

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

FIRST SECTION

CASE OF JURIČIĆ v. CROATIA

(Application no. 646/17)

JUDGMENT

STRASBOURG

1 December 2022

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



In the case of Juričić v. Croatia,

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

Péter Paczolay*, President*,
Alena Poláčková,
Davor Derenčinović*, judges*,
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 646/17) 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") on 19 December 2016 by a Croatian national, Mr Denis Juričić ("the applicant"), who was born in 1965 and lives in Split and who was represented by Ms H. Demaria, a lawyer practising in Split;

the decision to give notice of the complaints concerning the right to a fair hearing and the right to the peaceful enjoyment of possessions to the Croatian Government ("the Government"), represented by their Agent, Mrs Š. Stažnik, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 8 November 2022,

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

SUBJECT MATTER OF THE CASE

1. The application concerns civil proceedings between a State-founded agency and the applicant regarding a real-estate purchase contract.

2. On 8 July 2005 the Real Estate Transactions and Brokerage Agency (*Agencija za pravni promet i posredovanje nekretninama*; hereinafter "the Agency") and the applicant concluded a contract entitled "preliminary real-estate purchase contract" (*predugovor o kupoprodaji nekretnine*) for a garage parking space. The contract stated that the parking space surface area was 8.73 sq. m and that the purchase price was 907.73 euros (EUR) per sq. m, amounting in total to EUR 7,924.84. The parties undertook to conclude the "main purchase contract" and determine the "final price" after the completion of the construction of the building. In particular, the applicant undertook to pay the difference in price if there was a significant change to the surface area of the parking space.

3. The applicant paid the price stipulated in the preliminary contract and on 5 October 2007 entered into possession of the parking space.

4. On 25 March 2009 the Agency sent the applicant the "main purchase contract", which stated that the garage parking space surface was 10.48 sq. m and that the final price thus amounted to EUR 9,513.01. The applicant refused to sign that contract.

5. In October 2009 the Agency brought a civil action in the Split Municipal Court, asking it to order the applicant to conclude the main real-estate purchase contract or, alternatively, to hand over possession of the parking space.

6. The applicant argued that the initial contract contained all the essential elements to be considered to constitute the main contract. Moreover, that contract had been implemented in full since he had paid the price and had entered into possession of the parking space. The subsequent increase in price was contrary to the initial contract since the surface area of the parking space had not changed, but only the method used by the Agency for its calculation.

7. On 7 October 2010 the Split Municipal Court delivered a judgment holding that the parties had concluded a preliminary real-estate purchase contract, and not the main contract. The court dismissed the Agency's claim for the conclusion of the main contract, holding that it had been brought out of time. However, it accepted the Agency's alternative claim and ordered the applicant to hand possession of the parking space over to the Agency, holding that, by not having signed the main purchase contract, the applicant had no legal basis for possession of the parking space.

8. The applicant appealed, reiterating his arguments.

9. On 20 October 2011 the Split County Court dismissed the applicant's appeal. It simply stated that with the termination of the obligation to conclude the main contract, the preliminary contract was no longer valid, so the applicant had lost the legal basis for possession of the parking space. It did not address the applicant's arguments as to the legal effect of the preliminary contract.

10. The applicant appealed on points of law, arguing that the lower courts' decisions had entirely failed to address his arguments as to the legal effect of the initial contract. The contract in question was one of many identical contracts the Agency had concluded for the sale of garage parking spaces. Since there were several sets of proceedings pending before the lower courts, the applicant asked the Supreme Court to rule whether the standardised contract in question amounted to a preliminary one, or to the main real-estate purchase contract. He referred to a judgment of the Split Municipal Court of 5 October 2011, in which that court had held that the preliminary contract concluded with the Agency constituted the main real-estate purchase contract and that the defendant therefore had a legal basis for possession of the garage parking space.

11. On 19 January 2016 the Supreme Court dismissed the applicant's appeal on points of law. It held that the legal effect of the preliminary contract concluded between the applicant and the Agency was irrelevant, since at that point the only disputed issue in the case was whether the applicant had a legal basis for possession of the garage parking space.

12. The applicant lodged a constitutional complaint, submitting that the decisions in his case had been arbitrary, and that meanwhile the Split

Municipal Court had given several final judgments in factually and legally identical cases holding that the preliminary contracts constituted the main real-estate purchase contracts.

13. On 25 May 2016 the Constitutional Court dismissed the applicant's constitutional complaint as unfounded. The applicant's representative received that decision on 24 June 2016.

14. The applicant is still in possession of the garage parking space but cannot be registered in the land register as its owner. The Agency can seek his eviction at any time.

15. The applicant complained, under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, that the domestic courts' decisions ordering him to surrender possession of the property in question to the Agency had been arbitrary and contrary to the Supreme Court's case-law and to the domestic courts' decisions in cases concerning identical factual and legal circumstances.

THE COURT'S ASSESSMENT

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

16. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds and must therefore be declared admissible.

17. The Court reiterates that it is not its function to deal with errors of fact or law allegedly made by a national court, unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I; *Perez v. France* [GC], no. 47287/99, § 82, ECHR 2004-I; and *Zubac v. Croatia* [GC], no. 40160/12, § 79, 5 April 2018). Normally, issues such as the weight attached by the national courts to given items of evidence or to findings or assessments in issue before them for consideration are not for the Court to review. The Court should not act as a court of fourth instance and will not therefore question under Article 6 § 1 the judgment of the national courts, unless their findings can be regarded as arbitrary or manifestly unreasonable (see *Bochan v. Ukraine* (no. 2) [GC], no. 22251/08, § 61, ECHR 2015).

18. The parties agreed that it was decisive for the outcome of the proceedings complained of to determine the legal effect of the initial contract concluded between the applicant and the State-founded agency.

19. The applicant's main argument in the proceedings, which relied on the Supreme Court's longstanding practice (decision no. Rev-1341/1993 of 4 January 1995 and judgments nos. Rev-128/01 of 9 July 2003, Rev-2791/00 of 9 April 2003 and Rev-560/07 of 27 May 2008), was that the initial contract signed and implemented by the parties contained all the essential elements to be considered to constitute the main contract (see paragraph 6 above).

20. The first-instance court held that the parties had concluded a preliminary purchase contract only (see paragraph 7 above). The second-instance court remained silent on the applicant's arguments and assumed that the legal effect of the preliminary contract was undisputed between the parties (see paragraphs 8-9 above). The Supreme Court held that the legal effect of the contract was irrelevant (see paragraph 11 above). The Court considers that, had the issue been examined and it had been found that the preliminary contract in fact constituted the main contract, the applicant would have had a legal basis for retaining possession of the property in question.

21. It is not the Court's task to examine whether the contract at issue in was indeed the main real-estate purchase contract or a preliminary one, it being for the national courts to determine questions of that nature (see *Hiro Balani v. Spain*, 9 December 1994, § 28, Series A no. 303-B). However, the Court cannot but conclude that the domestic courts made assertions which were incorrect and failed to deal with the central legal argument in the case, with the result that the impugned proceedings fell short of the requirement of a fair hearing.

22. This conclusion is reinforced by the circumstance that meanwhile the Split Municipal Court had given final judgments in factually and legally identical situations (nos. P2-9259/09 of 4 May 2012; P1-9244/09 of 9 September 2013; and P1-9245/09 of 18 June 2014), in which it held that the preliminary contracts concluded with the Agency in fact constituted the main real-estate purchase contracts, that the defendants therefore had a legal basis for possession of the garage parking spaces, and that the subsequent increase in price by the Agency was contrary to the initial contract since the surface area of the garage parking space had not changed but only the method used by the Agency for its calculation (see paragraph 6 above).

23. There has accordingly been a violation of Article 6 § 1 of the Convention in the present case.

II. OTHER COMPLAINT

24. The applicant also complained under Article 1 of Protocol No. 1 to the Convention that the domestic courts' decisions had violated his right to peaceful enjoyment of his possessions. Having regard to the facts of the case, the submissions of the parties and its findings above, the Court considers that it has examined the main legal question raised in the present application. It thus considers that there is no need to rule separately on the admissibility and merits of the remaining complaint (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. The applicant claimed 7,500 euros (EUR) in respect of non-pecuniary damage and 19,875 Croatian kunas (HRK) in respect of costs and expenses incurred before the domestic courts and the Court.

26. The Government contested those claims.

27. The Court finds that in the present case the most appropriate way of repairing the consequences of the violation found is to reopen the civil proceedings complained of. Since under section 428a of the Croatian Civil Procedure Act, an applicant may seek the reopening of the civil proceedings in respect of which the Court has found a violation of the Convention, there is no call to award the applicant any sum in respect of non-pecuniary damage.

28. Having regard to the fact that the applicant can seek the reopening of the domestic civil proceedings and thereby obtain a fresh decision on costs before the civil courts and the Supreme Court, the Court considers it reasonable to award the sum of EUR 1,500 for the costs and expenses incurred before the Constitutional Court and the Court, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 6 § 1 of the Convention admissible;

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

3. *Holds* that there is no need to examine the admissibility and merits of the complaint under Article 1 of Protocol No. 1 to the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 1,500 (one thousand five hundred euros) in respect of costs and expenses, to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable to the applicant,
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 1 December 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt Deputy Registrar	Péter Paczolay President