



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

SECOND SECTION

CASE OF VRZIĆ v. CROATIA

(Application no. 43777/13)

JUDGMENT

STRASBOURG

12 July 2016

FINAL

12/10/2016

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



In the case of Vrzić v. Croatia,

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

Işıl Karakaş, *President*,

Julia Laffranque,

Nebojša Vučinić,

Valeriu Griţco,

Ksenija Turković,

Jon Fridrik Kjølbro,

Stéphanie Mourou-Vikström, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 21 June 2016,

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

PROCEDURE

1. The case originated in an application (no. 43777/13) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Croatian nationals, Mr Nikola Vrzić and Ms Mila Vrzić (“the applicants”), on 10 June 2013.

2. The applicants were represented by Ms L. Kušan, a lawyer practising in Ivanić Grad and Ms N. Owens, a lawyer practicing in Zagreb. The Croatian Government (“the Government”) were represented by their Agent, Ms Š. Stažnik.

3. The applicants alleged, in particular, that their right to respect for their home had been violated.

4. On 24 March 2014 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1955 and live in Poreč.

6. The facts of the case, as submitted by the parties, may be summarised as follows.

7. On 5 February 2009 the applicants and their company, M.N., entered into an agreement with M.G. and his company, E. By virtue of that agreement the applicants acknowledged their debt of 580,000 Croatian

kunas (HRK) to M.G. and their company's debt of HRK 180,000 to company E. In order to secure the overall loan, the applicants used their house as collateral, allowing M.G. to register a charge on it. It was stipulated that unless the applicants and their company paid their outstanding debts by 1 May 2009, the creditors were entitled to institute enforcement proceedings for payment of the debt through the sale of the applicants' house.

8. On 20 October 2009 M.G. and his company E. instituted enforcement proceedings against the applicants before the Poreč Municipal Court (*Općinski sud u Poreču*), seeking the judicial sale of the house. They argued that the applicants had failed to pay their debt to M.G., while the company M.N. had managed to pay only part of its debt to the company E. The applicants' outstanding debt amounted to HRK 703,643.05.

9. On 17 November 2009 the Poreč Municipal Court granted that request and issued an enforcement order against the applicants. The applicants did not appeal and the enforcement order became final on 17 December 2009.

10. On 11 December 2009 the Poreč Municipal Court registered the enforcement order on the applicants' house in the land register.

11. A hearing to assess the value of the property was held before the Poreč Municipal Court on 4 May 2010. Both applicants were properly summoned, but only the first applicant appeared. He undertook to submit an expert valuation of the house within two days. The creditor asked the Municipal Court to commission an expert for that purpose. The first applicant did not comply with his undertaking.

12. On 16 June 2010 the valuation of the house was carried out on site by a civil engineer and a surveyor, in the presence of the first applicant.

13. The civil engineer submitted his report on 20 August 2010, stating that the value of the house was HRK 2,463,092.48 (approximately 323,860 euros). The applicants made no objections to the valuation.

14. On 7 October 2010 another set of enforcement proceedings against the applicants was joined to the proceedings at issue. In the former proceedings an enforcement order had been issued against the applicants at the request of the Poreč Municipality on 12 May 2010, in respect of a claim of HRK 24,352.94 (approximately 3,200 euros). Since the applicants had not lodged an appeal, the enforcement order had become final on 12 June 2010.

15. On 25 October 2010 the Municipal Court set the value of the applicants' house at HRK 2,463,092.48.

16. On 25 January 2011 a first public auction was held. However, there were no interested buyers. The applicants, though properly summoned, did not appear.

17. A further set of enforcement proceedings against the applicants was joined to the proceedings at issue on 13 May 2011. In those proceedings, an enforcement order had been issued against the applicants at the request of

Bank P. on 24 January 2011, in respect of an unpaid loan of 14 February 2006 in the amount of 159,688.87 Swiss Francs. Since the applicants had not lodged an appeal, the enforcement order had become final on 31 March 2011.

18. A second public auction for the sale of the applicants' house was postponed several times at the request of the creditors.

19. The second public auction was eventually held on 30 March 2012 and the applicants' house was sold to M.G. for HRK 821,040 (approximately 109,000 euros). The applicants, though properly summoned, did not appear.

20. On 2 April 2012 the Poreč Municipal Court granted M.G. title to the applicants' house, on condition that he paid HRK 821,040 as the purchase price.

21. On 23 April 2012 the applicants lodged an appeal against that decision, arguing that the judicial sale had been disproportionate since the true value of their house had been about 700,000 euros (EUR). They also argued that the Municipal Court had failed to comply with the provisions of the Enforcement Act, which stated that courts should respect the dignity of debtors subject to enforcement and should make the enforcement process as humane as possible.

22. On 8 May 2012 the applicants submitted a statement that the value of their house was EUR 640,000.

23. On 28 December 2012 the Pula County Court (*Županijski sud u Puli*) dismissed the applicants' appeal. It found that the applicants' house had been sold at a second public auction for more than one-third of its value, that the first public auction had been unsuccessful, and that M.G. had been the only bidder. Furthermore, the value of the house had been set by the Poreč Municipal Court on 25 October 2010 and the applicants had not objected to it. In the County Court's view, the sale of the applicants' house was in accordance with the Enforcement Act.

24. On 31 January 2013 the Poreč Municipal Court entered M.G.'s title to the applicants' house in the land register.

25. On 20 February 2013 the applicants lodged an appeal on points of law against the decision of the Pula County Court, relying on section 382(2) of the Civil Procedure Act. They argued that the actual value of their house was around EUR 700,000, and that their house should have been exempted from enforcement as it was "meeting their basic human needs".

26. On the same day, the applicants applied to the Poreč Municipal Court for a stay of enforcement.

27. On 22 February 2013 the Poreč Municipal Court declared the applicants' appeal on points of law inadmissible on the grounds that such an appeal was allowed in enforcement proceedings only if based on section 382(2) of the Civil Procedure Act, which was not the case. The applicants lodged an appeal.

28. On the same day the Poreč Municipal Court declared the applicants' request for a stay of enforcement inadmissible, finding that they had failed to meet the statutory conditions for such a request. The applicants lodged an appeal.

29. On 8 March 2013 the Croatian Electricity Company (*Hrvatska Elektroprivreda*, hereinafter "HEP") cut off the applicants' electricity at M.G.'s request. The applicants immediately applied to the Poreč Municipal Court for an interim measure prohibiting M.G. from having the electricity and water cut off and from making alterations to the house, ordering HEP to reconnect the electricity, and authorising them to keep the house until the enforcement proceedings were complete. On the same day the Poreč Municipal Court issued the interim measure, prohibited M.G. from having the electricity and water cut off and ordered HEP to reconnect the electricity. That decision was quashed by the Pula County Court on 21 May 2013 and the applicants' request for an interim measure was denied.

30. On 19 June 2013 the Municipal Court decided to transfer ownership of the house at issue to M.G. The applicants lodged an appeal, which was declared inadmissible by the Municipal Court on 10 July 2013.

31. On 26 July 2013 the Poreč Municipal Court held a hearing on the division of the proceeds (*dioba kupovnine*) from the sale of the house. The applicants, though properly summoned, did not appear.

32. On 17 September 2013 the Poreč Municipal Court ordered the eviction of the applicants. The applicants lodged an appeal, arguing that enforcement should not have been carried out by the sale of their house, which served to "satisfy their basic needs": they lived there with their family and it also served as their business premises.

33. On 21 October 2013 the Municipal Court scheduled the eviction of the applicants for 13 December 2013, ordering the court bailiff to carry out the eviction. However, the eviction was postponed for three months.

34. On 19 November 2013 the applicants applied for an interim measure prohibiting the sale of their house and their eviction.

35. On 20 December 2013 the Poreč Municipal Court decided to conclude the enforcement proceedings for the payment of monetary debts.

36. On 20 January 2014 the Pula County Court dismissed the applicants' appeal against the decision of 17 September 2013 (see paragraph 32 above), finding that the Municipal Court had acted in accordance with the law, namely the provisions of the Enforcement Act. The enforcement proceedings were about to be concluded since the sale of the applicants' house had been completed.

37. On 23 January 2014 the Pula County Court accepted the applicants' appeal against the decision of 22 February 2013 (see paragraph 27 above) and remitted the applicants' appeal on points of law to the Municipal Court.

38. On the same day the Pula County Court, in a different decision, dismissed the applicants' appeal against the decision of 22 February 2013

by which their request for a stay of the enforcement proceedings had been dismissed (see paragraph 28 above).

39. On 12 March 2014 the applicants withdrew their appeal on points of law referred to in paragraphs 25 and 37 above.

40. On 13 March and 28 April 2014 M.G. sought the applicants' eviction.

41. The applicants have not yet been evicted.

II. RELEVANT DOMESTIC LAW

A. Enforcement legislation

1. Enforcement Act of 1996 with subsequent amendments

42. The relevant provisions of the 1996 Enforcement Act, which was in force at the material time (*Ovršni zakon*, Official Gazette of the Republic of Croatia, nos. 57/1996, 29/1999, 42/2000, 173/2003, 194/2003, 151/2004, 88/2005 and 67/2008), provided as follows:

Legal remedies

Section 11

“(1) Where this Act does not prescribe otherwise, an appeal is allowed against a ruling (*rješenje*) adopted by a first-instance court.

...

(3) Where this Act does not prescribe otherwise, an appeal is to be lodged within eight days of the service of the first-instance ruling.

(4) Where this Act does not prescribe otherwise, the lodging of an appeal does not stay the enforcement proceedings.

(5) There is no remedy against a court instruction (*zaključak*).

...”

Section 12

“(1) In enforcement proceedings ... only an appeal on points of law under section 382(2) of the Civil Procedure Act is allowed ...”

Section 46

“(1) The debtor may lodge an appeal against the enforcement order:

...

7. if the creditor is not authorised to seek enforcement on the basis of the enforcement title or is not authorised to seek enforcement against a particular debtor.

...

9. if the claim has ceased to exist on the basis of a fact that occurred when the debtor could no longer have presented it in the proceedings in which the enforcement title

was adopted, or after a court-assisted friendly settlement has been concluded or after a notary deed has been drafted, approved or authorised (*ovjeren*).

10. if the settling of the claim has been adjourned (even temporarily), disallowed, altered or prevented owing to a fact that occurred when the debtor could no longer have presented it in the proceedings in which the enforcement title was adopted, or after a court-assisted friendly settlement has been concluded or after a notary deed has been drafted, approved or authorised (*ovjeren*).

11. if the claim has become statute-barred.”

Section 48 provides that if a creditor opposes allegations in a debtor’s appeal lodged under section 46(1) subparagraphs 7 and 9 to 11, the court conducting the proceedings will instruct the debtor to bring a civil action seeking to have the enforcement declared inadmissible.

Valuation of real estate
Valuation assessment method
Section 87

“(1) A court [conducting enforcement proceedings] shall assess the value of real estate and issue a court instruction after holding a hearing at which the parties shall have an opportunity to present their arguments and submit written evidence. The court may seek information on the real-estate market from the tax authorities if necessary.

...

(3) When the parties set the value of real estate in an agreement ... by which that real estate is used as collateral ... for securing a claim which is to be enforced, that value will be relevant unless the parties agree otherwise in [enforcement] proceedings before a court ...

...”

Section 97

“(1) At the first public auction the real estate cannot be sold for less than two-thirds of its assessed value (section 87).

(2) At the second public auction the real estate cannot be sold for less than one-third of its assessed value.

...”

Section 120

“On the sale of the real estate, the enforcement debtor loses his or her title to the property and must deliver it to the buyer promptly after the service of the decision on delivering the property to the buyer, if not otherwise provided for by law or by an agreement with the buyer.”

2. Enforcement Act of 2012 with subsequent amendments

43. A new Enforcement Act entered into force on 15 October 2012.

44. Section 102 provides that real estate cannot be sold for less than two-thirds of its assessed value at a first public auction and half of its assessed value at a second public auction.

45. Section 369(1) provides that ongoing enforcement proceedings must be concluded under the previous enforcement legislation.

B. Civil Procedure Act

46. The relevant provision of the Civil Procedure Act (*Zakon o parničnom postupku*, Official Gazette of the Socialist Federal Republic of Yugoslavia nos. 4/1977, 36/1977 (corrigendum), 36/1980, 69/1982, 58/1984, 74/1987, 57/1989, 20/1990, 27/1990 and 35/1991, and Official Gazette of the Republic of Croatia nos. 53/1991, 91/1992, 58/1993, 112/1999, 88/2001, 117/2003, 88/2005, 2/2007, 84/2008, 123/2008, 57/2011, 148/2011 and 25/2013), as in force at the material time, provided as follows:

Section 382

“(2) ... parties to proceedings may lodge an appeal on points of law against a second-instance judgment where the outcome of a dispute depends on the assessment of a substantive or procedural issue which is of importance in guaranteeing a consistent application of the law and the equality of citizens ...”

47. The relevant provisions of the Obligations Act (*Zakon o obveznim odnosima*, Official Gazette nos. 35/2005, 41/2008, 125/2011) read as follows:

Nullity

Section 322

“(1) A contract that is contrary to the Constitution, mandatory rules or morals shall be declared null and void (*ništetan*) unless the purpose of the breached rule indicates some other sanction or the law in a particular case provides otherwise.

(2) If the conclusion of a contract is prohibited only to one party, the contract shall remain valid, unless the law in a particular case provides otherwise, and the party that has breached the statutory prohibition shall bear the relevant consequences.”

Voidable contracts

Section 330

“A contract is voidable (*pobojan*) if a party to it had no legal capacity or entered into the contract under duress (*mane volje*) at the time when it was concluded or where the contract is voidable under this Act or another statute.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

48. The applicants complained that their right to respect for their home had been violated. They relied on Article 8 of the Convention, which, in so far as relevant, reads:

“1. Everyone has the right to respect for his ... home ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

A. Admissibility

1. Submissions of the parties

49. The Government argued that the applicants had not exhausted all available domestic remedies. In the first place, they could have brought a civil action to declare the agreement at issue null and void. In such proceedings they could have argued that the agreement was contrary to the Constitution, which guaranteed the “inviolability of one’s home”. They could also have brought a civil action claiming that the enforcement order on their house was not admissible. In such proceedings they could have put forward all of the arguments concerning their right to respect for their home.

50. The applicants argued that a civil action could not have altered the rules for enforcement proceedings prescribed by the Enforcement Act. Also, an action seeking to have the loan agreement declared null and void would not have addressed the issue of the protection of their right to respect for their home in the enforcement proceedings.

2. The Court’s assessment

51. In accordance with Article 35 § 1 of the Convention, the Court may only deal with a matter after all domestic remedies have been exhausted. The purpose of Article 35 is to afford the Contracting States the opportunity of preventing or putting right violations alleged against them before those allegations are submitted to the Court (see, for example, *Gherghina v. Romania* (dec.) [GC], no. 42219/07, § 84, 9 July 2015; *Hentrich v. France*, 22 September 1994, § 33, Series A no. 296-A; and *Remli v. France*, 23 April 1996, § 33, *Reports of Judgments and Decisions* 1996-II). Thus, a complaint submitted to the Court should first have been made to the appropriate national courts, at least in substance, in accordance with the formal requirements of domestic law and within the prescribed time-limits

(see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 72, 25 March 2014). To hold otherwise would not be compatible with the subsidiary character of the Convention system (see *Gavril Yosifov v. Bulgaria*, no. 74012/01, § 42, 6 November 2008). Nevertheless, the obligation to exhaust domestic remedies requires only that an applicant make normal use of remedies which are effective, sufficient and accessible in respect of his Convention grievances (see *Vučković and Others*, cited above, § 73; *Balogh v. Hungary*, no. 47940/99, § 30, 20 July 2004; and *John Sammut and Visa Investments Limited v. Malta* (dec.), no. 27023/03, 28 June 2005).

52. In the present case the Government argued that the applicants had at their disposal two remedies they had failed to exhaust (see paragraph 49 above).

53. As to a civil action claiming that the enforcement order on their house was not admissible, the Court notes that such an action is allowed only for the reasons specified in section 46(1) subparagraphs 7 and 9 to 11 of the Enforcement Act (see paragraph 42 above) and that the applicants have not argued that any of those circumstances applied in their case. None of the circumstances specified in those provisions concerns the applicants' arguments under Article 8 of the Convention. Therefore, the Government's objection, in so far as it concerns a civil action claiming that the enforcement order on the applicants' house was not admissible, must be rejected.

54. As to a civil action seeking to have the contract at issue declared null and void, the Court considers that the arguments submitted by the parties in that respect concern the merits of the case. The Court will therefore examine them in that context.

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

B. Merits

1. Submissions of the parties

56. The applicants argued that the order for their eviction issued by the Poreč Municipal Court had amounted to an interference with their right to respect for their home, notwithstanding the fact that they had not yet been evicted. They accepted that the interference in question was in accordance with the law, but argued that it was not necessary in a democratic society. They maintained that their house should have been exempted from the enforcement proceedings since it had been satisfying their basic housing needs.

57. The applicants also argued that the procedural safeguards required under Article 8 of the Convention had not been provided, since the rules governing the enforcement proceedings did not allow the courts to carry out a proportionality test in the enforcement proceedings.

58. The Government argued that the grounds for interference with the applicants' right to respect for their home were set out in the Enforcement Act. The interference pursued the legitimate aim of protecting the interests of others, namely, the applicants' creditors. They maintained that, by using their house as collateral for their loan, the applicants had agreed to the sale of their house if they failed to comply with their contractual obligations.

2. The Court's assessment

(a) Whether there has been an interference with the applicants' right to respect for their home

59. The Court has previously held that the judicial sale of an applicant's home and his or her eviction were to be seen as an interference with the right to respect for his or her home (see *Zehentner v. Austria*, no. 20082/02, § 54, 16 July 2009). In the present case, the applicants' house was sold in enforcement proceedings and their eviction was ordered in the context of those proceedings. Even though the applicants have not yet been evicted, an eviction order has been issued and may be enforced at any time. The Court reiterates that the obligation on an applicant to vacate a house in which he or she lives amounts to an interference with his right to respect for his home (see *Ćosić v. Croatia*, no. 28261/06, § 18, 15 January 2009).

(b) Whether the interference was prescribed by law and pursued a legitimate aim

60. The national courts ordered the applicants to vacate their house. Under Croatian law regulating enforcement proceedings, a buyer of property at a public auction becomes the owner of that property (see section 120 of the Enforcement Act, paragraph 42 above).

61. The Court reiterates that it is primarily for the national authorities, notably the courts, to interpret and apply the domestic law, even in those fields where the Convention "incorporates" the rules of that law, since the national authorities are, in the nature of things, particularly qualified to settle issues arising in this connection (see, *mutatis mutandis*, *Winterwerp v. the Netherlands*, 24 October 1979, § 46, Series A no. 33). The Court will not substitute its own interpretation for theirs in the absence of arbitrariness (see, for example, *Tejedor García v. Spain*, 16 December 1997, § 31, *Reports* 1997-VIII).

62. The decision on transferring title to the house to M.G. was issued by the national courts under Croatian laws regulating the sale of real property in enforcement proceedings. Those laws provide that when a court awards

the property to the buyer, the enforcement debtor loses his title to it. The national courts' decision to order the applicant's eviction was based on section 120 of the Enforcement Act. The Court, noting that its power to review compliance with domestic law is limited (see, among other authorities, *Allan Jacobsson v. Sweden (No. 1)*, 25 October 1989, § 57, Series A no. 163), is thus satisfied that the national courts' decisions ordering the applicants' eviction were in accordance with domestic law (see *Ćosić*, cited above, § 19). The interference in question therefore pursued the legitimate aim of protecting the buyer's lawful title to the applicants' house.

(c) Whether the interference was “necessary in a democratic society”

63. The central question in this case is, therefore, whether the interference was proportionate to the aim pursued and thus “necessary in a democratic society”.

64. The Court has also held that any person at risk of interference with the right to respect for his or her home should in principle be able to have the proportionality of the measure determined by an independent tribunal in the light of the relevant principles under Article 8 of the Convention, notwithstanding that, under domestic law, his or her right of occupation has come to an end (see *McCann v. the United Kingdom*, no. 19009/04, § 50, ECHR 2008).

65. In several cases against Croatia the Court has found a violation of the applicants' right to respect for their home on the grounds that the national courts had not carried out the proportionality test when eviction orders had been issued (see, for example, *Ćosić*, cited above; *Paulić v. Croatia*, no. 3572/06, 22 October 2009; *Orlić v. Croatia*, no. 48833/07, 21 June 2011; *Bjedov v. Croatia*, no. 42150/09, 29 May 2012; and *Brežec v. Croatia*, no. 7177/10, 18 July 2013).

66. In all those cases, as well as in the above-cited case of *McCann*, the applicants were living in State-owned or socially-owned flats and an important aspect of finding a violation was the fact that there was no other private interest at stake. Furthermore, the applicants in those cases had not signed any form of agreement whereby they risked losing their home.

67. The situation in the present case is different inasmuch as the other parties in the enforcement proceedings were either a private person, namely M.G., or private enterprises, namely a bank and a company. The case-law of the Convention organs suggests that the approach in such cases is somewhat different and that a measure prescribed by law with the purpose of protecting the rights of others may be seen as necessary in a democratic society (see *J.P. v. France*, Commission decision, no. 26215/95, 6 September 1995, and *D.P. v. the United Kingdom*, no. 11949/86, 1 December 1986).

68. Unlike the situations addressed in the cases mentioned in paragraphs 64 and 65 above, the applicants in the present case complain that

the payment of their debts was enforced by the sale of their home. The Court notes at the outset that the applicants voluntarily used their home as collateral for their loan. The applicants specifically agreed that if they and their company failed to pay their outstanding debts by 1 May 2009, the creditors were entitled to seek enforcement of the repayment through the sale of their house (see paragraph 1 above).

69. The debt was substantial, namely some EUR 250,320. The risk inherent in borrowing such a high sum is that the debtor might not be able to repay it. The applicants expressly agreed to take such a risk.

70. The applicants did not challenge any of the loan agreements before the national courts in appropriate proceedings. For example, they could have instituted proceedings seeking to have the contract declared null and void (*ništav*) or voidable (*pobojan*) (see sections 322 and 330 of the Obligations Act, paragraph 47 above). This implies that the applicants freely entered into those agreements and freely stipulated that the loans could be secured using their house as collateral. The applicants must therefore have been aware that their house would be sold to secure the payment of any outstanding debts after the time-limit set for the repayment of the loan had expired. When the enforcement order for the sale of their house was issued, the applicants did not challenge that order by means of an appeal, as provided for under section 11 of the Enforcement Act (see paragraph 42 above). By not objecting to the enforcement order, which specifically concerned the sale of their house, the applicants tacitly agreed to its sale in the enforcement proceedings.

71. The sale of the applicants' house in the enforcement proceedings was a consequence of the applicants' failure to meet their contractual obligations. Moreover, it was a consequence to which the applicants had expressly agreed.

72. It can therefore be concluded that the applicants agreed and accepted that the payment of their outstanding debts would be enforced through the sale of their house.

73. The foregoing considerations are sufficient to enable the Court to conclude that there has been no violation of Article 8 of the Convention.

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

74. The applicants complained that their right to peaceful enjoyment of their possessions had been violated. They relied on Article 1 of Protocol No. 1 to the Convention, which reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

A. Admissibility

1. Submissions of the parties

75. The Government argued that the applicants had not exhausted the relevant domestic remedies. In the first place, they had not lodged an appeal against the enforcement order and had thus agreed to the sale of their house in the enforcement proceedings. Had they lodged an appeal against the enforcement order, they could have further lodged a constitutional complaint whereby they could have put forward all the complaints they had submitted before the Court.

76. Furthermore, the applicants had not objected to the valuation of their house as prescribed by the Enforcement Act. They had had until the conclusion of the first public auction to do so. Instead, they had objected to the valuation of their house for the first time in their appeal against the decision to grant M.G. title to their house. At that stage of the proceedings such an objection was no longer admissible.

77. The applicants maintained that by signing the contract with their creditors they had not agreed to the rules of the enforcement procedure, since those rules were prescribed by the Enforcement Act and a party to a contract could not agree or disagree with the provisions of an Act. Thus, a civil action concerning the contract could not have affected the application of the Enforcement Act.

78. The applicants argued that a constitutional complaint would not have been admissible in their case.

79. The applicants further stressed that they had appealed against the decision ordering the sale of their property and their eviction, but to no avail.

2. The Court's assessment

80. The Court considers that the arguments of the parties concerning the exhaustion of domestic remedies concern the merits of the applicants' complaint under Article 1 of Protocol No. 1, and in particular its procedural aspect, and will examine them accordingly.

81. The Court notes that 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. Submissions of the parties

82. The applicants put forward the following arguments in support of their complaint under Article 1 of Protocol No. 1.

83. The applicants maintained that the enforcement measures had not been accompanied by procedural safeguards. Most of their appeals in the enforcement proceedings had been declared inadmissible. The appeal against the sale of their house for a disproportionate price, namely one-third of its value, had been dismissed as unfounded.

84. The applicants also complained that their house had been sold for only a third of its value following a valuation by a court-appointed expert and that the value of their house had been much higher than the expert's valuation.

85. The applicants submitted that the Enforcement Act, which had entered into force on 15 October 2012 when the enforcement proceedings against them had still been pending, had not been applied in their case. The application of the Act would have benefited them since it provided that real estate could not be sold at public auction for less than half of its assessed value.

86. The applicants argued that their house had been sold to one of their creditors, M.G., and that he had thus become the owner of the property, the value of which far exceeded the price for which he had bought it. In such circumstances, the applicants' debt to M.G. should have been reduced in line with the value he had obtained, that is to say, the full value of the house at issue.

87. The Government submitted that, by entering into loan agreements, the applicants had themselves defined the details of their legal obligations in respect of their creditors. They had agreed to the sale of their house in the event that they were unable to meet their contractual obligations. The decisions adopted by the State authorities had not amounted to an interference with the applicants' right to peaceful enjoyment of their possessions but had merely served as a tool for the enforcement of the will of the parties to the loan agreements.

88. The manner in which the enforcement proceedings at issue were conducted was prescribed by the Enforcement Act, as was the manner in which the applicants' house was valued.

89. The sale of the applicants' house in the context of the enforcement proceedings had pursued the legitimate aims of protecting the interests of the applicants' creditors, and of ensuring legal certainty and the economic well-being of the country. The right of the applicants' creditors to secure the repayment of the loan was of no lesser value than the applicants' right to peaceful enjoyment of their possessions.

90. The applicants had expressly agreed to the sale of their house, and that sale had been necessary to secure the payment of their outstanding debts.

91. As regards the price for which the applicants' house had been sold, the Government submitted that the various Contracting States to the Convention had legislated in different ways in that respect. Whereas some of them had not set a minimum price, others had set the minimum at various percentages, with solutions similar to those provided for in the Croatian system. The Government conceded that some member States provided better protection for debtors, but pointed out that the differences in legislative approaches and practices among member States showed that they should enjoy a wide margin of appreciation in that connection.

92. The Government pointed out that the applicants had remained inactive as regards the valuation of their house in the context of the enforcement proceedings. They did not submit any evidence as regards the value of their house for over two years, nor did they put forward timely objections to the expert valuation.

2. *The Court's assessment*

(a) **Whether there has been an interference with the applicants' right to peaceful enjoyment of their possessions**

93. The ownership of the applicants' home was transferred to another person in the context of enforcement proceedings brought with a view to obtaining sums of money which the domestic courts had earlier ordered to be paid to the applicants' creditors. Even though the interference in question did not involve expropriation by the State, the contested measure resulted in depriving the applicants of their property.

94. The Court has already examined various situations of the forced sale of applicants' homes under Article 1 of Protocol No. 1 and concluded that such sale amounted to interference with the applicants' right to peaceful enjoyment of their possessions (see, for example, *Hagman v. Finland* (dec.), no. 41765/98, 14 January 2003; *Zehentner*, cited above, *Kanala v. Slovakia*, no. 57239/00, 10 July 2007; and *Rousk v. Sweden*, no. 27183/04, 25 July 2013). The Court sees no reason to depart from such a conclusion in the present case.

95. The Court refers to its established case-law on the structure of Article 1 of Protocol No. 1 and the manner in which the three rules contained in that provision are to be applied (see, among many other authorities, *J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom* [GC], no. 44302/02, § 52, ECHR 2007-III; *Jokela v. Finland*, no. 28856/95, § 44, ECHR 2002-IV; and *Zehentner*, cited above, § 70).

96. In line with that case-law, the Court considers that the judicial sale of the applicants' property falls to be considered under the so-called third rule, relating to the State's right "to enforce such laws as it deems necessary to control of the use of property in accordance with the general interest", set out in the second paragraph of Article 1 of Protocol No. 1 (see, for example, *Zehentner*, cited above, § 71).

(b) Whether the interference was prescribed by law and pursued a legitimate aim

97. The Court reiterates that the first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of someone's possessions should be lawful (see *Iatridis v. Greece* [GC], no. 31107/96, § 58, ECHR 1999-II).

98. Any interference with a right of property, irrespective of the rule under which it falls, can be justified only if it serves a legitimate public (or general) interest. The Court reiterates that, because of their direct knowledge of their society and its needs, national authorities are in principle better placed than any international judge to decide what is "in the public interest". Under the system of protection established by the Convention, it is thus for the national authorities to make a preliminary assessment as to the existence of a problem of public concern warranting measures that interfere with the peaceful enjoyment of possessions (see *Terazzi S.r.l. v. Italy*, no. 27265/95, § 85, 17 October 2002, and *Elia S.r.l. v. Italy*, no. 37710/97, § 77, ECHR 2001-IX).

99. The Court notes that the interference with the applicants' right to peaceful enjoyment of their possessions was based on the relevant provisions of the Enforcement Act and served the legitimate aims of protecting the creditors and the purchaser of the house (see paragraph 62 above for similar considerations in respect of Article 8).

(c) Whether the interference was proportionate to the legitimate aim pursued

100. It remains to be determined whether the measures complained of were proportionate to the aim pursued. According to the Court's well-established case-law, the second paragraph of Article 1 of Protocol No.1 is to be read in the light of the principle enunciated in the first sentence. Consequently, any interference must achieve a "fair balance" between the demands of the general interest of the community and the requirement of protecting the individual's fundamental rights. The search for this balance is reflected in the structure of Article 1 of Protocol No. 1 as a whole, and therefore also in the second paragraph thereof: there must be a reasonable relationship of proportionality between the means employed and the aim pursued. In each case involving an alleged violation of Article 1 of Protocol No. 1, the Court must ascertain whether by reason of the State's interference, the person concerned had to bear a disproportionate and

excessive burden (see *James and Others v. the United Kingdom*, 21 February 1986, § 50, Series A no. 98, and *Amato Gauci v. Malta*, no. 47045/06, § 57, 15 September 2009). In determining whether this requirement has been met, the Court recognises that the State enjoys a wide margin of appreciation with regard both to choosing the means of enforcement and to ascertaining whether the consequences of enforcement are justified in the general interest for the purpose of achieving the object of the law in question (see *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, § 75, ECHR 1999-III; *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 49, ECHR 1999-V; and *Luordo v. Italy*, no. 32190/96, § 69, ECHR 2003-IX;).

101. The Court is mindful of the fact that the present case concerns proceedings between private parties, namely the applicants and their creditors on the one hand and the applicants and the purchaser of their house on the other hand. However, even in cases involving private litigation, the State is under an obligation to afford the parties to the dispute judicial procedures which offer the necessary procedural guarantees and therefore enable the domestic courts and tribunals to adjudicate effectively and fairly in the light of the applicable law (see *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, § 83, ECHR 2007-I; *J.A. Pye*, cited above, § 57; and *Zagrebačka banka d.d. v. Croatia*, no. 39544/05, §§ 250 and 251, 12 December 2013).

102. The Court notes that the applicants' complaints under Article 1 of Protocol No. 1 are based on two main arguments: firstly, that their house was sold at a price far below its market value and contrary to the law in force at that time (see paragraph 85 above); and, secondly, that the enforcement measures were not accompanied by procedural safeguards. They complained that the remedies they had pursued in the proceedings had been unsuccessful.

103. As regards the applicants' conduct, the Court notes as follows. The applicants borrowed a considerable amount of money, a measure which, by its very nature, involved an element of risk. When entering into the loan agreement, the applicants could have stipulated the value of their house which they used as collateral. Under Croatian law, that would have provided them with a considerable degree of security, as under section 87(3) of the Enforcement Act a court conducting enforcement proceedings is in principle obliged to accept that value when ordering the sale of the real property concerned (see paragraph 42 above).

104. In addition, in order to avoid having their house sold at a public auction and the inherent risks, such as the possibility that the property might be sold for only a third of its assessed value, when the applicants realised that they could not comply with their contractual obligations, knowing that those obligations had been secured by their house, they could have sold the

house themselves, outside the enforcement proceedings. They could thus have attempted to obtain the full market value for it.

105. In so far as the applicants complain that their house was sold for only a third of its assessed value, the Court considers that the rules providing that real property may be sold at a public auction, in the context of enforcement proceedings, for one-third of its assessed value falls within the State's margin of appreciation and does not appear manifestly arbitrary or unreasonable. Also, it could only be sold for a third of the value after an initial auction had failed to obtain half the value.

106. Having regard to the margin of appreciation enjoyed by the national authorities under Article 1 of Protocol No. 1, the Court therefore considers that the price received by the applicants can be considered to have been reasonably related to the value of the property.

107. The Court also notes the applicants' argument that the Enforcement Act, which entered into force on 15 October 2012 when the enforcement proceedings against them were still pending, was not applied in their case. The application of the Act would have benefited them, since it provided that real property could not be sold at public auction for less than half of its assessed value (see paragraph 44 above). The Court notes that when new legislation is introduced, the new procedural rules may apply only to future cases or to all pending proceedings. In this instance, the Croatian legislator provided that all pending enforcement proceedings would be conducted under the old rules (see paragraph 45 above). In the Court's view, this is just one example among others of the variety of legal systems existing in Europe, and it is not the Court's task to standardise them. A State's choice of a particular system of procedural rules is in principle outside the scope of the supervision carried out by the Court at European level, provided that the system chosen does not contravene the principles set forth in the Convention (see, *mutatis mutandis*, *Achour v. France* [GC], no. 67335/01, § 51, ECHR 2006-IV; and *Taxquet v. Belgium* [GC], no. 926/05, § 83, ECHR 2010).

108. As to the applicants' argument that the person who bought their house was one of their creditors, M.G. (see paragraph 86 above), the Court sees no issue in the fact that a creditor who buys real property at public auction is treated in the same manner as any other buyer.

109. In sum, and particularly in view of the risks deliberately taken by the applicants when they borrowed approximately EUR 247,000 and used their house as collateral, the applicants have not been made to bear an individual and excessive burden in this case.

110. As to the part of the applicants' complaint relating to the procedural aspect of Article 1 of Protocol No. 1, the Court reiterates that although Article 1 of Protocol No. 1 contains no explicit procedural requirements, the proceedings at issue must afford the individual a reasonable opportunity of putting his or her case to the relevant authorities for the purpose of

effectively challenging the measures interfering with the rights guaranteed by this provision. In ascertaining whether this condition has been satisfied, the Court takes a comprehensive view (see, for instance, *Jokela*, cited above, § 45).

111. The Court notes that under Croatian law, a court conducting enforcement proceedings fixes the price of real property to be sold by a court instruction (*zaključak*) which is not amenable to appeal (see sections 11(5) and 87(1) of the Enforcement Act, paragraph 42 above). However, in proceedings originating in an individual application the Court has to confine itself, as far as possible, to an examination of the concrete case before it (see *J.B. v. Switzerland*, no. 31827/96, § 63, ECHR 2001-III). It is therefore not called upon to review the legislation at issue in the abstract, namely the relevant provisions of the Enforcement Act on the judicial sale of property, but will examine the specific circumstances of the applicants' case.

112. The Court notes that on 4 May 2010 the Poreč Municipal Court held a hearing to assess the value of the property at issue. Only the first applicant appeared at that hearing, even though both applicants had been properly summoned (see paragraph 11 above). The purpose of the hearing was to give the parties a possibility to advance their arguments concerning the price of the property to be sold and to submit evidence in support of their arguments (see section 87(1) of the Enforcement Act, paragraph 42 above). The first applicant, however, did not advance any arguments or submit any evidence. Even though he had promised to submit an expert valuation of the house within two days, he failed to do so. An expert commissioned by the Municipal Court submitted his valuation report on 20 August 2010. The applicants did not submit any objections to that report. Indeed, they challenged the valuation of their house for the first time in their appeal against the decision granting M.G. title to the house, at a stage of the proceedings when further arguments concerning the value of the house were no longer admissible.

113. By not using the opportunity provided to them at the hearing held to assess the value of their house, the applicants placed themselves in a disadvantageous position. The remedies the applicants sought to use at a later stage of the proceedings were not provided for by the Enforcement Act. Thus, all the consequences of the applicants' behaviour, such as the fact that they could not challenge the valuation of the house as assessed by the court conducting the enforcement proceedings and the failure of the remedies they pursued, are attributable to the applicants themselves.

114. Given that the applicants did not actively participate in the assessment of the value of their house at the relevant stage of the enforcement proceedings, even though they had an opportunity to do so at a hearing held for exactly that purpose and by submitting timely objections to

the expert's valuation report, the Court cannot accept their arguments concerning deficiencies in the rules of the enforcement proceedings.

115. In view of the above, the Court concludes that there has been no violation of Article 1 of Protocol No. 1.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been no violation of Article 8 of the Convention;
3. *Holds* that there has been no violation of Article 1 of Protocol No. 1 to the Convention.

Done in English, and notified in writing on 12 July 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Işıl Karakaş
President