



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

FIRST SECTION

CASE OF BÉLA NÉMETH v. HUNGARY

(Application no. 73303/14)

JUDGMENT

Art 1 P1 • Control of the use of property • Applicant as auction buyer had at least a legitimate expectation of acquiring legal ownership • Lawful and justified interference preventing applicant from taking possession of property bought at auction, in wake of legislative moratorium on evictions during foreign-currency loan crisis • Fair balance struck despite lack of time-limit for moratorium, between the applicant's interests and public interest in avoiding large parts of society becoming homeless overnight, and to delay evictions until pending legislation passed to settle the crisis • Swift implementation of further legislative measures after moratorium, meaning limited interference and uncertainty and no excessive individual burden for applicant who eventually gained possession of property
Art 14 (+ Art 1 P1) • Discrimination • Wide margin of appreciation for States in field of housing • No discrimination against applicant as a private individual and auction buyer subject to the moratorium, as not in a situation relevantly similar to economic operators wholly owned by the State or local municipalities

STRASBOURG

17 December 2020

FINAL

17/03/2021

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

In the case of Béla Németh v. Hungary,

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

Ksenija Turković, *President*,

Krzysztof Wojtyczek,

Alena Poláčeková,

Péter Paczolay,

Gilberto Felici,

Erik Wennerström,

Raffaele Sabato, *judges*,

and Abel Campos, *Section Registrar*,

Having regard to:

the application (no. 73303/14) against Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Hungarian national, Mr Béla Németh (“the applicant”), on 14 November 2014;

the decision to give notice to the Hungarian Government (“the Government”) of the application;

the parties’ observations;

Having deliberated in private on 25 November 2020,

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

INTRODUCTION

1. The case concerns a legislative amendment that placed a moratorium on evictions during the crisis in Hungary arising from widespread defaulting on foreign-currency-denominated loans. Within the context of an official auction, this amendment resulted in the applicant not being able to take possession of the property that he had bought at that auction.

THE FACTS

2. The applicant was born in 1948 and lives in Kistarcsa. He was represented by Mr O.V. Tamás, a lawyer practising in Budapest.

3. The Government were represented by their Agent, Mr Z. Tallódi, of the Ministry of Justice.

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

5. On 18 March 2014, the applicant, as a bidder at an official auction held within the framework of judicial enforcement proceedings, submitted a bid for the debtor’s residential property (“the residential property”) – which was put up for official auction owing to the debtor defaulting on a loan agreement denominated in foreign currency (“foreign-currency loan agreement”) – and won the auction.

6. Before the applicant's title to the residential property could be registered in the land register and before the debtor's eviction from the residential property could take place, section 303 of Act no. LIII of 1994 ("the Enforcement Act") was amended. The amendment placed a moratorium on evictions from residential properties affected by enforcement proceedings instituted for the recovery of debts arising from foreign-currency loan agreements until a date to be specified by further supplementary legislation ("the Moratorium"). The Moratorium was not applicable to local governments and economic operators wholly owned by the State or by local municipalities, provided that such legal persons that had bought real property at auction undertook to renovate such property within two years of their taking possession and to lease such property – by way of a public tender and in accordance with local government decrees on leasing – to workers, with the goal of promoting the creation of new jobs through the offering of subsidised housing. The Moratorium entered into force on 16 May 2014.

7. The Moratorium was the first enforcement-related legislative measure taken by the Government to mitigate the detrimental effects of the 2008 financial crisis on debtors who held loans denominated in foreign currency ("foreign-currency loans") (see also *Merkantil Car Zrt. v. Hungary*, no. 22853/15, 27 November 2018, §§ 7, 8, 90 and 108). The aim of the Moratorium was to ensure that – prior to the settling of invalidity disputes concerning foreign-currency loan agreements – large parts of society did not lose their homes.

8. Owing to the entry into force of the Moratorium, the bailiffs service was barred from taking measures aimed at the eviction of the debtor from the residential property.

9. On 3 July 2014, shortly after the entry into force of the Moratorium, the *Kúria* adopted uniformity resolution (*jogegységi határozat*) no. 2/2014.PJE, which provided guidance on addressing the unfairness of certain contractual clauses in foreign-currency loan agreements. Following that resolution, on 4 July 2014 Parliament adopted Act no. XXXVIII of 2014 ("the Uniformity Act"), which enforced at a statutory level the principles laid down in the *Kúria*'s uniformity resolution and allowed for the resolution of disputes concerning foreign-currency loan agreements.

10. On 5 October 2014 Parliament also passed Act no. XL of 2014 ("the Settlement Act"), which laid down the conditions for settling foreign-currency loan agreements. Section 17 of the Uniformity Act and section 42(4) of the Settlement Act stipulated that the restrictions imposed by the Moratorium on enforcement proceedings conducted against defaulting debtors were to be lifted once the financial institutions met the settlement obligations, and section 42(4) of the Settlement Act determined that the Moratorium would end on 31 December 2016 at the latest.

11. According to the copy of the title deed attached to the case documents, on 14 November 2014 the debtor (and not the applicant) was still the registered owner of the residential property.

12. The applicant submitted that he had gained possession of and title to the residential property approximately two years after he had purchased it at the public auction.

RELEVANT LEGAL FRAMEWORK

13. Decision no. 3021/2017 (II.17.) AB of the Constitutional Court contains the following passage:

“The practice of the Constitutional Court is consistent in that the right to property set out in Article XIII of the Fundamental Law protects property already acquired or, in exceptional cases, property expectations.”

14. Section 5:41 of Act no. V of 2013 on the Civil Code provides as follows:

Acquisition of ownership by an administrative decision or by official auction

“(1) Any person who has acquired a thing [dolog] in good faith by an official resolution or by official auction shall gain ownership, irrespective of who the previous owner was.

(2) Ownership by [acquired by] an administrative decision shall be considered to have been acquired when possession is transferred in the case of movable property, or when the acquisition of title is recorded in the Real Estate Register in the case of real property, unless the [relevant] administrative decision provides otherwise.

(3) In the event of an official auction the auction buyer [árverési vevő] shall acquire ownership when possession of the movable property [in question] is transferred by the auctioneer, or when [in the case of real estate property] the acquisition of title is registered in the Real Estate Register.

(4) Upon the acquisition of ownership of a thing by an official resolution or by official auction, the rights of the third party in respect of that thing shall cease, except when the party acquiring ownership by an official resolution or by official auction has not acted in good faith in respect of those rights.”

15. Section 303 of Act no. LIII of 1994 on Judicial Enforcement provides as follows:

“(1) In enforcement proceedings instituted against a debtor or obligor – as referred to in subsections (2) and (3) (or instituted with the direct involvement of the mortgage holder) – the bailiffs service shall, pursuant to the provisions set out in section 182/A, postpone the evacuation of the residential property in question from the day following the day of its receipt of an order to enforce eviction with police assistance or of a request from the auction buyer (that is to say the party taking over the property) made under section 154/A(10) for a period lasting from the date of the expiry of the eviction moratorium mentioned in this section until the date specified in the separate Act for the resolution of the situation of foreign-currency loan debtors.

...

(10) The provisions of this section shall not apply in the event that the auction buyer or the person taking over the residential property is a local-government [entity] or an economic operator owned, jointly or separately, wholly by the State or local government, and undertakes in writing:

a) to renovate the residential property or have it renovated within two years of its taking possession, and

b) to publish, within two years of its taking possession, a call for tenders for the awarding of a lease agreement, under terms specified in the respective local government decree on leasing in respect of residential property, to prospective workers, with a view to creating new jobs, maintaining existing jobs, and allowing local people [to remain in their respective areas] ...”

16. Section 42(4) of Act no. XL of 2014 on the settlement of certain issues related to Act no. XXXVIII of 2014 on the *Kúria*’s uniformity resolution on consumer credit agreements made by financial institutions and on statutory settlement rules and certain other provisions provides as follows:

“The execution of eviction from residential property specified in section 303 of the Enforcement Act – with respect to section 182/A of the Enforcement Act – may be resumed after 31 December 2016 at the latest.”

THE LAW

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

17. The applicant complained that his right to the peaceful enjoyment of his possessions had been infringed by the entry into force of the Moratorium, which had barred him for an unspecified time from taking possession of his property. In his view, this state of affairs had amounted to a violation of Article 1 of Protocol No. 1 to the Convention, which read 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. Submissions of the parties

18. The applicant argued that the two-year delay in his taking possession of the residential property that he had bought at auction had amounted to a violation of his right to the peaceful enjoyment of his possessions. He

furthermore complained that the Moratorium had not stipulated any temporary measures providing for the possibility for bidders at an auction to retract their bids in the light of the *ex post* restrictions imposed on the enforcement process by the Moratorium; he also submitted that the impugned measure had failed to meet the requirements of lawfulness owing to the uncertainty created by the initial enactment of the Moratorium, in that originally the duration of the prohibition of eviction had not been specified, as its length had been left dependent upon the enactment of further legislation within the context of the crisis arising from the widespread defaulting on foreign-currency-denominated loans (“the foreign-currency loan crisis”). Lastly, he argued that the impugned measure had not served the public interest since the issues arising from foreign-currency loan agreements had only affected a small part of society.

19. The Government disagreed. They did not dispute that by acquiring the status of “auction buyer” the applicant had had an asset in expectancy (*váromány*) that was recognised under Hungarian law. However, in their view this was insufficient to trigger the application of Article 1 of Protocol No. 1, as the applicant’s ownership title was not recorded in the land register; rather, he merely had the title of “auction buyer”, which in itself did not constitute ownership under Hungarian law. Therefore, Article 1 of Protocol No. 1 was not applicable. In any event, the enactment of the Moratorium had served a legitimate aim: firstly, it had been one of the first measures aimed at combating the effects of the foreign-currency loan crisis; secondly, its goal had been the protection of the public interest – namely the protection of a large group of consumers by means of ensuring that they would not suffer irreversible loss of ownership of moveable and immoveable property owing to (i) the uncertain situation surrounding the lawfulness of foreign-currency loan agreements and (ii) the temporary maintenance of the status quo pending the enactment of statutory provisions aimed at redressing unfair contract terms.

B. Admissibility

20. To ascertain whether the complaint is compatible *ratione materiae* with the provisions of the Convention and its Protocols, the Court must first determine whether the applicant had a “possession” within the meaning of Article 1 of Protocol No. 1 and whether that Article is consequently applicable in the instant case.

21. The Government submitted that upon the completion of the auction, the applicant had merely acquired the legal status of “auction buyer”, which – under section 5:41 (3) of Act no. V of 2013 on the Civil Code – did not result automatically in the registration of the ownership title in the land register (which is necessary for the legal transfer of ownership). The Government furthermore submitted that according to the title deed dated

14 November 2014, the applicant was not the owner of the property and that he therefore had had no legally recognised ownership title in respect of the property in question at the time of the submission of the application to the Court.

22. The applicant contested the Government’s argument and submitted that although he was not the owner of the residential property according to the land register, the residential property nevertheless constituted part of his assets.

23. The Court reiterates that the concept of “possessions” in the first paragraph of Article 1 of Protocol No. 1 has an autonomous meaning that is not limited to the ownership of material goods and is independent from the formal classification in domestic law. In the same way as material goods, certain other rights and interests constituting assets can also be regarded as “property rights”, and thus as “possessions” for the purposes of this provision. In each case the issue that needs to be examined is whether the circumstances of the case, considered as a whole, conferred on the applicant title to a substantive interest protected by Article 1 of Protocol No. 1 (see *Iatridis v. Greece* [GC], no. 31107/96, § 54, ECHR 1999-II; *Beyeler v. Italy* [GC], no. 33202/96, § 100, ECHR 2000-I; and *Broniowski v. Poland* [GC], no. 31443/96, § 129, ECHR 2004-V).

24. Although Article 1 of Protocol No. 1 applies only to a person’s existing possessions and does not create a right to acquire property (see *Stummer v. Austria* [GC], no. 37452/02, § 82, ECHR 2011), in certain circumstances a “legitimate expectation” of obtaining an asset may also enjoy the protection of Article 1 of Protocol No. 1 (see, among many authorities, *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, § 65, ECHR 2007-I). Thus, where a proprietary interest is in the nature of a claim, the person in whom it is vested may be regarded as having a “legitimate expectation” if there is a sufficient basis for that interest in national law – for example, where there is settled case-law of the domestic courts confirming its existence. However, no “legitimate expectation” can be said to arise where there is a dispute as to the correct interpretation and application of domestic law, and the applicant’s submissions are subsequently rejected by the national courts (see *Kopecký v. Slovakia* [GC], no. 44912/98, § 50, ECHR 2004-IX).

25. A “legitimate expectation” must be of a nature more concrete than a mere hope and be based on a legal provision or a legal act, such as a judicial decision. The hope that a long-extinguished property right may be revived cannot be regarded as a “possession”; nor can a conditional claim that has lapsed as a result of a failure to fulfil the condition (see *Gratzinger and Gratzingerova v. the Czech Republic* (dec.) [GC], no. 39794/98, §§ 69 and 73, ECHR 2002-VII).

26. In cases concerning Article 1 of Protocol No. 1, the issue that needs to be examined is normally whether the circumstances of the case,

considered as a whole, conferred on the applicant title to a substantive interest protected by that provision (see the above-cited cases of *Iatridis*, § 54, and *Beyeler*, § 100).

27. In the present case, the Court notes that on 18 March 2014 the applicant acquired the legal status of auction buyer with respect to the residential property in question. The Government did not dispute that by acquiring the status of auction buyer the applicant at least had an asset in expectancy, which is recognised under Hungarian law. In that regard, the Court observes that the Constitutional Court, in its decision no. 3021/2017. (II. 17.) AB, recognised that the right to property can extend to an asset in expectancy (see paragraph 13 above).

28. The Court also notes that it was not in dispute between the parties that – despite the fact that the applicant’s ownership title to the residential property was not recorded in the land register and he could not take possession of it – he had a legitimate expectation that such procedure would be carried out following the payment of the purchase price within the confines of the ensuing enforcement proceedings.

29. In the Court’s view, these elements demonstrate that the applicant had at least a legitimate expectation of acquiring legal ownership (that is to say recognised under Hungarian law) of the residential property – even if that was barred for a period by subsequent legislation – from the moment that he won the auction. This legitimate expectation therefore constitutes a “possession” for the purposes of Article 1 of Protocol No. 1 (see, *mutatis mutandis*, *Pine Valley Developments Ltd and Others v. Ireland*, 29 November 1991, § 51, Series A no. 222; *Asito v. Moldova*, no. 40663/98, § 61, 8 November 2005). The Court furthermore notes that in this case there was neither a *de facto* expropriation nor a transfer of property, and the applicant retained at all times the possibility of taking possession of the property once the Moratorium was lifted. As the implementation of the measures in question meant that the previous owners continued to possess (that is to say, to occupy) the property, the measures undoubtedly amounted to control of the use of property. Accordingly, the second paragraph of Article 1 of Protocol No. 1 is applicable.

30. The Court further notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

C. Merits

1. General principles

31. 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 possessions should be lawful: the second sentence of the first paragraph authorises a deprivation of possessions only “subject to

the conditions provided for by law”, and the second paragraph recognises that States have the right to control the use of property by enforcing “laws”. Moreover, the rule of law, one of the fundamental principles of a democratic society, is inherent in all the Articles of the Convention. The principle of lawfulness also presupposes that the applicable provisions of domestic law are sufficiently accessible, precise and foreseeable in their application (see *Broniowski*, cited above, § 147), in order to avoid all risk of arbitrariness and enable individuals to foresee the consequences of their actions (see *Žaja v. Croatia*, no. 37462/09, § 103, 4 October 2016).

32. Any interference with the enjoyment of a Convention right must pursue a legitimate aim. The principle of a “fair balance” inherent in Article 1 of Protocol No. 1 itself presupposes the existence of a general interest of the community. Moreover, it should be reiterated that the various rules incorporated in Article 1 of Protocol No. 1 are not distinct, in the sense of being unconnected, and that the second and third rules are concerned only with particular instances of interference with the right to the peaceful enjoyment of property. One of the effects of this is that the existence of the “public interest” (required under the second sentence) or the “general interest” referred to in the second paragraph are corollaries of the principle set forth in the first sentence, so that an interference with the exercise of the right to the peaceful enjoyment of possessions within the meaning of the first sentence of Article 1 of Protocol No. 1 must also pursue an aim in the public interest (see *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia* [GC], no. 60642/08, § 105, ECHR 2014).

33. Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is “in the public interest”. Under the system of protection established by the Convention, it is thus for the national authorities to make the initial assessment as to the existence of a problem of public concern warranting measures to be applied in the sphere of the exercise of the right of property. Since the margin of appreciation available to the legislature in implementing social and economic policies is wide, the Court will respect the legislature’s judgment as to what is in the public interest, unless that judgment is manifestly without reasonable foundation (see *Béláné Nagy v. Hungary* [GC], no. 53080/13, § 113, 13 December 2016).

34. Furthermore, an interference, particularly one falling to be considered under the second paragraph of Article 1 of Protocol No. 1, must strike a “fair balance” between the demands of the general interest and the requirements of the protection of the individual’s fundamental rights. The concern to achieve this balance is reflected in the structure of Article 1 as a whole, and therefore also in its second paragraph. There must be a reasonable relationship of proportionality between the means employed and the aim pursued. In determining whether this requirement is 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. In spheres such as housing, which plays a central role in the welfare and economic policies of modern societies, the Court will respect the legislature's judgment as to what is in the general interest unless that judgment is manifestly without reasonable foundation (see *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 49, ECHR 1999-V).

35. Within this context the Court must stress its fundamentally subsidiary role. The Contracting Parties, in accordance with the principle of subsidiarity, have the primary responsibility to secure the rights and freedoms defined in the Convention and the Protocols thereto, and in doing so they enjoy a margin of appreciation, subject to the supervisory jurisdiction of the Court. The national authorities have direct democratic legitimation and are, as the Court has held on many occasions, in principle better placed than an international court to evaluate local needs and conditions. In matters of general policy, on which opinions within a democratic society may reasonably differ widely, the role of the domestic policy-maker should be given special weight (see *Zelenchuk and Tsytsyura v. Ukraine*, nos. 846/16 and 1075/16, § 111, 22 May 2018).

36. In assessing compliance with Article 1 of Protocol No. 1, the Court must make an overall examination of the various interests in issue, bearing in mind that the Convention is intended to safeguard rights that are “practical and effective”. It must look behind appearances and investigate the realities of the situation complained of. That assessment may involve not only the relevant compensation terms – if the situation is akin to the taking of property – but also the conduct of the parties, including the means employed by the State and their implementation. In that regard, it should be stressed that uncertainty – be it legislative, administrative or arising from practices applied by the authorities – is a factor to be taken into account in assessing the State's conduct. Indeed, where an issue in the general interest is at stake, it is incumbent on the public authorities to act in good time, and in an appropriate and consistent manner (see *Broniowski*, cited above, § 151).

2. Application of the above principles in the instant case

(a) Whether there has been an interference

37. The Court notes that it was not in dispute between the parties that the applicant was subject to the “control of use” of his possession, within the meaning of the second paragraph of Article 1 of Protocol No.1 of the Convention, by virtue of the contested legislation. The Court sees no reason to hold otherwise.

38. However, such interference must comply with the principle of lawfulness, pursue a legitimate aim and be reasonably proportionate to the aim sought to be realised (see *Fábián v. Hungary* [GC], no. 78117/13, § 65, 5 September 2017, and *Béláné Nagy*, cited above, §§ 112-15).

(b) Lawfulness

39. The Court observes that the Moratorium had a basis in domestic law that has never been declared unconstitutional (contrast *Hutten-Czapska v. Poland* [GC], no. 35014/97, § 172, ECHR 2006-VIII).

40. The Court notes the applicant's argument that uncertainty was created by the initial enactment of the Moratorium – namely, that originally there was no time-limit set for the end of the Moratorium and that its length was dependent upon the enactment of further legislation in respect of the foreign-currency loan crisis. However, it considers that this argument is relevant in respect of determining whether the authorities struck a fair balance between the interests involved (see *Zelenchuk and Tsytsyura*, cited above, § 106).

41. Therefore, it considers that the restrictions imposed on the exercise of the applicant's rights complied with the requirement of "lawfulness" inherent in Article 1 of Protocol No. 1.

(c) Public interest

42. The applicant submitted that the Moratorium had not served the public interest, as the issues arising from foreign-currency loan agreements had only affected a small section of society.

43. The Government argued that the Moratorium had constituted the first measure in a chain of legislative measures aimed at combating the effects of the foreign-currency loan crisis and in particular that its aim had been to protect the public interest. In the Government's view it had been necessary to maintain a moratorium on evictions, on the one hand in order to ensure that members of large parts of society did not lose their homes, and on the other hand to prevent irreversible harm being done to consumers while waiting for the adoption of statutory measures that would settle foreign-currency loan agreements governed by unfair contract terms.

44. The Court has assessed the aims (as cited by the Government) of the impugned measure – notably that of protecting the public interest by ensuring that large parts of society did not become homeless overnight, and also the desire to delay evictions until pending legislation aimed at the settling of foreign-currency loan agreements was adopted.

45. Although the applicant challenged the legitimacy of that aim, relying on the argument that only a part of society had been affected by issues arising from the foreign-currency loan agreements, the Court – finding it natural that the margin of appreciation available to the legislature in

implementing social and economic policies should be a wide one – will respect the legislature’s judgment regarding what is “in the public interest”, unless that judgment is manifestly without reasonable foundation (see *Former King of Greece and Others v. Greece* [GC], no. 25701/94, § 87, ECHR 2000-XII; *James and Others v. the United Kingdom*, 21 February 1986, § 46, Series A no. 98; and *Beyeler*, cited above, § 112). The Court therefore considers that the goals of the Moratorium, as cited by the Government, cannot be said to be “manifestly without reasonable foundation”.

(d) Proportionality

46. The applicant argued the balance between the protection of the applicant’s rights and the general interest had been upset by (a) the legislative uncertainty resulting from (i) the enactment of the Moratorium (the terms of which stated that it would remain in place until a separate law governing the settlement of foreign-currency loans was enacted), and (ii) the lack of any transitional rules allowing auction bidders to revoke their respective bids in the light of the Moratorium, and (b) the absence of a compensation regime; moreover, the applicant argued that those factors had imposed an excessive individual burden on him (see paragraph 18 above).

47. The Government disagreed, submitting that the duration of the Moratorium had not been uncertain, given the fact that legislation regarding the settlement of foreign-currency loans had been swiftly adopted after the Moratorium had come into effect and that those further legislative measures had provided strict time-limits for the settlement of such loans.

48. The Court has previously held that, in principle, a system involving the temporary suspension or staggering of the enforcement of court orders followed by the reinstatement of a landlord in his property is not in itself open to criticism, having regard in particular to the margin of appreciation permitted under the second paragraph of Article 1 of Protocol No.1 (see *Immobiliare Saffi*, cited above, § 54); it considers that this approach is also applicable in the present case.

49. The Court notes that the impugned measure was implemented amid the foreign-currency loan crisis in Hungary (see paragraph 7 above). It also observes that the State had to implement an emergency measure in order to circumvent the possibility of large numbers of its population going homeless owing to the pending enforcement proceedings resulting from the widespread defaulting on foreign-currency loans (see paragraph 7 above).

50. It is also important to note that the Moratorium did not deprive the applicant of his legitimate expectation of acquiring title to the property that he had bought during the auction process; rather, it only delayed his taking possession of that property (see paragraphs 8 and 12 above).

51. It is true that at the time that the Moratorium entered into force on 16 May 2014 no end date had been specified, it having been stipulated that

it would be in force until further legislation had been adopted regarding the settlement of foreign-currency loans (see paragraph 6 above). However, shortly after its entry into force, those further legislative measures were indeed adopted – namely the Uniformity Act and the Settlement Act (see paragraph 9 above).

52. The Settlement Act, which came into effect on 6 October 2014, laid down strict time-limits for the settlement of foreign-currency loan agreements in order to ensure the speedy resolution of outstanding issues concerning the settlements; furthermore, it stipulated in section 42(2) that the emergency rules in the form of the Moratorium would not be applicable from 31 December 2016 (see paragraph 10 above). Thus, the uncertain legal situation ceased on 6 October 2014, when the Settlement Act came into effect, allowing the applicant to rely on a final deadline for his taking possession of the property that he had bought at the auction. Therefore, from 6 October 2014 onwards, it cannot be said that there was any legal uncertainty regarding when the Moratorium would end.

53. The interference of the Moratorium with the applicant's right to the peaceful enjoyment of his possessions was therefore limited, time-wise; moreover, the period of uncertainty – in the light of the swift implementation of the relevant legislative measures (see paragraph 9 above) – lasted for less than seven months in total (see paragraph 9 above), after which time the applicant was aware that the Moratorium would end on 31 December 2016 at the latest. Furthermore, the applicant eventually did gain possession of the property (see paragraph 12 above); therefore, the Court does not consider that the Moratorium caused the applicant to bear an excessive individual burden.

54. Given these circumstances, the Court finds that it was not disproportionate to freeze the enforcement of evictions with respect to property that was under enforcement owing to a default on a foreign-currency loan.

55. There has accordingly been no violation of Article 1 of Protocol No. 1 to the Convention.

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION, READ IN CONJUNCTION WITH ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

56. The applicant complained that Article 14 of the Convention, read in conjunction with Article 1 of Protocol No. 1, had been breached by the legislation in issue, in so far as it had protected economic operators wholly owned by the State or by local municipalities, to the detriment of private individuals, since the same restrictions under the Moratorium had not applied to the former.

57. Article 14 of the Convention provides as follows:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

A. Admissibility

58. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. Submissions of the parties

59. The applicant argued that he had been in a situation comparable with that of legal entities wholly owned by the State or by local municipalities because, hypothetically, he could also have undertaken obligations similar to those of State- or municipality-owned economic operators in respect of promoting the creation of workforces by offering public housing. He submitted that the removal from the scope of the Moratorium of economic operators wholly owned by the State or by local municipalities had therefore amounted to discrimination against private individuals.

60. The Government argued that the differential treatment afforded to economic operators wholly owned by the State or by local municipalities had been justified in view of the function fulfilled in the public interest by such entities – namely that of promoting the creation of workplaces by offering housing for reduced fees and thereby preserving rural communities. Furthermore, the Government submitted that given the public functions that they fulfilled, the above-mentioned economic operators had not been in a situation comparable with that of private individuals.

2. The Court's assessment

61. The relevant principles have been recently laid down in the case of *Fábián*, cited above, §§ 112 to 115.

62. In the present case, the Court is satisfied that the applicant's complaint concerning property rights clearly falls within the ambit of Article 1 of Protocol No. 1 and that Article 14 is therefore applicable. Indeed, this was not in dispute between the parties.

63. The Court will next ascertain whether the applicant, as both a private person and an auction buyer falling under the scope of the Moratorium, was in a situation that was analogous or relevantly similar to that of economic operators wholly owned by the State or by local municipalities.

64. The Court reiterates at the outset that a difference in treatment may raise an issue from the point of view of the prohibition of discrimination, as

provided in Article 14 of the Convention, only if the persons subjected to different treatment are in a relevantly similar situation, taking into account the elements that characterise their circumstances within the particular context. The Court notes that the elements which characterise different situations, and determine their comparability, must be assessed in the light of the subject matter and purpose of the measure which makes the distinction in question (see *Fábián*, cited above, § 121).

65. The Court has acknowledged that areas such as housing may often call for some form of regulation by the State. Decisions as to whether (and if so when) it may fully be left to the play of free-market forces or whether it should be subject to State control – as well as the choice of measures for securing the housing needs of the community and of the timing for their implementation – necessarily involve the consideration of complex social, economic and political issues. Acknowledging that the margin of appreciation available to a legislature in implementing social and economic policies should be a wide one, the Court has declared that it will respect a legislature’s judgment as to what is in the “public” or “general” interest unless that judgment is manifestly without reasonable foundation (see *Bittó and Others v. Slovakia*, no. 30255/09, § 96, 28 January 2014).

66. Secondly, for institutional and functional reasons, services provided by the public sector compared to those provided by the private sector may typically be subject to substantial legal and factual differences, not least in fields involving the exercise of sovereign State power and the provision of essential public services. Legal entities wholly owned by the State or by local municipalities, unlike private individuals, may be engaged in the exercise of the State’s sovereign power, and their functions may therefore be of a different nature, although the extent to which this is the case may depend on the specific functions that they have to perform (see, *mutatis mutandis*, *Fábián*, cited above, § 122).

67. Thirdly, as a result of the above, it cannot be assumed that the terms and conditions regarding the offering of subsidised housing will be similar for public and quasi-public entities as for private individuals, and nor can it therefore be presumed that they will be in relevantly similar situations in this regard (see, *mutatis mutandis*, *Fábián*, cited above, § 122).

68. Turning to the circumstances of the present case, the Court observes that the impugned provision of the Moratorium on evictions (see paragraphs 5 and 14 above) was adopted in order to promote the creation of workforces by offering subsidised housing to prospective workers in order to preserve rural communities by enabling people to continue to live locally (see paragraphs 6 and 15 above). The impugned provision provided that the Moratorium would not apply to economic operators owned wholly by the State or by local municipalities, provided that such economic operators would undertake in writing (i) to renovate the residential property in question or have it renovated within two years of the economic operator

taking possession of it, and (ii) to issue a public tender, within two years of it taking possession, for the awarding of a lease agreement under the terms specified in the respective local government decree on leasing (see paragraph 15 above).

69. The Court notes that the matter concerned in the present case is that of housing, where the choice of measures to be implemented is an area in which the State has a wide margin of appreciation (see *Bittó*, cited above, § 96). The Court also notes that the impugned provision sets out conditions – such as the obligation to issue a tender for the leasing of renovated residential properties and to issue (or respect existing) local-government decrees on leasing (see paragraph 15 above) – which, in general, are conditions that are typically observed by economic operators in the public sector and usually apply to such entities, rather than private ones.

70. Taking all these aspects of the present case into account, the Court finds that the applicant has not demonstrated that he, as a private individual, was in a situation relevantly similar to that of economic operators wholly owned by the State or by local municipalities.

71. It follows that there has been no discrimination and, therefore, no violation of Article 14, taken in conjunction with Article 1 of Protocol No. 1 (see, *mutatis mutandis*, *Fábián*, cited above, §§ 133-34).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been no violation of Article 1 of Protocol No. 1 to the Convention;
3. *Holds* that there has been no violation of Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1 to the Convention.

Done in English, and notified in writing on 17 December 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos
Registrar

Ksenija Turković
President