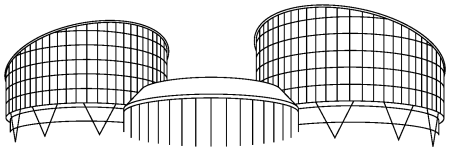

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF STATILEO v. CROATIA

(Application no. 12027/10)

JUDGMENT

STRASBOURG

10 July 2014

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 Statileo v. Croatia,

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

Khanlar Hajiyev, *President,*
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska,
Paulo Pinto de Albuquerque,
Linos-Alexandre Sicilianos,
Erik Møse,
Dmitry Dedov, *judges,*

and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 17 June 2014,

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

PROCEDURE

1. The case originated in an application (no. 12027/10) 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, Mr Sergej Statileo ("the applicant"), on 27 January 2010.

2. The applicant was represented by Mr T. Vukičević, an advocate practising in Split. The Croatian Government ("the Government") were represented by their Agent, Mrs Š. Stažnik.

3. The applicant alleged, in particular, that his inability to charge adequate rent for the lease of his flat had been in violation of his property rights.

4. On 28 June 2011 the application was communicated to the Government.

5. By a letter of 6 December 2011 the applicant's representative informed the Court that the applicant had died on 6 February 2011 and that his statutory heir Mr Boris Filičić wished to pursue the application (see paragraphs 88-89 below).

6. Ksenija Turković, the judge elected in respect of Croatia, withdrew from sitting in the case (Rule 28 of the Rules of Court). The Government accordingly appointed Isabelle Berro-Lefèvre, the judge elected in respect of Monaco, to sit in her place (Article 26 § 4 of the Convention and Rule 29).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1952 and lived in Split.

8. He was the owner of a flat in Split with a surface area of 66.76 square metres.

9. On 17 October 1955 a certain Ms P.A. was, on the basis of the Decree on Administration of Residential Buildings of 1953 (see paragraph 24 below), awarded the right to live in the flat and moved in together with her mother and her cousin I.T. (born in 1948) whom her parents had entrusted to P.A.'s care in 1951. This right was by the entry into force of the Housing Act of 1959 transformed into the specially protected tenancy (*stanarsko pravo*, see paragraphs 24-30 below about the specially protected tenancy in the former Yugoslavia).

10. P.A. and I.T. lived together in the applicant's flat until P.A. moved out in 1973. I.T. continued to live there with her husband and her son, Ig.T. (born in 1972). I.T.'s husband died in 1998.

11. On 5 November 1996 the Lease of Flats Act entered into force. It abolished the legal concept of the specially protected tenancy and provided that the holders of such tenancies in respect of, *inter alia*, privately owned flats were to become "protected lessees" (*zaštićeni najmoprimci*, see paragraphs 31 and 40 below). Under the Act such lessees are subject to a number of protective measures, such as the duty of landlords to contract a lease of indefinite duration, payment of protected rent (*zaštićena najamnina*), the amount of which is set by the Government and significantly lower than the market rent; and better protection against termination of the lease.

A. Civil proceedings

12. The applicant refused to conclude a lease contract with I.T. stipulating the protected rent pursuant to section 31(1) of the Lease of Flats Act (see 40 below). On 16 May 1997 I.T. brought a civil action against him in the Split Municipal Court (*Općinski sud u Splitu*), relying on section 33(3) of the same Act (see paragraph 43 below), with a view to obtaining a judgment in lieu of such a contract.

13. Shortly afterwards in 1997 the applicant brought a civil action in the same court seeking to obtain a judgment ordering I.T. and her son to vacate the flat in question. He argued that she had not been "a child without parents" and thus could not have been considered a member of P.A.'s household within the meaning of section 9(4) of the 1974 Housing Act or section 12(1) of the 1985 Housing Act (see respectively paragraphs 28 and 29 below). Consequently, she could not have taken over the specially

protected tenancy after P.A. had moved out of the flat in 1973, and thus had not had any title to use it.

14. The two proceedings were subsequently joined.

15. By a judgment of 2 September 2002 the Split Municipal Court found in favour of I.T. and her son in part. It ordered the applicant to conclude with I.T. a lease contract stipulating protected rent in the amount of 102.14 Croatian kunas (HRK) – approximately 14 euros (EUR) at the time – per month within fifteen days; otherwise the judgment would substitute such a contract. Since the existence of a specially protected tenancy was a necessary precondition for acquiring the status of a protected lessee under the Lease of Flats Act (see paragraph 11 above) the court had first to determine, as a preliminary issue, whether I.T. had become the holder of the specially protected tenancy after P.A. had moved out of the flat in 1973. The court held that, unlike the subsequent legislation relied on by the applicant, the legislation in force at the material time, namely the Housing Act of 1962, had not defined who could have been considered a member of the household of a holder of a specially protected tenancy (see paragraph 27 below). Thus, given that I.T. had been in foster care by P.A. and lived with her in the flat in question, she could have been considered as a member of her household and therefore could, after P.A. had moved out of the flat in 1973, taken over the specially protected tenancy from her and become the holder thereof. Consequently, when in November 1996 the Lease of Flats Act entered into force, I.T. had, as the holder of the specially protected tenancy, become a protected lessee by the operation of law and was entitled to conclude a lease contract stipulating protected rent with the applicant (see paragraphs 39-40 below). While the court ruled that I.T.'s son could be listed in the lease contract as a member of her household, it also held that her daughter-in-law and her grandson could not because they had not moved into the flat until after the entry into force of the Lease of Flats Act, when specially protected tenancies could no longer be obtained.

16. On 28 June 2006 the Požega County Court (*Županijski sud u Požegi*) dismissed an appeal by the applicant and upheld the first-instance judgment, which thereby became final.

17. The applicant then lodged a complaint with the Constitutional Court (*Ustavni sud Republike Hrvatske*) alleging violations of his right to equality before the law, his right to a fair hearing and his right of ownership under the Constitution (see paragraph 23 below).

18. On 17 September 2009 the Constitutional Court dismissed the applicant's constitutional complaint and served its decision on his representative on 2 November 2009.

B. The protected rent

19. According to the information submitted by the parties, the monthly protected rent for the applicant's flat changed as follows, in line with the increase in the construction price index (see paragraphs 52 and 85 below):

Period	The amount of the protected rent	
	HRK	EUR (average exchange rate in the relevant period)
1 December 1997 – 31 October 2005	102.14	13.36
1 November 2005 – 8 May 2008	157.62	21.48
9 May 2008 – 4 September 2012	174.48	23.66
5 September 2012 – onwards	180.25	23.76

20. It appears from the documents submitted by the Government that the applicant refused to receive the protected rent for the flat and that I.T. therefore had to deposit it with a court.

21. According to the parties the condominium fee paid into the common reserve fund (see paragraph 67 below) by the owner of the flat – the applicant and later his heir – for maintenance etc., was set at HRK 102.81 on 1 January 1998 and has not been changed since.

22. The Government also submitted information from the tax authorities according to which the applicant had never declared any income from renting out the flat. On the other hand, the applicant's heir did so in his tax returns for 2011 and 2012 where he also asked for a tax deduction on account of costs corresponding to the amount of the condominium fee paid (see paragraphs 67-70 below). The Government did not specify what tax rate was applied.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Constitution

23. The relevant provisions of the Constitution of the Republic of Croatia (*Ustav Republike Hrvatske*, Official Gazette no. 56/90 with subsequent amendments) read as follows:

Article 14(2)

"Everyone shall be equal before the law."

Article 29(1)

"In the determination of his rights and obligations or of any criminal charge against him or her, everyone is entitled to a fair hearing within a reasonable time by an independent and impartial court established by law."

Article 48

"The right of ownership shall be guaranteed.

Ownership entails obligations. Owners and users of property shall contribute to the general welfare."

B. Legislation governing specially protected tenancy

24. The "right to a flat", entitling its holder to permanent and unrestricted use of a flat for living purposes, was introduced into the legal system of the former Yugoslavia in 1953 by the Decree on Administration of Residential Buildings (*Uredba o upravljanju stambenim zgradama*) of 1953. The Housing Act (*Zakon o stambenim odnosima*) of 1959 was the first legislative act that introduced the legal concept of the "specially protected tenancy" (*stanarsko pravo*). Once awarded, it entitled its holder and the members of his or her household to permanent (lifelong) and unrestricted use of a particular flat for living purposes against the payment of a nominal fee covering only maintenance costs and depreciation. The holder of a specially protected tenancy could also sub-let a part of the flat to someone else, participate in the administration of the building in which the flat was located, exchange it for another flat (in agreement with the provider of the flat) and, exceptionally, use part of it for business purposes. In legal theory and judicial practice the specially protected tenancy was described as a right *sui generis*. Such tenancy could be terminated only in judicial proceedings and on limited grounds, the most important one being failure by the holder to use the flat for living for a continuous period of at least six months without justified reason.

25. Until the entry into force of the Housing Act of 1974, specially protected tenancies could be awarded in respect of both socially and privately owned flats. However, in the large majority of cases they were awarded in respect of flats in "social ownership" (*društveno vlasništvo*) – a type of ownership which did not exist in other socialist countries but was particularly highly developed in the former Yugoslavia. According to the official doctrine, property in social ownership had no owner, the role of public authorities in respect of such property being confined to management. With the Housing Act of 1974 it was no longer possible to award specially protected tenancies in respect of flats in private ownership. However, the pre-existing specially protected tenancies in respect of such flats were preserved.

26. The legal relationship between the providers of flats (public authorities which nominally controlled and were allocating socially-owned flats, or owners of privately-owned flats) and holders of specially protected tenancies were regulated by successive Housing Acts of 1959, 1962, 1974 and 1985. Those acts provided, *inter alia*, that when a holder of a specially protected tenancy died or moved out of the flat the tenancy was transferred by the operation of law (*ipso jure*) to the members of his or her household, even though in such cases the housing administration could seek eviction of those using the flat if it considered that none of them satisfied the conditions for obtaining that tenancy. Thus, specially protected tenancies could be passed on, as of right, from generation to generation.

27. The Housing Act of 1962 did not define who could be considered a member of the household of a holder of a specially protected tenancy. It did, however, define, in section 12(1), who could be considered the occupant of a flat:

> "(1) The occupants of a flat within the meaning of this Act are: the holder of the specially protected tenancy, members of his or her household who live together with him or her, and persons who are no longer members of his or her household but still live in the same flat."

28. The Housing Act of 1974 in its section 9(4) defined household members of a holder of a specially protected tenancy as:

"... persons who live together with him or her and form an economic unit, [including] spouses, blood relatives in the direct line and their spouses, stepchildren and adoptees, children without parents taken into foster care, stepfather and stepmother, adoptive parents, brothers and sisters and dependants, a cohabitee ..."

29. The Housing Act of 1985 in its section 12(1) defined household members of a holder of a specially protected tenancy in the following terms:

> "Under this Act members of the household of a holder of a specially protected tenancy are his or her spouse and persons who have lived with him or her in the past two years, including: blood relatives in the direct line and their spouses, brothers and sisters, stepchildren and adoptees, children without parents taken into foster care, stepfather and stepmother, adoptive parents and dependants, a cohabitee ..."

30. The Specially Protected Tenancies (Sale to Occupier) Act of 1991 entitled holders of specially protected tenancies and, with their permission, the members of their household, 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. However, holders of specially protected tenancies in respect of privately-owned flats or socially-owned flats which flats had passed into social ownership by means of confiscation (rather than nationalisation) had no right to purchase the flats in respect of which they held such tenancy. They, together with those holders of specially protected tenancies who had, but did not avail themselves of, the right to purchase the flats, became the so-called protected lessees with the entry into force of the

Lease of Flats Act on 6 November 1996 (see paragraph 11 above and paragraphs 39-40 below).

C. The Lease of Flats Act

1. Relevant provisions

31. The Lease of Flats Act (*Zakon o najmu stanova*, Official Gazette no. 91/1996 of 28 October 1996), which entered into force on 5 November 1996, regulates the legal relationship between landlord and lessee with regard to the lease of flats.

(a) Provisions relating to ordinary lease

32. Section 5 provides that a contract for lease of a flat should specify, *inter alia*, the types of charges payable in connection with living in the flat and the way they should be paid, and contain clauses on the maintenance of the flat.

33. According to section 6 the rent paid for the use of a flat may be either the protected rent or freely negotiated rent (that is, the market rent).

34. Section 7, which provides for the protected rent as one of the most important elements of the status of a protected lessee, reads as follows:

Section 7

"(1) Protected rent is set on the basis of the standards and criteria set forth by the Government of the Republic of Croatia [that is, by the Decree on the standards and criteria for the determination of protected rent].

(2) The standards and criteria referred to in paragraph 1 of this section shall be set depending on the conveniences and living (usable) space of a flat, the maintenance costs of the communal areas and installations of the building [where the flat is located], as well as on the purchasing power [i.e. income] of the lessee's household.

(3) Protected rent cannot be lower than the amount necessary to cover the costs of regular maintenance of the residential building [in which the flat is located], which is determined by special legislation."

35. Section 13 states that the landlord has to maintain the flat he or she rents out in a habitable condition, in accordance with the lease contract.

36. Section 14(3) provides that the lessee has to notify the landlord of any required repairs in the flat and the communal premises of the building in which it is located, the costs of which must be borne by the landlord.

37. Pursuant to section 19 a landlord may terminate a lease in the following cases:

- if the lessee does not pay the rent or charges;
- if the lessee sublets the flat or part of it without permission from the landlord;
- if the lessee or other tenants in the flat disturb other tenants in the building;

- if another person, not named in the lease contract, lives in the flat for longer than thirty days without permission from the landlord, except where that person is the spouse, child or parent of the lessee or of the other legal tenants in the flat, or a dependant of the lessee or a person in respect of whom the lessee is a dependant;
- if the lessee or other legal tenants use the flat for purposes other than as living accommodation.

38. Section 21 reads as follows:

> "Apart from the grounds stipulated in section 19 of this Act, the landlord may terminate a lease of indefinite duration if he or she intends to move into the flat or install his or her children, parents or dependants in it."

(b) Provisions relating to protected lease

39. Transitional provisions (sections 30-49) of the Lease of Flats Act establish a special category of lessees ("protected lessees" – *zaštićeni najmoprimci*), namely, those who were previously holders of specially protected tenancies in respect of privately owned flats or those who did not purchase their flats under the Specially Protected Tenancies (Sale to Occupier) Act. Such lessees are subject to a number of protective measures, such as the obligation of landlords to contract a lease of indefinite duration; payment of protected rent (*zaštićena najamnina*), the amount of which is set by the Government; and a limited list of grounds for termination of the lease. The provisions of the Lease of Flats Act relating to ordinary lease apply to protected lease unless the provisions relating to protected lease provide otherwise.

40. By section 30 of the Act the still existing specially protected tenancies (see paragraph 30 above) were abolished and holders of such tenancies became protected lessees as of its coming into force.

41. Section 31(1) provides that the owner of the flat and the former holder of a specially protected tenancy in respect of the same flat shall enter into a lease contract of indefinite duration where the lessee shall have the right to protected rent. Section 31(2) states that the protected lessee does not have the right to protected rent if he or she runs a business in a part of the flat or owns a habitable house or flat.

42. According to section 33(2) the lessee has to submit a request for the conclusion of a lease contract stipulating protected rent to the landlord within six months from the Act's entry into force or from the day on which the decision determining the right of that person to use the flat becomes final.

43. Section 33(3) states that if the landlord does not enter or refuses to enter into a lease contract stipulating protected rent within three months of the receipt of the lessee's request, the lessee can bring an action in the competent court with a view to obtaining a judgment in lieu of the lease contract.

44. It follows from section 35 that the protected lessee must pay the landlord, in addition to the protected rent, the utilities fees and other charges levied in connection with living in the flat (running costs), if they have so agreed.

45. Section 36 reads as follows:

> "If, owing to amendments to the legislation referred to in section 7 of this Act, the level of the protected rent changes, the lessee is bound to pay that [revised] rent on the basis of the calculation provided by the landlord without any modification of the [lease] contract."

46. Section 37(1) provides that persons who, at the time of the Act's entry into force, had the legal status of a member of the holder of the protected tenant's household, acquired under the provisions of the 1985 Housing Act (see paragraph 29 above), must be entered into the lease contract.

47. Section 38 states as follows:

> "(1) In the event of the death of a protected lessee or when the protected lessee abandons the flat, the rights and duties of the protected lessee stipulated in the lease contract shall pass to [one of] the person[s] indicated in the lease contract, subject to their agreement.
>
> (2) In the event of a dispute, the landlord shall designate the lessee.
>
> (3) The person referred to in paragraph 1 of this section shall [make a] request [to] the landlord to conclude a lease contract [stipulating protected rent] within sixty days from the change of circumstances [referred to in paragraph 1 of this section].
>
> (4) The landlord shall conclude with the person referred to in paragraph 1 of this section a contract for lease of the flat of indefinite duration, stipulating the rights and duties of a protected lessee."

48. The grounds for termination by a landlord of the lease of a flat to a protected lessee are set out in section 40 of the Lease of Flats Act, which reads as follows:

> "(1) Apart from the grounds stipulated in section 19 of this Act, a landlord may terminate the lease of a flat to a protected lessee, on the grounds:
>
> - provided for in section 21(1) of this Act,
>
> - if he or she does not have other accommodation for himself or herself and for his or her family, and is [either] entitled to permanent social assistance on the basis of the special legislation or is over sixty years of age.
>
> (2) [*Invalidated by the Constitutional Court as unconstitutional by a decision of 31 March 1998.*]
>
> (3) In the case referred to in paragraph 1, second sub-paragraph, of this section the local government ... shall provide the protected lessee with another suitable flat [in the use of which he or she shall retain] the rights and obligations of a protected lessee.
>
> (4) The landlord or the local government in the cases referred to in paragraphs 2 and 3 of this section are not bound to provide the protected lessee with another

suitable flat if he or she owns a suitable habitable flat in the territory of the township or municipality where the flat in which he or she lives is located.

(5) ..."

49. By a decision of 31 March 1998 the Constitutional Court invalidated as unconstitutional (see paragraph 57 below), *inter alia*, paragraph 2 of section 40 which provided that in the case referred to in paragraph 1, first sub-paragraph, of that section the landlord could terminate the protected lease only if he or she had provided the protected lessee with another habitable flat under housing conditions that were not less favourable for the lessee. After that decision by the Constitutional Court, the Supreme Court, in decision Rev-486/02-2, Gzz-74/02 of 21 February 2007, specified that a landlord who intends to move into his or her own flat or install his or her children, parents or dependants therein is entitled to terminate the lease contract of a flat to a protected lessee (or to refuse to enter into a lease contract) only if (a) the landlord does not have other accommodation for himself or herself and for his or her family, and is either entitled to permanent social assistance or is over sixty years of age; or (b) the lessee owns a suitable habitable flat in the same municipality or township where the flat in which he or she lives is located.

50. Section 41 defines the notion of a "suitable flat", referred to in paragraphs 3 and 4 of section 40, as a flat located in the same township or municipality, which complies in terms of its size with the "one person one room" principle and which does not have a greater number of rooms than the flat the protected lessee has to move out of.

2. Related subordinate legislation

(a) The Decree on the standards and criteria for the determination of protected rent

51. The Decree on the standards and criteria for the determination of protected rent (*Uredba o uvjetima i mjerilima za utvrđivanje zaštićene najamnine*, Official Gazette nos. 40/97 and 117/05), which entered into force on 16 April 1997, is the subordinate legislation referred to in section 7(1) of the Lease of Flats Act (see paragraph 34 above).

52. Section 3 contains the mathematical formula for calculating protected rent. The formula takes into account: (a) the usable floor area of the flat; (b) the construction price index (as of 1 November 2005 when the Amendments to the Decree entered into force); (c) the number of points given to the flat in its valuation record (which depend on the building materials, the state of the carpentry and plumbing, the state of the water, gas, heating and electric installations and telecommunication outlets, the finishing of the floors and walls, the floor on which the flat is located, the existence of an elevator, etc.); (d) the location coefficient (which depends on the location of the flat and demographic trends); and (e) the usability

coefficient (which depends of the usable floor area of the flat and the number of tenants living in it).

53. Section 9 provides for the possibility of reducing the amount of the protected rent calculated in accordance with the formula contained in section 3 in cases where the average monthly income per member of the household in the previous year was less than half the average monthly income in the Republic of Croatia for the same year.

54. Section 10 states that the amount of the protected rent reduced in accordance with section 9 cannot be lower than a certain minimum amount calculated using the formula provided in that section.

55. According to section 11(1) the monthly amount of the protected rent in respect of a specific flat shall be calculated by the landlord once a year. Section 11(2) provides that the landlord may ask the relevant department of the local authority charged with housing affairs to calculate the amount of the protected rent for the flat he or she is renting out.

(b) The Decision on the determination of the level of freely negotiated rent

56. The Government of Croatia's Decision on the determination of the level of freely negotiated rent (*Odluka o utvrđivanju slobodno ugovorene najamnine*, Official Gazette no. 120/00) of 15 November 2000, sets the level of rent for flats owned by the State. It is to be noted that this rent is not protected rent but "freely negotiated rent" within the meaning of section 6 of the Lease of Flats Act (see paragraph 33 above). Nevertheless, because such flats are generally awarded to socially vulnerable tenants, it is a non-profit or low-profit rent and is thus considerably lower than the market rent. In particular, the Decision provides that the amount of freely negotiated rent to be paid by lessees in State-owned flats shall correspond to two times the amount of the monthly condominium fee paid into the common reserve fund of the building where the flat is located (see paragraph 67 below). It also provides that the amount of freely negotiated rent paid by protected lessees not entitled to protected rent for the reasons set out in section 31(2) of the Lease of Flats Act (see paragraph 41 above) shall be set at HRK 15 per square metre.

3. The Constitutional Court's case-law

57. Following numerous petitions for (abstract) constitutional review (*prijedlog za ocjenu ustavnosti*), by decision no. U-I-762/1996 of 31 March 1998 (Official Gazette 48/98 of 6 April 1998) the Constitutional Court invalidated four provisions of the Lease of Flats Act, including section 40(2), as unconstitutional (see paragraph 49 above). In its decision it also rejected a number of those petitions and thereby refused to review the constitutionality of another thirteen provisions of the same Act, including section 7 (see paragraph 34 above), as well as of the entire Act itself.

58. By decision no. U-I-533/2000 of 24 May 2000 (Official Gazette 56/00 of 6 June 2000) the Constitutional Court rejected a petition for (abstract) constitutional review and thus refused to review the constitutionality of eight provisions of the Lease of Flats Act, including section 7 (see paragraph 34 above), as well as of the entire Act itself.

59. By decision no. U-II-1218/2000 of 22 November 2000 the Constitutional Court rejected a petition for (abstract) constitutional review and thus refused to review the constitutionality of the Decree on the standards and criteria for the determination of protected rent (see paragraphs 51-55 above).

D. The Obligations Act

60. Several provisions of the Obligations Act (*Zakon o obveznim odnosima*, Official Gazette, nos. 35/2005 and 41/2008), which entered into force on 1 January 2006, govern lease contracts.

61. Section 551 states that the provisions of the Obligations Act on lease contracts apply, as subsidiary rules, to leases governed by special legislation.

62. Section 553(1) provides that the lessor has to make the property available to the lessee and maintain it in a condition suitable for the agreed use.

63. Section 554 reads as follows:

Maintenance of the property and public levies

Section 554

"(1) In order to maintain the property in a condition suitable for the agreed use, the lessor is bound to carry out the required repairs in due time and at his own expense, and the lessee is bound to allow the lessor to do so.

(2) The lessor is bound to reimburse any costs the lessee has incurred by carrying out repairs, either because they were urgent or because the lessor, having been informed thereof, did not carry them out in due time.

(3) The costs of minor repairs and the costs of regular use of the property [i.e. running costs] shall be borne by the lessee.

(4) The lessee is bound to notify the lessor of the required repairs without delay; otherwise he or she shall be liable for the resultant damage.

(5) All taxes and public levies in connection with the leased property shall be borne by the lessor."

E. The Property Act

64. Sections 66-99 of the Ownership and Other Rights *In Rem* Act (*Zakon o vlasništvu i drugim stvarnim pravima*, Official Gazette no. 91/96

with subsequent amendments), which entered into force on 1 January 1997 ("the Property Act"), regulates condominium (*vlasništvo posebnih dijelova nekretnine, etažno vlasništvo*). This is a form of (co-)ownership of a multi-unit building where there is separate and distinct ownership of individual units (such as flats or business premises) and co-ownership of communal areas of the building (such as entrances, staircases, hallways, the roof, heating system, elevators, etc.) and of the land under it.

65. Section 84(1) provides that a co-owner in a condominium is bound to maintain, at his or her own expense, the individual unit (for example, a flat) he or she owns individually and has to bear all public levies in connection with that unit.

66. Section 84(3) states that if a lessee of an individual unit (for example, a tenant) is bound to pay for the utilities linked with its use, the owner of that unit shall guarantee to the utility provider that they will be paid.

67. According to section 89(1) and (2) the costs of maintenance of and improvements to a condominium are incumbent upon all co-owners in proportion to their share in the condominium. Co-owners must set up a common reserve fund (*zajednička pričuva*) into which they have to pay a condominium fee (*doprinos za zajedničku pričuvu*).

F. Legislation on personal income tax

68. The 2004 Personal Income Tax Act (*Zakon o porezu na dohodak*, Official Gazette no. 177/04 with subsequent amendments) entered into force on 1 January 2005. Section 8 sets the personal income tax rates at 12%, 25% or 40%, depending on the level of taxable income.

69. Section 27(1) and (2) provide that taxable income from property and pecuniary rights includes, *inter alia*, the difference between receipts (takings) on account of rent and leases and the costs incurred by the taxpayer in connection with those receipts, where only costs up to 30% of the amount received can be deducted.

70. Similar provisions were contained in section 23(1) and (2) of the 2000 Personal Income Tax Act (Official Gazette no. 127/00 with subsequent amendments), which was in force between 1 January 2001 and 31 December 2003, and sections 30(1) and 32(1) of the 1993 Personal Income Tax Act (Official Gazette no. 109/93 with subsequent amendments), which was in force between 1 January 1994 and 31 December 2000. Tax rates, depending on taxable income, were 20% and 35% under the 1993 Personal Income Tax Act, and 15%, 25% and 35% and, as of 1 January 2003, also 45% under the 2000 Personal Income Tax Act.

III. OTHER RELEVANT DOCUMENTS

A. Bills to amend the Lease of Flats Act

1. Draft Amendments of 12 December 2002 to the Lease of Flats Act

71. On 12 December 2002 the Government of Croatia adopted draft amendments to the Lease of Flats Act and presented them to Parliament for first reading. Parliament deliberated on the draft amendments on 29 January 2003 and agreed to them. The bill contained a proposal to amend, *inter alia*, section 7 of the Lease of Flats Act, that is, the provision on protected rent (see paragraph 34 above).

72. The general part of the explanatory report to those Draft Amendments reads as follows:

> "The current level of protected rent is, in principle, not sufficient to cover even the costs of maintenance of the communal areas and installations of a building, which costs are incumbent upon flat owners. Therefore, it is evident that, in principle, the [condominium fee] is higher than the protected rent. It follows that owners even have to pay the difference between the rent obtained and [the condominium fee]. In addition, under the applicable legislation flat owners [who are] natural persons are also liable to pay income tax on the [income derived from] the lease of [their] flats.
>
> Therefore, the lowest [level of] protected rent should be regulated so that ... [it is] linked with the regular maintenance costs of the building. The criterion of purchasing power [i.e. income] should be separated from the level of the rent and linked instead with the social welfare system, which provides for a 'housing allowance' ...
>
> In particular, in developed rental housing systems one of the basic principles applied, even under the system of non-profit or low-profit rents, and [those involving] privileged and protected groups of tenants including socially vulnerable persons, is that the rent must cover the minimum costs of maintenance of the immovable property (of [both] the building and the flat) and that so-called vulnerable groups ... are provided for by the social welfare system."

73. The special part of the explanatory report to section 1 of the Draft Amendments, which amends section 7 of the Lease of Flats Act, reads:

> "... Today's level of protected rent is generally between the lowest monthly amount of 1.53 and around 2 [Croatian] kunas per square metre of flat. It is estimated that the rent is usually set at the lowest amount.
>
> It is also proposed that the protected rent [in any one case] should not be lower than the amount paid by the owner of the flat [i.e. the condominium fee] into the common reserve fund for the maintenance of the communal premises and installations of the building [where the flat is located], increased by 20%. That increase is [proposed] because the owner of a flat [i.e. a landlord] [who is a natural person] is bound by the applicable legislation to declare the contract of lease of the flat, [more specifically], the income from that lease, to the tax authorities. [The proposed increase] would therefore cover the costs incurred by the owner as a result of his obligation to maintain the building (but not the flat) and the tax [levied] on ... [the income from] that lease."

2. The Final Draft Amendments of 3 July 2003 to the Lease of Flats Act

74. On 3 July 2003 the Government of Croatia adopted the final version of the abovementioned draft amendments and presented them to the Croatian Parliament for second reading. The final version also contained a proposal to amend section 7 of the Lease of Flats Act and estimated that at that time around 7,000 privately-owned flats in Croatia were subject to the protected lease scheme. This final version of the draft amendments was placed on Parliament's agenda for the session held between 24 September and 17 October 2003. However, Parliament did not have the opportunity to deliberate or vote on that draft before its dissolution on account of the forthcoming scheduled parliamentary elections.

75. The general part of the explanatory report to the Final Draft Amendments reads as follows:

> "The current level of protected rent is, in principle, not sufficient to cover even the costs of maintenance of a building, which costs are incumbent upon flat owners. The lowest level of protected rent is currently set at 1.53 [Croatian] kunas per square metre of a flat. However, over a period of five years of charging that rent it has been established that the costs related to the maintenance of communal areas and installations in buildings considerably [exceed it]. Consequently, flat owners have to ... pay ... the difference [between the rent obtained and] the amount required for the maintenance of the communal areas and installations of the building [i.e. the condominium fee]. In addition, under the applicable tax legislation ... flat owners with protected lessees living in their flats are also liable to pay income tax on the ... [income derived from] that lease, from which they in fact do not make [any] net profit but only incur additional costs.
>
> It is therefore necessary to regulate the criteria for setting the level of protected rent [so that it covers] the costs of maintenance of the immovable property in question. Since the level of protected rent is very low (for a flat of some 60 square metres the average protected rent is around 100 [Croatian] kunas per month) it is proposed to secure [its payment in cases where] the [impecunious] tenant is unable to pay it through the social welfare system, which, within the current legislative framework, provides for a 'housing allowance' ...."

76. The special part of the explanatory report to the Final Draft Amendments relating to section 1 of the Draft, amending section 7 of the Lease of Flats Act, reads as follows:

> "... Today's level of protected rent is generally between the lowest monthly amount of 1.53 and around 2 [Croatian] kunas per square metre of a flat. It is estimated that rent is usually set at the lowest amount, which in principle does not even cover the costs of the maintenance of the communal areas of the building [in which the flat is located].
>
> Paragraph 3 ... currently provides that protected rent cannot be lower than the amount necessary to cover the costs of regular maintenance of the residential building [i.e. the condominium fee], determined by special legislation. However, since that amount is not [actually] specified by any special legislation, it is proposed that it be

specified in the Decree on the standards and criteria for the determination of protected rent."

3. Draft Amendments of November 2013 to the Lease of Flats Act

77. In November 2013 the relevant Ministry prepared draft amendments to the Lease of Flats Act and on 6 December 2013 opened a public debate on the draft, which lasted until 6 February 2014. This draft also proposes that section 7 of the Lease of Flats Act be amended but estimates that currently no more than 2,600 privately-owned flats in Croatia are subject to the protected lease scheme.

78. Those Draft Amendments contain a proposal to amend section 40 of the Lease of Flats Act (see paragraph 48 above) so that a landlord who intends to move into his or her own flat or install his or her children, parents or dependants therein would be entitled to terminate the lease contract of a flat to a protected lessee without any conditions. In that situation the local government would have to provide the protected lessee with another suitable flat for the use of which he or she would be paying protected rent. As regards protected rent, the Draft Amendments contain a proposal to the effect that its level should be such to cover the costs of maintenance of the building in which the flat is located (see paragraph 67 above) and enable the landlords to derive at least some profit from renting out their flats. The Draft Amendments also envisage gradual increase in the level of protected rent so that it would in ten years of their entry into force reach the level of freely negotiated rent. Lastly, the Draft Amendments provide for State and local government subsidies that would enable protected lessees to buy (another) flat under favourable conditions and thereby meet their housing needs.

79. The general part of the explanatory report to the Draft Amendments, reads as follows:

"The current level of protected rent is, in principle, not sufficient to cover even the costs of maintenance of a building, which are incumbent upon flat owners. The lowest level of protected rent is currently set at 2.7 [Croatian] kunas per square metre of a flat. However, over many years of charging that rent it has been established that the costs related to the maintenance of communal areas and installations in buildings considerably [exceed it]. Consequently, flat owners have to ... pay ... the difference [between the rent obtained and] the amount required for the maintenance of the communal areas and installations of the building [i.e. the condominium fee]. In addition, under the applicable tax legislation ... flat owners with protected lessees living in their flats are also liable to pay income tax on the ... [income derived from] that lease, from which they do not make [any] profit but only incur additional costs.

...

As regards protected rent, it is proposed that the criteria for setting that rent be defined so that it covers the costs of regular maintenance of the immovable property.

The proposed method of calculation would increase the level of protected rent (...) so that it [would not only] cover the costs of regular maintenance of the immovable

property [but that] the flat owners would receive a portion of it as a compensation for renting out the flat. ...

A gradual increase in the [level of protected] rent is also envisaged, so that after ten years it would reach the level of freely negotiated rent.

...

Under the proposed new solution, according to which protected rent would be set so that it covers the costs, flat owners would no longer have to secure additional funds in order to meet their obligations concerning regular maintenance of the communal areas of the building."

80. The special part of the explanatory report to the Draft Amendments relating to section 1 of the Draft, amending of section 7 of the Lease of Flats Act, reads as follows:

"... Today's level of protected rent is generally between the lowest monthly amount of 2.7 and around 3.8 [Croatian] kunas per square metre of a flat. It is estimated that rent is usually set at the lowest amount, which in principle does not even cover the costs of the maintenance of the communal areas of the building [in which the flat is located]."

B. Ombudsman's reports

81. The relevant part of the 2007 Annual Report of the Croatian Ombudsman (*Izvješće o radu pučkog pravobranitelja za 2007. godinu*) reads as follows:

"... the systemic question of controlled rent (protected rent), that is, [whether it strikes] a fair balance between the interests of landlords in covering losses incurred in connection with the maintenance of their flats and the general interest in providing flats to tenants under the same conditions ... they had [enjoyed] as holders of specially protected tenancies was also raised before the Ombudsman.

The level of protected rent, which is set in accordance with the Decree on the standards and criteria for the determination of protected rent, does not enable landlords to comply with their obligation to carry out costly maintenance work. Therefore, [the landlords] consider that the setting of the [level of] protected rent (controlled rent) without any possibility of raising it in view of the value and/or repair costs of a flat [means that] they have been forced to bear an excessive and disproportionate burden.

Although the application of the restrictions is justified and proportionate to the aim pursued in the general interest (the protection of tenants, a socially sensitive issue), [the setting of] the level of [protected] rent below the maintenance costs [has meant that] a fair distribution of the social and financial burden involved in the reform of housing legislation has not been achieved. A protection mechanism, that is, ... a legal avenue for [obtaining] compensation for losses (for example, through subsidies to the owners for maintenance costs [or] subsidies to the tenants for rent) has not been provided.

In the domestic legal system it is necessary to ensure, in a timely manner and [using] appropriate measures, [that there are] mechanisms [in place] for maintaining a fair balance between the interests of landlords (including their right to derive profit from

their property) and the general interest, that is, the protection of tenants, so that an excessive burden and/or housing conditions that are more onerous than those they have enjoyed so far are not imposed on them. Otherwise, in the event that legal protection is sought outside the domestic legal system, the Republic of Croatia may be put in a situation where it has to pay compensation (European Court of Human Rights, Pilot judgment of the Grand Chamber of 19 June 2006, Hutten-Czapska v. Poland).”

82. The relevant part of the 2012 Annual Report of the Croatian Ombudsman (*Izvješće o radu pučkog pravobranitelja za 2012. godinu*) reads as follows:

“Protected rent is paid by former holders of specially protected tenancies of flats in private ownership and those who did not purchase a flat on the basis of the Specially Protected Tenancies (Sale to Occupier) Act. Protected rent does not cover the maintenance costs of the flats borne by the owners (landlords). This balance has been further undermined by the fact that protected rent completely excludes the right of owners to derive profit from their property. It is therefore necessary to provide mechanisms in the domestic legal system for achieving and maintaining a fair balance between the interests of owners, who are forced to bear an excessive burden, and the interests of tenants, who wish to maintain their current housing conditions.”

83. In the same Annual Report the Ombudsman presented, as an example, the case of a landlord who lodged a complaint with the Ombudsman’s Office:

“The complainant [a landlord] from Z. complains about the fact that the protected rent paid by the tenant does not even cover the basic costs he has [to bear] for the maintenance of the flat. The level of [the condominium fee], that is, the funds intended to cover the expected costs of maintenance and improvement of the building [in which the flat is located], has doubled. He further states that he, as a 78 year-old pensioner, [is thus forced to] co-finance the housing of a working-age tenant who is 39 years old.

Measures taken: The complainant was advised to set a [revised] amount of protected rent for the tenant. The Decree on the standards and criteria for the determination of protected rent provides that the monthly amount of protected rent in respect of a specific flat shall be calculated by the landlord once a year (section 11). [The complainant] may also ask the competent authority of the Township of Z. to calculate the amount of the protected rent. Otherwise, that is, if the tenant does not accept the offer to amend the contract, [the complainant] may seek the amendment of the part of the lease contract concerning the level of the protected rent by bringing a civil action [with a view to obtaining a judgment specifying a different amount of rent].

An increase in rent cannot be based on an increase in [the condominium fee], because [that fee] is not included in the formula for the calculation of protected rent. Rather, it is [based on] a change in value of the elements [included] in [that] formula ...: the construction price index (6,000 [Croatian] kunas per square metre of usable surface of the flat), the average net monthly salary in the Republic of Croatia, the number of household members and the average monthly net income per member of the household in the past year.”

84. In her 2013 Annual Report (*Izvješće o radu pučke pravobraniteljice za 2013. godinu*) the Ombudsman criticised the gradual increase in the level

of protected rent envisaged by the Draft Amendments of November 2013 to the Lease of Flats Act (see paragraph 78 above) in the following terms:

> "... the proposed ... ten-year period in which the protected rent should reach the level of freely negotiated rent for the owners means restriction of their right of ownership contrary to the Constitution which guarantees the right of ownership and provides that property may be taken or restricted in the interest of the Republic of Croatia [only] against payment of compensation for its market value."

C. Construction price indexes

85. The construction price (*etalonska cijena građenja*) per square metre in Croatian kunas (HRK) and in euros (EUR), which is one of the factors taken into account in the calculation of protected rent (see paragraph 52 above), has changed as follows:

Period	HRK	EUR
1 June 1995 – 2 January 2002	3,400.00	NA
3 January 2002 – 18 November 2003	5,156.60	700
19 November 2003 – 5 June 2005	5,307.83	700
6 June 2005 – 8 May 2008	5,246.62	700
9 May 2008 – 9 June 2009	5,808.00	792.41
10 June 2009 – 4 September 2012	5,808.00	NA
5 September 2012 onwards	6,000.00	NA

D. Information on the average monthly salary and average monthly pension in Croatia

86. According to reports issued by of the State Bureau of Statistics (*Državni zavod za statistiku*) the average monthly salary in HRK in Croatia between 1997 and 2012 was as follows:

Year	Amount in HRK
1997	2,377
1998	2,681
1999	3,055
2000	3,326
2001	3,541
2002	3,720
2003	3,940
2004	4,173
2005	4,376
2006	4,603

2007	4,841
2008	5,178
2009	5,311
2010	5,343
2011	5,441
2012	5,478

87. According to statistical information provided by the Croatian Pension Fund (*Hrvatski zavod za mirovinsko osiguranje*) the average monthly pension (in HRK) in Croatia between 1999 and 2012 was as follows:

Year	Amount in HRK
1999	1,309.43
2000	1,382.48
2001	1,591.96
2002	1,647.67
2003	1,702.24
2004	1,758.12
2005	1,829.27
2006	1,875.68
2007	1,933.83
2008	2,059.52
2009	2,156.83
2010	2,165.30
2011	2,156.83
2012	2,165.65

THE LAW

I. AS TO WHETHER THE APPLICANT'S HEIR CAN PURSUE THE APPLICATION

88. In his letter to the Court of 6 December 2011 the applicant's representative informed the Court that the applicant had died on 6 February 2011 and that his statutory heir, Mr Boris Filičić, was "ready to replace him in this matter" (see paragraph 5 above). He submitted a decision issued by a notary public of 15 July 2011 declaring Mr Filičić the applicant's sole heir.

89. The Court considers that in so doing the applicant's heir expressed the wish to pursue the application. The Government did not contest this.

90. Having regard to its case-law on the subject (see, for example, *Malhous v. the Czech Republic* (dec.) [GC], no. 33071/96, ECHR 2000-XII), and given that the applicant's heir inherited the flat in question and thereby became its owner, the Court holds that he has standing to continue the present proceedings in the applicant's stead. However, the Court's examination is limited to the question of whether or not the complaints as originally submitted by Mr Statileo, who remains the applicant, disclose a violation of the Convention (see *Malhous*, cited above).

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

91. The applicant complained that he had been unable to regain possession of his flat or charge the market rent for its lease. He 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."

92. The Government contested that argument.

A. Admissibility

93. The Government argued that the applicant had failed to exhaust domestic remedies and that he had not suffered a significant disadvantage.

1. Non-exhaustion of domestic remedies

94. The Government first argued that the applicant had never complained before the domestic authorities about the allegedly inadequate level of the protected rent for which he was entitled to rent out his flat. The protected rent was set pursuant to the Decree on the standards and criteria for the determination of protected rent (see paragraphs 51-55 above). The applicant could have challenged such subordinate legislation by filing a petition for (abstract) constitutional review. However, he had not done so.

95. The applicant's heir replied that the issue of the constitutionality of section 7 of the Lease of Flats Act and the Decree on the standards and criteria for the determination of the protected rent had already been brought to the attention of the Constitutional Court, which had rejected all petitions for their constitutional review as unfounded (see paragraphs 57-59 above).

96. The Court considers it understandable that the applicant did not raise the issue of the inadequate level of the protected rent in the civil proceedings referred to (see paragraphs 12-18 above). He requested the eviction of the tenant from his flat, whereas the tenant sought the conclusion of a lease contract stipulating protected rent. Therefore, only after those proceedings had ended in his disfavour, and the domestic courts had ruled that the tenant was entitled to conclude a lease contract stipulating protected rent with the applicant, could he complain that the protected rent was inadequate. As to the Government's argument that the applicant should have filed a petition for constitutional review to contest the Decree on the standards and criteria for the determination of protected rent, it is sufficient to note that the Constitutional Court had already twice rejected petitions to review section 7 of the Lease of Flats Act (see paragraphs 57-58 above), that is, a provision on which the Decree is based, and once a petition to review the Decree itself (see paragraph 59 above). In these circumstances, leaving aside the question of whether a petition for constitutional review could be considered a remedy to be exhausted for the purposes of Article 35 § 1 of the Convention, the Court finds that the applicant was not in the present case required to file such a petition in order to comply with the requirements of that Article. It follows that the Government's objection as to the exhaustion of domestic remedies must be dismissed.

2. Whether the applicant suffered a significant disadvantage

97. The Government further submitted that the complaint was inadmissible because the applicant had not suffered a significant disadvantage within the meaning of Article 35 § 3 (b) of the Convention. They explained that the imposition of the protected lease in respect of the applicant's flat under the Lease of Flats Act had actually been more advantageous for the applicant than the earlier regime of the specially protected tenancy under the 1985 Housing Act. In particular, under the Lease of Flats Act the applicant, as a landlord, could terminate the lease of the protected lessee under more favourable conditions than those that had applied to the termination of a specially protected tenancy under the 1962, 1974 and 1985 Housing Acts. Likewise, under the Lease of Flats Act the applicant was, as a landlord, entitled to receive the protected rent from the protected lessee, whereas under the 1985 Housing Act he had not been entitled to any rent whatsoever.

98. The applicant's heir replied that in a situation where the applicant would have been able to repossess his flat had the domestic courts ruled in his favour, and where the protected rent was twenty-five times lower than the market rent (see paragraph 114 below), it could hardly be argued that he had not suffered a significant disadvantage.

99. The Court considers that, in order to determine whether the applicant suffered a significant disadvantage, his situation resulting from the alleged

violation cannot be compared to the situation that existed before the alleged breach, as the Government suggested. Rather, it should be compared to the situation the applicant would have been in if he had succeeded with his civil action and evicted the tenant, or one where he would have been able to rent out his flat under market conditions. For the Court it is evident that such a situation would have been significantly more advantageous for him. Thus, it cannot be said that he did not suffer a significant disadvantage as a result of the alleged violation of Article 1 of Protocol No. 1 to the Convention. The Government's objection concerning the alleged lack of a significant disadvantage must therefore be rejected.

3. Conclusion

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

B. Merits

1. The arguments of the parties

(a) The Government

101. The Government argued that the judgment of the Split Municipal Court of 2 September 2002 had not constituted an interference with the applicant's right to the peaceful enjoyment of his possessions, because the judgment in question had been of a declaratory nature only. The domestic courts had found that I.T. had become the holder of the specially protected tenancy of the applicant's flat in 1973, when P.A. had moved out of the flat (see paragraph 15 above). On the basis of that status I.T. had, on 5 November 1996, when the Lease of Flats Act entered into force (see paragraphs 11 and 31 above), become the protected lessee *ex lege* (see paragraph 40 above). Therefore, the Government pointed out, I.T. had acquired the status of the holder of the specially protected tenancy and subsequently the status of a protected lessee before Croatia ratified the Convention on 5 November 1997. Thus the impugned judgment had merely reiterated the already existing restrictions on the applicant's ownership of the flat.

102. The Government further submitted that, if the Court were to find that there had been an interference with the applicant's right to the peaceful enjoyment of his possessions in the present case, that interference had been lawful and necessary to control the use of property in the general interest. It had also been proportional as it had achieved a fair balance between the

general interest of the community and the protection of the applicant's property rights.

103. In particular, I.T. had acquired the status of protected lessee in respect of the applicant's flat on the basis of section 30 of the Lease of Flats Act (see paragraph 40 above), which provision was compatible with the Croatian Constitution (see paragraphs 57-58 above). That provision, as well as the other transitional provisions of that Act introducing the protected lease scheme, was clear, specific and therefore foreseeable for the applicant. Those provisions were also in the general interest of the community, as their aim was to ease the negative consequences of the transition from the Socialist social and economic system to a democratic system and market economy, which had necessarily entailed the abandonment of the Socialist concept of the specially protected tenancy.

104. As regards the proportionality of the interference, the Government first reiterated that laws controlling the use of property were especially common in the field of housing, which in modern societies was a central concern of social and economic policies, in the implementation of which the States had a wide margin of appreciation both with regard to the existence of a problem of public concern warranting measures of control and with regard to their implementation. The Court had itself indicated that it would respect the legislature's judgment as to what was in the general interest unless that judgment was manifestly without reasonable foundation (see *Spadea and Scalabrino v. Italy*, 28 September 1995, § 29, Series A no. 315-B; and *Mellacher and Others v. Austria*, 19 December 1989, § 45, Series A no. 169). The same applied necessarily, if not *a fortiori*, to such radical social changes as those occurring in Central and Eastern Europe during the transition from the Socialist regime to a democratic state (see *Jahn and Others v. Germany* [GC], nos. 46720/99, 72203/01 and 72552/01, § 91, ECHR 2005-VI).

105. Applying these principles to the present case, the Government argued that the transitional provisions of the Lease of Flats Act struck a socially acceptable and fair balance between the competing interests of, on the one hand, the owners (landlords) of flats previously let under specially protected tenancies who wished to regain greater control over their properties, and, on the other hand, the interests of the former holders of specially protected tenancies in respect of privately owned flats who wanted to continue living in their homes. The protected lease scheme, introduced by those provisions, represented a comprehensive solution to that issue.

106. Under that arrangement landlords, who during the Socialist regime had been forced to give up their flats to be used by others, had for a certain period of time remained subject to limitations on their right of ownership such as, notably, the inability to regain direct possession of their flats. Those restrictions were an expression of constitutionally permitted limitations on ownership, which, according to the Constitution, entailed duties and obliged

owners to contribute to the general welfare (see paragraph 23 above). For their part, the tenants were not allowed to use the flats commercially or enjoy the status of protected lessees in cases where they were no longer in need of housing.

107. Moreover, the landlords' position under the transitional provisions of the Lease of Flats Act was more favourable than their position under the previous legislation enacted during the Socialist period (see paragraphs 24 and 25 above). Firstly, it had been uncertain for how long and in respect of which persons landlords, whose flats had been subject to the regime of the specially protected tenancy, would have to tolerate the restrictions on their right of ownership. Under the current system the landlords were certain that their right of ownership was restricted only in respect of those tenants (protected lessees) who had lived in their flat as holders of specially protected tenancies and members of their households on the day of the entry into force of the Lease of Flats Act, and only as long as those tenants continued using the flat. There was no possibility for persons who had become members of the protected lessee's household after that date or for any other persons to acquire the status of the protected lessee.

108. Furthermore, section 40 of the Lease of Flats Act specified that landlords could terminate a protected lease on grounds enumerated in section 19 of the Act (see paragraphs 37 and 48 above). A landlord could also terminate a protected lease if he or she intended to move into the flat (see paragraph 38 and 48 above). As regards the financial benefits which a landlord derived from the protected lease, the Government pointed out that the protected rent had to cover at least the costs of maintenance of the flat and could be higher, whilst under the previous system the rent had only fully covered the costs of maintenance. Therefore, each restriction imposed on landlords had conditions under which it could be removed.

109. All these considerations applied to the applicant, who, in addition to the flat in question, owned another flat which he had himself used for living purposes. On the other hand, neither I.T., who had been living in the flat since 1955, nor the members of her household had had any other accommodation. It was therefore evident that in the present case the application of the relevant provisions of the Lease of Flats Act had not disturbed the fair balance between the general interest of providing housing for I.T. and her family and the applicant's right of ownership. Thus it could not be argued that he had had to bear an excessive individual burden. On the contrary, any attempt to evict I.T. from the applicant's flat would have constituted a violation of her right to respect for her home, guaranteed by Article 8 of the Convention.

110. The Government also emphasised that the applicant could have taken legal action under the 1962 Housing Act (see paragraph 27 above), and sought I.T.'s eviction as early as 1973, when P.A. had moved out of his flat (see paragraph 10 above). However, he had done so only after I.T. had

instituted proceedings to have her status as protected lessee certified by a court judgment, that is, only in reaction to her suit (see paragraphs 12-13 above). That, in the Government's view, meant he had not considered her living in his flat to be a burden.

111. In view of the above, the Government concluded that there had been no violation of Article 1 of Protocol No. 1 to the Convention in the present case.

112. In reply to the Court's request for information on the average monthly market rent for flats in the town of Split since November 1997, the Government furnished information according to which the monthly market rent for renting out flats in the vicinity of that of the applicant ranged, in the period between January 2004 and December 2011, from HRK 1,000 to HRK 5,104.40 depending on the size and the state of repair of the flat and the duration of the lease. The data submitted referred to four flats and read as follows:

Size in square metres	**Monthly rent in HRK**	**Monthly rent in EUR**	**Duration of the lease**
75.79	3,643.00	498.73	1 December 2009 – 31 July 2010
NA (one-room flat	1,451.00	192.55	1 January 2006 – 31 December 2011
68.20	5,104.40	694.71	1 July 2009 – 31 August 2009
60	1,000.00	130.50	from 1 January 2004 onwards

(b) The applicant's heir

113. The applicant's heir submitted that the domestic courts had refused to evict I.T. from the applicant's flat because they had mistakenly viewed her as "a child without parents taken into foster care" within the meaning of section 9(4) of the 1974 Housing Act (see paragraph 28 above) and section 12(1) of the 1985 Housing Act (see paragraph 29 above), even though she had not been parentless when she had moved into the flat with her cousin P.A. in 1955 (see paragraph 9 above). Therefore, contrary to the Government's argument, the interference with the applicant's right to the peaceful enjoyment of his possessions had not followed from the pre-ratification legislation itself but from the domestic courts' erroneous interpretation of that legislation, that is, from the contested judgment.

114. Even though the applicant had formally been the owner of the flat in question, the level of the monthly protected rent, which ranged between 102.14 and 174.48 Croatian kunas (HRK), that is, between some 14 and 24 euros (EUR), would not have been sufficient to cover even the monthly electricity bills and other costs related to the flat where the applicant had

lived, let alone the costs of maintenance of the flat he was bound to cover as a landlord under section 13 of the Lease of Flats Act (see paragraph 35 above). Those costs reduced the already low protected rent the applicant had been entitled to receive, which was in any case twenty-five times lower than the market rent. In support of his argument, the applicant's heir submitted an advertisement from the Internet dated 6 December 2011 offering for rent a furnished flat in Split of a similar size (63 square metres) and 450 metres away from the flat in question, for 2,631 Croatian kunas (HRK) per month, that is, HRK 41.76 per square metre.

115. Lastly, the applicant's heir argued that the protected lease scheme provided for in the Lease of Flats Act had placed on the applicant as a landlord an excessive individual burden as he could not use the flat, rent it to a third person of his own choice and under market conditions, sell it at the market price, or in any way influence the duration of the lease. In particular, the Lease of Flats Act permitted not only I.T. to continue living in the flat and pay the protected rent indefinitely, but also recognised the same right in respect of her son, Ig.T., born in 1972 (see paragraphs 15 and 46-47 above). As a consequence, the applicant had been unable to use his flat during his lifetime. The applicant's heir, born in 1943, would most likely not be able to do so either.

2. The Court's assessment

(a) Whether there was an interference with the applicant's peaceful enjoyment of his "possessions"

116. The Court reiterates that Article 1 of Protocol No. 1 comprises three distinct rules: the first rule, 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, *inter alia*, to control the use of property in accordance with the general interest. The three rules are not, however, distinct in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule (see, among many other authorities, *Hutten-Czapska v. Poland* [GC], no. 35014/97, § 157, ECHR 2006-VIII).

117. In the Court's view, there was indisputably an interference with the applicant's property rights in the present case as the protected lease entails a number of restrictions that prevent landlords from exercising their right to use their property. In particular, landlords are unable to exercise that right in terms of physical possession, as the flat remains indefinitely occupied by

the tenants, and their rights in respect of letting the flat, including the right to receive the market rent for it and to terminate the lease, are substantially affected by a number of statutory limitations (see paragraphs 125-129 below). However, landlords are not deprived of their title, continue to receive rent, and are free to sell their flats, albeit subject to the terms of the lease. Bearing that in mind, and having regard to its case-law on the matter (see, for example, *Hutten-Czapska*, cited above, §§ 160-161; *Edwards v. Malta*, no. 17647/04, § 59, 24 October 2006; and *Srpska pravoslavna Opština na Rijeci v. Croatia* (dec.), no. 38312/02, 18 May 2006), the Court considers that the interference in question constitutes a measure amounting to the control of use of property within the meaning of the second paragraph of Article 1 of Protocol No. 1 to the Convention.

118. The Court must further examine whether the interference was justified, that is, whether it was provided for by law, was in the general interest and was proportional.

(b) Whether the interference was justified

(i) Whether the interference was "provided for by law"

119. In examining whether the interference with the applicant's property rights was justified, the Court is first required to determine whether it can be regarded as lawful for the purposes of Article 1 of Protocol No. 1 to the Convention.

120. In this respect the Court reiterates that its power to review compliance with domestic law is limited (see, among other authorities, *Allan Jacobsson v. Sweden (no. 2)*, 19 February 1998, § 57, *Reports of Judgments and Decisions* 1998-I). It is in the first place for the national authorities, notably the courts, to interpret and apply domestic law, even in those fields where the Convention "incorporates" the rules of that law, since the national authorities are, in the nature of things, particularly qualified to settle the issues arising in this connection (see *Pavlinović and Tonić v. Croatia* (dec.), no. 17124/05 and 17126/05, 3 September 2009). This is particularly true when, as in this instance, the case turns upon difficult questions of interpretation of domestic law (see *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, § 83, ECHR 2007-I). Consequently, it is not the Court's task in the present case to determine whether under the domestic law I.T. satisfied the statutory requirements to be granted the status of a protected lessee in respect of the applicant's flat or to examine whether the domestic courts misinterpreted the relevant domestic law by holding that she did. Rather, the Court's task is to verify whether the restrictions on the applicant's right of ownership of the flat, inherent in a contract of lease stipulating protected rent (see paragraph 117 above), may be regarded as justified under Article 1 of Protocol No. 1 to the Convention (see paragraphs 121-145 below).

121. The Court notes that the legal basis for that interference was the Lease of Flats Act (see paragraphs 31-50 above) and the Decree on the standards and criteria for the determination of protected rent (see paragraphs 51-55 above). Therefore, the interference was provided for by law, as required by Article 1 of Protocol No. 1 to the Convention.

(ii) Whether the interference was "in accordance with the general interest"

122. The Court accepts that the legislation applied in this case pursues an aim in the general interest, namely, the social protection of tenants, and that it thus aims to promote the economic well-being of the country and the protection of the rights of others (see *Srpska pravoslavna Opština na Rijeci*, cited above).

(iii) Proportionality of the interference

123. The Court must examine in particular whether an interference with the peaceful enjoyment of possessions strikes the requisite fair balance between the demands of the general interest of the public and the requirements of the protection of the individual's fundamental rights, and whether it imposes a disproportionate and excessive burden on the applicant (see, *inter alia*, *Jahn*, cited above, § 93).

124. The Court observes that the Lease of Flats Act was enacted with a view to reforming the housing sector in Croatia during the country's transition to the free-market system. Its transitional provisions (see sections 30 to 49 referred to in paragraphs 39-50 above) regulating the "protected lease" imposed, *ex lege*, a landlord-tenant relationship on the owner of a flat in respect of which the tenant previously held a "specially protected tenancy". Those provisions maintained a number of restrictions on the rights of landlords with former holders of specially protected tenancies living in their flats. These restrictions are, for the most part, comparable to those which existed under the housing laws introduced under the Socialist regime (see paragraphs 24 and 26 above).

125. Specifically, under the transitional provisions of the Lease of Flats Act, every specially protected tenancy that had been awarded in respect of a privately owned flat was transformed into a contractual lease of indefinite duration (see paragraphs 11 and 39-40 above). While this can be seen as creating a quasi-lease agreement between a landlord and a lessee, landlords have little or no influence on the choice of the lessee or the essential elements of such an agreement (see, *mutatis mutandis*, *Hutten-Czapsk*a, cited above, § 196; *Ghigo v. Malta*, no. 31122/05, § 74, 26 September 2006; and *Edwards*, cited above, § 73).

126. This applies not only to the duration of the contract but also to the conditions for its termination. Not only is it not open to those landlords to repossess their flats solely on the basis of their wish to make other use of them (see, *mutatis mutandis*, *Edwards*, cited above, § 73) but their right to

terminate the lease on the basis of their own need for accommodation or that of their relatives or because the protected lessee owns alternative accommodation and thus does not need protection against the termination of the lease (see, *mutatis mutandis*, *Amato Gauci v. Malta*, no. 47045/06, § 61, 15 September 2009), is considerably restricted.

127. In particular, under section 40 of the Lease of Flats Act (see paragraphs 48-49 above) a landlord who intends to move into the flat or install his children, parents or dependants in it is entitled to terminate the contract for lease of a flat to a protected lessee only if (1) the landlord does not have other accommodation for himself or herself and for his or her family, and is either entitled to permanent social assistance or is over sixty years of age, or (2) the lessee owns a suitable habitable flat in the same municipality or township.

128. Consequently, the protected lease scheme lacks adequate procedural safeguards aimed at achieving a balance between the interests of protected lessees and those of landlords (see, *mutatis mutandis*, *Amato Gauci*, loc. cit.). Those rules, combined with the statutory right of those who were members of the lessee's household at the time the Lease of Flats Act entered into force to succeed to the status of the protected lessee (see paragraphs 46-47 above) has left little or no possibility for landlords to regain possession of their flats as the likelihood of protected lessees leaving flats voluntarily is generally remote (see, *mutatis mutandis*, *Hutten-Czapska*, cited above, § 196, and *Amato Gauci*, loc. cit.).

129. The other duties of landlords, potentially involving considerable expense on their part, are set out in section 13 of the Lease of Flats Act (see paragraphs 35 above) and section 89(1) and (2) of the Property Act (see paragraph 67 above), which oblige them to maintain the flat in a condition fit for habitation and pay a condominium fee into the common reserve fund set up to cover the costs of regular maintenance of the residential building in which the flat is located. At the same time, their right to derive profit from leasing their flats is subject to statutory restrictions (see, *mutatis mutandis*, *Hutten-Czapska*, cited above, § 197). In particular, pursuant to section 7(1) of the Lease of Flats Act, the landlords have no power to fix the rent freely (see paragraph 34 above) as the protected rent for each flat has been calculated according to the formula provided in the Decree on the standards and criteria for the determination of protected rent (see paragraphs 51-55 above). As acknowledged by the Government of Croatia in its attempts to pass amendments to the Lease of Flats Act (see paragraphs 71-80 above) and confirmed by the Ombudsman's findings (see paragraphs 81-83 above), protected rent calculated according to that formula has often been lower than the condominium fee and thus insufficient to cover even the costs of maintenance of the communal areas and installations of the building in which flats are located, let alone the costs of maintenance of the flats themselves. What is more, protected rent is, in the authorities own

admission, generally set at the lowest amount (see paragraphs 73, 76 and 80 above). The resulting shortfall has therefore been covered by the landlords (see, *mutatis mutandis*, *Hutten-Czapska*, cited above, § 198).

130. The Court is particularly struck by the fact that even though section 7(2) of the Lease of Flats Act provides that the level of the protected rent depends, *inter alia*, on the income of the lessee's household (see paragraph 34 above), that criterion, according to section 9 of the Decree on the standards and criteria for the determination of protected rent, operates only to the benefit of the lessee (see paragraph 53 above) allowing him to reduce the amount of the protected rent even further. This has sometimes resulted in paradoxical situations, such as the one described by the Ombudsman in his 2012 Annual Report (see paragraph 83 above), where elderly and impecunious landlords have in fact been subsidising the housing of working-age salaried lessees. The paradox is even greater taking into account the fact that between 1998 and 2012 the construction price index, as the only element of the formula for calculating the level of the protected rent allowing for upward adjustments, rose by 82% (see paragraph 85 above) whereas the average monthly salary in the same period rose by 134% and the average monthly pension by 65% (see paragraphs 86-87 above).

131. The situation of landlords has been further compounded by their obligation to pay personal income tax on the amount of rent received (from which they can deduct a maximum of 30% on account of costs incurred, see paragraphs 68-70 above). Moreover, the practical exclusion of landlords' rights to freely dispose of their flats which results from restrictive provisions on the termination of leases (see paragraphs 48-49 and 126 above), has caused a depreciation in the market value of their flats (see, *mutatis mutandis*, *Hutten-Czapska*, loc. cit.).

132. Lastly, the Court notes that no statutory time-limit was applied to the protected lease scheme or any of the restrictions on the rights of landlords it entailed. Having regard to the above-mentioned statutory right of the members of a lessee's household to succeed to his or her status as a protected lessee (see paragraphs 46-47 and 128 above), this means that those restrictions could in many cases last for two or sometimes even three generations. As mentioned by the applicant's heir, he, like the applicant himself, would most likely not be able to use his flat in his lifetime (see paragraph 115 above).

133. Turning to the applicant's individual situation, the Court first notes that in 1955 the Communist authorities had awarded the specially protected tenancy of the applicant's flat to P.A. (see paragraph 9 above), which tenancy passed to I.T. when in 1973 P.A. moved out of the flat (see paragraph 10 above). The entry into force of the Lease of Flats Act on 5 November 1996 created a quasi-lease agreement (see paragraphs 11, 40 and 125 above) between the applicant as the landlord and I.T. as the lessee. However, the Convention did not enter into force in respect of Croatia until

a year later, on 5 November 1997. It follows that even though for some fifty-five years the applicant had little or no possibility to repossess his flat or charge the market rent for it, the period susceptible to the Court's scrutiny began only on 6 November 1997, the day after the entry into force of the Convention in respect of Croatia, and ended with the applicant's death on 6 February 2011 (see paragraphs 5 and 88 above). It thus lasted more than thirteen years.

134. The Court further notes that the applicant refused to enter into a lease contract with I.T. stipulating the protected rent (see paragraph 12 above) and that such a contract was eventually imposed on him by the Split Municipal Court's judgment of 2 September 2002 (see paragraph 15 above). Moreover, as the documents submitted by the Government seem to suggest, the applicant refused to receive the protected rent for his flat even after the adoption of that judgment (see paragraph 20 above). However, this fact could not be held against him if the Court were eventually to find that in the aforementioned period of about thirteen years (see the preceding paragraph) the rent he was entitled to receive was so low and inadequate that, together with the other restrictions (see paragraphs 126-127 above) on his ownership, it amounted to a continuing violation of his property rights (see, *mutatis mutandis*, *Hutten-Czapska*, cited above, 209).

135. The Court observes that in those thirteen years the applicant was entitled to receive monthly rent for the flat in question amounting to HRK 102.14 (approximately EUR 13.36) in the period between 5 November 1997 and 31 October 2005, HRK 157.62 (approximately EUR 21.48) between 1 November 2005 and 8 May 2008, and HRK 174.48 (approximately EUR 23.66) between 9 May 2008 and his death on 6 February 2011 (see paragraph 19 above). At the same time, throughout those thirteen years the applicant had to pay a monthly condominium fee of HRK 102.81 (approximately EUR 13.55, see paragraph 21 above).

136. This means that before 1 November 2005 the applicant would not have made any profit from the flat whereas after that date the net monthly income (profit) he could have obtained from the flat was HRK 54.81, that is, EUR 7.93 (in the period between 1 November 2005 and 8 May 2008) and 71.67 HRK, that is, EUR 10.11 (in the period between 9 May 2008 and 6 February 2011).

137. The Court further notes that neither the applicant nor his heir claimed that the applicant had incurred any costs other than the condominium fee in connection with the flat in question, such as, for example, costs related to the maintenance of the flat itself which, under the relevant law, landlords were required to bear (see paragraphs 35 and 129 above). It also considers it only natural that, since he had refused to receive the protected rent for his flat (see paragraphs 20 and 134 above), he never declared any income from renting it to the tax authorities (see paragraph 22 above).

138. However, even assuming that the applicant, besides the condominium fee, did not have to cover any other costs in relation to his flat and did not pay personal income tax on the amount of the rent he was entitled to receive, the Court cannot but note that the sums in issue – ranging between zero and about ten euros per month (see paragraph 136 above) – are extremely low and could hardly be seen as fair compensation for the use of the applicant's flat (see, *mutatis mutandis*, *Ghigo*, cited above, § 74; *Edwards*, cited above, § 75; and *Saliba and Others v. Malta*, no. 20287/10, § 66, 22 November 2011). The Court is not convinced that the interests of the applicant as a landlord, including his entitlement to derive profits from his property (see *Hutten-Czapska*, cited above, § 239), were met by such extremely low returns (see, *mutatis mutandis*, *Ghigo*, loc. cit.; *Edwards*, loc. cit.; and *Saliba*, loc. cit.).

139. What is more, that amount of rent contrasts starkly with the market rent the applicant could have obtained for his flat (see *Amato Gauci*, cited above, § 62). In particular, the Court notes that the applicant's heir submitted evidence to the effect that the protected rent for the flat in question was twenty-five times lower than the market rent (see paragraph 114 above). The Government, for their part, have not contested that and the information they submitted does not appear to suggest otherwise (see paragraph 112 above). In these circumstances it cannot but be concluded that the amount of the protected rent the applicant was entitled to receive was manifestly disproportionate to the market rent (see, *mutatis mutandis*, *Saliba and Others*, cited above, § 65).

140. The Court has stated on many occasions that in spheres such as housing, States necessarily enjoy a wide margin of appreciation not only in regard to the existence of a problem of public concern warranting measures for control of individual property but also to the choice of the measures and their implementation. State control over levels of rent is one such measure and its application may often cause significant reductions in the amount of rent chargeable (see, for example, *Mellacher and Others*, cited above, § 45; *Hutten-Czapska*, cited above, § 223; and *Edwards*, cited above, § 76).

141. The Court also recognises that the Croatian authorities, in the context of the fundamental reform of the country's political, legal and economic system during the transition from the Socialist regime to a democratic state, faced an exceptionally difficult exercise in having to balance the rights of landlords and the protected lessees who had occupied the flats for a long time. It had, on the one hand, to ensure the protection of the property rights of the former and, on the other, to respect the social rights of the latter, who were often vulnerable individuals (see, *mutatis mutandis*, *Hutten-Czapska*, cited above, § 225, and *Radovici and Stănescu v. Romania*, nos. 68479/01, 71351/01 and 71352/01, § 88, ECHR 2006-XIII (extracts)).

142. Nevertheless, that margin, however considerable, is not unlimited and its exercise, even in the context of the most complex reform of the State, cannot entail consequences which are at variance with the Convention standards (see *Hutten-Czapska*, cited above, § 223). The general interest of the community in such situations calls for a fair distribution of the social and financial burden involved, which cannot be placed on one particular social group, however important the interests of the other group or the community as a whole (see *Hutten-Czapska*, cited above, § 225, and *Radovici and Stănescu*, loc. cit.). In particular, the exercise of State discretion in such situations may not lead to results which are manifestly unreasonable, such as amounts of rent allowing only a minimal profit (see *Amato Gauci*, cited above, § 62).

143. Having regard to: (a) primarily, the small amount of protected rent the applicant was entitled to receive and the statutory financial burdens imposed on him as a landlord, which meant he was able to obtain only a minimal profit from renting out his flat (see paragraphs 129 and 135-136 above); (b) the fact that the applicant's flat was occupied for some fifty-five years, of which more than thirteen years passed after the entry into force of the Convention in respect of Croatia, and that he was unable to recover possession of it or rent it out at market conditions in his lifetime (see paragraphs 132-133 above); and in view of (c) the above-mentioned restrictions on landlords' rights in respect of the termination of protected leases and the absence of adequate procedural safeguards for achieving a balance between the competing interests of landlords and protected lessees (see paragraphs 126-128 above), the Court discerns no demands of general interest (see paragraph 122 above) capable of justifying such comprehensive restrictions on the applicant's property rights and finds that in the present case there was not a fair distribution of the social and financial burden resulting from the reform of the housing sector. Rather, a disproportionate and excessive individual burden was placed on the applicant as a landlord, as he was required to bear most of the social and financial costs of providing housing for I.T. and her family (see, *mutatis mutandis*, *Lindheim and Others v. Norway*, nos. 13221/08 and 2139/10, §§ 129 and 134, 12 June 2012; *Hutten-Czapska*, cited above, §§ 224-225; *Edwards*, cited above, § 78, *Ghigo*, cited above, § 78; *Amato Gauci*, cited above, § 63; and *Saliba*, cited above, § 67). It follows that the Croatian authorities in the instant case, notwithstanding their wide margin of appreciation (see paragraphs 141-142 above), failed to strike the requisite fair balance between the general interests of the community and the protection of the applicant's property rights (see, *mutatis mutandis*, *Edwards*, loc. cit.; *Amato Gauci*, loc. cit.; and *Lindheim*, cited above, § 134).

144. This conclusion is not called into question by the Government's argument that the protected lease scheme introduced by the transitional provisions of the Lease of Flats Act restricted the applicant's property rights

to a lesser extent than the earlier regime of the specially protected tenancy (see paragraph 107 above), because from the ratification date onwards all of the State's acts and omissions must conform to the Convention (see *Blečić v. Croatia* [GC], no. 59532/00, § 81, ECHR 2006-III).

145. There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention.

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

146. The applicant also complained that the above-mentioned civil proceedings had been unfair, in particular on account of the way in which the domestic courts had assessed the evidence. He relied on Article 6 § 1, which reads as follows:

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

147. In the light of all the material in its possession, the Court notes that there is no evidence to suggest that the courts lacked impartiality or that the proceedings were otherwise unfair.

148. It follows that this complaint is inadmissible under Article 35 § 3 (a) of the Convention as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 thereof.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

149. Lastly, the applicant invoked Articles 13 and 14 of the Convention, without substantiating those complaints.

150. 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 the present case does not disclose any appearance of a violation of either of the above-mentioned Articles of the Convention.

151. It follows that these complaints are inadmissible under Article 35 § 3 (a) of the Convention as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 thereof.

V. ARTICLES 41 AND 46 OF THE CONVENTION

A. Application of Article 41 of the Convention

152. 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."

1. Damage

(a) The parties' submissions

153. The applicant's heir claimed 11,110 euros (EUR) in respect of pecuniary damage. He explained that this amount corresponded to the monthly market rent of EUR 100 for the applicant's flat in the period between 2 September 2002, that is, the day of the adoption of the Split Municipal Court's judgment (see paragraph 15 above), and 6 December 2011, that is, the day he submitted the claim for just satisfaction. The applicant's heir also claimed EUR 5,000 in respect of non-pecuniary damage.

154. The Government contested these claims.

(b) The Court's assessment

(i) Pecuniary damage

155. The Court considers that the applicant must have suffered pecuniary damage as a result of his inability to charge the adequate rent for his flat in the period between 5 November 1997 (the date of the entry into force of the Convention in respect of Croatia) and his death on 6 February 2011 (see, for example and *mutatis mutandis*, *Edwards v. Malta* (just satisfaction), no. 17647/04, §§ 18-22, 17 July 2008). However, given that when making the claim for just satisfaction the applicant's heir sought compensation for pecuniary damage only for the period following the adoption of the Split Municipal Court's judgment of 2 September 2002, the Court can award him such compensation only for the period between that date and the date of the applicant's death, that is, from 2 September 2002 until 6 February 2011.

156. Having regard to the general interest pursued by the interference with the applicant's property rights in the present case (see paragraph 122 above), the Court further reiterates that when enacting housing legislation the States parties to the Convention are entitled to reduce the rent to a level below the market value, as the legislature can reasonably decide as a matter of policy that charging the market rent is unacceptable from the point of

view of social justice (see *Mellacher and Others*, cited above, § 56). Therefore, such measures designed to achieve greater social justice may call for less than reimbursement of the full market value (see, for example, *Edwards* (just satisfaction), cited above, § 20).

157. Lastly, the Court also finds it appropriate to deduct the amount of the protected rent the applicant was entitled to receive (paragraphs 19 and 135 above) in the period for which the compensation is to be awarded (see paragraph 155 above), that is, for the period between 2 September 2002 and 6 February 2011 (see *Edwards* (just satisfaction), cited above, § 22). That is so because the compensation for pecuniary damage sustained by the applicant in the instant case should cover the difference between the rent the applicant was entitled under the domestic legislation, which the Court found to be inadequate, and the adequate rent. It thus cannot comprise the amount of the protected rent the applicant would in any event be entitled to receive. Otherwise I.T. as the protected lessee who has been living in the applicant's flat would be unduly discharged from her obligation to pay the rent in that period, which in that case would have to unjustifiably be borne by the State.

158. In the light of the foregoing, and in order to determine the adequate rent in the present case, the Court has made an estimate, taking into account in particular the information submitted by the parties on the market rent for comparable flats in the relevant period (which information does not substantially differ, see paragraph 139 above) and the protected rent the applicant was entitled to receive in the same period for renting out his flat (see paragraph 135 above). The Court considers it reasonable to award the applicant's heir EUR 8,200 on account of pecuniary damage.

(ii) Non-pecuniary damage

159. The Court also finds that the applicant must have sustained non-pecuniary damage (see, for example, *Edwards* (just satisfaction), cited above, § 37). Ruling on an equitable basis, the Court awards the applicant's heir (see, *mutatis mutandis*, *Dolneanu v. Moldova*, no. 17211/03, § 58, 13 November 2007) under that head EUR 1,500, plus any tax that may be chargeable on that amount.

2. Costs and expenses

160. The applicant's heir claimed EUR 1,122 for the costs and expenses incurred by the applicant before the domestic courts. He also claimed an unspecified sum for "all procedural costs related to the representation before the Court".

161. The Government contested these claims.

162. As regards the claim for the costs and expenses the applicant incurred before the domestic courts, the Court notes, having regard to its above findings (see paragraphs 120 and 147-148 above), that the costs claimed were not incurred in order to seek, through the domestic legal order,

prevention or redress of the violation found by the Court (see, for example, *Frommelt v. Liechtenstein*, no. 49158/99, §§ 43-44, 24 June 2004). It therefore rejects the claim for costs and expenses under this head.

163. As regards the claim for costs and expenses incurred before it, the Court considers it reasonable to award the sum of EUR 850.

3. Default interest

164. 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.

B. Article 46 of the Convention

165. Whilst in finding a violation of Article 1 of Protocol No. 1 to the Convention in the present instance the Court has primarily focused on the particular circumstances of the applicant's case, it adds by way of a general observation that the problem underlying that violation concerns the legislation itself and that its findings extend beyond the sole interests of the applicant in the instant case (see paragraph 77 above). This is therefore a case where the Court considers that the respondent State should take appropriate legislative and/or other general measures to secure a rather delicate balance between the interests of landlords, including their entitlement to derive profit from their property, and the general interest of the community – including the availability of sufficient accommodation for the less well-off – in accordance with the principles of the protection of property rights under the Convention (see, *Edwards* (just satisfaction), cited above, § 33). In this connection the Court has noted that legislative reform is currently under way (see paragraphs 77-80 above). It is not for the Court to specify how the rights of landlords and lessees (see paragraph 168 above) should be balanced against each other. The Court has already identified the main shortcomings in the current legislation, namely, the inadequate level of protected rent in view of statutory financial burdens imposed on landlords, restrictive conditions for the termination of protected lease, and the absence of any temporal limitation to the protected lease scheme (see paragraphs 124-132 above). Subject to monitoring by the Committee of Ministers the State remains free to choose the means by which it will discharge its obligations under Article 46 arising from the execution of the Court's judgment, (see, *mutatis mutandis*, *Lindheim*, cited above, § 137).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the right to property admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant's heir, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Croatian kunas at the rate applicable at the date of settlement:
      (i) EUR 8,200 (eight thousand two hundred euros) in respect of pecuniary damage;
      (ii) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) EUR 850 (eight hundred and fifty euros), plus any tax that may be chargeable to applicant's heir, 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 amounts 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 heir's claim for just satisfaction.

Done in English, and notified in writing on 10 July 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Khanlar Hajiyev
President