

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

FIRST SECTION

CASE OF ARAMBAŠIN v. CROATIA

(Applications nos. 48981/17 and 49727/17)

JUDGMENT

STRASBOURG

23 June 2022

This judgment is final but it may be subject to editorial revision.



In the case of Arambašin v. Croatia,

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

Erik Wennerström, *President,*
Lorraine Schembri Orland,
Ioannis Ktistakis, *judges,*
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the applications (nos. 48981/17 and 49727/17) 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 the applicants listed in the appended table, ("the applicants"), on the date indicated therein;

the decision to give notice of the applications to the Croatian Government ("the Government") represented by their Agent, Ms Š. Stažnik;

the decision of the French and Dutch Governments not to make use of their right to intervene in the proceedings (Article 36 § 1 of the Convention);

the parties' observations;

Having deliberated in private on 31 May 2022,

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

SUBJECT MATTER OF THE CASE

1. The present case concerns the applicants' inability to use their flats or to collect an adequate rent from their tenants.

2. In particular, the applicants are the co-owners of two flats in Split with a surface area of 72 and 126.50 square metres occupied by protected lessees (*zaštićeni najmoprimci*). Under the Lease of Flats Act, which has been in force since 5 November 1996, such lessees are subject to a number of protective measures, such as the duty of landlords to enter into a lease of indefinite duration; the payment of protected rent, the amount of which is set by the Government and is significantly lower than the market rent; and better protection against termination of the lease.

3. In 2009 the applicants brought a civil action seeking eviction of the protected lessees and the members of their households. On 18 May 2012 their action was dismissed by a judgment of the first-instance court, which was upheld on 10 January 2013 by a judgment of the second-instance court.

4. The applicants lodged an appeal on points of law (*revizija*), but the Supreme Court declared it inadmissible *ratione valoris*, whereupon they lodged a constitutional complaint against the Supreme Court's decision.

5. On 11 January 2017 the Constitutional Court declared their constitutional complaint inadmissible finding that the case did not raise a constitutional issue.

6. Before the Court the applicants complained, under Article 1 of Protocol No. 1 to the Convention, that they had been unable to use their flats or charge adequate rent.

THE COURT'S ASSESSMENT

I. JOINDER OF THE APPLICATIONS

7. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

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

A. Admissibility

1. Victim status

8. The Government argued that the applicants were no longer victims of the violation complained of because on 4 August 2018 the Amendments to the Lease of Flats Act had entered into force and they provided for a progressive increase of protected rent over a period of five years starting from 1 September 2018. The amendments further provided that from that date the protected rent and all other rights of protected lessees would be extinguished. If the protected lessees did not enter into a new lease contract with the owner, they would be obliged to vacate the flats they occupied by 1 September 2023 at the latest. In the Government's view, these amendments created a legal framework that struck a fair balance between the conflicting interests of flat owners and the general interest of providing housing for protected lessees.

9. The Court notes that on 14 September 2020 the Constitutional Court invalidated those Amendments as incompatible with the Constitution. Moreover, despite the gradual increase in the protected rent in the period between 1 September 2018 and 14 September 2020, when the amendments were in force, the protected rent the applicants had been entitled to receive had still been significantly lower than the market rent. The applicants can thus still claim to be victims of the violation alleged. The Government's objections regarding their victim status must therefore be dismissed.

2. Exhaustion of domestic remedies and compliance with the six-month time-limit

10. The Government further argued that the applicants had complained of the inadequate level of protected rent for the first time in their application to the Court, that is, without having exhausted domestic remedies beforehand. Specifically, they had not raised that issue in the eviction proceedings (see

paragraphs 3-5 above) nor instituted separate civil proceedings for compensation against the State seeking the difference between the protected rent and the market rent.

11. Moreover, the applicants had lodged a clearly inadmissible appeal on points of law instead of lodging a constitutional complaint directly against the second-instance judgment. This meant that they had not properly exhausted domestic remedies, or that the final domestic decision was the second-instance judgment of 10 January 2013 and that their application lodged on 5 July 2017 had therefore been lodged outside of the six-month time-limit.

12. In reply to similar arguments in earlier cases the Court has held that the alleged violations stemmed from the national legislation itself and that the applicants therefore could not have effectively challenged the level of protected rent (see *Statileo v. Croatia*, no. 12027/10, §§ 96 and 165, 10 July 2014, and *Skelin-Hrvoj and Đuričić v. Croatia* [Committee], nos. 23414/15 and 52161/15, §§ 50-53, 10 June 2021).

13. The Court takes note of the Government's argument that the domestic case-law has evolved in the meantime and that landlords can now seek compensation for the difference between the protected rent and the market rent before civil courts. However, the relevant evidence of that case-law development are not the two judgments of the second-instance courts from November 2017 and January 2018 on which the Government relied, but the Supreme Court's judgment of 19 December 2018 to which the Government referred in their revised action plan of 30 September 2021 submitted to the Committee of Ministers in the process of execution of the judgments in the *Statileo*-group. That is so because it cannot be said that there has indeed been a shift in the existing case-law until the views expressed by lower courts are endorsed by the Supreme Court or the Constitutional Court.

14. Moreover, in cases like the present one, where the remedy in question was the result of interpretation by the courts, it normally takes six months for such a development of the case-law to acquire a sufficient degree of legal certainty before the public may be considered to be effectively aware of the domestic decision which had established the remedy and the persons concerned be enabled and obliged to use it (see, for example, *Kirinčić and Others v. Croatia*, no. 31386/17, § 115, 30 July 2020).

15. Since the applicants lodged their application with the Court on 5 July 2017 and the case-law establishing the compensatory remedy relied on by the Government acquired a sufficient degree of legal certainty six months after the Supreme Court's judgment of 19 December 2018 (see paragraph 13 above), the applicants could not have benefited from it.

16. As regards the argument that the applicants could have raised the issue of inadequate rent in the eviction proceedings (see paragraph 10 above), the Government relied on the Supreme Court's judgment of 29 June 2016 and the

Constitutional Court's decision of 4 October 2017 as examples of the case-law development in that type of proceedings.

17. However, that Constitutional Court's decision was adopted after the applicants lodged their application with the Court on 5 July 2017.

18. The Supreme Court in its judgment of 29 June 2016 held that protected rent served the purpose of social protection and that it was therefore unacceptable for a lessee who owned a valuable piece of real estate to take advantage of protected lease. In the eviction proceedings instituted by the applicants that issue arose only in respect of one of the protected lessees, whom the applicants claimed owned a holiday home. However, the domestic courts established that the lessee was not the owner of that property.

19. The Court therefore refers to its conclusion in earlier cases (see paragraph 12 above) and finds that at the relevant time the applicants could not have effectively challenged the level of protected rent before the domestic authorities.

20. The Government's objections regarding the exhaustion of domestic remedies and non-compliance with the six-month time-limit must therefore be rejected.

21. The Court further notes that the applications are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

22. The Court has already found a violation of Article 1 of Protocol No. 1 to the Convention in a case raising similar issues to the present ones (see *Statileo*, cited above, §§ 116-45). Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion on the merits of the present applications.

23. There has accordingly been a breach of Article 1 of Protocol No. 1 to the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

I. DAMAGE

24. The applicants sought 413,943.15 euros (EUR) each in respect of pecuniary damage which corresponded to the difference between the monthly protected rent and the monthly market rent for their flats in the period between 5 November 1997 (the date of the entry into force of the Convention in respect of Croatia) and the end of November 2019 (the month when they submitted their claim for just satisfaction). They further claimed EUR 61,768.50 each in respect of future pecuniary damage they would

sustain until 31 August 2023 (the date on which the right to a protected rent would have been extinguished under the invalidated Amendments to the Lease of Flats Act, see paragraph 8 above). They also claimed EUR 10,000 each in respect of non-pecuniary damage.

25. The Government contested these claims.

26. The Court considers that even though the applicants must have sustained pecuniary damage, they cannot be awarded compensation for the period before they acquired ownership of the flats in question.

27. The applicants stated that they had become owners by deed of gift of 21 April 2008. However, under domestic law, when ownership is acquired in such a way, its registration in the land register is the act constitutive of the acquisition. Even though the applicants did not provide that information, it is evident from the documents in the Court's possession that the registration occurred at the earliest on 22 July 2008. It is therefore appropriate to award compensation for pecuniary damage starting from that date.

28. That compensation should cover the difference between the protected rent and adequate rent (see *Statileo*, cited above, § 157).

29. In that regard the Court has made an estimate, taking into account in particular the information submitted by the applicants concerning the market rent for comparable flats in the relevant period and the protected rent they received in the same period. The Court considers it reasonable to award EUR 106,200 to the applicants jointly for pecuniary damage.

30. However, their claim for future losses must be dismissed, without prejudice to any future claims they may have, because it is not for the Court to quantify the amount of any damage which they may suffer as a result of the implementation of the rent-control scheme in the future (see *Amato Gauci v. Malta*, no. 47045/06, § 80, 15 September 2009, and *Bittó and Others v. Slovakia* (just satisfaction), no. 30255/09, § 27, 7 July 2015).

31. The Court also finds that the applicants must have sustained non-pecuniary damage (see *Statileo*, cited above, § 159). Ruling on an equitable basis, it awards EUR 5,000 to each applicant under that head, plus any tax that may be chargeable on that amount.

II. COSTS AND EXPENSES

32. The first applicant claimed EUR 8,824.50 and the second applicant claimed EUR 8,949.48 for the costs and expenses incurred before the domestic courts and before the Court.

33. The Government contested these claims.

34. As regards the claim for the costs and expenses before the domestic courts, the Court notes, having regard to its above findings (see paragraphs 12 and 19 above), that those costs were not incurred in order to seek, through the domestic legal order, prevention or redress of the violation found (see

Statileo, cited above, §§ 20 and 162). It therefore rejects the applicants' claim for those costs.

35. As to the costs incurred before it, the Court considers it reasonable to award EUR 1,670 to each applicant, plus any tax that may be chargeable to them.

36. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the applications admissible;

3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

4. *Holds,*
   (a) that the respondent State is to pay, within three months, the following amounts to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 106,200 (one hundred and six thousand two hundred euros) to the applicants jointly in respect of pecuniary damage;
      (ii) EUR 5,000 (five thousand euros) to each applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) EUR 1,670 (one thousand six hundred and seventy euros) to each applicant, plus any tax that may be chargeable to them, 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;

5. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 23 June 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt	Erik Wennerström
Deputy Registrar	President

APPENDIX

No.	Application no. Date of introduction	Applicant's Name	Year of birth	Nationality	Place of residence	Representative
1.	48981/17 05/07/2017	Nella ARAMBAŠIN	1961	Croatian and French	Paris	Nikola DOBRIĆ
2.	49727/17 05/07/2027	Marina ARAMBAŠIN	1959	Croatian, French and Dutch	Den Haag	Nikola DOBRIĆ