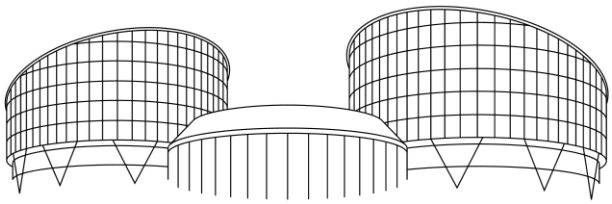

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

DECISION

Application no. 54388/09
Ljubica GALOVIĆ
against Croatia

The European Court of Human Rights (First Section), sitting on 5 March 2013 as a Chamber composed of:

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*

and Søren Nielsen, *Section Registrar,*

Having regard to the above application lodged on 17 September 2009,

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 Galović, is a Croatian national, who was born in 1926 and lives in Mošćenička Draga. She was represented before the Court by Ms T. Vuković, an advocate practising in Rijeka.

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

A. The circumstances of the case

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

1. Background to the case

4. In 1949 the applicant's husband acquired and became the holder of a specially protected tenancy (*stanarsko pravo*) of a flat in Mošćenička Draga owned by Mr J.J. and with a surface area of 56.4 square metres. Pursuant to the relevant legislation the applicant, as his wife, automatically became joint holder of the specially protected tenancy.

5. After the death of her husband in 1995 the applicant became the sole holder of the specially protected tenancy of the flat in question and continued to live in it with her son and his family. Likewise, after the death of the flat's owner, J.J., his son, Mr A.J., became the owner of the flat.

6. On 5 November 1996 the Lease of Flats Act entered into force. It abolished specially protected tenancies and provided that the holders of such tenancies in respect of privately owned flats were to become protected lessees (see paragraph 25 below).

7. On 9 April 1997 the applicant requested A.J. to conclude a lease contract stipulating protected rent in respect of the flat, as provided for by the Lease of Flats Act. She received no reply.

8. On 31 March 1998 the Constitutional Court invalidated certain provisions of the Lease of Flats Act, including section 21(2) and section 40(2), as unconstitutional. The Constitutional Court deferred the effects of its decision in respect of sections 21(2) and 40(2) by giving the Croatian Parliament six months to comply with the decision and enact amendments to the Lease of Flats Act to replace those two unconstitutional provisions. The Constitutional Court's decision was published in Official Gazette no. 48/1998 of 6 April 1998.

9. On 20 June 2007 the Constitutional Court adopted and sent a report to the Croatian Parliament in which it analysed the situation resulting from Parliament's failure to comply with its decision of 31 March 1998 and pass the relevant amendments to the Lease of Flats Act. The relevant part of that report reads as follows:

> "The Constitutional Court notes that in the period between publication of the Constitutional Court's decision [of 31 March 1998] in the Official Gazette (6 April 1998) and [the day] it took effect [, invalidating the provisions in question] (6 October 1998), the Croatian Parliament did not amend section 40 of the Lease of Flats Act in accordance with the legal views expressed in the above-mentioned decision of the Constitutional Court, nor had it done so by the date of adoption of this report.
>
> In the period after the Constitutional Court's decision and after the invalidated statutory provision was no longer in force, numerous flat owners (landlords) instituted proceedings before the competent courts with a view to terminating leases on flats, relying on section 40(1) of the Lease of Flats Act.

> According to the Constitutional Court's docket, constitutional complaints were lodged with the Constitutional Court against judgments in which the [ordinary] courts had ruled on actions [brought] by flat owners (landlords) for the eviction of lessees even though the conditions for such evictions had not been determined beforehand in the Lease of Flats Act. The constitutional complaints were lodged, depending on the judgment, by [either] flat owners or lessees because they considered that their constitutional rights had been violated by those judgments.
>
> In response to such constitutional complaints, the Constitutional Court in two cases stayed the enforcement of judgments ... ordering lessees to vacate their flats until it had ruled on [their] constitutional complaints. The Constitutional Court did not rule on the constitutional complaints in those cases, because its decision [of 31 March 1998] had not been executed, which is a precondition for ruling on the constitutional complaints [in question] on the merits.
>
> Under section 31 of the Constitutional Court Act, decisions of the Constitutional Court are binding on all state authorities, and [the latter] are bound, within their statutory purview, to execute the Constitutional Court decisions.
>
> The Constitutional Court emphasises that it has no power within its jurisdiction to remedy the inequality in the application of the Lease of Flats Act that occurred when the invalidated statutory provision was no longer in force. A decision of the Constitutional Court (allowing or dismissing a constitutional complaint) would lead to a further inequality before the law, which is contrary to the constitutional guarantee provided in Article 14 § 2 of the Constitution. Therefore, the existing normative situation is unacceptable and impermissible from the constitutional-law point of view because it does not solve the problem of the application of the Lease of Flats Act completely and in an equal manner for all. It follows that only the legislature is competent, by enacting the relevant amendments to the Lease of Flats Act, to regulate the disputed legal relationships in a manner that ensures that all are equal before the law."

10. To date, the amendments to the Lease of Flats Act have not been adopted.

2. The civil and enforcement proceedings for the applicant's eviction

11. On 4 May 1999 the owner of the flat, A.J., who lived in a flat of 65.82 square metres with his wife and two adult sons, brought a civil action against the applicant, her son and her daughter-in-law as well as her two grandchildren in the Opatija Municipal Court (*Općinski sud u Opatiji*) seeking their eviction from the flat at issue. In so doing he submitted that he intended to install his two adult sons in the flat.

12. On 9 October 1999 the applicant together with other defendants, relying on section 33(3) of the Lease of Flats Act, brought a counterclaim with a view to obtaining a judgment in lieu of a lease contract stipulating protected rent.

13. On 7 December 1999 the Opatija Municipal Court gave judgment for the plaintiff. It ordered the applicant and the other defendants to vacate the flat and dismissed their counterclaim. Relying on section 21(1) of the Lease of Flats Act, it held that, after paragraph 2 of the same section had been invalidated by the Constitutional Court, the right of a landlord to seek the eviction of a lessee had become unrestricted in cases where he or she

wanted to move into the flat or install his or her children, parents or dependants in it. Therefore, the fact that the plaintiff wished to install his two sons in the flat at issue had been sufficient to justify ruling in his favour.

14. By a judgment of 18 September 2002 the Rijeka County Court (*Županijski sud u Rijeci*) dismissed an appeal by the defendants and upheld the first-instance judgment, which thus became final. The County Court endorsed the reasoning given in the first-instance judgment. Although it held that the Municipal Court should have applied section 40(1), first sub-paragraph (see paragraph 31 below), instead of section 21(1) of the Lease of Flats Act, it observed that the error had had no influence on the outcome of the case. The second-instance judgment was served on the defendants' representative on 31 December 2002.

15. In 2003 A.J. applied for enforcement of the Opatija Municipal Court's judgment of 7 December 1999. On 12 March 2003 the same court issued a writ of execution (*rješenje o ovrsi*). On 22 October 2003 the Rijeka County Court dismissed an appeal by the defendants as judgment debtors against the writ.

16. On 14 January 2003 the defendants lodged a constitutional complaint with the Constitutional Court (*Ustavni sud Republike Hrvatske*) alleging a violation of their constitutional rights to equality before the law, equality before the courts and the right of ownership as well as their Convention rights to a fair hearing and an effective remedy. At the same time, they asked the Constitutional Court to postpone the enforcement of the Opatija Municipal Court's judgment of 7 December 1999 until the Constitutional Court had ruled on their constitutional complaint.

17. On 30 April 2003 the Constitutional Court postponed the enforcement of the first-instance judgment of 7 December 1999 pending its decision on the defendants' constitutional complaint.

18. On 17 March 2009 the Constitutional Court dismissed the defendants' constitutional complaint and served its decision on their representative on 27 March 2009. The relevant part of that decision reads as follows:

> "It follows from the facts established [by the ordinary courts] that the complainant Ljubica Galović lives in the flat in question with her son and his wife and their two children, as the members of the household, and that the complainant's son is the owner of a house in Selce of 120 square metres, while his wife owns a flat in Rijeka of 74 square metres.
>
> Therefore, even though Ljubica Galović does not own a suitable flat in the township or municipality where the flat in which she lives is located, the Constitutional Court finds that in the particular case the conditions for eviction of the complainant and the members of her household from the flat in which they currently live were met, since members of her household own a habitable flat and a house in the territory of the municipality where the flat in which they currently live is located.
>
> The Constitutional Court notes that when examining the constitutional complainant it took into account the established fact that the owner of the flat in question lives in

an inadequate flat, in the same household with his wife and two adult sons, and that he intends to move into the flat himself or install his two sons in it.

Having regard to the established facts, the Constitutional Court finds that the factual position of the complainant and her household members restricts the plaintiff's right of ownership, which is reflected in his inability to use the flat at issue and solve his and his family's housing needs.

The fact that the legislature did not, after the Constitutional Court's decision, substitute the invalidated provision of the Lease of Flats Act with another one, cannot prevent the landlord to, relying on the relevant statutory provision, seek the eviction of the complainants, as that would be contrary to the constitutional guarantee of ownership, as well as to Article 16 § 2 of the Constitution according to which any restriction of rights and freedoms has to be proportional to the nature of the need to restriction in each individual case. Namely, the inability of the complainants' eviction for the reasons raised by the complainants in the constitutional complaint, relying on the fact that the legislature has not yet regulated the disputed legal relationship, in the Constitutional Court's view, constitutes for the owner a disproportionate and excessive burden, which the [ordinary] courts correctly highlighted, so that the contested judgments achieved a fair balance between the parties as regards their housing needs.

Therefore, the Constitutional Court considers that the legal views expressed in the contested judgments of competent courts are based on a constitutionally acceptable interpretation and application of the relevant substantive law. For those reasons the Constitutional Court did not accept the arguments of the complainants that in the present case they did not enjoy the equality before the law, guaranteed by Article 14 § 2 Constitution."

19. On 29 April 2009 the applicant and the members of her household vacated the flat at issue of their own motion. Accordingly, on 11 October 2011 the Opatija Municipal Court discontinued the enforcement proceedings.

B. Relevant domestic law and practice

1. The Constitution

Relevant provisions

20. The relevant provisions of the Constitution of the Republic of Croatia (*Ustav Republike Hrvatske*, Official Gazette nos. 56/90, 135/97, 8/98 (consolidated text), 113/00, 124/00 (consolidated text), 28/01, 41/01 (consolidated text), 55/01 (corrigendum), 76/10 and 85/10) read as follows:

Article 14 § 2

"All shall be equal before the law."

Article 26

"All citizens of the Republic of Croatia and foreigners shall be equal before the courts and other state or public authorities."

Article 34

"The home is inviolable.

Only a court may, by a written and reasoned warrant based on law, order a search of a home or other premises.

It is the right of a tenant that he or she, or his or her representative, and mandatorily two witnesses, be present during the search of a home or other premises.

Under the conditions prescribed by law, the police authorities may, even without a court warrant or the tenant's consent, enter a home or premises and carry out a search without any witnesses being present where that is necessary to execute an arrest warrant or to apprehend a perpetrator of a criminal offence or to avert serious risk to the life or health of people, or to the property of a high value.

A search aimed at finding or securing evidence, likely to be found in the home of a perpetrator of a criminal offence, may only be carried out in the presence of witnesses."

Article 48

"The right of ownership shall be guaranteed.

Ownership implies duties. Owners and users of property shall contribute to the general welfare."

2. The Lease of Flats Act

(a) Relevant provisions

21. The Lease of Flats Act (*Zakon o najmu stanova*, Official Gazette no. 91/1996 of 28 October 1996), which entered into force on 5 November 1996, regulates the legal relationship between the landlord and the lessee with regard to the lease of flats.

22. Section 19 provides that a landlord may terminate the lease in the following cases:

- if the lessee does not pay the rent or charges;
- if the lessee sublets the flat or part of it without permission from the landlord;
- if the lessee or other tenants in the flat disturb other tenants in the building;
- if another person, not named in the lease contract, lives in the flat for longer than thirty days without permission from the landlord, except where that person is the spouse, child or parent of the lessee or of the

other legal tenants in the flat, or a dependant of the lessee or a person on whom the lessee is dependent;

- if the lessee or other legal tenants use the flat not as living accommodation but for other purposes.

23. Before the Constitutional Court's decision of 31 March 1998 which invalidated paragraph 2 of section 21, that section provided as follows:

> "(1) Apart from the grounds stipulated in section 19 of this Act, the landlord may terminate a lease of indefinite duration if he or she intends to move into the flat or install his or her children, parents or dependants in it.
>
> (2) In the case referred to in paragraph 1 of this section the landlord may terminate a lease of indefinite duration only if he or she has provided the lessee with another habitable flat under housing conditions that are not less favourable for the lessee."

24. The Lease of Flats Act also recognises a special category of lessees ("protected lessees" – *zaštićeni najmoprimci*), namely those who were previously holders of specially protected tenancies in respect of privately owned flats or those who did not purchase their flats under the Specially Protected Tenancies (Sale to Occupier) Act. According to the Act that category is subject to a number of protections such as: the obligation of landlords to contract a lease of indefinite duration, payment of protected rent (*zaštićena najamnina*) the amount of which is prescribed by the Government, and a limited list of grounds for termination of the lease.

25. Section 30 provides that with the Act's entry into force specially protected tenancies shall be abolished and the holders of such tenancies shall become protected lessees.

26. Section 31(1) provides that the owner of the flat and the former holder of the specially protected tenancy in respect of the same flat shall enter into a lease contract of indefinite duration where the lessee shall have the right to protected rent. Section 31(2) reads as follows:

> "The right to protected rent does not belong to the lessee who:
>
> - runs business in a part of the flat;
>
> - owns a habitable house or flat."

27. Section 33(2) provides that the lessee has to submit a request for the conclusion of a lease contract stipulating protected rent to the landlord within six months from the Act's entry into force or from the day on which the decision determining the right of that person to use the flat becomes final.

28. Section 33(3) provides that if the landlord does not conclude or refuses to conclude a lease contract stipulating protected rent within three months of the receipt of the lessee's request, the lessee can bring an action in the competent court with a view to obtaining a judgment in lieu of the lease contract.

29. Section 37(1) provides that the persons who at the moment of the Act's entry into force had the legal status of a member of the household,

acquired under the provisions of the Housing Act, shall be entered into the lease contract.

30. Section 38 provides as follows:

> "(1) In case of death of a protected lessee or when the protected lessee abandons the flat, the rights and duties of the protected lessee from the lease contract shall be transferred to [one of] the person[s] indicated in the lease contract, depending on the agreement of those persons.
>
> (2) In case of a dispute, the landlord shall determine the lessee.
>
> (3) Person referred to in paragraph 1 of this section has to [make a] request [to] the landlord to conclude a lease contract [with protected rent] within sixty days from the change of circumstances [referred to in paragraph 1 of this section].
>
> (4) The landlord has to conclude with the person referred to in paragraph 1 of this section the contract of lease of flat for an unlimited period of time, stipulating rights and duties of a protected lessee."

31. The grounds for termination of the lease of a protected lessee are set out in section 40 of the Lease of Flats Act, which, before the Constitutional Court's decision of 31 March 1998 invalidating paragraph 2, provided as follows:

> "(1) Apart from the grounds stipulated in section 19 of this Act, the landlord may terminate the lease of a protected lessee, on the ground:
>
> - provided for in section 21(1) of this Act,
>
> - if he or she does not have another accommodation for himself or herself and for his or her family, and is, on the basis of the special legislation, entitled to permanent social assistance, or is more than sixty years of age.
>
> (2) In the case referred to in paragraph 1, first sub-paragraph, of this section the landlord may terminate a lease of indefinite duration only if he or she has provided the lessee with another habitable flat under housing conditions that are not less favourable for the lessee.
>
> (3) In the case referred to in paragraph 1, second sub-paragraph, of this section the local government ... is bound to provide the protected lessee with another suitable flat with [that is, subject to] the rights and obligations of a protected lessee.
>
> (4) The landlord or the local government in the cases referred to in paragraphs 2 and 3 of this section are not bound to provide the protected lessee with another suitable flat if he or she owns a suitable habitable flat in the territory of the township or municipality where the flat in which he or she lives is located.
>
> (5) ..."

32. Section 41 defines the notion of a "suitable flat" as a flat located in the same township or municipality, which complies in terms of its size with the "one person-one room" principle and which does not have a greater number of rooms than the flat from which the protected lessee is moving out.

(b) The case-law of the Supreme Court

33. In case no. Rev-486/02-2, Gzz-74/02 of 21 February 2007 the Supreme Court (*Vrhovni sud Republike Hrvatske*) reversed the judgments of the first and second-instance courts of 15 February 1999 and 7 June 2000 by dismissing a landlord's action for eviction of a protected lessee. The lower courts had held that, after the Constitutional Court, on 31 March 1998, had invalidated section 40(2) of the Lease of Flats Act as unconstitutional, and in the absence of any amendments to replace that provision, a landlord could, without any further conditions, terminate the lease of a protected lessee if he or she intended to move into the flat or install his or her children, parents or dependants in it (section 40(1), first sub-paragraph, of the Lease of Flats Act). Those courts had therefore ruled in favour of the landlord and ordered the protected lessee to vacate the flat. However, the Supreme Court considered that interpretation to be erroneous. Rather, it held that, given the failure of the Croatian Parliament to enact the relevant amendments to the Lease of Flats Act and fill the legal gap created after the Constitutional Court's decision of 31 March 1998, the correct interpretation of section 40(1), first sub-paragraph, of the Lease of Flats Act was that a landlord wishing to move into the flat or install his or her children, parents or dependants in it could terminate the lease of a protected lessee on that ground only if the protected lessee owned a suitable habitable flat in the same township or municipality (that is, under the conditions provided in section 40(4) of the Lease of Flats Act). The relevant part of the Supreme Court's judgment reads as follows:

> "[From the Constitutional Court's decision of 31 March 1998,] it follows that the Constitutional Court considered that before [the invalidation of section 40(2) of the Lease of Flats Act came into effect] it was necessary to prescribe the conditions under which a landlord could terminate a protected lease where he or she wished to move into the flat, and that it legitimately expected that the legislature would prescribe those conditions; however, the legislature did not do so.
>
> Therefore, ..., as regards the application of section 40(1), first sub-paragraph, of the Lease of Flats Act, a question arises as to the imperfection [that is, defective or incomplete nature] of that provision, and, consequently, of the inapplicability of such incomplete legislation. That provision cannot be interpreted only textually [that is, literally] and in isolation from the other provisions of the Lease of Flats Act concerning the termination of the protected lease, and in particular section 40(1), second sub-paragraph, and section 40(3) of the same Act....
>
> ...
>
> Having regard to the incomplete nature of section 40(1), first sub-paragraph, of the Lease of Flats Act, [resulting from the invalidation of] paragraph 2 of the same section, no specific [civil] action can be based on that provision.
>
> That provision may be applied only in the case where the lessee owns a suitable habitable flat within the municipality or township where the flat in which he or she lives is located, since the obligation for a landlord to provide the lessee with another habitable flat did not exist in such a case even before the invalidation of [certain] provisions of the Lease of Flats Act."

The Supreme Court maintained this interpretation in subsequent cases, in particular in its judgments no. Rev-803/08-2 of 10 September 2008 and no. Rev-1083/06-2 of 27 January 2009.

(c) The Constitutional Court's jurisprudence

34. In case no. U-III/2521/2005 of 2 July 2009 (published in Official Gazette no. 88/2009 of 22 July 2009), the Constitutional Court allowed the constitutional complaint of a protected lessee and quashed the judgments of the first and second-instance courts of 4 September 2000 and 9 February 2005 ordering the protected lessee to vacate the flat in question. In particular, the ordinary courts had held that after the Constitutional Court's decision of 31 March 1998, a landlord intending to move into the flat or install his or her children, parents or dependants in it could, on the basis of section 40(1), first sub-paragraph, of the Lease of Flats Act, terminate the lease of a protected lessee without any restrictions. The Constitutional Court first expressly endorsed the reasoning of the Supreme Court provided in the above-cited case no. Rev-486/02-2, Gzz-74/02 of 21 February 2007 (see paragraph 33 above). It then held that the interpretation given by the ordinary courts, which was contrary to the Supreme Court's interpretation, violated the constitutional guarantee of equality before the law provided in Article 14 § 2 of the Constitution. The Constitutional Court did not examine whether the contested judgments were also in breach of Article 34 of the Constitution and Article 8 of the Convention, on which the complainant relied as well in her constitutional complaint. The relevant part of that decision reads as follows:

> "The Supreme Court in its decision no. Rev-486/02-2, Gzz-74/02 of 21 February 2007 expressed (in comparison to the above-mentioned view of the Rijeka County Court) a different legal view.
>
> ...
>
> Having regard to the constitutional competence of the Supreme Court of the Republic of Croatia provided by Article 118 § 1 of the Constitution, the Constitutional Court considers that the [above-quoted] legal view of the highest court in the country is based on constitutionally acceptable interpretation and application of the relevant substantive law.
>
> Given that in the instant case the judgments of the Rijeka County [Court] and [Rijeka] Municipal Court are contrary to the legal view of the Supreme Court of the Republic of Croatia quoted [above], the Constitutional Court finds that the complainant's constitutional guarantee to equality before the law, prescribed in Article 14 § 2 of the Constitution, was violated by the contested judgments."

COMPLAINTS

35. The applicant complained under Article 8 of the Convention that by ruling as they did the domestic courts had violated her right to respect for her home.

36. She further complained under Article 6 § 1 of the Convention about the length of the above civil proceedings in their part before the Constitutional Court.

37. The applicant also complained under Articles 6 § 1 and 13 of the Convention about the outcome of the above civil proceedings.

38. Lastly, the applicant complained under Article 14 of the Convention that she had been discriminated against because, unlike the holders of the specially protected tenancy in respect of socially-owned flats, she had not been entitled to purchase and thereby become the owner of her flat.

THE LAW

A. Alleged violation of Article 8 of the Convention

39. The applicant complained that, by ordering her to vacate the flat in question, the domestic courts had violated her right to respect for her home. She relied on Article 8 of the Convention, which in its 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."

40. The Government contested that argument. They disputed the admissibility of this complaint on three grounds. They argued that the applicant had failed to exhaust domestic remedies, that she had not observed the six-month rule and that, in any event, the complaint was manifestly ill-founded.

1. The parties' submissions

(a) Non-exhaustion of domestic remedies

41. The Government first argued that the applicant had not complained of a violation of her right to respect for her home in the proceedings before the domestic courts. In particular, in her constitutional complaint the applicant had complained only of violations of her constitutional rights to equality before

the law, equality before the courts and her right of ownership, as well as her Convention rights to a fair hearing and an effective remedy.

42. The applicant replied that in her constitutional complaint she had not relied on Article 34 of the Constitution because that provision, as interpreted by the Constitutional Court at the relevant time, provided only for protection of the home against unlawful entries and searches by the police authorities. The scope of that Article had therefore been narrower than the scope of Article 8 of the Convention. Only in December 2010 had the Constitutional Court extended the scope of Article 34 of the Constitution so as to correspond to that of Article 8 of the Convention. Given that the applicant had lodged her constitutional complaint in January 2003, she could not have relied on that development in the Constitutional Court's jurisprudence.

(b) Compliance with the six-month rule

43. The Government further submitted that, should the Court find that the constitutional complaint was not an effective remedy to be exhausted with regard to the Convention right to respect for the home, or that the applicant in the present case was not required to lodge a constitutional complaint, her complaint under Article 8 of the Convention should be rejected for non-observance of the six-month time-limit, as in those circumstances the final domestic decision within the meaning of Article 35 § 1 of the Convention was the judgment of the Rijeka County Court of 18 September 2002.

44. The applicant replied that a constitutional complaint was an effective remedy for the purposes of Article 35 § 1 of the Convention, and that she had therefore complied with the six-month rule.

(c) As to whether the complaint is manifestly ill-founded

45. The Government submitted that the interference with the applicant's right to respect for her home had been in accordance with the law, had pursued a legitimate aim and had been necessary in a democratic society.

46. In particular, the Government argued that the interference with the applicant's right to respect for her home had been lawful regardless of the fact that the Croatian Parliament had not adopted amendments to the Lease of Flats Act following the Constitutional Court's decision of 31 March 1998. This was so because the judgment ordering the applicant to vacate the flat had been based on section 40(1), first sub-paragraph, of the Lease of Flats Act, that is, the paragraph that remained in force after the Constitutional Court had invalidated paragraph 2 of the same section as unconstitutional (see paragraph 31 above).

47. Moreover, in the Government's view, that judgment had been in line with the case-law of the Supreme Court established after the above-mentioned Constitutional Court decision and enunciated in case no. Rev-486/02-2, Gzz-74/02 of 21 February 2007 (see paragraph 33 above), which had later been expressly endorsed by the Constitutional Court

in case no. U-III/2521/2005 of 2 July 2009 (see paragraph 34 above). According to that case-law a landlord wishing to move into the flat or install his or her children, parents or dependants in it could terminate the lease of a protected lessee only if the latter owned a suitable habitable flat in the same township or municipality. According to the Government, the protected lessees were not only the former holders of specially protected tenancies but also the members of their households. Given that the ordinary courts had found that the members of the applicant's household owned suitable habitable properties in the same municipality where the flat in question was located, the Government concluded that the statutory conditions for ordering the applicant to vacate the flat had been met and that the interference with her right to respect for her home had therefore been in accordance with the law.

48. The Government further submitted that the legitimate aim pursued by the interference with the applicant's right to respect for her home had been the protection of the rights of others, in particular, the right of ownership of the owner of the flat.

49. As to the proportionality of the interference, the Government noted that the domestic courts had established that the owner of the flat in question had been living in an inadequate flat, that is, in the flat surfacing 65.82 square metres together with his wife and two adult sons. On the other hand the applicant had been living in the flat at issue together with her son who owned a house of 120 square metres and her daughter-in-law who owned a flat of 74 square metres. Those courts had applied the proportionality test and found that allowing the applicant to remain in the flat would have represented a disproportional and excessive burden for the owner. In so deciding the domestic courts had, regardless of the applicant's age, reached a fair balance between the competing interests of the applicant and the owner of the flat. The interference with her right to respect for her home had therefore been necessary in a democratic society.

50. The applicant submitted that the interference with her right to respect for her home had not been in accordance with the law. This was so because the Croatian Parliament had not amended the Lease of Flats Act pursuant to the Constitutional Court's decision of 31 March 1998, and because the judgment ordering her to vacate the flat had not been in accordance with the case-law of the Supreme Court.

51. With regard to the second reason, the applicant explained that the case-law of the Supreme Court required that the protected lessee own a suitable habitable flat in the same township or municipality in order for a landlord to be entitled to terminate the protected lease. However, the applicant herself had not owned a suitable habitable flat. Moreover, her son and her daughter-in-law, as members of her household, could not be viewed as protected lessees to whom the same case-law was applicable, as the Government suggested. In any event, while her son indeed owned a house in Selca near Mošćenice, it was unfinished and uninhabitable. Her daughter-in-law owned a flat in Rijeka, that is, outside the municipality of Mošćenička Draga. Therefore, the judgment ordering her to vacate the flat

had been contrary to the above-mentioned case-law of the Supreme Court; for that reason, the interference with her right to respect for her home had not been lawful.

52. The applicant further argued that the interference with her right to respect for her home had not been necessary in a democratic society or pursued a legitimate aim. That was so because the domestic courts had not taken into account the following facts: her advanced age, the fact that she had been living in the flat in question since 1949, that her son's house in Selca near Mošćenice was not recorded in the land register or cadastre (which meant that he was not formally the owner), that it was unfinished and thus uninhabitable (it had no doors, heating or tiles), that there was no public transport from and to the house, that there was no shop nearby, that the daughter-in-law had had a flat in another township, that the applicant had not wanted to live elsewhere, that the owner of the flat had a habitable attic above his flat which in fact constituted a separate flat and owned a house in Mošćenička Draga where his two adult sons actually lived.

2. The Court's assessment

53. The Court does not find it necessary to examine the Government's objections based on the applicant's failure to exhaust domestic remedies and observe the six-month rule because this complaint is in any event inadmissible for the following reasons.

54. The Court first notes that the applicant was the holder of a specially protected tenancy in respect of the flat in question (see paragraphs 4 and 5 above). With the entry into force in 1996 of the Lease of Flats Act, specially protected tenancies were abolished and the holders of such tenancies in respect of privately owned flats were to become protected lessees (see paragraphs 6 and 25 above).

55. The applicant therefore requested the owner of the flat of which she had the specially protected tenancy, Mr A.J., to conclude with her a lease contract with protected rent, in accordance with the Lease of Flats Act (see paragraph 7 above). Instead of concluding the requested lease contract with the applicant, the owner brought proceedings for her eviction (see paragraph 11 above). Those proceedings ended with the judgment ordering the applicant to vacate the flat.

(a) Whether there was interference with the applicant's right to respect for her home

56. It was not disputed between the parties that the Opatija Municipal Court's judgment of 7 December 1999 ordering the applicant to vacate the flat at issue, which was upheld by the Rijeka County Court's judgment of 18 September 2002, constituted an interference with her right to respect for her home guaranteed by Article 8 § 1 of the Convention. The Court, having regard to its case-law (see, for example, *Trifunović v. Croatia* (dec.), no. 34162/06, 6 November 2008, and *Paulić v. Croatia*, no. 3572/06, §§ 35−38, 22 October 2009), sees no reasons to hold otherwise.

(b) Whether the interference was justified

57. The Court must further examine whether that interference was justified in terms of Article 8 § 2, that is, 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).

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

58. In examining whether that interference with the applicant's right to respect for her home was justified, the Court is first required to determine whether it can be regarded as lawful for the purposes of Article 8 § 2 of the Convention, given that the decision occasioning it must comply with the relevant domestic law (see *Weber and Saravia v. Germany* (dec.), no. 54934/00, § 90, ECHR 2006-XI). In this connection the Court reiterates that it is in the first place for the national authorities, notably the courts, to interpret and apply the domestic law. The "law" is therefore the enactment in force as the competent courts have interpreted it (see *Weber and Saravia*, loc. cit.). 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 *Goranova-Karaeneva v. Bulgaria*, no. 12739/05, § 46, 8 March 2011, and *Weber and Saravia*, loc. cit.).

59. In this connection the Court first observes that the domestic courts, in particular the Opatija Municipal Court, the Rijeka County Court and the Constitutional Court, supported their decisions with different reasons and relied on different provisions of the Lease of Flats Act (see paragraphs 13-14 and 18 above). Ultimately, the Constitutional Court, in its decision to dismiss the applicant's constitutional complaint, found that the members of the applicant's household, namely her son and her daughter-in-law, owned a house in Selca near Mošćenice and a flat in Rijeka respectively. On that basis it held that even though the applicant herself did not own a suitable flat in the same municipality, the requirements for her eviction and the eviction of the members of her household had nevertheless been met because members of her household owned a habitable flat and house in the same municipality (see paragraph 18 above).

60. From that reasoning it follows that the Constitutional Court based its decision on the first sub-paragraph of section 40(1) of the Lease of Flats Act taken in conjunction with paragraph 4 of the same section. These two provisions, read together, entitle landlords to terminate the lease contract of a protected lessee (or to refuse to enter into a lease contract) if both of the two following conditions are met: (1) a landlord intends to move into the flat or install his or her children, parents or dependants therein, and (2) a

lessee owns a suitable habitable flat in the same municipality or township where the flat in which he or she lives is located.

61. The Court finds no indication that the Constitutional Court applied those provisions arbitrarily. It is true that, as the applicant pointed out (see paragraph 51 above), she herself did not own a house or a flat. Rather, it was her son who owned a house and her daughter-in-law who owned a flat. However, for the Court that only means that, by holding that the provisions in question applied also to cases where members of lessee's household owned a suitable habitable house or a flat even if the lessee himself or herself did not, the Constitutional Court in the applicant's case, in the exercise of its constitutional powers, adopted an extensive interpretation of those provisions, which was not far-fetched or unforeseeable for the applicant. As the members of the household derive their right to live in the flat from the right of a protected lessee and otherwise benefit from his or her status (including the right to succeed to that status after the death of a protected lessee), the Court accepts the interpretation provided by the Constitutional Court.

62. The Court is therefore satisfied that the interference in the present case was "provided for by law", as required by Article 8 § 2 of the Convention.

(ii) Whether the interference pursued a legitimate aim

63. The Court further considers that the interference in question pursued the legitimate aim of protecting the rights of others, in particular the rights of the landlord as the owner of the flat.

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

64. The Court reiterates that an interference will be considered "necessary in a democratic society" if it answers a "pressing social need" and, in particular, if it is proportionate to the legitimate aim pursued. While it is for the national authorities to make the initial assessment of necessity, the final evaluation as to whether the reasons cited for the interference are relevant and sufficient remains subject to review by the Court for conformity with the requirements of the Convention (see *Connors v. the United Kingdom*, no. 66746/01, § 81, 27 May 2004).

65. In this connection the Court notes that in the present case all the domestic courts involved, weighing the applicant's interest against those of the owner of the flat, established that her son and daughter-in-law – with both of whom she lived in the flat at issue – had a house of 120 square metres and a flat of 74 square metres respectively, and thus could much easier meet her and their own housing needs than the owner of the flat could meet the housing needs of his two adult sons, with whom he lived in the flat of 65.82 square metres together with his wife. As to the applicant's argument that the owner of the flat owned other habitable property capable of satisfying his or his children's housing needs (see paragraph 52 above), the Court notes that she did not adduce any evidence in support of that

argument nor demonstrated that she had raised it before the domestic courts. Against that background, and having regard to the margin of appreciation left to the States in housing matters (see *Connors*, cited above, § 82), the Court considers that in the instant case it cannot be argued that by ordering the applicant to vacate the flat in question the domestic courts failed to discharge their obligation to strike a fair balance between the competing interests involved. Consequently, the interference was proportionate to the legitimate aim pursued, and was thus necessary in a democratic society.

66. 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.

B. Alleged violation of Article 6 § 1 of the Convention on account of the excessive length of proceedings

67. The applicant further complained that the length of the above-mentioned civil proceedings, in the stage before the Constitutional Court, was incompatible with the "reasonable time" requirement laid down in Article 6 § 1 of the Convention, which reads as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair... hearing within a reasonable time by [a] ... tribunal..."

68. The Government contested that argument. They disputed the admissibility of this complaint by arguing that the applicant's complaint was manifestly ill-founded.

69. The Court does not find it necessary to examine the Government's inadmissibility objection, because this complaint is in any event inadmissible for the following reasons.

70. The Court first notes that the part of the proceedings before the Constitutional Court lasted for some six years and two months. That period, during which the applicant remained in a state of uncertainty as regards the determination of her civil rights and obligations, may, in the light of the criteria established in this Court's case-law on the question of "reasonable time" (the complexity of the case, the applicant's conduct and that of the competent authorities, and what was at stake for the applicant), raise an issue under Article 6 § 1 of the Convention, having regard in particular to what was at stake for the applicant.

71. However, it cannot but be noted that the length of the proceedings at the same time benefited the applicant because the Constitutional Court postponed the enforcement of the judgment ordering her eviction until it had ruled on her constitutional complaint. That being so, the issue arises whether the applicant suffered a "significant disadvantage" within the meaning of Article 35 § 3 (b) of the Convention as a result of the alleged violation.

72. The Court reiterates that the "significant disadvantage" admissibility criterion hinges on the idea that a violation of a right, however real from a purely legal point of view, should attain a minimum level of severity to

warrant consideration by an international court (see *Korolev v. Russia* (dec.), no. 25551/05, 1 July 2010). The assessment of this minimum level is, in the nature of things, relative and depends on all the circumstances of the case (see *Korolev*, cited above). The severity of a violation should be assessed taking account of both the applicant's subjective perceptions and what is objectively at stake in a particular case.

73. In the light of the criteria established in its case-law, the Court considers that, in ascertaining whether the violation of a right attains the minimum level of severity, the following factors, *inter alia*, should be taken into account: the nature of the right allegedly violated, the seriousness of the impact of the alleged violation on the exercise of a right and/or the possible effects of the violation on the applicant's personal situation (see *Giusti v. Italy*, no. 13175/03, § 34, 18 October 2011).

74. In the present case the Court notes that because of the duration of the proceedings before the Constitutional Court the applicant, instead of being evicted from the flat in the enforcement proceedings, remained living in it for another six years and two months. That fact, in the Court's view, compensated for or at least significantly reduced the damage normally entailed by the excessive length of civil proceedings. The Court accordingly considers that the applicant did not suffer a "significant disadvantage" in respect of her right to a hearing within a reasonable time (see, *mutatis mutandis*, *Gagliano Giorgi v. Italy*, no. 23563/07, §§ 57-58, 6 March 2012).

75. As to whether respect for the human rights safeguarded by the Convention and its Protocols requires the examination of the merits of the complaint, the Court observes that the issue of the length of civil proceedings in Croatia has been addressed on numerous occasions in its judgments (see, among many other authorities, *Horvat v. Croatia*, no. 51585/99, ECHR 2001-VIII; *Kozlica v. Croatia*, no. 29182/03, 2 November 2006; and *Kaić and Others v. Croatia*, no. 22014/04, 17 July 2008). Thus, an examination on the merits of the present complaint would not add anything in this regard. The Court therefore concludes that respect for human rights, as defined in the Convention and the Protocols thereto, does not require an examination of this complaint on its merits.

76. Lastly, as to whether the case was "duly considered by a domestic tribunal", the Court first reiterates that in the *Holub* case (see *Holub v. Czech Republic* (dec.), no. 24880/05, 14 December 2010) it held that the term "case" referred to in Article 35 § 3 (b) of the Convention is to be distinguished from the terms "application" or "complaint". Rather, it corresponds to the notion of the "case" in the sense of an action, claim or request that was submitted to the domestic courts. It is the "case" understood in that way that has to be "duly considered by a domestic tribunal" for the purposes of Article 35 § 3 (b) of the Convention. That being so, the Court notes that in the present instance the applicant's "case", that is the action for eviction brought against her and her counterclaim, was "duly considered" by the first- and the second-instance courts and by the Constitutional Court.

77. In addition, the Court reiterates that the clause that the case must be "duly considered by a domestic tribunal" is consonant with the principle of subsidiarity, as reflected notably in Article 13 of the Convention, which requires that an effective remedy against violations be available at the national level (see *Korolev*, cited above). The Court further refers to its case-law developed in the context of Article 13 according to which, where, as in the instant case, the applicant alleges a violation of the rights conferred by the Convention by the last-instance judicial authority of the domestic legal system, the application of Article 13 is implicitly restricted. Therefore, for example, the absence of a remedy in respect of the Constitutional Court's decision does not raise an issue under Article 13 (see *Juričić v. Croatia*, no. 58222/09, § 100, 26 July 2011; and *Harabin v. Slovakia*, no. 58688/11, § 171, 20 November 2012). The Court considers that this reasoning applies with equal force in the context of Article 35 § 3 (b) of the Convention in circumstances such as those prevailing in the present case. That is to say that, when examining whether the "significant disadvantage" admissibility criterion has been satisfied in cases where the applicant alleges a violation of the Convention by the last-instance judicial authority of the domestic legal system, the Court may dispense with the requirement laid down in Article 35 § 3 (b) of the Convention whereby no case may be rejected on that ground unless it has been "duly considered by a domestic tribunal". To construe the contrary would prevent the Court from rejecting any claim, however insignificant, relating to alleged violations imputable to a final national instance. The Court finds that such an approach would be neither appropriate nor consistent with the object and purpose of Article 35 § 3 (b) of the Convention (see *Korolev* and *Holub*, both cited above).

78. It follows that this complaint is inadmissible under Article 35 § 3 (b) of the Convention because the applicant has not suffered a significant disadvantage, and must be rejected pursuant to Article 35 § 4.

C. Alleged violation of Article 14 of the Convention

79. The applicant also complained that she had been discriminated against because, unlike other holders of specially protected tenancies in respect of socially-owned flats, she had not been entitled to purchase and thereby become the owner of the flat at issue. She relied on Article 14 of the Convention, which reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

80. The Court reiterates that it had an opportunity to examine similar complaints in the *Strunjak* and *Sorić* cases (see *Strunjak and Others v. Croatia* (dec.), no. 46934/99, ECHR 2000-X, and *Sorić v. Croatia* (dec.), no. 43447/98, 16 March 2000) and that it declared them inadmissible as

manifestly ill-founded. The Court sees no reason to reach a different conclusion in the present case.

81. 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.

D. Other alleged violations of the Convention

82. Lastly, the applicant complained under Articles 6 § 1 and 13 of the Convention about the outcome of the above-mentioned civil proceedings. Article 13 read as follows:

Article 13

> "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."

83. As regards the applicant's complaint under Article 6 § 1 of the Convention, the Court notes that she complained about the outcome of the proceedings. However, unless the outcome was arbitrary, the Court is unable to examine it under the Article in question. In the light of all the material in its possession, the Court considers that in the present case the applicant was able to submit her arguments before courts which offered the guarantees set forth in Article 6 § 1 of the Convention and which addressed those arguments. Their decisions were duly reasoned and cannot be qualified as arbitrary.

84. As regards the applicant's complaint under Article 13 of the Convention, the Court reiterates 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 (see *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-X). It therefore notes that the applicant had at her disposal effective domestic remedies – in the form of an appeal and a constitutional complaint – by which to complain of the violation of her Convention right to respect for her home, and that she availed herself of those remedies. The mere fact that the outcome of the proceedings was not favourable to her does not render those remedies ineffective.

85. It follows that these complaints are also inadmissible under Article 35 § 3 (a) of the Convention as manifestly ill-founded and must be rejected pursuant to Article 35 § 4.

For these reasons, the Court unanimously

Declares the application inadmissible.

Søren Nielsen Registrar	Isabelle Berro-Lefèvre President