



**HUMAN RIGHTS LAWYERS NETWORK WITHOUT FRONTIERS**

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**Rule of law and equal enjoyment of human rights**

**CROATIA: Discrimination before the courts, government bodies and institutions based on ethnic origin and denial of justice – Cases of Dalibor Močević**

Through the years Mr. Dalibor Močević a Croatian citizen of Serbian descent suffered inequality and discrimination before the institutions of Republic of Croatia in cases of his mother's suspicious death in 2009, deprivation of property owned by him and his family in Croatia, his inheritance rights, right to family life and custody of his minor children, deprivation and inability to maintain personal relations and direct contact with his children living in Croatia, as well as unresponsiveness on his repeated reports of threats he has been exposed from known assailants during his unsuccessful search for justice within the system.

**Denial of human rights and discrimination**

1. Criminal complaints about the death of Mr. Močević's mother and received threats

The mother of the Mr. Dalibor Močević, Mrs. Sofija Močević, died on August 25<sup>th</sup> 2009 in the Zadar General Hospital (Opća bolnica Zadar). From the moment of death, Mr. Dalibor Močević suspected that his mother did not die a natural death,

and that it was a violent death caused by her common-law husband, Mr. Ante Radetić a Croatian national. On that day, in the early morning hours, Mrs. Sofija Močević suffered a stroke, and urgent medical assistance from General Hospital Zadar was called upon by Mr. Radetić. Since Mr. Dalibor Močević at that time was absent from Zadar, after having learned of a tragic event, he requested a copy of the medical documentation from which he had noticed a number of differences in official records of admittance and course of illness, from what his mother's common-law spouse had said to him about the course of events. Although under the Rulebook on Conditions, Organization and Method of Outpatient Emergency Medical Assistance, (Article 25, paragraphs 6, 7 and 9), it was prescribed that HMP (ambulance emergency services) forms should be found in the medical documentation, they were not there. Upon request to GH Zadar, Mr. Dalibor Močević was told to address the health center, which he did without any response, and then he addressed the Ministry of Health, but there was no response there, either.

According to the information Mr. Močević had received from Mr. Radetić, he noted that the late Sofia Močević was feeling ill, at about 1:30 in the morning, as well as being paralyzed on the left side of the body, while according to documents from the hospital, his mother was admitted to the hospital around 3:30 in the morning, although the apartment she lived in, was only about 100 m away. When he asked for a copy of the complete medical documentation, Mr. Močević only received a report from the protocol. In the last month before her death, the mother Sofija Močević had drastic changes in the blood chemistry, while the medical records showed no signs of poisoning, although there was no toxicological finding in the documentation, nor was it clear on the basis of which facts such a conclusion was made by emergency medical staff. In the end, after his mother's death, the hospital returned her jewelry and watch to Mr. Dalibor Močević, even though she was supposedly transported to a hospital out of bed, where she went to sleep when she felt sick. Mr. Močević was certain that his mother never wore jewelry and watch in bed, and always removed them before bedtime. After his mother's death, her partner, Ante Radetić has gone into swift selling of her real-estate property and withdrawal of funds from the joint bank accounts, which further enhanced Mr. Močević's suspicion about the cause of death.

Just several days after the death of Sofija Močević, and two months before the conclusion of the inheritance proceedings, Mr. Radetić advertised the sale of the apartment in Zadar, Mihovila Pavlinovića Street, they both had joint ownership of, and several days after the conclusion of inheritance proceedings Mr. Radetić, advertised and sold the garage they also owned in Zadar.

Due to these and other circumstances indicating unlawful conduct and unclear circumstances regarding mother's death, Mr. Dalibor Močević, sent a letter by electronic mail dated December 20<sup>th</sup> 2010, to the County Prosecutors Office in Zadar (Županijsko državno odvjetništvo), requesting investigation of aforementioned suspicions. County Prosecutors Office compiled a case, number KR-DO-405/2010 and sent a request to the hospital in Zadar to make a statement on the relevant facts, and also to the Zadar police, which was to carry out the

necessary investigations. Zadar police interviewed Dalibor Močević on 25 March 2011. An interview with Ante Radetić was done on 10 May 2011. Subsequently, the police did not take any action nor informed Mr. Dalibor Močević about the outcome of the proceedings, the suspension of the proceedings or the filing of the criminal report, which is why on 08 March 2011 Mr. Dalibor Močević filed a complaint to the internal affairs division of the Ministry of Interior, against the investigating officers of Zadar police department. During 2011, 2012 and 2013, Mr. Močević complained to the State Attorney Office (DORH), about the excessive length of the preliminary investigation into the death of his mother and disturbing phone calls, but it didn't help its effectiveness or a conclusion of the proceedings.

During December 2010 Mr. Dalibor Močević had received several threats via text messages, from his common-law spouse, whom he met through the son of Mr. Ante Radetić. The threats were related to the division of inheritance of his deceased mother, which he had put in connection with Mr. Radetić's efforts to obtain his mother's property. These threats have also been reported to the police accompanied with a list of telephone conversations and SMS messages, but the police did not carry out any investigative actions, except informing Mr. Dalibor Močević that due to the complexity and comprehensiveness of the case, several organizational units were involved. On 28 March 2012, Mr. Dalibor Močević filed a criminal complaint to the County Prosecutor's Office in Zadar, against police officers of Zadar police who were involved in the cases, but that complaint had no outcome either (acceptance or rejection), or had Mr. Močević been notified about the proceeding, to which he was entitled to according to the Criminal procedure code and the Constitution. Therefore preliminary criminal investigation into two different reports made by Mr. Dalibor Močević had lasted for 8 years now, without any outcome.

## 2. Deprivation of property

Mr. Dalibor Močević had a permanent residence in a flat located in Zadar, at Ugljanska Street, number 6. He resided there since his birth on 24 August 1972, up until 1994, as the member of the household of the specially protected tenant, (nosilac stanarskog prava), his father, Savo Močević, who was given the tenancy of the flat in 1972, by his former employer, Customs office Zadar. Pursuant to the relevant legislation, Mr. Dalibor Močević and his mother, Sofija Močević, automatically became a co-holders of the specially protected tenancy of the flat.

In 1993, Ministry of finance, Customs administration, Customs office Zadar, brought a civil action against Mr. Močević's parents in the Zadar Municipal Court (Općinski sud u Zadru), seeking their eviction. The plaintiff stipulated that the tenants had ceased using the said flat for a period longer than 6 months. Mr. Močević's father died on 15 September 1992, as a victim of the war in Bosnia, where he was placed in a sanatorium, for the last years of his life. Since Mr. Dalibor Močević was not included in the lawsuit, he filed a petition as intervener. He stated that as co-holder of the specially protected tenancy, he was entitled to a use and purchase of the flat, in accordance with the Housing Act. In the beginning of 1993, he also submitted a request for transfer of tenancy right to his name. Since he was

employed in merchant shipping, he left Zadar in January 1993, and upon his return in February 1994, found the flat occupied by a family of refugees. His personal belongings were left in the flat. In the proceedings, the court acquired a certificate from Zadar police, certifying that Mr. Dalibor Močević had registered residence in Ugljanska, number 6, since 29 September 1988. At that time Mr. Močević had no other place of residence. The flat of 58 sqm, that his mother was consequently given a protective tenancy at, by her employer, was occupied by her, her new husband and his children, becoming over-cramped as it was, so his only residence was in the flat that was taken away from him during his voyage.

On 9 February 1999, the Municipal Court ruled for the plaintiff, canceling specially protected tenancy rights to Mr. Močević's mother. Mr. Dalibor Močević's intervention lawsuit was continued to be tried separately. Mr. Močević sued the State based on the Lease of Flats Act, asking for protected tenancy of the same flat, where he lived for the most of his life. On 26 April 2001, the Municipal Court ruled for the defendant, dismissing Mr. Močević's lawsuit. Following an appeal by Mr. Močević, on 11 September 2003 the Zadar County Court (Županijski sud u Zadru) quashed the first-instance judgment and remanded the case. On 11 November 2004, the Municipal Court again ruled for the Defendant State. Following another appeal by Mr. Močević, on 27 September 2006 the Zadar County Court again quashed the first-instance judgment and remanded the case for a retrial.

First instance proceedings continued on 8 February 2008, after 15 years from the initial lawsuit. On 17 March 2008, the Municipal Court again ruled against Mr. Dalibor Močević, dismissing his claim for protected tenancy of the flat in Ugljanska Street. The court found that Mr. Dalibor Močević had not been entitled to purchase the flat under the Specially Protected Tenancies Act (Sale to Occupier), or to acquire the status of a protected lessee under the Lease of Flats Act. Accordingly, the court concluded that he had no title to the flat even though he had no other place of residence, since he didn't occupy his mother's flat and was considered a remaining member of the household (preostali član porodičnog domaćinstva) in the terms of the Act. On 31 August 2010 the Zadar County Court dismissed Mr. Dalibor Močević's appeal and upheld the first-instance judgment, which thereby became final and enforceable.

Mr. Dalibor Močević then lodged an appeal on points of law (revizija) with the Supreme Court (Vrhovni sud Republike Hrvatske). Relying on section 382 (1) and 382(2) of the Civil Procedure Act, he argued that his case raised legal issues important for ensuring the legal certainty and uniform application of the law and equality of citizens. Mr. Dalibor Močević pointed out that he has no other place of residence and that he lived in the flat from his birth, until the beginning of 1994 when the flat was occupied by third persons (refugees). On 3 March 2011 the Supreme Court declared Mr. Dalibor Močević's appeal on points of law inadmissible as it found that neither the value of the subject matter of the dispute reached the statutory threshold, or that the raised issues satisfied the prescribed points of law.

Meanwhile, on 25 October 2010, Mr. Močević lodged a constitutional complaint with the Constitutional Court (Ustavni sud Republike Hrvatske) against the County Court's decision, alleging violations of his constitutional rights to equality before the law and fair proceedings as well as his rights to respect for his home and peaceful enjoyment of his possessions. Mr. Močević was forced to leave Croatia at the end of 2011 due to fear for his own safety, because of the threats he received over the phone and various other personal security issues. He had no knowledge of the outcome of the proceedings before the Constitutional Court, for a number of years. His mother had died in 2009, so he had no living relative left in Croatia. Finally, on the 24 November 2016, after repeated inquiries made by electronic mail, Mr. Močević received a notification from the Constitutional Court of Croatia, with information that his constitutional complaint was decided upon on 22 February 2012. The decision was sent to his lawyers in Zadar, who refused receipt of the decision on the grounds of further non representation of Mr. Dalibor Močević. The Court then tried to deliver the decision at the address of Mr. Močević's residence, in Zadar, Ugljanska, number 6, where there was the flat which Mr. Dalibor Močević was deprived from, but the mail returned with the notice "unknown". After two repeated unsuccessful deliveries, in July 2012, the Court posted the decision on its bulletin board. After receiving email from the Constitutional Court, Mr. Dalibor Močević was orally informed that the Court dismissed his complaint as unfounded. Although he tried, he couldn't acquire a copy of the decision to this day.

### 3. Inheritance proceedings

Mr. Dalibor Močević's maternal grandfather, late Dušan Prostran, died on October 6<sup>th</sup> 1986, leaving the will, made on 16 January 1986 and signed before the witnesses, which made it legally valid according to the Inheritance law. The inheritance proceedings on this will were completed by Municipal Court in Zadar which brought the decision on inheritance, No. O. 394/87 of 30 June 1989. There was no dispute among the successors, and the said decision became final.

His maternal grandmother, Olga Prostran, died without a will, on 3 July 2000. Her property consisted of all the remaining assets not inherited by other inheritors, according to her husband, Dušan Prostran's will, and by the decision of the Municipal Court in Zadar dated 30 June 1989, she inherited a land in total area of 1,425 ha, registered in KO Smoković. Despite the fact that she had the property and several successors, including Mr. Dalibor Močević, after the death of his late mother, the proceedings had not been carried out but the Municipal Court in Zadar, but the notary public Davor Mišković, issued a ruling, no. O-314/2008 of 13 October 2015 that the inheritance hearing will not be conducted due to the lack of inheritable property of Mrs. Olga Prostran. It was stated in the decision that by the successor's statements it could not have been established with certainty that the possessor had any property, which is not correct, as the court's decision of 30 June 1989, by which Olga Prostran inherited property in ownership, was delivered to the notary by the time the inheritance proceedings were due to commence. Therefore the inheritance proceedings initiated in 2008 have not yet been completed, for over 10 years.

In the same way, the state authorities acted after the death of Mr. Dalibor Močević's uncle, Gojko Prostran that Mr. Dalibor Močević was supposed to inherit, who died on September 6, 2007. The inheritance proceeding into his uncle's property in Croatia has not been completed to this day, depriving Mr. Močević of property he should have inherited by law.

#### 4. Failed custody battle and deprivation of contact with children

Mr. Dalibor Močević was in a common-law marriage with Željka Šimunović from Našice, in the period from January 1<sup>st</sup> 2003 until August 26<sup>th</sup> 2006 when this marriage ceased to exist because of mutual differences and severe alcoholism of Željka Šimunović. In this marriage the son I.M was born on February 14, 2007.

On May 30<sup>th</sup> 2008 Mr. Dalibor Močević's spouse filed a lawsuit to the Našice Municipal Court to entrust her with a sole custody of minor I.M. Although she has not lived together with Mr. Dalibor Močević for two years, Mr. Močević's spousal wife has taken the child with her even though she did not have the right to do so because the parents did not arrange for care, nor did any competent authority make any decision about it. On 17 June 2008, the Municipal Court in Našice resolved on the lawsuit by decision, number: R1-54 / 08-3 of 17.6.2008 in which minor I.M was entrusted to immediate care of his mother, which by this decision got the sole custody.

Without notice and presence of the father, who lived at that time in Zadar at the address where he and his wife lived, which could not have been unknown to his spouse, or the Našice Municipal Court, the child minor was taken away from his mother because of alcoholism and psychiatric problems (behavioral change and family conflict) upon proposal of the Center for Social Welfare Našice, No. R1-5 / 10-3 of 28 January 2010, and entrusted into care of her parents who lived with her in the same household.

When Mr. Močević became aware of these facts, as well as about the child being subjected to extreme mental pressure due to the circumstances that had arisen, and that even after being taken from his mother, he is being subjected to a mental torture, Mr. Dalibor Močević filed a proposal on 20 December 2010 to the Našice Municipal Court, for the adoption of a decision on parental care by which the child would be entrusted to him, due to the changed circumstances on the part of the mother, which by previous decision of the court, was entrusted with sole custody, in addition to the removal of the child, by decision of the Center for Social Welfare in Našice on 28 June 2010 and an imposed measure of supervision, with obligatory psychiatric treatment, which, in Mr. Močević's opinion could mentally hurt the child even more.

Mr. Dalibor Močević also came into possession of the release letter from the neuropsychiatric hospital "Dr. Ivan Barbot" in Popovača, where his ex-wife was treated with alcohol addiction, diagnosis of F 10.2 and anxiety-depressive disorder, diagnosis F 41.2, during the period from 10 February 2010 to 17 May 2010. In

addition, in the history of illness, it is clear that the patient is a heavy alcoholic with borderline personality disorder and that she has a conflicting relationship with her mother, often resulting in domestic violence because of them living in a same household. Under such conditions, the court in Našice entrusted minor I.M, then only 3 years old to his grandparents living in the same household with his mother, while he was allegedly taken away from her care, continuing to face constant, day to day conflicts between them. During the proceedings the mother argued that she did not want to allow the father to see her child in Zadar and without her supervision, which did not provoke a reaction from the Center for Social Welfare, although according to their findings mother was so unfit to raise a child that he had to be taken away from her custody. On the other hand, Našice Social Welfare Center had no objections to the custody of Mr. Dalibor Močević, as the child's father.

Meanwhile, the Municipal Court in Našice issued the ruling number: R1-10 / 11-3 of 28 January 2011, which replaced its previous decision, R1-5 / 10 of 28 January 2010, and restored the care of minor I.M, to the mother, and arranged father's visitation rights so that the child will see his father once a month for 10-12 hours, on Saturday, in Našice. Mr. Dalibor Močević lodged an appeal against this decision to the Osijek County Court on 14 February 2011. In the appeal Mr. Močević pointed out that the court completely excluded him as the father in the process in which it decided about the care of his young son and the manner of family visits. Also, the fact of mother's mentally illness, and propensity for alcoholism, were pointed out as well known to the court and documented with evidence of the household in which the child resides being in a state of permanent physical conflicts which is why the mother was under the supervision of CSS in Našice. Despite all this the first instance court ruled that such a mother, should be awarded custody of the child, while the child is still staying in the atmosphere that is unquestionably neither positive, nor healthy for him to grow up in. In accordance with the provisions of the Family Law, if one parent is unable to care for a child, then this obligation is taken over by another parent, and only he or she is unable to care, the child can be entrusted to another person.

The Osijek County Court decided on appeal on 10 March 2011, overturned the first instance ruling and remanded the case for retrial. County Court decided that the disputed decision was brought in violation of the right to a fair trial because the father was now allowed to participate. In the resumed proceedings, the Municipal Court's case file R1-31 / 11, was joined with a file R1-103 / 10-23, the proposal for the allocation of a child in the care of his father, for the reason of expediency. Mr. Dalibor Močević proposed to conduct psychiatric examination of the mother, regarding her psychic and psychological relationship with the child, because the child is under constant and chronic stress. Instead, the court ordered a psychiatric examination of Mr. Dalibor Močević, who had no history of mental illness or any dependencies.

Mr. Močević was subsequently absent from Croatia, only to leave it permanently in early 2012. Relations with the mother of his child persisted, and he was later informed by Mrs. Šimunić's family that she continued to drink and consequently

left the child and moved abroad. Mr. Močević came in possession of the decision of Municipal Court in Našice, number: R1-103 / 10-23, rejecting his proposal and returning the child to mother's care in May of 2017, because the decision was not delivered to Mr. Močević personally who was the party in the proceedings, but to a person who lived at the address in Zadar he left in 2012. After obtaining a copy of the decision, Mr. Močević lodged a constitutional complaint, claiming the violation of his, and his son's human rights, namely the rights protected under articles 6 and 8 to the Convention.

In 2017 Mr. Močević's ex-wife again abandoned the son, and left Croatia in an unknown direction. A year later she was extradited from Austria where she lived as a homeless person, mentally unstable and alcoholic. In the beginning of 2019 Municipal court in Đakovo, section in Našice, (former Municipal court) initiated proceedings no. 15.ref; R1 Ob-18/2019 to deprive / restore the right to parental care of minor I.M. Although the child has been left without care from a parent who is able to provide him with stable and nurturing environment by direct fault from the family court judge Ankica Wolf, who ignored all evidence that the mother was an unsuitable parent and denied father the right to care for his child solely on ethnic grounds, she is still presiding the case leaving Mr. Močević and his attorney out of the ongoing proceedings. All requests Mr. Močević made in 2019 for the exclusion from proceedings of both the judge, the president of the court in Đakovo and the delegation of jurisdiction to another court were either rejected or not decided upon by the Supreme Court of Croatia, despite clear evidence that the child was endangered and hindered in normal development by judge Wolf, who, despite the facts and the evidence entrusted the minor child with a psychologically unstable and alcoholic parent, prone to vagrancy who clearly could not care or provide for him. The child is living for over 10 years now in a state of mental anguish.

Mr. Močević has also been denied any contact with his children from second marriage who live in Zadar with their mother. In late December 2018, the mother has barred him from any contact, even by phone with his sons age 3 and 10. Mr. Močević has reported this violation of his right to maintain personal relations and direct contact with him as a parent on a regular basis protected both by the UN Convention on the Rights of the Child and Article 8-2 of the European Convention on Human Rights. Article 95 of the Croatian Family Law stipulates that "A parent who does not live with a child has the right and duty to have personal relations with the child, unless prohibited or restricted by a court order." Mr. Močević has both directly and through his attorneys informed the Family court in Zadar and Center for social welfare about this unlawful conduct but both of them failed to react or do anything to protect the rights of Mr. Močević and his children.

## 5. Further observations

Mr. Močević points out that, in the absence of a decision in the KR-DO-405/10 criminal investigation case, within a reasonable time, Croatian authorities violated the provision of Article 6 paragraph 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe. That provision stipulates, inter alia, that for the purpose of establishing their civil rights

and obligations or in the case of the indictment for a criminal offense, everyone has the right to a fair and public hearing within a reasonable period of time. The aforementioned principle is also contained in Article 29 para. 1 of the Constitution of the Republic of Croatia (Official Gazette 41/01, consolidated text, 55/01-corrected, hereinafter: the Constitution), according to which everyone has the right to an independent and impartial tribunal established by law to decide fairly and within a reasonable period of time on his rights and obligations, or of suspicion or accusation of a criminal offense. Mr. Močević was entitled to an investigation and a decision within a reasonable time on the report he filed to the prosecutor about suspicious death of his mother and the threats he received by telephone, so that the County Prosecutors Office (ŽDO) should have brought a decision on these suspicions, either through an indictment or a dismissal of allegations, in the proceedings he could actively participate in. The preliminary investigation proceedings in the case KR-DO-405/10 have not been concluded to this day (see *Mocanu and Others v. Romania* Applications nos. 10865/09, 45886/07 and 32431/08 § 280, 17 September 2014, *mutatis mutandis*, *Palić v. Bosnia and Herzegovina*, no. 4704/04, § 52, 15 February 2011). Therefore when the criminal proceedings at the preliminary investigation stage lasted ten years, and, most notably, where no investigative procedures whatsoever had been undertaken in most of that time, the European Court usually found a breach of Article 6 § 1 of the Convention (*Karamitrov and Others v. Bulgaria* no. 53321/99, §§ 55,56, 10 January 2008). Article 6 § 1 applies throughout the entirety of proceedings for “the determination of ... any criminal charge” (*Phillips v. the United Kingdom* no. 41087/98 §39, 5 July 2001).

Mr. Močević was discriminated against because of his origin and nationality. He was treated differently by the authorities than his mother's common-law husband, Ante Radetić a Croatian national. “According to settled case-law, the principle of equal treatment prohibits not only overt discrimination based on nationality but also all covert forms of discrimination which, by applying other distinguishing criteria, lead in fact to the same result. *Commission of the European Communities v. Republic of Austria* (judgment of 7 July 2005, Case C-147/03 points 41 and 46-48). Therefore a refusal of the authorities to carry on or conclude criminal proceedings into the death of applicant's mother, her husband's conduct and telephone threats he received from his ex-wife, in our opinion amount to a breach of the right protected by Article 14 of the European Convention on Human Rights.

By depriving him of his tenancy right in the apartment in Zadar, Ugljanska 6, and the right to lease, Croatian courts had violated Mr. Močević's right to respect for his home. The Strasbourg case-law is clear on the point that the concept of “home” within the meaning of Article 8 is not limited to those premises which are lawfully occupied or which have been lawfully established. “Home” is an autonomous concept which does not depend on classification under domestic law. Whether or not a particular premises constitutes a “home” which attracts the protection of Article 8 § 1 will depend on the factual circumstances, namely, the existence of sufficient and continuous links with a specific place (see *Buckley v. the United Kingdom*, 25 September 1996, Reports 1996-IV, §§ 52-54, and *Commission's report* of 11 January 1995, § 63; *Gillow v. the United Kingdom*, 24 November 1986, § 46,

Series A no. 109; *Wiggins v. the United Kingdom*, no. 7456/76, Commission decision of 8 February 1978, DR 13, p. 40; and *Prokopovich v. Russia*, no. 58255/00, § 36, ECHR 2004-XI (extracts). Thus, whether certain premises are to be classified as a “home” is a question of fact and does not depend on the lawfulness of the occupation under domestic law (see *McCann v. the United Kingdom*, no. 19009/04, § 46, 13 May 2008).

As to the present case, it is undisputed that Mr. Močević had lived in the apartment in question between 1972 and beginning of 1994. In the domestic court cases the Government have not disputed that the apartment was Mr. Močević’s actual place of residence. A person’s eviction also amounts to an interference with that person’s right to respect for his or her home. By disputed decisions, Mr. Močević was factually evicted from his home, together with his mother. Mr. Močević was ordered to vacate the flat in question by the national courts under Croatian laws regulating ownership, which allow an owner to seek repossession of his or her property when the possessor has no legal grounds for possession. The Court has adopted several judgments against Croatia on the ground that the national courts ordered persons eviction solely because they had no legal basis for occupying the flats at issue, without having carried out a proportionality test as to the measures taken against him (see, for example, *Ćosić v. Croatia*, no. 28261/06, § 18, 15 January 2009; *Brežec v. Croatia*, no. 7177/10, § 40, 18 July 2013 etc). In circumstances where the national authorities, in their decisions ordering and upholding Mr. Močević’s eviction, have not given any explanation or put forward any arguments demonstrating that Mr. Močević’s eviction was necessary, the State’s legitimate interest in being able to control its property comes second to Mr. Močević’s right to respect for his home. Moreover, where the State has not shown the necessity of Mr. Močević’s eviction in order to protect its own property rights, the European Court in its well established case-law places a strong emphasis on the fact that no interests of other private parties are likewise at stake.

Under Article 1 of Protocol No. 1 to the European Convention dismissing his action in the above-mentioned civil proceedings the Croatian courts had violated his property rights as they had prevented him from becoming the owner of his flat.

Regarding the length of the inheritance proceedings no. O-314/2008, which was brought before the Municipal Court in Zadar, the court or the notary public could not fail to deliver a decision since the statements of living inheritors and written evidence from inscription in the land register KO Smoković could clearly establish the existence of immovable property. In the present case, the state authorities violated Mr. Močević’s constitutional right to decision by a legally established independent and impartial tribunal, within a reasonable time, which was guaranteed by Article 29 § 1 of the Constitution of the Republic of Croatia (equal to Art. 6 §1 of the Convention), by failing to bring a decision in these proceedings to this day (please see among other decisions the judgment in case of “BUJ v. CROATIA” App. No(s). 24661/02 of 01/06/2006, § § 13-28).

By decision of the Municipal Court in Našice to grant sole custody of his minor son to his mother which was under treatment for alcoholism and borderline personality

disorder the Croatian authorities with Mr. Močević's right to respect for his family life, as guaranteed by Article 8 § 2 of the European Convention. The human rights of children and the standards to which all governments must aspire in realizing these rights for all children, are set out in the Convention on the Rights of the Child. The Convention entered into force on 2 September 1990 and has been ratified by 191 countries, including Croatia. The Convention spells out the basic human rights that children everywhere – without discrimination – have: the right to survival; to develop to the fullest; to protection from harmful influences, abuse and exploitation etc. In the present case the court didn't act in accordance with the child's best interest, it's decision was based on 18 months old report from the psychiatric hospital that treated Mr. Močević's common-law wife and disputed procedure in whole was not supported by relevant and sufficient reasons to justify such interference in Mr. Močević's family life. Therefore the court's decision did not correspond to any overriding requirement in the children's best interests, on the contrary, it clearly endangered such interest, so the national authorities overstepped their margin of appreciation on account of the decision to grant sole custody to mentally unstable person, thereby violating Mr. Močević's rights under Article 8 of the Convention (CASE OF AGEYEVY v. RUSSIA, App. No(s). 7075/10 of 18 April 2013, §§ 126-129).

Mr. Močević's right to a fair trial was also violated because the court excluded him from the majority of the custody trial, did not provide him with constitutional guarantees of equality before courts and other state bodies, and his constant chicanery by judge Ankica Wolf, attorney of CSS Našice and guardian for special case attorney Matko Mamilović, only based on his ethnic origin, caused systematic and continuous damage to the best interest of the child. In addition to this, the expertise was entrusted, to an expert who is not specialized in children psychology, despite Mr. Močević's arguments, and the court did not have the need to conduct a psychiatric evaluation on the father which has no history of any mental or psychiatric problems, as opposed to the mother whom the court entrusted sole custody. In addition, Mr. Močević was discriminated against on the basis of his job since as a seaman he could not have had more frequent contact with the child, as well as by birth and ethnic origin.

All applications Mr. Močević submitted to the European Court of Human Rights remained unanswered.

### **RECOMMENDATIONS**

Since the Republic of Croatia is both member of the EU, Council of Europe, OSCE and the UN, and also ratified all international conventions in the field of human rights and rights of children we recommend to the OSCE to ensure that the courts, other government bodies and holders of public authority in Croatia honor internationally assumed commitments, comply with and effectively implement the "Rule of Law standards" in each and every case brought before the judiciary regardless of nationality and ethnic origin of the parties.<sup>1</sup>

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<sup>1</sup> See the Venice Commission Rule of Law Checklist ([http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)007-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)007-e)).