



Authorities' disregard of a handicapped child's needs when applying rules on tax relief was discriminatory

In today's **Chamber judgment**¹ in the case of [Guberina v. Croatia](#) (application no. 23682/13) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 14 (prohibition of discrimination) of the European Convention on Human Rights in conjunction with Article 1 of Protocol No. 1 (protection of property) to the Convention.

The case concerned the complaint by the father of a severely handicapped child about the tax authorities' failure to take account of the needs of his child when determining his eligibility for tax exemption on the purchase of property adapted to his child's needs.

The Court considered that, by failing to recognise the factual difference of Mr Guberina's situation with regard to basic infrastructure requirements meeting the housing needs of his family in comparison with other persons seeking tax exemption, the domestic authorities had taken an overly restrictive approach when applying the relevant tax legislation. They had disregarded both other provisions of domestic law, which addressed the question of accessibility of buildings for persons with disabilities, and Croatia's obligations under the UN Convention on the Rights of Persons with Disabilities.

Principal facts

The applicant, Joško Guberina, is a Croatian national who was born in 1969 and lives in Samobor (Croatia).

In 2003 the third child of Mr Guberina and his wife, a son, was born with multiple physical and mental disabilities, including cerebral palsy. In 2008 the child was declared 100 percent disabled by the social services.

In 2006 Mr Guberina bought a house in Samobor. According to him, the flat in Zagreb where he and his family had been living and which he had bought three years before the birth of his disabled son – situated on the third floor of a residential building without a lift – did not meet the needs of his son and his family. In 2008 he sold the flat in Zagreb.

Following the purchase of the house in Samobor, Mr Guberina submitted a tax exemption request to the tax authorities. He relied on the relevant provisions of the Real Property Transfer Tax Act, which provided for a possibility of tax exemption for a person who was buying a flat or a house in order to solve his or her housing needs, if the buyer or his or her family members did not have another flat or house meeting their needs. Mr Guberina argued that the flat he owned in Zagreb did not meet the family's housing needs, since it did not have a lift and it was becoming impossible to take his disabled child, who was in a wheelchair, out of the flat. He had bought the house in order to accommodate the needs of his son.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

In 2009 the tax office dismissed Mr Guberina's request, finding that he did not meet the conditions of the Real Property Transfer Tax Act and stating in particular that the flat he owned satisfied the needs of his family, being sufficiently large and equipped with the necessary infrastructure such as electricity and heating. No consideration was given to the plight of the child and the absence of a lift in the flat. His appeals to the Finance Ministry and the High Administrative Court were dismissed and, in September 2012, the Constitutional Court rejected his constitutional complaint as ill-founded, endorsing the reasoning of the lower bodies.

Complaints, procedure and composition of the Court

Relying, in particular, on Article 1 of Protocol No. 1 (protection of property) in conjunction with Article 14 (prohibition of discrimination), Mr Guberina complained of discrimination as a result of an unfair application of the domestic tax legislation.

The application was lodged with the European Court of Human Rights on 28 March 2013. The following organisations jointly submitted written comments as third parties (under Article 36 of the Convention): the Croatian Union of Associations of Persons with Disabilities (SOIH), the European Disability Forum (EDF) and the International Disability Alliance (IDA).

Judgment was given by a Chamber of seven judges, composed as follows:

İşıl Karakaş (Turkey), *President*,
Nebojša Vučinić (Montenegro),
Paul Lemmens (Belgium),
Valeriu Grițco (the Republic of Moldova),
Ksenija Turković (Croatia),
Jon Fridrik Kjølbro (Denmark),
Georges Ravarani (Luxembourg),

and also Stanley Naismith, *Section Registrar*.

Decision of the Court

[Article 14 in conjunction with Article 1 of Protocol No. 1](#)

The Court considered that Mr Guberina, who did not himself belong to a disadvantaged group, could nevertheless complain of discriminatory treatment, relying on Article 14, on account of the disability of his child for whom he provided care. It followed from the Court's case-law that Article 14 also covered situations in which an individual was treated less favourably on the basis of another person's status.

The tax office had excluded Mr Guberina from benefitting from a tax exemption for the purchase of property meeting the housing needs of his family, without giving any consideration to his arguments concerning the specific needs of his family related to the disability of his child. Similarly, the Finance Ministry and the High Administrative Court, in upholding that decision, had not taken those specific needs into account. They had failed to recognise the factual difference of his situation with regard to the question of basic infrastructure and technical accommodation requirements meeting the housing needs of his family.

According to the Croatian Government, the domestic tax legislation provided for objective criteria for establishing the existence of basic infrastructure requirements of adequate housing, which left no discretion for an interpretation to the administrative tax authorities in a particular case. However, the Court observed that other provisions of domestic law did address the question of accessibility of buildings for persons with disabilities. In particular, they envisaged the existence of a

lift as one of the basic requirements of accessibility. Nevertheless, in Mr Guberina's case the domestic authorities had not given any consideration to those provisions, which could have complemented the reading of the relevant tax legislation.

Moreover, the domestic authorities had not given any consideration to Croatia's obligations under the UN Convention on the Rights of Persons with Disabilities. By adhering to that Convention, Croatia had committed to take into account its relevant principles, such as reasonable accommodation, accessibility and non-discrimination against persons with disabilities with regard to their full and equal participation in all aspects of social life.

In that light, the Court considered that the domestic authorities had taken an overly restrictive approach to applying the tax legislation, in particular as regards the interpretation of the term "basic infrastructure requirements" for the housing of a disabled person, and had thus failed to sufficiently accommodate the specific requirements in Mr Guberina's case.

Finally, the Court was not convinced by the Government's argument that Mr Guberina had not met the financial requirements for a tax exemption given that he was not a financially disadvantaged person and thus did not fall within the group of persons protected by the relevant legislation. The Court noted in particular that it followed from all the decisions of the domestic authorities that the reason for excluding him from the scope of tax exemption beneficiaries had been that his flat in Zagreb was considered as meeting the basic infrastructure requirements for the housing needs of his family. Only the Finance Ministry had made a reference to the financial element of the tax exemption provision, but without making a specific assessment of Mr Guberina's financial situation.

The Court therefore found that there had been a violation of Article 14 in conjunction with Article 1 of Protocol No. 1.

Just satisfaction (Article 41)

The Court held that Croatia was to pay Mr Guberina 5,000 euros (EUR) in respect of non-pecuniary damage and EUR 11,500 in respect of costs and expenses.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.