



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

FIRST SECTION

Application no. 31588/12
Milica MILADINOVIĆ
against Croatia
lodged on 16 April 2012

STATEMENT OF FACTS

The applicant, Ms Milica Miladinović, is a Croatian national, who was born in 1951 and lives in Zagreb. She is represented before the Court by Ms L. Kušan, a lawyer practising in Ivanić Grad.

A. The circumstances of the case

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

1. Background to the case

The applicant is a Croatian national of Serbian origin.

From 1978 to 1991 the applicant lived in a flat in Zagreb with her (now) ex-husband and two children as a holder of specially protected tenancy (*stanarsko pravo*). In August 1991 she was thrown out from the flat by unknown uniformed persons.

From 1991 to 2000 the applicant lived as a refugee in Bosnia and Herzegovina and Serbia. In 1995 the Zagreb Municipal Court (*Općinski sud u Zagrebu*) established that the applicant had lost the specially protected tenancy over the flat, which was subsequently sold to a third person.

Since 1982 the applicant has owned a house in Stubičke Toplice. In spring 1994, the house was occupied by a certain M.N. without knowledge or consent of the applicant.

On 27 September 1995 the Temporary Takeover and Administration of Certain Property Act (“the Takeover Act”) entered into force. It provided that property belonging to persons who had left Croatia after 17 October 1990 was to be sequestered, that is, taken into the care of and controlled by the State. It also authorised local authorities (takeover commissions) to temporarily accommodate other persons in such property.

On 19 October 1995 the Housing Commission of the Stubičke Toplice Municipality (*Stambena komisija općine Stubičke Toplice*) issued a decision allowing M.N. to use the applicant’s house temporarily.

In June 1998 Croatian Parliament (*Hrvatski sabor*) adopted the Programme for the Return of Refugees and Displaced Persons (“the Programme for Return”), regulating the principles for their return and repossession of their property.

In August 1998 the Act on Termination of the Takeover Act (“the Termination Act”) entered into force. It incorporated and gave legal force to the provisions of the Programme for Return, providing that those persons whose property had, during their absence from Croatia, been used to accommodate others, should apply to the competent local authorities – the housing commissions – to recover their property.

The State secured an alternative accommodation for M.N. in 1998, by reconstructing a house in Novska. However, M.N. has still not moved there.

In 2000 the applicant moved back to Croatia. She lives alone in a rented room in Zagreb and receives social benefit (*socijalna pomoć*).

2. *The proceedings for repossession of the applicant’s house*

On 10 April 2000 the applicant requested the repossession of her house from Stubičke Toplice Municipality.

On 10 May 2000 the Stubičke Toplice Municipality set aside its decision allowing M.N. to use the house and ordered him to vacate the house and hand it over to the applicant.

Since M.N. failed to comply with this decision, the applicant requested the Stubičke Toplice Municipality to institute eviction proceedings.

On 19 July 2001 the applicant brought an action against M.N. in the Donja Stubica Municipal Court (*Općinski sud u Donjoj Stubici*), seeking eviction.

On 10 October 2001 the Donja Stubica Municipal Court accepted the applicant’s action and ordered the eviction of M.N.

On 13 July 2005 the Zlatar County Court (*Županijski sud u Zlataru*) dismissed M.N.’s appeal and upheld the first-instance judgment.

Meanwhile, on 10 January 2005 the Zlatar Municipal State Attorney’s Office (*Općinsko državno odvjetništvo u Zlataru*) also brought an action against M.N. in the Donja Stubica Municipal Court, seeking eviction.

On 31 October 2005 the Donja Stubica Municipal Court accepted the action and ordered the eviction of M.N.

On 21 June 2006 the Zlatar County Court dismissed M.N.’s appeal and upheld the first-instance judgment.

On an unspecified date, the Zlatar Municipal State Attorney’s Office instituted enforcement proceedings against M.N., seeking the enforcement of eviction. The Donja Stubica Municipal Court ordered the enforcement on 23 October 2006.

On 19 June 2007 the applicant reposessed her house. On that occasion, the Refugees, Returnees and Displaced Persons Department (*Uprava za prognanike, povratnike i izbjeglice*) of the Ministry of Sea, Tourism, Traffic and Development (*Ministarstvo mora, turizma, prometa i razvitka*) and the applicant signed the taking-over protocol (*zapisnik o primopredaji*), where it was established that the house had been completely destroyed and uninhabitable.

On the same day the applicant requested the reconstruction of her house from the Refugees, Returnees and Displaced Persons Department of the

Ministry of Sea, Tourism, Traffic and Development. No decision was reached upon this request.

3. *The proceedings against the applicant*

On 2 April 2007 M.N. brought an action against the applicant in the Donja Stubica Municipal Court, seeking payment of 235,460 Croatian kunas (HRK) on account of his investments in her house.

On 24 April and 7 May 2009 the applicant lodged a counter-claim against M.N., seeking payment of HRK 281,825.33 on account of compensation for usage of her property and costs necessary for reconstruction of the house. It appears that her counter-claim is still pending before the first-instance court.

On 9 June 2009 the Zlatar Municipal Court - Donja Stubica Permanent Office (*Općinski sud u Zlataru - Stalna služba u Donjoj Stubici*) accepted M.N.'s action. It argued that M.N. was a *bona fide* investor in the house since the applicant intended to sell the house to M.N. already in 1996.

On 10 February 2010 the Zlatar County Court dismissed the applicant's appeal and upheld the first-instance judgment. The applicant lodged an appeal on points of law (*revizija*) against that judgment. It appears that the appeal on points of law is still pending before the Supreme Court (*Vrhovni sud Republike Hrvatske*).

On 25 July 2011 M.N. instituted enforcement proceedings against the applicant.

On 3 August 2011 the Zlatar Municipal Court – Donja Stubica Permanent Office ordered the enforcement. The applicant appealed against that decision and requested the stay of enforcement proceedings until the Supreme Court's decision upon her appeal on points of law.

On 19 September 2011 the Zagreb County State Attorney's Office – Zlatar Permanent Office (*Županijsko državno odvjetništvo u Zagrebu – Stalna služba u Zlataru*) informed the Municipal Court that the Republic of Croatia, pursuant to section 9 of the Amendments of the Act on Area of Special State Concern (*Izmjene i dopune Zakona o područjima posebne državne skrbi*) took over the position of the applicant in the enforcement proceedings.

On 30 November 2011 the Zlatar Municipal Court – Donja Stubica Permanent Office terminated the enforcement against the applicant and ordered the enforcement against the Republic of Croatia.

4. *Friendly settlement requests of the applicant*

On 7 December 2006 the Croatian Government delegated several Ministries with a task to gather data on proceedings against owners of the property given for temporary use and to offer such persons the execution of three-party friendly settlements. The applicant invited the competent Ministry to reach such a settlement on 19 August 2009, 9 December 2009, 1 April 2010, 16 December 2010 and 22 July 2011. On 16 September 2011 a meeting between the applicant and the State Secretary (*državni tajnik*) of the Department for Area of Special State Concern (*Uprava za područje posebne državne skrbi*) in the Ministry of Regional Development, Forests and Waters (*Ministarstvo regionalnog razvoja, šumarstva i vodnoga*

gospodarstva) was held, in order to find a solution for the applicant's problem. The applicant again invited the competent Ministry to reach a friendly settlement on 3 December 2012 and 12 February 2013. However, the friendly settlement has never been reached.

COMPLAINTS

The applicant complains under Article 1 of Protocol No.1 to the Convention about the prolonged inability to use her house.

She also complains, under Article 13 of the Convention in conjunction with Article 1 of Protocol No. 1 to the Convention, about the lack of effective remedy against her grievances.

QUESTIONS TO THE PARTIES

1. Has there been a violation of the applicant's right to peaceful enjoyment of her possessions, on account of the prolonged inability to use her house, within the meaning of Article 1 of Protocol No. 1?
2. Did the applicant have at her disposal an effective domestic remedy for her complaint under Article 1 of Protocol No. 1 to the Convention, as required by Article 13 of the Convention?