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

SECOND SECTION

DECISION

Application no. 74936/12
Zvonimir PETOLAS
against Croatia

The European Court of Human Rights (Second Section), sitting on 22 March 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 Stanley Naismith, *Section Registrar,*

Having regard to the above application lodged on 19 October 2012,

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, Mr Zvonimir Petolas, is a Croatian national who was born in 1941 and lives in Zagreb. He was represented before the Court by Ms S. Budimir, an advocate practising in Zagreb.

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

A. The circumstances of the case

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

4. On 22 December 1972 the applicant and his wife moved into a socially-owned flat in Zagreb with a floor area of approximately 34 square metres.

5. On 26 June 1975 the company S., as the flat provider, invited the applicant to come to its offices with a view to signing a contract for use of the flat (*ugovor o korištenju stana*) and to bring along the decision whereby he had been assigned the flat in question.

6. On 24 March 1980 the applicant was summoned to the offices of the Department of Housing Affairs of the Novi Zagreb Municipality (*Općina Novi Zagreb*) for the same reason.

1. Civil proceedings

7. Since the applicant had failed to react to either of those requests, on 7 June 1984 the Novi Zagreb Municipality (which was later succeeded by the City of Zagreb [*Grad Zagreb*], hereafter "the local authorities"), represented by the State Attorney's Office, brought a civil action in the Zagreb Municipal Court (*Općinski sud u Zagrebu*), seeking eviction of the applicant and his wife on the grounds that they had been occupying the flat without being entitled to do so.

8. The applicant submitted that he had received the keys to the flat from company S., on whose waiting list for housing he had figured for ten years. He had moved into the flat at the same time as the other tenants had moved into their flats located in the same building. He claimed to have signed several copies of the contract with company S. for use of the flat, on which occasion he had been told that one of the copies would be sent to him by post. However, he had never received it. Over a period of two years he had several times enquired of the company if he might obtain a copy of the contract, but had been told that it had been misplaced. The company had later been dissolved without him ever receiving his copy. Since he had already signed the relevant contract, as explained above, he did not wish to sign another and had thus ignored both the above-mentioned requests.

9. In answer to the question why he had not paid any rent until he was eventually sued, the applicant replied that he had done so retrospectively.

10. By a judgment of 8 November 1984 the Zagreb Municipal Court ordered the applicant and his wife to vacate the flat. The court held that they had no right to occupy the flat in question. More specifically, the court held that (a) under the relevant legislation a written contract for use of a flat needed to be signed in order to acquire a specially protected tenancy (see section 14 of the 1962 Housing Act in paragraph 40 below), (b) it was against the law to move in to and occupy a flat without having signed such a contract beforehand (see section 6 of the 1962 Housing Act in paragraph 40 below), and (c) the applicant had not proved that he had ever signed such a contract.

11. By a judgment of 12 March 1985 the Zagreb District Court (*Okružni sud u Zagrebu*) dismissed an appeal lodged by the applicant and upheld the first-instance judgment, endorsing the reasons given therein. It added that the applicant had never submitted the decision assigning him the flat in question, which was a precondition for concluding the contract for use of the flat (see section 43(2) of the 1962 Housing Act in paragraph 40 below).

12. By a judgment of 13 November 1985 the Supreme Court (*Vrhovni sud Hrvatske*) allowed an appeal from the applicant on points of law (*revizija*), quashed the judgments of the lower courts and remitted the case to the first-instance court. That court held that the lower courts had failed to examine whether the applicant and his wife had acquired a specially protected tenancy by virtue of their long-term use of the flat, that is to say, by complying for many years with their obligations as tenants, which would have implied that there was a contract for use of the flat even though it had not been concluded in writing (see paragraphs 43 and 46 below). The relevant part of that judgment reads as follows:

> "[The factual] findings of the [lower] courts are deficient to ... [the] extent that they ... do not [provide] sufficient [grounds] for concluding that the defendants have been using the flat without being entitled to do so.
>
> It is true that the existence of a written contract for use of the flat was not established. However, circumstances may suggest that such a contract existed even though not in written form. In such cases, which entail compliance [by the occupier] with contractual obligations for many years, [in particular where the occupier] behaves like [a tenant] and pays the rent ... it is possible to acknowledge status as the holder of a specially protected tenancy in respect of a person who has occupied a flat on the basis of a contract of use for the [said] flat for many years (in this case more than 10 years) despite the non-existence of such a contract concluded in writing."

13. In the resumed proceedings, at a hearing held on 2 December 1992 the local authorities withdrew their civil action in so far as it was directed against the applicant's wife, who had ceased to live in the flat after the couple divorced.

14. By its judgment of 2 December 1992 the Zagreb Municipal Court dismissed the action by the local authorities. On 5 October 1993 the Zagreb District Court quashed that judgment for incompleteness of facts and remitted the case to the lower court.

15. On 5 November 1996 the Lease of Flats Act entered into force. It abolished the legal concept of the specially protected tenancy and provided that the holders of such tenancies who did not avail themselves of the right to purchase the flats under separate legislation were to become "protected lessees" (*zaštićeni najmoprimci*). Under the Act such lessees enjoy a number of protective measures, such as the duty of landlords to enter into a lease of indefinite duration, payment of a protected rent (*zaštićena najamnina*) – the amount of which is set by the Government and significantly lower than the market rent – and better protection against termination of the lease.

16. In its judgment of 10 October 2000 the Zagreb Municipal Court ruled in favour of the local authorities and ordered the applicant to vacate the flat. Following an appeal by the applicant, on 18 May 2004 the Zagreb County Court (*Županijski sud u Zagrebu*) quashed the first-instance judgment and remitted the case.

17. In the resumed proceedings, at a hearing held on 15 January 2008 the applicant submitted a copy of the contract for use of the flat he had allegedly signed on 22 February 1973, claiming that he had found it in the meantime. He asked the court to allow him to submit the original at a later date.

18. At the same hearing the applicant, relying on the Lease of Flats Act (see paragraph 15 above), also brought a counterclaim against the local authorities (the details of which he provided later) whereby he sought a judgment (a) acknowledging that he had acquired the status of a protected lessee, and (b) forcing a lease contract stipulating the protected rent.

19. At a hearing held on 7 April 2008 the court invited the applicant to bring to the next hearing, scheduled for 5 September 2008, the original of the contract of 22 February 1973.

20. The applicant did not attend in person the hearing held on 5 September 2008 nor did he submit the original of the contract, as requested by the court.

21. At a hearing held on 21 November 2008 the applicant's representative stated that the applicant was unable to find the original of the contract. He explained that a friend of his from Dubrovnik had only recently found the copy of the contract and sent it to him. However, he had not found the original. The applicant's representative therefore asked the court to adjourn the hearing and allow him additional time to find it. After hearing the applicant, the court refused that request and closed the main hearing. During his testimony the applicant explained that after 1971 he had been persecuted as a Croatian nationalist and that criminal proceedings had been instituted against him. In those proceedings he had been represented by an advocate from Dubrovnik who had in the meantime died. Because he had not felt safe in Zagreb, he had transferred all his important personal documents, including the contract in question, to that advocate for safekeeping. That was the reason why he could not find the copy of the contract earlier, and why he had been unable to find the original thus far.

22. By a judgment of 5 December 2008 the Zagreb Municipal Court (a) ordered the applicant to vacate the flat, (b) dismissed his counterclaim, and (c) ordered him to pay 12,215 Croatian kunas (HRK) for the costs of the proceedings. That court held that the applicant had not proved he had ever concluded a written contract for use of the flat. In particular, the court held as follows:

> "It follows ... that the plaintiff proved facts on the basis of which its ownership of the flat at issue may be presumed in terms of section 166 of the [1996] Property Act.

It has also proved that its right to possess the flat is stronger (in terms of section 41 of the [1980] Basic Property Act, which was in force at the time of the institution of these proceedings) than that of the defendant, in respect of whom this court ... finds that his use of the flat at issue has been without such entitlement. ...

... The defendant did not succeed in proving during the proceedings ... that he had moved into the flat at issue [on 22 December 1972] on the basis of any valid legal right to do so ... Furthermore, in this court's view, the defendant did not succeed in proving his arguments [to the effect that he had] subsequently [on 22 February 1973] signed a written contract for use of the flat [and thereby obtained] valid legal status as the holder of a specially protected tenancy in terms of section 14 read in conjunction with section 43(2) of the [1966] Housing Act, which was in force at the [relevant] time.

In particular, the copy of the alleged 'Contract for use of a flat of 22 February 1973', which ... the applicant did not submit until the hearing held on 15 January 2008, cannot in the view of this court be regarded as valid evidence [that there was] a written contract for use of the flat at issue, given that the plaintiff disputed the authenticity of the said document, and the fact that the defendant had still not, by the time the main hearing was closed, submitted the original of the document in question despite being invited by the court to do so.

It is to be noted that at the hearing held on 21 November 2008 this court refused the defendant's request to allow him additional time to submit the original of the impugned contract. [The court did so because] it found that the proposal was aimed at protracting the proceedings in this case and found unconvincing the defendant's explanation that he had managed to find the impugned contract at the beginning of 2008 (that is to say, more than 24 years after the institution of these proceedings) and that the original is with an unnamed friend of his in Dubrovnik, who is unable to find it at this time.

The court did not give credence to the defendant's testimony stating that he had ... signed the ... contract for use of the flat of 22 February 1973 on the premises of company S., but that he had lost it after transferring all his personal documentation to an unnamed advocate in Dubrovnik, having been persecuted as a Croatian nationalist from 1971 onwards. [The court] finds such testimony unconvincing and illogical, and contradictory of other evidence taken during these proceedings."

23. On the question of whether the applicant had acquired a specially protected tenancy on the basis of his long-term use of the flat, the court held as follows:

"Even though under the former Housing Act a specially protected tenancy could exceptionally have been recognised in cases where there was no written contract for use of a flat, that was possible only in cases where the long-term occupation, combined with compliance with all the obligations incumbent on the holder of a specially protected tenancy, was the result of an agreement between the provider of the flat and the person occupying [it] – the potential holder of the specially protected tenancy.

However, even leaving aside the fact that the [evidence] suggested that the defendant had moved into the flat illegally, ... from the defendant's own testimony it follows ... that in the relevant period, [that is to say] between the time he moved in and the date when these [civil] proceedings were instituted, [he] had not paid the rent or other charges in respect of the flat. [It] was only in 1984 that he [retrospectively] paid ... the plaintiff [a certain amount] for the rent and charges [accrued] in the period

> between 1 January 1973 and 31 May 1984. It cannot therefore be concluded that the defendant in the relevant period had complied with the obligations incumbent on a holder of a specially protected tenancy in respect of the flat at issue. In addition, in the view of this court the fact that the defendant was paying the rent and charges after the institution of these proceedings is not decisive for their outcome because [it became evident] at the latest when these proceedings were instituted that the defendant had been using the flat without the consent of the plaintiff, it being understood that the use of a flat without entitlement does not imply using the flat for free."

24. On 16 February 2009 the applicant appealed against that judgment, arguing that the evidence suggested that a written contract for use of the flat had indeed existed but had been misplaced.

25. By a judgment of 26 January 2010 the Zagreb County Court dismissed the applicant's appeal and upheld the first-instance judgment, which thereby became final. The County Court endorsed the reasons given by the Municipal Court. It added:

> "Since in his appeal the defendant contests only the finding of the [first-instance] court that he did not acquire a specially protected tenancy by having signed a [written] contract for use of the flat, but [he does] not [contest] the finding ... that he did not acquire a specially protected tenancy [by long-term use of the flat] with the knowledge and the consent of the plaintiff as the provider of the flat, the first-instance court correctly ... [ruled in favour] of the plaintiff ... given that the defendant does not have any right entitling him to possess [i.e. occupy] the flat."

26. The applicant then lodged an appeal on points of law (*revizija*) with the Supreme Court.

27. On 9 March 2011 the Supreme Court dismissed the applicant's appeal on points of law in so far as the contested second-instance judgment entailed a decision dismissing his counterclaim. To the extent that the impugned second-instance judgment entailed a decision allowing the plaintiff's action and ordering the applicant to vacate the flat, the Supreme Court declared inadmissible the applicant's appeal on points of law because the value of the subject matter of the dispute did not reach the statutory threshold for lodging such an appeal.

28. On 18 May 2011 the applicant then lodged a constitutional complaint alleging violations of his constitutional rights of equality before the law, equality before the courts and fair procedure.

29. By a decision of 1 March 2012 the Constitutional Court (*Ustavni sud Republike Hrvatske*) declared inadmissible the applicant's constitutional complaint, finding that the case did not raise any constitutional law issue. It served its decision on the applicant's representative on 19 April 2012.

30. Meanwhile, on 28 February 2012 the local authorities had applied to the Zagreb Municipal Court for enforcement of its judgment of 26 January 2010 (see paragraph 22 above).

31. On 20 February 2013 the court issued a writ of execution (*rješenje o ovrsi*) ordering the eviction of the applicant from the flat at issue.

32. On 11 June 2013 the Zagreb County Court dismissed the applicant's appeal against writ.

33. By a decision of 19 September 2013 the Municipal Court, at the request of the applicant, to which the local authorities agreed, decided to postpone the enforcement (*odgoda ovrhe*) until 13 March 2014.

34. Following a motion by the local authorities, by a decision of 19 November 2013 the Municipal Court decided to stay the enforcement proceedings (*prekid postupka*) pending a final decision in the concurrent administrative proceedings (see paragraphs 36-39 below). The enforcement court regarded the issue to be decided in those proceedings as a preliminary question (*prethodno pitanje*) in the enforcement proceedings and thus grounds for stay.

35. It would appear that the enforcement proceedings have been stayed ever since.

2. Other proceedings

36. Meanwhile, by a letter of 4 February 2013, the relevant department of the local authorities informed the applicant that he could regularise his status regarding the flat in question by lodging a request that it be allocated to him under a local regulation setting out the criteria and the procedure for renting out flats owned by the City of Zagreb. The letter also specified that together with his request the applicant had to submit the relevant supporting documents, namely, the proof that he had regularly paid the charges in respect of the flat and the proof that he had paid the costs of the above civil and (see paragraph 22 above) enforcement proceedings.

37. On 28 March 2013 the applicant lodged such request but without enclosing the relevant supporting documents.

38. On 22 August 2013 and 13 November 2014 the local authorities' commission for allocation of flats informed the applicant that his request was incomplete and invited him to enclose the relevant supporting documents (see paragraph 36 above).

39. Since the applicant did not do so, on 11 December 2015 the commission adopted a decision whereby it declared the applicant's request inadmissible as incomplete.

B. Relevant domestic law and practice

1. Housing legislation

(a) 1962 Housing Act

40. The relevant provision of the Housing Act of 1962 (*Zakon o stambenim odnosima*, Official Gazette of the Socialist Federal Republic of

Yugoslavia no. 17/62 with subsequent amendments), which was in force between 1962 and 25 December 1974, reads as follows:

Section 6

"It is against the law to move into or occupy a flat without having signed a contract for use of the [said] flat beforehand, save in the cases provided for in this Act."

Section 14

"A specially protected tenancy shall be acquired on the day [an individual] lawfully moves into a flat on the basis of a contract for use of the [said] flat, unless this Act provides otherwise."

Section 43

"(1) A contract for use of a flat in social ownership shall be concluded between a holder of a specially protected tenancy and the [respective] organisation for maintenance of residential buildings in social ownership.

(2) The contract referred to in paragraph 1 of this section shall be concluded on the basis of a decision by the provider of the flat, if the issuance of such a decision is envisaged by the agreement between the provider of the flat and the organisation for maintenance of residential buildings in social ownership.

(3) ..."

Section 50

"(1) A contract for use of a flat shall be made in writing.

(2) A contract for use of a flat which was not made in writing shall have no legal effect.

(3) ..."

(b) 1974 Housing Act

41. The relevant provision of the Housing Act of 1974 (*Zakon o stambenim odnosima*, Official Gazette of the Socialist Republic of Croatia no. 52/74), which was in force between 26 December 1974 and 24 December 1985, reads as follows:

Section 48

"A specially protected tenancy shall be acquired by concluding a contract for use of a flat, unless this Act provides otherwise."

Section 79

"It is against the law to move into a flat and use it without a contract for use of the [said] flat, unless this Act provides otherwise."

Section 81

"(1) A contract for use of a flat shall be made in writing.

(2) A contract which was not made in writing shall be null and void."

(c) 1985 Housing Act

42. The relevant provisions of the Housing Act of 1985 (*Zakon o stambenim odnosima*, Official Gazette of the Socialist Republic of Croatia nos. 51/85 and 42/86, and Official Gazette of the Republic of Croatia 22/92 and 70/93), which was in force between 25 December 1985 and 4 November 1996, and read as follows:

Section 59

"A specially protected tenancy shall be acquired on the day [an individual] lawfully moves into a flat relying on a final decision assigning the flat for use, or another valid legal basis, unless this Act provides otherwise."

2. Obligations Act

43. The relevant provision of the Obligations Act of 1978 (*Zakon o obveznim odnosima*, Official Gazette of the Socialist Federal Republic of Yugoslavia nos. 29/78, 39/85 and 57/89, and Official Gazette of the Republic of Croatia nos. 53/91, 73/91, 111/93, 3/94, 7/96, 91/96, 112/99 and 88/01 – "the 1978 Obligations Act"), which was in force between and 1 October 1978 and 31 December 2005, read as follows:

Section 73

"Where the law requires that a contract be made in written form, it shall be considered valid even if it was not made in that form if the contracting parties have complied, entirely or in major part, with the obligations that arise from it, provided that the purpose for which the form is prescribed clearly does not suggest otherwise."

3. Property legislation

(a) 1980 Basic Property Act

44. The relevant provisions of the Basic Ownership Relations Act (*Zakon o osnovnim vlasničkopravnim odnosima*, Official Gazette of the Socialist Federal Republic of Yugoslavia nos. 6/1980 and 36/1990, and Official Gazette of the Republic of Croatia no. 53/1991, "the 1980 Basic Property Act"), which was in force between 1 September 1980 and 31 December 1996, read as follows:

Section 37

"An owner may by bringing a civil action to seek repossession of [his or her] property from a person in whose possession it is."

Section 41(1)

"A person who has acquired ... a property on the basis of [valid] legal title ... (the presumed owner) shall have the right to seek its repossession even from a possessor in good faith who possesses it without a title or on the basis of weaker title."

(b) 1996 Property Act

45. The relevant provisions of the Ownership and Other Rights *In Rem* Act (*Zakon o vlasništvu i drugim stvarnim pravima*, Official Gazette no. 91/96 with subsequent amendments – "the 1996 Property Act"), which has been in force since 1 January 1997, read as follows:

Section 161(1)

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

Section 165(1) and (2)

"(1) Anyone who in proceedings before a court or other relevant authority proves his legal title ... shall be considered to be the owner of that property (the presumed owner) against a person who possesses it without title or on the basis of weaker title.

(2) A possessor who has no title or has a weaker title must surrender the property to its presumed owner at his or her request ..."

4. Supreme Court's case-law

46. In its decisions no. Rev 1799/1997-2 of 9 February 2000, no. Rev 1483/01-2 of 18 December 2001 and no. Rev-x 513/11-2 of 13 July 2011, the Supreme Court held as follows:

"... a person who uses housing premises for a number of years with the knowledge and approval of the flat provider [and who] meets all the obligations of a holder of a specially protected tenancy and generally acts as a person who has concluded a contract for use of that flat or who possesses some other written entitlement, shall be considered to be the holder of a specially protected tenancy irrespective of the fact that he or she does not have a written contract for use of the flat [he or she occupies] or some other deed conferring a specially protected tenancy ..."

COMPLAINTS

47. The applicant complained under Article 6 § 1 of the Convention that the domestic courts had wrongly assessed the evidence and had misapplied the domestic law.

48. He also complained that he had been deprived of his home.

49. The applicant further complained under Article 14 of the Convention that he had been discriminated against.

50. Lastly, he complained under Article 13 of the Convention that he had not had an effective remedy for his Convention complaints.

THE LAW

A. Alleged violation of Article 8 of the Convention

51. The applicant complained about the domestic courts' decisions ordering him to vacate the flat in which he had been living for forty years. Taking into account the applicant's submissions, the Court considered that he could be understood to be complaining about a violation of his right to respect for his home, and decided to communicate the complaint under Article 8 of the Convention. Article 8 of the Convention in the relevant part reads as follows:

> "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."

52. The Government disputed the admissibility of this complaint by arguing that the applicant had failed to exhaust domestic remedies, and that this complaint was, in any event, manifestly ill-founded.

1. The parties' arguments

(a) The Government

53. The Government argued that the applicant had failed to exhaust domestic remedies in that he had failed to complain about a violation of his right to respect for his home throughout the entire proceedings before the domestic courts, and even in his application to the Court. In their view he had not raised this complaint even in substance. His arguments had rather been focused on factual issues, namely proving that he had signed a written contract entitling him to use the flat in question, and disproving the factual findings of the domestic courts to the contrary. The question of whether the applicant could have acquired a specially protected tenancy by virtue of his long-term use of the flat – which is the only issue that could have been relevant in context of Article 8 of the Convention – had been raised by the Supreme Court in its judgment of 13 November 1985 (see paragraph 12 above) and not by the applicant himself. What is more, in his appeal against the first-instance judgment of 5 December 2008, the applicant had not

contested the findings of the first-instance court addressing that issue (see paragraphs 24-25 above). In other words, he had not pursued before the domestic courts the only argument that could have been seen as raising in substance his Convention complaint concerning the alleged violation of his right to respect for his home. Lastly, in his constitutional complaint he had not referred, either explicitly or in substance, to a violation of Article 8 of the Convention (see paragraph 28 above).

54. As regards the question of whether this complaint was manifestly ill-founded, the Government conceded that it overlapped with the question of whether the applicant had exhausted the domestic remedies. The Government referred to the *Paulić* case where the Court held that applicants had to raise the issue of the proportionality of the interference with their right to respect for their home as it did not arise automatically in each eviction case (see *Paulić v. Croatia*, no. 3572/06, § 43, 22 October 2009). However, in the instant case the applicant had not presented any personal circumstances which might have led the domestic courts to conclude that his eviction would have been disproportionate. Instead, as already noted above (see paragraph 53), he had insisted that he had signed a written contract entitling him to occupy the flat while advancing totally unconvincing arguments. Therefore, if the Court were to conclude that in the present case the domestic courts had failed to assess the proportionality of the applicant's eviction, the Government would emphasise that this was because he had not even implicitly asked them to do so.

55. Lastly, the Government emphasised that the domestic courts had established that the applicant had only begun to pay the rent and other charges for the flat after the eviction proceedings had been instituted against him (see paragraph 23 above).

(b) The applicant

56. The applicant contested the Government's argument that he had not exhausted the domestic remedies. He explained that in his constitutional complaint he had stated that the contested judgments of the ordinary courts ordering him to vacate the flat would have resulted in him losing his home. Furthermore, after entering into litigation with the local authorities over the question of whether he was entitled to occupy the flat in which he had been living for some forty years, it was self-evident that in those proceedings he had defended his right to respect for his home.

57. The applicant also argued that he had not moved into the flat illegally, that is to say secretly or by force. Rather, he had received the keys to the flat from the person in charge of company S., and the representative of the tenants in the building had, on the day he had moved in, checked that he was in possession of a document entitling him to do so. Shortly afterwards, on 22 February 1973, he had signed the contract for use of the flat, a copy of which he had submitted as evidence in the eviction

proceedings before the domestic courts. In any event, he had been living in the flat for forty years, during which period he had regularly paid the rent and charges. The interference with his right to respect for his home had therefore not been in accordance with the law (see paragraphs 12 and 46 above).

58. The applicant further contended that the Government had not demonstrated who had a greater need of the flat (which was only 34 square metres in size) than he did. He was impecunious (his pension amounted to only 2,163 Croatian kunas (HRK), of which one third was being garnered to pay the costs of proceedings), was elderly and was in poor health (walking with the help of crutches). He had taken care of the flat for forty years, and was living in it with his older son (his wife and the younger son had left him). In other words, the Government had not shown that there was a pressing social need for the local authorities to evict him and repossess their flat. Consequently, the interference with his right to respect for his home had not been proportionate to the legitimate aim pursued and was thus not necessary in a democratic society.

2. The Court's assessment

(a) Applicability of Article 8 of the Convention

59. The first question the Court has to address is whether the flat in question may be considered to be the applicant's home.

60. The Court reiterates that the concept of "home" within the meaning of Article 8 is not limited to premises which are lawfully occupied or have been lawfully established. "Home" is an autonomous concept which is not dependent on its classification under domestic law. Whether or not particular premises constitute a "home" which attracts the protection of Article 8 § 1 will depend on factual circumstances, namely, the existence of sufficient and continuous links with a specific place (see *Prokopovich v. Russia*, no. 58255/00, § 36, ECHR 2004-XI (extracts), and *Globa v. Ukraine,* no. 15729/07, § 37, 5 July 2012). Thus, whether or not a property can 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).

61. As to the present case, the applicant had lived in the flat in question between 22 December 1972 and at least 20 September 2013. The judgment ordering him to vacate the flat became final on 26 January 2010. The applicant was therefore living in the flat in question at the time when the alleged interference with the right to respect for his home occurred. Having regard to the factual circumstances outlined above, the Court finds that the applicant had sufficient and continuing links with the flat at issue for it to be considered his "home" for the purposes of Article 8 of the Convention,

despite the fact that according to the domestic courts' findings he had no right to occupy it.

(b) Whether there was an interference with the applicant's right to respect for his home

62. The Court has already held that the mere existence of a final a judgment ordering a person to vacate the flat amounts to an interference with that person's right to respect for his or her home, notwithstanding the fact that the judgment has not yet been enforced (see, for example, *Trifunović v. Croatia* (dec.), no. 34162/06, 6 November 2008; *Paulić*, cited above, §§ 35−38; and *Bjedov v. Croatia*, no. 42150/09, §§ 59-62, 29 May 2012). It sees no reason to hold otherwise in the present case.

(c) Whether the interference was justified

63. The Court must further examine whether that interference was justified in terms of Article 8 § 2, that is to say, whether it was in accordance with the law, pursued a legitimate aim and was necessary in a democratic society (see *Gillow v. the United Kingdom*, 24 November 1986, § 48, Series A no. 109, and *Galović v. Croatia* (dec.), no. 54338/09, § 57, 5 March 2013).

(i) Whether the interference was in accordance with the law

64. The Court notes that the applicant was ordered to vacate the flat in question in accordance with the provisions of the relevant property and housing legislation entitling landlords to seek repossession of their flats when persons occupying them have no right to do so (see paragraphs 40-45 above).

65. In this connection, and in reply to the applicant's arguments (see paragraph 57 above), the Court first reiterates that it is sensitive to the subsidiary nature of its role, and that it must be cautious in taking on the role of a first-instance tribunal of fact where this is not rendered unavoidable by the circumstances of a particular case. It is not the Court's task to substitute its own assessment of the facts for that of the domestic courts, and as a general rule it is for those courts to assess the evidence before them. Although the Court is not bound by the findings of domestic courts, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts (see *Europapress Holding d.o.o. v. Croatia*, no. 25333/06, § 62, 22 October 2009). In the present case, there are no elements that would lead the Court to depart from the factual findings of the domestic courts that the applicant had not demonstrated with the requisite degree of certainty that he had ever signed the relevant contract entitling him to occupy the flat in question.

66. The Court further notes that it is not its task in the present case to determine whether under domestic law the applicant was entitled to occupy

the flat in question, or to examine whether the domestic courts misapplied the relevant domestic law by holding that he was not. It reiterates that it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law. While the Court should exercise a certain power of review in this matter – since failure to comply with domestic law entails a breach of Article 8 – the scope of its task is subject to limits inherent in the subsidiary nature of the Convention, and it cannot question the way in which the domestic courts have interpreted and applied national law, except in cases of flagrant non-observance or arbitrariness (see *Galović*, cited above, § 38). However, there is no indication that in the present case the domestic courts applied the relevant provisions arbitrarily or that their decisions were unlawful under domestic law.

67. The Court is therefore satisfied that the interference with the applicant's right to respect for his home was in accordance with the law, as required by Article 8 § 2 of the Convention.

(ii) Whether the interference pursued a legitimate aim

68. The Court considers that the interference with the applicant's right to respect for his home in the present case pursued the legitimate aims of promoting the economic well-being of the country and protecting the rights of others. More specifically, the interference in question pursued the aim of ensuring that the relevant housing legislation, intended to satisfy the housing needs of citizens, had been properly applied and that flats assigned under the specially protected tenancy had indeed been allocated to those who had satisfied the statutory criteria. This aim could not have been achieved without at the same time protecting the right of the public authorities as owners to regain possession of their property against individuals who have no contractual or other right to live in such flats (see *McCann*, cited above, § 48, and *Gustovarac v. Croatia* (dec.), no. 60223/09, 18 February 2014).

(iii) Whether the interference was necessary in a democratic society

69. The Court has adopted several judgments against Croatia finding a violation on the ground that the national courts had ordered the applicants' eviction solely because they had no right to occupy the flats at issue, without having carried out a proportionality test as to the measures taken against the applicants (see, for example, *Ćosić v. Croatia*, no. 28261/06, 15 January 2009; *Paulić*, cited above; *Orlić*, cited above; *Bjedov*, cited above; and *Brežec v. Croatia*, no. 7177/10, 18 July 2013). However, the present case differs from the above-cited cases in some crucial aspects.

70. Unlike in the previous cases, where the applicants had moved into the flats they were occupying on the basis of decisions granting them the right to dwell in those flats, the factual findings of the domestic courts in the

applicant's case suggest that he had moved into the flat at issue without any such decision or corresponding contract (see paragraph 22 above).

71. In the present case the domestic courts did not restrict their findings to the fact that the applicant had no right to occupy the flat at issue but also examined, of their own motion, whether his right to dwell in the flat could arise from long-term use of the flat (see paragraphs 12 and 23 above). In so doing, the domestic courts established that before he had been sued in 1984 the applicant (a) had on two occasions been invited by the relevant authorities to regularise his status but had ignored those calls, and (b) had not paid any rent or charges (see paragraphs 7-9 and 23 above).

72. Furthermore, given that the issue of the proportionality does not arise automatically in each eviction case (see *Paulić*, cited above, § 43), it cannot but be noted that in his remedies against the first-instance judgment of 5 December 2008 the applicant failed to pursue the argument based on his long-term use of the flat (see paragraphs 24-29 above).

73. Lastly, the Court notes that, even after the adoption of the final judgment ordering him to vacate the flat, the local authorities offered the applicant a possibility to regularise his status in respect of the flat in question, and that he lodged a request to that end. However, that request was eventually declared inadmissible as incomplete because of his failure to submit relevant supporting documents (see paragraphs 36-39 above).

74. In these circumstances it cannot be said that ordering the applicant to vacate the flat was disproportionate to the legitimate aim pursued. Consequently, the interference was necessary in a democratic society within the meaning of Article 8 § 2 of the Convention.

75. It follows that this complaint is inadmissible under Article 35 § 3 (a) of the Convention as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 thereof.

76. In view of this conclusion the Court does not find it necessary to examine the Government's remaining inadmissibility objection based on the non-exhaustion of domestic remedies (see paragraphs 52-53 above).

B. The other alleged violations of the Convention

77. The applicant also complained under Article 6 § 1, 13 and 14 of the Convention that the above civil proceedings had been unfair, that he had been discriminated against and that he had not had an effective remedy to protect his rights under the Convention.

78. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court considers that the present case does not disclose any appearance of a violation of any of the above Articles of the Convention.

79. It follows that these complaints are also inadmissible under Article 35 § 3 (a) of the Convention as manifestly ill-founded and that they must be rejected in accordance with Article 35 § 4 thereof.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 28 April 2016.

Stanley Naismith
Registrar

Işıl Karakaş
President