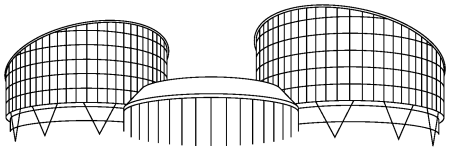

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF GROZDANIĆ AND GRŠKOVIĆ-GROZDANIĆ v. CROATIA

(Application no. 43326/13)

JUDGMENT

Art 1 P1 • Deprivation of property • Justified invalidation by domestic courts of sale contract of flat, used in a manner breaching statutory requirements of a specially protected tenancy • Interference foreseeable, despite reversal of the pre-existing case-law of the domestic courts • Decision to invalidate based on purely procedural reversal of case-law, and not altering the substantive-law conditions for termination of tenancy • Requiring tenants to demonstrate their intention to continue using the flats awarded to them by bringing relevant proceedings against third persons occupying the flat not disproportionate, particularly during time of war with high numbers of displaced people
Art 35 § 3 (b) • No significant disadvantage • Inadmissible access-to-court complaint for refusal to hear appeal on points of law that lacked any prospect of success

STRASBOURG

28 January 2021

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Grozdanić and Gršković-Grozdanić v. Croatia,

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

Krzysztof Wojtyczek, *President,*
Ksenija Turković,
Aleš Pejchal,
Armen Harutyunyan,
Pere Pastor Vilanova,
Tim Eicke,
Jovan Ilievski, *judges,*
and Renata Degener, *Deputy Section Registrar,*

Having regard to:

the application (no. 43326/13) 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 two Croatian nationals, Ms Đurđica Grozdanić and Ms Vedrana Gršković-Grozdanić ("the applicants"), on 17 June 2013;

the decision to give notice to the Croatian Government ("the Government") of the complaints concerning access to court and the peaceful enjoyment of possessions and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 16 December 2020,

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

INTRODUCTION

1. The case concerns the domestic courts' decision to declare null and void the contract of sale whereby the first applicant and her husband (the second applicant's father) bought from the local authorities the flat in respect of which they had previously held a specially protected tenancy. As a result, they lost their ownership of the flat. The domestic courts' decision was based on a reversal of the pre-existing case-law which occurred three years after the relevant legislation had been repealed.

THE FACTS

2. The applicants were born in 1949 and 1982 respectively and live in Pula. The applicants were represented by Mr B. Kopf, an advocate practising in Osijek.

3. The Government were represented were represented by their Agent, Ms Š. Stažnik.

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

I. EVENTS GIVING RISE TO THE DISPUTE

5. On 8 February 1983 company IPK awarded the first applicant's husband (the second applicant's father), M.G., a specially protected tenancy (*stanarsko pravo*) of a socially-owned flat in Osijek with a surface area of 90.47 square metres. Pursuant to the relevant legislation, the first applicant, as his wife, automatically became a co-holder of the specially protected tenancy of the flat in question.

6. On 19 June 1991 the Specially Protected Tenancies (Sale to Occupier) Act (hereinafter "the Sale to Occupier Act") entered into force. It entitled holders of specially protected tenancies of flats in social and State ownership to purchase them from the providers of such flats under favourable conditions.

7. On 19 January 1992 the first applicant and her husband submitted a request to company IPK to purchase their flat, in accordance with the Act.

8. In February 1992 they moved to Rijeka and subsequently to Pula. Their two children (including the second applicant) joined them in September 1992. By February 1996 both the first applicant and her husband had obtained permanent jobs in Pula.

9. Following their departure, in February 1992 the company awarded their flat to a certain Mr J.P. for temporary use.

10. In response to their purchase request, the company first, on 27 July 1992, instituted civil proceedings against the first applicant and her husband before the Osijek Municipal Court (*Općinski sud u Osijeku*) seeking termination of their specially protected tenancy, and then, by a letter of 5 September 1992 informed them that their purchase request would be dealt with following the conclusion of those proceedings.

11. By a letter of 15 April 1993 the first applicant and her husband wrote to J.P. asking him to move out because they intended to return to the flat. The letter suggested that they had only temporarily moved out of the flat, which had been awarded to him by the company with their approval, and so only temporarily, until their return.

12. In September 1999 the first applicant and her husband bought and thereby became the owners of a plot of land in Pula with the surface area of 264 square metres on which they later on, around 2005, built a residential building of 143 square metres.

13. By a judgment of 24 May 2001 the Municipal Court dismissed the company's action for termination of the tenancy. It found that since 26 June 1992 the company had no longer been the provider of the flat because the management rights in respect of the flat had been transferred to a local authority, namely, to the Municipality of Osijek (*Općina Osijek*), which subsequently became the Osijek Township (*Grad Osijek* – hereinafter "the local authorities"). The company had thus not been entitled to bring an action for termination of tenancy. Even though that judgment was quashed on

24 August 2001 by the second-instance court and the case remitted, on 25 April 2002 the company withdrew the action, thus bringing the proceedings to an end.

14. By a letter of 7 August 2002 the legal representative of the first applicant and her husband informed J.P. that the above-mentioned proceedings had ended in his clients' favour and that they thus retained their tenancy. J.P. was therefore asked to move out of the flat.

15. Having regard to the domestic court's findings in the said proceedings, on 30 September 2002 the first applicant and her husband re-submitted their request to purchase the flat to the local authorities (see paragraph 7 above).

16. On 2 October 2002 the first applicant's husband obtained a certificate from the local authorities' housing department, stating that he satisfied the statutory conditions for purchasing the flat owned by the local authorities, namely, he and the first applicant were registered as holders of a specially protected tenancy/protected lessees (see paragraph 47 below) of the flat in question, neither he nor members of his family had purchased another socially-owned flat, and he was registered as an occupant of the flat.

17. By a letter of 29 October 2002 the first applicant and her husband again asked J.P. to move out of the flat as they intended to move back in.

18. On 26 November 2002 the local authorities concluded a contract of sale with the first applicant and her husband and thereby sold them the flat in question. The contract stipulated the sale price at 79,064.11 Croatian kunas (HRK)[1], established according to the criteria provided for in the Sale to Occupier Act. It also stipulated that the flat was to be sold to the first applicant and her husband at 20% discount for paying in cash, that is, for HRK 63,251.29.[2]

19. The next day the contract was submitted for opinion to the Osijek State Attorney's Office (*Općinsko državno odvjetništvo u Osijeku*), pursuant to section 21 of the Sale to Occupier Act (see paragraph 50 below).

20. On 29 November 2002 the State Attorney's Office gave a negative opinion, holding that the contract was not legally valid. It stated that the statutory conditions for the sale had not been met, *inter alia*, because the applicant and her husband had not lived in the flat for a prolonged period of time. That was evidenced by the fact that they had not had their registered domicile at the address of the flat between February 1992 and 25 November 2002 and that they had both been employed in Pula since 1 February 1996.

21. On 3 November 2003 a notary public, after having verified that the sale contract had been submitted for opinion to the State Attorney, certified the parties' signatures on the contract, as required by section 22 of the Sale to Occupier Act (see paragraph 51 below).

[1] Approximately 10,206.10 euros (EUR) at the time.
[2] Approximately EUR 8,164.92 at the time.

22. Following an application by the first applicant of 4 November 2003, by a decision of 20 November 2003 the Land Registry Division of the Osijek Municipal Court recorded her and her husband as the owners of the flat in the land register.

23. On 17 June 2003 the first applicant and her husband brought a civil action against J.P. (see paragraphs 9 and 11 above) in the Osijek Municipal Court, seeking his eviction from the flat. The outcome of the proceedings and the domestic courts' findings are described in paragraphs 42-44 below.

II. CIVIL PROCEEDINGS FOR DECLARING THE SALE CONTRACT NULL AND VOID

24. On 21 November 2003 the Osijek Municipal State Attorney's Office brought a civil action against the first applicant and her husband and the local authorities in Osijek Municipal Court (*Općinski sud u Osijeku*), seeking to have the above-mentioned sale contract declared null and void. In the statement of claim the State Attorney's Office indicated that the value of the subject matter of the dispute was HRK 79,064.11, which corresponded to the price at which the flat had been sold (see paragraph 18 above).

25. Throughout the proceedings the first applicant and her husband were represented by an advocate.

26. At the hearing held on 15 February 2005 the local authorities' representative stated that he did not oppose the action because after receiving the negative opinion of the State Attorney's Office, the local authorities had contacted the first applicant and her husband three times with a view to rescinding the sale contract, but to no avail.

27. At the hearing held on 24 October 2005 the court heard the first applicant and her husband, who stated that in 1992 they had moved first to Rijeka and then to Pula for work reasons, namely, because the first applicant had been transferred there.

28. By a judgment of 25 April 2006 the Osijek Municipal Court ruled for the plaintiff. It established that the first applicant and her husband had indeed left the flat in February and their two children (including the second applicant) had left in September 1992. In February 1996 both the first applicant and her husband had obtained permanent jobs in Pula (see paragraph 8 above). Moreover, before 17 June 2003, when they had brought their civil action for repossession, they had taken no steps to regain possession of their flat against the third person living in it (see paragraph 23 above and paragraph 44 below). The court therefore held that their specially protected tenancy had been terminated *ex lege* on the basis of section 99 of the Housing Act (see paragraphs 46 below), since they had not used the flat for a period exceeding six months without a justified reason. Once the court had resolved that preliminary question, it went on to conclude that, at the time when the first applicant and her husband had bought the flat, they had not

satisfied the most important statutory requirement for doing so, as they had no longer held the specially protected tenancy. The sale contract had therefore been contrary to the mandatory rules (*jus cogens*) of the Sale to Occupier Act (see paragraphs 49-52 below), which meant that the contract was null and void in terms of section 103 of the Obligations Act (see paragraph 61 below).

29. Following an appeal by the first applicant and her husband, on 16 November 2006 the Osijek County Court (*Županijski sud u Osijeku*) quashed the first-instance judgment and remitted the case. The court held that the first-instance court had misapplied the substantive law because under section 105 of the Housing Act a specially protected tenancy could be terminated on the grounds set forth in section 99 of that Act only on the basis of a court judgment, and not *ex lege* (see paragraphs 46 and 53-54 below).

30. In fresh proceedings, by a judgment of 8 February 2008 the Municipal Court again ruled for the plaintiff and declared the sale contract null and void. In so doing it repeated, in substance, the reasons adduced in its earlier judgment (see paragraph 28 above). In support of its reasoning it referred to the Constitutional Court decision of 3 December 2007 (see paragraph 60 below).

31. On 5 June 2008 the Osijek County Court dismissed an appeal lodged by the first applicant and her husband and upheld the first-instance judgment. This time, the second-instance court accepted the interpretation of the relevant provisions of the Housing Act given by the first-instance court.

32. The first applicant and her husband then lodged, concurrently, an appeal on points of law (*revizija*) and a constitutional complaint on 14 and 16 August 2008, respectively. In their appeal on points of law they argued that the lower courts had misapplied the substantive law by holding that their specially protected tenancy had been terminated by the operation of law. In their constitutional complaint they alleged, *inter alia*, violations of their constitutional right to fair proceedings and right of ownership.

33. Meanwhile, by a decision of 20 December 2006 the Constitutional Court (*Ustavni sud Republike Hrvatske*), in abstract constitutional review proceedings, had invalidated as unconstitutional section 382 of the Civil Procedure Act, which stipulated that an appeal on points of law could not be lodged in cases where the value of the subject matter of the dispute did not exceed 100,000 Croatian kunas (HRK). The court held that the threshold had been set too high, which had distorted the constitutional roles of the Supreme Court and the Constitutional Court. The Constitutional Court, however, deferred the effects of its decision by giving the Croatian Parliament until 15 July 2008 to amend the unconstitutional provision.

34. On 2 July 2008 Parliament amended the Civil Procedure Act, including the provision invalidated by the Constitutional Court. The statutory threshold for an appeal on points of law was again set at HRK 100,000. However, its detrimental (unconstitutional) effects were offset by more lenient procedural requirements for lodging a so-called extraordinary appeal

on points of law, which did not depend on the value of the subject matter of the dispute. The amendments stipulated that they would enter into force on 1 October 2008.

35. By a decision of 9 July 2008 the Constitutional Court further deferred the effects of its decision of 20 December 2006 until 1 October 2008. That second deferral decision did not state that it was effective immediately or any time before its publication in the Official Gazette. It was published in the Official Gazette on 21 August 2008.

36. As already noted above (see paragraph 32), the first applicant and her husband lodged their appeal on points of law on 14 August 2008, that is, in the period between the adoption of the second deferral decision by the Constitutional Court on 9 July 2008 and its publication on 21 August 2008 (see paragraphs 33 and 35 above).

37. On 20 December 2009 the first applicant's husband died. In a decision of 8 March 2010 issued by a notary public in Pula, the first and second applicants were declared his heirs and inherited various items of his property, including his share in the ownership of the residential building in Pula (see paragraph 12 above). However, only the first applicant was listed as the heir who inherited her late husband's share in the ownership of the flat in question and thus became the owner of the flat.

38. On 30 March 2010 the Supreme Court (*Vrhovni sud Republike Hrvatske*) declared the appeal on points of law lodged by the first applicant and her late husband inadmissible *ratione valoris*. It noted that the value of the subject matter of the dispute in their case was HRK 79,064.11 (see paragraph 24 above), and thus lower than HRK 100,000. The Supreme Court took note of the Constitutional Court's decision to invalidate section 382 of the Civil Procedure Act, but noted that the effects of that decision had eventually been deferred until 1 October 2008 (see paragraphs 33 and 35 above).

39. On 10 May 2010 the local authorities returned HRK 63,251.29 to the first applicant, that is, the amount she and her late husband had paid as the purchase price for the flat (see paragraph 18 above).

40. On 15 July 2010 the applicants amended the constitutional complaint lodged earlier by the first applicant and her late husband (see paragraph 32 above) to include the Supreme Court's decision among the decisions contested by that constitutional complaint. They argued that the appeal on points of law should not have been declared inadmissible *ratione valoris* because it had been lodged on 14 August 2008, which was before the Constitutional Court's second deferral decision had been published in the Official Gazette on 21 August 2008 (see paragraphs 32 and 35 above). In their view, that meant that in the period between 15 July and 21 August 2008 there had been no financial threshold for lodging appeals on points of law. In any event, they could not have been expected to have any knowledge of the second deferral decision before it had been published in the Official Gazette.

41. On 4 April 2013 the Constitutional Court dismissed the applicants' constitutional complaint. In so doing, it examined the case only from the perspective of their constitutional right to fair proceedings. In so far as the applicants' constitutional complaint was directed against the Supreme Court's decision to declare the appeal on points of law inadmissible, the Constitutional Court referred to its second deferral decision of 9 July 2008 (see paragraph 35 above), which it considered sufficient to conclude that there had been no legal gap in the period indicated by the applicants.

III. OTHER RELEVANT PROCEEDINGS

42. As stated above (see paragraph 23), on 17 June 2003 the first applicant and her husband instituted civil proceedings before the Osijek Municipal Court seeking J.P.'s eviction from the flat. Following the death of the first applicant's husband on 20 December 2009 (see paragraph 37 above), the second applicant took over those proceedings in his stead.

43. By a judgment of 21 November 2012 the Municipal Court dismissed the action. It ruled against the applicants because it established, as in the proceedings above (see paragraphs 28 and 30), that the first applicant and her husband had lost their specially protected tenancy on the grounds of their prolonged absence from the flat. Consequently, they had not been entitled to seek J.P.'s eviction. However, that court did not rely on section 99 or any other provision of the Housing Act. Instead, it held that a specially protected tenancy could also be extinguished under general rules of civil law provided in the Obligations Act, namely, by an agreement of the parties (*sporazumni raskid*), and that those rules would apply in a situation where the tenant permanently left the flat. In such cases the tenancy was not terminated by a court judgment, but as soon as the tenant left the flat. That court went on to conclude that by leaving the flat and never returning to it, the first applicant and her late husband had demonstrated their will to leave it permanently, which had resulted in termination of their tenancy.

44. By a judgment of 5 September 2013 the Osijek County Court dismissed an appeal lodged by the applicants and upheld the first-instance judgment. The court agreed with the finding of the first-instance court but did not rely on the Obligations Act. It held instead that their tenancy had been terminated by virtue of section 64(3) of the Housing Act, which provided for automatic termination of a specially protected tenancy held by a spouse who had permanently left the flat (see paragraph 46 below).

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. THE CONSTITUTIONAL COURT ACT

45. The relevant provision of the 1999 Constitutional Act on the Constitutional Court of the Republic of Croatia (*Ustavni zakon o Ustavnom sudu Republike Hrvatske*, Official Gazette no. 99/99 with subsequent amendments – "the Constitutional Court Act"), which has been in force since 24 September 1999, reads:

Section 53

"(1) The Constitutional Court shall invalidate a statute or its provisions if it finds that they are incompatible with the Constitution ...

(2) Unless the Constitutional Court decides otherwise, the invalidated statute or its provisions shall cease to have legal force on the date of publication of the Constitutional Court's decision in the Official Gazette."

II. HOUSING LEGISLATION AND PRACTICE

A. Relevant legislation

1. Housing Act

46. The Housing Act (*Zakon o stambenim odnosima*, Official Gazette nos. 51/85 with subsequent amendments), which was in force between 25 December 1985 and 4 November 1996, provided as follows:

Section 64

"1. A specially protected tenancy of a single flat can be held by one person only.

2. Where a specially protected tenancy has been acquired by one of the spouses living together, the other spouse shall also have the specially protected tenancy.

3. When one of the tenant spouses dies or permanently ceases to use the flat, the other spouse shall retain the specially protected tenancy, unless this Act provides otherwise."

Section 99

"1. A specially protected tenancy may be terminated if the tenant and the members of his household ... cease to use 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 because he or she is undergoing medical treatment, performing military service or for other justified reasons."

Section 100(1)

"As an exception from the provisions of section 99(1) and (3), a specially protected tenancy cannot be terminated if a tenant is temporarily employed abroad or elsewhere in the country ..."

Section 101(1)

"A specially protected tenancy cannot be terminated for a period of two years if the tenant changes his or her domicile in the country and is in the place of the new domicile living as a subtenant or on the basis of a lease contract, owing to his or her inability to exchange the flat [for another one]."

Section 105(1)

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

47. The Housing Act was repealed by the entry into force of the Lease of Flats Act (*Zakon o najmu stanova*, Official Gazette no. 91/96) on 5 November 1996. The latter Act abolished the legal concept of the specially protected tenancy and provided that the holders of such tenancies would become "protected lessees" (*zaštićeni najmoprimci*).

48. Section 52(1) of the Lease of Flats Act, however, provides for extended application of the repealed legislation by stipulating that proceedings instituted under the Housing Act must be determined under the provisions of that Act.

2. Specially Protected Tenancies (Sale to Occupier) Act

49. The Specially Protected Tenancies (Sale to Occupier) Act (*Zakon o prodaji stanova na kojima postoji stanarsko pravo*, Official Gazette no. 27/91 with subsequent amendments – "the Sale to Occupier Act"), which entered into force on 19 June 1991, entitled holders of specially protected tenancies of flats in social or State ownership to purchase the flats in respect of which they held such tenancy under favourable conditions. In that way a large majority of specially protected tenancies were transformed into the right of ownership of former tenants.

50. Section 21 obliged a seller to submit the sale contract for opinion to the relevant State Attorney's Office within eight days. That provision read as follows:

Section 21

"The seller shall submit for opinion the contract of sale of a flat to the relevant State Attorney's Office within 8 days.

If the State Attorney finds that the statutory conditions for the conclusion of the contract have not been met ..., it shall deliver an opinion that the flat cannot be sold. If, after the conclusion of the contract, the State Attorney finds that the statutory conditions

> for the conclusion of the contract had not been met, he shall seek annulment of the contract within a period of one year from the date of [its] conclusion."

51. Section 22 obliged the contracting parties to have their signatures certified by a notary public, who first had to verify that the contract had been submitted for opinion to the relevant State Attorney's Office.

52. Section 23 provided that the buyer acquired the right of ownership of the flat by recording it in the land register.

B. Relevant practice

1. The Supreme Court's practice

53. In decision no. Rev-616/1988 of 11 October 1988 the Supreme Court interpreted section 99 of the Housing Act (see paragraph 46 above) in the following way:

> "A 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."

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

55. In its decisions nos. Rev-777/1995-2 of 21 December 1999 and Rev-391/02-2 of 18 February 2003, the Supreme Court took the view that, even in the absence of a judgment terminating a specially protected tenancy, the courts were entitled to examine whether there were grounds for its termination in cases where the existence of such a tenancy was a precondition for a tenant acquiring and exercising the right to purchase the flat under the Sale to Occupier Act.

56. The relevant part of 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 is null and void if it has been concluded with a person whose specially protected tenancy ended by means of 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 the time of the conclusion of [such a contract]. ...
>
> 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 ..."

57. The relevant part of 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 question) – ... the plaintiff [would have no right] to demand that a contract of sale of the flat be concluded."

58. In situations where the holder of a specially protected tenancy did not use the flat awarded to him or her because it was occupied by a third person, the bringing of legal proceedings in order to evict the occupant was relevant for demonstrating an intention to live in the flat, that is to say preventing the tenant's absence from being considered unjustified and resulting in the termination of the tenancy. However, it was important to act within six months since the tenant could not rely on any subsequent legal action in order to demonstrate an intention to live in the flat. In particular, in decisions nos. Rev-155/1994-2 of 16 February 1994, 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 the Supreme Court held 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."

59. These decisions reflect earlier case-law, namely, the decision of the Zagreb District Court (*Okružni sud u Zagrebu*) no. Gž-3517/76 of 7 September 1976 and the judgment of the Supreme Court no. Rev-645/1991-2 of 16 April 1991. The District Court in its decision dismissed the civil action by the provider of the flat seeking to terminate the special protected tenancy, finding that the tenant's non-use of the flat had been justified under the terms of section 99 of the Housing Act because the flat had been occupied by third persons and the tenant had sought judicial protection. The Supreme Court in its judgment upheld the judgments of the lower-instance courts whereby they, citing section 99 of the Housing Act, had terminated the specially protected tenancy of the tenant because he had not brought a civil action for eviction against the persons occupying in the flat of which he held such a tenancy.

2. The Constitutional Court's practice

60. In its decision no. U-III/4949/2005 of 3 December 2007 (published in Official Gazette no. 1/2008 of 2 January 2008) the Constitutional Court dismissed a constitutional complaint lodged by the defendants in a civil case against a second-instance judgment of the Zadar County Court upholding a first-instance judgment of the Zadar Municipal Court. The Zadar Municipal Court, ruling for the State as the plaintiff, adopted a declaratory judgment,

finding that the defendants had not acquired the status of protected lessees under the Lease of Flats Act (see paragraph 47 above) because grounds for termination of their specially protected tenancy had existed before the entry into force of that Act. The Municipal Court made that ruling even though the defendants' specially protected tenancy had never been terminated by a court judgment. The Constitutional Court agreed with that interpretation and held as follows:

> " ... [The] complainants argue that after the entry into force of the Lease of Flats Act it is no longer possible to examine in judicial proceedings any facts or circumstances in relation to a specially protected tenancy because specially protected tenancies ceased to exist *ex lege* pursuant to section 30(1) of the Lease of Flats Act. Therefore, they consider that in the civil proceedings in question ... [the court] was not allowed to decide on 'a non-existent specially protected tenancy'.
>
> ...
>
> In the civil proceedings [in question] it was necessary to determine whether the complainants had retained the specially protected tenancy until the entry into force of the Lease of Flats Act, that is to say, whether they had acquired the status of protected lessees in respect of the flat [in question].
>
> ... [The] first-instance court found that the complainants had been absent from the flat for more than six months and that their specially protected tenancy had thus ended pursuant to section 99(1) of the Housing Act. Having regard to the fact that the complainants' specially protected tenancy had ended before the entry into force of the Lease of Flats Act ... the first-instance court found that [they] had never acquired the status of [protected] lessees. ...
>
> When dismissing the complainants' appeal against the first-instance judgment, the second-instance court noted in the contested judgment that the status of a protected lessee was acquired by a person who could demonstrate that he or she was a holder of a specially protected tenancy at the time of the entry into force of the Lease of Flats Act (5 November 1996). In accepting the findings of the first-instance court that the complainants' specially protected tenancy had ended before the entry into force of the Lease of Flats Act (where the existence of a judicial decision on termination of the specially protected tenancy is not decisive; rather, what is decisive is whether on 5 November 1996 grounds for termination within the meaning of the Housing Act existed, that is, unjustified absence from the flat for a period exceeding six months), the second-instance court held that the complainants had never acquired the status of protected lessees.
>
> ...
>
> The legal views expressed in the contested judgment of the County Court are based on a correct application of the relevant substantive law and on a constitutionally acceptable interpretation of that law. ...
>
> [The Constitutional Court] considers unfounded the complainants' argument that after the entry into force of the Lease of Flats Act it was no longer possible to examine in the judicial proceedings at issue (or in any other judicial proceedings) any facts or circumstances in relation to 'a non-existent specially protected tenancy'. In particular, in situations which so require (for example, in proceedings for determination of the status of protected lessee, in proceedings for conclusion of a lease of flat contract, or in proceedings for declaring a contract of sale of a flat null and void, and similar), the civil

court not only can, but must, determine whether the specially protected tenancy ... was terminated or whether a ground for [its] termination existed (for example, non-use of the flat exceeding six months)."

III. OBLIGATIONS ACT

61. The relevant provisions of the 1978 Obligations Act and the 2006 Obligations Act are set out in the case of *Vukušić v. Croatia* (no. 69735/11, §§ 29-30, 31 May 2016).

IV. CIVIL PROCEDURE ACT

62. The relevant provision of the Civil Procedure Act (*Zakon o parničnom postupku*, Official Gazette of the Socialist Federal Republic of Yugoslavia no. 4/77 with subsequent amendments, and Official Gazette of the Republic of Croatia no. 53/91, with subsequent amendments) read as follows:

Section 12

"When a court's decision depends on the prior resolution of the question whether a certain right or legal relationship exists, and this question has not yet been decided by a court or other relevant authority (the preliminary question), the court may settle that question itself, unless special legislation provides otherwise.

The court's decision on a preliminary question shall have legal effect only in the civil proceedings in which that question was settled."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

63. The applicants complained that the domestic courts' judgments declaring the contract of sale of 26 November 2002 null and void (see paragraphs 18 and 30-31 above) had violated their right to the peaceful enjoyment of their possessions. They relied on Article 1 of Protocol No. 1 to the Convention, which reads as follows:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. Admissibility

1. *Submissions of the parties*

(a) The Government

64. The Government disputed the admissibility of this complaint by arguing that that Article 1 of Protocol No. 1 was not applicable to the present case, and that this complaint was, in any event, incompatible *ratione temporis*.

(i) Applicability of Article 1 of Protocol No. 1

65. The Government argued that Article 1 of Protocol No. 1 to the Convention was inapplicable because the applicants had never been, nor had they had legitimate expectations of becoming, the owners of the flat.

66. The Government pointed out that the contract of 26 November 2002 whereby the local authorities had sold the flat in question to the first applicant and her late husband had been declared null and void in judicial proceedings because the statutory requirements had not been met. In particular, the domestic courts had established that at the relevant time the first applicant and her late husband had no longer held the specially protected tenancy, which they had lost because of their prolonged absence from the flat in question (see paragraphs 28 and 30-31 above). The fact that the contract of sale had been declared null and void meant that the contract had been legally invalid *ab initio*, that is, from its inception. Therefore, in the Government's view, even though the first applicant and her late husband had, on the basis of that contract, subsequently recorded their ownership of the flat in the land register, they had not had a legitimate expectation, in the terms of the Convention, to become its owners.

67. The Government further submitted that their argument was further reinforced by the fact that only three days after the conclusion of the sale contract in question, the State Attorney's Office had given a negative opinion as to its validity, indicating that the contract was null and void (see paragraph 20 above). In the Government's view, that fact distinguished the present case from the case of *Gashi v. Croatia* (no. 32457/05, §§ 22 and 27-43, 13 December 2007), where the State Attorney's Office had given a positive opinion and where the Court had held that Article 1 of Protocol 1 was applicable and eventually found a violation of that provision.

(ii) Compatibility ratione temporis

68. The Government further argued that this complaint was in any event incompatible *ratione temporis* with the provisions of the Convention. In particular, the domestic courts had established that the first applicant and her late husband had lost their specially protected tenancy on account of their unjustified absence from the flat for a continuous period exceeding six

months – having left the flat in February 1992 and never returned to it (see paragraphs 28 and 30-31 above). This meant that their tenancy had been terminated *ex lege* in August 1992, together with all the rights derived from it, including the right to purchase the flat. That had been before the entry into force of the Convention in respect of Croatia on 5 November 1997.

(b) The applicants

69. The applicants first referred to section 23 of the Sale to Occupier Act, which provided that a buyer acquired the right of ownership of a flat by recording it in the land register (see paragraph 52 above). Accordingly, the first applicant and her late husband had become the owners of the flat on 20 November 2003 when they had recorded their ownership in the land register (see paragraph 22 above).

70. The applicants further noted that in the *Gashi* case (cited above, § 22), the Court in similar circumstances had held that Article 1 of Protocol No. 1 was applicable.

2. The Court's assessment

(a) The second applicant's victim status

71. The Government did not raise an objection concerning the second applicant's victim status. However, the issue whether an applicant can claim to be a victim of the violation complained of is a matter which goes to the Court's jurisdiction, and which the Court must thus examine of its own motion (see *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, § 70, ECHR 2016 (extracts)).

72. The Court notes that by a decision of 8 March 2010 issued by a notary public following the death on 20 December 2009 of M.G., who was the first applicant's husband and the second applicant's father, only the first applicant inherited his share in the ownership of the flat in question (see paragraph 37 above). This means that the second applicant cannot claim to be a victim of the alleged violation of Article 1 of Protocol No. 1 to the Convention because she had never been the (co-)owner of the flat.

73. It follows that this complaint, in so far as it concerns the second applicant, is inadmissible for lack of victim status and must be rejected pursuant to Article 34 and Article 35 §§ 3 (a) and 4 of the Convention.

(b) Applicability

74. As regards the Government's argument concerning the (in)applicability of Article 1 of Protocol No. 1, the Court first notes that under Croatian law when the ownership is acquired on the basis of a legal transaction such as, for example, a contract, the registration of the ownership in the land register is the act constitutive of the acquisition (see paragraph 52 above). That being so, the Court finds it sufficient to note that the first

applicant and her late husband bought the flat in question on 26 November 2002 and, by virtue of section 23 of the Sale to Occupier Act, became its owners on 20 November 2003 when they recorded their ownership in the land register (see paragraphs 18, 22 and 52 above).

75. It follows that the Government's objection regarding the inapplicability of Article 1 of Protocol No. 1 must be dismissed.

(c) Compatibility ratione temporis

76. The Court refers to its above findings regarding the applicability of Article 1 of Protocol No. 1 and, specifically, to the finding that the first applicant became the owner of the flat at issue on 20 November 2003 when she recorded her ownership in the land register (see paragraph 74 above). It follows that the alleged violation of the first applicant's property rights thus occurred when her ownership title, namely, the contract of sale whereby she and her late husband had bought that flat, had been declared null and void. That occurred on 5 June 2008 when the Osijek County Court upheld the first-instance judgment of the Osijek Municipal Court of 8 February 2008, which thereby became final (see paragraphs 30-31 above). That was after the Convention had come into force in respect of Croatia on 5 November 1997.

77. The Government's objection regarding incompatibility *ratione temporis* must therefore also be dismissed.

(d) Conclusion as regards admissibility

78. The Court further notes that to the extent that this complaint concerns the first applicant it is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. Submissions of the parties

(a) The first applicant

79. The first applicant submitted that pursuant to section 105 of the Housing Act and the case-law developed in the application of that legislation while it had been in force, a specially protected tenancy could have been terminated against the will of the tenant only by a court judgment delivered in proceedings instituted by the provider of the flat (see paragraphs 46 and 53-54 above). Since her and her husband's specially protected tenancy had never been terminated by such judgment, the preliminary question concerning the existence of their tenancy, which had arisen in the proceedings complained of, should not have been resolved to their detriment. The fact that the domestic courts in those proceedings had held otherwise meant that the

resultant deprivation of ownership acquired on the basis of that tenancy had been contrary to the law.

80. The first applicant further submitted that in its first judgment in the case, of 16 November 2006, the Osijek County Court had applied the law correctly (see paragraph 29 above). However, in its second judgment, of 5 June 2008, it had departed from its earlier position without providing any explanation (see paragraph 31 above). That change had been inexplicable and completely unforeseeable.

81. Commenting on the Government's arguments, the first applicant pointed to certain inconsistencies. In particular, the Government had stated that there had been a change in the case-law regarding the termination of specially protected tenancies and that the new case-law had been applied in her case, resulting in the finding that her and her husband's tenancy had been terminated *ex lege* (see paragraphs 87-88 below). That finding had further resulted in her losing ownership of the flat, acquired on the basis of that tenancy. The Government had argued that the change in the case-law had been justified by the emergence of new types of dispute brought about by the enactment of the Sale to Occupier Act (see paragraph 88 below). However, the first applicant pointed out that in so arguing, the Government had been referring to disputes resulting from the refusal by the providers of flats to sell them to holders of specially protected tenancies, whereas in the present case the provider of the flat had sold her and her husband the flat at issue and the dispute had arisen only because the State Attorney had questioned the validity of that sale (see paragraphs 18, 20 and 24 above).

82. Furthermore, for the first applicant the Government's argument that the reversal of the case-law had not substantially altered the legal situation of tenants (see paragraph 90 below) was difficult to understand, given that in her case it had been decisive for the outcome of the proceedings.

83. The Government had argued that the deprivation of the first applicant's and her late husband's ownership of the flat at issue had been foreseeable because the State Attorney's Office had, three days after conclusion of the sale contract of 26 November 2002, given a negative opinion as to its validity (see paragraph 20 and 91 below). In reply to that argument, the first applicant submitted that the opinion had come as a surprise to her because a month and a half before the conclusion of that contract, on 2 October 2002, she had received a certificate from the local authorities' housing department that she and her husband had satisfied the statutory conditions for purchasing the flat (see paragraph 16 above).

84. The first applicant also averred that her and her late husband's absence from the flat had been justified. They had moved out of the flat in February 1992 for work-related reasons, which under section 100 of the Housing Act had been a justified reason for non-use of a flat (see paragraphs 8 and 46 above). Their absence from the flat had also been justified, because they could

not have returned to it as it had been occupied by a third person to whom the flat had been awarded for temporary use (see paragraphs 9 and 11 above).

85. As regards the proportionality of the interference and the Government's argument that she had not been in need of housing (see paragraph 93 below), the first applicant replied that she and her husband had acquired a residential building in Pula after they had moved out of the flat in question, as they could not have waited for so many years to regain possession of it.

(b) The Government

86. The Government submitted that if the Court were to accept that Article 1 of Protocol No. 1 was applicable and that there had been an interference with the first applicant's property rights, that interference in the form of deprivation of property had been provided for by law as it had been based on the relevant legislation and had been foreseeable. Furthermore, the interference had been in the public interest and proportional.

87. As regards the foreseeability requirement, the Government admitted that there had indeed been a change in the case-law concerning the termination of a specially protected tenancy on the grounds of failure by the tenant to use the flat for accommodation purposes for a continuous period exceeding six months without justified reason. In their view, that case-law development had been warranted and justified by certain legislative changes. The Sale to Occupier Act (see paragraph 49 above) had been an instrument for replacing the specially protected tenancy with the right of ownership of former tenants and the first step in the process of removing the legal concept of specially protected tenancy – a relic of the socialist era – from the Croatian legal system. That process had been completed in November 1996 when the Housing Act had been repealed and such tenancy finally abolished (see paragraph 47 above).

88. It was true that in the period when the specially protected tenancy had still existed, the case-law of the Supreme Court had been such that in the event of the tenant's absence from the flat for a period exceeding six months without justified reason – a ground for termination of the tenancy under section 99 of the Housing Act – the specially protected tenancy could have been terminated only by a court decision of constitutive character (see paragraphs 53-54 above). However, the entry into force of the Sale to Occupier Act had brought about a new type of dispute: resulting from the refusal by the providers of flats to sell them to holders of specially protected tenancies. In such disputes the courts had had to determine, as a preliminary question (see section 12 of the Civil Procedure Act in paragraph 62 above), whether the plaintiffs had indeed held a specially protected tenancy of the flat they had wished to buy. When deciding on that preliminary question, the courts had adjusted their earlier case-law to those new circumstances and considered themselves entitled to decide whether a specially protected

tenancy had been terminated even in the absence of an earlier court judgment to that effect (see paragraphs 55-57 and 60 above).

89. In the Government's view, such case-law development had been entirely logical and justified. The purpose of the specially protected tenancy, and the right to purchase the flat which derived from it, had been to satisfy tenants' housing needs. Tenants who, for a prolonged period of time, had not been living in the flats let to them under specially protected tenancies had evidently satisfied their housing needs in some other way. To allow such tenants to retain their tenancies and/or purchase those flats would have frustrated the purpose of the Housing Act and the Sale to Occupier Act.

90. However, the above-mentioned change in the case-law had not substantially altered the legal situation of tenants who had been unjustifiably absent for a prolonged period of time from the flats awarded to them under a specially protected tenancy, as they had always known that the sanction for such absence was termination of their tenancy. Therefore, in the present case it could not have been argued that the termination of the tenancy of the first applicant and her husband, who had left the flat in question in 1992 and never returned to it (see paragraph 8 above) – and the resultant loss of ownership of the flat acquired on the basis of that tenancy – had been unforeseeable.

91. In any event, in the instant case the sale contract whereby the first applicant and her husband had bought the flat had been concluded on 26 November 2002 (see paragraph 18 above), by which time the new case-law leading to that contract being subsequently declared null and void was already well established, the change in the case-law having emerged in 1999 (see paragraphs 55-56 above). What is more, three days after the conclusion of that sale contract, the State Attorney's Office had given an opinion that the contract was invalid (see paragraph 20 above). Against that background, the Government averred, the deprivation of the first applicant's right of ownership had been fully foreseeable.

92. As to whether the deprivation of ownership had been in the public interest, the Government reiterated that the purpose of the legislation governing the specially protected tenancy and the right to purchase flats let under such tenancy had been to satisfy the housing needs of citizens. In order to achieve that purpose, the State had to have the means to enforce the law against individuals whose ownership of such flats had been obtained in contravention of that legislation and contrary to its purpose. The deprivation of the first applicant's ownership of the flat in question had thus aimed to promote the rule of law and equality of all before the law.

93. As to the proportionality, the Government emphasised that at the time the interference had occurred, the first applicant had been the owner of a residential building in Pula (see paragraph 37 above) and had not lived in the flat in question for more than ten years.

94. In view of the above arguments, the Government invited the Court to find no violation of Article 1 of Protocol No. 1 to the Convention.

2. The Court's assessment

(a) Whether there was interference with the peaceful enjoyment of "possessions"

95. The Court reiterates that Article 1 of Protocol No. 1, which guarantees in substance the right of property, comprises three distinct rules. The first rule, which is set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property. The second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions. The third rule, stated in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest, by enforcing such laws as they deem necessary for the purpose. The second and third rules are concerned with particular instances of interference with the right to the peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule (see, among other authorities, *Fábián v. Hungary* [GC], no. 78117/13, § 60, 5 September 2017).

96. In this connection the Court first refers to its above finding (see paragraph 74) that Article 1 of Protocol No. 1 is applicable to the present case because the first applicant and her late husband purchased the flat at issue under a contract of sale concluded on 26 November 2002 with the local authorities and on that basis were subsequently recorded in the land register as the owners of the flat.

97. That being so, and having regard to its case-law on the matter (see, for example, *Pavlinović and Tonić v. Croatia* (dec.), nos. 17124/05 and 17126/05, 3 September 2009), the Court considers that the Osijek Municipal Court's judgment of 8 February 2008 (see paragraph 30 above) declaring null and void the contract of sale (see paragraph 18 above) from which the first applicant and her late husband derived their ownership undoubtedly constituted an interference with the first applicant's right to the peaceful enjoyment of her possessions, as guaranteed by Article 1 of Protocol No. 1 to the Convention.

98. As to the question whether the interference was covered by the first or second paragraph of that Article, the Court has already held that declaring title to property null and void is to be examined under the second sentence, as it amounts to deprivation of possessions (see, for example, *Pavlinović and Tonić*, cited above).

99. The Court must further determine whether that interference in the form of deprivation of property was justified, that is, whether it was provided for by law, in the public interest and proportional.

(b) Whether the interference was "provided for by law" and whether it was in the public interest

100. The Court reiterates that the first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful (see, for example, *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia* [GC], no. 60642/08, § 103, ECHR 2014).

101. In the Court's view the decisions of the domestic courts in the present case had a legal basis in domestic law, in particular in section 103 of the 1978 Obligations Act (see paragraph 61 above) read in conjunction with:

- the relevant provisions of the Sale to Occupier Act, which entitled only holders of specially protected tenancies to purchase socially or State-owned flats in respect of which they held such tenancy (see paragraph 49 above); and

- the relevant provisions of the Housing Act, notably its section 99, which regulated conditions under which such tenancy could be terminated in the event of prolonged absence from the flat (see paragraph 46 above).

102. The Court reiterates that the aim of section 99 of the Housing Act (see paragraph 46 above) was to terminate specially protected tenancies held by individuals who no longer lived in flats allocated to them, with a view to subsequently redistributing such flats to others in need of accommodation (see *Bjedov v. Croatia*, no. 42150/09, § 63, 29 May 2012).

103. The Court considers that this and the other legislation applied in the present case (see paragraph 101 above) pursued the aims of promoting the economic well-being of the country and protecting the rights of others (see, *mutatis mutandis*, *Bjedov*, cited above, § 63, and *Petolas v. Croatia* (dec.), no. 74936/12, § 68, 22 March 2016). More specifically, it pursued the aim of ensuring that the relevant housing legislation, intended to satisfy the housing needs of citizens, had been properly applied and that flats assigned under the specially protected tenancy had indeed been allocated and later on sold to those who had satisfied the statutory criteria (see, *mutatis mutandis*, *Petolas*, loc. cit.). The ultimate means for achieving this aim was allowing the relevant authorities to seek judicial decision to invalidate sale contracts concluded in contravention of that legislation.

104. However, the Court further reiterates that the existence of a legal basis is not in itself sufficient to satisfy the principle of lawfulness. When speaking of "law", Article 1 of Protocol No. 1 alludes to a concept which comprises statutory law as well as case-law and implies qualitative requirements, notably those of accessibility and foreseeability (see, for example, *Brezovec v. Croatia*, no. 13488/07, § 60, 29 March 2011, with further references to *Mullai and Others v. Albania*, no. 9074/07, § 113, 23 March 2010; *Špaček, s.r.o. v. the Czech Republic*, no. 26449/95, § 54, 9 November 1999; and *Carbonara and Ventura v. Italy*, no. 24638/94, § 64,

ECHR 2000‑VI). In particular, the law is "foreseeable" when an individual is able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail and when it affords a measure of protection against arbitrary interferences by the public authorities (see, for example, *Ljaskaj v. Croatia*, no. 58630/11, § 65, 20 December 2016, and *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 141 and 143, ECHR 2012).

105. The first applicant in essence argued that the domestic courts' decisions leading to deprivation of her ownership of the flat in question had been contrary to the law because they had been based on the interpretation of the relevant provisions of the Housing Act, which she considered to be wrong (see paragraph 79 above). In addition, she submitted that those decisions also constituted a departure from well-established case-law, thus suggesting that the interference with her property rights had been unforeseeable (see paragraph 80 above).

106. In this connection, the Court first reiterates that its power to review compliance with domestic law is limited (see, for example, *Zagrebačka banka d.d. v. Croatia*, no. 39544/05, § 263, 12 December 2013) as it is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation. Its role is to verify whether the effects of such interpretation are compatible with the Convention (see, among many other authorities, *Nejdet Şahin and Perihan Şahin v. Turkey* [GC], no. 13279/05, § 49-50, 20 October 2011).

107. Likewise, the requirements of legal certainty and the protection of the legitimate confidence of the public in the judicial system do not confer an acquired right to consistency of case-law (see *Nejdet Şahin and Perihan Şahin*, cited above, § 58, and *Unédic v. France*, no. 20153/04, § 74, 18 December 2008). However, in some cases changes in domestic jurisprudence which affect pending civil proceedings may violate the Convention. For example, in *Petko Petkov v. Bulgaria* (no. 2834/06, § 33, 19 February 2013) the Court held that the applicant had been unable to reasonably foresee that a new interpretation of the relevant legislation by the Supreme Court, which had effectively introduced a new procedural requirement, would be applied retroactively. In *Serkov v. Ukraine* (no. 39766/05, § 40, 7 July 2011) the Court considered that the manner in which the domestic courts had re-interpreted the relevant legal provisions had undermined their foreseeability.

108. Turning to the circumstances of the present case, the Court highlights the following facts, which were not disputed by the parties:

- under the Housing Act and the case-law developed in its application while it was still in force, a specially protected tenancy could be terminated only by a court judgment of constitutive character, rather than by the operation of law (see paragraphs 53-54 above);

- the Housing Act was repealed on 5 November 1996, and the new legislation provided for its extended application only to pending proceedings that had been instituted under that Act (see paragraphs 46- 47 above);

- in 1999 the case-law of the domestic courts changed so that a specially protected tenancy was considered to have been terminated by the operation of law as soon as the conditions for termination had been met, thus allowing the courts to rule on the (in)existence of such tenancy as a preliminary question in all proceedings concerning rights derived from it, notably, those concerning the right to purchase a flat under the Sale to Occupier Act (see paragraphs 55-57 and 60 above);

- on 26 November 2002, that is more than six years after the Housing Act had been repealed, the first applicant and her husband bought the flat let to them under the specially protected tenancy, and on 20 November 2003 formally became its owners by recording their ownership in the land register (see paragraphs 18, 22 and 47 above);

- on 21 November 2003, that is seven years after the Housing Act had been repealed, the relevant State Attorney's Office instituted civil proceedings with a view to declaring the sale contract null and void (see paragraphs 24 and 47 above);

- in those proceedings the domestic courts, by applying the new case-law, eventually declared that contract null and void after having established that the tenancy of the first applicant and her husband had been terminated *ex lege* sometime in 1992 on account their failure to use the flat for accommodation purposes for a continuous period exceeding six months without justified reason (see paragraphs 28 and 30-31 above).

109. In view of those facts, the Court considers that the reversal of the pre-existing case-law of the domestic courts did not render the interference with the first applicant's property rights unforeseeable. In this connection the Court shares the Government's view that the first applicant had always known that her prolonged absence from the flat without a justified reason could result in termination of her specially protected tenancy (see paragraph 90 above).

110. The reversal of the case-law – prompted by the changes in the housing legislation during the period of transition from the socialist regime to a democratic state – entitled the courts to examine whether the grounds for termination of a specially protected tenancy existed in the absence of a court judgment terminating such tenancy (see paragraphs 55-57 and 60 above) and thus allowed them to undertake such examination even after repeal of the Housing Act (see paragraphs 46-47 above). It thus merely prolonged the period of time during which the courts could examine whether such tenancy should have been terminated or not. The reversal of the case-law was therefore of procedural character only and did not alter the substantive-law conditions for termination of a specially protected tenancy on account of prolonged absence from the flat.

111. It cannot be said that this change in the case-law of the domestic courts was not in line with the aims pursued by the legislation in question (see paragraphs 102-103 above). On the contrary, the change was necessary because the aim of ensuring that flats assigned under the specially protected tenancy had been allocated to those in need of housing (see paragraph 103 above) became even more important with the enactment of the Sale to Occupier Act whereby the State decided to sell such flats to their tenants under favourable conditions (see paragraph 49 above) and in that way permanently satisfy their housing needs.

112. The foregoing considerations (see paragraphs 101-111 above) are sufficient for the Court to conclude that that the interference with the first applicant's right to the peaceful enjoyment of her possessions not only had a legal basis in domestic law but was also foreseeable to her. The interference was therefore provided for by law.

113. Likewise, in view of its above findings (see paragraphs 102-103 above), the Court also concludes that the interference was in the public interest.

(c) Proportionality of the interference

114. The first applicant argued that the interference had been disproportionate because her absence from the flat had been justified on the following grounds (see paragraph 84 above):

- she and her husband had moved out of the flat for work-related reasons, which under section 100 of the Housing Act had been a justified reason for non-use of a flat (see paragraphs 8 and 46 above),

- they could not have returned to it as it had been occupied by a third person to whom the flat had been awarded for temporary use (see paragraphs 9 and 11 above).

115. In this connection the Court first notes that the domestic courts found the first applicant's and her husband's absence unjustified after having established that they had left the flat in question in February 1992, that their two children had left in September 1992, and that in February 1996 both the first applicant and her husband had obtained permanent jobs in Pula (see paragraphs 28 and 30-31 above). The Court therefore finds it difficult to accept that the domestic courts were wrong considering that after February 1996 the first applicant's absence could have been justified by work-related reasons.

116. The Court further considers that, having regard to the wide margin of appreciation enjoyed by the States in housing matters (see, for example, *Statileo v. Croatia*, no. 12027/10, § 140, 10 July 2014), the case-law of the domestic courts requiring tenants to demonstrate their intention to continue using the flats awarded to them by bringing within six months relevant proceedings against third persons occupying the flat (see paragraphs 58-59 above), is not in itself disproportionate to the legitimate aim identified above

(see paragraphs 102-103 above). To find that requirement disproportionate would be even more difficult in circumstances such as those prevailing in the present case, that is to say in a time of war, where a large number of people were displaced and in need of accommodation.

117. In the present case, the first applicant and her husband instituted civil proceedings before the Osijek Municipal Court seeking temporary occupant's eviction from the flat as late as on 17 June 2003 (see paragraphs 23 and 42 above).

118. The Court further notes that it was not disputed between the parties that at the relevant time the first applicant and her husband were the owners of a residential building in Pula, the town where she has been living since at least 1996 (see paragraphs 8, 28, 31, 37, 85 and 93 above). It also notes that the local authorities paid her back the money she and her husband had paid as the purchase price for the impugned flat in Osijek (see paragraph 39 above).

119. In these circumstances (see paragraphs 115-118 above) it cannot be said that the interference in question placed on her an excessive individual burden.

120. That being so, and having regard to the aim pursued by the interference, as well as to the wide margin of appreciation left to the States in housing matters (see paragraph 116 above), the Court considers that domestic courts in the instant case struck the requisite fair balance between the public interest involved (see paragraphs 102-103 above) and the protection of the first applicant's property rights. The interference with her rights was therefore proportionate to the aim sought to be achieved.

121. There has accordingly been no violation of Article 1 of Protocol No. 1 to the Convention in the present case.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

122. The applicants also complained that by declaring the appeal on points of law lodged by the first applicant and her late husband inadmissible *ratione valoris* (see paragraph 38 above), the Supreme Court had violated the applicants' right of access to court because at the time of lodging it, there had been no financial threshold for lodging that remedy. They relied on Article 6 § 1 of the Convention, which in its relevant part reads as follows:

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

123. The Government contested that argument.

124. The Court does not find it necessary to reproduce the parties' arguments in detail, as this complaint is in any event inadmissible for the following reasons.

125. In so far as this complaint concerns the second applicant, the Court refers to its above finding that she cannot claim to be a victim of a violation

of Article 1 of Protocol No. 1 to the Convention (see paragraph 71-73 above). That finding applies with equal force in the context of the complaint under Article 6 § 1 of the Convention because the underlying facts suggest that the proceedings complained of did not concern determination of her civil rights and obligations but those of her mother. Consequently, the second applicant cannot claim to be a victim of the alleged violation of the right of access to court in those proceedings.

126. It follows that this complaint, to the extent that it concerns the second applicant, is inadmissible for lack of victim status and must be rejected pursuant to Article 34 and Article 35 §§ 3 (a) and 4 of the Convention.

127. In so far as this complaint concerns the first applicant, the Court refers to its findings above that the change in the case-law of the Supreme Court, which resulted in her and her husband losing their ownership of the flat in question, occurred in 1999 (see paragraph 101 above). It further notes that the lower courts' judgments, which the first applicant and her husband contested in their appeal on points of law of 14 August 2008, reflected that change (see paragraphs 30-31 above).

128. In those circumstances the Court finds that the appeal on points of law lodged by the first applicant and her husband lacked any prospect of success. In other words, even if the Supreme Court had examined it on the merits, it would have dismissed it as ill-founded. It thus cannot but be concluded that the first applicant did not suffer a significant disadvantage on account of the Supreme Court's decision to declare that appeal on points of law inadmissible *ratione valoris*.

129. However, before being able to declare a complaint inadmissible for lack of significant disadvantage, the Court has to satisfy itself that the two safeguard clauses stipulated in Article 35 § 3 (b) of the Convention were complied with. In particular, it must examine (a) whether respect for the human rights safeguarded by the Convention and its Protocols requires an examination of this part of the application on the merits, and (b) whether the case has been duly considered by a domestic tribunal.

130. As to the first safeguard clause, the Court observes that it has examined access-to-court complaints (and more specifically, those concerning restrictions on access to the Supreme Court based on the value of the subject matter of the dispute) in a number of cases, including those brought against Croatia, and has established clear and extensive case-law on the topic (see, for example, *Zubac v. Croatia* [GC], no. 40160/12, 5 April 2018; *Hasan Tunç and Others v. Turkey*, no. 19074/05, 31 January 2017; *Egić v. Croatia*, no. 32806/09, 5 June 2014; *Jovanović v. Serbia*, no. 32299/08, 2 October 2012; *Dobrić v. Serbia*, nos. 2611/07 and 15276/07, 21 June 2011; *Bulfracht Ltd v. Croatia*, no. 53261/08, 21 June 2011; *Garzičić v. Montenegro*, no. 17931/07, 21 September 2010; and *Brualla Gómez de la Torre v. Spain*, 19 December 1997, *Reports* 1997-VIII). It is therefore satisfied that respect for human rights as defined in the Convention and the

Protocols thereto does not require it to continue the examination of this part of the application on its merits.

131. As to the second safeguard clause, the Court notes that in the present instance the first applicant's "case" within the meaning of the Court's case-law (see *Holub v. Czech Republic* (dec.), no. 24880/05, 14 December 2010) – that is, whether the contract of sale of 26 November 2002 was null and void – was examined on the merits by the first and the second-instance courts, and that their judgments were reviewed by the Constitutional Court (see paragraphs 28-31 and 41 above). What is more, the Constitutional Court also examined the first applicant's access-to-court complaint, which she subsequently brought before the Court (see paragraph 41 above). The Court is therefore satisfied the case has been "duly considered by a domestic tribunal".

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning the peaceful enjoyment of possessions admissible in so far as it concerns the first applicant and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 1 of Protocol No. 1 to the Convention as regards the first applicant.

Done in English, and notified in writing on 28 January 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court. {signature_p_1} {signature_p_2}

Renata Degener
Deputy Registrar

Krzysztof Wojtyczek
President