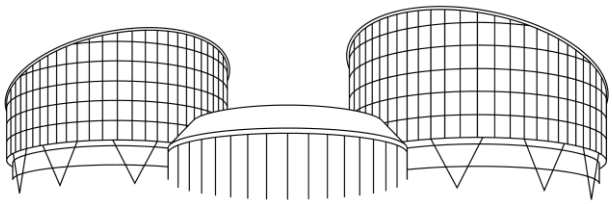

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF BJEDOV v. CROATIA

(Application no. 42150/09)

JUDGMENT

STRASBOURG

29 May 2012

FINAL

29/08/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Bjedov v. Croatia**,**

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

Anatoly Kovler, *President*,
Nina Vajić,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyev,
Linos-Alexandre Sicilianos,
Erik Møse, judges,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 10 May 2012,

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

PROCEDURE

1. The case originated in an application (no. 42150/09) 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, Mrs Stana Bjedov ("the applicant"), on 25 July 2009.

2. The applicant was represented by Mrs J. Biloš, an advocate practising in Osijek. The Croatian Government ("the Government") were represented by their Agent, Mrs Š. Stažnik.

3. The applicant alleged, in particular, that, having regard to her age and bad health, her eviction from the flat in which she had been living for the past thirty-six years would lead to a rapid deterioration of her health and ultimately to her death.

4. On 19 October 2009 the President of the First Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1933 and lives in Zadar. Her income consists of her pension, amounting to HRK 1,787.10 per month, and a social benefit amounting to HRK 350 per month.

6. On 14 January 1975 the applicant's husband was awarded a specially protected tenancy (*stanarsko pravo*) of a flat in Zadar. Pursuant to the relevant legislation, the applicant as his wife automatically became a co-holder of the specially protected tenancy of the flat. After the death of her husband in 1994 she became the sole holder of the tenancy.

7. On 14 August 1991 the applicant and her husband went to the village of Mokro Polje, between Obrovac and Knin. In September 1991 the applicant's husband fell ill. They also found out that third persons had broken into and occupied their flat in Zadar. In these circumstances she decided to stay with her husband in Mokro Polje.

8. After the death of her husband on 6 September 1994, the applicant went to live with her daughter in Switzerland. The applicant returned to Zadar in October 1998 and lived in a friend's flat until 15 July 2001, when the third persons moved out of her flat and she moved back in.

9. Meanwhile, on 29 December 1995 the applicant made a request to purchase the flat at issue to the Town of Zadar as the provider of the flat. She relied on section 4 of the Specially Protected Tenancies (Sale to Occupier) Act, which entitled holders of specially protected tenancies of flats in social ownership to purchase their flats from the provider of the flat under favourable conditions (see paragraph 39 below).

A. Civil proceedings

10. As she received no reply to her request to purchase of the flat, on 5 April 2000 the applicant, relying on section 9 of the Specially Protected Tenancies (Sale to Occupier) Act, brought a civil action in the Zadar Municipal Court (*Općinski sud u Zadru*) against the Town of Zadar seeking judgment in lieu of a contract of sale.

11. The defendant submitted a counterclaim seeking the applicant's eviction.

12. On 11 January 2001 the Municipal Court ruled for the applicant. Following an appeal by the defendant, on 11 July 2001 the Zadar County Court (*Županijski sud u Zadru*) quashed the first-instance judgment and remitted the case.

13. In the resumed proceedings, on 20 May 2002 the Zadar Municipal Court again ruled for the applicant. On 24 June 2005 the Zadar County Court again quashed the first-instance judgment and remitted the case.

14. In the resumed proceedings, on 28 April 2006 the Zadar Municipal Court delivered a judgment whereby it dismissed the applicant's action. At the same time it accepted the defendant's counterclaim and ordered the applicant to vacate the flat. It also ordered her to reimburse the defendant 4,800 Croatian kunas (HRK) for the costs of the proceedings. The court found that the applicant had been absent from the flat between 14 August 1991 and 15 July 2001, that is, for a period exceeding six months, and that her absence had not been justified. In so deciding the court followed the case-law of the Supreme Court (see paragraphs 34-37 below), according to which, in cases where a third person moves into the flat, the bringing of legal proceedings in order to evict the occupant would demonstrate an intention to live in the flat and prevent the tenant's absence from being considered unjustified and resulting in a termination of the tenancy. However, the applicant had never instituted any proceedings to regain possession of her flat. Therefore, the condition for termination of her specially protected tenancy stipulated in section 99(1) of the Housing Act had already been met on 13 February 1992. That being so, the court held, while expressly relying on decisions of the Supreme Court nos. Rev-777/1995-2 of 21 December 1999 and Rev-391/02-2 of 18 February 2003 (see paragraphs 31-33 below), that she had not been entitled to purchase the flat under the Specially Protected Tenancies (Sale to Occupier) Act or to acquire the status of a protected lessee under the Lease of Flats Act. Accordingly, the court concluded that she had no title to the flat and ordered her eviction.

15. On 17 November 2008 the Zadar County Court dismissed the applicant's appeal and upheld the first-instance judgment, which thereby became final and enforceable.

16. The applicant then lodged an appeal on points of law (*revizija*) with the Supreme Court (*Vrhovni sud Republike Hrvatske*). Relying on section 382(2) of the Civil Procedure Act (see paragraph 52 below) she argued that her case raised legal issues important for ensuring the uniform application of the law and equality of citizens. In particular, she argued, *inter alia*, that the judgments of the lower courts in her case were contrary to the case-law of the Supreme Court, according to which a specially protected tenancy could only be terminated by a court judgment (see paragraphs 34-39 below).

17. On 25 February 2010 the Zadar County Court declared the appeal on points of law admissible on the ground that it concerned issues relevant for the unification of interpretation of some provisions of substantive laws.

18. On 6 October 2010 the Supreme Court declared the applicant's appeal on points of law inadmissible as it found that neither the value of the subject matter of the dispute reached the statutory threshold nor were the

legal issues raised therein important for ensuring the uniform application of the law and equality of citizens within the meaning of section 382(2) of the Civil Procedure Act. In particular, the Supreme Court held that the findings of the lower courts in the applicant's case were not incompatible with its own opinion expressed in judgment no. Rev-391/02-2 of 18 February 2003 according to which, even in the absence of a judgment terminating a specially protected tenancy, the courts were entitled to examine, as a preliminary issue, whether the grounds for its termination had been present in cases where the prior existence of such a tenancy was a requirement for acquiring the right to purchase a flat under the Specially Protected Tenancies (Sale to Occupier) Act or the status of a protected lessee under the Lease of Flats Act (see paragraph 38 below).

19. On 17 June 2011 the applicant lodged a constitutional complaint with the Constitutional Court (*Ustavni sud Republike Hrvatske*) against the Supreme Court's decision, alleging violations of her constitutional rights to equality before the law and fair proceedings as well as her Convention rights to a fair hearing, respect for her home and peaceful enjoyment of her possessions. At the same time she asked for an interim measure under section 67(2) of the Constitutional Court Act that would postpone the enforcement of the Zadar Municipal Court's judgment of 28 April 2006 until the Constitutional Court had decided on her constitutional complaint.

20. On 20 May 2011 the applicant lodged a request for reinstatement of the proceedings in the Zadar Municipal Court. She also asked that the decision by the Supreme Court of 6 October 2010 be served on her. She withdrew that request on 30 August 2011.

21. On 11 January 2012 the Constitutional Court declared the applicant's constitutional complained inadmissible as ill-founded on the ground that that she had not put forward any arguments relevant for the protection of her constitutional rights.

B. Enforcement proceedings

22. Meanwhile, on 4 August 2009 the Town of Zadar instituted enforcement proceedings before the Zadar Municipal Court with a view to enforcing the above-mentioned judgment of 28 April 2006.

23. On 24 August 2009 the court issued a writ of execution (*rješenje o ovrsi*) ordering the applicant's eviction from the flat and the seizure and sale of her movable property to satisfy the enforcement creditor's claim for costs of the above-mentioned civil proceedings.

24. On 4 September 2009 the applicant appealed against the writ to the Zadar County Court and at the same time asked the Zadar Municipal Court to postpone the enforcement. She submitted that her income (pension) was insufficient to cover the costs of other accommodation, that she was

seventy-five years of age, in poor health and walked with the help of crutches. She argued that in those circumstances her eviction would amount to inhuman and degrading treatment causing irreparable harm, as it would certainly lead to a rapid deterioration of her health and eventually to her death. In support of her arguments the applicant enclosed with her appeal a medical certificate of 19 June 2009 signed by Dr I.M. from Zadar stating that the applicant was in postoperative status after the hip surgery, suffered from hypertension, rosacea (a skin condition) and a psychoneurosis (psychic tension). Dr I.M. also stated that the applicant walked with the help of crutches and expressed his view that, due to her poor health, it was necessary to spare her from any relocation.

25. On 28 October 2010 the Zadar Municipal Court issued a decision postponing the enforcement until the Zadar County Court had decided the applicant's appeal of 4 September 2009 and until the Supreme Court had decided on her appeal on points of law in the above-mentioned civil proceedings. The relevant part of that decision read as follows:

> "... in the court's view the enforcement debtor demonstrated that, if the enforcement were to be carried out, she would probably suffer irreparable harm manifested in the fact that she is an elderly person in poor health who would be rendered homeless and who, at the moment, cannot secure temporary accommodation for herself, whereas, on the other hand, the enforcement creditor would not suffer any loss on account of the postponement because the enforcement debtor regularly pays the rent for the flat at issue."

26. On 5 November 2010 the Zadar County Court dismissed the applicant's appeal and upheld the writ of execution of 24 August 2009.

27. On 11 May 2011 the Zadar Municipal Court issued a decision to continue the enforcement proceedings. However, on 30 August 2011 the enforcement proceedings were postponed until the Zadar Municipal Court decided on the applicant's request for reinstatement of the civil proceedings.

28. After she had withdrawn her request for the reinstatement of the civil proceedings, the applicant on 28 September 2011 again asked that the enforcement proceedings be postponed until the Constitutional Court delivered its decision. On 20 February 2012 the Zadar Municipal Court dismissed the applicant's request and resumed the enforcement proceedings which are still pending.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Relevant law

29. Article 34 of the Constitution (*Ustav Republike Hrvatske*, Official Gazette nos. 41 and 55) reads as follows:

"The home is inviolable.

A search of a person's home or other premises shall be ordered by a court in the form of a reasoned written warrant based on law.

The occupier, or his or her representative, shall be entitled to be present during a search of a home or other premises. The presence of two witnesses shall be obligatory.

Under the conditions prescribed by law and where it is necessary to execute an arrest warrant or to apprehend a person who has committed a criminal offence or in order to remove serious danger to the life or health of people, or to property of a high value, the police may enter a person's home or other premises and carry out a search without a court warrant or the occupier's consent and without any witnesses being present.

Where there is a probability that evidence may be found in the home of a person who has committed a criminal offence, a search shall be carried out only in presence of witnesses."

30. The relevant part of the Housing Act (Official Gazette nos. 51/1985, 42/1986, 22/1992 and 70/1993) reads:

Section 59

"A specially protected tenancy is acquired on the date of moving into the flat on the basis of a final decision allocating the flat or on another valid legal basis, unless otherwise provided by this Act."

Section 99

"1. A specially protected tenancy may be terminated if the tenant [...] ceases to occupy the flat for an uninterrupted period exceeding six months.

2. A specially protected tenancy shall not be terminated under the provisions of paragraph 1 of this section in respect of a person who does not use the flat on account of undergoing medical treatment, performance of military service or other justified reasons."

Section 105

"1. The provider of the flat shall terminate a specially protected tenancy by bringing an action in the competent court.

2. ...

3. The judgment ordering eviction shall not be enforced if the person to be evicted is not provided with another flat or basic accommodation [*nužni smještaj*], when that is required by this Act.

4. Another flat shall be made available by the provider of the flat at the latest by the end of the main hearing in the proceedings for the termination of the specially protected tenancy, unless otherwise provided for by this Act."

5. Basic accommodation shall be secured in enforcement proceedings."

Section 108

"The duty of the tenant to vacate the flat extends to other users of that flat, unless otherwise provided for by this Act."

31. The Specially Protected Tenancies (Sale to Occupier) Act (Official Gazette nos. 27/1991, 33/1992, 43/1992, 69/1992, 25/1993, 26/1993, 48/1993, 2/1994, 44/1994, 47/1994, 58/1995, 11/1996, 11/1997 and 68/1998, *Zakon o prodaji stanova na kojima postoji stanarsko pravo*) regulates the conditions for the sale of flats let under specially protected tenancies. In general, the Act entitles the holder of a specially protected tenancy of a publicly owned flat to purchase it under favourable conditions of sale.

The relevant provision of the Act provides as follows:

Section 4

"Every holder of a specially protected tenancy (hereinafter 'the tenant') may submit a written application to purchase a flat to the ... owner ('the seller') ... and the seller shall be obliged to sell the flat.

..."

32. Section 161 paragraph 1 of the Property Act (*Zakon o vlasništvu i drugim stvarnim pravima*, Official Gazette no 91/1996) reads as follows:

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

33. 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:

Section 382

"...

The parties to the proceedings may lodge an appeal on points of law against a second instance judgment where the outcome of dispute depends on the assessment of some substantive or procedural issue of importance for ensuring the unified application of the laws and the equality of citizens ...

..."

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."

B. The Supreme Court's practice

34. In decision no. Rev-616/1988 of 11 October 1988 the Supreme Court interpreted section 99 of the Housing Act in the following way:

"The specially protected tenancy is not lost *ex lege* by the mere fact of non-use of the flat for a period exceeding six months. Rather, that is a ground for termination of a specially protected tenancy that can be terminated only by the provider of the flat."

35. The specially protected tenancy was terminated as soon as the court's judgment upholding the claim of the provider of the flat to that end has become *res judicata* (see, *inter alia*, the Supreme Court's decision no. Rev-1009/1993-2 of 15 June 1994).

36. In its decisions no. Rev-777/1995-2 of 21 December 1999 and no. Rev-391/02-2 of 18 February 2003 the Supreme Court took the view that, even in the absence of a judgment terminating the specially protected tenancy, the courts were entitled to examine whether the grounds for its termination had been present in cases where the existence of such a tenancy was a precondition for acquiring and exercising the right of a tenant to purchase the flat under the Specially Protected Tenancies (Sale to Occupier) Act.

37. The relevant part of the decision no. Rev-777/1995-2 of 21 December 1999 reads as follows:

"In [the Supreme Court's] view a contract of sale of a flat concluded with a person whose specially protected tenancy ended by termination after the conclusion of [that] contract, or in respect of whom it was established that a ground for termination [of the specially protected tenancy] had existed at time of the conclusion of [such a contract], is null and void. ...

It was therefore necessary to examine whether at the time of the conclusion of the impugned contract any grounds for termination of the specially protected tenancy existed ..."

38. The relevant part of the decision no. Rev-391/02-2 of 18 February 2003 reads as follows:

"The [view] of the first-instance court, which was also accepted by the second-instance court, that the existence of a judicial decision on termination of the specially protected tenancy is decisive for [resolving] the question whether the plaintiff's specially protected tenancy of the flat at issue has ended, is incorrect. In [the Supreme Court's] view, if grounds for termination of the specially protected tenancy existed on the side of the plaintiff at the time of the conclusion of the contract of sale of the flat ... or at the time [he] made a request for purchase of the flat – on which issue the court should have in the instant case decided upon the defendant's counterclaim (otherwise it could have decided it as a preliminary issue) – ... the plaintiff [would have no right] to demand that a contract of sale of the flat be concluded."

39. In a series of decisions (for example, in cases nos. Rev-152/1994-2 of 23 February 1994, Rev-1780/1996-2 of 10 March 1999, Rev-1606/00-2 of 1 October 2003, Rev-998/03-2 of 4 December 2003 and Rev-590/03-2 of 17 December 2003), starting with decision no. Rev-155/1994-2 of 16 February 1994, the Supreme Court interpreted section 99(1) of the Housing Act as follows:

"The fact that a flat that is not being used by its tenant is illegally occupied by a third person does not, *per se*, make the non-use [of the flat by the tenant] justified. In other words, if the tenant fails to take the appropriate steps to regain possession of the flat within the statutory time-limits set forth in section 99(1) of the Housing Act ..., then the [illegal occupation of the flat by a third person] is not an obstacle to the termination of the specially protected tenancy."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

40. 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 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

1. The submissions of the parties

(a) The Government

41. In their observations of 25 February 2010 the Government submitted that the applicant had not lodged a constitutional complaint against the Zadar County Court's judgment of 17 November 2008 or the Supreme Court's decision of 6 October 2010.

42. The Government also argued that the applicant lodged an appeal on points of law, a remedy which in the circumstances of her case had not offered her any prospects of success, and which the Supreme Court had eventually declared inadmissible.

43. In the light of the foregoing, the Government invited the Court to declare the application inadmissible for non-exhaustion of domestic remedies.

44. After the applicant on 17 June 2011 lodged a constitutional complaint against the Supreme Court's decision of 6 October 2010, the Government, in their letter of 30 June 2011, argued that by doing so she had implicitly confirmed their argument that a constitutional complaint was an effective remedy which had to be exhausted for the purposes of Article 35 § 1 of the Convention. Since the applicant had lodged her constitutional complaint after lodging the application with the Court, the Government reiterated that her application was inadmissible for non-exhaustion of domestic remedies.

(b) The applicant

45. In her observations of 11 May 2010 the applicant argued that a constitutional complaint was not an effective remedy in her case. She maintained that argument even after she had on 17 June 2011 lodged such a complaint against the Supreme Court's decision of 6 October 2010.

2. The Court's assessment

46. 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).

47. Turning to the circumstances of the present case the Court notes that the applicant lodged an appeal on points of law against the Zadar County Court's judgment of 17 November 2008. On 25 February 2010 the Zadar County Court declared that appeal admissible on the ground that the application of laws by the second instance civil courts as regards the issues relevant for the assessment of the applicant's case was in dispute among those courts. The Supreme Court declared the appeal on points of law inadmissible. However, it did not declare it inadmissible on formal grounds but also examined the issue whether the findings of the lower courts in the applicant's case were compatible with the prior practice of the Supreme Court.

48. The applicant then lodged a constitutional complaint whereby she argued, *inter alia*, that her right to respect for her home had been violated. Again, the Constitutional Court did not declare the applicant's complaint inadmissible on formal grounds – such as that she had not complied with the procedural rules under domestic law, but held that her complaint was ill-founded on the ground that that the applicant had not put forward any arguments relevant for the protection of her constitutional rights. By doing so the Constitutional Court implicitly accepted that the applicant's constitutional complaint satisfied formal criteria. The Court sees no reason to hold otherwise. It also notes that the applicant in her constitutional complaint relied on her right to respect for her home. She thus gave adequate opportunity to the Constitutional Court to remedy the situation she is now complaining of before the Court.

49. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The submissions of the parties

(a) The Government

50. The Government argued that the flat in question had not been the applicant's home since she had left it in August 1991 and returned only in July 2001. The decision ordering the applicant's eviction had been based in law and the national courts had established that she had not lived in the flat for over six months with no good reason.

51. The Government also noted that in the *Marzari* case (see *Marzari v. Italy* (dec.) no. 36448/97, 4 May 1999) the Court held that, although Article 8 did not guarantee the right to have one's housing problem solved by the authorities, a refusal of the authorities to provide assistance in this respect to an individual suffering from a severe illness could in certain circumstances raise an issue under Article 8 of the Convention because of the impact of such a refusal on the private life of the individual. In that connection they first emphasized that the applicant, as an indigent person who faced eviction, had never contacted the Zadar Welfare Centre or requested to be provided with accommodation even though in the proceedings before the Court she claimed that she had no family members who could support her and provide her with a place to live. Nevertheless, the Government stressed, the competent social services were familiar with the applicant's situation, and were prepared, in the event of her eviction, to offer her social assistance by accommodating her in a nursing home for the elderly and the infirm or in a foster family. The administrative proceedings in which such assistance would be granted would be instituted by the Zadar Welfare Centre of its own motion, which would choose the accommodation facility and determine how the costs of such accommodation would be met. Those proceedings could also be instituted upon the applicant's request. Pursuant to the Social Welfare Act the costs of such accommodation were to be covered from the applicant's income. If her income was insufficient to cover the full cost, the difference had to be covered by those who were obliged to support her or, if they failed to do so, by the Ministry of Health and Social Welfare. In support of their allegations the Government submitted two reports of 21 August 2009 and 17 May 2011 prepared by the Zadar Social Welfare Centre for the Ministry of Health and Social Welfare concerning the applicant's situation.

52. Further to these arguments the Government submitted that the cost of accommodation in the Home for the Elderly and Infirm in Zadar ranged between 2,550 and 2,700 Croatian kunas (HRK) for persons with reduced mobility, and between HRK 1,900 and 2,400 per month for the fully mobile.

They further submitted that the applicant's income consisted of her pension, amounting to HRK 1,787.10 per month, and a social benefit amounting to HRK 350 per month. Apart from the social benefit and social assistance in the form of accommodation in a nursing home for the elderly or a foster family, the Government claimed that that the applicant could obtain other forms of social assistance available under the Social Welfare Act, such as a lump sum benefit, which could be granted several times, or payment of the costs of accommodation.

(b) The applicant

53. The applicant argued that her right to respect for her home had been violated in that she had been ordered to leave it. She maintained that she had lawfully occupied the flat for a number of years prior to 1991 and that she had again been living in the flat since July 2001. In the case of her eviction she would have been rendered homeless and owing to her advanced age and poor health her eviction could not be seen as proportionate.

54. She had no other place to live and her pension was not sufficient to cover the costs of other accommodation. She further argued that there was no obligation on the part of the authorities to provide her with any accommodation. Rather, that depended on their benevolence. That being so, and given that the social authorities had not contacted her or undertaken any measures to accommodate her, the applicant was uncertain as to whether those authorities would provide her with accommodation and who, if anyone, would pay for it. In particular, she emphasized that nursing homes accepted elderly people only if their income could cover the costs of accommodation or if they submitted written statements by their children guaranteeing that they would cover those costs.

55. Furthermore, while it was true that children had an obligation to support their parents (even regardless of their income), that obligation had to be enforced through the courts if the children refused to do so. In particular, there was no mechanism to secure enforcement of that obligation in cases where children did not have sufficient means to provide for their parents. In this connection, the applicant submitted that her son and his wife, who lived with her, were both unemployed. Her other two children (a son and a daughter) lived in Switzerland and had to provide for their own families. In particular, her daughter had to support her unemployed husband and a son who still went to school, whereas her son, who was divorced, had to support three underage children who lived with their mother. Thus, her children were not in a position to voluntarily support her.

2. The Court's assessment

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

56. 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.

57. 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 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 *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 certain premises are 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).

58. As to the present case, it is undisputed that the applicant had lived in the flat in question between 1975 and August 1991 and then again since July 2001. The facts of the case show that she has no other home. The Government have not disputed that the flat in question was the applicant's actual place of residence. Having regard to the factual circumstances outlined above, the Court finds that the applicant had sufficient and continuing links with the flat at issue for it to be considered 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 her home

59. 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 ..."

60. 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."

61. 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."

62. The Court sees no reason to depart from this approach in the present case. It considers that the obligation for the applicant to leave 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.

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

63. The applicant was ordered to vacate the flat in question by the national courts under Croatian laws regulating specially protected tenancy, in particular section 99(1) of the Housing Act. The aim of that provision was to terminate specially protected tenancies held by individuals who no longer lived in the socially owned flats allocated to them, with a view to subsequently redistributing such flats to others in need. It was therefore intended to satisfy the housing needs of citizens and thus pursued the legitimate aims of promoting the economic well-being of the country and protecting the rights of others.

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

64. 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. The Court set out the relevant principles in assessing the necessity of an interference with the right to "home" in the case of *Connors v. the United Kingdom*, (no. 66746/01, §§ 81–84, 27 May 2004) which concerned summary possession proceedings. The relevant passage reads as follows:

> "81. An interference will be considered 'necessary in a democratic society' for a legitimate aim 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 ...

82. In this regard, a margin of appreciation must, inevitably, be left to the national authorities, who by reason of their direct and continuous contact with the vital forces of their countries are in principle better placed than an international court to evaluate local needs and conditions. This margin will vary according to the nature of the Convention right in issue, its importance for the individual and the nature of the activities restricted, as well as the nature of the aim pursued by the restrictions. The margin will tend to be narrower where the right at stake is crucial to the individual's effective enjoyment of intimate or key rights ... . On the other hand, in spheres involving the application of social or economic policies, there is authority that the margin of appreciation is wide, as in the planning context where the Court has found that '[i]n so far as the exercise of discretion involving a multitude of local factors is inherent in the choice and implementation of planning policies, the national authorities in principle enjoy a wide margin of appreciation' ... . The Court has also stated that in spheres such as housing, which play a central role in the welfare and economic policies of modern societies, it will respect the legislature's judgment as to what is in the general interest unless that judgment is manifestly without reasonable foundation ... . It may be noted however that this was in the context of Article 1 of Protocol No. 1, not Article 8 which concerns rights of central importance to the individual's identity, self-determination, physical and moral integrity, maintenance of relationships with others and a settled and secure place in the community ... . Where general social and economic policy considerations have arisen in the context of Article 8 itself, the scope of the margin of appreciation depends on the context of the case, with particular significance attaching to the extent of the intrusion into the personal sphere of the applicant ... .

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 ..."

65. The Court notes that 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 right to continue to occupy the flat at issue on the ground that between August 1991 and July 2001 she had been absent from the flat without a good reason. The national courts made no further analysis as to the proportionality of the measure to be applied against the applicant, namely her eviction from a State-owned flat. However, the guarantees of the Convention require that the interference with an applicant's right to respect for her home be not only based on the law but also be proportionate under paragraph 2 of Article 8 to the legitimate aim pursued, regard being had to the particular circumstances of the case. Furthermore, no legal provision of domestic law should be interpreted and applied in a manner incompatible with Croatia's obligations under the Convention (see *Stanková v. Slovakia*, cited above, § 24, 9 October 2007).

66. In this connection the Court reiterates that any person at risk of an interference with 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).

67. 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. As previously held, the Court does not accept that the grant of the right to an occupier to raise an issue under Article 8 would have serious consequences for the functioning of the domestic systems or for the domestic law of landlord and tenant (see, *McCann v. the United Kingdom*, cited above, §§ 28 and 54).

68. In the present case the applicant raised the issue of her right to respect for her home, which was not taken up by the national courts. They ordered the eviction of the applicant from her home without having determined the proportionality of the measure. In this connection the Court notes that in his opinion of 19 June 2009, Dr I.M. stated that, in view of the applicant's poor health, it was necessary to spare her from any relocation. Moreover, in its decision of 28 October 2010 postponing enforcement, the Zadar Municipal Court, taking into account the applicant's age and her state of health, found that her eviction would probably cause her irreparable harm. In this connection, the Court is mindful of the applicant's advanced age - she is now seventy-eight years old - and of her poor health, as well as the fact that she has been living in the flat in question for many years. At the same time, the Zadar Municipal Court held that the postponement of enforcement would not cause any damage to the local authorities because the applicant regularly paid the rent for the flat.

69. The Court also takes note of the Government's argument that the social services expressed their readiness to accommodate the applicant in a foster family or in the Home for the Elderly and Infirm in Zadar, if she were to be evicted, and to cover the difference between the cost of such accommodation and the applicant's income, as well as to institute relevant proceedings in that respect of their own motion. However, the Court also notes that, even though the applicant's case was brought to their attention a long time ago, and the applicant's eviction became imminent after the Zadar Municipal Court decided on 11 May 2011 to continue with enforcement, those authorities have not to date instituted the relevant administrative proceedings with a view to granting her the promised accommodation.

70. Another element of importance is the following. 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.

71. The applicant raised the issue of her right to home which was not taken up by the national courts in the civil proceedings. While it is true that the applicant's eviction had been temporarily adjourned on health grounds in the course of the enforcement proceedings, this in itself does not satisfy the requirement that the reasonableness and the proportionality of the eviction order as such has to be assessed by an independent tribunal. The enforcement proceedings – which are by their nature non-contentious and whose primary purpose is to secure the effective execution of the judgment debt – are, unlike regular civil proceedings, neither designated nor properly equipped with procedural tools and safeguards for the thorough and adversarial examination of such complex legal issues. Therefore, competence for carrying out the test of proportionality lies with a court conducting regular civil proceedings in which the civil claim lodged by the State and seeking the applicant's eviction was determined (see *Paulić v. Croatia*, no. 3572/06, § 44, 22 October 2009).

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

73. Lastly, the applicant complained under Article 1 of Protocol No. 1 to the Convention that by dismissing her action in the above-mentioned civil proceedings the domestic courts had violated her property rights as they had prevented her from becoming the owner of her flat. She also complained under Article 6 § 1 of the Convention about the outcome of those proceedings and the assessment of the evidence by the domestic courts.

74. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court considers that this part of the application does not disclose any appearance of a violation of the Convention. It follows that it is inadmissible under Article 35 § 3 (a) as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

75. 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

76. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

77. The Government contested that claim.

78. 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.

79. 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 2,000, plus any tax that may be chargeable on that amount.

B. Costs and expenses

80. The applicant also claimed HRK 17,087.40 for the costs and expenses incurred before the domestic courts and HRK 50,737.50 for those incurred before the Court.

81. The Government contested these claims.

82. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 6,150 covering costs under all heads.

C. Default interest

83. 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 complaint concerning the right to respect for home admissible and the remainder of the application inadmissible;

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, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, to be converted into Croatian kuna at the rate applicable at the date of settlement:

      (i) EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 6,150 (six thousand one hundred and fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

   (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 29 May 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Anatoly Kovler
President