individual can pursue, that person is entitled to choose a remedy which addresses his or her essential grievance. In other words, when a remedy has been pursued, use of another remedy which has essentially the same objective is not required.

23. In the present case, on 8 November 2012, one year and nine months after the public auction, one year and seven months after entry into possession was ordered by the regional court and one year and three months after the certificate of delivery was signed, in which it was recorded that there were no liens, leases or tenancy agreements encumbering the property bought, the applicant first instituted civil proceedings seeking recognition of his tenancy relationship. Following a complaint lodged with the police one day later, criminal proceedings relating to inviolability and arbitrariness were instituted.

24. Crucially, the applicant withdrew his civil proceedings in October 2014, such that, when the criminal proceedings were discontinued in August 2016 for the lack of elements of a crime, the nature, if any, of the tenancy relationship between the applicant and the former and new owners of the apartment, had not been the subject of civil proceedings before the domestic courts. When withdrawing his civil claim, the applicant declared in open court that he was fully aware of the consequences of the withdrawal.

25. In the separate civil proceedings introduced by the applicant against the bailiff under s. 620 of the Civil Procedure Law, the district and regional courts held that the applicant had no standing to challenge execution of the Regional Court's enforcement order as he was not the debtor. Both courts

explained to the applicant that he could prove his claim to the apartment in question by submitting a claim to the courts of general jurisdiction.

26. The majority reject the Government's objection on grounds of non-exhaustion since they consider that the case is about arbitrary eviction without a lawful eviction order and not whether the applicant was a tenant under Latvian law (see § 65 of the judgment). However, as per the majority, "the crux of the applicant's complaint before this Court is that he was evicted without his right to reside in the apartment – or the absence thereof – having first been determined by the domestic courts" (idem). I agree that the latter question lies at the heart of the case. However, that question could only be determined either in the context of civil proceedings or by a combination of civil and criminal proceedings given the specificities of Latvian law and the nature of the dispute. The majority consider the case to be admissible because of the criminal proceedings instituted following the applicant's complaint to the police. However, for several reasons I consider this approach untenable.

27. Firstly, it is clear from the discontinuation of the criminal proceedings (§ 21) that the applicant should not have abandoned the civil ones. Recognition of the nature of his tenancy relationship, if any, and its legal effects was central to the decisions of the authorities in relation to the inviolability and arbitrariness complaints.

28. Secondly, whether there has been an eviction, whether it is arbitrary, and what safeguards and protections the law must afford the occupier are all pertinent considerations. As indicated by the Latvian Supreme Court in the 2019 ruling referred to in the judgment, the question of the tenancy rights of the persons living in residential premises has to be resolved by bringing proceedings on recognising tenancy agreement. The majority has implicitly opted for a line of exhaustion case-law – where one suitable remedy has been exhausted it is not necessary to require an applicant to exhaust another similar one – which is inapposite in the context of a dispute between two private parties such as that at issue in this case. It is neither excessively formalistic nor demanding to require of an applicant to exhaust a combination of civil and criminal remedies before seeking to establish the responsibility of a State, as a matter of international law, pursuant to positive procedural obligations incumbent on law enforcement officers and negative obligations opposable in relation to the actions of a bailiff.

29. Thirdly, the need for the applicant to have exhausted civil remedies is borne out not just by the 2019 domestic judgment referred to but also by the majority's reasoning in relation to the applicant's complaint under Articles 8 and 13. Having deemed the application admissible because of the effectiveness of the criminal law remedy (in theory), the majority consider that the remedy was ineffective (in practice) as it was "too limited in its scope and *offered no effective protection in a situation where the tenancy rights were in dispute*" (§ 100) and as regards the bailiff it did not consider "the lawfulness of the actions directed at the applicant as the person living there"

(idem). Thus, according to the majority judgment, "due to the domestic authorities' approach to the applicant's case, [the criminal proceedings] did not prevent the alleged violation or its continuation and did not offer a redress, *primarily owing to the ongoing civil dispute on the tenancy relationship between the apartment owner and the applicant*" (emphasis added). The text in italics underlines in my view why the Court should not have deemed irrelevant the applicant's failure to pursue the necessary civil proceedings regarding recognition of his tenancy relationship (or indeed a different civil remedy, see further below). The majority inadvertently recognise that the weakness they perceive in the criminal remedy resides in the withdrawal of the parallel civil proceedings. Incidentally, it is incorrect to refer to the "ongoing civil dispute" since the criminal proceedings continued until 2016, while the civil proceedings had been withdrawn by the applicant in 2014.

30. Thus, I cannot agree with my colleagues when they dismiss as irrelevant, alone or combined, remedies which cover "claims for recognition of tenancy relationships, restoration of physical possession or reimbursement of damages caused by the removal of his belongings" (§§ 65 and 99).

31. In addition, and crucially, it is a fairly standard tenet of civil law, reflected in the case-law of the Court on Article 6, that civil litigants are required to show a certain degree of diligence (see *Zubac v. Croatia* [GC], no. 40160/12, § 93, 5 April 2018, and the authorities cited therein). Whatever the legal nature and effects under Latvian law of "an agreement on the use of premises", it is uncontested that the last signed contract or agreement only ran until 1 July 2011. Prior to the assertion by the new owner of its rights and the enforcement by the bailiff of the entry into possession and the enforcement order of the Riga regional court in November-December 2012, the applicant had had ample time to introduce civil proceedings seeking recognition of the tenancy-like relationship he asserted, civil proceedings to challenge a refusal to extend a tenancy agreement (see § 31 and s.6 of the Law on Residential Tenancy) or civil proceedings to ensure recognition of the tenancy agreements concluded by previous owners (see §§ 31 and 38 and s. 8 of the Law on Residential Tenancy). He did none of these things with a view to enforcing by means of available civil proceedings respect for his right to what he argued was his "home".

32. Even if one ignores the failure to exploit these domestic civil remedies *prior* to the events in November-December 2012 which gave rise to the application before the Court, other civil remedies clearly existed to vindicate any right he might have had and which right might have been infringed *during* those events. The applicant had at his disposal, for example, civil proceedings for restoration of physical possession of the apartment (§§ 25 and 28) or claims for damages (§§ 28, 34 and 60 and ss. 1635 and 1779 of the Civil Law).

33. It is not sufficient in my view, when faced with clear evidence of other civil law remedies and an applicant who has tried none of them, to simply pin

the burden on the respondent Government and conclude that "the Court has no grounds to consider that a civil-law remedy for the protection of his Convention rights was available to the applicant" (§ 99).

34. In relation to the negative and unlawful interference by the bailiff, the majority considers that "a mechanism whereby tenants can seek a subsequent determination of the fact that they had had the right to reside in the dwelling from which they have already been removed cannot be regarded as an adequate procedural safeguard capable of preventing unjustified interference with the right to respect for one's home. It places a disproportionate burden on tenants who are forced to defend their rights through civil litigation after they have already lost their home" (see § 87). This reasoning, which seems firstly to presuppose a lawful tenancy, seems secondly to provide a right to remain unlawfully in the premises of another for as long as protracted legal proceedings may take, excluding damages as an effective remedy to compensate *ex post facto* any unlawfulness or arbitrariness in the *manner* of one's removal. Were one to have approached this case from the perspective of the rights of the lawful owner under Article 1 of Protocol n° 1, much of the majority's reasoning in relation to domestic civil remedies would not hold up in my view.

35. According to the Court's case-law, the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust that avenue of redress. All of the domestic judgments and decisions relied on in support of the majority judgment (§§ 38 – 41) date from between 2013 and 2019. They are the result of litigants relying on the multitude of civil law remedies available under the Latvian Civil Procedure Law and the Law on Residential Tenancy. Not only do they relate to the same time period as that during which the applicant could and should have sought to test and vindicate his rights before the domestic courts, but they demonstrate that his prospects of an effective remedy were not obviously futile. It cannot be forgotten that the effectiveness of a remedy within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant and the mere fact that an applicant's claim might fail is not in itself sufficient to render the remedy ineffective (see *O'Sullivan McCarthy Mussel Development Ltd. v. Ireland*, no. 44460/16, § 160, 7 June 2018).

36. Finally, it is important to stress that the situation in the present case is totally different from one where there exist parallel criminal and civil remedies and where the Court's case-law clearly states that the victim is not obliged to pursue both paths. The core question in this case was one of civil law and any criminal remedy was dependent on determination of the civil law question whether there was some form of "tenancy" agreement. The civil and criminal remedies available in the present case did not aim at the same goal. Rather, the criminal remedy appears subordinated, in the case of a challenge

by the alleged victim of a violation of his or her "home", to the assessment of any entitlement to reside in the impugned premises by civil courts.

V. PROTECTION OF THE APPLICANT'S "CONVENTION RIGHTS"

37. On the merits, the majority judgment finds two separate violations of Article 8 of the Convention, as well as a violation of Articles 8 and 13 combined.

38. According to the Court's case-law, the notion of "home" under Article 8 is an autonomous concept which does not depend on the classification under domestic law. Whether a premises constitutes a "home" under the protection of Article 8 § 1 depends on the factual circumstances, namely the existence of sufficient and continuous links with a specific place (*Winterstein and Others v. France*, no. 27013/07, § 141, 17 October 2013, with further references therein). The protection afforded by Article 8 is not limited to lawful residence.

39. Given the factual circumstances in the present case – the short length of the "use of premises" agreements which the applicant had entered into with three successive companies, with the authorisation (disputed) of the former owner of the apartment, the fact that he had registered his residence elsewhere and the fact that the disputed apartment seems also to have been occupied by a third party, J.P. - it is questionable whether Article 8 is applicable in the circumstances of the present case. Without the establishment of facts by a domestic court, the Court is badly placed to judge the contrasting, even contradictory, facts presented by the parties.

40. As regards the first violation found, the actions of the police – called to the residential premises on 8-9 November and subsequently responsible for the criminal proceedings instituted - are assessed on the basis of an overall balancing test pertaining to their positive obligations (§§ 74 – 81).

41. According to the majority, a State's positive obligations are triggered, in circumstances involving a private dispute over property, when an individual calls the police to defend himself against persons trying to evict him by force without any legal authorisation to do so (§ 76). The judgment refers to the fact that Article 8 protection of respect for one's home is not limited to premises which are lawfully occupied and links this to the domestic law requirement that "no person could be evicted without a valid eviction order" (§ 78). The basis for the latter statement is the Ombudsman's report of 2013 and the references to provisions of the Law on Residential Tenancy (§§ 30 – 32). However, sections 28 and 44 of the Law on Residential Tenancy use remarkably laconic formulations (§ 32). Even if the Court, acting as a court of first instance on questions of fact and domestic law, was to derive from them a requirement of a prior court assessment in *all* cases where an "eviction" is alleged by a person who claims to be a "tenant", the draft pins the triggering of the State's positive procedural obligations both to the general

Article 8 requirements of the Convention and to Latvian law as interpreted by the Court, referring to some domestic court decisions in the years following the applicant's case. The majority's position contradicts the assessment of both the Latvian prosecutors in the criminal proceedings and of the first instance court in the civil proceedings which the applicant withdrew (compare §§ 21 and 28 with the Court's assessment §§ 77 and 79). The judgment of the Supreme Court of 2019 does not sit well with it either. Both in terms of the interpretation of domestic law and the actions of the police, it is the report of the Ombudsman which seems principally to inform the Court's position. I have no difficulty conceding that the assessment of the prosecutors in 2016 when discontinuing the proceedings could have been more substantial (see § 80 of the judgment where they are criticised), but can one discount the impact on their assessment of the applicant's decision to withdraw his related civil proceedings two years earlier?

42. The actions of the bailiff are also found wanting given the lawfulness requirement of Article 8. The applicant's "eviction" is found not to have had a legal basis and any existing procedural safeguards under domestic law are considered to have failed to prevent the arbitrariness (§§ 82 – 90).

43. In the absence of the exhaustion of domestic remedies which could have established the relevant facts and the requirements of national law, the Chamber decides itself that the applicant was "evicted" (§ 82). As regards whether the actions of the bailiff were provided by law, again the Court decides that an owner may evict a tenant or a person unlawfully occupying an apartment only by means of court proceedings (§ 85). Leaving aside whether the enforcement of the court order on entry into possession was fit for purpose in a case such as this, as illustrated above, since the expiry of his contract or agreement in July 2011 the applicant had had civil remedies at his disposal to assert his right to remain in his "home". He had had ample opportunity to challenge what he considered a refusal to grant his request for extension of his tenancy relationship/agreement/use of premises. Despite not having had recourse to any of these remedies, responsibility for events in November and December 2012 is placed at the door of the bailiff who, according to the domestic courts which were seised, deemed the latter's actions to have been in accordance with domestic law.

44. The judgment is not limited to a Latvian law requirement that eviction can only occur after court proceedings. It appears to extend protection to persons who have failed to exhaust remedies to establish what they argue is their valid ground to reside in a given premises, shifting to the State a positive procedural and operational burden in private property disputes despite the existence of an extensive regulatory framework and available civil remedies.

VI. CONCLUSION

45. The domestic background to this case may be an important key to understanding the majority judgment. Following the financial crisis in 2008 and subsequent years many mortgaged properties were sold at public auctions or by other means to enforce judgment debts. A housing and rental crisis ensued for owners in arrears and tenants in properties which changed ownership.

46. The present case no doubt highlights structural problems in Latvia where property owners and those on the rental market appeared to resort to unregulated forms of "tenancy" such as "use of premises". This problem may indeed have given rise to many legal questions regarding the rights and obligations of owners and occupants. Furthermore, the systemic nature of the problem in Latvia is highlighted in the Ombudsman's report. Problems of this nature can be seen in many Council of Europe States whose property and rental markets were deeply affected by the crash. The present judgment could thus be welcomed if it casts light on the systemic difficulties in Latvia at the relevant time.

47. However, for the reasons explained above, I consider that the case should have been deemed inadmissible for non-exhaustion. The failure of the applicant to pursue appropriate and available domestic remedies means that the judgment on the merits fails to satisfy, riddled as it is with difficulties which flow from the failure to respect the exhaustion requirement. Furthermore, although the intention was perhaps to be Latvia-specific, the judgment risks extending the scope and protection afforded by Article 8 unnecessarily. It is for these reasons that I could not, regretfully, join my colleagues.