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

FOURTH SECTION

DECISION

Application no. 33690/06
Stanisław ZABOR
against Poland

The European Court of Human Rights (Fourth Section), sitting on 7 January 2014 as a Chamber composed of:

Ineta Ziemele, *President,*
Päivi Hirvelä,
George Nicolaou,
Zdravka Kalaydjieva,
Vincent A. De Gaetano,
Paul Mahoney,
Krzysztof Wojtyczek, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 7 July 2006,

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 Stanisław Zabor, is a Polish national, who was born in 1954 and lives in Wrocław. He was represented before the Court by Mr B. Latos, a lawyer practising in Wrocław. The Polish Government ("the Government") were represented by their Agent, first Mr J. Wołąsiewicz and, subsequently, Ms J. Chrzanowska, both of the Ministry of Foreign Affairs.

A. The circumstances of the case

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

3. On an unspecified date the applicant's mother was granted, by way of an administrative decision, the right to a protected lease of an apartment located in a building owned by the Wrocław municipality. The applicant had lived in this apartment since 1955. It appears that he moved out in 1980 following his marriage (see paragraph 34 below).

4. In 1995 the applicant's father signed a tenancy agreement with the municipality, which replaced the earlier administrative decision. The agreement stipulated that other tenants would be the applicant, his mother and his brother.

5. In 1999 the applicant's brother and father, who apparently had both been in conflict with the applicant, instituted proceedings to strike out the registration of the applicant's permanent residence in the apartment on the ground that he did not live there. According to the applicant, in those proceedings his mother confirmed that he has been living in the apartment. On 22 October 1999 the Mayor of Wrocław refused the request.

6. The applicant's father died on an unspecified date.

7. On 13 January 2001 the applicant's mother died. The applicant's brother was recognised as a successor to the tenancy agreement.

8. The applicant requested that the municipality recognise him also as a successor to the tenancy agreement. This was refused by a letter of 10 July 2001 on the ground that the applicant did not comply with the requirement for such a succession set out in section 8 of the Lease of Dwellings and Housing Allowances Act of 2 July 1994 ("the 1994 Act") since he had not lived in the apartment. At the same time the municipal housing administration instituted proceedings to strike out the registration of his permanent residence in the apartment.

9. On 27 February 2002 the municipal administration reiterated their refusal to sign a tenancy agreement with the applicant.

10. On an unspecified date in 2002 the applicant was allegedly forced to leave the apartment due to the aggressive behaviour of his brother.

11. The Government submitted that according to the Mayor of Wrocław's internal inquiry the applicant had not been living in the flat for many years. They contended that this fact had been confirmed by the applicant during his interview before the Wrocław Municipal Office on 21 January 2002.

12. In consequence of the above-mentioned internal inquiry, on 17 April 2002 the Mayor of Wrocław gave a decision striking out the registration of the applicant's permanent residence in the apartment. The Mayor, having regard to the evidence of two residents of the building and the applicant's brother, established that the applicant had not been living in

the apartment for many years. The applicant confirmed this fact, but stated that he had been prevented from occupying the flat by his brother. On 10 June 2002 the Governor of Dolny Śląsk Region upheld the Mayor's decision. He noted that the applicant had not attempted to use legal remedies to recover the occupation of the apartment. The applicant appealed. On 22 June 2004 the Supreme Administrative Court dismissed his appeal. It emphasised that the act of registration was solely a technical act confirming the fact of residence in the flat and did not concern the right to a given dwelling.

13. On 24 July 2002 the applicant brought an action against the municipality, claiming that he should be recognised as a successor to the tenancy agreement after his mother's death. On 6 November 2002 the Wrocław Śródmieście District Court gave a judgment in default, allowing his claim. The municipality lodged an objection against that judgment.

14. On 7 March 2003 the Wrocław Śródmieście District Court upheld the judgment in default and confirmed that the applicant was the successor in respect of the tenancy agreement. Neither party filed an appeal against that judgment.

15. On 5 May 2003 the applicant requested the Wrocław municipality to take steps to make the judgment operational by concluding a tenancy agreement with him.

16. In a letter of 18 July 2003 the municipality stated the following:

> "In reply to your letter and with reference to the attached judgment of 7 March 2003, I should inform you that under that judgment you became your mother's successor in respect of the tenancy agreement, but that it is impossible to sign such an agreement with you.
>
> This is so because an internal enquiry showed that you had not been living in that apartment on a permanent basis. This has already resulted in the decision of the Mayor striking out the registration of your permanent residence in the apartment.
>
> Consequently, pursuant to Article 11 (3) 1 of the Act of 21 June 2001 on the protection of the rights of tenants, housing resources of municipalities and amendments to the Civil Code, the municipal office hereby gives six-month notice in respect of the agreement which you obtained under the judgment referred to above, the agreement expiring on 29 February 2004. The factual basis for the termination of the agreement is the fact that you have not been living in this apartment for a period longer than twelve months."

17. On 9 December 2003 the applicant lodged an action with the Wrocław Śródmieście District Court in which he sought a declaration under Article 189 of the Code of Civil Procedure that a tenancy agreement existed between him and the municipality.

18. On 25 February 2005 the court gave a judgment in default and allowed the applicant's claim. The municipality filed an objection to that judgment. On 23 September 2005 the Wrocław Śródmieście District Court upheld the judgment in default. It appears that subsequently the judgment became final and enforceable.

19. On 19 December 2005 the applicant requested the Wrocław municipality to sign a tenancy agreement with him, having regard to the final judgment of 25 February 2005. He also requested the municipality to evict his brother from the apartment.

20. On 28 March 2006 the municipality informed the applicant that it recognised him as a tenant in accordance with the judgment of 25 February 2005. It further informed the applicant about the significant rent arrears in respect of the apartment and set a time-limit to pay them. The applicant's brother was also requested to clear the rent arrears as a joint tenant.

21. The applicant replied that on 10 July 2001 the municipality had refused to recognise him a successor to the tenancy and that subsequently the registration of his permanent residence in the apartment had been struck out. In those circumstances the applicant could not occupy the apartment. He requested the municipality to seek payment of rent arrears from his brother who had been the sole occupant of the apartment.

22. On 21 June 2006 the municipality informed the applicant that it had initiated the procedure with a view to terminating the tenancy agreement since the rent arrears had not been paid. On 23 May 2007 it informed the applicant that it did not have legal means to reinstate his possession of the apartment. On 6 June 2007 the municipality terminated the tenancy agreement with the applicant and his brother with effect from 31 July 2007.

23. On 12 June and 24 July 2007 the municipality again confirmed that the applicant and his brother were the lawful tenants. It underlined that there were no obstacles to the applicant's use of the apartment occupied by his brother in the absence of a written tenancy agreement. The signing of the written agreement had been postponed until the time when the applicant and his brother cleared the rent arrears.

24. On 9 April 2008 the applicant requested the Mayor of Wrocław to authorise the registration of his permanent residence in the apartment. On 22 August 2008 the request was dismissed on the grounds that the applicant had not lived in the apartment for many years. That decision was upheld on appeal.

25. On 21 May 2008 the municipality filed an action against the applicant and his brother with the Wrocław Śródmieście District Court, seeking payment of rent arrears. On 27 May 2008 the court issued an order for payment against the applicant and his brother. The applicant filed an objection to the order. The municipality submitted in the proceedings that it was the applicant's brother who had refused to allow the applicant's access to the apartment. The municipality had no legal means to resolve the family conflict and it was up to the applicant to institute proceedings for repossession.

26. On 10 February 2009 the Wrocław Śródmieście District Court dismissed the municipality's action against the applicant. It found that the municipality had consistently obstructed the applicant in taking possession

of the apartment. The court noted firstly that the municipality had struck out the registration of his permanent residence in the apartment which had had adverse effects on the applicant's ability to occupy the apartment. The applicant's brother had used the lack of the applicant's registration as a pretext not to let the applicant into the apartment. Secondly, the municipality had not recognised the applicant as the successor to the lease and thus had forced him to assert his rights in court proceedings. Thirdly, the municipality had refused to confirm in writing the conditions of the tenancy agreement. Consequently, the applicant had not known his obligations as a tenant, in particular as regards the amount of his rent. The court found that since the municipality had not respected its obligations under the tenancy agreement towards the applicant it was not entitled to claim rent from him.

27. The municipality appealed. On 23 June 2009 the Wrocław Regional Court dismissed the appeal.

28. On 2 July 2009 the municipality filed an action with the Wrocław Śródmieście District Court against the applicant and his brother, seeking their eviction. On 10 September 2009 the Wrocław Śródmieście District Court gave judgment. It ordered the applicant's brother to vacate the flat and ruled that the municipality was under an obligation to provide him with social housing.

29. The court dismissed the action against the applicant. It noted that the applicant's right to the lease of the flat had been confirmed in its final judgment of 25 February 2005. The court further noted that in accordance with the final judgment of the Wrocław Regional Court of 23 June 2009 the applicant had not been obliged to pay the rent arrears. The court found invalid the municipality's notice of termination of the tenancy agreement issued on the grounds of the failure to pay the rent arrears and confirmed the applicant's right to use the flat. The municipality did not appeal.

30. On 5 May 2010 the municipality summoned the applicant to sign an appendix to the tenancy agreement to the apartment, specifying him as a tenant.

31. On an unspecified date the applicant complained to the municipality about its failure to provide social housing to his brother in accordance with the Wrocław Śródmieście District Court's judgment of 10 September 2009. In its reply of 23 June 2010 the municipality informed the applicant that it did not question his right to the lease of the apartment and did not refrain from confirming the lease in writing. In any event, the applicant was informed that his right to the apartment did not depend on the written confirmation thereof. With regard to the eviction of his brother, the municipality informed the applicant that due to a significant number of eviction judgments and the limited stock of municipal social housing it could not immediately satisfy his request to have his brother evicted.

32. In his reply of 21 July 2010, the applicant informed the municipality that he decided to refrain from signing the agreement for the duration of the proceedings before the Court.

33. On 14 November 2011 the applicant brought an action against the municipality in the Wrocław Regional Court. He sought compensation for rendering him long-term homeless in connection with the municipality's failure to enforce four final judgments. The applicant submitted that he had succeeded to the tenancy agreement after his mother's death on 13 January 2001. He had been expelled from the flat by his brother who was an alcoholic. Subsequently, the municipality had struck out the registration of his permanent residence in the apartment and refused to sign a tenancy agreement with him. The applicant claimed that as a result he could not find employment for a period exceeding ten years.

34. On 13 February 2013 the Wrocław Regional Court dismissed the applicant's action. It found that the applicant had failed to demonstrate that he had suffered the alleged damage, namely the long-term homelessness and the lack of employment as a result of the municipality's actions. With regard to the alleged homelessness, the court noted that the applicant had succeeded to the tenancy agreement after his mother's death. The municipality had initially refused to confirm the content of the tenancy agreement and had struck out the registration of his permanent residence in the disputed apartment. However, it did not result from these circumstances that the applicant had become homeless. The court noted that the applicant had not demonstrated that he had been homeless in the period of ten years preceding the lodging of his action. The court established that the applicant had moved out of the flat in 1980 after his marriage. Initially, he had lived with his wife at his parents-in-law and subsequently in an apartment located at Starościńska Street. After about twelve years he had moved out following a conflict with his wife. Subsequently, he had rented flats, lived at his sister and at an allotment. The applicant had not attempted to move into the apartment at issue for more than ten years on account of the conflict with his brother. Currently, he was living in a garden hut owned by his son-in-law. The court concluded then that the applicant had not been a homeless person at the relevant time.

35. With regard to his alleged unemployment, the court established that up until 2007 the applicant had run a transportation firm. Subsequently, he had worked as a security guard and helped his son-in-law with the latter's business. He had registered as an unemployed only on 22 February 2010 and had lost the right to an unemployment benefit on 2 March 2011. Having regard to the above, the court found that the applicant had been able to rent a flat or a room in order to avoid the alleged homelessness. In addition, besides his brother, the applicant had other close family, including his wife, two adult children and three sisters.

36. The court also found that regardless of the issue of damage, the applicant had not proved that the municipality had acted unlawfully in his case. It noted that the applicant had been deprived of the possibility of living in the apartment at issue after his parents' death because of the conflict with his brother. The applicant admitted this in the proceedings. The applicant had reproached the municipality for having struck out the registration of his permanent residence in the apartment; however, the court observed that this decision had been upheld on appeal as having been made in accordance with the law. In addition, the court noted that the applicant had not been living in the apartment for more than thirty years. The allegation that the municipality had not signed a tenancy agreement with the applicant had been also unjustified. The court noted that the applicant had succeeded to the tenancy agreement after the death of his mother by operation of the law. The lack of written confirmation of the applicant's tenancy agreement had had no effect on the existence of the applicant's right to the apartment. In any event, the municipality had invited the applicant to sign the relevant agreement but the applicant had so far not responded to the invitation.

37. Lastly, the court found that the applicant had not established a causal link between the actions of the municipality and his situation in the last ten years. In particular, the municipality could not be held responsible for the applicant's situation, such as the conflict with his brother as well as the applicant's marital problems and the moving out of the flat which he had shared for long years with his wife.

38. The applicant appealed.

39. On 19 June 2013 the Wrocław Court of Appeal dismissed the applicant's appeal. It accepted the facts as established by the Regional Court.

40. The Court of Appeal confirmed that the applicant had not demonstrated that the municipality had acted unlawfully. It noted that the applicant had blamed the municipality for its inactivity in making the apartment available to the applicant. However, the tenancy agreement in respect of the disputed apartment had been in the name of the applicant and his brother, while it was only the latter who had been the sole occupant of the apartment. The Court of Appeal noted that the municipality had had no powers to compel the applicant's brother to allow the applicant's access to and use of the apartment. It further noted that if the applicant's brother had prevented him from occupying the apartment to which he had been entitled under the tenancy agreement, the applicant should have directed his claims against the brother and not against the municipality.

B. Relevant domestic law

1. Special lease scheme

41. From 1945 to 1994 housing matters were subject to a high degree of state control under successive provisions of housing legislation. The most important characteristic of this system, a so-called "special lease scheme", was that a lease was created by means of an administrative decision and not by a civil law contract between the landlord and the tenant. Under these protected tenancies, the tenants paid a controlled rent and the owners could not terminate the lease by giving notice to the tenant. The special lease scheme was also applicable to houses owned, until 1990, by the State Treasury, and after the reform of the local administration, by the municipalities.

42. The "special lease scheme" was abolished under the Lease of Dwellings and Housing Allowances Act of 2 July 1994 (*Ustawa o najmie lokali mieszkalnych i dodatkach mieszkaniowych*), ("the 1994 Act") which entered into force on 12 November 1994. However, the special lease scheme (protected lease) was still applicable to tenants who were allocated their apartments on the basis of administrative decisions.

43. Under transitional provisions of the 1994 Law, lease agreements which had originated in administrative decisions given in the past under the special lease scheme were to be regarded as contractual leases concluded for an indefinite period and governed by the provisions of the 1994 Law. The 1994 Act maintained, albeit with slight modifications of wording, the rules concerning the protection of tenants against termination of leases continued on the basis of previous administrative decisions and the right of succession to a lease.

2. Succession to the right to lease a flat

44. Section 8(1) of the 1994 Act read:

> "1. In the event of a tenant's death, his or her descendants, ascendants, adult siblings, adoptive parents or adopted children or a person who has lived with a tenant in *de facto* marital cohabitation, shall, on condition that they lived in the tenant's household until his or her death, succeed to the tenancy agreement and acquire the tenant's rights and obligations connected with [the lease of] the flat, unless they relinquish that right to the landlord. This provision shall not apply to persons who, when the [original] tenant died, had title to another residential dwelling.
>
> 2. In cases where there is no successor to the tenancy agreement, or where the successors have relinquished their right, the lease shall expire."

45. In 2001 parliament adopted a new law governing housing matters and relations between landlords and tenants. The Act of 21 June 2001 on the protection of the rights of tenants, housing resources of municipalities and on amendments to the Civil Code (*Ustawa o ochronie praw lokatorów, mieszkaniowym zasobie gminy i o zmianie Kodeksu cywilnego*)

("the 2001 Act") entered into force on 10 July 2001. It repealed the 1994 Act.

46. Under Article 11 (3) 1 of that Act, the owner of apartment may give six-months notice on the lease agreement if the tenant has not been living in that apartment for more than twelve months.

COMPLAINTS

47. The applicant complained under Article 8 of the Convention that the authorities had violated his right to respect for his home. He claimed that the municipality had disregarded the judgments recognising him as a tenant and had effectively prevented him from exercising his right to a lease. He further invoked Articles 3, 7 § 2, 13, 14, 17 and 18 of the Convention. The Court raised of its own motion a complaint under Article 1 of Protocol No. 1 to the Convention.

THE LAW

A. The Government's submissions

48. The Government argued that there had been no interference of any kind with the applicant's right to respect for his home or his right to the peaceful enjoyment of his possessions as a result of the conduct attributable to the State. It had not been established that the actions of the municipality had amounted to such an interference. The case related to a dispute between two private-law persons – the municipality and the applicant, and the civil litigation concerning firstly the recognition of the applicant's succession to the tenancy agreement and, secondly, the issue of rent arrears. The Government recalled that in cases involving private-law relations, the obligations of the State under Article 1 of Protocol No. 1 entailed the taking of measures necessary to protect the right of property. In particular, the State was under an obligation to afford the parties to the dispute relevant judicial procedures (*Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, § 83, ECHR 2007-I).

49. The Government noted that in support of his Convention claims, the applicant submitted, *inter alia*, the correspondence with the municipality. With regard to the aforementioned correspondence, the Government stressed that the municipality had not given any decision in respect of the applicant's right to respect for his home or his property rights. The only decision issued by the Mayor of Wrocław concerned the register of

residents of the building at issue and the striking of the applicant's name out of it. The above decision was upheld by a higher administrative authority and the administrative court.

50. With regard to the impugned decision, the Government stressed that such a decision could not be regarded as an interference with the applicant's rights protected under the Convention. The consistent case-law of the administrative courts determined that such an administrative decision had only confirmed the established facts and that it had not deprived an individual of any rights to the dwelling. Conversely, the technical act of registration did not create any right to the dwelling and the registration stood for no more than the fact that an individual had resided at a certain place. The administrative courts emphasised that under the Law on the Registration of the Population and the Identity Cards (*Ustawa o ewidencji ludności i dowodach osobistych*) the situation of vacating an apartment had encompassed not only a voluntary change of the place of residence but also the situation when the individual had been forced to leave the apartment and had not made use in good time of the appropriate legal remedies which would have enabled the evicted person to return to the apartment (case no. III SA/Wr 279/07).

51. In addition, the Government submitted that in 1999 the municipality had not disputed the fact that the applicant had been living in the apartment and had refused to strike his name out of the register of permanent residents. However, subsequently the situation changed and the applicant left his previous place of residence. The applicant confirmed during his hearing before the Wrocław Municipal Office that he had not been living in the apartment since his father had instituted proceedings to strike his name out of the register of residents. The Government produced a copy of the minutes of that hearing held on 21 January 2002.

52. The Government averred that the municipality had never disputed the final court's judgments in the applicant's case and had recognised him as a successor to the tenancy agreement. Moreover, the fact that the municipality had instituted proceedings to terminate the tenancy agreement with the applicant had only confirmed that the applicant had been recognised as a lawful tenant.

53. The municipality had never used any force or pressure towards the applicant and had not evicted him. Neither had the public-law powers been ever used with regard to the applicant. In this connection, the Government underlined that the final judgment of the Wrocław Śródmieście District Court of 10 September 2009 had been in the applicant's favour. He had been recognised as the lawful tenant of the apartment, the municipality's claims for rent arrears had been finally dismissed and there had been no possibility that the applicant would be evicted from the apartment.

54. The applicant did not indicate the manner in which the authorities had allegedly interfered with his right to the peaceful enjoyment of his

possessions. The fact that the municipality had instituted civil proceedings with a view to resolving various disputed with the applicant in respect of the tenancy could not amount to an interference with the applicant's rights.

The applicant's complaint that it had been impossible for him to occupy the apartment since he could not sign an appendix to the tenancy agreement was legally and factually unjustified. According to the final judgments given in his case, the applicant was the lawful successor of the previous tenant and he had the right to live in the flat and any appendix to the tenancy agreement would be redundant. In any event, the municipality had decided to regulate the legal situation of the apartment in question and had requested the administrator of the property to sign an appendix to the tenancy agreement with the applicant.

55. The Government underlined that the alleged infringement of the applicant's rights could have only resulted from the unlawful conduct of the members of his family, in particular his brother who had supposedly forced him to leave the apartment. The authorities had done all that could have been expected of them and they could not be blamed for having breached their obligation to protect the applicant's home or his property rights.

56. The Government submitted that the State provided all legal measures enabling an evicted individual to return to the apartment. The Polish civil law contained several regulations which guaranteed the protection of home and of the possession. In the situation when the applicant was forced by his brother to leave the apartment where he had resided, he was entitled to take advantage of the domestic remedies in order to immediately return to the apartment. The Government referred to Article 342 of the Civil Code which prohibited a wilful infringement of possession even if the possessor was in bad faith. Thus, the applicant's right to the apartment and the issue of whether he was the lawful tenant had been irrelevant when his brother had infringed his possession.

57. Under Article 343 of the Civil Code the applicant was entitled to have recourse to a necessary defence in order to repel a wilful infringement of his possession. Pursuant to § 2 of the same Article the applicant, as the possessor of an immovable property, could, immediately after a wilful infringement of his possession, restore the previous state by his own act. However, the applicant was not entitled to use force. Hence, in the case of a potential resistance put up by his brother, the applicant could have sought under Article 344 of the Civil Code a restoration of the previous state and abstention from infringements against the person who wilfully infringed possession as well as against the person who benefited from the infringement.

58. In this regard, the Government submitted that they had had no information that the applicant had initiated any proceedings in respect of the impugned violation caused by the alleged behaviour of his brother. Neither have they had any information that the applicant had ever requested the

authorities for assistance in repossessing the flat which had been occupied by his brother. They contended that the authorities could not institute civil proceedings against the applicant's brother on behalf of the applicant.

59. The Government disagreed with the applicant's allegation that he would be unable to move into the apartment. Having regard to the Wrocław Śródmieście District Court's judgment of 10 September 2009 which noted that the applicant's right to the apartment had been confirmed in its final judgment of 25 February 2005, and, having in mind the letter of the Wrocław municipality of 23 June 2010, the Government saw no legal obstacles which could prevent the applicant from moving into the apartment.

60. The allegation that the applicant's brother who was no longer entitled to stay in the apartment would hinder the applicant's move into the apartment was no more than the hypothetical one and, in any event, the applicant would be entitled to receive the authority's assistance. If the cohabitation of brothers did not shape up well in the period until the municipality would offer the applicant's brother social housing or if the applicant simply did not wish the presence of his brother in the apartment he could file his own action for the eviction. Where the municipality would protract in offering social housing to the applicant's brother, the applicant could claim compensation under section 18 § 5 of the 2001 Act in conjunction with Article 417 of the Civil Code.

61. Lastly, the Government claimed that the present case had not concerned a "home" within the meaning of Article 8. They noted that the applicant had left his home moving with all his possessions to a different place, had voluntary renounced taking advantage of the legal remedies which would have allowed him to return to the apartment and had broken off all connections with the old home.

B. The applicant's submissions

62. The applicant averred that the facts of the case had disclosed a breach of his right to respect for his home. He claimed firstly that the municipality had denied for many years to follow the final judgment of the court recognising the applicant as a successor to the tenancy agreement with no further conditions. Secondly, the municipality had not taken any steps to protect the applicant's rights of a legal tenant, in particular by prompt recognition of his rights and evicting the applicant's brother from the flat. Instead, it had used its powers to hinder the applicant in the exercise of his rights. As a result of these infringements, the applicant had been deprived of his home for nearly 10 years and had been forced to live on the street or in temporary locations with no permanent address, no chance for regular work, no social security cover, etc. Furthermore, the municipality's decision

striking the applicant's name out of the register of residents deprived the applicant of any possibility to claim that he could enter the flat.

63. The applicant submitted that contrary to the conclusions of the municipality's inquiry, he had been living in the apartment prior to his mother's death on 13 January 2001 and some time after it. With regard to the municipality's decision to strike the applicant's name out of the register of the residents, the applicant stressed that the authority had issued this decision without due regard to the essential circumstances of the case. It also relied on the declarations of the applicant's brother which could not have been reliable. The applicant claimed that the Government ignored that the "established facts" had been the consequence of unlawful use of force by the applicant's brother during the time when the municipality had abstained from enforcing the final court judgment.

64. According to the applicant, the evidence in the case indisputably showed that the municipality had disregarded and disputed the final judicial decisions. In particular, the Wrocław Śródmieście District Court in its judgment of 6 November 2002 declared that the applicant had been a legal successor to the tenancy agreement in the place of his late mother. According to the law in force at the material time this judgment constituted a sufficient basis for a conclusion of the tenancy agreement. After the judgment had become final the applicant wrote to the municipality to sign an appropriate tenancy agreement. However, the municipality did not agree and after some time decided to terminate the tenancy agreement with the applicant.

65. The applicant disagreed with the Government's suggestion that the municipality had not questioned the applicant's right to the apartment. The relevant documents showed that the municipality had, on the one hand, accepted the final judgment of 7 March 2003 but, on the other hand, had made the applicant's rights conditional by requesting him to pay all the rent arrears of his brother. Such an approach of the municipality had been finally declared void by the court judgment of 10 February 2009. It was therefore obvious that until that date the applicant had not been able to sign a valid tenancy agreement without a fear of being obliged to pay the rent arrears.

66. In so far as the possibility to have recourse to remedies referred to by the Government was concerned, the applicant contended that he was not a lawyer and had relied on the instructions and letters received from the municipal authorities. The applicant first tried to have recognised his statutory right of succession to the tenancy agreement. Once he had realised the negative attitude of the municipality, he tried to make use of other remedies.

The Government pointed to a claim under Article 344 of the Civil Code, but omitted to mention that such a claim could be pursued only in the period of one year from the alleged violation, i.e. the loss of possession of the apartment. The decision on striking the applicant's name out of the register of residents was taken on 17 April 2002 and until that time the applicant had tried to live in the flat, even sometimes he had managed to stay there over night. However, it became increasingly difficult due to his brother's aggressive behaviour. Accordingly, the applicant claimed that he could not make use of Article 344 of the Civil Code because shortly after January 2001 he had managed to enter the apartment for short periods of time. After the decision of 17 April 2002 had been issued, the applicant had formally no arguments to rely on Article 344 of the Civil Code.

67. The applicant argued that he had started to live in the apartment in 1955 and had been registered as residing there. He disagreed with the Government's assertion that forty years of residence in the apartment could not be considered as a sufficient and continuous link with the specific place. There was no doubt that the apartment constituted his "home". He underlined that he had not left the apartment voluntarily, he had been unable to take most of his belongings and had not abstained from using legal remedies.

68. In the letter of 19 September 2010 the municipality had finally confirmed the existence of the tenancy agreement with the applicant. In any event, the applicant noted that such a confirmation should have been made soon after his mother's death. Lastly, the applicant noted that the municipality had refused to evict the applicant's brother from the apartment, claiming that it had no social housing available for him. He considered that the lack of social housing could not be invoked by the municipality as a justification for not complying with the final judgment.

69. The applicant subsequently submitted that his brother was serving a prison sentence and that the flat remained unoccupied. However, it was impossible for the applicant to move in since the flat was in a very bad condition and he could not afford the necessary repairs. The applicant did not wish to sign the tenancy agreement with the municipality as proposed by the latter as he would be then obliged to pay the rent and other costs. He submitted that the municipality refused to make the necessary repairs to the flat and claimed that under the 2001 Act the municipality was required to repair all essential installations in the flat and then make it available to the applicant.

70. The applicant submitted that he was living at his sister's or cousin's apartment but this could not be treated as regular accommodation. In April or May he would have to move a temporary garden hut. The applicant still did not have a registered place of residence and the relevant entry in his ID card stated "place of residence – none". In consequence, the applicant was

unable to find a permanent employment or run his own business. In his view, such entry in his ID was an official confirmation of his homelessness.

71. The applicant also alleged that there was a breach of Article 1 of Protocol No. 1. The decision striking the applicant's name out of the register of residents deprived him of the right to the peaceful and effective enjoyment of his possessions as well as of any possibility to occupy the flat.

C. The Court's assessment

1. The complaint under Article 8

72. The applicant complained under Article 8 of the Convention that the authorities had violated his right to respect for his home. He also invoked Articles 3, 7 § 2, 13, 14, 17 and 18 of the Convention. The Court considers that this complaint should be examined under Article 8 of the Convention alone.

73. The Court recalls 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 the classification under domestic law. Whether or not a particular premises 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 *inter alia*, *Buckley v. the United Kingdom*, 25 September 1996, *Reports* 1996-IV, §§ 52-54; *Prokopovich v. Russia*, no. 58255/00, § 36, ECHR 2004-XI (extracts); *Bjedov v. Croatia*, no. 42150/09, § 57, 29 May 2012).

74. In the present case it was established in the administrative proceedings concerning the registration of the applicant's residence that he had not been living in the apartment for many years (see paragraph 12 above). The civil courts made similar findings. They established that the applicant had moved out of the flat at issue in 1980 and had not been living in it for more than 30 years (see, paragraph 36 above). The applicant was recognised by the domestic courts as a successor to the tenancy agreement after his mother's death and subsequently the municipality acknowledged this status too. However, after 1980 he has never occupied the flat with the exception, at most, of short, occasional stays. In these circumstances the Court finds that the applicant did not have sufficient and continuous links with the flat at issue which therefore cannot be classified as the applicant's "home" within the meaning of Article 8.

It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

2. The complaint under Article 1 of Protocol No. 1

75. At the stage of the communication the Court raised of its own motion a complaint under Article 1 of Protocol No. 1 to the Convention.

76. It recalls that lease may be considered a proprietary interest attracting the protection of Article 1 of Protocol No. 1 to the Convention (see, *Stretch v. the United Kingdom*, no. 44277/98, §§ 32-35, 24 June 2003; *Bruncrona v. Finland*, no. 41673/98, § 79, 16 November 2004; *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], no. 45036/98, § 140, ECHR 2005-VI) and thus this provision is applicable in the case. However, it needs to be determined whether the facts of the case disclose an interference with the applicant's property rights.

77. The Court notes that initially the municipality refused to recognise the applicant as a successor to the tenancy held by his mother, claiming that he had not fulfilled one of the statutory criteria, namely the occupation of the apartment. The applicant sued the municipality and the courts recognised him as a successor to the tenancy agreement (see paragraphs 13-14 above). Next, the municipality wished to terminate the applicant's tenancy for the lack of his occupation in the apartment; however the applicant again sued the municipality and obtained a favourable judgment (see paragraphs 17-18 above). Consequently, the municipality recognised the applicant as a tenant in the apartment and confirmed this fact to him in writing (see paragraph 20 above).

78. Subsequently, the municipality sued the applicant and his brother to recover unpaid rent. The courts dismissed the municipality's action against the applicant. They found, *inter alia*, that the municipality had hindered the applicant in taking possession of the apartment and thus was not entitled to claim rent from him (see paragraphs 25-27 above). The subsequent municipality's claim for the applicant's eviction was also futile (see paragraphs 28-29 above).

79. It follows that the municipality's challenge to the applicant's succession to the tenancy as well as its efforts to recover unpaid rent and to evict the applicant were unsuccessful. The Court notes that in all the above disputes between the applicant and the municipality the latter acted as a private-law party and did not exercise powers conferred on it by public law. The disputes were resolved before the civil courts to which the applicant had normal access and argued his case on equal terms with the municipality. It therefore appears that the State fulfilled its obligation to afford the parties to the dispute judicial procedures which offer the necessary procedural guarantees and therefore enable the domestic courts and tribunals to adjudicate effectively and fairly in the light of the applicable law (see, *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, § 83, ECHR 2007-I). However, the Court reiterates that its jurisdiction to verify that domestic law has been correctly interpreted and applied is limited and that it is not its function to take the place of the national courts,

its role being rather to ensure that the decisions of those courts are not flawed by arbitrariness or otherwise manifestly unreasonable. In the present case the Court cannot discern any such arbitrariness or manifest unreasonableness.

80. The only aspect of the case where the municipality exercised its public-law powers concerned the issue of the applicant's registration as permanent resident in the disputed apartment. By a decision of 17 April 2002 the Mayor of Wrocław struck out the applicant's registration as a permanent resident on the ground that he had not been living in the apartment. This fact was duly established following the inquiry carried out by the municipality in which the residents of the building and the applicant had been heard. The Mayor's decision was upheld on appeal by the higher administrative authority and by the administrative court. The latter underlined that the act of registration of one's residence was solely a technical act confirming the residence and had no bearing on the right to a given residential dwelling. The Government submitted arguments to the same effect. The Court, in line with the established case-law of the Polish administrative courts, considers that the decision striking out the applicant's registration as a permanent resident in the apartment did not deprive him of his rights to it as a tenant. This is clearly confirmed by a number of judgments subsequent to the decision which confirmed the applicant's status as a tenant. Having regard to the above, the Court finds that the decision at issue could not be considered as an interference with the applicant's property rights.

81. The Court further notes that an important feature of the present case is the applicant's conflict with his brother which had far-reaching consequences for the possibility of using the apartment. It appears that on an unspecified date in 2002 the applicant was forcefully removed from the apartment by his brother. The municipality informed the applicant that it did not have legal means to reinstate his possession of the apartment and that it was up to him to have resort to the relevant legal proceedings in order to seek repossession (see paragraphs 22 and 25 above). The Government also argued that the applicant had at his disposal specific legal remedies provided in Articles 342 to 344 of the Civil Code in order to protect his possession of the apartment. None of these remedies appear to have been used by the applicant.

82. The Court notes that in the judgment of 10 February 2009 the Wrocław Śródmieście District Court found that the municipality had obstructed the applicant in taking possession of the apartment. Be that as it may, the Court attaches significant importance to the Wrocław Regional Court's subsequent judgment of 13 February 2013, subsequently confirmed by the Court of Appeal, dismissing the applicant's claim against the municipality for allegedly having rendered him homeless. These courts expressly noted that the applicant had been deprived of the possibility of living in the apartment due to the conflict with his brother (see paragraphs 34, 36 and 40 above). This fact was admitted by the applicant in the proceedings. The courts thoroughly analysed the facts of the case and held that the municipality had not acted unlawfully in the applicant's case. In particular, they refuted the applicant's allegations with regard to the decision striking out the applicant's registration as a permanent resident in the apartment and the lack of a written tenancy agreement. They also noted that the applicant had had alternative arrangements in place in order to satisfy his housing needs (see paragraph 34 above).

83. The Court accepts these findings of the domestic courts and the similar arguments put forward by the Government. It is persuaded that the interference with the applicant's proprietary rights resulted first of all from the unlawful conduct of his brother and not from the actions of the municipality or the courts. In such a context the State was required to afford to the parties to the dispute, which it did, judicial procedures in order to resolve the relevant disputes. However, the State responsibility cannot extend as far as to impose an obligation to resolve a family feud which prevented the applicant from taking possession of the apartment. It should be noted that the applicant was recognised by the domestic courts as a successor to the tenancy agreement and the subsequent lack of possibility to occupy the apartment could not be held to be attributable to the authorities. Furthermore, as confirmed by the domestic courts (see paragraphs 26 and 29 above), the applicant was not required to pay rent in respect of the period during which he did not occupy the apartment.

84. Having regard to the foregoing, the Court does not find it established that there has been an interference with the applicant's property rights.

85. It follows that the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court unanimously

Declares inadmissible the application.

Fatoş Aracı
Deputy Registrar

Ineta Ziemele
President