



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

FIFTH SECTION

**CASE OF IRINA SMIRNOVA v. UKRAINE**

*(Application no. 1870/05)*

JUDGMENT

STRASBOURG

13 October 2016

**FINAL**

**06/03/2017**

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



**In the case of Irina Smirnova v. Ukraine,**

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

Angelika Nußberger, *President*,

Ganna Yudkivska,

Khanlar Hajiyeu,

André Potocki,

Faris Vehabović,

Yonko Grozev,

Carlo Ranzoni, *judges*,

and Milan Blaško, *Deputy Section Registrar*,

Having deliberated in private on 20 September 2016,

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

**PROCEDURE**

1. The case originated in an application (no. 1870/05) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Ukrainian national, Mrs Irina Trofimovna Smirnova (“the applicant”), on 28 December 2004.

2. The applicant, who had been granted legal aid, was represented by Ms N. Kusner and Mr O. Tarakhkalo, lawyers practising in Donetsk and Kyiv respectively. The Ukrainian Government (“the Government”) were represented by their Agents, most recently Mr I. Lishchyna.

3. The applicant alleged, in particular, that the State authorities had failed to protect her physical and psychological integrity, home and private life from serious intrusions by private persons, who co-owned the flat in which she resided, and their guests and tenants.

4. On 14 December 2011 the President of the Fifth Section decided to give notice of the application to the Government and to invite them to comment on whether there had been a breach of Article 8 of the Convention in the applicant’s case.

5. On 19 September 2013 the President of the Fifth Section decided to request that the parties also comment on whether there had been a breach of Article 3 of the Convention in the applicant’s case.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1940 and lives in Donetsk.

#### **A. History of the applicant's conflict with the co-owners of her flat**

7. In the end of November 2001 the applicant was visited by two unfamiliar men, V.S. and A.N., who offered to buy half of the flat she lived in for 700 United States dollars (USD). It was a one-bedroom flat, measuring 43.3 square meters, recently privatised and acquired in equal shares by the applicant and her adult son, Y. The applicant refused to sell her half of the flat. According to her, the price offered was extraordinarily below the market value. In any event, she had no reason to sell the flat, which had been her long-established home for several decades. In response, V.S. and A.N. warned the applicant that she would regret her decision, because Y., (who was married and lived elsewhere), had offered the other half of the flat as a gift to V.S. If the applicant refused to sell her half for the price, which was offered to her, or to exchange it for a smaller flat on the outskirts of the city, V.S. would move into the flat and create intolerable living conditions for her.

8. Subsequently the applicant learned that on 18 December 2001 Y. had signed a notarised gift deed in which he transferred his title to half of the flat (which was not as divided into allocated parts of the whole) to V.S.

9. From November 2002 A.N., V.S. and their acquaintances started regularly visiting the applicant's flat, demanding that she sell. According to the applicant, on numerous occasions they broke the locks, insulted and harassed her and caused damage to her property. Subsequently a part and then the entire of V.S.'s share in the flat was formally acquired by A.N. as a gift, whose value amounted to 5,602 Ukrainian hryvnias (UAH) according to the gift certificates. However, irrespective of this transfer, A.N. and V.S. continued to act in concordance in demanding the applicant move out and sell her share.

10. For instance, on 23 November 2002 A.N. and V.S. broke the locks on the entrance door when the applicant was away, entered the flat and, upon the applicant's arrival, reiterated their demands that she sell her share. As the applicant protested against their presence in the flat and their overall conduct, a conflict emerged, in the course of which A.N. hit the applicant in the chest inflicting a bruise and causing soft tissue swelling.

11. On 26 November 2002 A.N., V.S. and several strangers broke into the applicant's flat again. As they were irritated by the barking of the applicant's dog, V.S. started kicking her and chased her out. Subsequently the applicant found her dog's dead body in a garbage container.

12. Also on an unspecified date in November 2002 V.S. arrived in the flat after 11 p.m. (when the applicant was already asleep) and opened the balcony door, holding it open for some four hours notwithstanding the freezing temperature outside. In response to the applicant's subsequent reprimands, he explained that he wished for her to catch a cold as she had been disagreeable.

13. On 15 December 2002, when the applicant's daughter was visiting the applicant, V.S. arrived in the flat again. A conflict emerged, in the course of which V.S. hit the applicant on the head and stomach, inflicting concussion and blunt trauma of the abdominal wall. He also hit the applicant's daughter on the head and other parts of the body, inflicting cerebral concussion and bruising of legs and arms. As a result of the conflict, the applicant and her daughter had to seek medical assistance for their injuries and the applicant received inpatient hospital treatment.

14. Subsequently V.S. and A.N. started installing in the flat from two to six strangers without the applicant's consent. These tenants, mostly young males, behaved in a discourteous way. In particular, they organised loud parties; frivolously used, damaged and stole the applicant's belongings; created insanitary conditions; carelessly used electricity, gas and appliances, frequently left the entrance door open, and ignored requests to contribute towards the maintenance charges on the flat.

15. On numerous occasions the applicant attempted to drive the tenants away or to call them to order. Her efforts resulted in conflicts, in the course of which she was harassed and intimidated. Her attempts to replace the locks on the entrance doors to prevent unauthorised entry into the flat resulted in them being broken and in the tenants, who frequently changed, moving in again, in spite of her discontent. As she was unable to withstand such living conditions and was afraid for her life and limb, the applicant effectively moved out, contending herself with odd living arrangements. However, she paid short visits to the flat regularly, to supervise the situation.

16. In the beginning of June 2003 V.S. drove his car onto the footpath, where the applicant was standing waiting for a bus, scaring and nearly hitting her.

17. On 11 July 2003 at about 9.20 a.m. V.S. again arrived in the flat, when the applicant was in it, and demanded that she surrender her share. A conflict emerged, in the course of which V.S. punched the applicant in the stomach, causing her physical pain.

18. On three further occasions (30 July 2004, 5 August and 1 December 2005) the applicant was severely beaten by V.S., twice accompanied by his acquaintance A.L. The applicant suffered physical pain and bruising. On 30 July 2005, in addition to that, she also sustained a second concussion, which necessitated inpatient treatment.

19. On various dates the applicant learned that A.N. and V.S. had also acquired ownership of shares in numerous other flats in Donetsk and that they had behaved similarly with the co-owners of these flats, inducing them to sell their shares on unfavourable terms.

**B. The applicant's action for rescission of the gift deed (first set of civil proceedings)**

20. On 16 October 2003 the Voroshylivsky district prosecutor instituted civil proceedings on the applicant's behalf, seeking rescission of the gift deed between Y. and V.S. and the eviction of the latter on the grounds that the gift deed had been executed without the applicant's consent.

21. On 12 November 2003 the Voroshylivsky District Court of Donetsk (hereafter "the Voroshylivsky Court") allowed this claim, having found, in particular, that Article 113 of the Civil Code of Ukraine of 1963 did not authorise the transfer of title to a part of shared property, which had not been divided into allocated parts and that it also obliged co-owners of a shared property to seek the consent of their counterparts before carrying out transactions in it.

22. On 5 February 2004 the Donetsk Regional Court of Appeal (hereinafter "the Regional Court") quashed this judgment following an appeal by the applicants' opponent and dismissed the prosecutor's claim, having found that, unlike in the case of selling part of a shared property, giving it as a gift to a third party did not require the co-owners' consent.

23. On 10 August 2004 the Supreme Court of Ukraine dismissed the applicant's and the prosecutor's requests for leave to appeal in cassation against the Regional Court's judgment. The judgment became final.

**C. The applicant's action with a view to dispossessing V.S. and A.N. and rescinding their right of occupancy of the flat (second set of civil proceedings)**

24. On 5 October 2004 the applicant instituted civil proceedings seeking the dispossession of V.S. (joined by A.N., when he acquired part of V.S.'s share and replaced by him, when he acquired the entire share), of his share in the flat, regard being had to his unlawful conduct towards her, the impossibility of joint use of the flat, and his refusal to pay his share of the maintenance costs. She further sought a judicial rescission of their right to occupy the flat and compensation for the costs she had borne on the flat with their shares. The defendants lodged a counterclaim, alleging, in particular, that the applicant had been interfering with their personal life and belongings, provoking conflicts, harassing them and creating intolerable living conditions, which made it impossible for them to fulfil their desire to

settle in the flat. They sought damages from the applicant for this conduct and demanded that the flat be divided into allocated parts.

25. On 21 June 2005 the District Court allowed the applicant's claim in part and dismissed her opponents' counterclaim. In particular, referring to Article 365 of the new Civil Code of Ukraine of 2003, it ordered the dispossession of A.N. (by then the owner of half the flat) of his share against payment by the applicant of compensation in the amount of UAH 5,602. The court noted, in particular, that there was extensive evidence that the defendants had allowed numerous strangers to live in the flat; that the applicant had been harassed; and that the flat's appliances and the applicant's belongings had been misused and damaged. It further concluded that, regard being had to the flat's size and layout, it was not possible for the co-owners to use it jointly in a harmonious manner or to have it reasonably divided into two independent halves for each of them to use separately. At the same time, A.N.'s dispossession in return for fair compensation would not put him at a substantial disadvantage, since he had another registered residence and predominantly used the disputed flat for subletting to other persons. The court next found that, since A.N. had received the flat as a gift, fair compensation would be the payment of the indicative price (UAH 5,602) declared by the parties as that share's value in the latest gift deeds. Finally, the court found that A.N. and V.S. had no longer any right to occupy the flat and ordered partial reimbursement of the maintenance costs incurred by the applicant on the flat.

26. On 20 October 2005 the Regional Court, having reviewed the case on appeal by the applicant's opponents, upheld the judgment with respect to the reimbursement of the costs borne on the flat by the applicant and the revocation of V.S.'s right to occupy it, as he no longer owned any share in the flat. It then quashed the ruling to dispossess A.N., having noted that, according to the expert assessment, the market value of the disputed flat had been appraised at UAH 147,756, which meant that value of half the flat had been UAH 73,878. The court further stated that the applicant's claim for dispossession of A.N. and revocation of his right of occupancy had not been based on any legal provision. The relevant part of the judgment read as follows:

“Neither the provisions of the Housing Code of Ukraine nor those of the Civil Code of Ukraine of 2003, which the applicant cites as the basis for her claims, nor the Property Law of Ukraine, envisage dispossession of the owner of his or her property and his or her eviction from a flat owned by him or her on the grounds cited by the applicant.”

27. The applicant appealed in cassation. She noted, in particular, that A.N. and V.S. had acquired shares in a number of Donetsk flats and had deliberately created intolerable living conditions for their co-owners in order to obtain the flats in their entirety on terms grossly unfavourable to the other co-owners. She further alleged that, having no other residence and

being a victim of constant harassment, she had abandoned the flat and had been requesting refuge from various acquaintances.

28. On 2 December 2005 the district prosecutor also lodged a cassation appeal on the applicant's behalf, in which he corroborated her submissions that the defendants had been harassing her, had been using the flat in bad faith and had forced the applicant, a senior lady, to leave the dwelling she had occupied for many years. He also alleged that the sum proposed by the applicant in compensation for the defendants' share in the flat had been fair, as it had been equal to the flat's value indicated in the gift deeds on the basis of which A.N. had received the disputed share.

29. On 11 January 2006 the Supreme Court of Ukraine rejected the applicant's request for leave to appeal.

30. On 22 January 2006 it likewise rejected the prosecutor's request for leave to appeal and the Regional Court's judgment became final.

#### **D. The applicant's complaints to the law-enforcement authorities and criminal proceedings against A.N., V.S. and A.L.**

31. On numerous occasions between 2002 and 2007 the applicant complained to the Voroshylivsky district police in Donetsk ("the district police") about various instances of verbal and physical harassment, damage to and taking of her property and attempts by V.S. and A.N. to extort her share in the flat.

32. On various dates police officers arrived in the applicant's flat in response to her calls for help. They examined the situation, questioned the applicant and her opponents, and subsequently refused to institute criminal proceedings (in particular, 22 January, 7 February and 24 December 2002; 22 and 24 January, 22 February, 5 and 22 March, 15 July, 30 August, 18 September, 12, 16 and 24 October, 4, 15 and 19 November and 5 December 2003; 1 June, 3 and 9 August and 15 November 2004, 20 January, 23 July, 6 August, 19 November, 13 and 28 December 2005; and 4 and 31 March and 16 and 27 July 2006). In their refusals, the police noted that the prosecution of A.N., V.S. and their acquaintances was unwarranted since the relevant facts disclosed the existence of a chronic domestic conflict between lawful occupants of a flat, who attempted to engage the police in resolving their private disagreements. The hostilities took place inside the household and did not breach the public peace. Both parties had accused each other of provoking conflict and it was not evident, which party had in fact assaulted the other and which had acted out of self-defence. In any event, during these conflicts the applicant had sustained no serious damage to her health and had not presented any evidence that her belongings had in fact been taken or damaged by the accused individuals. It was not possible to exclude that she had falsified the disappearance of her belongings in order to compromise the unwanted tenants. The police further



recommended that the applicant resolve the dispute concerning the use of the flat in civil proceedings and assured her that “pre-emptive conversations” had been had with the purported offenders to foster respectful conduct on their part. On several occasions the police had issued official warnings to them, advising them of the impermissibility of antisocial behaviour.

33. On 30 January 2003 the prosecutor’s office quashed a decision not to institute criminal proceedings in connection with the injuries caused to the applicant on 15 December 2002. On several occasions the applicant enquired about the status of these proceedings and received no reply. In 2006 the applicant was informed that the investigation had been suspended.

34. On 19 October 2005 the head of the district police instructed his officers to place the applicant’s flat on the police register for frequent visits with a view to preventing any offences and infringements of applicable law. He noted, in particular, that the investigations had confirmed the applicant’s allegations concerning A.N.’s and V.S.’s disruptive conduct. In particular, it had been established that they had been allowing numerous tenants to live in the co-owned flat, who had brought it into a decrepit and insanitary state. The persons who had been occupying the flat had also taken the applicant’s personal belongings without her authorisation and had used her furniture, equipment and appliances in a careless manner, as a result of which these objects were deteriorating. Moreover, these persons had interfered with the applicant’s ability to access the flat by changing the locks and thus effectively precluding her from living there. He also acknowledged that numerous pre-emptive conversations and warnings given by the police had not brought about any improvements.

35. On several other occasions (in particular, 28 February 2006, 4 September 2006, 19 February 2007 and 6 March 2007) the Ministry of the Interior in Donetsk acknowledged, in response to the applicant’s further complaints, that her allegations concerning A.N.’s and his associates’ interference with her home had some basis. They further assured the applicant that her address had been placed on the police register for frequent visits.

36. On 18 July 2006 the applicant lodged a private criminal complaint against V.S., A.N. and A.L. with the Voroshylivsky Court. Relying on Articles 125 and 126 of the Criminal Code of Ukraine, she alleged that the defendants had systematically beaten and verbally harassed her. In this respect the applicant referred to the incidents of 23 November and 15 December 2002, 30 July 2004 and 5 August 2005 (see paragraphs 10, 13 and 18 above). She also submitted that, in her view, these incidents had to be approached not as isolated instances of ill-treatment, but as episodes of systematic and premeditated criminal conduct by an organised criminal association functioning with a view to extorting flats from Donetsk residents. She submitted that the same individuals had engaged in similar

conduct *vis-à-vis* a number of other co-owners of properties in the city. Accordingly, she requested the District Court's assistance in transmitting her complaints to the public law-enforcement authorities with a view to instituting criminal proceedings concerning extortion and coercion.

37. On various dates five other residents of Donetsk joined the proceedings, alleging that the same defendants had acquired shares in their flats and had been pressurising and terrorising them with a view to extorting the remaining shares.

38. On 19 December 2006 Judge M. of the Voroshylivsky Court decided that the applicant's and other complainants' allegations disclosed an appearance that serious crimes, warranting institution of public criminal proceedings, had been committed. Accordingly, the judge instituted criminal proceedings on suspicion of fraud, extortion, coercion, circumvention of the law and several other crimes, and transferred the case to the Donetsk regional prosecutor for investigation.

39. On 24 January 2007 the prosecutor's office appealed against this decision, alleging that applicable law did not authorise judges to institute public criminal proceedings in the above circumstances.

40. On 27 March 2007 the Regional Court upheld the prosecutor's office's appeal and returned the case to the Voroshylivsky Court to be examined by another judge with respect to the complaints which could be addressed in private prosecution proceedings.

41. Subsequently (23 August 2007) Judge P. of the Voroshylivsky Court returned the applicant's and other complainants' submissions without examination. She found that the injured parties had failed to comply with the rules on territorial jurisdiction and with other unspecified procedural requirements.

42. On 26 July 2007 the regional police instituted criminal proceedings in respect of a complaint about extortion lodged by a certain A.C., who had allegedly been forced to abandon her flat on account of the intolerable living conditions created by the co-owners of her flat.

43. On 15 August 2007 the police joined the applicant's complaints concerning extortion to the aforementioned criminal proceedings.

44. On the same date A.N., V.S. and A.L. were arrested and placed in custody.

45. On various further dates complaints by eleven other individuals relating to the same persons' misconduct were joined to the proceedings.

46. On 29 December 2007 deputy head of the regional prosecutor's office signed the bill of indictment in respect of A.N., V.S. and A.L. charging them, in particular, under Article 189 § 4 of the Criminal Code, with extorting property in an organised group and transferring the case to the Kyivskiy District Court of Donetsk (hereafter "the Kyivskiy Court") for trial.

47. On various dates in 2008 the defendants were released from custody pending trial.

48. On 24 May 2011 the Kyivskiy Court acquitted all the defendants of the charges under Article 189 of the Criminal Code. It noted, in particular, as follows:

“... The court comes to a conclusion that the basis of the present criminal proceedings is the existence of a private-law dispute between the defendants and the injured parties concerning the use of shared property, which the injured parties demand to resolve by way of criminal proceedings in view of their extremely antagonistic relationship with the defendants.”

49. On 27 February 2012 the Regional Court quashed this verdict on appeal by the prosecution and the injured parties and remitted the case for retrial.

50. On 17 April 2012 the defendants were rearrested and placed in custody.

51. On 12 October 2012 the Kyivskiy Court found that all the defendants were guilty of extortion under Article 189 § 4 and sentenced them to eleven, ten and eight years' imprisonment respectively. It also ordered the confiscation of all their personal property. The court found, in particular, that the case-file contained sufficient evidence that the episodes of the applicant's harassment (listed in paragraphs 10, 12-13 and 16-18 above) had indeed taken place. It also awarded the applicant UAH 35,273.47 in pecuniary and UAH 30,000 in non-pecuniary damage to be paid jointly and separately by the defendants.

52. On 6 March 2013, following an appeal by the defendants, the Regional Court upheld this verdict on appeal concerning all points, except one episode unrelated to the applicant's case.

53. On 18 September 2014 the Higher Specialised Civil and Criminal Court rejected the cassation appeals lodged by A.N. and V.S.

## II. RELEVANT DOMESTIC LAW

### A. Constitution of Ukraine

54. The relevant provisions of the Constitution of Ukraine (1996) read as follows:

#### Article 28

“Everyone has the right to respect for his or her dignity.

No one shall be subjected to torture, cruel, inhuman or degrading treatment or punishment that violates his or her dignity ...”

**Article 30**

“Everyone is guaranteed the inviolability of his or her dwelling place.

Entry into a dwelling place or other possessions of a person, and the examination or search thereof, shall not be permitted, other than pursuant to a substantiated court decision ...”

**Article 32**

“No one shall be subject to interference in his or her personal and family life, except in cases envisaged by the Constitution of Ukraine.”

**Article 41**

“Everyone has the right to own, use and dispose of his or her property ...

The right of private property is acquired by the procedure determined by law ...

The use of property shall not cause harm to the rights, freedoms and dignity of citizens, the interests of society, aggravate the ecological situation and the natural qualities of land.”

**B. Civil Code of Ukraine of 1963 (repealed with effect from 1 January 2004)**

55. Relevant provisions of the Civil Code of Ukraine in force at the time when the applicant brought the first set of civil proceedings read as follows:

**Article 113. Right of Divided Co-Ownership**

“Possession, use and disposal of property held in divided co-ownership shall be carried out with the consent of all the co-owners, and, in the absence of consensus, the dispute shall be decided by court.

...

Every co-owner ... according to the size of his or her share [in the right of joint ownership] shall be entitled to proceeds from joint property, shall be liable before third parties for obligations regarding the joint property and shall pay their part of various taxes and dues, as well as in maintenance and upkeep expenses concerning the joint property.

Every co-owner of a joint divided property shall have the right to transfer his share [in the right of] the joint ownership to a third person for or without remuneration.”

**Article 114. Right of first refusal in buying a share in the right of divided co-ownership**

“When a share in the right of joint [divided] ownership is proposed for sale to a third party, the remaining co-owners shall have the right of first refusal of the share at the asking price ...

The seller of the share is obliged to inform the remaining co-owners in writing of his or her intent to sell his or her share to a third party, indicating the price and other terms of the sale ...

When the sale of a share is effected in breach of the right of first refusal, another co-owner ... may apply to court demanding transfer of the rights and obligations of the buyer to him or her.”

### **C. Civil Code of Ukraine of 2003**

56. Relevant provisions of the new Civil Code of Ukraine of 2003 read as follows:

#### **Article 358. Exercise of the right of divided co-ownership**

“1. The right of divided co-ownership shall be exercised by the co-owners on a consensual basis.

2. The co-owners may enter into an agreement regarding the rules on possession and the use of their property held in divided co-ownership.

3. Every co-owner shall have the right to be provided with a share of the co-owned object corresponding to his or her share in a divided co-ownership. Where this is impossible, he or she may demand relevant pecuniary compensation from other co-owners who possess and use the co-owned object.”

#### **Article 362. Right of first refusal in buying a share in the right of divided co-ownership**

“1. Where a share of divided co-ownership is to be sold, a co-owner shall have the right of first refusal at the asking price for the sale, and on other equal conditions, except where the sale is effected via a public auction ...”

#### **Article 365. Termination of title to a share in joint ownership on the demand of other co-owners**

“1. Title to a share in joint ownership may be terminated upon a court decision on the basis of a legal action by other co-owners in the event that:

- 1) the share is insignificant and cannot be allocated as a divisible part of the whole;
- 2) the property is indivisible;
- 3) joint possession and use of the property is impossible;
- 4) such termination will not cause significant harm to the interests of the co-owner and members of his family.

2. The court shall decide on the termination of a person’s title to a share in joint ownership on condition of advance deposit by the plaintiff of the value of this share with the court’s deposit account.”

#### **Article 386. Basic provisions concerning protecting the right of ownership**

“1. A State shall ensure equal protection of all subjects of the right of ownership.

2. An owner who reasonably foresees a possibility of a breach of his or her right by another person, may apply to court to obtain an injunction against actions, which may breach his or her right, or to obtain execution of certain actions for the prevention of such a breach.

An owner whose rights have been breached, shall be entitled to reimbursement of the pecuniary and moral damage sustained by him or her.”

**Article 391. Protection of the right of ownership from breaches other than deprivation of possession**

“1. The owner of property shall have the right to demand cessation of interference with exercising his or her rights of use and disposal of his or her own property.”

**D. Criminal Code of Ukraine**

57. The relevant provisions of the Criminal Code of Ukraine (2003) as worded in the material time read as follows:

**Article 125. Intentional minor physical injury**

- “1. An intentional minor physical injury shall be punished by a fine ...;
2. An intentional minor physical injury resulting in a short-term health disorder or insignificant loss of capability to work shall be punished by public works ...”

**Article 126. Battery and torment**

- “1. Intentional striking; beating or commitment of other violent acts, which caused physical pain and did not result in physical injuries shall be punished by a fine ...
2. The same acts, which constitute torments by their nature, committed by a group of people or with a purpose to terrorise the injured party or his or her close friends or relatives shall be punished by restriction of liberty ...”

**Article 189. Extortion**

- “1. A demand to transfer the property of another ... by threatening to commit a violent act in respect of the victim or his or her relatives, restrict rights, freedoms ... of these persons, damage or destroy their property, ... shall be punished by restriction of liberty ...;
4. Extortion resulting in particularly grave pecuniary damage or committed by an organised group or accompanied by infliction of grave physical injury ... shall be punished by imprisonment from seven to twelve years and confiscation of property.”

**III. RELEVANT COUNCIL OF EUROPE DOCUMENTS**

58. In its Recommendation Rec(2002)5 of 30 April 2002 on the protection of women against violence, the Committee of Ministers of the Council of Europe stated, inter alia, that member States should introduce, develop and/or improve where necessary national policies against violence based on maximum safety and protection of victims, support and assistance, adjustment of the criminal and civil law, raising of public awareness, training for professionals confronted with violence against women and prevention.

59. The Recommendation also stated that member States should ensure that all victims of violence are able to institute proceedings, make provisions to ensure that criminal proceedings can be initiated by the public prosecutor, encourage prosecutors to regard violence against women as an aggravating or decisive factor in deciding whether or not to prosecute in the public interest, and ensure where necessary that measures are taken to protect victims effectively against threats and possible acts of revenge.

## THE LAW

### I. SCOPE OF THE CASE

60. The Court notes that the applicant raised several new complaints in her reply to the Government's observations of 10 April 2012 on the admissibility and merits of this case. In particular, she additionally complained, under Article 6 of the Convention, that the length of proceedings in her case had been unreasonable, and referred to Article 13 of the Convention and Article 1 of Protocol No. 1 to the Convention in respect of the facts of the present case.

61. In the Court's view, the applicant's new complaints are not an elaboration of her original complaints to the Court on which the parties had commented before they were raised. The Court considers, therefore, that it is not appropriate to take up these matters in the context of the present case (see, in particular, *Piryaniuk v. Ukraine*, no. 75788/01, § 20, 19 April 2005).

### II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

62. The applicant complained that for an extended period of time the State authorities had failed to protect her from systematic inhuman and degrading treatment, that is, violence and verbal harassment by the co-owners of her flat, and their guests and tenants. She relied on Article 3 of the Convention, which reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

#### A. Admissibility

63. The Government alleged that the available domestic remedies in respect of the above complaint had not been exhausted when their observations had been lodged (23 December 2013). First of all, at that time the criminal proceedings against the co-owners of the applicant's flat, instituted in 2007, had been still pending at the material time; thus it had

been premature to prejudge their outcome. Secondly, had the applicant been unsatisfied with the manner in which the law-enforcement authorities had conducted these proceedings or generally responded to her complaints, it had been open for her to lodge a complaint against them seeking damages for delayed and ineffective investigation. Finally, it had always been open to the applicant to institute private criminal prosecution proceedings to seek punishment of the alleged offenders for the episodes of violent behaviour, in particular, under Articles 125 and 126 of the Criminal Code. She had not done so until July 2006, and even then she had failed to pursue her claim.

64. The applicant disagreed. She submitted, in particular, that the public criminal proceedings against the alleged offenders had been instituted with undue delay and had been unreasonably protracted and thus ineffective. As regards the other remedies mentioned by the Government, they were *prima facie* ineffective in her case. In particular, a private criminal action was incapable of redressing the situation of continuous and systematic harassment. At best, it could result in insignificant penalties for isolated incidents of physical violence. In any event, the applicant had tried this remedy in 2006, and her complaint had been rejected on formal procedural grounds more than a year after it had been accepted for examination. By that time the public criminal proceedings against the principal offenders had been instituted. In the applicant's view, these proceedings could reasonably have led to incorporation and proper qualification of the entirety of her complaints. In this situation it had become pointless for the applicant to pursue a separate private action. Lastly, as regards the civil claim against the law-enforcement authorities, the Government had not shown how this remedy would have operated in practice and how it would have been capable of speeding up the resolution of the applicant's systematic problem.

65. The Court notes that, as regards the first objection raised by the Government, on 18 September 2014 the final decision was taken in the criminal proceedings against A.N., V.S. and A.L. Accordingly, it considers that the Government's objection that the applicant's complaint had been premature is no longer valid (see *Kirpichenko v. Ukraine*, no. 38833/03, § 63, 2 April 2015).

66. As regards the other objections, they are closely linked to the substance of the applicant's complaint under Article 3 of the Convention and must therefore be joined to the merits.

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



## B. Merits

68. The applicant submitted that for a number of years starting from November 2001 she had lived in a continuous situation of harassment from the co-owners of her flat, and their guests and tenants. In the meantime, for a very long period of time, the authorities had been “dissecting” this continuous situation into isolated trivial conflicts and had refused to see the underlying structural problem. While eventually the criminal proceedings had been initiated and the applicant’s submissions had been adequately incorporated in the body of the evidence against the principal offenders, the delay in instituting these proceedings and their subsequent length had rendered them ineffective.

69. The Government acknowledged that the applicant, a retired single woman, was a vulnerable person, and that the State had a positive duty to protect her from ill-treatment by her flat co-owners and their guests and tenants. Further, they argued that this duty had been duly discharged in the applicant’s case. In particular, the initial reluctance of the police to institute criminal proceedings against the purported offenders was understandable and justified: it had not been easy to distinguish the applicant’s case from a trivial domestic dispute. The co-owners of the applicant’s flat and their guests and tenants had a legal right to be in that flat. Both sides had accused each other of provoking the conflicts and creating intolerable living conditions. As the time lapsed, it had become obvious that the situation had been more complicated. Accordingly, criminal proceedings had been instituted and the applicant’s offenders had been sentenced to significant prison terms. It had also always been open to the applicant under the law to appeal in court against the decisions not to institute criminal proceedings against the offenders as well as to prosecute them in private criminal actions for the particular incidents of ill-treatment. The fact that she had not pursued these avenues cannot be held against the State.

70. The Court reiterates that the obligation on the High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken together with Article 3, requires States to put in place effective criminal-law provisions to deter the commission of offences against personal integrity, backed up by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions. This requirement extends to ill-treatment administered by private individuals (see, among other authorities, *D.F. v. Latvia*, no. 11160/07, § 83, 29 October 2013 and *Valiulienė v. Lithuania*, no. 33234/07, § 75, 26 March 2013). For this positive obligation to arise, it must be established that the ill-treatment complained of reached the threshold of severity proscribed under Article 3 (see *B.V. and Others v. Croatia* (dec.), no. 38435/13, §§ 152-53, 15 December 2015) or that the authorities knew or ought to have known at

the time of the existence of a real and immediate risk of such ill-treatment (see *Dorđević v. Croatia*, no. 41526/10, § 139, ECHR 2012).

71. The State authorities may not be expected to set in motion the criminal-law machinery in every case where neighbours, household members or other individuals engage in trivial disputes and seek to settle an ongoing personal conflict by involving the criminal justice authorities (see *B.V. and Others*, cited above, §§ 153, 155-58). On the other hand, it is important that measures of effective protection against domestic violence and other types of harassment are put in place for vulnerable persons, including reasonable steps to prevent likely ill-treatment (see *Durđević v. Croatia*, no. 52442/09, § 102, ECHR 2011 (extracts)). Where an individual makes a credible assertion of having been subjected to repeated acts of domestic violence or other types of harassment, however trivial the isolated incidents might be, it falls on the domestic authorities to assess the situation in its entirety, including the risk that similar incidents would continue. This assessment should, above all, take due account of the psychological effect that the risk of repeated harassment, intimidation and violence may have on the victim's everyday life (see *Valiulienė*, cited above, §§ 68-69; *Dorđević*, cited above, §§ 90-93; and *M. and M. v. Croatia*, no. 10161/13, §§ 141-42, ECHR 2015 (extracts)). Where it is established that a particular individual has been systematically targeted and future abuse is likely to follow, apart from responses to specific incidents, the authorities may be called upon to implement an appropriate action of a general nature to combat the underlying problem (see *Dorđević*, cited above, §§ 147-49).

72. Turning to the facts of the present case, the Court notes the repeated and premeditated nature of the verbal and physical assaults, to which a group of younger and stronger men was subjecting the applicant, a retired single woman, for several years. While some episodes complained of, taken in isolation, could qualify as trivial domestic disputes between lawful flat occupants, other instances of violence, resulting in injuries (see paragraphs 10, 13 and 18 above), were very serious in and of themselves. As the incidents regularly repeated over a period of time, they must be viewed as a continuing situation, which is an aggravating circumstance (see *Valiulienė*, cited above, § 68). It also follows from the case file that repeated physical and verbal attacks caused the applicant profound mental suffering, distress and constant fear for her life and limb. This suffering was aggravated in view that violence and harassment occurred in the privacy of the applicant's home, which prevented any outside help.

73. Regard being had to the repeated and premeditated nature of verbal attacks coupled with incidents of physical violence by a group of men against a single senior woman, the Court considers that the treatment, to which the applicant was subjected, reached the threshold of severity falling within the ambit of Article 3 of the Convention. It further finds that this treatment engaged the State's positive duty under Article 3 of the

Convention to put in motion the protective legislative and administrative framework.

74. It follows from the case file that eventually the applicant's principal miscreants were publicly prosecuted and sentenced to significant prison terms. In addition to that, the judicial authorities ordered confiscation of their property. It is notable that the charges against the applicant's aggressors were qualified in law as extortion rather than harassment or a similar offence. However, it appears from the domestic judgments that violent conduct *vis-à-vis* the applicant was taken into account in the courts' analysis and that the measures adopted have effectively shielded her from the risk of sharing the flat with her former aggressors or their acquaintances in future. Nevertheless, assuming that the charges against the applicant's aggressors have adequately addressed her complaints concerning their violent conduct and systematic harassment, the Court notes that it took the State authorities over twelve years to resolve the matter.

75. In view of this, the Court reiterates that for the purposes of Article 3, the protective measures should allow the authorities to respond as a matter of particular urgency in a manner proportionate to the perceived risk faced by the person concerned (see *D.F.*, cited above, §§ 91 and 95). Where a situation warrants institution of criminal proceedings, these proceedings as a whole, including the trial stage, must satisfy the requirements of Article 3 of the Convention and allow for the examination of the merits of the case within a reasonable time (see, for example, *M. and M.*, cited above, §§ 147-152).

76. The Court accepts that at the early stages of the confrontation between the applicant and her flat co-owners the domestic authorities might have experienced certain difficulties in qualifying the situation in law. However, it has not been presented with a plausible explanation, which could justify the entire delay of over twelve-years.

77. As regards a possibility to initiate a private prosecution under Articles 125 and 126 of the Criminal Code (cited in paragraph 57 above) or to institute civil proceedings against the law-enforcement authorities for inaction, the Court reiterates that the crux of the applicant's complaint was her systematic harassment. In the meantime, the national authorities, although aware of that situation, failed to take appropriate measures to punish the offenders and prevent further assaults and insults. Thus, the situation called for a swift intervention by the public officials. The Government have not shown that either of the aforementioned remedies could lead to such an intervention and effective resolution of the underlying systemic problem.

78. In these circumstances the Court dismisses the Government's objection as to the non-exhaustion of domestic remedies previously joined to the merits and finds that the respondent State failed in discharging its positive duty under Article 3 of the Convention to protect the applicant from

repeated verbal harassment and physical violence by the co-owners of her flat and their acquaintances on account of extreme delays in instituting and conducting public criminal proceedings against the co-owners of the applicant's flat.

79. There has accordingly been a violation of Article 3 of the Convention.

### III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

80. The applicant also complained that the State authorities had failed to protect her home and private life from unwanted intrusion by strangers. She relied on Article 8 of the Convention in this respect. The provision in question, insofar as relevant, reads as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence. ...”

#### A. Admissibility

81. The Government alleged that the available domestic remedies in respect of the above complaint had also not been exhausted. In so far as the applicant's complaint may have been related to the incidents of violent and abusive conduct by the co-owners of her flat and their guests and tenants, the Government adduced the arguments similar to those discussed above in respect of Article 3.

82. As regards the more trivial side of the conflict (that is to say, disagreements concerning the manner in which the premises and household appliances had to be used) – in the Government's view, the applicant had never tried to use the numerous civil-law remedies available for settling such conflicts. These remedies had included a claim for pecuniary and non-pecuniary damages, a demand to cease and desist from interfering with exercising the applicant's right to use her property, or an action for establishing the rules of use of an object of joint ownership (see the relevant provisions of Domestic Law in paragraph 56 above).

83. In the Government's view, the applicant had not used any of these remedies, because she had not been genuinely interested in resolving the dispute and achieving harmonious relations with her flat co-owners. Her only wish had been to gain the entire flat for herself. This option had also been possible under domestic law under Article 365 of the Civil Code (see paragraph 56 above). However, from this point of view the State's duty had not been to protect the applicant's home from unwanted intrusions, but to ensure equal protection of the intersecting property interests of two private parties. The applicant had tried to use this remedy, however, as she had wanted to pay a symbolic, insignificant sum in compensation for her co-owners' share, the judicial authorities could not be reproached for

rejecting this proposal. It had always been open to the applicant to renegotiate dispossession of her flat co-owners on more reasonable conditions.

84. The applicant disagreed. She submitted that the one-bedroom flat, in which she had resided, was designed as a one-family residence. It had not been possible to divide it into two separate dwellings or somehow establish two separate households in it, enabling a senior lady to cohabit with unrelated young males in a sensible and harmonious manner. In any event, A.N. and V.S. had not intended to cohabit with the applicant. They had acquired a share in her flat with an obvious criminal intent: to extort the remaining share under grossly unfavourable terms by terrorising the applicant and creating intolerable living conditions. In this situation there could not have been any fair negotiation and balancing of private interests; only a criminal-law remedy would have been appropriate. The applicant had made an honest attempt to redeem her co-owners' share in the flat via civil court proceedings. She agreed that the price she had offered had been below the price, which could be obtained for it, if the flat had been sold in its entirety, free from any occupation or other encumbrances. However, in her view, a virtual share in an indivisible one-bedroom flat occupied by residents would have had no market value. In any event, the applicant's opponents, according to the documents, had received their share in her flat free of charge, except the acquisition taxes calculated on the basis of the nominative value indicated in the gift deed. In these circumstances, payment of a higher compensation – onerous for a retired pensioner – would have amounted to unjustified enrichment for her antagonists.

85. The Court considers that the Government's objection is closely linked to the substance of the applicants' complaints under Article 8 of the Convention and that it must therefore be joined to the merits.

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

## **B. Merits**

### *1. The submissions by the parties*

87. The applicant alleged that the arrival of uninvited strangers in her flat constituted a gross intrusion into her home and private life. This was more so as the new cohabitants had refused to use the flat sensibly and had harassed and terrorised the applicant. For years all the applicant's attempts to resolve the matter either by negotiation, civil proceedings or appeals to law-enforcement authorities had been futile and, unable to tolerate her

co-habitants, she had to seek refuge elsewhere and had found herself practically homeless.

88. The Government submitted that the respondent State had properly discharged its positive duties under Article 8 *vis-à-vis* the applicant, as there had been an appropriate legal and administrative framework in place to protect her home and private life from unwelcome intrusions. Among all other instruments, Article 365 of the Civil Code provided the applicant with a possibility to dispossess her flat co-owners of their share in the flat on the ground that her co-habitation with them was intolerable. However, it was important in this context that V.S. and subsequently A.N. had lawfully acquired their shares in the disputed flat. Accordingly, they had been entitled to possess, use and dispose of them on a par with the applicant. In these circumstances the applicant had to pay market-value compensation in order to dispossess them, and she did not want to do so. She could not expect the domestic law to give her the tools to obtain exclusive right to reside in the flat by herself without having paid fair compensation to its other co-owners. The State authorities could also not be held responsible for the applicant's failure to use the other, softer legal tools mentioned in paragraph 82 above, which could help her negotiate fair terms of cohabitation in the flat with its co-owners.

## 2. *The Court's assessment*

89. The Court notes that, in so far as the applicant's complaint under Article 8 may relate to the acts of harassment and violence, it falls within the ambit of Article 8 (see, for example, *Hajduová v. Slovakia*, § 46, 30 November 2010; *Sandra Janković*, cited above, § 45; *Remetin*, cited above, § 90; and *B.V. and Others*, cited above, §§ 149-54). However, as the Court has already examined the applicant's relevant submissions under Article 3 above, it is not necessary to address them also under Article 8 of the Convention (see, for example, *Dorđević*, cited above, § 93, and *M. and M.* cited above, § 143).

90. At the same time, the Court notes that there are other aspects of the applicant's complaint under Article 8, which have not yet been examined by it. In particular, it follows from the applicant's submissions that, in addition to her complaints about violence and harassment, she also complains (a) of the very fact that she was obliged to tolerate the presence inside her home of persons foreign to her household; and (b) of their disagreeable, but essentially non-criminal conduct (notably, discourteous use of the flat and the applicant's belongings, spoliation of the flat amenities, noise and other nuisances, and so forth).

91. The Court considers that the criminal proceedings, in the course of which V.S. and A.N. were charged with extortion, eventually redressed these aspects of the applicant's complaint. In particular, as follows from the Kyivskiy Court's verdict of 12 October 2012, A.N. and V.S. were ordered

to pay compensation to the applicant for pecuniary and non-pecuniary damage. In addition, they were also divested of their share in the flat as a result of the property confiscation order. However, regard being had to the extreme delays in the institution and conduct of these proceedings, which have already been discussed in paragraphs 76 and 78 above, their effectiveness in the applicant's case was significantly compromised. Accordingly, the applicant's rights under Article 8 of the Convention were set at naught for a very considerable period of time (see *Surugiu*, cited above, §§ 60-67, and *Udovičić*, cited above, §§ 158-59).

92. At the same time, the Court reiterates that there is no absolute right under the Convention to obtain the prosecution or conviction of any particular person (see *Söderman v. Sweden* [GC], no. 5786/08, § 83, ECHR 2013). While a criminal-law remedy may be necessary in cases relating to particularly serious encroachments upon the person's physical or psychological integrity, in respect of less serious intrusions into the sphere protected by Article 8 the relevant obligation on the member States may be discharged by putting in place other, in particular, civil-law instruments, which, where necessary, should include such procedural remedies as the granting of an injunction (*ibid*, § 85). In the light of these observations, the Court must proceed to examine whether, in the specific circumstances of the case before it, the respondent State had an adequate non-criminal legal framework providing the applicant with acceptable level of protection against the intrusions on her privacy and enjoyment of her home (see, *mutatis mutandis*, *ibid*, § 91).

93. The Court reiterates that guarantees afforded by Article 8, and, in particular, the right to respect for home, among them, are of central importance to an individual's identity, self-determination, physical and moral integrity, maintenance of relationships with others and a settled and secure place in the community (see, in particular, *Connors*, cited above, § 82, and *Kryvitska and Kryvitsky v. Ukraine*, no. 30856/03, § 44, 2 December 2010). A home is usually the place, where an individual is supposed to feel safe (see *Söderman*, cited above, § 117) and sheltered from unwanted attention and intrusions. This concerns not only physical intrusions, such as unauthorised entries, but various nuisances, such as noise or smells and other forms of interference which preclude the inhabitants from quiet, undisturbed enjoyment of the amenities of their abode (see *Udovičić*, cited above, § 136).

94. In light of these considerations, the Court finds that sharing one's home with uninvited strangers, regardless of how sensibly they behave, creates very important implications for a person's privacy and other interests protected by Article 8. Accordingly, where a member State adopts a legal framework obliging a private individual, for one reason or another, to share his or her home with persons foreign to his or her household, it

must put in place thorough regulations and necessary procedural safeguards to enable all the parties concerned to protect their Convention interests.

95. It appears that in the present case applicable law did not afford to the applicant any meaningful forum in which she could object against cohabitation with A.N., V.S. and their acquaintances on the ground that such cohabitation created disproportionate consequences for her rights guaranteed by Article 8 of the Convention (see, *mutatis mutandis*, *McCann v. the United Kingdom*, no. 19009/04, §§ 49-50 and 55, ECHR 2008; *Ćosić v. Croatia*, no. 28261/06, § 21-23, 15 January 2009; and *B. v. the Republic of Moldova*, no. 61382/09, § 74, 16 July 2013) and obtain appropriate and expeditious protection against unwanted intrusions into her personal space and home, including, if necessary, by way of an injunction order (see, *mutatis mutandis*, *Söderman*, § 85).

96. In particular, it is notable that initially the flat was designed to be occupied and was occupied by a single family (the applicant's family), then by the applicant alone. The legal arrangement, whereby V.S., a person outside the applicant's family, received an entitlement to move into the flat, was created without the applicant's consent having been sought. This arrangement, found to be lawful by the domestic courts (see paragraphs 22-23 above) also automatically gave V.S. the right to invite other persons to live there and to bestow his share in the flat without the applicant's consent on other third parties. Accordingly, the applicant lost any control over how many persons would obtain the right to occupy her flat or over the choice of these persons. Thus, her one-bedroom flat was virtually converted into a hostel without the applicant having any means of objecting to such a change.

97. Similarly, after the aforementioned arrangement was created, the applicant had no legal remedy enabling her to argue that co-habitation with A.N., V.S. and their acquaintances had resulted in disproportionate burden for her ability to enjoy the rights guaranteed under Article 8. The Court is prepared to accept that the civil remedies, mentioned by the Government in paragraph 82 above, such as an action for damages, a demand to cease and desist from interfering with enjoyment of another's possessions, or an action for establishing the rules of use of an object of shared property could be helpful in a situation where lawful cohabitants need to settle specific disagreements concerning the use of a common flat. However, it follows from the case-file that the situation in the present case was much less trivial. Notably, the applicant's complaint was that her flat was not suitable for use by more than one family and that V.S. and A.N., had entered it by breaking in and taking possession of it against her will. The Government have not shown how the aforementioned remedies could address and redress the core of the above complaint.

98. The Court notes that the Government have also referred in their observations to Article 365 of the Civil Code, as a legal instrument, on the



basis of which the cohabitation arrangement in the applicant's case could be terminated by a competent court. This Article (see the text in paragraph 56 above) established a possibility of dispossessing a co-owner of his/her share in an object of indivisible property, if other co-owners considered that joint use of this object was not possible. However, it follows from the text of this provision that it could be used only against the co-owners, whose share was "insignificant". More importantly, it has not been shown by the Government that this remedy, apparently geared towards resolving the ownership disputes, could grant prompt relief for the applicant's complaint concerning forced entry into the flat, which was her established "home" previously possessed by her family for years, against the applicant's will and despite that it was not designed to accommodate more than one family. In light of the above, the Court fails to see how this procedure could have provided an expeditious and appropriate remedy for the applicant's particular complaint concerning intrusion by strangers into her home and private space. Accordingly, the Court is not convinced that Article 365 of the Civil Code could provide any relief to the applicant, regardless of any price-related or other arguments.

99. It follows that neither the case-file material, nor the Government's observations demonstrate that the applicant had any meaningful forum available to her for raising an argument that a duty to share her home with V.S., A.N., and their acquaintances disproportionately affected her private life and enjoyment of her home. Accordingly, the Court considers that the domestic legal framework did not provide the applicant with requisite procedural safeguards for protecting her right to respect for home and private life under Article 8 of the Convention.

100. Accordingly, the Court dismisses the Government's objection concerning non-exhaustion raised in paragraphs 82-83 above.

101. Regard being had to the considerations presented in paragraphs 91 and 99 above, the Court finds that there has been a breach of Article 8 of the Convention.

#### IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

102. Lastly, the applicant also complained, under Article 6 of the Convention, about the outcome of two sets of her civil proceedings and referred to Articles 9, 14 and 17 of the Convention and Article 2 of Protocol No. 4 to the Convention in respect of the facts of the present case.

103. Having considered these complaints in the light of all the material in its possession, the Court finds that, in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

104. It follows that this part of the application must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

## V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

105. Article 41 of the Convention provides:

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

### A. Damage

106. The applicant initially claimed 100,000 euros (EUR) in respect of non-pecuniary damage on account of the alleged breach of Article 8 (in her reply to the Government’s observations of 10 April 2012) and a further EUR 200,000 in respect of the alleged breach of Article 3 of the Convention (in her reply to the Government’s additional observations of 25 December 2013). In addition, in her reply to the Government’s observations of 10 April 2012, she also asked that the respondent State be obliged to buy her share in the disputed flat at a fair price, corresponding to the market value of half the flat, in order to enable the applicant to buy another flat, which would belong to her exclusively.

107. The Government alleged that this claim was exorbitant and unsubstantiated.

108. The Court recalls that the case at issue concerned breaches of Articles 3 and 8 of the Convention. It does not see a correlation between the breaches of these provisions and a requirement to finance acquisition of a new flat for the applicant. It therefore dismisses this claim. On the other hand, the Court considers that the applicant must have suffered anguish and distress on account of the facts giving rise to the finding of breaches of Articles 3 and 8 of the Convention. Ruling on an equitable basis, it awards the applicant EUR 4,000 in respect of non-pecuniary damage.

### B. Costs and expenses

109. In her reply to the Government’s observations of 10 April 2012, the applicant also claimed legal fees for her representation before the Court, unspecified court fees and costs of translation of unspecified documents into English. She submitted some documents, including a copy of her contract with a firm called Dimex for legal representation; however, she did not specify the exact amount of her claim for legal fees or any other expenses. In her reply to the Government’s additional observations of 25 December

2013 the applicant did not reiterate her previous claim and did not submit any new claims under this head.

110. The Government pointed out that the applicant had been provided with legal aid to cover the costs of her representation before the Court, and that in any event she had failed to substantiate her claims for costs and expenses with appropriate documentary evidence.

111. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, the Court recalls that the applicant has been provided with legal aid and considers, regard being had to the documents in its possession and the above criteria, that the applicant's claim for costs and expenses should be rejected for lack of substantiation.

### **C. Default interest**

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join to the merits the Government's objections concerning non-exhaustion of domestic remedies in respect of the applicant's complaints under Articles 3 and 8 of the Convention and dismisses them;
2. *Declares* the complaints under Articles 3 and 8 of the Convention admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 3 of the Convention;
4. *Holds* that there has been a violation of Article 8 of the Convention;
5. *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, EUR 4,000 (four thousand euros), to be converted into the currency of the respondent State at the rate applicable at the date of settlement, in respect of non-pecuniary damage;
  - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate

equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 13 October 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško  
Deputy Registrar

Angelika Nußberger  
President