

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

FIRST SECTION

CASE OF TIJARDOVIĆ v. CROATIA

(Application no. 38906/13)

JUDGMENT

STRASBOURG

19 June 2014

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



In the case of Tijardović v. Croatia,

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

Mirjana Lazarova Trajkovska, *President,*
Paulo Pinto de Albuquerque,
Ksenija Turković, *judges,*

and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 27 May 2014,

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

PROCEDURE

1. The case originated in an application (no. 38906/13) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Croatian national, Ms Dragica Tijardović ("the applicant"), on 16 May 2013.

2. The applicant was represented by Mr V. Duplančić, a lawyer practising in Split. The Croatian Government ("the Government") were represented by their Agent, Ms Š. Stažnik.

3. The applicant alleged, in particular, that her right to respect for her home was violated, contrary to Article 8 of the Convention.

4. On 18 September 2013 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1957 and lives in Split.

6. On an unspecified date the applicant's father-in-law was granted a specially protected tenancy on a flat at Teutina 1, Split. However, since that flat was derelict, in 1983 he was granted a specially protected tenancy on another flat, at Kvaternikova 1, also in Split. The same year the applicant's father-in-law, his wife, the applicant's husband, the applicant and their child moved into the flat in Kvaternikova street. Another child was born in 1984.

7. The applicant's parents-in-law renovated the first flat in Teutina street and moved back into it in 1985. The applicant, her husband and their children continued to live in the second flat in Kvaternikova street. They paid the rent and all bills. On 3 June 1991, Parliament enacted the Specially

Protected Tenancies (Sale to Occupier) Act (*Zakon o prodaji stanova na kojima postoji stanarsko pravo*), which regulated the sale of publicly owned flats previously let under a specially protected tenancy. In general, the Act entitled the holder of a specially protected tenancy on a publicly owned flat to purchase it under favourable conditions of sale.

8. In 1994 the applicant's husband died and she continued to live in the same flat with her two children.

9. It recognises a special category of lessees, those who were previously holders of specially protected tenancies on privately-owned flats. Such a category is, according to the Act, subject to a number of protections, such as an obligation for the owners to contract a lease for an unlimited period of time, the payment of a so called "protected rent", the amount of which is to be prescribed by the Government, and strictly limited reasons for termination of the lease. This Act abolishes the specially protected tenancy as such.

10. The applicant's father-in-law died in 1998. In 2000 the applicant's mother-in-law bought the first flat.

11. On the basis of the Specially Protected Tenancies (Sale to Occupier) Act, the applicant requested that the Town of Split, as the owner of the flat she occupied, conclude a contract for the sale of the flat between the owner as the seller and herself as the buyer. Since the owner declined her request, on 7 November 2000 the applicant brought a civil action in the Split Municipal Court (*Općinski sud u Splitu*) seeking a judgment in lieu of the contract of sale. She subsequently also sought recognition of her status of a protected lessee. On 23 November 2007 the Town of Split lodged a counter-claim, arguing that the applicant had no legal basis for occupying the flat and seeking her eviction.

12. On 30 June 2009 the Split Municipal Court dismissed the applicant's claims on the ground that she had never acquired a specially protected tenancy or any other right on that flat and therefore had no legal basis for occupying the flat. The Municipal Court accepted the counter claim and ordered the applicant's eviction.

13. That judgment was upheld on appeal by the Split County Court on 25 August 2010.

14. On 19 September 2012 the Supreme court declared inadmissible an appeal on points of law lodged by the applicant. It found that the legal issues raised therein were not important for ensuring the uniform application of the law and equality of citizens within the meaning of section 382(2) of the Civil Procedure Act.

15. On 8 March 2011 and 3 December 2012 the applicant lodged two constitutional complaints, whereby she argued that she had moved into the flat as a household member of her father-in-law, who had been granted a specially protected tenancy on that flat; that the case concerned an existential issue for her and that her modest income would not allow her to

secure alternative accommodation; that she had been living in the flat since 1983 and paying the rent and all utility bills; and that the authorities had not asked her to leave the flat when her parents-in-law had moved to another flat and thus had accepted that she had had the right to occupy the flat in Kvaternikova street.

16. On 28 March 2013 the applicant's complaints were declared inadmissible as ill-founded on the ground that she had not put forward any arguments relevant for the protection of her constitutional rights.

II. RELEVANT DOMESTIC LAW

17. The Specially Protected Tenancies (Sale to Occupier) Act (Official Gazette nos. 27/1991, 33/1992, 43/1992, 69/1992, 25/1993, 26/1993, 48/1993, 2/1994, 44/1994, 47/1994, 58/1995, 11/1996, 11/1997 and 68/1998, *Zakon o prodaji stanova na kojima postoji stanarsko pravo*) regulates the conditions for the sale of flats let under specially protected tenancies. In general, the Act entitles the holder of a specially protected tenancy of a publicly owned flat to purchase it under favourable conditions of sale.

The relevant provision of the Act provides as follows:

Section 4

> "Every holder of a specially protected tenancy (hereinafter 'the tenant') may submit a written application to purchase a flat to the ... owner ('the seller') ... and the seller shall be obliged to sell the flat."

18. Section 161(1) of the Property Act (*Zakon o vlasništvu i drugim stvarnim pravima*, Official Gazette no 91/1996) reads as follows:

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

19. The relevant part of the Civil Procedure Act (*Zakon o parničnom postupku*, Official Gazette of the Socialist Federal Republic of Yugoslavia nos. 4/1977, 36/1977 (corrigendum), 36/1980, 69/1982, 58/1984, 74/1987, 57/1989, 20/1990, 27/1990 and 35/1991, and the Official Gazette of the Republic of Croatia nos. 53/1991, 91/1992, 58/1993, 112/1999, 88/2001, 117/2003, 88/2005, 2/2007, 84/2008 and 123/2008) provides as follows:

Section 382

> "(2) The parties to the proceedings may lodge an appeal on points of law against a second-instance judgment where the outcome of a dispute depends on the assessment of some substantive or procedural issue of importance for ensuring a unified application of the law and the equality of citizens ..."

Reopening of proceedings following a final judgment of the European Court of Human Rights in Strasbourg finding a violation of a fundamental human right or freedom

Section 428a

"(1) When the European Court of Human Rights has found a violation of a human right or fundamental freedom guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms or the additional protocols thereto ratified by the Republic of Croatia, a party may, within thirty days of the judgment of the European Court of Human Rights becoming final, file a petition with the court in the Republic of Croatia which adjudicated in the first instance in the proceedings in which the decision violating the human right or fundamental freedom was rendered, to set aside the decision by which the human right or fundamental freedom was violated.

(2) The proceedings referred to in paragraph 1 of this section shall be conducted by applying, *mutatis mutandis*, the provisions on the reopening of proceedings.

(3) In the reopened proceedings the courts are required to respect the legal opinions expressed in the final judgment of the European Court of Human Rights finding a violation of a fundamental human right or freedom."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

20. The applicant complained that the national courts had violated her right to respect for her home. She relied on Article 8 of the Convention, the relevant part of which provides:

"1. Everyone has the right to respect for ... his home ...

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

1. The parties' arguments

21. The Government argued that the applicant had failed to exhaust domestic remedies. They contended that she had lodged an appeal on points of law, a remedy which in the circumstances of her case had not offered her any prospects of success, and which the Supreme Court had eventually declared inadmissible. Furthermore, in her constitutional complaint she had not presented any complaint concerning her right to respect for her home.

22. The applicant replied that she had exhausted all available remedies before the national courts and had insisted on the protection of her right to respect for her home before the domestic courts.

2. The Court's assessment

23. The Court reiterates that the rule of exhaustion of domestic remedies normally requires that the complaints intended to be made subsequently at the international level should have been raised before the domestic courts, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law. The object of the rule on exhaustion of domestic remedies is to allow the national authorities (primarily the judicial authorities) to address an allegation that a Convention right has been violated and, where appropriate, to afford redress before that allegation is submitted to the Court. In so far as there exists at national level a remedy enabling the national courts to address, at least in substance, any argument as to an alleged violation of a Convention right, it is that remedy which should be used (see *Azinas v. Cyprus* [GC], no. 56679/00, § 38, ECHR 2004-III).

24. Turning to the circumstances of the present case the Court notes that the applicant lodged an appeal on points of law and at the same time a constitutional complaint, both against the Split County Court's judgment of 25 August 2010. On 19 September 2012 the Supreme Court declared that appeal inadmissible on the ground that the application of laws as regards the issues relevant for the assessment of the applicant's case was not in dispute. However, the Supreme Court did not declare the applicant's appeal on points of law inadmissible on formal grounds but examined the issue of whether the findings of the lower courts in the applicant's case were compatible with the prior practice of the Supreme Court.

25. After her appeal on points of law had been declared inadmissible, the applicant lodged a second constitutional complaint. Neither of the applicant's constitutional complaints was declared inadmissible on formal grounds, for example that she had not complied with the procedural rules under domestic law. Instead, the Constitutional Court held that her complaint was ill-founded on the ground that she had not put forward any arguments relevant for the protection of her constitutional rights. By doing so, the Constitutional Court implicitly accepted that the applicant's constitutional complaint satisfied formal criteria (see, by way of comparison, *Bjedov v. Croatia*, no. 42150/09, § 48, 29 May 2012). The Court sees no reason to hold otherwise. The Court also notes that in her submissions before the Constitutional Court, the applicant complained in substance about her eviction from the flat in which she had been residing since 1983. She thus gave the Constitutional Court adequate opportunity to remedy the situation she is now complaining of before the Court. In those circumstances, the Court is satisfied that the applicant exhausted domestic

remedies in respect of her complaint under Article 8 of the Convention concerning her right to respect for her home (see, by way of comparison, *Paulić v. Croatia*, no. 3572/06, §§ 25 and 26, 22 October 2009; *Orlić v. Croatia*, no. 48833/07, §§ 40 and 41, 21 June 2011; and *Brežec v. Croatia*, no. 7177/10, § 27, 18 July 2013). Accordingly, the complaint cannot be dismissed for failure to exhaust domestic remedies.

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

B. Merits

1. The parties' arguments

27. The applicant contended that she had nowhere else to live and that the flat at issue was her only home. Her modest income would not allow her to secure alternative accommodation and the eviction would render her homeless. She had raised before the national courts various arguments against her eviction from the flat she had been occupying since 1983 (see paragraph 14 above). However, the national courts had simply found that she had no right to occupy that flat and had ordered her eviction.

28. The Government accepted that the flat at issue was the applicant's home and that ordering her eviction amounted to an interference with her right to respect for her home. However, since the applicant had not brought any arguments before the national courts concerning her right to respect for her home, the national courts had not been obliged to carry out the proportionality test.

2. The Court's assessment

(a) Whether a right protected by Article 8 is in issue

29. The parties agree that the flat at issue was the applicant's home and that therefore she had a right protected by Article 8 of the Convention. In this connection the Court also stresses whether a property is to be classified as a "home" is a question of fact and does not depend on the lawfulness of the occupation under domestic law (see *McCann v. the United Kingdom*, no. 19009/04, § 46, 13 May 2008).

30. It is undisputed that the applicant has been living in the flat in question since 1983. Having regard to this, the Court finds that the applicant had sufficient and continuous links with the flat at issue for it to be considered her "home" for the purposes of Article 8 of the Convention.

(b) Whether there has been an interference with the applicant's right to respect for her home

31. The Court has adopted several judgments in which it assessed the issue of an interference with an applicant's right to respect for his or her home in circumstances where an eviction order had been issued. In the case of *Stanková v. Slovakia* (no. 7205/02, 9 October 2007) the Court held as follows:

> "57. The Court notes, and it has not been disputed between the parties, that the obligation on the applicant to leave the flat amounted to an interference with her right to respect for her home which was based on the relevant provisions of the Civil Code and the Executions Order 1995 ..."

32. Subsequently, the Court held in *McCann*, cited above:

> "47. It was further agreed that the effect of the notice to quit which was served by the applicant's wife on the local authority, together with the possession proceedings which the local authority brought, was to interfere with the applicant's right to respect for his home."

33. Furthermore, the Court has held in *Ćosić v. Croatia* (no. 28261/06, 15 January 2009):

> "18. The Court considers that the obligation on the applicant to vacate the flat amounted to an interference with her right to respect for her home, notwithstanding the fact that the judgment ordering the applicant's eviction has not yet been executed."

34. The Court sees no reason to depart from this approach in the present case. It notes that an eviction order was issued against the applicant and became final on 25 August 2010 when the Split County Court upheld the first-instance judgment (see paragraph 13 above). The Court considers that the eviction order issued against the applicant amounted to an interference with her right to respect for her home, notwithstanding the fact that the judgment ordering the applicant's eviction has not yet been executed. The fact that the national courts postponed the applicant's eviction is not of decisive importance, since those proceedings could be resumed at the request of the State at any time (compare to *Paulić*, cited above, § 38).

(c) Whether the interference was prescribed by law and pursued a legitimate aim

35. The domestic courts ordered the applicant to vacate the flat in question under Croatian laws regulating ownership, which allow an owner to seek repossession of his or her property when the possessor has no legal grounds for possession (see the relevant provision of the Property Act in paragraph 18 above).

36. The Court reiterates that it is in the first place for the national authorities, notably the courts, to interpret and apply the domestic law, even in those fields where the Convention "incorporates" the rules of that law, since the national authorities are, in the nature of things, particularly

qualified to settle the issues arising in this connection (see, *mutatis mutandis*, *Winterwerp v. the Netherlands*, 24 October 1979, § 46, Series A no. 33). The Court will not substitute its own interpretation for theirs in the absence of arbitrariness (see, for example, *Tejedor García v. Spain*, 16 December 1997, § 31, *Reports of Judgments and Decisions* 1997-VIII).

37. The eviction order in question was issued by the national courts under Croatian laws regulating ownership, which allow an owner to seek repossession of his or her property when the possessor has no legal grounds for possession. The national courts relied on section 161 of the Property Act when ordering the applicant's eviction. The Court, noting that its power to review compliance with domestic law is limited (see, among other authorities, *Allan Jacobsson v. Sweden* (no. 1), 25 October 1989, Series A no. 163, p. 17, § 57), is thus satisfied that the national courts' decisions ordering the applicant's eviction were in accordance with domestic law (see *Ćosić*, cited above, § 19). The interference in question therefore pursued the legitimate aim of protecting the rights of the owner of the flat (see *Orlić*, cited above, § 62).

(d) Whether the interference was "necessary in a democratic society"

38. The central question in this case is, therefore, whether the interference was proportionate to the aim pursued and "necessary in a democratic society". The Court reiterates that whilst Article 8 contains no explicit procedural requirements, the decision-making process involved in measures of interference must be fair and such as to afford due respect to the interests safeguarded by Article 8 (see *Giacomelli v. Italy*, no. 59909/00, § 82, ECHR 2006-XII; *Maumousseau and Washington v. France*, no. 39388/05, § 62, 6 December 2007; *V.C. v. Slovakia*, no. 18968/07, § 141, ECHR 2011 (extracts); and *Hardy and Maile v. the United Kingdom*, no. 31965/07, § 219, 14 February 2012). In that respect, the Court held as follows in the case of *Connors v. the United Kingdom* (no. 66746/01, §§ 81–84, 27 May 2004), which concerned summary possession proceedings:

> "83. The procedural safeguards available to the individual will be especially material in determining whether the respondent State has, when fixing the regulatory framework, remained within its margin of appreciation. In particular, the Court must examine whether the decision-making process leading to measures of interference was fair and such as to afford due respect to the interests safeguarded to the individual by Article 8 ..."

39. In this connection the Court reiterates that any person at risk of an interference with his or her right to a home should in principle be able to have the proportionality and reasonableness of the measure determined by an independent tribunal in the light of the relevant principles under Article 8 of the Convention, notwithstanding that, under domestic law, he or she has

no right to occupy the property concerned (see, *mutatis mutandis*, *McCann*, cited above, § 50, and *Orlić*, cited above, § 65).

40. The Court, however, emphasises that such an issue does not arise automatically in every case concerning an eviction dispute. If an applicant wishes to mount an Article 8 defence to prevent eviction, it is for him or her to do so and for a court to uphold or dismiss the claim.

41. The Court notes that in the present case the applicant has raised the issue of her right to respect for her home. Before the national courts she presented arguments linked to the proportionality of her eviction, such as the fact that she had moved into the flat as a household member of her father-in-law who had been granted a specially protected tenancy on that flat; that the case concerned an existential issue for her and that her modest income would not allow her to secure alternative accommodation; that she had been living in the flat since 1983 and paying the rent and all utility bills; that the authorities had not asked her to leave the flat when her parents-in-law moved to another flat and thus had accepted that she had the right to occupy the flat in Kvaternikova street.

42. The Court also notes that the flat at issue was allocated to the applicant's father-in-law in the specific circumstances which existed in the former Yugoslavia, where employees paid obligatory monthly contributions to housing funds and where a large proportion of employees were allocated publicly-owned flats. It is to be noted that when the applicant was allocated the flat at issue, it was publicly owned. While the respondent State certainly enjoys a wide margin of appreciation in drawing up its social and housing policies, the Court notes that the eviction order was not submitted until 2007, in the context of proceedings in which she sought to establish her right to purchase the flat as a holder of a protected tenancy. Thus, in addition to noting the applicant's longstanding occupancy of the flat and the fact that she paid the rent for it, the Court also observes that the owner did not initially take a firm standpoint as regards the applicant's entitlement to occupy the flat (see *Orlić*, cited above, § 70, and *Brežec*, cited above, § 48).

43. However, when it comes to the decisions of the domestic authorities in the present case, their findings were restricted to the conclusion that under the applicable national laws the applicant had no legal entitlement to occupy the flat. The national courts thus confined themselves to finding that the applicant had no legal grounds for occupying the flat, and made no further analysis of the proportionality of the measure to be applied against her, namely her eviction from the flat she had been occupying since 1983.

44. By failing to examine the above-mentioned arguments, the national courts did not afford the applicant adequate procedural safeguards. The decision-making process leading to the measure of interference in those circumstances was not fair and did not afford due respect to the interests safeguarded to the applicant by Article 8 (see, by way of comparison, the above-cited cases of *Ćosić; Paulić*; *Orlić; Bjedov and Brežec*).

45. There has, therefore, been a violation of Article 8 of the Convention in the instant case.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. 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

47. The applicant claimed 100,300 euros (EUR) in respect of pecuniary damage.

48. The Government opposed that claim.

49. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

B. Costs and expenses

50. The applicant also claimed 57,525 Croatian kuna (HRK) for the costs and expenses incurred before the domestic courts and EUR 2,000 for those incurred before the Court.

51. The Government deemed the sums claimed unfounded and excessive.

52. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 4,000, covering costs under all heads.

C. Default interest

53. 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, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 8 of the Convention;

3. *Holds*
(a) that the respondent State is to pay the applicant, within three months EUR 4,000 (four thousand euros), 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 19 June 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Mirjana Lazarova Trajkovska
President