

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

SECOND SECTION

# CASE OF MAROSLAVAC v. CROATIA

*(Application no. 64806/16)*

JUDGMENT

| Art 1 P1 • Secure the payment of taxes • Lawful and proportionate decision ordering the applicant to pay unpaid profit tax following a tax audit of her financial affairs |
|---|
| Prepared by the Registry. Does not bind the Court. |

STRASBOURG

13 February 2024

**FINAL**

13/05/2024

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



**In the case of Maroslavac v. Croatia,**

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

Arnfinn Bårdsen*, President*,
Jovan Ilievski,
Pauliine Koskelo,
Saadet Yüksel,
Lorraine Schembri Orland,
Frédéric Krenc,
Davor Derenčinović*, judges*,
and Hasan Bakırcı, *Section Registrar,*

Having regard to:

the application (no. 64806/16) 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, Ms Željka Maroslavac ("the applicant"), on 7 November 2016;

the decision to give notice to the Croatian Government ("the Government") of the complaint concerning the applicant's property rights and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 12 December 2023,

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

# INTRODUCTION

1. The case concerns the applicant's complaints under Article 1 of Protocol No. 1 to the Convention that a tax audit of her financial affairs had been procedurally flawed, and that she had been ordered to pay taxes for periods in respect of which the right of the State to collect those taxes had become time-barred.

# THE FACTS

2. The applicant was born in 1958 and lives in Zagreb. She was represented by Ms I. Bojić, 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.

5. In 2001 the applicant, who is a notary public, purchased business premises the value of which, according to domestic law, she had the right to deduct from her profit tax (*porez na dobit*) over the period of the following six years. The applicant had paid about 2,700,000 Croatian kunas (HRK; approximately 360,000 euros (EUR)) for the property in question, but a later expert opinion showed its value to be HRK 5,000,000 (approximately EUR 660,000).

6. By a decision dated 26 June 2007, the Zagreb Office of the Ministry of Finance's Tax Administration (hereinafter: "the Zagreb Office") began a tax audit of the applicant. The audit was performed in respect of value-added tax (VAT – *porez na dodanu vrijednost*) for the period between 1 January 2003 and 31 May 2007, and profit tax for the period between 1 January 2003 and 31 December 2006.

7. By a determination (*zaključak*) dated 26 October 2007, the tax audit was extended to include the applicant's income tax for the period between 1 January 2003 and 31 December 2005. The applicant was notified of that decision on 5 November 2007.

8. On 7 November 2007 the applicant was served with an audit report dated 6 November 2007 which stated, among other things, that in 2001, 2002 and 2003 she had not shown the income arising from the revaluation of her assets, contrary to domestic law, and that therefore the sums declared in her tax return in respect of profit tax for 2003 needed to be increased.

9. The applicant lodged an objection against the audit report, in which she stated that the audit had covered the years 2001 and 2002, which fell outside the statutory limitation period. She also maintained that she had been unable to actively participate in the proceedings because of the late service of the decision to extend the audit to include her income tax. However, her objection was mistakenly sent to the wrong department within the Zagreb Office.

10. On 28 December 2007 the Zagreb Office issued a tax ruling (*porezno rješenje*) establishing that the applicant had paid less profit tax in 2003, 2004 and 2005, less VAT for all years between 2003 and 2007, and less income tax on capital for 2003, 2004 and 2005 than she should have done. The applicant was therefore ordered to pay the additional tax and accrued default interest. The text of the ruling stated as follows:

> "Given that the taxpayer failed to show the income from the revaluation of the assets up to the value of the amount declared for deduction from profits as amortisation (*amortizacija*) on the basis of the revaluation in 2001, 2002 and 2003, the tax audit established that the undeclared income from the revaluation of the assets amounted to 1,462,084.59 kunas.
>
> As a consequence, the profit tax for 2003 ... has been increased by 1,462,084.59 kunas[1]."

11. On 6 February 2008 the applicant lodged an appeal against the tax ruling of 28 December 2007. She complained, among other things, that the calculation of her tax liability for 2001 and 2002 had covered periods in respect of which the statutory limitation period had expired, and that she had been unable to participate effectively in the proceedings.

12. On 14 February 2008 the applicant's objection to the audit report (see paragraph 9 above) was received at the relevant department of the Zagreb Office.

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[1]Approximately 195,000 euros.

13. As a consequence, on 20 February 2008 the Zagreb Office issued a fresh tax ruling, replacing the one of 28 December 2007 (see paragraph 10 above), similarly finding that the applicant had paid less profit tax in 2003, 2004 and 2005, less VAT for all years between 2003 and 2007, and less income tax on capital gains for 2003, 2004 and 2005 than she should have done. The applicant was ordered to pay the additional tax and accrued default interest, which, at the applicable rate of 20%, for 2003 amounted to HRK 513.654,52 (approximately EUR 68,500). The relevant parts of that decision read as follows:

> "The tax audit carried out established that [the applicant] ... had recorded the estimated value of her business premises in her general ledger for the year 2001 ... and that in the period between 2001 and 2006 she calculated amortisation and showed deductions for the total estimated value of those business premises.
>
> Section 100(5) of the General Tax Act ... provides that a tax audit must be extended to previous taxation periods if there are facts which indicate that such an extended tax audit might alter the calculation of tax liability to a significant extent. In line with the legal provision cited, during the tax audit a correction of amortisation calculations for 2001 and 2002 was made in the year 2003.
>
> Section 91(1) of the General Tax Act ... provides that the limitation period may be interrupted by any official action of the [relevant] authority carried out with a view to assessing tax liability ...
>
> Section 92 of the same Act provides that the absolute statutory limitation period for the right of a tax authority to assess tax liability and interest, to initiate minor offence proceedings, and to collect taxes, interest, enforcement costs and fines expires six years from the date on which the statutory limitation period first started to run.
>
> ...
>
> The tax audit of [the applicant's] business was carried out in accordance with the provisions of section 108(1) of the General Tax Act; [the applicant] participated in the assessment of the facts relevant to tax liability by providing information and presenting records, business books, business documentation and other documents. In the course of the audit [the applicant] was aware of the irregularities noted, ... on which the finding that the audit should be extended to cover income tax was based ...
>
> ...
>
> During the tax audit, ... it was established that in 2001 [the applicant] had the right to amortisation on the purchase value by claiming a deduction in the amount of HRK 551,446 and that the difference between the purchase price and the estimated value was HRK 487,361.53, and that in order to make deductions for amortisation based on the estimated value she should have increased her income from the revaluation of the assets by HRK 487,361.53 ... The same is true for 2002 and 2003.
>
> Given that [the applicant] in 2001, 2002 and 2003 failed to show the income from the revaluation of the assets up to the amount claimed for amortisation on the basis of the revaluation, the tax audit established income from the revaluation in the amount of HRK 1,462,084.59.

> As a consequence, the profit tax calculation for 2003 ... is increased by HRK 1,462,084.59[2].”

14. On 31 March 2008 the applicant lodged an appeal against the first-instance tax ruling of 20 February 2008. She repeated her arguments relating to the expiry of the statutory limitation period in respect of the calculation of her tax liability for 2001 and 2002, as well as her inability to participate effectively in the proceedings.

15. On 9 July 2008 the Ministry of Finance dismissed the applicant’s appeal, finding that the first-instance tax authority had correctly assessed the applicant’s tax liability. As regards her argument concerning the expiry of the statutory limitation period, the Ministry referred to section 100(5) of the General Tax Act and stated that in her case there had been facts indicating that extending the audit might significantly alter the amount of the assessable tax base. As regards her participation in the proceedings, the Ministry in essence repeated the conclusions of the contested tax ruling (see paragraph 13 above).

16. On 21 October 2008 the applicant brought an action for judicial review, complaining about, among other things, the expiry of the statutory limitation period for assessing her tax liability for 2001 and 2002 and her inability to participate effectively in the proceedings.

17. On 19 January 2011 the Administrative Court of the Republic of Croatia (*Upravni sud Republike Hrvatske*) dismissed the applicant’s action for judicial review, holding that she had taken part in the tax audit and that she had failed to raise her complaint concerning the expiry of the statutory limitation period with the administrative authorities.

18. On 5 May 2011 the applicant lodged a constitutional complaint, alleging that the proceedings had been unfair and that there had been a breach of her property rights.

19. On 4 May 2016 the Constitutional Court dismissed her complaint, upholding the Administrative Court’s reasoning that the applicant had failed to timely raise her complaint, and noting that the period to which the tax audit had been extended had not been covered by the (absolute) statutory limitation period set out in section 92 of the General Tax Act.

## RELEVANT LEGAL FRAMEWORK AND PRACTICE

20. The relevant provisions of the General Tax Act (*Opći porezni zakon*, Official Gazette nos. 127/2000, 26/2000, 86/2001 and 150/2002), as in force between 1 January 2001 and 31 December 2008, read as follows:

[2] Approximately 195,000 euros.

**Section 1**
**General provisions**

"This Act governs the relationship between taxpayers and tax authorities that apply regulations on taxes and other public benefits, unless otherwise regulated by special laws on certain types of taxes and other public benefits, and represents the common basis of the tax system."

**Section 7**
**Right to declaration**

"Prior to the issuing of a tax order establishing the rights and obligations of a taxpayer, the tax authority shall provide the taxpayer with the opportunity to submit a declaration of the facts and circumstances essential to the issuing of the tax order."

**Section 90**
**Statutory limitation**

"(1) The right of a tax authority to assess tax liability and interest, to initiate minor offence proceedings and to collect taxes, interest, enforcement costs and fines, and the right of taxpayers to refunds of taxes, interest, enforcement costs and fines, shall be subject to a statutory limitation period of three years including the date on which statutory limitation commences.

(2) The statutory limitation period for the right to assess tax liabilities and interest shall start to run after the end of the year in which the tax liability and interest should have been assessed.

..."

**Section 91**
**Interruption of statutory limitation**

"(1) The statutory limitation period shall be interrupted by any official action of a tax authority directed at the assessment or collection of taxes, interest, enforcement costs or fines of which the taxpayer is notified.

(2) The statutory limitation period shall be interrupted by an action of a taxpayer, of which the tax authority is notified, involving the exercise of the right to a refund of taxes collected without legal grounds or of overpaid taxes, interest, enforcement costs or fines.

(3) Following the undertaking of the actions referred to in subsections 1 and 2 of this section, the statutory limitation period shall begin running again."

**Section 92**
**Absolute statutory limitation**

"The absolute statutory limitation period for the right of a tax authority to assess tax liability and interest, to initiate minor offence proceedings and to collect taxes, interest, enforcement costs and fines shall expire six years from the date on which statutory limitation first started to run."

**Section 100**
**Audit period**

"1. A tax audit may be performed for the period in respect of which the statutory limitation of the right to the determination of tax liability has not expired.

...

4. A tax audit for other persons [that is, those reporting income of more than 50 million Croatian kunas] shall in principle cover the last taxation period in respect of which a taxation report was submitted.

5. A tax audit as provided for in subsection 4 of this section shall be extended to cover a previous taxation period if there are facts which indicate that such an extended tax inspection may alter the calculation of the tax liability to a significant extent."

**Section 103**
**Audit order**

"1. The tax authority shall issue an order to establish the subject and duration of a tax audit.

..."

**Section 104**
**Delivery of the audit order**

"1. The order for the audit shall be served on the taxpayer as follows:

- thirty days prior to the commencement of the audit in respect of a large taxpayer,

- fifteen days prior to the commencement of the audit in respect of other taxpayers.

..."

**Section 108**
**Mandatory taxpayer participation in conducting an audit**

"1. A taxpayer shall be obliged to participate in the establishment of the facts essential to taxation by providing information, presenting records, business ledgers, business documentation and other documents ..."

21. In its decision no. U-III-1749/2017-4 of 9 October 2018 the Constitutional Court held that a decision of the High Administrative Court from 2015, according to which, after the tax authorities had issued an administrative decision, only the absolute statutory limitation period would continue to run had been arbitrary because it rendered nugatory the entire concept of relative and absolute statutory limitation periods, since relative statutory limitation would cease to operate.

22. In its decision no. U-III/3552/2016 of 9 July 2019, given in another tax case concerning statutory limitation periods, the Constitutional Court held as follows:

"In legal matters in which the State acts *de iure imperii*, the legitimate purpose of the concept of limitation periods is the self-limitation and 'self-sanctioning' of the State, in such a way that it imposes on its own bodies a certain dynamism and efficiency in dealing with cases by imposing on them a clearly defined and publicised time frame

within which they are authorised to act in cases in which the legal status of citizens is being decided, especially if they lead to the imposition of obligations or penalties. The authority of State bodies ends once the prescribed period of absolute statutory limitation has expired, and after that citizens can no longer be exposed to the 'pressure' of possible decisions of State bodies or the 'burden' that the State could impose on them with such decisions. The State therefore has an indisputable right to make legal decisions that impose certain burdens on citizens, but citizens also have an indisputable right not to be exposed indefinitely to such decisions even if they are lawful (that is, the principle of the rule of law and legal certainty of an objective legal order applies and the State requires agility and efficiency), so statutory limitation periods establish a fair balance between the State and citizens for the purposes of Article 14, paragraph 2, of the Constitution."

# THE LAW

## I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

23. The applicant complained that the tax audit had taken into account her financial activities in 2001 and 2002 and that she had consequently been ordered to pay profit tax for that period although the statutory limitation period had expired, and that the domestic authorities had never properly addressed her complaints in that respect. She also complained that she had been unable to participate effectively in the determination of her obligation to pay income tax given that the decision extending the tax audit to include her income tax had been served on her only a day before the tax inspection had ended.

24. She relied on Article 1 of Protocol No. 1 to the Convention, which reads as follows:

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

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

### A. Admissibility

25. 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. The parties' submissions*

#### (a) The applicant

26. The applicant maintained that the amount of profit tax that she had been ordered to pay in respect of 2003 had included the amounts due in 2001 and 2002. However, she could not validly have been ordered to pay those amounts since any claim for profit tax in respect of those periods had been time-barred. The interference with her property rights in so far as it concerned those amounts had therefore been unlawful.

27. The applicant further complained that none of the domestic authorities had examined the merits of her argument in that respect, although she had raised it as early as in her objection to the audit report and had repeated it when pursuing all other subsequent remedies. Neither the administrative authorities nor the Administrative Court had denied that the tax audit had in essence been extended to include 2001 and 2002. However, they had failed to give any explanation as to why this had been done and what consequences it had produced for the applicant's tax obligations for 2003. The tax authorities had referred to section 100(5) of the General Tax Act, which made it possible to extend a tax audit to previous periods. However, they had failed to explain how this had been in accordance with subsection 1 of the same provision, which provided that a tax audit could only be performed in respect of periods which had not become time-barred. Moreover, the Administrative Court and the Constitutional Court had incorrectly and arbitrarily rejected her argument about the statutory limitation period on the grounds that she had failed to raise that argument with the administrative authorities.

28. The applicant submitted that the manner in which the domestic authorities had addressed her argument concerning the statutory limitation period applicable to 2001 and 2002 had been arbitrary and unlawful and contrary to the principle of legal certainty where it concerned the relevant provisions on limitation in the General Tax Act. In her case, the statutory limitation period set out in section 90 of the General Tax Act had expired at the latest on 1 January 2006, since for the three immediately preceding years the tax authorities had not undertaken any actions in respect of her, whereas the absolute statutory limitation period under section 92 of the Act had been wholly irrelevant.

29. Finally, the applicant also argued that the decision to extend the tax audit had not been given in the appropriate form, that she had never been orally informed of that extension as claimed by the Government and that she had been served with the decision on the extension only a day before the audit report had been issued, contrary to domestic law.

**(a) The Government**

30. The Government maintained that the interference with the applicant's property rights had not been unlawful. They explained that, while conducting the tax inspection for 2003, the tax authorities had realised that it was necessary to extend the audit to the previous periods since there were facts that indicated that an extended audit would significantly alter the amount of the taxpayer's liability under section 100(5) of the General Tax Act. In particular, the applicant had been found to have calculated the accumulated depreciation of the business premises she had acquired in 2001 throughout the period between 2001 and 2006, contrary to the accounting conventions regarding deductions for amortisations of purchase costs and asset revaluation, contrary to the Profit Tax Act and contrary to the relevant instruction, published on the tax authorities' website, which provided that if assets had been revalued in the previous tax period but the gains from the revaluation had not been included in the return for that tax period, those gains were to be included in the following income tax return.

31. The extension of the tax audit to 2001 and 2002 thus represented an integral and necessary part of the tax audit conducted for the year 2003. In the Government's view, such an extension was not time-barred since the statutory limitation period for the year 2003 had started to run from 1 January 2005, whereas the first official action by the tax authority had taken place on 26 June 2007 with the issuing of the order to conduct an audit. Nor was the extension of the audit contrary to the absolute statutory limitation period, which in the applicant's case would have expired only on 1 January 2011.

32. Moreover, under section 105(2) of the General Tax Act, if the taxpayer considered that the tax audit had not been conducted in accordance with the order, he or she could lodge a complaint with the tax authority which had carried it out. The applicant had not only never raised such a complaint but had also provided the information requested for the extension of the tax audit to the years 2001 and 2002.

33. For the above reasons and bearing in mind that the applicant was a legal professional and used professional bookkeeping services, the applicable legislation must have been foreseeable to her, and she should have been aware of the scope of the tax assessment.

34. As regards the applicant's complaint about her inability to participate in part of the tax audit, the respondent State maintained that she had had the opportunity to present her observations on all the circumstances of the tax audit both during the audit itself and afterwards. In particular, the tax inspectors had warned the applicant about irregularities related to her income tax which had not been covered by the initial tax demand. Moreover, she could have raised new facts and put forward new evidence both in her objection to the audit report and in her appeal against the first-instance tax ruling. It could therefore not be said that during the proceedings the applicant had been placed in an unequal position in any way.

*2. The Court's assessment*

**(a) Whether there was an interference with the applicants' property rights**

35. The Court considers that the domestic authorities' decision ordering the applicant to pay a certain amount of money in profit tax constituted an interference with her property rights guaranteed by Article 1 of Protocol No. 1, it being understood that such an interference is to be examined from the standpoint of the rule in the second paragraph of Article 1 of Protocol No. 1 under which the States have the right to enforce such laws as they deem necessary to secure the payment of taxes (see *Gasus Dosier- und Fördertechnik GmbH v. the Netherlands*, 23 February 1995, § 59, Series A no. 306; *Špaček, s.r.o., v. the Czech Republic*, no. 26449/95, §§ 39 and 41, 9 November 1999; and *Burden v. the United Kingdom* [GC], no. 13378/05, § 59, ECHR 2008).

36. It remains to be determined whether the interference was lawful and compatible with the proportionality principle inherent in that provision (see *Khodorkovskiy and Lebedev v. Russia*, nos. 11082/06 and 13772/05, §§ 869-70, 25 July 2013), having regard to the wide margin of appreciation enjoyed by the State in the tax sphere (see *Gasus Dosier- und Fördertechnik GmbH*, cited above, § 60; and "*Bulves" AD v. Bulgaria*, no. 3991/03, § 63, 22 January 2009).

**(b) Whether the interference was lawful**

37. When speaking of "law", Article 1 of Protocol No. 1 alludes to the very same concept as that to which the Convention refers elsewhere when using that term – a concept that comprises statutory law as well as case-law and implies qualitative requirements (notably those of accessibility and foreseeability) (see *Cantoni v. France*, 15 November 1996, § 29, *Reports of Judgments and Decisions* 1996-V and *Špaček, s.r.o.*, cited above, § 54).

38. Furthermore, where the tax sphere is concerned, the Court's well-established position is that States may be afforded some degree of additional deference and latitude in the exercise of their fiscal functions under the lawfulness test (see *Bežanić and Baškarad v. Croatia*, nos. 16140/15 and 13322/16, § 64, 19 May 2022, and *OAO Neftyanaya Kompaniya Yukos v. Russia*, no. 14902/04, § 559, 20 September 2011).

39. In the present case, in assessing the applicant's tax liability for 2003, the first-instance tax ruling explicitly stated that the tax authority had included in her tax base for 2003 certain sums which should have been due for the previous two years (see paragraph 13 above). The Government did not deny that the applicant had been ordered to pay certain amounts as a result of her financial activities in 2001 and 2002.

40. The competent tax authorities explained that under section 100(5) of the General Tax Act, a tax audit could be extended to earlier periods if there were facts which indicated that such an extended tax audit might alter the

calculation of tax liability to a significant extent (see paragraphs 13 and 15 above). The Government further explained that the extension of the assessment of the applicant's tax liability by taking into account her financial activities for the years 2001 and 2002 had further been foreseeable on the basis of the instructions on the calculation of the profit tax for the year in issue, which had been published on the tax authorities' website (see paragraph 30 above).

41. While it would have been desirable for the Administrative Court of the Republic of Croatia to have given a clear answer to the applicant's complaint as regards the expiration of the statutory limitation period in her case, the Court sees no reason to question the domestic courts' interpretation and application of the relevant legislation to the applicant's case, considering that it is primarily for the national authorities, notably the courts, to interpret and apply domestic law (see, among many other authorities, *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 140, ECHR 2012), in particular bearing in mind that in taxation matters the States may be afforded an additional degree of latitude in the exercise of their fiscal functions under the lawfulness test (see paragraph 38 above).

42. In the Court's view, it must in this respect be noted that no reassessment of the tax liability for the years 2001 or 2002 took place in the applicant's case. The reassessment was limited to the subsequent years starting with 2003, in line with the substantive tax law in force at the time. For 2001 and 2002 the accounts and tax declarations were indeed checked, but only with a view to establishing whether and how those facts had an impact on the tax liability for 2003 and any following year. To consider, as the domestic tax authorities and courts did, that this was not precluded by the provisions on statutory limitation period for the determination of tax liabilities and the scope of audits, is a matter of interpretation and application of domestic law which the Court finds was neither arbitrary nor manifestly unreasonable in the circumstances of the present case.

43. Consequently, the Court concludes that in the present case there existed a sufficiently clear legal basis for ordering the applicant to pay profit tax for 2003.

#### (c) Whether the interference pursued a legitimate aim

44. The Court considers that the domestic authorities' decisions pursued an aim that was in the general interest – that is to say to secure the payment of taxes, as envisaged by legislation, in an area where the State has a wide margin of appreciation (see *OAO Neftyanaya Kompaniya Yukos*, cited above, § 606).

**(d) Whether the interference was proportionate to the legitimate aim pursued**

45. It remains to be determined whether a fair balance was struck between the demands of the general interest and the requirements of the protection of the applicant's property rights.

46. The Court observes at the outset that as a result of the tax audit at issue, the applicant was ordered to pay approximately EUR 68,500 in respect of unpaid profit tax and interests for 2003 (see paragraph 13 above). Neither that amount, not the applicable tax rate, which amounted to 20%, could in the Court's view from the quantitative standpoint be considered exorbitant (see *Christian Religious Organization of Jehovah's Witnesses v. Armenia* (dec.), no. 73601/14, § 53, 29 September 2020).

47. Furthermore, there is nothing to indicate, nor has it been suggested by the applicant, that the levying of such a sum in profit tax fundamentally undermined her financial situation or that of her notary office – one of the factors to which the Court has given weight when gauging whether a fair balance has been struck in a given case (see *N.K.M. v. Hungary*, no. 66529/11, § 42, 14 May 2013; *Cacciato v. Italy* (dec.), no. 60633/16, 16 January 2018).

48. Finally, and equally importantly, the applicant had at her disposal a procedural guarantee by which to challenge the imposed sums, specifically the possibility of bringing judicial review proceedings. She made use of that remedy and, contrary to her claims (see paragraph 23 above), she was able to effectively participate in those proceedings and raise her various complaints before the domestic authorities. There is nothing to show that the decision-making process confirming the imposition of the amount of taxes complained of was unfair or arbitrary (see also paragraph 41 above).

49. The Court is satisfied that, subject to its findings in respect of the lawfulness of the decisions delivered by the domestic authorities, ordering the applicant to pay profit tax for 2003 in the above amount, constituted a proportionate measure that was undertaken in pursuance of the legitimate aim of securing the payment of taxes.

**(e) Conclusion**

50. Having regard to the above considerations and the wide margin of appreciation enjoyed by the State in the tax sphere, the Court considers that the decision ordering the applicant to pay profit tax was lawful and did not amount to a disproportionate burden on her.

51. There has accordingly been no violation of Article 1 of Protocol No. 1 to the Convention in the present case.

## FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the application admissible;

2. *Holds*, by five votes to two, that there has been no violation of Article 1 of Protocol No. 1 to the Convention.

Done in English, and notified in writing on 13 February 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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| Hasan Bakırcı<br>Registrar | Arnfinn Bårdsen<br>President |

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the joint dissenting opinion of Judges Ilievski and Derenčinović is annexed to this judgment.

A.R.B.
H.B.

# JOINT DISSENTING OPINION OF JUDGES ILIEVSKI AND DERENČINOVIĆ

1. The majority have taken the position that there has been no violation of Article 1 of Protocol No. 1 to the Convention, despite the applicant's complaint that the State had audited her and ordered her to pay additional tax and interest in respect of a period which, according to Croatian legislation, was time-barred. The majority's position was purportedly justified by the **broad margin of appreciation that States have in tax matters and by the domestic legislation that gave the tax authorities broad powers to extend tax audits to previous taxation periods**.

2. We cannot agree with the position of our distinguished colleagues, for several reasons.

3. In the present case, in assessing the applicant's tax liability for 2003, the first-instance tax ruling of 28 December 2007 explicitly stated that the tax authority had included in her assessable tax base for 2003 (which was not time-barred at that time) certain sums that should have been due in respect of the previous two years (2001 and 2002, which *were* time-barred at that time).

4. Under section 90(1) of the General Tax Act, as in force at the relevant time, **the statutory limitation period** for assessing tax liability applicable to all types of taxes, including profit tax, was **three years starting from the end of the year in which the tax liability first arose** (*relativna zastara*). That (relative) limitation period could be interrupted by any official action on the part of the authorities, as provided in section 91 of the General Tax Act, after which the limitation period would start to run again. However, even in the event of interruption of the limitation period, under section 92 of the General Tax Act, **the absolute limitation period for any tax liability – upon the expiry of which any such liability could no longer be taken into account – would expire after six years.**

5. When these provisions are applied to the facts of the present case, **it seems to be very clear that any assessment of the applicant's profit tax liability for 2001 and 2002 had become time-barred on 1 January 2006 and 1 January 2007, respectively, because no action had been taken by the tax authorities that would have interrupted the limitation period provided for by section 90(1) of the General Tax Act.** However, the domestic tax authorities disregarded these provisions by assessing and ordering the payment of certain unpaid taxes, first in the tax ruling of 28 December 2007 and subsequently in a second tax ruling of 20 February 2008, including taxes in respect of periods that had become time-barred (2001 and 2002). The applicant raised the objection that the limitation period had expired both with the competent tax authorities and subsequently before the domestic courts (including the Constitutional Court). However, her

arguments were dismissed in summary fashion, without providing any plausible reasoning. **What is more, at no time did the domestic authorities ever explain why the tax audit had not been formally extended to those periods, in particular – and as required by law – by sending the applicant a formal notice to that effect, failing which the lawfulness of any such extension would be called into question both under the General Tax Act and the relevant case-law of the administrative courts.**

**6. The rules governing the calculation and expiry of the different limitation periods (relative and absolute) had been set out very clearly, precisely, and unambiguously in the domestic legislation.** There was, moreover, abundant domestic case-law supporting them. For example, the High Administrative Court, in judgment no. Usž-335/2014-5 of 15 April 2014, held that the relative statutory limitation period for the determination of property tax liability, which had started to run on 1 January 2007, had ended on 1 January 2010 and that, after that date, there had been no legal basis for issuing a decision determining tax liability (see also the Rijeka Administrative Court's judgment no. UsI-1597/2012-8 of 1 December 2013).

7. It is not for the Court to interpret and apply domestic law. However, the Court is required to assess whether the domestic authorities, most notably the courts, **have succeeded or failed to provide sufficient procedural safeguards against arbitrariness** in the application and interpretation of domestic legislation. This is especially the case when the applicant raises relevant and well-argued objection(s), such as that raised in the present case concerning the expiry of the limitation period. In view of the legal provisions cited above and the well-established jurisprudence of the domestic courts on the matter, we consider that the arguments raised by the applicant were specific, pertinent and important (see, *mutatis mutandis*, *Tarvydas v. Lithuania*, no. 36098/19, § 52, 23 November 2021; and *Mala v. Ukraine*, no. 4436/07, § 48, 3 July 2014, and the authorities cited therein). **Accordingly, the domestic courts should have provided a plausible reply to the applicant's submission as to the expiry of the statutory limitation period in her case.**

8. In this regard, we reiterate that **limitation periods serve several important purposes**, namely to ensure legal certainty by setting a time-limit on bringing judicial proceedings, protect potential defendants from stale claims which might be difficult to counter and prevent the injustice that might arise if courts were required to decide upon events which took place in the distant past on the basis of evidence which might have become unreliable and incomplete because of the passage of time (see, in the context of Article 6 of the Convention, *Vegotex International S.A. v. Belgium* [GC], no. 49812/09, § 116, 3 November 2022, and *Oleksandr Volkov v. Ukraine*, no. 21722/11, § 137, ECHR 2013; and, in the context of Article 7 of the Convention, see the *Advisory opinion on the applicability of statutes of limitation to prosecution,*

*conviction and punishment in respect of an offence constituting, in substance, an act of torture* [GC], request no. P16-2021-001, Armenian Court of Cassation, § 72, 26 April 2022).

9. In the Croatian legal system, **the statute of limitations is a legal principle and norm of constitutional rank**. There is no doubt that statutes of limitation are part of public order and form part of the body of strict law with which all authorities, including the tax administration, are obliged to comply. Moreover, on 7 November 2014, at the meeting of its Financial, Labour and Property Department, **the High Administrative Court adopted a conclusion that the statutory time-limits in tax cases were to be examined *ex officio***.

10. Against this background, we note that **no domestic authority ever gave a substantive response to the applicant's argument that part of her assessed tax liability had in fact been time-barred**. While the tax authorities only made a general reference to section 100(5) of the General Tax Act, under which a tax audit could be extended to earlier periods under certain circumstances (see paragraphs 13 and 15 of the judgment), they failed to explain how this tallied with the statutory limitation period for the assessment of tax liability as set out in section 90 of the General Tax Act, or with section 100(1) of the General Tax Act, which provided that a tax audit could only be performed for periods in respect of which the statutory limitation period had not expired (see paragraph 20 of the judgment).

11. Subsequently, the Administrative Court of the Republic of Croatia erroneously dismissed the applicant's argument concerning the expiry of the statutory limitation period as having been made solely in her action for judicial review (see paragraph 17 of the judgment), **despite the fact that she had submitted her argument to that effect in the course of all the legal remedies she had pursued** (see paragraphs 9, 11 and 14 of the judgment). Moreover, the Constitutional Court reached the same incorrect conclusion and noted, in addition, that in the applicant's case the absolute limitation period under section 92 of the General Tax Act had not expired when the tax audit was carried out, without taking into account the effect of the (relative) statutory limitation period as defined in section 90(1) of the General Tax Act (see paragraph 19 of the judgment). As a way of observation, this interpretation of the relevant domestic legislation by the Constitutional Court is manifestly arbitrary. It goes against the logic of the limitation period under domestic law, including tax law, whereby, once the relative limitation period has expired on account of inactivity on the part of the domestic authorities, the absolute limitation period is irrelevant and does not apply. The absolute limitation period is applicable only in cases where the authorities have interrupted the relative limitation period by reason of specific, official, procedural actions. Since the limitation period might never expire in such cases, the logic of an absolute limitation period is to prevent countless

interruptions of relative limitation periods as a result of procedural actions taken by the authorities. Consequently, any interpretation of the absolute limitation period that disregards relative limitation periods is not only manifestly arbitrary and unlawful but also runs counter to the very logic of distinguishing between two types of limitation periods existing at the relevant times in Croatian legislation.

12. Regrettably, the majority's decision does not respond to this and numerous other failures on the part of the domestic authorities, including the courts, in addressing the arguments raised by the applicant. In our opinion, tolerating such blatant disregard for the law by appealing to a broad margin of appreciation in tax-related matters is not well-founded and makes protection against arbitrariness under Article 1 of Protocol No. 1 close to illusory. A broad margin of appreciation cannot be used as a shield to protect the State's financial interests when it comes to public order issues, as was the case here. By disregarding the principle of legal certainty inherent in every substantive provision of the Convention, including Article 1 of Protocol No. 1, the majority failed to exercise the level of scrutiny expected of this Court. **Therefore, we cannot but conclude that the interference with the applicant's right to the peaceful enjoyment of her possessions was not accompanied by sufficient procedural safeguards against arbitrariness and was thus not lawful within the meaning of Article 1 of Protocol No. 1 to the Convention.**