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

SECOND SECTION

DECISION

Application no. 63081/14
Ljubica LALIĆ
against Croatia

The European Court of Human Rights (Second Section), sitting on 20 September 2016 as a Chamber composed of:

Işıl Karakaş, *President,*
Julia Laffranque,
Nebojša Vučinić,
Paul Lemmens,
Ksenija Turković,
Jon Fridrik Kjølbro,
Stéphanie Mourou-Vikström, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having regard to the above application lodged on 12 September 2014,

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

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Ms Ljubica Lalić, is a Croatian national, who was born in 1950 and lives in Šibenik. She was represented before the Court by Mr I. Labura, a lawyer practising in Šibenik.

2. The Croatian Government ("the Government") were represented by their Agent, Ms Š. Stažnik.

The circumstances of the case

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

1. Proceedings concerning the fiduciary agreement to transfer the applicant's house to a bank

4. The applicant's husband was an employee of the "Slavonac" company. On 24 September 1998 the applicant and her husband, as guarantors of a loan to the company, entered into an agreement with the Jadranska bank of Šibenik to use their house as security for a loan of 200,000 Croatian kunas. It was stipulated that unless the debtor paid its outstanding debts within five years, the creditor bank was entitled to institute enforcement proceedings for payment of the debt through the sale of the applicants' house.

5. On 13 March 2005 the applicant brought a civil action before the Šibenik Municipal Court against the said bank and the "Slavonac" company, claiming that neither she nor her husband had ever signed the fiduciary agreement in respect of their house and that she had learned about it for the first time in the inheritance proceedings instituted after the death of her husband.

6. The Municipal Court commissioned an expert in graphology, who confirmed that the signatures on the said agreement were indeed those of the applicant and her husband, and on 15 February 2008 the Municipal Court dismissed the applicant's claim. This judgment was upheld by the Šibenik County Court on 27 September 2010 and the Supreme Court on 2 July 2013.

7. The applicant's subsequent constitutional complaint was dismissed on 12 March 2014.

2. Eviction proceedings

8. In the meantime, on 18 April 2006 the Jadranska bank of Šibenik applied to the Šibenik Municipal Court for enforcement of the fiduciary agreement against the applicant. It sought her eviction on the basis of a report of 21 February 2006 and its appendix, certified by a notary public on 9 February 2006 (*Zapisnik o posvjedočenju činjenica s potvrdom kojeg je sastavio javni bilježnik i dopuna Potvrde*). Those documents had been issued in connection with the above-mentioned fiduciary agreement in respect of the applicant's and her husband's house.

9. On 26 May an eviction order against the applicant was issued by the Šibenik Municipal Court.

10. On 14 June 2006 the applicant lodged an appeal against the eviction order, referring to the above-mentioned civil proceedings, which were still pending. The appeal was dismissed by the Šibenik County Court on 26 February 2007. However, on 9 October 2007 the eviction was postponed.

11. On 20 January 2012 the creditor asked the court to postpone the applicant's eviction until further notice.

COMPLAINTS

12. The applicant complained under Article 8 of the Convention that her right to respect for her home had been violated.

THE LAW

13. The applicant complained that the eviction order had been issued in violation of her right to respect for her home. She relied on Article 8 of the Convention, the relevant part of which reads:

> "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."

1. Submissions of the parties

14. The Government argued that the applicant had not exhausted domestic remedies, because she had not raised any complaint about her right to respect for her home in the civil proceedings in which she challenged the validity of the fiduciary agreement in respect of her house. Furthermore, as regards the enforcement proceedings, she had not lodged a constitutional complaint against the enforcement order. In such a complaint she could have argued that the agreement was contrary to the Constitution, which guaranteed the "inviolability of one's home".

15. The Government also argued that the grounds for interference with the applicant's right to respect for her home were set out in the Enforcement Act. The interference had pursued the legitimate aim of protecting the interests of others, namely the creditor bank. They maintained that, by using their house as security for a loan, the applicant and her late husband had agreed to their house being sold if the debtor company failed to comply with its contractual obligations.

16. The applicant replied that she had exhausted the available domestic remedies.

17. She also argued that the eviction order amounted to an unacceptable interference with her right to respect for her home.

2. The Court's assessment

18. The Court does not have to address all the issues raised by the parties because, even assuming that the applicant properly exhausted the

available domestic remedies, the application is in any event inadmissible for the following reasons.

19. The Court notes at the outset that even though the applicant has not yet been evicted, an eviction order has been issued and may be enforced at any time. The Court reiterates that the obligation on an applicant to vacate a house in which he or she lives amounts to an interference with his right to respect for his or her home (see *Ćosić v. Croatia*, no. 28261/06, § 18, 15 January 2009).

20. The applicant in the present case complained that the repayment of a loan made to the "Slavonac" company had been enforced by the sale of her home. The Court notes at the outset that the applicant voluntarily acted as a guarantor of the loan and used her home as collateral for it. The applicant specifically agreed that if the outstanding debt remained unpaid, the creditor bank was entitled to seek enforcement of the repayment through the sale of her house (see paragraph 4 above).

21. The applicant attempted to challenge the validity of her signature on the fiduciary agreement in respect of the house belonging to her and her husband. However, the national courts in those proceedings concluded that the signature was the applicant's. This implies that she freely entered into the agreement at issue and freely stipulated that the loan could be secured using the house as security. The applicant must therefore have been aware that her house would be sold to pay any outstanding debt if the debtor failed to make the repayments.

22. The sale of the applicant's house in the enforcement proceedings was a consequence of her contractual obligations. Moreover, it was a consequence to which she had expressly agreed.

23. It can therefore be concluded that the applicant agreed and accepted that payment of the "Slavonac" company's outstanding debt would be enforced by the sale of her house.

24. Accordingly, this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 13 October 2016.

Hasan Bakırcı
Deputy Registrar

Işıl Karakaş
President