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

FIRST SECTION

CASE OF RADANOVIĆ v. CROATIA

(Application no. 9056/02)

JUDGMENT

STRASBOURG

21 December 2006

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 Radanović v. Croatia,

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

Mr C.L. ROZAKIS, *President*,
Mr L. LOUCAIDES,
Mrs F. TULKENS,
Mrs N. VAJIĆ,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 30 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 9056/02) 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 and Canadian national, Mrs Seka Radanović ("the applicant"), on 14 December 2001.

2. The applicant, who had been granted legal aid, was represented by Mr T. Vukičević, a lawyer practising in Split. The Croatian Government ("the Government") were represented by their Agents, first Mrs L. Lukina-Karajković and subsequently Mrs Š. Stažnik.

3. The applicant alleged that her rights to property and to an effective remedy had been violated. She relied on Article 1 of Protocol No. 1 to the Convention and Article 13 thereof.

4. By a decision of 19 May 2005 the Court declared the application admissible.

5. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1939 in Croatia. She currently lives in Burlington, Canada.

7. The applicant is the owner of a flat in Karlovac where she lived until October 1991, when she left for Germany to join her son. Later on both of them went to Canada.

8. On 27 September 1995 the Temporary Takeover and Managing of Certain Property Act ("the Takeover Act") entered into force. It provided that property belonging to persons who had left Croatia after 17 October 1990 was to be taken into the care of, and controlled, by the State. It also authorised local authorities (takeover commissions) to temporarily accommodate other persons in such property.

9. After realising that her flat had been occupied by third persons, on 24 September 1996 the applicant brought a civil action against a certain family U. in the Karlovac Municipal Court (*Općinski sud u Karlovcu*) seeking their eviction.

10. On 27 September 1996 the Commission for Temporary Takeover and Use of Property of the Municipality of Karlovac (*Komisija za privremeno preuzimanje i korištenje imovine Općine Karlovac* – "the Takeover Commission") issued a decision authorising a certain M.V. to use the applicant's flat temporarily.

11. On 16 November 1996 the Municipal Court invited the applicant to designate the proper respondent. On 31 November 1996 the applicant did so by designating M.V. as the respondent.

12. On 13 June 1997 the respondent submitted to the Municipal Court the decision of the Takeover Commission.

13. In June 1998 Parliament adopted the Programme for the Return of Refugees and Displaced Persons ("the Programme for Return"), regulating the principles for their return and repossession of their property.

14. In August 1998 the Act on Termination of the Takeover Act ("the Termination Act") entered into force. It incorporated and gave legal force to the provisions of the Programme for Return providing that those persons, whose property had during their absence from Croatia been given for accommodation of others, had to apply for repossession of their property with the competent local authorities – the housing commissions.

15. At the hearing held on 15 September 1999 the court enquired with the Housing Commission of the Municipality of Karlovac (*Stambena Komisija Karlovac* – "the Housing Commission") whether it had set aside the Takeover Commission's decision of 27 September 1996. On 22 February 2000 the Housing Commission replied to the court in the negative.

16. On 10 March 2000 the Municipal Court declared the applicant's action inadmissible for lack of jurisdiction. The court found that the Termination Act was *lex specialis* in relation to the Act on Ownership and Other Rights *In Rem* ("the Property Act"). Accordingly, instead of bringing a civil action the applicant should have applied for repossession of her property to the competent housing commission, as provided by the Termination Act.

17. As neither party appealed against the decision, it became final on 31 March 2000. On the same day the applicant applied for repossession of her property to the Housing Commission.

18. On 16 October 2000 the Housing Commission decided to set aside the Takeover Commission's decision by which M.V. had obtained the right to use the applicant's property. It also ordered M.V. to vacate the flat within 15 days. M.V. unsuccessfully appealed against that decision to the Karlovac Municipal Court.

19. On 4 June 2001 the Housing Commission issued a warrant ordering M.V. to vacate the flat within 15 days following the receipt of the warrant and indicated that otherwise it would bring a civil action against him in the competent municipal court.

20. M.V. failed to comply with that warrant. However, the Housing Commission brought no action against him.

21. On 1 October 2002 the Amendments to the Act on Areas of Special State Concern ("the 2002 Amendments") entered into force. They transferred the jurisdiction in the matter from the housing commissions (which were abolished) to the Ministry of Public Works, Reconstruction and Construction (*Ministarstvo za javne radove, obnovu i graditeljstvo* – "the Ministry").

22. On 21 February 2003 the Ministry invited the applicant to contact its competent regional office in order to repossess her flat and/or receive compensation for the prolonged inability to use it, in accordance with the 2002 Amendments.

23. One day later the Ministry issued a decision by which it established that M.V. had a right to housing which was to be satisfied by providing him with construction material, in line with the 2002 Amendments. Pursuant to that decision M.V. was obliged to vacate the flat within 90 days of the final shipment of the construction material. The date on which M.V. received the final shipment is unknown.

24. On 2 April 2003 the applicant contacted the Ministry and requested compensation. She also reiterated her request for repossession.

25. On 23 June 2003 the Ministry made an offer for a settlement according to which the State was to pay compensation to the applicant. However, the applicant declined the offer as unsatisfactory. She submitted that the amount of compensation offered had covered only the period from 1 November 2002 onwards. Moreover, the compensation had amounted to only 314 Croatian kunas (HRK) per month while the amount of the rent for the flat of that size (45 m²) should have been assessed at HRK 2,500.

26. In December 2003 M.V. delivered the flat to the Ministry and the applicant repossessed it on 13 January 2004. She submitted that the flat had been looted and rendered uninhabitable.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The relevant legislation

1. The Takeover Act

27. The Takeover Act (*Zakon o privremenom preuzimanju i upravljanju određenom imovinom*, Official Gazette nos. 73/1995 and 7/1996) in its relevant part provided as follows:

Section 2(2) provided that property belonging to persons who had left Croatia after 17 October 1990, was to be taken into the care of, and controlled, by the State.

Section 5, *inter alia*, authorised the takeover commissions to entrust the property under Section 2 for temporary use by refugees, displaced persons or persons whose property had been destroyed in the war.

Section 7 obliged temporary occupants to use the property with the care of a prudent administrator (*bonus paterfamilias*) and prohibited them from selling it or from creating any charges on such property.

2. The Property Act

28. The Property Act (*Zakon o vlasništvu i drugim stvarnim pravima*, Official Gazette nos. 91/1996, 73/2000 and 114/2001) in its relevant part provides as follows:

Section 161(1) entitles the owner of property to recover it from anyone who possesses it.

Section 163(1) provides that the possessor may refuse to deliver the property to its owner if he is entitled to retain possession of it (i.e. if he has a right of possession).

Section 164(1) provides that a bona fide possessor, who is not actually entitled to possess the property, must deliver it to its owner but is not obliged to compensate the owner for its use, the benefit derived from it, or the damage resulting from its loss or deterioration.

3. The Programme for Return and the Termination Act

29. Section 9 of the Programme for Return (*Program povratka i zbrinjavanja prognanika, izbjeglica i raseljenih osoba*, Official Gazette no. 92/1998) provided as follows:

> "Persons with Croatian [citizenship] documents who are owners of property in Croatia in which other persons are temporarily accommodated may apply to the municipal housing commission and seek repossession of their property. The commission shall inform the owner within five days about the status of his property. Relying on proof of ownership, the commission shall set aside any previous decision allowing the temporary accommodation of other persons and order the temporary occupant to vacate the premises. The commission shall serve a written decision on the owner and on the temporary occupant within seven days. The decision shall contain a

time-limit for eviction and an offer of alternative accommodation for the temporary occupant in a house or flat under state ownership.

...

If a temporary occupant fails to vacate the premises within the fixed time-limit, the commission shall institute eviction proceedings in the competent municipal court within seven days. The court shall apply the provisions concerning summary procedure in civil matters. The court's decision shall be immediately enforceable. An appeal shall not interfere with the enforcement proceedings or the repossession of the property by the owner."

Section 2(3) and 2(4) of the Termination Act (*Zakon o prestanku važenja Zakona o privremenom preuzimanju i upravljanu određenom imovinom*, Official Gazette no. 101/1998) provided that the Programme for Return applied to proceedings concerning the temporary use, management and control of the property of persons who had left Croatia and that such proceedings were to be conducted by housing commissions in the first instance and by municipal courts in the second instance. They were required to apply the Administrative Procedure Act.

4. The Act on Areas of Special State Concern and related subordinate legislation

30. Sections 8, 9 and 17 of the Act on Areas of Special State Concern (*Zakon o područjima od posebne državne skrbi*, Official Gazette nos. 44/1996, 57/1996 (errata), 124/1997, 73/2000, 87/2000 (errata), 69/2001, 94/2001, 88/2002, 26/2003 (consolidated text), 42/2005), as amended by the 2002 Amendments, provide that a temporary occupant has a right to housing.

Section 18(1) provides that a temporary occupant whose right to housing is to be satisfied by providing him with construction material, must vacate the house or flat entrusted for his temporary use within 90 days of the final shipment of such material.

Section 18(2) provides that if a temporary occupant fails to observe the above time-limit, the State Attorney will, within the 15 days following the expiry of the time-limit, institute civil proceedings for his eviction.

Section 18(5) provides that, regardless of whether the State Attorney has brought a civil action for eviction, the owner has an independent right to bring such an action for the protection of his ownership.

Section 27 provides that the Ministry shall pay compensation for the damage sustained by an owner who applied for repossession of his or her property prior to 30 October 2002 but to whom the property was not returned by that date.

31. The Decision on the Level of Compensation Due to Owners for Damage Sustained (*Odluka o visini naknade vlasnicima za pretrpljenu štetu*, Official Gazette no. 68/2003) establishes the amount of that compensation at seven Croatian kunas (HRK) per square metre.

B. The Supreme Court's practice

32. In a series of decisions (for example, in cases nos. Rev-291/1999-2 of 11 September 2002, Rev-1157/02-2 of 21 November 2002 and Rev-1289/00-02 of 6 November 2003), starting with decision no. Rev-574/02-2 of 23 April 2002 the Supreme Court interpreted the relationship between the Property Act and the Termination Act as follows:

> "The jurisdiction to decide on an owner's application for repossession conferred on the administrative authorities under the Termination Act does not exclude ordinary court jurisdiction in such matters under the Property Act. Therefore, a civil action for repossession, based on section 161(1) of the Property Act and brought in a court against a temporary occupant by an owner whose property had been taken over under the Takeover Act, should be decided on its merits rather than declared inadmissible for lack of jurisdiction."

33. In its decisions nos. Rev-967/00-2 of 30 September 2004 and Rev-1444/02-2 of 29 June 2004 the Supreme Court gave further interpretation of the relationship between the Property Act and the Termination Act as well as of the Programme for Return:

> "The temporary occupant's right to use the owner's property does not cease merely for the reason that a housing commission has set aside the decision allowing him or her to do so. This is because the duty to return the property to its owner is conditional upon the duty of the State to provide alternative accommodation for the temporary occupant.
>
> It follows that the temporary occupant is not obliged to compensate the owner for the use of his or her property since, before being provided with alternative accommodation, he or she remains a bona fide possessor."

THE LAW

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

A. The parties' submissions

1. The applicant

34. The applicant complained that she was prevented from using her property for a prolonged period of time, contrary to Article 1 of Protocol No. 1, 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."

35. The applicant submitted that M.V. was neither a refugee nor a displaced person. In her view, the local authorities had tolerated his occupation of her flat with the sole purpose of preventing her return. This was illustrated by the fact that they had issued a decision to justify that occupation immediately after she had instituted civil proceedings for his eviction thereby effectively preventing the otherwise competent court to rule on the merits of her action.

36. She further argued that, by letting her flat to be used by a person who was not entitled to do so under the laws in force, the State had violated her right to property. Moreover, once the decision to give her flat for use to M.V. had been set aside and a warrant had been issued to vacate it, M.V. became an illegal occupant. The failure of the domestic authorities to evict him had been contrary to the law and amounted to a breach of her property rights. In any event, by preventing her to use her flat for a long period of time, and by not providing compensation which would correspond to the market rent for that period, the domestic authorities imposed on her a disproportionate and excessive burden.

2. The Government

37. The Government admitted that there had been an interference with the applicant's right to peaceful enjoyment of her possessions when the local authorities had placed another person in the applicant's flat. However, they repudiated the applicant's contention that, by issuing a decision allowing M.V. to use her flat shortly after she had instituted civil proceedings to evict him, those authorities had acted in bad faith. In the Government's view, it was highly unlikely that the local authorities had been aware of the pending civil proceedings instituted only three days before they had given the impugned decision.

38. The Government further argued that entitling M.V. to use the applicant's flat had been a measure to control the use of property. The resultant interference had been based on law, namely section 5 of the Takeover Act and, later on, the Termination Act and the 2002 Amendments. Moreover, the impugned measure had been in accordance with the general interest as it had pursued a legitimate aim. The aim of these statutes and the ensuing measure had been: (a) to protect from deterioration and devastation the property which had been abandoned by its owners, (b) to enable the persons whose homes had been destroyed in the war to solve temporarily their housing needs, (c) to secure repossession of property of persons who had left Croatia but were subsequently returning, and, at the same time,

(d) to protect those refugees and displaced persons who had been placed in the abandoned houses and flats.

39. As to the proportionality of the measure, the Government firstly observed that, when establishing whether a fair balance between the general interest of the community and the protection of the individual's fundamental rights had been struck, any special circumstances and the wide margin of appreciation afforded to States in assessing what had been in the general interest, were to be taken into consideration. They argued that the measure had been proportional since it had been only of a temporary character, necessary to meet a pressing social need (to provide adequate temporary accommodation for a large number of displaced persons and refugees) and narrowly tailored (the users had been under duty to use the property with the care of a prudent administrator and had been prohibited from selling it or creating any charges on it).

40. Moreover, following the applicant's request for repossession, the State had taken appropriate measures to satisfy this request in accordance with the laws in force and within the framework of the post-war social situation.

41. Consequently, the Government concluded that to grant M.V. temporary use of the applicant's abandoned flat had not represented an immediate excessive individual burden for the applicant. A fair balance had been struck between the applicant's fundamental right to property and the general interest of the community.

B. The Court's assessment

42. In the Court's view, there has indisputably been an interference with the applicant's right to property as her flat was allocated for use to another person and she was unable to use it for a prolonged period of time.

43. The Court further notes that the applicant was not deprived of her title. Therefore, the interference complained of constituted a control of use of property within the meaning of the second paragraph of Article 1 of Protocol No. 1 (see, *mutatis mutandis*, *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 46 and 48, ECHR 1999-V; and *Scollo v. Italy*, judgment of 28 September 1995, Series A no. 315-C, p. 52, § 27).

44. The Court considers that it does not have to decide whether the very fact of giving the applicant's flat for use to a third person was justified under Article 1 of Protocol No.1 to the Convention. Even assuming so, the situation became significantly different once the applicant instituted relevant proceedings for repossession of her flat.

45. In those proceedings the domestic authorities recognised the applicant's right to repossession and issued a warrant to the occupant to vacate the flat. However, under the relevant legislation (see paragraphs 29-30 above) the authorities had to provide the temporary occupant with alternative accommodation. Moreover, according to the case-law of the

Supreme Court, he could not have been evicted before being secured a place to stay (see paragraph 33 above).

46. It would appear that in the present case the domestic authorities were unable to provide alternative accommodation for M.V. before December 2003. They were therefore reluctant and never brought a civil action for his eviction knowing that in the circumstances such an action would be doomed to fail. As a result, M.V. was permitted to remain in the applicant's flat, effectively preventing her from using it, for more than six years.

47. Therefore, the issue to be examined is whether the domestic authorities breached Article 1 of Protocol No. 1 of the Convention by making the applicant's right to repossess her flat contingent on their own duty – which they were unable to fulfil for several years – to provide alternative accommodation for the temporary occupant.

48. Assuming that the interference complained of was lawful and in the general interest, it must be examined whether it struck 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 imposed a disproportionate and excessive burden on the applicant (see, for example, *Immobiliare Saffi v. Italy* [GC], cited above, § 49).

49. The Court recognises that the Croatian authorities faced an exceptionally difficult task in having to balance the rights of owners against those of temporary occupants in the context of the return of refugees and displaced persons, as this involved dealing with socially sensitive issues. Those authorities had, on the one hand, to secure the protection of the property rights of the former and, on the other, to respect the social rights of the latter, both of them often being socially vulnerable individuals. The Court therefore accepts that a wide margin of appreciation should be accorded to the respondent State. However, the exercise of the State's discretion cannot entail consequences which are at variance with Convention standards (see *Broniowski v. Poland* [GC], no. 31443/96, § 182, ECHR 2004-V). In this connection the Court reiterates that a situation as the one in the present case calls for a fair distribution of the social and financial burden involved. This burden cannot be placed on a particular social group or a private individual alone, irrespective of how important the interests of the other group or the community as a whole may be (see, *mutatis mutandis*, *Hutten-Czapska v. Poland* [GC], no. 35014/97, § 225, to be published in ECHR 2006). However, in the instant case the applicant was forced to bear a burden – which should have been borne by the State – of providing the temporary occupant with a place to stay, a weight she eventually had to carry for more than six years.

50. Notwithstanding the State's margin of appreciation, and in the absence of adequate compensation (see paragraph 25 above), the Court considers that the Croatian authorities failed to strike the requisite fair balance between the general interest of the community and the protection of the applicant's right to property. As a result thereof the applicant had to bear

an excessive individual burden; therefore the interference with her right to property cannot be considered proportionate to the legitimate aim pursued.

There has accordingly been a breach of Article 1 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

A. The parties' submissions

1. The applicant

51. The applicant further complained that she had not had an effective remedy for her Convention complaint under Article 1 of Protocol No. 1. She relied on Article 13 of the Convention, which reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

52. The applicant argued that she had not appealed against the Karlovac Municipal Court's decision of 10 March 2000 because at the material time such an appeal would have lacked any prospects of success. In support of her argument she referred to the Municipal Court's reasoning (see paragraph 16 above) and the provisions of the Termination Act which, in her view, had clearly excluded ordinary court jurisdiction in such matters.

53. The applicant further argued that bringing a new civil action after the entry into force of the 2002 Amendments would not have had any prospects of success either. Even though the courts would have examined the merits of such an action, they would have still ruled against her. This was so because a favourable outcome of her civil action would have depended on the availability of alternative accommodation for the temporary occupant and, in particular, after 22 February 2003 (see paragraph 23 above), on the receipt of the final shipment of the construction material. Only when the temporary occupant's housing needs had been satisfied the courts could have ordered his eviction. Once this had occurred in December 2003, to bring a civil action had become obsolete as M.V. had left her flat of his own accord.

2. The Government

54. The Government maintained that there had been no violation of the applicant's right to an effective remedy. They firstly submitted that under the case-law of the Supreme Court the courts had always had jurisdiction to decide on the civil action for repossession brought by an owner against a temporary occupant. Contrary to the applicant's view, the 2002 Amendments had not (re)established but merely confirmed the existence of that jurisdiction and the right of owners to sue for repossession of their

property. In spite of that, the Government conceded that to lodge an appeal against the Karlovac Municipal Court's decision of 10 March 2000 – by which that court declined jurisdiction in the case – would have been futile. The appeal would have ultimately resulted only in a negative decision on the merits instead of a negative procedural decision because at the material time the decision allowing M.V. to use the applicant's flat had not yet been set aside in the administrative proceedings. However, once the Housing Commission had done so on 16 October 2000 (see paragraph 18 above), the situation became completely different and from then on to bring a (second) civil action would have resulted in a decision favourable to the applicant. Accordingly, the Government argued that at the time she introduced her application with the Court the applicant had at her disposal an effective domestic remedy for the alleged violation of her right to property.

B. The Court's assessment

55. The Court observes that the applicant had at her disposal remedies to seek repossession of her flat: a civil action and an application to the local (administrative) authorities. She availed herself of these remedies. However, Article 13 requires a remedy to be "effective", and the question arises whether this was the case in the specific circumstances having regard to the fact that it took more than six years for the applicant to repossess her flat. The gist of the applicant's complaint under that Article thus concerns the ineffectiveness rather than the lack of the available remedies.

56. The Court therefore has to determine whether the remedies to which the applicant had recourse, or which were otherwise available, were "effective" in the sense of either preventing the alleged violation of her right to property or its continuation, or of providing adequate redress for any violation that had already occurred (see, *mutatis mutandis*, *Kudła v. Poland* [GC], no. 30210/96, § 158, ECHR 2000-XI).

57. The Court notes that, initially, the domestic authorities recognised the applicant's right to repossession and issued a warrant to the temporary occupant to vacate her flat. However, as already noted above (see paragraph 45), prior to his eviction the authorities had to provide him with alternative accommodation. As they were unable to do so before December 2003, for the applicant to bring another civil action for his eviction, as suggested by the Government, would have had no prospects of success. Given that the remedies to which the applicant previously resorted proved equally ineffective, the Court concludes that she had no effective remedy for the protection of her Convention right to property.

Accordingly, there has been a breach of Article 13.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

58. Article 41 of the Convention provides:

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

A. Pecuniary damage

1. The parties' submissions

59. The applicant claimed 43,363 euros (EUR) in respect of pecuniary damage, of which EUR 33,363 was for the loss of rent, and EUR 10,000 for the value of her property left in the flat, which had been lost. She submitted that the amount of the lost rent was calculated according to the monthly market rent, which amounted to approximately EUR 5 per square metre. In support of her claim, the applicant submitted an advertisement from a local newspaper of 29 May 2006 offering for rent a furnished flat in Karlovac of the same size (45 m²) for 1,200 Croatian kunas (HRK) per month.

60. The Government contested these claims. They submitted information collected by the fiscal authorities according to which the average monthly rent for the flats in Karlovac in the period between 1997 and 2004 ranged between HRK 3.13 and 8.57 per square metre. That being so, the Government reiterated that, in June 2003, the applicant had been offered compensation amounting to HRK 7 per square metre but she had refused it (see paragraph 25 above).

61. The applicant considered derisory the amounts the Government alleged to have corresponded to the market rent in the relevant period. She explained that those amounts represented, in fact, the lowest amounts of rent tolerated by the fiscal authorities for the purposes of taxation, whereas the average rent had in reality been substantially higher. The Government, for their part, agreed that the advertisement submitted by the applicant could serve as an indicator of the average rent for flats in Karlovac in the year 2006. However, in their view, it could by no means indicate the average rent in the period for which the applicant was seeking compensation, that is, the period before 13 January 2004.

2. The Court's assessment

62. The Court considers that the applicant must have suffered pecuniary damage as a result of her lack of control over her flat from 5 November 1997 (being the date of the entry into force of the Convention in respect of Croatia) until 13 January 2004 (see, *mutatis mutandis*, *Prodan v. Moldova*, no. 49806/99, § 71, ECHR 2004-III (extracts)).

63. As regards the loss of rent, the Court firstly notes that the applicant already had accommodation and therefore it is reasonable to assume that she would have attempted to let the flat (see *Prodan v. Moldova*, cited above, § 72; and *Popov v. Moldova (no. 1)* (just satisfaction), no. 74153/01, § 11, 17 January 2006).

64. Having examined the parties' submissions, the Court will take the amount set forth in the newspaper advertisement submitted by the applicant as a reference point for assessing the loss suffered.

65. In making its assessment, the Court takes into account the fact that the applicant would inevitably have experienced certain delays in finding suitable tenants and would have incurred certain maintenance expenses in connection with the flat. She would have also been subjected to taxation (see *Prodan v. Moldova*, cited above, § 74; and *Popov v. Moldova (no. 1)* (just satisfaction), cited above, § 13). The Court also takes note of the Government's argument that the applicant refused to accept compensation that would have amounted to some EUR 615.

66. Having regard to the foregoing, and deciding on an equitable basis, the Court awards the applicant EUR 6,000 on account of the loss of rent, plus any tax that may be chargeable on that amount.

67. As regards the loss of the applicant's personal belongings in the flat, the Court does not discern any causal link between the violation found and the pecuniary damage alleged. It therefore rejects this claim.

B. Non-pecuniary damage

68. The applicant claimed EUR 4,000 in respect of non-pecuniary damage.

69. The Government contested the claim.

70. The Court finds that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards her EUR 2,500 under that head, plus any tax that may be chargeable on that amount.

C. Costs and expenses

71. The applicant also claimed EUR 100 for the costs and expenses incurred before the domestic courts.

72. The Government contested the claim.

73. According to the Court's case-law, an applicant is entitled to reimbursement of his or her costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers that the sum claimed for costs and expenses in the domestic proceedings should be awarded in full, plus any tax that may be chargeable on that amount.

D. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

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

2. *Holds* that there has been a violation of Article 13 of the Convention;

3. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 6,000 (six thousand euros) in respect of pecuniary damage;

(ii) EUR 2,500 (two thousand five hundred euros) in respect of non-pecuniary damage;

(iii) EUR 100 (one hundred euros) in respect of costs and expenses;

(iv) any tax that may be chargeable on the above amounts;

(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 claim for just satisfaction.

Done in English, and notified in writing on 21 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President