

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

SECOND SECTION

CASE OF VIJATOVIĆ v. CROATIA

(Application no. 50200/13)

JUDGMENT
(Merits)

STRASBOURG

16 February 2016

FINAL

16/05/2016

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



In the case of Vijatović v. Croatia,

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

Işıl Karakaş, *President,*
Julia Laffranque,
Nebojša Vučinić,
Valeriu Griţco,
Ksenija Turković,
Jon Fridrik Kjølbro,
Stéphanie Mourou-Vikström, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 19 January 2016,

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

PROCEDURE

1. The case originated in an application (no. 50200/13) 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 Vera Vijatović ("the applicant"), on 24 July 2013.

2. The applicant was represented by Mr V. Adžić, a lawyer practising in Zagreb. The Croatian Government ("the Government") were represented by their Agent, Ms Š. Stažnik.

3. The applicant alleged, in particular, that the refusal of her request to purchase the flat she occupied amounted to a violation of her right to peaceful enjoyment of her possessions and that the decisions of the national courts were inconsistent.

4. On 2 June 2014 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1927 and lives in Zagreb.

6. On 24 May 1961 the applicant's husband was granted a specially protected tenancy in respect of a flat in Zagreb by the Yugoslav People's Army (the "YPA"). The applicant, as his spouse, was also a holder of a specially protected tenancy of that flat.

7. On 3 June 1991 Parliament enacted the Protected Tenancies (Sale to Occupier) Act (*Zakon o prodaji stanova na kojima postoji stanarsko pravo* – hereinafter "the Sale to Occupier Act"), which regulated the sale of socially-owned flats previously let under a specially protected tenancy (see paragraph 19 below). However, State-owned flats were excluded.

8. On 3 October 1991 the Government adopted a decree (*Uredba o preuzimanju sredstava JNA i SSNO na teritoriju Republike Hrvatske u vlasništvo Republike Hrvatske*) whereby it took all the YPA's property in Croatia into State ownership.

9. In 1995 the Act Amending the Sale to Occupier Act (*Zakon o izmjenama i dopunama Zakona o prodaji stanova na kojima postoji stanarsko pravo* – hereinafter "the APTSO") allowed the sale of State-owned flats as well (see paragraph 22 below). The time-limit for lodging a request to purchase such a flat was set at sixty days.

10. On 29 January 1997 the Constitutional Court abrogated some of the provisions of the APTSO, including the one stipulating the time-limit for lodging a purchase request (see paragraph 23 below)

11. The applicant's husband died on 15 April 2006.

12. On 7 June 2006 the applicant lodged with the Ministry of Defence a request to purchase the flat she was occupying. The request was denied on the ground that it had been lodged outside the prescribed time-limit, which had expired on 31 December 1995.

13. On 19 March 2008 the applicant brought a civil action in the Zagreb Municipal Court seeking a judgment in lieu of a sale contract. She relied on several decisions of the Constitutional Court ruling that there was no time-limit in respect of a holder of a specially protected tenancy lodging a request to purchase the respective State-owned flat (see paragraphs 24-26 below).

14. In its judgment of 24 June 2008 the Zagreb Municipal Court held that there was no dispute between the parties that the applicant, as a former holder of a specially protected tenancy of the flat that she occupied, had the right to purchase that flat under favourable conditions. The only issue to be resolved was whether there was a time-limit that the applicant had to observe when lodging her request to purchase that flat – and if so, whether she had complied with it. The Municipal Court dismissed the applicant's claim on the ground that the applicant had lodged her purchase request outside the accepted time-limit, which had been 31 December 1995.

15. The applicant lodged an appeal, arguing that the time-limit under the APTSO for lodging a request to purchase a State-owned flat had been abrogated by the Constitutional Court and that no new time-limit had been fixed. The fact that there was no prescribed time-limit in place should not have been interpreted to the detriment of a plaintiff. She also relied on the opinion of the Constitutional Court that the very purpose of the Sale to Occupier Act was to enable holders of specially protected tenancies in

respect of socially and State-owned flats to purchase such flats (see paragraph 22 below).

16. The first-instance judgment was upheld by the Zagreb County Court on 12 October 2010. The relevant part of the second-instance judgment reads:

> "As regards the decisions of the Constitutional Court relied on in the [plaintiff's] action, it is to be noted that these decisions exceptionally recognised the right of certain parties to purchase flats [they occupied] in particular circumstances (such as their having had no clearly regulated status of holder of a specially protected tenancy before that date – for example in decision no. U-3551/02 of 25 May 2005) ... even though a request to purchase a flat had not been lodged before 31 December 1995. In such particular cases the Constitutional Court has adopted decisions based on particular circumstances. The Constitutional Court in all decisions recognising the right to purchase flats [they occupied] of persons who had not lodged a request in that respect before 31 December 1995 has accepted that there were objective circumstances preventing those persons from taking all relevant steps within the prescribed time-limits. In the case at issue the plaintiff did not even argue [that there were any] such circumstances, but insisted that she could bring an action for the purchase of the flat [that she occupies] at any time and that there were no time-limits in that respect.
>
> The view of this court is that the holders of specially protected tenancies of State-owned flats were obliged to lodge a request for purchasing these flats before 31 December 1995 (with the exception that in certain circumstances it was possible to claim that a party was prevented from lodging such a request within that time-limit on objective grounds)."

17. The applicant's subsequent constitutional complaint was dismissed on 20 February 2013. The relevant part of that decision reads:

> "The Constitutional Court notes that the competent courts dismissed the applicant's civil action on the grounds that she had not proved that any objective circumstances had prevented her from lodging a request to purchase the flat in issue within the prescribed time-limit. The Constitutional Court considers that the impugned decisions contain reasons acceptable from the standpoint of the constitutional law and that therefore they cannot be seen as arbitrary or unreasonable."

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Housing Act

Relevant provisions

18. The Housing Act (*Zakon o stambenim odnosima*, Official Gazette nos. 51/1985, 42/1986, 22/1992 and 70/1993), as in force at the material time, provided as follows:

Section 64

"2. If a specially protected tenancy was acquired by one spouse who lives with the other, the other shall also be considered as having acquired it.

..."

B. Sale to Occupier Act

1. Relevant provisions

19. The Sale to Occupier Act (Official Gazette no. 27/1991 with subsequent amendments), which entered into force on 19 June 1991, entitled the holder of a specially protected tenancy ("the tenant") of a socially-owned flat to purchase it from the provider of the flat under favourable conditions.

Section 4(2) provided that a written request to purchase (the first request) had to be made within one year of the date of the Act's entry into force (by means of subsequent amendments to the Act, this time-limit was extended until 31 December 1995), and a further request for the actual conclusion of the purchase contract within two years of the first request.

2. The case-law of the Supreme Court

20. In its decision no. Rev-944/99-2 of 13 August 2002 the Supreme Court interpreted section 4(2) of the Sale to Occupier Act as follows:

"Since the plaintiff did not make a request for the purchase of the flat to the defendants in written form by 31 December 1995, as provided by law ... the lower-instance courts correctly assessed that the plaintiff had lost his right to request the conclusion of a purchase contract."

3. The case-law of the Constitutional Court

21. The decision of the Constitutional Court no. U-III-344/2002 of 8 December 2005, in so far as relevant, reads as follows:

"The very purpose of the Specially Protected Tenancies (Sale to Occupier) Act, as regards socially-owned flats in respect of which there were specially protected tenancies, is to clearly define those persons with an entitlement to [purchase] formerly socially-owned property and to ensure that [such persons] are, in the first place, persons who have been using such flats lawfully."

C. The APTSO

1. Relevant provisions

22. The APTSO (Official Gazette no. 58/1995) which entered into force on 17 August 1995 extended the right of purchase to holders of specially protected tenancies of State-owned flats.

Section 16 reads as follows:

"(1) Holders of specially protected tenancies ... shall have the right to purchase flats in State ownership.

...

(3) The following persons shall not be entitled to purchase, or transfer the right to purchase, a flat in State ownership:

- those sentenced by a final judgment for crimes against humanity and international law,

- those sentenced by a final judgment for crimes against the Republic of Croatia,

- those against whom criminal proceedings for crimes against humanity and international law or crimes against the Republic of Croatia have been instituted, until the judgment becomes final,

- those who have participated or participate in enemy activities against the Republic of Croatia,

- those who have evaded conscription,

- those against whom proceedings for termination of a specially protected tenancy or termination of a lease agreement in respect of a flat have been instituted, until the end of those proceedings,

- those owning a dwelling house or flat in the same place [i.e. village, town or city],

- those who have left the Republic of Croatia or have moved to the occupied territories and have not used the flat for more than six months."

Section 20(1) and (2) of the APTSO provides that a written request to purchase a State-owned flat had to be made within sixty days of the date of the APTSO's entry into force (sub-section 1(1), after the expiry of which the tenant lost his or her right to purchase the flat (sub-section 2).

Section 20(3) provided that the seller had to conclude the purchase contract with the buyer within one year after the expiry of the time-limit referred to in paragraph 1 (this time-limit was by subsequent amendments extended until 31 December 1998).

Section 20(4) provided that if the seller, at the request of the buyer, failed to conclude a contract within the time-limit stipulated in paragraph 3, the buyer had the right to bring a civil action in the competent court with a view to obtaining a judgment that would entirely replace such a contract.

2. The Constitutional Court's decision of 29 January 1997 and its ensuing case-law

23. Having received 37 requests for it to review the constitutionality of the APTSO, on 26 June 1996 the Constitutional Court instituted proceedings to that end. On 29 January 1997 it delivered decision no. U-I-697/1995 abrogating a number of the provisions of the APTSO as being unconstitutional, including sub-sections 1 and 2 of section 20.

Sub-sections 1 and 2 of section 20 were abrogated because of an unwarranted distinction in respect of the time-limits for making a purchase

request to be observed by the holders of, respectively, specially protected tenancies of State-owned flats and socially-owned flats. The Constitutional Court noted that holders of specially protected tenancies of State-owned flats had been obliged to make their request within only sixty days of the entry into force of the APTSO, whereas the holders of tenancies of socially-owned flats had had to do so within one year of the entry into force of the Sale to Occupier Act, the time-limit for which had been extended several times (eventually until 31 December 1995). The Constitutional Court held that new time-limits could be prescribed by the legislature and also by the Government.

24. In its decisions U-III-559/2004 of 16 November 2004 and U-III-344/2002 of 8 December 2005, the Constitutional Court held that applicants who had been prevented on objectively justified grounds from lodging a request to purchase State-owned flats that they occupied could not have been required to lodge such requests as long as these obstacles existed (in the two cases in point these were applicants whose specially protected tenancies of State-owned flats had been recognised only in 1996 and 2001, respectively).

25. In case no. U-III-551/2002 of 6 May 2005 the applicant in that case argued that she had acquired the specially protected tenancy of a State-owned flat only on 13 March 1997 and had therefore not been able to lodge a request to purchase it before that date. The Constitutional Court held, in so far as relevant, as follows:

> "5. The Constitutional Court in the reasoning of its decision no. U-I-697/1995 of 29 January 1997, in connection with abrogating section 20(1) of the Act amending the Protected Tenancies (Sale to Occupier) Act (the APTSO), which prescribed a sixty-day time-limit for lodging requests to purchase State-owned flats, held as follows:
>
> 'The inequality of the positions of buyers of so-called State-owned flats and buyers of other flats, which is incompatible with the Constitution, exists also in respect of the time-limits for lodging requests to purchase State-owned flats. Therefore, section 20(1) and (2) and section 21 of the APTSO have been repealed because they [discriminated against] those citizens for whom the time-limit for seeking to purchase the flats [they occupied] was sixty days or thirty days from the APTSO entering into force, in comparison with those citizens who [initially] had a one-year time-limit to lodge such requests ... [such time-limit having been subsequently] extended for a further couple of years.
>
> In repealing these provisions, the [Constitutional] Court is aware that new time-limits ... could be prescribed not only by the legislature but also by the Government of the Republic of Croatia. ...'
>
> 6. The Constitutional Court stresses the following:
>
> Before the APTSO had entered into force, section 50 of the Specially Protected Tenancies (Sale to Occupier) Act (Official Gazette no. 43/92 – consolidated text) provided as follows:
>
> 'Flats which have become the property of the Republic of Croatia on the basis of the Decree on the Taking Over of the Assets of the YPA [Yugoslav People's Army] ... on

the Territory of the Republic of Croatia (Official Gazette no. 52/91) and the Decree on the Taking Over of the Assets of the Former SFRY [the Socialist Federal Republic of Yugoslavia] into the Ownership of the Republic of Croatia (Official Gazette no. 68/91) shall not be sold before the enactment of laws establishing specific criteria for the sale of such flats'.

That law reflects exactly the APTSO, which in section 20(1) and (2) fixed the time-limit (between 5 August and 4 October 1995) for lodging requests to purchase State-owned flats (such as the flat the applicant wishes to buy). After certain provisions of that Act were repealed (by the decision mentioned in point 5 of this decision), the competent body did not enact any new law prescribing a new time-limit.

Therefore, the Constitutional Court finds that the non-existence of a time-limit for taking a certain action (particularly in view of the fact that the time-limit was repealed by a decision of the Constitutional Court) cannot be interpreted to the detriment of a party who had to take such action.

The Constitutional Court has established that the lower courts wrongly applied substantive law and thus violated the applicant's constitutional right, as guaranteed by Article 14 § 2 of the Constitution, which guarantees the equality of all before the law."

26. In case no. U-III-1525/2010 of 27 May 2010 there is no indication that the applicant in that case was prevented from lodging before 31 December 1995 a request to purchase the flat that she occupied. The Constitutional Court held, insofar as relevant, as follows:

"5. The APTSO set time-limits for lodging requests to purchase so-called State-owned flats (between 5 August and 4 October 1995). After some of the provisions of that Act were repealed ..., the competent body did not enact laws prescribing a new time-limit.

Therefore, the Constitutional Court finds that the non-existence of a time-limit for taking a certain action (particularly in view of the fact that the time-limit was repealed by a decision of the Constitutional Court) cannot be interpreted to the detriment of a party who had to take such action.

The Constitutional Court expressed the same opinion in its decision no U-III-559/2004 of 16 November 2004 (Official Gazette no. 174/04)."

27. The constitutional Court expressed the same view its decision no. U-III-4842/2013 of 13 May 2015.

3. The case-law of the Supreme Court

28. In its decision no. Rev-1256/02-2 of 14 July 2004 the Supreme Court interpreted the relationship between the Sale to Occupier Act (in particular its section 4) and the APTSO as follows:

"The plaintiff made a request for the purchase of the flat to the defendant on 18 October 1996, that is, after the expiry of the prescribed time-limit (31 December 1995), so the courts [ruled] correctly [when they] dismissed her claim. The time-limit in question is preclusive, meaning that after its expiry a holder of a specially protected tenancy loses his or her right to make a request to purchase such flat ...

The fact that the proceedings for termination of the specially protected tenancy – which ended with the first-instance judgment ... of 16 April 1996, which became final on 11 July 1996 – were pending between the parties at the time when the time-limit expired (31 December 1995) is not relevant. ... [Those proceedings] did not prevent the plaintiff from making a request to purchase the flat. ...

The provisions of section 16 of the APTSO on which the plaintiff relies, and which concern so-called State-owned flats, did not extend the time-limit for making the request to purchase the flat. Under [section 16 of the APTSO] persons against whom proceedings for termination of the specially protected tenancy ... have been instituted, could not, until the end of those proceedings, buy a State-owned flat. That means, in particular, that the plaintiff cannot have concluded a sale contract in respect of the flat until 11 July 1996, when the proceedings for the termination of the specially protected tenancy ended ... On that day that impediment ceased to exist ... [H]owever, making a written request to purchase the flat before the expiry of the prescribed time-limit is a precondition for the conclusion of the contract [of sale]. Because the plaintiff did not make such a request before the time-limit expired (on 31 December 1995), she lost the right to make the request and the defendant was not obliged to sell her the flat on the basis of the request made after the expiry of the time-limit (18 October 1996). The proceedings for termination of the specially protected tenancy were an impediment to buying the flat (for the conclusion of a contract), but not to making a request to purchase the flat. The existence of the [pending] proceedings does not extend the time-limit for making a request to purchase the flat.

The Constitutional Court's decision U-I-697/1995 of 29 January 1997 abrogating, *inter alia*, section 20(1) and (2) of the APTSO is of no relevance to the outcome of these proceedings. Those abrogated provisions provided that the request ... to purchase the State-owned flat had to be made within sixty days of the entry into force of the APTSO and that after the expiry of that time-limit the applicant lost the right to buy the flat. [Those provisions] placed the holders of specially protected tenancies of State-owned flats in an unequal position compared to the holders of such tenancies of flats not owned by the State, because for them the considerably shorter preclusive time-limit for making their request to purchase the flat was prescribed (the prescribed time-limit of sixty days expired on 16 October 1995). By the Constitutional Court's decision the buyers of State-owned flats were put in the same position as other buyers, but they were not given a privileged status, so the prescribed time-limit for making a request to purchase a flat (31 December 1995), valid for all other buyers, would not apply to them."

D. Decision on the Sale of Flats Managed by the Ministry of Defence

29. On 2 April 2009 the Croatian Government issued the Decision on the Sale of Flats Owned by the Republic of Croatia and Managed by the Ministry of Defence (*Odluka o prodaji stanova u vlasništvu Republike Hrvatske kojima upravlja Ministarstvo obrane* (Official Gazette nos. 43/209, 109/2010 and 116/2011) by which it allowed the sale of these flats for their market value, but excluded those flats which were the subject of the Sale to Occupier Act and the APTSO.

THE LAW

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

30. The applicant complained that her property rights had been violated, contrary to the guarantees stipulated under 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

31. The Government argued that the applicant had failed to exhaust domestic remedies because she had not lodged her request to purchase the flat in issue within the prescribed time-limits. Further to this she could have lodged such a request between 8 April and 31 December 2011 on the basis of a Decision issued by the Croatian Government granting the right to protected lessees to purchase flats managed by the Ministry of Defence (see paragraph 29 above).

32. The applicant argued that she had exhausted all available remedies.

33. The Court considers that the Government's argument on non-exhaustion of domestic remedies is closely linked to the substance of the applicant's complaint under Article 1 of Protocol No. 1 to the Convention. The plea should, therefore, be joined to the merits.

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

B. Merits

1. The parties' submissions

(a) The applicant's submissions

35. The applicant argued that the time-limit for lodging a request to purchase a socially-owned flat under the initial Sale to Occupier Act had been one year from the date on which the Act had entered into force – that is

until 19 June 1992. This time-limit had been extended on several occasions; the final time-limit was 31 December 1995. Thus, persons holding that right under the initial Sale to Occupier Act had had over four and half years in which to make a purchase request.

36. By contrast, those holding the right to purchase State-owned flats, granted to them under the APTSO, had initially had only sixty days in which to lodge their requests to purchase the flats they occupied. Owing to the significant difference between the time-limits, on 26 June 1996 the Constitutional Court had abrogated the sixty-day time-limit and invited the Parliament and the Government to set a new time-limit. However, that had not happened; therefore, the applicant had not had any time-limit for lodging her request to purchase the State-owned flat that she occupied. This had been confirmed by the decisions adopted by the Constitutional Court.

37. However, the ordinary courts had ignored the Constitutional Court's decision and views and continued to dismiss all claims concerning the sale of Sate-owned flats lodged after 31 December 1995. The Constitutional Court in each of such cases had found a violation of the Constitution on the ground that there had been no time-limit for lodging such a request. The only departure from such a view had been the applicant's case.

(b) The Government's submissions

38. The Government argued that the applicant had had no reason to wait until June 2006 before lodging her request to purchase the State-owned flat that she occupied, since it had always been undisputed that she, as the spouse of the person to whom the flat had been granted, also held a specially protected tenancy of that flat and had Croatian citizenship.

39. The Constitutional Court decisions on which the applicant relied had concerned situations that differed from that of the applicant, since the applicants in those cases – unlike the applicant in the case at issue – had had a justified reason for lodging their requests outside the time-limit established by the Croatian courts (31 December 1995).

2. The Court's assessment

(a) Whether the applicant had a "possession"

40. The Court reiterates that an applicant may allege a violation of Article 1 of Protocol No. 1 only in so far as the impugned decisions relate to his or her "possessions" within the meaning of that provision. "Possessions" can be "existing possessions" or claims that are sufficiently established to be regarded as "assets". Where, as in the present case, a proprietary interest is in the nature of a claim, it may be regarded as an "asset" only if there is a sufficient basis for that interest in national law (for example, where there is settled case-law of the domestic courts confirming it) – that is, when the claim is sufficiently established to be enforceable (see *Kopecký v. Slovakia*

[GC], no. 44912/98, §§ 48-49 and 52, ECHR 2004 IX, and *Stran Greek Refineries and Stratis Andreadis v. Greece*, 9 December 1994, § 59, Series A no. 301 B).

41. The Court notes that under section 16(1) of the APTSO, all holders of specially protected tenancies of State-owned flats had the right to purchase the flats they occupied, save for those defined in paragraph 3 of that section (see paragraph 22 above).

42. Turning to the present case, the Court first notes that the domestic courts recognised that the applicant, as a former holder of a specially protected tenancy of the flat in issue, had the right to purchase it under favourable conditions. This was not disputed by the Government.

43. Having regard to this, the relevant domestic law and the facts of the present case, the Court therefore considers that the applicant's claim to purchase the flat in the present case had a sufficient basis in national law to qualify as an "asset" and therefore a "possession" protected by Article 1 of Protocol No. 1 to the Convention.

(b) Whether there was an interference with the applicant's possession

44. Having concluded that the applicant's claim to purchase the flat she occupied amounted to a "possession" within the meaning of Article 1 of Protocol No. 1, the Court considers that the decisions of the domestic courts denying the applicant the right to purchase that flat amounted to an interference with her right to peaceful enjoyment of her possessions.

45. The Court considers that the situation complained of should be examined in the light of the general rule contained in the first paragraph, first sentence, of Article 1 of Protocol No. 1. In order to be compatible with the general rule of Article 1 of Protocol No. 1, any interference must be in accordance with the law, in the public interest, and proportionate to the aim pursued (see *Beyeler v. Italy* [GC], no. 33202/96, §§ 108 and 111, ECHR 2000-I).

(c) Whether the interference was "provided for by law"

46. The Court reiterates that the first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of someone's possessions should be lawful (*Iatridis v. Greece* [GC], no. 31107/96, § 58, ECHR 1999 II). Moreover, the rule of law, one of the fundamental principles of a democratic society, is a notion inherent in all the Articles of the Convention (see *Former King of Greece and Others v. Greece* [GC] (merits), no. 25701/94, § 79, ECHR 2000‑XII; *Broniowski v. Poland* [GC], no. 31443/96, § 147, ECHR 2004‑V; and *Vistiņš and Perepjolkins v. Latvia* [GC], no. 71243/01, § 95, 25 October 2012).

47. The Court considers that when speaking of "law", Article 1 of Protocol No. 1 alludes to the same concept as that to which the Convention

refers elsewhere when using that term – a concept which comprises statutory law as well as case-law. It refers to the quality of the law in question, requiring that it be accessible to the persons concerned, precise and foreseeable in its application (see *Špaček, s.r.o., v. the Czech Republic*, no. 26449/95, § 54, 9 November 1999; *Carbonara and Ventura v. Italy*, no. 24638/94, § 64, ECHR 2000 VI; *Baklanov v. Russia*, no. 68443/01, §§ 40-41, 9 June 2005). In addition, the application of the legal provision in question should not be manifestly erroneous or so as to reach arbitrary conclusions (see *Beyeler*, cited above, § 108).

48. The Court accepts that its power to review compliance with domestic law is limited as it is in the first place for the national authorities to interpret and apply that law. When assessing the lawfulness of the interference under Article 1 of Protocol No. 1 the Court is required to verify whether the way in which the domestic law was interpreted and applied has produced consequences that are consistent with the principles of the Convention (see *Apostolidi and Others v. Turkey*, no. 45628/99, § 70, 27 March 2007, and *Nacaryan and Deryan v. Turkey*, nos. 19558/02 and 27904/02, § 58, 8 January 2008; *Lelas v. Croatia*, no. 55555/08, § 76, 20 May 2010; *Shchokin v. Ukraine*, nos. 23759/03 and 37943/06, § 51, 14 October 2010; *Antonyan v. Armenia*, no. 3946/05, § 54, 2 October 2012; *Budchenko v. Ukraine*, no. 38677/06, § 40, 24 April 2014; and *Krasnodębska-Kazikowska and Łuniewska v. Poland*, no. 26860/11, § 44, 6 October 2015).

49. As to the instant case, the Court notes that the national courts accepted that the applicant had the right to purchase under favourable conditions the flat she occupied, such right having been granted to persons in her position in 1995 by the APTSO. The national courts held that the only issue in dispute between the parties in the civil proceedings was whether there was a time-limit within which the applicant had to lodge a request to purchase the flat she occupied, and if so, whether she had complied with that time-limit.

50. The Court notes that the time-limit for lodging a request to purchase State-owned flats was stipulated in section 20(1) and (2) of the APTSO; that time-limit was set at within sixty days of 17 August 1995, the date on which the APTSO entered into force (see paragraph 22 above). These provisions were abrogated by the Constitutional Court's decision no. U-I-697/1995 of 29 January 1997. In that decision the Constitutional Court noted that new time-limits could be fixed not only by the legislature but also by the Croatian Government (see paragraph 25 above). However, neither of those bodies has ever adopted any law prescribing a new time-limit. This has led to the courts reaching conflicting conclusions as to whether there was any time-limit for lodging requests to purchase State-owned flats.

51. The Supreme Court held that the final date on which a request to purchase a State-owned flat could be lodged was 31 December 1995 (see paragraph 28 above).

52. The early development of the Constitutional Court's case-law, after it had abrogated the time-limit fixed by section 20 of the APTSO, shows that the Constitutional Court firstly held that where there had been objectively justified grounds which had prevented a holder of a specially protected tenancy of a State-owned flat from lodging a request to purchase such a flat, such a person was excused from lodging such a request for as long as the obstacle existed (see paragraph 24 above).

53. The further development of the Constitutional Court's case-law shows that that Court adopted the principle that the non-existence of any prescribed time-limit for lodging requests to purchase State-owned flats could not be interpreted to the detriment of a party seeking to purchase such a flat (see paragraphs 25 above), even where, as in the applicant's case, there were no arguments put forward that there had been obstacles to lodging a purchase request at any given time (see paragraphs 26 to 28 above).

54. At this juncture the Court reiterates that the lack of a sufficiently precise and foreseeable statutory provision may be remedied by domestic courts giving a clear and precise interpretation (see *Apostolidi and Others*, cited above, § 70; and *Nacaryan and Deryan*, cited above, § 58).

55. However, in the present case there was no statutory provision setting the time-limit for lodging requests to purchase State-owned flats. This lacuna in the law could not be remedied by the practice of the domestic courts.

56. The Court also notes that following the abrogation of the time-limit set by section 20(1) and (2) of the APTSO, it was up to the Croatian Parliament (as the legislature), or the Croatian Government, to set a new time-limit, which they failed to do. The Court agrees with the view expressed by the Constitutional Court that "the non-existence of a time-limit for taking a certain action ... cannot be interpreted to the detriment of a party who had to take such action" (see paragraphs 25 and 26 above). In this connection, the Court also reiterates a principle established by its own case-law: that the risk of any mistake made by a State authority must be borne by the State and any errors must not be remedied at the expense of the individual concerned (see *Gashi v. Croatia*, no. 32457/05, § 40, 13 December 2007; *Stolyarova v. Russia*, no. 15711/13, § 49, 29 January 2015; and, *mutatis mutandis*, *Radchikov v. Russia*, no. 65582/01, § 50, 24 May 2007).

57. Having regard to the Government's objection (see paragraph 31), which was joined to the merits of the complaint, the Court considers, for the reasons explained above, that the applicant did not have to comply with any time-limit for lodging her request to purchase the flat she occupied. As regards the Decision of 2 April 2009 relied on in the Government's observations (see paragraphs 29 and 31 above), this did not concern the applicant since it did not relate to those flats which were the subject of the

Sale to Occupier Act and the APTSO; moreover, the Decision of 2 April 2009 was not considered by the national courts during the proceedings in issue. Also, the present case concerns the applicant's complaint that she was not able to purchase the flat that she occupied under the Sale to Occupier Act, which provided for that right under favourable conditions, unlike the Decision of 2 April 2009.

58. In these circumstances the Court considers that the interference with the applicant's right to peaceful enjoyment of her possessions was not provided for by law. Accordingly, the Court finds that there has been a violation of Article 1 of Protocol No.1 to the Convention and dismisses the Government's objection as to the exhaustion of domestic remedies.

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

59. The applicant complained about the fact that in her case the national courts interpreted the relevant law in a manner contrary to the practice of the Constitutional Court. She relied on Article 6 § 1 of the Convention.

60. The Government contested that argument.

61. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

62. Having regard to the finding relating to Article 1 of Protocol No. 1 to the Convention (see paragraph 57 above), the Court considers that it is not necessary to examine whether, in this case, there has been a violation of Article 6 § 1 of the Convention (see, among other authorities, *Öneryıldız v. Turkey* [GC], no. 48939/99, § 160, ECHR 2004-XII; and *Gaygusuz v. Austria*, 16 September 1996, § 55, *Reports of Judgments and Decisions* 1996-IV).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

63. 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."

64. The applicant claimed 73,000 euros (EUR) in respect of pecuniary damage and EUR 10,000 in respect of non-pecuniary damage.

65. The applicant also claimed 8,437.50 Croatian kunas (HRK) in respect of the costs and expenses incurred before the domestic courts and HRK 15,000 for those incurred before the Court.

66. The Government deemed the claims unfounded and excessive.

67. In the circumstances of the present case the Court finds that the question of the application of Article 41 of the Convention is not ready for

decision. Consequently, it will reserve the question in its entirety and schedule the subsequent procedure, bearing in mind the possibility of an agreement being reached between the respondent State and the applicant (Rule 75 § 1 of the Rules of Court). The Court gives the parties three months for that purpose.

FOR THESE REASONS, THE COURT

1. *Decides* to join to the merits the Government's objection as to the exhaustion of domestic remedies and rejects it;

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

3. *Holds*, by six votes to one, that there has been a violation of Article 1 of Protocol No 1 to the Convention;

4. *Holds*, unanimously, that there is no need to examine the complaint under Article 6 § 1 of the Convention;

5. *Holds*, by six votes to one, that the question of the application of Article 41 of the Convention is not ready for decision;

and accordingly,

a) *reserves* the said question in its entirety;

b) *invites* the Government and the applicant to submit, within three months from the date of notification of this judgment, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;

c) *reserves* the further procedure and *delegates* to the President of the Chamber the power to fix the same if need be.

Done in English, and notified in writing on16 February 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	Işıl Karakaş
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Kjølbro is annexed to this judgment.

A.I.K.
S.H.N.

DISSENTING OPINION OF JUDGE KJØLBRO

1. I agree with the majority that the applicant had a property right that is protected by Article 1 of Protocol No. 1 (paragraphs 40-43 of the judgment) and that the dismissal of her request to purchase the State-owned flat in which she was living amounts to an interference with her right to peaceful enjoyment of her possessions (paragraphs 44-45 of the judgment). However, I am unable to follow the majority in their finding that the interference was not lawful within the meaning of Article 1 of Protocol No. 1 (paragraphs 46-58 of the judgment).

2. In general, it is for the domestic courts to interpret domestic legislation, and the Court will respect their interpretation of that legislation, unless it is manifestly erroneous or arbitrary (see *Beyeler v. Italy* [GC], no. 33202/96, § 108, ECHR 2000-I, and *Jahn and Others v. Germany* [GC], nos. 46720/99, 72203/01 and 72552/01, § 108, ECHR 2005-VI). In my view, there is an insufficient basis for saying that the interpretation of domestic law performed by Zagreb Municipal Court in its judgment of 24 June 2008, the Zagreb County Court in its judgment of 12 October 2010, or the Constitutional Court in its judgment of 20 February 2013, was manifestly erroneous or arbitrary.

3. In accordance with the Sale to Occupier Act 1991, the holder of a specially protected tenancy may purchase his or her socially-owned flat on favourable terms. A one year time-limit for submitting requests for purchase was stipulated in section 4(2) of the Act, and after several extensions the time-limit expired on 31 December 1995. On 17 August 1995, under a new Act, the right to purchase flats was extended to holders of a specially protected tenancy living in State-owned flats. The applicant and her late husband fell into that category and were entitled to make use of the right to purchase their flat. Section 20 of the 1995 Act contained a 60 day time-limit for submitting a written request to purchase a State-owned flat. However, this time-limit was abrogated by the Constitutional Court in a judgment of 29 January 1997, and the legislature never adopted a new time-limit to replace the defunct 60 day time-limit, as they had been encouraged to do by the Constitutional Court.

4. Therefore, when the applicant in 2006, at the age of 79 and more than 11 years after the adoption of the 1995 Act, lodged a request to purchase her State-owned flat, the domestic authorities, first the Ministry of Defence and subsequently the domestic courts, were faced with the following legal question: what was the legal consequence of the fact that the abrogated 60 day time-limit in section 20 of the Sale to Occupier Act had not been replaced by a new time-limit by the legislature? Was the consequence of this inaction that no time-limit applied? Or was the consequence that the generally applicable time-limit under the 1991 Act (which had expired on 31 December 1995) applied?

5. The applicant argued for the first solution, that no time-limit applied (paragraph 36 of the judgment). The Government argued for the second solution, that the general time-limit was applicable (paragraphs 38-39 of the judgment). The domestic court dismissed the applicant's claim holding that it had been lodged out of time. More specifically, the domestic courts ruled that the generally applicable time-limit in the 1991 Act, which had expired on 31 December 1995, was applicable to the applicant's case, and that there had been no objective circumstances preventing the applicant from lodging her claim within the time-limit. The question therefore arises whether the domestic courts' interpretation of domestic legislation was "manifestly erroneous" or "arbitrary". In the view of the majority, that was the case. I respectfully disagree.

6. The Supreme Court had, in a judgment of 14 July 2004, approximately four years before the applicant instituted court proceedings, ruled that the generally applicable time-limit applied to requests to purchase State-owned flats (paragraph 28 of the judgment). Subsequently, the Constitutional Court in a judgment of 6 May 2005 (paragraph 25 of the judgment) had ruled, having regard to its earlier abrogation of section 20 of the Sale to Occupier Act, that "the non-existence of a time-limit for taking a certain action ... cannot be interpreted to the detriment of a party who had to take such action".

7. From this the majority deduce that, in the view of the Constitutional Court, no time-limit applied for requests to purchase State-owned flats. However, in the judgment of the Constitutional Court, the applicant in that case had argued that she had only acquired the specially protected tenancy of the State-owned flat on 13 March 1997 and that she had therefore not been able to lodge a request to purchase it before that date. In other words, the case concerned an applicant who, for objective reasons, could not comply with the generally applicable time-limit that had expired on 31 December 1995. Therefore, it does not follow clearly from the judgment that no time-limit is applicable in the view of the Constitutional Court. On the contrary, the judgment can equally be read as confirming the Constitutional Court's earlier case-law, in a judgment of 16 November 2004 (paragraph 24 of the judgment), according to which applicants who had been prevented on objectively justified grounds from lodging a request to purchase State-owned flats that they occupied could not have been required to lodge such a request as long as those obstacles existed. Likewise, the judgments of 27 May 2010 and 13 May 2015 of the Constitutional Court (paragraph 26 and 27 of the judgment) only repeat what was stated in the Constitutional Court's judgment of 6 May 2005, according to which "the non-existence of a time-limit for taking a certain action ... cannot be interpreted to the detriment of a party who had to take such action". Furthermore, it does not follow clearly from these two judgments that no time-limit applied in the view of the Constitutional Court.

8. From this I deduce that it is possible to interpret the domestic legislation in the following way. The special time-limit for lodging requests to purchase State-owned flats was abrogated by the Constitutional Court. Therefore, the generally applicable time-limit, which expired on 31 December 1995, is applicable. However, this time-limit does not apply, by way of exception, where the person concerned has been prevented on objectively justified grounds from lodging a request to purchase a State-owned flat. I am not saying that this is the correct interpretation of domestic legislation. I am only saying that this is a possible interpretation. Furthermore, if this interpretation is adopted, there is no conflicting case-law as alleged by the majority.

9. This possible interpretation was exactly the one adopted by the Zagreb County Court in its judgment of 12 October 2010, upholding the Zagreb Municipal Court's judgment of 24 June 2008. Furthermore, I cannot but note that the Constitutional Court dismissed the applicant's constitutional complaint in a judgment of 20 February 2013. In doing so, the Constitutional Court noted that the domestic courts had dismissed the applicant's claim "on the grounds that she had not proved that any objective circumstances had prevented her from lodging a request to purchase the flat in issue within the prescribed time-limit", and according to the Constitutional Court, the decisions "contain reasons acceptable from the standpoint of the constitutional law and ... therefore they cannot be seen as arbitrary or unreasonable" (paragraph 17 of the judgment).

10. Having regard to the Constitutional Court's judgment, I cannot but note the following. If, as alleged by the majority, there is conflicting case-law between the Supreme Court and the Constitutional Court (paragraph 50 of the judgment), the majority must also assume that the Constitutional Court was not aware of – or erroneously did not apply – its own case-law when it adopted its judgment of 20 February 2013. I would be very careful not to make such an assumption.

11. Therefore, having regard to the possible interpretation of domestic law and the remarks above, I cannot share the view of the majority that the domestic courts' interpretation of domestic law in the applicant's case, that is to say in the judgments of the Zagreb Municipal Court, the Zagreb County Court and the Constitutional Court, was "manifestly erroneous" or "arbitrary".

12. For my part, I am willing to accept the domestic court's interpretation of domestic law and find that the interference with the applicant's property right was lawful within the meaning of the Convention. Having regard to the length of the period in question (from 17 August 1995 when the law entered into force until 31 December 1995) and the fact that there were no objective circumstances that had prevented the applicant from lodging her request within that time-limit, I do not find it disproportionate to dismiss the applicant's request for failure to comply with the time-limit.

Therefore, I voted for a finding of no violation of Article 1 of Protocol No. 1.

13. I would like to add a final remark. I find the consequences of the Court's judgment very unfortunate. In the view of the Court, no time-limit applies for lodging a request to buy a State-owned flat under the Sale to Occupier Act 1991 (paragraph 57 of the judgment). In other words, holders of a specially protected tenancy, who for unknown reasons had not submitted a request to purchase their flat before the end of 1995, may now, with reference to the Court's interpretation of domestic legislation, lodge a request to buy their State-owned flat more than 30 years after the adoption of the 1995 Act, thereby allowing individuals to speculate on the development of the market value of real estate to the detriment of the State and tax-payers. The applicant was 79 years old when she, in 2006, decided to request to buy the flat in which she had been living since 1961, and today she is 89 years old. Therefore, the judgment of the Court will, in practice, be first and foremost of benefit to the applicant's heirs.