

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

FIRST SECTION

CASE OF FIŠIĆ v. CROATIA

(Application no. 18788/22)

JUDGMENT

Art 6 (civil) • Access to court • Impossibility of obtaining judicial review of the mayoral decision issued in a public tender procedure for the lease of municipal property in which the applicant participated as a bidder • Art 6 applicable • Genuine and serious dispute over civil "right" in domestic law of bidders to compete on equal terms in the tender procedure • High Administrative Court's decision, declaring inadmissible the applicant's action on the ground that the mayoral decision was not an administrative act amenable to judicial review, based on a temporary change of approach by the domestic courts at the time without any detailed explanation • Judicial review of compliance by municipalities with their statutory obligations to organise public tenders and award contracts ensures the lawfulness of the procedure and guarantees accountability • Very essence of right of access to a court impaired

Prepared by the Registry. Does not bind the Court.

STRASBOURG

29 October 2026

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.



In the case of Fišić v. Croatia,

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

Erik Wennerström*, President*,
Raffaele Sabato,
Frédéric Krenc,
Davor Derenčinović,
Alain Chablais,
Artūrs Kučs,
Anna Adamska-Gallant*, judges*,
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 18788/22) 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 a Croatian national, Mr Oliver Fišić ("the applicant"), on 6 April 2022;

the decision to give notice to the Croatian Government ("the Government") of the complaint concerning access to a court and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 6 October 2026,

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

INTRODUCTION

1. The case concerns the applicant's complaint under Article 6 § 1 of the Convention that he had been denied access to a tribunal to defend his rights in relation to a mayoral decision adopted in a public tender procedure in which he had participated as a bidder.

THE FACTS

2. The applicant was born in 1968 and lives in Brašina. He was represented by Mr B. Radan, a lawyer practising in Zagreb.

3. The Government were represented by their Agent, Ms Š. Stažnik.

4. The facts of the case may be summarised as follows.

I. CALL FOR TENDERS FOR THE LEASE OF PUBLIC AREAS IN THE MUNICIPALITY OF ŽUPA DUBROVAČKA

5. On 15 March 2017 the mayor of Župa dubrovačka ordered a municipal committee to organise a call for tenders for the lease of certain of the municipality's public areas, to be used, *inter alia*, for vending stands.

6. The tender, which was published on 20 March 2017, set out the eligibility criteria, the lease duration, minimum bid amounts and the deadline for submissions.

It also stated that the best bidder would be selected in accordance with the municipality of Župa dubrovačka's decision on the lease of public areas ("the municipality's Decision", see paragraph 24 below).

7. The applicant submitted a bid of 16 Croatian kunas (HRK) per square metre per day for a vending stand in Brašina. Another bidder, N.P., submitted a bid of HRK 11 per square metre per day for the same location.

8. On 5 April 2017 the committee found that both bids had been submitted on time and complied with the specifications. As the bids differed, it decided under section 13 of the municipality's Decision (see paragraph 24 below) that N.P., as the previous lessee, would be offered the lease at the higher price submitted by the applicant. On 21 April 2017 N.P. agreed to pay the higher price.

9. On 26 April 2017 the mayor accepted N.P.'s bid and concluded a lease agreement with her.

10. The applicant lodged an objection, arguing that the mayoral decision had been unlawful. On 27 July 2017 the Municipal Council dismissed the objection, emphasising that section 13 of the municipality's Decision granted priority to the previous lessee in order to ensure legal certainty for entrepreneurs.

11. On 28 July 2017 the municipality, represented by the mayor, concluded a lease agreement with N.P.

II. PROCEEDINGS IN THE ADMINISTRATIVE COURTS

12. The applicant brought an administrative action in the Split Administrative Court (*Upravni sud u Splitu*), challenging the mayoral decision of 26 April 2017. He argued that the misapplication of section 13 of the municipality's Decision had placed him at a disadvantage *vis-à-vis* the other tenderer, whose bid was lower than his. He submitted that priority ought to be given to the previous lessee only if two identical bids were submitted, which had not been the case. Moreover, section 13 did not provide for the possibility for the previous lessee to have disclosed or match the highest bid.

13. On 9 April 2019 the Split Administrative Court set aside the Municipal Council's decision of 27 July 2017 (see paragraph 10 above) but upheld the mayoral decision of 26 April 2017 (see paragraph 9 above).

It noted that, pursuant to a practice direction adopted by the Administrative Court of the Republic of Croatia on 28 April 2008 (see paragraph 25 below), acts granting the lease of public areas constituted administrative acts – that is, individual acts by which the public authority decided on the rights, obligations or legal interests of an individual in an administrative matter (see paragraph 21 below). Such decisions were therefore subject to a review of

their lawfulness in administrative disputes where the administrative courts applied the Constitution and the relevant statutory law.

The Split Administrative Court further noted that the legislation did not allow for the lodging of an appeal against individual mayoral acts deciding on the rights, obligations and legal interests of an individual. Such decisions could instead be challenged in an administrative court. For that reason, the Split Administrative Court concluded that the Municipal Council had lacked competence to review the mayoral decision and, accordingly, set aside its decision of 27 July 2017.

It reviewed the lawfulness of the mayoral decision of 26 April 2017 and concluded that the facts had been properly established and that the relevant law had been properly applied.

14. The applicant appealed against that judgment, reiterating the arguments set out in paragraph 12 above and adding that, had section 13 of the municipality's Decision provided for the possibility of the previous lessee to have disclosed or match the highest bid, he would never have bothered to submit a bid in the first place.

15. On 24 September 2020 the High Administrative Court quashed the Split Administrative Court's judgment and declared the applicant's administrative action inadmissible. It held that, pursuant to its decision of 26 January 2015 delivered in the context of a specific tender procedure (see paragraph 26 below), decisions on the lease of public areas did not constitute administrative acts but acts of property management and thus fell outside the scope of administrative judicial review.

III. CONSTITUTIONAL COURT PROCEEDINGS

16. On 1 April 2021 the applicant lodged a constitutional complaint, alleging violations of his constitutional rights to a fair trial, equality before the law, and entrepreneurial and market freedom. He relied on the State's obligation to ensure that all entrepreneurs had equal status on the market (see paragraph 19 below).

17. On 22 December 2021 the Constitutional Court dismissed the complaint as manifestly ill-founded. It found that the restriction on the right of access to a court had been constitutionally acceptable, having regard to the sufficient and relevant reasons provided by the High Administrative Court.

18. That decision was served on the applicant on 10 January 2022.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC LAW

19. The relevant provisions of the Constitution (*Ustav Republike Hrvatske*, Official Gazette no. 56/1990, with subsequent amendments) read as follows:

Article 29 § 1

"Everyone shall be entitled to have his or her rights and obligations, or suspicion or accusation of a criminal offence, decided upon fairly and within a reasonable time by an independent and impartial court established by law."

Article 49

"Entrepreneurial and market freedom are the foundations of the economic system of the Republic of Croatia.

The State shall ensure that all entrepreneurs have equal legal status on the market. The abuse of monopolies, as determined by law, is prohibited.

..."

20. The relevant provision of the Trade Act (*Zakon o trgovini*, Official Gazette no. 87/2008, with subsequent amendments) reads as follows:

Section 4(2)

"A trader shall carry out trading activities freely and under equal conditions on the market, in such a way that competition is neither prevented, restricted nor distorted."

21. The relevant provisions of the Administrative Disputes Act 2010 (*Zakon o upravnim sporovima*, Official Gazette no. 20/2010, with subsequent amendments), as in force during the proceedings instituted by the applicant in the administrative courts, read as follows:

Section 3

"(1) The subject matter of an administrative dispute is:

1. review of the lawfulness of an individual decision by which a public authority has decided on the right, obligation or legal interests of an individual in an administrative matter (an administrative act) against which no ordinary legal remedy is permitted;

2. review of the lawfulness of the conduct of a public authority in the field of administrative law by which a right, obligation or the legal interests of an individual has been infringed, and against which no ordinary legal remedy is permitted;

3. review of the lawfulness of a failure on the part of a public authority in the field of administrative law to decide, within the time-limit prescribed by law, on a right, obligation, legal interests or ordinary legal remedy of an individual, or to act in accordance with a regulation;

4. review of the lawfulness of the conclusion, termination or fulfilment of an administrative contract.

..."

Section 4

"(1) An administrative dispute may not be brought in matters for which judicial protection is provided outside of an administrative dispute.

(2) An administrative dispute may not be brought concerning the correctness of an individual decision made at the discretion of a public authority, but it may be conducted concerning the lawfulness of such a decision, the limits of authority, and the purpose for which the authority was granted.

..."

Section 5

"In an administrative dispute, the court shall issue a decision on the basis of the Constitution and relevant statutory law."

22. The relevant provisions of the Ownership and Other Rights *In Rem* Act (*Zakon o vlasništvu i drugim stvarnim pravima*, Official Gazette no. 91/1996, with subsequent amendments – "the Property Act") read as follows:

Section 35

"(1) The Republic of Croatia and other legal persons governed by public law which hold ownership rights shall, as owners, have the same status in legal relations as private owners, unless otherwise provided by law.

(2) Property owned by the Republic of Croatia shall be disposed of, administered and used by the Republic of Croatia's government or by a body authorised by it, unless otherwise provided by a special law. Powers of disposal, administration and use in respect of property owned by local and regional self-government units shall be exercised by the bodies of those units as designated by the legislation governing the organisation of local and regional self-government units, unless otherwise provided by a special law.

...

(8) The rules governing ownership by the Republic of Croatia shall apply, *mutatis mutandis*, to the ownership rights of local and regional self-government units, unless otherwise provided for by law or where required otherwise by the nature of those entities. ..."

Section 391

"(1) Immovable property owned by local and regional self-government units may be alienated or otherwise disposed of by the competent authorities only on the basis of a public tender procedure and for compensation determined at market value, unless otherwise provided by law.

(2) The provisions of paragraph 1 of this section shall not apply where the ownership of immovable property owned by local or regional self-government units is acquired by

the Republic of Croatia, local or regional self-government units, or legal persons owned wholly or predominantly by the Republic of Croatia, or by legal persons owned wholly or predominantly by local or regional self-government units, where this serves the interest and objective of the general economic and social development of their citizens.

(3) Land owned by local or regional self-government units may be sold by the competent authorities at a price determined by the market without organising a public tender procedure:

– to a person to whom part of that land is necessary for the development of a vacant plot of land in accordance with a zoning permit or detailed land-use plan, provided that such land does not exceed 20% of the total area; and

...

(5) Legal transactions concluded contrary to the provisions of this section shall be null and void."

23. The relevant provisions of the Local and Regional Self-Government Act (*Zakon o lokalnoj i područnoj (regionalnoj) samoupravi*, Official Gazette, no. 33/2001, with subsequent amendments) read as follows:

Section 48

"(1) The municipal mayor, city mayor, or county prefect:

...

manages immovable and movable property owned by the local or regional self-government unit, together with related revenue and expenditure, in accordance with the relevant laws and regulations;

..."

Section 67

"(1) The assets of a local or regional self-government unit shall include all movable and immovable property, and property rights.

(2) A local or regional self-government unit must manage, use, and dispose of its assets with the diligence of a prudent manager."

24. The Decision on the lease of public areas in the municipality of Župa dubrovačka (*Odluka o zakupu javnih površina Župe dubrovačke*, Official Gazette of the municipality of Župa Dubrovačka nos. 1/2010 and 15/2013) set out the conditions and procedure for the lease of public areas within the municipality. It provided that "public areas" included land designated for general use in accordance with spatial planning documents (such as streets, squares, and public green areas), the management of which was entrusted to the mayor.

Section 9 of the Decision provided that the municipal mayor was to organise a public call for tenders specifying the key details of the lease, including the public area concerned, its intended use, the starting rent per square metre, the deposit, the deadline and procedure for submitting bids, the lease duration, and any other relevant conditions.

Section 12 of the Decision provided that the selection of the most favourable bidder in the public tender shall be made by the municipal mayor on the proposal of the municipal committee.

Section 13 of the Decision provided that, when selecting the most favourable bidder, the municipal mayor would give priority based on the following order: (1) lessees from the previous year who had duly fulfilled their contractual obligations; (2) Croatian disabled war veterans; (3) family members of Croatian war veterans who were killed in the war; (4) individuals employing such veterans or their family members on a permanent basis on the premises concerned; (5) individuals who had voluntarily joined the Croatian armed forces between 1991 and 1992; (6) members of the Croatian armed forces or police involved in the war for at least six consecutive months between 1991 and 1992; and (7) on an equal basis, persons with permanent residence in the municipality. Following a final decision on the selection of the most favourable bidder, a lease agreement was to be concluded.

II. DOMESTIC COURT PRACTICE

25. On 28 April 2008 the Administrative Court of the Republic of Croatia (*Upravni sud Republike Hrvatske*)[1] adopted practice direction no. 7 Su-618/08-3 which stipulated that "acts awarding the use of public areas" constituted administrative acts. Such acts were therefore subject to administrative judicial review.

26. This approach changed in 2015. Specifically, in decision no. Usoz-38/14-5 of 26 January 2015, delivered in the context of a tender procedure in which the mayor of Zagreb had granted a lease of immovable property to the Croatian Football Federation, the High Administrative Court held – without providing detailed reasoning – that the mayoral decision had not constituted an administrative act but rather an act of property management (*raspolaganje imovinom*). By decision no. U-III-1276/2015 of 14 November 2019 the Constitutional Court found that the High Administrative Court had given relevant and sufficient reasons for its conclusion and held that the complainant's right of access to a court had not been violated.

27. Following this shift, the administrative courts treated mayoral decisions granting the lease of property in tender procedures as acts of property management that were not subject to review, and declared related

[1] Until 31 December 2011, administrative disputes in Croatia were adjudicated by the Administrative Court of the Republic of Croatia, which functioned as a single specialised administrative court. Following the entry into force of the new Administrative Disputes Act on 1 January 2012, that single-tier system was replaced with a two-tier system of administrative adjudication. Notably, four administrative courts, seated in Zagreb, Split, Rijeka and Osijek, were established as courts of first instance, while the High Administrative Court of the Republic of Croatia became the appellate administrative court. In addition to its appellate jurisdiction, the High Administrative Court also exercises original jurisdiction in certain categories of cases expressly provided for by law.

administrative actions inadmissible. That approach was applied in a line of cases between 2016 and 2020 concerning both decisions granting leases and decisions annulling tender procedures, and was regularly upheld on appeal.

28. Accordingly, in the decisions of 25 March 2016 (Split Administrative Court, no. Usl-120/14-6, upheld by the High Administrative Court on 28 September 2016, no. Usž-2432/16-2), 11 June 2018 (Rijeka Administrative Court, no. Usl-607/18-2, upheld by the High Administrative Court on 30 August 2018, no. Usž-3293/18-2), and 4 November 2020 (High Administrative Court, no. Usž-1426/20-2), administrative actions against mayoral decisions awarding leases of business premises were declared inadmissible on the grounds that such decisions did not constitute administrative acts but rather acts of property management.

29. The same reasoning was applied in various decisions annulling tender procedures. In the decisions of 24 April 2017 (Rijeka Administrative Court, no. UsI-499/17-3, upheld by the High Administrative Court on 1 March 2018, no. Usž-1964/17-2) and 30 November 2017 (Rijeka Administrative Court, no. UsI-1536/17-2, upheld by the High Administrative Court on 18 July 2018, no. Usž-157/2018-2), the courts held that such decisions constituted acts of property management and were not subject to review.

30. In the latter line of cases, the Constitutional Court held, in its decision of 23 September 2020 (no. U-III-4030/2018), that judicial protection had to be ensured in respect of all individual acts by public authorities, regardless of their nature. It pointed out that all courts were under an obligation to safeguard the constitutional and Convention right to judicial protection, particularly when reviewing decisions of public authorities. It added that the courts had to ensure that all the parties had access to a court by interpreting the law purposively – that is, at a minimum, by directing them to another available form of effective legal protection or, if none existed, by explaining why judicial protection was not required.

31. In a number of cases from 2018 onwards, the administrative courts reverted to their earlier position, again classifying decisions granting the use of public areas as administrative acts subject to administrative judicial review, in accordance with the 2008 practice direction (see paragraph 25 above). In those cases, the courts examined the merits and, where appropriate, set aside mayoral decisions for lack of reasoning or unlawfulness.

32. For example, by judgment no. Usl-871/17-22 of 23 March 2018, the Rijeka Administrative Court held that, pursuant to the 2008 practice direction, a mayoral decision in a public tender granting the lease of a public area constituted an administrative decision and was as such amenable to judicial review. It set aside the decision, finding that it had lacked the required statutory elements, including the reasons for selecting the winning bid. By judgment no. Usž-3246/18-2 of 19 November 2020, the High Administrative Court upheld that judgment, emphasising that, if the reasons for selecting a

bid were not provided, it was impossible to assess either the correctness of the established facts, or the lawfulness of the contested decision.

33. By decision no. Usž-3307/17-2 of 13 December 2018, the High Administrative Court quashed a decision by the Split Administrative Court declaring inadmissible an administrative action to challenge a mayoral decision granting the lease of a public area in a public tender. Referring to the 2008 practice direction, it held that such decisions constituted administrative acts and ordered the lower court to examine the case on the merits.

34. By decision no. Usž-4094/22-2 of 15 February 2023, the High Administrative Court quashed a decision by the Rijeka Administrative Court declaring inadmissible an administrative action against a mayoral decision, likewise relying on the 2008 practice direction.

35. In the remitted proceedings, by judgment no. Usl-356/2023-7 of 5 September 2023 the Rijeka Administrative Court examined the case on the merits and set aside the mayoral decision. In the tender procedure at issue, the complainant had submitted the highest bid; however, another bidder had been given priority on the basis of local residency, invited to match the offer, and ultimately selected.

The Rijeka Administrative Court found that such preferential treatment on the basis of residence had directly conflicted with the principles of free-market competition and the equal legal status of entrepreneurs guaranteed by Article 49 of the Croatian Constitution and set out in Article 4(2) of the Trade Act (cited at paragraphs 19 and 20 above). Those provisions stipulated that economic activity should be conducted freely and under equal market conditions, without any restrictions on or distortions to competition. By favouring "local" bidders, the contested decision had violated those principles.

It further clarified that although local authorities could grant preferential access to public services (such as childcare or social programmes) to their residents, this did not extend to economic activities. The lease of public areas for commercial purposes was not a public service but rather a means of facilitating private business. Municipalities therefore lacked authority to grant advantages to local entrepreneurs in this context.

The court further observed that the contested mechanism had created only an illusion of equality and although the highest bid appeared to be the decisive criterion, local bidders had been allowed to match competing offers after their disclosure, a privilege not afforded to others. This had conferred an unjust advantage, undermined genuine competition and had violated the requirement that all bidders were to compete on equal terms.

Lastly, the court held that the measure had been incompatible with EU law, in particular Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market ("the Bolkenstein Directive"), which prohibited discrimination on the basis of the location of the registered office and did not recognise residence as a

valid overriding public-interest justification for restricting the freedom to provide services.

36. By judgment no. Usž-2721/2023-2 of 10 July 2024, the High Administrative Court upheld that judgment.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

37. The applicant complained that he had been denied access to a tribunal to defend his rights in connection with the mayoral decision adopted in the public tender procedure in which he had participated as a bidder. He relied on Article 6 § 1 of the Convention, which, in so far as relevant, reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. Admissibility

1. The parties' arguments

(a) The Government

38. The Government argued that Article 6 § 1 of the Convention did not apply to the present case because the domestic proceedings did not involve a dispute over the applicant's "civil rights and obligations", as required under the Court's case-law.

39. The applicant's participation in the public tender procedure had conferred only an opportunity to obtain a lease, not a legally enforceable right. The selection process depended on the discretionary assessment of the competent authority, which fell outside the scope of Article 6.

40. The Government explained the distinction between administrative acts and non-administrative acts under domestic law. Administrative acts covered authoritative decisions by public bodies on rights, obligations, or legal interests within the sphere of administrative law, and were subject to judicial review in administrative disputes. By contrast, non-administrative acts, which included, *inter alia*, acts of business – that is, acts of property management carried out by bodies governed by public law – were not subject to judicial review in administrative disputes.

41. The Government argued that the mayoral decision to select the preferred bidder in a public tender procedure had not been an administrative act, but an act of property management. It had been carried out in the exercise of ownership powers over municipal property, as conferred by domestic legislation, including section 391 of the Property Act and section 48 of the Local and Regional Self-Government Act (see paragraphs 22 and 23 above).

Such decisions formed part of the municipality's management of its assets and did not involve the exercise of public authority in the administrative-law sense.

42. The Government also argued that the relevant domestic legal framework and case-law were clear, consistent, and foreseeable. Since January 2015, the High Administrative Court had consistently held that decisions concerning the lease of public property constituted acts of property management rather than administrative acts. That position had been confirmed by the Constitutional Court in 2019 and 2020 (see paragraphs 26 and 30 above). The High Administrative Court's decision no. Usž-3307/17 of 13 December 2018 (see paragraph 33 above) represented an isolated departure from otherwise consistent and well-established domestic case-law. The applicant, who was represented by a lawyer, should have been aware of this well-established case-law. Although earlier jurisprudence from 2008 had taken a different approach, legislative reforms and subsequent judicial practice had rendered that earlier position obsolete.

43. The Government further argued that a transitional period had begun in November 2020, during which divergences in the case-law had emerged, requiring consolidation in the light of the Convention case-law. In that connection they submitted that the Court had previously acknowledged that a transitional phase could be necessary in legal systems where courts applied rather than created the law. In any event, the Government argued that the High Administrative Court's decision of September 2020 in the applicant's case had been consistent with the prevailing domestic case-law at the material time.

44. The Government concluded that the applicant did not have a "civil right" within the meaning of Article 6 § 1 and that domestic law contained limitations preventing the merits of his claim from being examined by the administrative courts. Those limitations were neither arbitrary nor unreasonable but flowed from consistent and established case-law. Accordingly, the application should be declared inadmissible as being incompatible *ratione materiae* with the provisions of the Convention.

(b) The applicant

45. The applicant maintained that the case concerned a dispute over his civil rights and obligations. The public tender procedure had directly determined essential economic rights, including the right to lease municipal land, carry out activities on that land and derive profit from it, and obligations arising from the tender conditions and the lease agreement. Given that the outcome of the tender had directly affected his ability to engage in economic activity, Article 6 § 1 of the Convention was applicable.

46. The applicant disputed the Government's distinction between administrative and non-administrative acts as applied in the present case. Although such a distinction existed in domestic law, he argued that decisions

taken in the context of a mandatory public tender procedure could not be equated with purely private-law acts of property management. The statutory requirement to organise a public tender demonstrated that the authority was bound by legal rules and could not act with unlimited discretion.

47. The applicant further contested the classification of the mayoral decision as a non-administrative act, arguing that this approach was illogical and lacked any legal basis. Domestic law provided for two types of property management measure: one subject to stricter rules (public tenders), and the other subject to less formal requirements. It would be illogical if the stricter procedure resulted in exclusion from judicial review.

48. In support of that argument, the applicant drew an analogy with public procurement and concession procedures, in which similar decisions were treated as administrative acts by statutory provisions and were subject to judicial scrutiny. Given their comparable nature, purpose and structure, there was no justification for excluding public tender decisions regarding the lease of municipal property from judicial scrutiny. Accordingly, there was no legal basis for the judicial practice of denying the administrative nature of such decisions.

49. The applicant also challenged the Government's reliance on the clarity and consistency of domestic case-law. He submitted that the decision of the High Administrative Court of 24 September 2020 in his case had deviated from both earlier and later case-law without any valid justification. In particular, he referred to the High Administrative Court's decisions of 13 December 2018, 19 November 2020, and 15 February 2023 (see paragraphs 32-34 above), in which such decisions had been treated as administrative acts that were subject to judicial review. The decision adopted in his case had therefore constituted an isolated and arbitrary departure from that case-law.

50. According to the applicant, that departure from case-law had led to an absurd situation in which the mayor could decide on the disposal of public property without any possibility of judicial review. Such a situation was incompatible with the rule of law, particularly given that municipal property was public property financed by taxpayers.

2. The Court's assessment

(a) General principles

51. The Court reiterates that for Article 6 § 1 in its civil limb to be applicable, there must be a "dispute" ("*contestation"* in French) regarding a "right" which can be said, at least on arguable grounds, to be recognised under domestic law, irrespective of whether it is protected under the Convention. The dispute must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise; and, finally, the result of the proceedings must be directly decisive for the right in

question, mere tenuous connections or remote consequences not being sufficient to bring Article 6 § 1 into play (see *Denisov v. Ukraine* [GC], no. 76639/11, § 44, 25 September 2018; *Grzęda v. Poland* [GC], no. 43572/18, § 257, 15 March 2022; and *Grosam v. the Czech Republic* [GC], no. 19750/13, § 108, 1 June 2023, all with further references). Lastly, the right must be a "civil" right (see *Grzęda*, cited above, § 257, and *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* [GC], no. 53600/20, § 595, 9 April 2024).

52. Article 6 § 1 does not guarantee any particular content of "civil rights and obligations" in the substantive law of the Contracting States: the Court may not create through the interpretation of Article 6 § 1 a substantive right which has no legal basis in the State concerned (see, for example, *Grzęda*, cited above, § 258).

53. It is the right as asserted by the applicant in the domestic proceedings that must be taken into account in order to assess whether Article 6 § 1 is applicable. Where there was a genuine and serious dispute about the existence of that right, a decision by the domestic courts that there was no such right does not remove, retrospectively, the arguability of the claim (see *Károly Nagy v. Hungary* [GC], no. 56665/09, § 63, 14 September 2017, with further references).

54. The rights conferred by the domestic legislation can be substantive, or procedural, or, alternatively, a combination of both (see *Regner v. the Czech Republic* [GC], no. 35289/11, § 101, 19 September 2017, with further references).

55. There can be no doubt about the existence of a "right" within the meaning of Article 6 § 1 where a substantive right recognised in domestic law is accompanied by a procedural right to have that right enforced through the courts. The mere fact that the wording of a legal provision affords an element of discretion does not in itself rule out the existence of a right. Article 6 therefore applies where the judicial proceedings concern a discretionary decision resulting in interference in an applicant's rights (ibid., § 102, with further references).

56. However, Article 6 is not applicable where the domestic legislation, without conferring a right, grants a certain advantage which it is not possible to have recognised in the courts. The same situation arises where a person's rights under the domestic legislation are limited to a mere hope of being granted a right, while the actual grant of that right depends on an entirely discretionary and unreasoned decision of the authorities (ibid., § 103, with further references).

57. In some cases, national law, while not necessarily recognising that a person has an individual right, does confer the right to a lawful procedure for examination of his or her claim, involving, for example, a ruling by a competent court as to whether a decision was arbitrary or *ultra vires* or whether there were procedural irregularities. This is true of certain decisions

where the authorities have a purely discretionary power to grant or refuse an advantage or privilege, and where the law confers on the person concerned the right to apply to the courts, which may set the decision aside if they find that it was unlawful. In such a case Article 6 § 1 of the Convention is applicable, on condition that the advantage or privilege, once granted, gives rise to a civil right (ibid., § 105, with further references).

58. In the case of *Mirovni Inštitut v. Slovenia* (no. 32303/13, § 29, 13 March 2018), the Court applied those principles to a call for tenders organised by the domestic authorities for the award of a research grant. Although the applicant institute had had no right to be awarded funding and the examination of the merits of the different tenders had fallen within the scope of the authorities' discretion, the Court pointed out that the applicant institute had clearly enjoyed a procedural right to the lawful and proper adjudication of the tenders. Had its bid been accepted, it would have had a civil right conferred on it. Article 6 was therefore applicable (§§ 28-30). In more general terms, the Court revisited its case-law concerning the applicability of Article 6 to tender procedures (see also *Marina Aucanada Group S.L. v. Spain*, no. 7567/19, § 33, 8 November 2022, in which the Court reiterated its finding that participants in public tenders enjoyed procedural guarantees under Article 6 § 1 of the Convention on condition that the advantage or privilege, once granted, gives rise to a civil right).

(b) Application of those principles to the present case

59. The Court notes, first, that the applicant lodged an administrative action claiming that the mayoral decision to accept another bidder's tender and to conclude a lease agreement with her had violated the conditions of the tender procedure and the requirement that all bidders should be able to compete on equal terms (see paragraph 12 above). In his constitutional complaint he also relied on his constitutional right to entrepreneurial and market freedom and on the State's obligation to ensure that all entrepreneurs had equal status on the market (see paragraph 16 above). The dispute in the present case was therefore genuine and serious.

60. Secondly, with regard to whether there was a dispute over a "right", the Court observes that, in the present case, the mayor disposed of the municipal property in question by leasing it to a third party. However, this was not an exercise of unlimited discretion. Under section 391 of the Property Act, such transactions must be conducted through a mandatory public tender procedure (see paragraph 22 above). Moreover, the contract could only be awarded to a bidder who met all the tender requirements and who submitted the best bid (see paragraphs 6 and 24 above).

61. Furthermore, prior to 2015 and from 2018 onwards (with certain exceptions between 2018 and 2020), bidders clearly enjoyed a procedural right to the lawful and correct adjudication of the tenders (compare *Mirovni Inštitut*, cited above, § 29). In particular, the domestic courts have

consistently held by relying on the 2008 practice direction adopted by the Administrative Court of the Republic of Croatia (see paragraph 25 above) that decisions taken in the course of public tender procedures for the lease of municipal property constituted administrative acts – namely, acts by which a public authority determined the rights, obligations, or legal interests of individuals in administrative matters – and were therefore subject to judicial review (see paragraphs 31-36 above).

62. By contrast, in its decision of 26 January 2015, delivered in the context of another tender procedure (see paragraph 26 above), the High Administrative Court held – without providing detailed reasoning – that such a decision constituted an act of property management not amenable to judicial review. That approach was also applied in the applicant's case. However, from 2018 onwards (see paragraphs 31-36 above), subject to certain exceptions until 2020 (see paragraphs 15 and 28 above), the domestic courts reverted to their earlier approach and reaffirmed the existence of a procedural right to the lawful and correct adjudication of tenders.

63. For example, in a case in which the complainant had submitted the highest bid but another bidder had been given priority on the basis of local residence, the administrative courts at two levels of jurisdiction held (in decisions summarised in paragraphs 35 and 36 above) that such treatment had conflicted with the principles of free-market competition and the equal legal position of entrepreneurs guaranteed by Article 49 of the Croatian Constitution and developed further in Article 4(2) of the Trade Act (see paragraphs 19 and 20 above). The courts explained that the lease of public areas for commercial purposes facilitated private business and emphasised that all bidders had to be able to compete on equal terms.

64. It is therefore apparent from the domestic case-law that every bidder satisfying the tender requirements has the right to compete on equal terms in the tender procedure, a right which is a corollary of the right to free-market competition and the equal legal position of entrepreneurs guaranteed by Article 49 of the Croatian Constitution (see, *mutatis mutandis*, *Majski v. Croatia (no. 2)*, no. 16924/08, § 50, 19 July 2011, and *Juričić v. Croatia*, no. 58222/09, § 52, 26 July 2011).

65. In these circumstances, the Court considers that the applicant had a "right", which could arguably be said to be recognised under Croatian law. In that connection the Court also notes that the Constitutional Court did not dismiss the applicant's constitutional complaint on the ground of the proceedings not concerning his rights or obligations, but on the ground that the restriction on the right of access to a court was constitutionally acceptable (see paragraph 17 above). Accordingly, there was a dispute over a "right" in the present case.

66. Lastly, the Court notes that the applicant's right to compete in the tender procedure on equal terms with other bidders involved a distinct pecuniary interest and was undoubtedly "civil".

67. To sum up, the Court considers that the proceedings in which the applicant sought to challenge the mayoral decision delivered in the tender procedure for the lease of municipal property fell within the scope of Article 6 of the Convention under its civil head. The Government's objection as to incompatibility *ratione materiae* with the provisions of the Convention must therefore be dismissed.

(c) Conclusion as to admissibility

68. The Court further notes that the application is not manifestly ill-founded, nor is it inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' arguments

(a) The applicant

69. The applicant complained that the impossibility of obtaining judicial review of the mayoral decision issued in the tender procedure for the lease of municipal property had breached his right of access to a court.

70. He rejected the Government's reliance on the autonomy of local self-government, arguing that it had been misinterpreted. Municipalities were under statutory obligations to organise public tenders and did not therefore operate solely as private-law actors. Judicial review of their compliance with the rules regulating public tenders did not undermine their autonomy but instead ensured legality and accountability.

71. The applicant argued that judicial review would not result in excessive interference since the courts examined only the decisions issued in the context of regulated procedures – such as public tender procedures – and not all municipal decisions.

72. As regards proportionality, the applicant maintained that the lack of judicial protection had placed an excessive burden on him. Judicial protection was necessary in his case, because the tender procedure had been conducted unlawfully. Although he had submitted the most economically advantageous offer, his tender had not been selected. Formal aspects of the procedure, such as the publication of the tender or the opening of bids, could not compensate for substantive irregularities at the selection stage.

73. Lastly, the applicant emphasised that public tender procedures would lose their purpose if no judicial remedy existed, as participants would be left without protection against unlawful decisions.

(b) The Government

74. The Government submitted that there had been no violation of the applicant's right of access to a court.

75. The restriction on access to an administrative court had been lawful, as it had been based on applicable legislation, namely section 35 of the Property Act, section 48 of the Local and Regional Self-Government Act, and Articles 9 and 13 of the municipality's decision on the lease of public areas (see paragraphs 22-24 above), and consistent case-law. It pursued a legitimate aim, namely the protection of the autonomy of local self-government units in managing and disposing of their property. This autonomy, which included financial independence and the authority to issue business decisions, was safeguarded both by domestic constitutional principles and by the European Charter of Local Self-Government. Allowing courts to review such decisions would undermine this autonomy and subject the ordinary business decisions of municipalities to excessive judicial interference.

76. The restriction had also been proportionate. The domestic courts' refusal to examine the applicant's claim had been consistent with established judicial practice and had not imposed an excessive burden on him. Moreover, the tender procedure itself had been conducted transparently and in accordance with the applicable rules. The mayor had appointed a committee, published the call for tenders, ensured the integrity of the bidding process, and selected the most economically advantageous bid. The application of priority rules favouring the previous lessee had been lawful and consistent with market principles. In those circumstances, judicial protection had not been necessary.

2. The Court's assessment

(a) General principles

77. The right of access to a court was established as an aspect of the right to a fair hearing guaranteed by Article 6 § 1 of the Convention in *Golder v. the United Kingdom* (21 February 1975, §§ 28-36, Series A. no. 18). In that case, the Court found the right of access to a court to be an inherent aspect of the safeguards enshrined in Article 6, referring to the principles of the rule of law and the avoidance of arbitrary exercise of power which underlay much of the Convention. Thus, Article 6 § 1 secures to everyone the right to have a claim relating to his or her civil rights and obligations brought before a court (see *Grzęda*, cited above, § 342; see also *Zubac v. Croatia* [GC], no. 40160/12, § 76, 5 April 2018).

78. In respect of matters that fall within the ambit of the Convention, the Court's case-law has tended to show that where there is no access to an independent and impartial court, the question of compliance with the rule of law will always arise (see *Grzęda*, cited above, § 343 with a further reference). However, the Court has itself acknowledged that the right of access to a court is not absolute and may be subject to limitations that do not restrict or reduce the access left to the person concerned in such a way or to such an extent that the very essence of the right is impaired. A limitation will

not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (ibid., with further references).

(b) Application of those principles to the present case

79. In the present case, the applicant's administrative action against the mayoral decision – issued in the course of a tender procedure for the lease of municipal property – was declared inadmissible by the High Administrative Court on the ground that no judicial review was available against it (see paragraph 15 above). This constituted a restriction on his right of access to a court.

80. The inadmissibility decision was based on an approach adopted by the High Administrative Court on 26 January 2015 in the context of another tender procedure (see paragraph 26 above). That decision overturned consistent case-law, which had been applied since 2008. However, neither the decision of 26 January 2015, nor the decision in the applicant's case, provided any detailed reasoning as to why a decision issued in the course of a tender procedure for the lease of municipal property was to be considered a non-administrative act and, as such, not amenable to judicial review. Neither decision referred to any relevant case-law or doctrinal authority to compensate for that lack of reasoning.

81. In any event, even without going into the compatibility of such an approach with the requirements of the rule of law (see paragraph 30 above), the Court cannot but note that the domestic courts eventually reverted to their earlier approach, reaffirming that decisions issued in the course of a tender procedure for the lease of municipal property constituted administrative acts, and reestablishing judicial review of the lawfulness and correct adjudication of tender procedures (see paragraphs 31-36 above).

82. The present case thus concerns a historical situation, one which was limited to a specific period of time, and which no longer obtains (compare, for factual circumstances, *Morović v Croatia* (dec.) [Committee], no. 22567/18, §§ 4 and 5, 19 October 2019).

83. Accordingly, in circumstances in which decisions issued in the course of a tender procedure for the lease of municipal property were subject to judicial review from 2008 onwards, save for the period between 2015 and 2018 during which that practice seems to have been temporarily changed without any detailed explanation, it is hard to accept the Government's justification that such judicial review would undermine the autonomy of local self-government units and subject their business decisions to excessive judicial interference.

84. Indeed, municipalities are required by statutory obligations to organise public tenders and can award contracts only to those parties satisfying the tender requirements (see paragraphs 6, 22 and 24 above). As shown by the domestic case-law, judicial review of compliance with those

rules ensures the lawfulness of the procedure and guarantees accountability regarding the disposal of municipal property (see paragraphs 31-36 above).

85. It can therefore be concluded that the impossibility of obtaining judicial review of the mayoral decision issued in the tender procedure for the lease of municipal property restricted the applicant's right of access to a court to such an extent that it impaired the very essence of that right.

86. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

87. Article 41 of the Convention provides:

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

A. Damage

88. The applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage.

89. The Government contested that claim.

90. The Court reiterates that a judgment in which it finds a breach imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences. If national law does not allow – or allows only partial – reparation to be made, Article 41 empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, §§ 32-33, ECHR 2000-XI).

91. In this connection the Court notes that under the Administrative Disputes Act the applicant could seek the reopening of the domestic proceedings in respect of which the Court has found a violation of the Convention. However, having regard to the fact that the reopening would be futile since the proceedings concerned a tender for the leasing of public areas conducted in 2017, the Court awards the applicant EUR 4,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

92. The applicant also claimed EUR 3,691.35 for the costs and expenses incurred before the domestic courts and before the Court.

93. The Government contested that claim.

94. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to

quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,660 for costs and expenses incurred in the proceedings before the Constitutional Court (in which the applicant, who was represented by a lawyer, was requesting that court to remedy the violation of Article 6 § 1 of the Convention that had occurred before the High Administrative Court), and in the proceedings before the Court, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 2,660 (two thousand six hundred and sixty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 29 October 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt Deputy Registrar	Erik Wennerström President