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# Jansons v Latvia: when is an ‘eviction’ actually an eviction?

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November 10, 2022

By Serde Atalay and Vladislava Stoyanova

When exactly does an eviction occur according to the Strasbourg Court? In Jansons v Latvia (application no. 1434/14), this question lurks behind the majority’s reasoning and the dissenting opinion of Judge O’Leary. This case is one of the “verticalized” cases brought before the Court, concerning, in essence, a private law dispute between the individual applicant and a private company in the context of a contested tenancy. In this post, we will analyse the case by focusing on the importance of framing a case in different ways as observed in the majority’s reasoning and the dissenting opinion, and on the meaning of eviction.

## Facts

The case was brought by the applicant, Mr. Mārtiņš Jansons, against Latvia, due to the latter’s alleged failure to protect his rights under Article 8 and Article 13 taken in conjunction with Article 8 of the ECHR against the actions of a private company that “forced him out of” his apartment (paragraph 1) and the actions of a bailiff to the same effect as part of an enforcement procedure.

The applicant signed an *agreement on the use of premises* on 27 August 2009 with SIA Aeron, a private company, with respect to an apartment in a residential building owned by the latter. The relevant Latvian legislation did not regulate such an agreement (which had important repercussions for the applicant’s tenancy claim over the apartment in the events that followed). Nevertheless, this agreement constituted the basis of the applicant’s occupancy of the apartment, and it was extended several times, the last one being valid until July 2011. While the applicant’s occupancy continued, in February 2011, the residential building was sold at a public auction to enforce a judgment debt. In April 2011, a domestic court ruled for SIA Ektornet Residential Latvia to be registered as the new owner and issued an order on entry into possession. After this, the old owner confirmed in writing that the apartment in question was vacant despite the applicant’s presence there, and later also attested in writing that it never entered into a *lease* or *rental agreement* with the applicant.

Following the expiry of the agreement on the use of premises in July 2011, the applicant continued paying rent as he considered that the agreement had been extended *de facto*. As of Autumn 2011, the applicant and the new owner negotiated a new *tenancy agreement*, which was inconclusive. Then, on 25 May 2012, the applicant was told to vacate the

apartment by 25 June 2012. In the meantime, SIA Ektornet Residential Latvia returned the applicant's payments by stating that there was no tenancy agreement (though it is not crystal clear from paragraph 8 *as of exactly when* payments were returned).

A series of actions taken by the owner against the applicant ensued. It all started with the owner cutting off the supply of electricity and water to the kitchen. Then, on 8 November 2012, the representatives of the owner forced themselves into the applicant's apartment with the help of armed private security guards. This was also the date when the applicant instituted civil proceedings against the owner to have the agreement on the use of premises recognised as a valid tenancy agreement. Following this forced entry, the applicant locked himself in a room inside the apartment and called the police. Despite arriving at the scene, the police did not take any action, indicating the private nature of the dispute and telling the applicant to file a complaint at a police station. When the applicant left the apartment to do so the following day, the situation escalated with the owner having changed the locks and fortified the apartment entrance. Thereafter, the applicant was effectively prevented access to the apartment and his pleas to the police were to no avail, as the papers showed that he had no tenancy. Shortly after these events, the bailiff came to the apartment to enforce the order on entry into possession of SIA Ektornet Residential Latvia on 12 December 2012. The applicant tried to persuade the bailiff that he resided there, however, the bailiff continued with the enforcement. The applicant sought the help of police, again to no avail.

The applicant pursued criminal and civil proceedings against both the bailiff and the owner, along with disciplinary proceedings against the bailiff. All criminal and disciplinary proceedings, along with the civil proceedings against the bailiff were unsuccessful. The applicant himself dropped the civil proceedings against the owner after SIA Ektornet Residential Latvia was replaced by a third person following the sale of the apartment.

## The judgment

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The Court examined the case under the home aspect of Article 8. As for admissibility, after establishing that there was a 'home' within the meaning of Article 8 and that the applicant was a victim within the meaning of Article 34, the Court dismissed the Government's preliminary objection on the exhaustion of domestic remedies. According to the Court, in essence, the case concerned the fact that the applicant was evicted without a lawful eviction order. Therefore, certain domestic remedies which the State claimed were available to the applicant were not deemed suitable by the Court to address the substance of his claim. Hence, he did not have to exhaust them.

As to the merits, the Court first examined under Article 8 the failure of the State to act against the private owner. According to the Court, in certain circumstances, States have a positive obligation to assist persons who sought the help of authorities against an attack by a private person to their right to respect for one's home. Latvia's positive obligations to protect the applicant against what appeared to be a forced eviction were triggered, and it failed to fulfil

them. The Court noted that the existence of a legal dispute over the applicant's right to occupy the apartment could not be used as an excuse by the State to justify its failure. And the criminal investigation into the actions of the owner was too limited in scope as it heavily relied on the fact that the applicant was not established as a tenant under the law and offered no real protection to the applicant. Therefore, Article 8 was found to have been violated.

Second, the Court examined whether the bailiff's actions were in violation of the State's negative obligations. It noted that the bailiff's persistence with the enforcement notwithstanding the dispute over the apartment resulted in the applicant's eviction. This interference was not 'in accordance with the law', because the domestic law required, even when an apartment was occupied without a tenancy agreement, the existence of an eviction order, which was absent. The Court also remarked that although certain domestic procedural safeguards were available to the applicant, these were "effectively rendered inoperative" (paragraph 89). Therefore, it found a violation of Article 8 also with respect to the actions of the bailiff.

Under Article 13 taken in conjunction with Article 8, the Court emphasized that the applicant had no standing to bring civil action against the bailiff since he was neither the creditor nor the debtor in the process of entry into possession as per domestic law. Regarding the other civil law remedies, the Court reiterated that none of the remedies concerning the aftermath of the eviction could have addressed the applicant's main complaint that there was no eviction order issued against him to begin with. Lastly, regarding the other available criminal law remedies, the Court repeated that they were too narrow in scope. Therefore, the Court found a violation of Article 13 taken in conjunction with Article 8.

## Analysis

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The first noteworthy aspect of this case is the way in which the dispute was framed in significantly different ways by the majority and by the dissenter. The case shows that the choices made by judges in framing a case indeed do weigh heavily on its outcome. For the majority, the case centered on the lack of an eviction order. Both with respect to the lack of action of the Latvian State and the actions of the bailiff, the Court attached great importance to the fact that no eviction order was issued by a court at any moment. Considering the provision in domestic law, which required such an order even in the event of arbitrary occupancy, remedies such as claims for recognition of the tenancy relationship, restoration of physical possession or reimbursement of damages simply could not compensate for the illegality of the eviction. With this ruling, the Court sent a strong message to States: evictions must comply with the standards laid out in domestic law from the beginning, and States must make sure that property owners respect this, too. Considering that, for the Court, "the loss of

one's home is a most extreme form of interference with the right to respect for the home", this approach appears consistent with its case-law and, from the perspective of prospective applicants, laudable.

For Judge O'Leary, however, the heart of the dispute was the determination of whether the applicant had a right to occupy the apartment, i.e. the nature of the agreement on the use of premises under Latvian law. Since the applicant did not see through the civil proceedings that he brought against the owner to have his contract recognised as a valid tenancy agreement, which was also crucial for the outcome of the criminal proceedings, he did not exhaust domestic remedies. Therefore, the application should have been deemed inadmissible. Judge O'Leary therefore placed emphasis on the importance of the civil proceedings, which is understandable given the private nature of the dispute. She also highlighted how the criminal proceedings, on which the majority's reasoning relied, were actually dependent on the civil proceedings. This dependency in itself further justified the importance of the civil proceedings.

The dissenter's opinion is quite strong on these points; however, it significantly diverges from the Court's established case-law. For the Court, the legality of the occupancy of a home is not decisive for the applicability of Article 8 in the first place. The decisive factor is whether, *factually*, an applicant has sufficient and continuous links with a specific place for that place to be called their home, as autonomously understood under the Convention (see, *inter alia*, [here](#), [here](#), and [here](#)). Having one's address registered somewhere else or not having a legal basis to occupy an apartment do not per se pose a problem in that respect. In this case, the applicant had this link, and it was not disputed that the applicant had actually lived in the apartment (paragraph 53). That sufficed for the Court to find Article 8 applicable, since the apartment was the applicant's home *within the meaning of the Convention*. In what followed, therefore, the key issue for the Court was the illegality of the eviction from the beginning – regardless of the legal basis of occupancy. This was further justified by the fact that the domestic law openly required an eviction order even for those without a tenancy agreement. Therefore, asking for the applicant to have exhausted domestic remedies concerning the determination of the legal basis of his occupancy would have served no purpose. Judge O'Leary's argument, then, virtually questions the Court's general approach to home-related disputes before the Court. By emphasizing that the applicant should have exhausted domestic remedies to establish the basis of his occupancy, she questioned, first indirectly, the low threshold of applicability of Article 8 under its 'home' aspect. She then directly challenged this with her remarks on whether the apartment really constituted the applicant's home by attaching importance to formal criteria (see paragraph 39 of her opinion), which, overall, differs from the Court's approach in deciding on the existence of a home by looking at factual circumstances.

The second noteworthy aspect of this case is the question of when exactly the eviction took place, or, by a stretch, whether it took place at all. If one adopts the Court's long-established approach of factually treating the existence of a home, there was clearly a forced eviction in

this case as the applicant was forced out of his apartment and his belongings were forcibly removed. Indeed, according to General Comment No. 7 on forced evictions of the United Nations Committee on Economic, Social and Cultural Rights, forced eviction means “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.” Therefore, Judge O’Leary’s suggestion that what happened may not have been an eviction (exemplified in the way she used quotation marks when she referred to the applicant’s “eviction”, for instance) seems untenable.

That said, two points are warranted. First, what the Court thinks about *when* exactly the eviction took place or *who* evicted the applicant in the first place is not clear. Looking at the factual pattern, it is plausible to say that the forced eviction occurred on 8 November 2012 upon the forcible entry of the representatives of the owner into the apartment. The fact that the police reminded the intruders that “an eviction could only be carried out on the basis of a court order” supports this contention (paragraph 10). Therefore, it would be misleading to call only the actions of the bailiff an eviction, since what he did was in effect continuing an eviction that had already started. It is thus intriguing that the Court does not openly refer to the actions of the owner as (forced) eviction right from the start but leaves it to the reader to infer that (paragraphs 76 ff.). Second, relating to the first point, eviction is not defined in the Court’s case-law. It is important for the Court to clarify whether it adduces a specific meaning to eviction within its own case-law, or whether it considers that this is a matter to be clarified by domestic authorities, as defended by Judge O’Leary. In the event of the former, the definition of, and standards in relation to, forced evictions developed by the United Nations Committee on Economic, Social and Cultural Rights, which the Court already referred to in the past, could be of great help to the Court.

## Conclusion

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*Jansons v Latvia* makes it clear that especially when the (il)legality of an eviction, or, in fact, the whole basis of occupancy is at issue in a case, defining eviction becomes crucial. The case also shows how factual circumstances can be approached differently depending on the angle used. The majority’s approach centered on the actual harm suffered. The dissenter’s approach centered on the domestic proceedings.