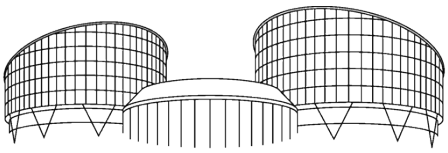

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ŠKRTIĆ v. CROATIA

(Application no. 64982/12)

JUDGMENT

STRASBOURG

5 December 2013

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

In the case of Škrtić v. Croatia,

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

Elisabeth Steiner, *President,*
Mirjana Lazarova Trajkovska,
Ksenija Turković, *judges,*

and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 12 November 2013,

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

PROCEDURE

1. The case originated in an application (no. 64982/12) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Croatian national, Ms Branka Škrtić ("the applicant"), on 27 July 2012.

2. The applicant was represented by Ms R. Dozet Daskal, a lawyer practising in Karlovac. The Croatian Government ("the Government") were represented by their Agent, Ms Š. Stažnik.

3. On 11 February 2013 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1951 and lives in Karlovac.

5. The applicant and her husband were holders of a specially protected tenancy on a flat in Karlovac. In 1991 a bomb was thrown into the flat and the family moved out of the flat for security reasons. By a decision of the Karlovac Housing Committee of 29 November 1991 they were given another flat in Karlovac for temporary occupation. The applicant's husband moved out of the flat in 1992 and they subsequently divorced. The applicant and two children born of the marriage continued to occupy the flat. The above-said decision was annulled by the same Commission on 11 November 2000.

6. In 2000 the Karlovac Municipality, as the owner of the flat, brought a civil action in the Karlovac Municipal Court against the applicant, seeking her eviction. The claim was granted on 1 February 2008 on the ground that

the flat at issue had been given for temporary occupation to the applicant's husband who had left the flat and that that decision had been annulled in 2000 and that therefore she no longer had a legal basis for occupying the flat.

7. This judgment was upheld by the Karlovac County Court on 19 August 2009.

8. In her subsequent constitutional complaint the applicant argued that she had been a holder of a specially protected tenancy on a flat in Karlovac, owned by the Karlovac Municipality and had to leave that flat owing to the circumstances not attributable to her. She had moved into the other flat, on the basis of a decision issued by the Karlovac Housing Committee. That other flat was also owned by the Karlovac Municipality and it had been agreed between the owner and the applicant that she would be granted a specially protected tenancy on that other flat. She also argued that the case concerned an existential issue for her; that she had been living in the flat for more than twenty years; that she had addressed the Karlovac Municipality on numerous occasions and had been told "not to worry and that everything would be alright"; that she had fulfilled her obligations as a tenant. The complaint was dismissed on 29 March 2012.

II. RELEVANT DOMESTIC LAW

9. Section 161, paragraph 1 of the Act on Ownership and other Rights *in Rem* (*Zakon o vlasništvu i drugim stvarnim pravima*, Official Gazette no 91/1996) reads as follows:

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

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

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

Section 428a

> "(1) When the European Court of Human Rights has found a violation of a human right or fundamental freedom guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms or additional protocols thereto ratified by the Republic of Croatia, a party may, within thirty days of the judgment of the European Court of Human Rights becoming final, file a petition with the court in the

Republic of Croatia which adjudicated in the first instance in the proceedings in which the decision violating the human right or fundamental freedom was rendered, to set aside the decision by which the human right or fundamental freedom was violated.

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

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

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

11. The applicant complained that the national courts' judgments ordering her eviction violated her right to respect for her home, contrary to Article 8 of the Convention, which reads as follows:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

12. The Government firstly maintained that the applicant had failed to exhaust domestic remedies, arguing that she had not lodged an administrative action against the Commission decision of 11 November 2000 (see paragraph 5 above).

13. The applicant contested that argument.

14. The Court reiterates that the rule of exhaustion of domestic remedies normally requires that the complaints intended to be made subsequently at the international level should have been raised before the domestic courts, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law. The object of the rule on exhaustion of domestic remedies is to allow the national authorities (primarily the judicial authorities) to address an allegation that a Convention right has been violated and, where appropriate, to afford redress before that allegation is submitted to the Court. In so far as there exists at national level a remedy

enabling the national courts to address, at least in substance, any argument as to an alleged violation of a Convention right, it is that remedy which should be used (see *Azinas v. Cyprus* [GC], no. 56679/00, § 38, ECHR 2004-III).

15. As to the Government's argument that the applicant had failed to bring an administrative action against the decision adopted by the Commission, the Court notes that the applicant's complaint concerns the alleged deficiencies in the proceedings instituted before the Karlovac Municipal Court by the owner of the flat she occupied, seeking her eviction. In the Court's view, such issues should be considered in the context of those proceedings. The applicant lodged an appeal against the first instance judgment and a constitutional complaint, whereby she put forward various arguments concerning her right to respect for her home before the national courts (see paragraph 8 above). Bringing an administrative action could in no way have remedied the situation complained of by the applicant. Therefore, the Court considers that the applicant properly exhausted the relevant domestic remedies.

16. It follows, therefore, that the Government's arguments must be rejected.

17. Having regard to the above facts, the Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It also notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

18. The applicant argued that by ordering her eviction solely on the ground that she had no legal basis for occupying the flat at issue, the national courts violated her right to respect for her home. She put forward the same arguments she had presented before the Constitutional Court (see paragraph 8 above). She also submitted that she had always been willing to accept a smaller flat but that no agreement had been reached between her and the Karlovac Municipality in that respect.

19. The Government argued that the applicant could not have acquired a specially protected tenancy on the flat at issue and that the owner of the flat had a legitimate aim to seek its repossession. The flat the applicant occupied measured 72,24 square metres and thus exceeded the applicant's needs. The Karlovac Municipality regularly allocated socially-owned flats to those in need but the applicant had not applied for such a flat.

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

20. The first question the Court has to address is whether the applicant may arguably claim that she had a right protected by Article 8 and – more

specifically in the present case – whether the flat in question may be considered as the applicant's home.

21. The Convention organs' case-law is clear on the point that the concept of "home" within the meaning of Article 8 is not limited to those premises which are lawfully occupied or which have been lawfully established. "Home" is an autonomous concept which does not depend on classification under domestic law. Whether or not a particular premise constitutes a "home" which attracts the protection of Article 8 § 1 will depend on the factual circumstances, namely, the existence of sufficient and continuous links with a specific place (see *Buckley v. the United Kingdom*, 25 September 1996, *Reports* 1996-IV, §§ 52-54, and Commission's report of 11 January 1995, § 63; *Gillow v. the United Kingdom*, 24 November 1986, § 46, Series A no. 109; *Wiggins v. the United Kingdom*, no. 7456/76, Commission decision of 8 February 1978, DR 13, p. 40; and *Prokopovich v. Russia*, no. 58255/00, § 36, ECHR 2004-XI (extracts)). Thus, whether a property is to be classified as a "home" is a question of fact and does not depend on the lawfulness of the occupation under domestic law (see *McCann v. the United Kingdom*, no. 19009/04, § 46, 13 May 2008).

22. As to the present case, it is undisputed that the applicant has been living in the flat in question since 1991. Having regard to this, the Court finds that the applicant had sufficient and continuing links with the flat at issue for it to be considered her "home" for the purposes of Article 8 of the Convention.

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

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

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

24. Subsequently the Court held in the *McCann v. the United Kingdom* (no. 19009/04, 13 May 2008):

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

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

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

26. The Court sees no reason to depart from this approach in the present case. It notes that an eviction order was issued against the applicant and it became final on 19 August 2009 when the Karlovac County Court upheld the first instance judgment. The Court considers that the eviction order issued against the applicant to leave the flat amounted to an interference with her right to respect for her home, irrespective of the fact whether she moved out of her own motion after the eviction order had become final or was forcefully evicted (see *Ćosić v. Croatia*, cited above, § 18 and *Paulić v. Croatia*, no. 3572/06, § 38, 22 October 2009) .

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

27. The applicant was ordered to vacate the flat in question by the national courts under Croatian laws regulating ownership, which allow an owner to seek repossession of his or her property when the possessor has no legal grounds for possession (see above the relevant provision of the Property Act, paragraph 9).

28. In this connection the Court first reiterates that it is in the first place for the national authorities, notably the courts, to interpret and apply the domestic law, even in those fields where the Convention "incorporates" the rules of that law since the national authorities are, in the nature of things, particularly qualified to settle the issues arising in this connection (see, *mutatis mutandis*, *Winterwerp v. the Netherlands*, 24 October 1979, § 46, Series A no. 33). The Court will not substitute its own interpretation for theirs in the absence of arbitrariness (see, for example, *Tejedor García v. Spain*, 16 December 1997, § 31, *Reports of Judgments and Decisions* 1997-VIII).

29. The possession order in question was issued by the national courts under Croatian laws regulating ownership which allow an owner to seek repossession of his or her property when the possessor has no legal grounds for the possession. The national courts relied on section 161 of the Property Act when ordering the applicant's eviction. The Court, noting that its power to review compliance with domestic law is limited (see, among other authorities, *Allan Jacobsson v. Sweden* (no. 1), 25 October 1989, Series A no. 163, p. 17, § 57), is thus satisfied that the national courts' decisions ordering the applicant's eviction were in accordance with domestic law (see *Ćosić v. Croatia*, cited above, § 19). The interference in question pursued the legitimate aim of the rights and interests of the owner (see *Orlić v. Croatia*, no. 48833/07, § 62, 21 June 2011).

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

30. The central question in this case is, therefore, whether the interference was proportionate to the aim pursued and thus "necessary in a democratic society". It must be recalled that this requirement under paragraph 2 of Article 8 raises a question of procedure as well as one of substance. In particular in respect of the question of procedure the Court held as follows in the case of *Connors v. the United Kingdom*, (no. 66746/01, §§ 81–84, 27 May 2004) which concerned summary possession proceedings:

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

31. In this connection the Court reiterates that any person at risk of an interference with his or her right to home should in principle be able to have the proportionality and reasonableness of the measure determined by an independent tribunal in the light of the relevant principles under Article 8 of the Convention, notwithstanding that, under domestic law, he or she has no right to occupy a flat (see, *mutatis mutandis*, *McCann v. the United Kingdom*, no. 19009/04, § 50, 13 May 2008; and *Orlić v. Croatia*, cited above, § 65).

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

33. The Court notes that in the present case the applicant raised the issue of her right to respect for her home. Before the national courts she presented arguments linked to the proportionality of her eviction, such as the fact that she had been a holder of a specially protected tenancy on a flat in Karlovac, owned by the Karlovac Municipality, and had to leave that flat owing to the circumstances not attributable to her. She had moved into the other flat, on the basis of a decision issued by the Karlovac Housing Committee. That other flat was also owned by the Karlovac Municipality and it had been agreed between the owner and the applicant that she would be granted a specially protected tenancy on that other flat. She also argued that the case concerned an existential issue for her; that she had been living in the flat for more than twenty years; that she had addressed the Karlovac Municipality on numerous occasions and had been told "not to worry and that everything would be alright"; that she had fulfilled her obligations as a tenant.

34. The Court notes that the flat at issue is socially-owned. In this connection the Court considers that in circumstances where the national authorities, in their decisions ordering and upholding the applicant's

eviction, have not given any explanation or put forward any arguments demonstrating that the applicant's eviction was necessary, the State's legitimate interest in being able to control its property comes second to the applicant's right to respect for her home. Moreover, where the State has not shown the necessity of the applicant's eviction in order to protect its own property rights, the Court places a strong emphasis on the fact that no interests of other private parties are likewise at stake (see *Bjedov v. Croatia*, no. 42150/09, § 70, 29 May 2012).

35. When it comes to the decisions of the domestic authorities in the present case, their findings were restricted to the conclusion that under applicable national laws the applicant had no legal entitlement to occupy the flat. The national courts thus confined themselves to finding that occupation by the applicant was without legal basis, but made no further analysis as to the proportionality of the measure to be applied against the applicant, namely her eviction from the flat she has been occupying since 1991.

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

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

38. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

39. The applicant claimed 3,000 euros (EUR) in respect of non-pecuniary damage and EUR 12,000 in respect of future pecuniary-damage she would sustain if evicted.

40. The Government deemed that sum excessive and unfounded.

41. The Court reiterates that a judgment in which it finds a breach imposes on the respondent State a legal obligation to put an end to the breach and to make reparation for its consequences. If the national law does not allow – or allows only partial – reparation to be made, Article 41

empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, §§ 32-33, ECHR 2000-XI). In this connection, the Court notes that under section 428(a) of the Civil Procedure Act an applicant may file a petition for reopening of the civil proceedings in respect of which the Court has found a violation of the Convention (see *Orlić v. Croatia*, cited above, § 78; and *Bjedov v. Croatia*, cited above, § 78).

42. As regard the claim for pecuniary damage, the Court does not discern any causal link between the violation found and the damages claimed; it therefore rejects that claim. On the other hand, the Court finds that the applicant must have sustained non-pecuniary damage. It therefore awards the applicant under that head EUR 3,000, plus any tax that may be chargeable on that amount.

B. Costs and expenses

43. The applicant also claimed EUR 833 for the costs and expenses incurred before the Court and Croatian kuna 6,125 for the proceedings before the national courts.

44. The Government deemed the sum claimed excessive.

45. As regards the costs incurred before the national courts the Court notes that, following a violation found by it, the applicant may seek the reopening of the proceedings and that in the fresh proceedings the costs of the overall proceedings will be assessed. The Court therefore rejects the claim for the costs incurred before the national courts.

46. As regards the costs incurred before it, the Court notes that the applicant was granted legal aid and therefore rejects this claim.

C. Default interest

47. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT,UNANIMOUSLY,

1. *Declares* the application admissible;

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

3. *Holds*

(a) that the respondent State is to pay the applicant EUR 3,000 (three thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant, to be converted into Croatian kuna at the rate applicable at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 5 December 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Elisabeth Steiner
President