



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

SECOND SECTION

**CASE OF GUBERINA v. CROATIA**

*(Application no. 23682/13)*

JUDGMENT

STRASBOURG

22 March 2016

**FINAL**

**12/09/2016**

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



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

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

Işıl Karakaş, *President*,

Nebojša Vučinić,

Paul Lemmens,

Valeriu Griţco,

Ksenija Turković,

Jon Fridrik Kjølbro,

Georges Ravarani, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 23 February 2016,

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

**PROCEDURE**

1. The case originated in an application (no. 23682/13) 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, Mr Joško Guberina (“the applicant”), on 28 March 2013.

2. The applicant was represented by Ms V. Terhaj, a lawyer practising in Zagreb, assisted by Mr C. Cojocariu, a lawyer qualified in Romania and based in London. The Croatian Government (“the Government”) were represented by their Agent, Ms Š. Stažnik.

3. The applicant complained of the unfair application of domestic tax legislation and alleged discrimination in that respect, contrary to Article 8 of the Convention and Article 1 of Protocol No. 1 taken alone and in conjunction with Article 14 of the Convention, and Article 1 of Protocol No. 12.

4. On 17 July 2013 the complaints under Article 1 of Protocol No. 1 taken alone and in conjunction with Article 14 of the Convention, and under Article 1 of Protocol No. 12, were communicated to the Government. On 25 March 2014 the President of the Section to which the case was allocated decided, under Rule 54 § 2 (c) of the Rules of Court, to invite the parties to submit further observations in respect of the issues raised under Article 8 taken alone and in conjunction with Article 14 of the Convention.

5. In addition, third-party comments were received jointly from the Croatian Union of Associations of Persons with Disabilities (SOIH), the European Disability Forum (EDF) and the International Disability Alliance (IDA) (Article 36 § 2 of the Convention and Rule 44 § 3 of the Rules of Court).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1969 and lives in Samobor.

#### A. Background to the case

7. The applicant owned a flat in Zagreb situated on the third floor of a residential building, where he lived with his wife and two children.

8. In 2003, three years after he had bought the flat, the applicant's wife gave birth to their third child. The child was born with multiple physical and mental disabilities.

9. After the birth the child underwent a number of medical treatments and his condition was under the constant supervision of the competent social care services. In April 2008 an expert commission diagnosed him with incurable cerebral palsy, grave mental retardation and epilepsy. In September 2008 the social services declared the child 100% disabled.

10. In the meantime, in September 2006, the applicant bought a house in Samobor, and in October 2008 he sold his flat. According to the applicant, the reason for buying a house was the fact that the building in which his flat was situated had no lift and for that reason did not meet the needs of his disabled child and his family. In particular, it was very difficult to take his son out of the flat to see a doctor, or to take him for physiotherapy and to kindergarten or school, and to meet his other social needs.

#### B. Proceedings concerning the applicant's request for tax exemption

11. On 19 October 2006, after he had bought the house in Samobor, the applicant submitted a tax exemption request to the tax authorities. He relied on section 11(9) of the Real Property Transfer Tax Act, which provided for the 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 he or she, or his or her family members, did not have another flat or house meeting their housing needs (see paragraph 24 below). In his request the applicant argued that the flat which he owned did not meet the housing needs of his family since it was very difficult, and in fact becoming impossible, to take his disabled child out of the flat from the third floor without a lift, given that he was in a wheelchair. The applicant therefore submitted that he had bought the house in order to cater for his son's needs.

12. On 6 May 2009 the Samobor Tax Office (*Ministarstvo Financija – Porezna uprava, Područni ured Zagreb, Ispostava Samobor*) dismissed the applicant's request, giving the following reasons:

“Section 11(9) of the Real Property Transfer Tax Act ... provides for tax exemption for citizens who are buying their first real property in order to meet their housing needs, under conditions which must be cumulatively satisfied, including the requirement that the taxpayer in question, or his or her family members, do not have another flat or a house meeting their housing needs. During the proceedings it was established that the taxpayer Joško Guberina had owned a flat measuring 114,49 square metres, in Zagreb ..., which he had sold on 25 November 2008 to ... Given that the surface of that real property, and in view of the number of the taxpayer’s immediate family members (five), satisfied the housing needs of the taxpayer and his immediate family, within the meaning of section 11(9.3) of the Real Property Transfer Tax Act, and given that it satisfied all housing needs in terms of hygiene and technical requirements as well as the basic infrastructure (electricity, water and [access to] other public utilities), under section 11(9.5) of the Real Property Transfer Tax Act, the taxpayer does not meet the cumulative conditions provided under section 11(9) of the Real Property Transfer Tax Act. It was therefore decided as noted in the operative part [of the decision].”

13. The Samobor Tax Office ordered the applicant to pay 83,594.25 Croatian kunas (HRK; approximately EUR 11,250) in tax.

14. The applicant appealed against the above decision to the Finance Ministry (*Ministarstvo Financija, Samostalna služba za drugostupanjski upravni postupak*; hereafter, “the Ministry”), and on 6 July 2009 the Ministry dismissed his appeal as ill-founded, endorsing the reasoning of the Samobor Tax Office. The relevant part of the decision reads:

“Section 11(9) of the Real Property Transfer Tax Act (Official Gazette, nos. 69/07-153/02) provides for tax exemption for citizens who are buying their first real property in order to meet their housing needs. It further lays down conditions which the citizen must meet in order to demonstrate that he or she is buying his or her first real property in order to meet his or her housing needs. In this connection, one of the conditions laid down under indent 9.5 is that the citizen and the members of his or her immediate family must not have another real property (flat or house) meeting their housing needs; and indent 9.6 also provides that the citizen and the members of his or her immediate family must not own a flat, a holiday house, or property of a significant value (other property of a significant value can include a piece of land where construction is allowed) or a business premises where the citizen or his or her immediate family members do not exercise a registered [business] activity, whereby the value of the real property is similar to that of the real property (flat or house) which the citizen is purchasing.

Given the rationale of the cited provisions and the facts of the case as established beyond doubt during the proceedings, [the Ministry] considers that the first-instance authority was justified in rejecting the appellant’s request for tax exemption ... The right to tax exemption exists if the citizen, or his or her immediate family members, at the time of purchase [of the real property], do not own, or did not own, another real property meeting their housing needs or a flat, a holiday house or other real property of a significant value. As this is not the situation in the present case, given that the appellant, at the time of purchase [of the house], owned a flat in Zagreb ... larger than the real property he was buying and in respect of which he sought tax exemption, it cannot be said that by buying the house the appellant was purchasing his first real property in order to meet his housing needs.”

15. On 7 September 2009 the applicant lodged an administrative action with the High Administrative Court (*Visoki upravni sud Republike Hrvatske*), arguing that in their decisions the lower bodies had ignored his specific family situation and, in particular, his child's disability and therefore the housing needs of his family. In the applicant's view, it was necessary to recognise that in his particular case the availability of a lift in the building was an infrastructural requirement on the same level as access to water and electricity in general. He also emphasised that the house was the first real property in respect of which he had sought a real property transfer tax exemption.

16. On 21 March 2012 the High Administrative Court dismissed the applicant's administrative action as ill-founded, endorsing the reasoning of the lower administrative bodies. The relevant part of the judgment reads:

"Given that the surface area of the flat [which the applicant owned] satisfied the needs of five members of the plaintiff's family (provision 9.3) and that the flat at issue was equipped with the basic infrastructure and hygiene and technical requirements, the defendant correctly concluded that the plaintiff, in the given case, did not meet the conditions for a tax exemption set out in section 11(9) of the Real Property Transfer Tax Act.

The arguments regarding the administrative action are ineffective in changing the decision in this administrative matter, and therefore the court considers that the impugned decision did not breach the law to the plaintiff's detriment."

17. On 25 May 2012 the applicant lodged a constitutional complaint with the Constitutional Court (*Ustavni sud Republike Hrvatske*) relying on Article 14 of the Constitution, contending, *inter alia*, that, given the specific accommodation needs of his family due to his child's disability, he had been discriminated against by unfair application of the relevant tax legislation. He argued, in particular, that the competent administrative authorities had failed to correct the factual inequality inherent in his particular situation with regard to the ordinary meaning of the term basic infrastructural requirements meeting the housing needs of his family.

18. On 26 September 2012 the Constitutional Court, endorsing the reasoning of the lower bodies, dismissed the applicant's constitutional complaint as ill-founded on the grounds that there was no violation of his constitutional rights. In particular, having examined his complaints from the angle of the right to a fair trial, the Constitutional Court held that no issue arose with regard to the other complaints relied upon by the applicant.

19. The decision of the Constitutional Court was served on the applicant's representative on 11 October 2012.

### **C. Other relevant information**

20. The Government provided a report by the Ministry of Social Policy and Youth (*Ministarstvo socijalne politike i mladih*) of 6 November 2013,

according to which the applicant's child had been in receipt of monthly monetary allowances of HRK 1,000 (approximately EUR 130) in the period between 19 January 2006 and 10 September 2012, and allowances of HRK 625 (approximately EUR 80) from 11 September 2012 onwards. In addition, he had been involved in various therapeutic and social assistance activities, and for the period between 29 June 2010 and 2 October 2011 the applicant's wife had been granted special status related to her child's disability and had received *inter alia*, monthly payments of HRK 2,500 (approximately EUR 300).

21. According to the applicant, the annual expenses relating to his son's special needs amounted to some HRK 80,000 (approximately EUR 10,400). This included HRK 28,800 for physiotherapy, HRK 4,500 for speech therapy, HRK 900 for a child neurologist, HRK 7,200 for drugs, HRK 21,175 for a wheelchair (with additional State support of HRK 8,900); HRK 7,200 for swimming therapy; and HRK 9,150 for daily transport to the day-care centre for ten months.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### A. Relevant domestic law

#### 1. Constitution

22. The relevant provisions of the Constitution of the Republic of Croatia (*Ustav Republike Hrvatske*, Official Gazette nos. 56/1990, 135/1997, 8/1998, 113/2000, 124/2000, 28/2001, 41/2001, 55/2001, 76/2010, 85/2010 and 5/2014) read as follows:

#### Article 14

“Everyone in the Republic of Croatia shall enjoy rights and freedoms regardless of their race, colour, sex, language, religion, political or other belief, national or social origin, property, birth, education, social status or other characteristics.

All shall be equal before the law.”

#### Article 34

“The home is inviolable ... “

#### Article 35

“Everyone has the right to respect for and legal protection of his or her private and family life, dignity, reputation and honour.”

#### Article 48

“The right of ownership shall be guaranteed ...“

## 2. *Constitutional Court Act*

23. The relevant part of section 62 of the Constitutional Court Act (*Ustavni zakon o Ustavnom sudu Republike Hrvatske*, Official Gazette no. 49/2002) reads as follows:

### Section 62

“1. Anyone may lodge a constitutional complaint with the Constitutional Court if he or she deems that an individual act on the part of a State body, a body of local or regional self-government, or a legal person with public authority, concerning his or her rights and obligations or a suspicion or accusation of a criminal deed, has violated his or her human rights or fundamental freedoms or his or her right to local or regional self-government guaranteed by the Constitution (hereinafter “a constitutional right”)  
...

2. If another legal remedy exists in respect of the violation of the constitutional right [complained of], a constitutional complaint may be lodged only after that remedy has been used.”

## 3. *Real Property Transfer Tax Act*

24. The relevant provision of Real Property Transfer Tax Act (*Zakon o porezu na promet nekretnina*, Official Gazette nos. 69/1997, 26/2000, 127/2000 and 153/2002) at the material time read:

### Section 11

“The real property transfer tax shall not be paid by:

...

9. a citizen who is buying his or her first real property (flat or house) in order to meet his or her housing needs provided that:

...

9.3. the surface area of the real property, depending on the number of members of the citizen’s immediate family, does not surpass:

...

- for five persons, up to 100 square metres,

...

9.5. the citizen, or members of his or her immediate family, do not have other real property (a flat or a house) which meets their housing needs. Such real property (a flat or a house) meeting housing needs includes any accommodation which has basic infrastructure and satisfies hygiene and technical requirements. ...

9.6. the citizen and the members of his or her immediate family do not own a flat, a holiday house and other real property of a significant value. Another property of a significant value is a piece of land where construction is allowed and business premises where the citizen or his or her immediate family members do not perform a registered [business] activity, and the value of the real property is similar to the value of the real property (flat or house) which the citizen is buying.

...

15. the citizens who have already used their right to a real property transfer tax exemption under the provisions 9, 11 and 13 [of this section] do not have a right to another real property transfer tax exemption.”

*4. By-law on the accessibility of buildings for persons with disabilities and reduced mobility*

25. The relevant provisions of the by-law on the accessibility of buildings to persons with disabilities and reduced mobility (*Pravilnik o pristupačnosti građevina osobama s invaliditetom i smanjene pokretljivosti*, Official Gazette nos. 151/2005 and 61/2007) provide:

**Section 1**

“This by-law lays down the conditions for and the manner of securing unobstructed access, mobility, stay and work for persons with disabilities and reduced mobility (hereafter, “accessibility”) as well as [the manner of] improving the accessibility of buildings for ... residential ... purposes ...”

**Section 2**

“The accessibility, improvement of accessibility and the [methods for] conforming to the accessibility of buildings referred to in section 1 of this by-law shall be secured by mandatory building design and construction of the buildings so as to secure the elements of accessibility and/or to conform to the conditions of use of [mobility] devices for persons with disabilities ... as laid down in this by-law.”

**III Basic elements of accessibility**

**Section 7**

“The basic elements of accessibility are:

A. the elements of accessibility for overcoming differences in height ...”

**A. The elements of accessibility for overcoming differences in height**

**Section 9**

“In order to overcome differences in height in the premises used by persons with reduced mobility, the following elements of accessibility can be used: ... a lift ...”

**Section 12**

**Lifts**

“A lift shall be used as an element of accessibility for overcoming height differences, and must be used for overcoming height differences of more than 120 centimetres inside or outside the building.

...”

### 5. *Prevention of Discrimination Act*

26. The relevant parts of the Prevention of Discrimination Act (*Zakon o suzbijanju diskriminacije*, Official Gazette no. 85/2008) provide:

#### **Section 1**

“(1) This Act ensures the protection and promotion of equality as the highest value of the constitutional order of the Republic of Croatia; creates conditions for equal opportunities and regulates protection against discrimination on the basis of race or ethnic origin or skin colour, gender, language, religion, political or other conviction, national or social origin, state of wealth, membership of a trade union, education, social status, marital or family status, age, health, disability, genetic inheritance, gender identity, expression or sexual orientation.

(2) Discrimination within the meaning of this Act means putting any person in a disadvantageous position on any of the grounds under subsection 1 of this section, as well as his or her close relatives.

...”

#### **Section 8**

“This Act shall be applied in respect of all State bodies ... legal entities and natural persons ...”

#### **Section 16**

“Anyone who considers that, owing to discrimination, any of his or her rights has been violated may seek protection of that right in proceedings in which the determination of that right is the main issue, and may also seek protection in separate proceedings under section 17 of this Act.”

#### **Section 17**

“(1) A person who claims that he or she has been a victim of discrimination in accordance with the provisions of this Act may bring a claim and seek:

(1) a ruling that the defendant has violated the plaintiff’s right to equal treatment or that an act or omission by the defendant may lead to the violation of the plaintiff’s right to equal treatment (claim for an acknowledgment of discrimination);

(2) a ban on (the defendant’s) undertaking acts which violate or may violate the plaintiff’s right to equal treatment or an order for measures aimed at removing discrimination or its consequences to be taken (claim for a ban or for removal of discrimination);

(3) compensation for pecuniary and non-pecuniary damage caused by the violation of the rights protected by this Act (claim for damages);

(4) an order for a judgment finding a violation of the right to equal treatment to be published in the media at the defendant’s expense.”

27. In 2009 the Croatian Government Office for Human Rights (*Ured za ljudska prava Vlade Republike Hrvatske*) published a “Manual on implementation of the Prevention of Discrimination Act” (*Vodič uz Zakon o suzbijanju diskriminacije*; hereafter, “the Manual”). The Manual explains,

*inter alia*, that section 16 of the Prevention of Discrimination Act provides two alternative avenues which an individual can pursue. Accordingly, an individual may raise his or her complaint of discrimination in proceedings concerning the main subject matter of a dispute, or he or she may opt for separate civil proceedings, as provided under section 17 of the Act.

#### 6. Administrative Disputes Act

28. The relevant provision of the Administrative Disputes Act (*Zakon o upravnim sporovima*, Official Gazette nos. 20/2010, 143/2012 and 152/2014) provides:

##### Section 76

“(1) Proceedings terminated by a judgment shall be reopened at the party’s request:

1. if, in a final judgment, the European Court of Human Rights has found a violation of fundamental rights and freedoms in a manner differing from the [Administrative Court’s] judgment, ... “

### B. Relevant practice

#### 1. Relevant practice concerning discrimination

29. On 9 November 2010, in case no. U-III-1097/2009, the Constitutional Court declared a constitutional complaint of discrimination under a Parliamentary decision regarding the political affiliation of a deputy inadmissible for non-exhaustion of legal remedies. The Constitutional Court found that the appellant had failed to pursue both the relevant administrative remedies and the remedies provided under the Prevention of Discrimination Act. However, it declined to determine what the relationship between several possible avenues in a case concerning allegations of discrimination was, on the grounds that it was primarily for the competent courts to determine that matter.

30. In its decisions no. U-III-815/2013 of 8 May 2014 concerning alleged discrimination in obtaining social benefit, and U-III-1680/2014 of 2 July 2014 concerning alleged discrimination in employment, the Constitutional Court confirmed its case-law as to the availability of remedies under the Prevention of Discrimination Act.

31. The Government referred to the judgments of the Supreme Court, no. Gž-41/11-2 of 28 February 2012, no. Gž-25/11-2 of 28 February 2012 and no. Gž-38/11-2 of 7 March 2012, which had accepted actions under the Prevention of Discrimination Act alleging discrimination on the grounds of sexual orientation.

*2. Relevant practice concerning the application of tax legislation*

32. The Government also cited case-law of the Administrative Court (*Upravni sud Republike Hrvatske*) and the High Administrative Court by which they dismissed actions challenging the refusal of a real property transfer tax exemption on the grounds of the appellants' failure to cumulatively meet the requirements under section 11(9.5) and (9.6) of the Real Property Transfer Tax Act (judgments in the cases no. Us-4028/2009-4 of 1 June 2011, no. Us-14106/2009-4 of 16 May 2012, and no. Us-3042/2011-4 of 19 September 2013; and a judgment of the High Administrative Court, no. Usž-269/2012-4 of 23 January 2013, by which it upheld a decision on tax exemption under section 11(9.3), (9.5) and (9.6) of the Real Property Transfer Tax Act).

33. In each of these cases the administrative authorities conducted a thorough assessment of the comparable values of properties when deciding whether the appellant had a real property of significant value within the meaning of section 11(9.6) of the Real Property Transfer Tax Act.

### III. RELEVANT INTERNATIONAL MATERIAL

#### A. United Nations

*1. Convention on the Rights of Persons with Disabilities*

34. The relevant parts of the United Nations Convention on the Rights of Persons with Disabilities, A/RES/61/106, 24 January 2007 (hereinafter: the "CRPD"), ratified by Croatia on 15 August 2007, provide:

**Article 2**  
**Definitions**

"For the purposes of the present Convention:

...

"Reasonable accommodation" means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms; ..."

**Article 3**  
**General principles**

"The principles of the present Convention shall be:

...

(b) Non-discrimination;

...

(f) Accessibility; ..."

**Article 4**  
**General obligations**

“1. States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. To this end, States Parties undertake:

(a) To adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention;

(b) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities;

(c) To take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes:

(d) To refrain from engaging in any act or practice that is inconsistent with the present Convention and to ensure that public authorities and institutions act in conformity with the present Convention;

(e) To take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise;

...

2. With regard to economic, social and cultural rights, each State Party undertakes to take measures to the maximum of its available resources and, where needed, within the framework of international cooperation, with a view to achieving progressively the full realization of these rights, without prejudice to those obligations contained in the present Convention that are immediately applicable according to international law.

...”

**Article 5**  
**Equality and non-discrimination**

“1. States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.

2. States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.

3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.

4. Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention.”

**Article 7**  
**Children with disabilities**

“1. States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.

2. In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.

...”

### **Article 9 Accessibility**

“1. To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:

(a) Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;

(b) Information, communications and other services, including electronic services and emergency services.”

### **Article 19 Living independently and being included in the community**

“States Parties to the present Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that:

(a) Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement;

(b) Persons with disabilities have access to a range of in-home residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community; ...”

### **Article 20 Personal mobility**

“States Parties shall take effective measures to ensure personal mobility with the greatest possible independence for persons with disabilities, including by:

(a) Facilitating the personal mobility of persons with disabilities in the manner and at the time of their choice, and at affordable cost;

(b) Facilitating access by persons with disabilities to quality mobility aids, devices, assistive technologies and forms of live assistance and intermediaries, including by making them available at affordable cost; ...”

**Article 28**  
**Adequate standard of living and social protection**

“1. States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.

...”

*2. Practice of the United Nations Committee on the Rights of Persons with Disabilities (CRPD)*

35. In its General Comment No. 2 (2014) on Article 9: Accessibility, CRPD/C/GC/2, 22 May 2014, the CRPD Committee noted:

“1. Accessibility is a precondition for persons with disabilities to live independently and participate fully and equally in society. Without access to the physical environment, to transportation, to information and communication, including information and communications technologies and systems, and to other facilities and services open or provided to the public, persons with disabilities would not have equal opportunities for participation in their respective societies.

...

29. It is helpful to mainstream accessibility standards that prescribe various areas that have to be accessible, such as the physical environment in laws on construction and planning, transportation in laws on public aerial, railway, road and water transport, information and communication, and services open to the public. However, accessibility should be encompassed in general and specific laws on equal opportunities, equality and participation in the context of the prohibition of disability-based discrimination. Denial of access should be clearly defined as a prohibited act of discrimination. Persons with disabilities who have been denied access to the physical environment, transportation, information and communication, or services open to the public should have effective legal remedies at their disposal. When defining accessibility standards, States parties have to take into account the diversity of persons with disabilities and ensure that accessibility is provided to persons of any gender and of all ages and types of disability. Part of the task of encompassing the diversity of persons with disabilities in the provision of accessibility is recognizing that some persons with disabilities need human or animal assistance in order to enjoy full accessibility (such as personal assistance, sign language interpretation, tactile sign language interpretation or guide dogs). It must be stipulated, for example, that banning guide dogs from entering a particular building or open space would constitute a prohibited act of disability-based discrimination.”

*3. Practice of the United Nations Committee on Economic, Social and Cultural Rights*

36. The United Nations Committee on Economic, Social and Cultural Rights (CESCR) in its General Comment No. 5: Persons with Disabilities, E/1995/22, 9 December 1994 noted:

“**3. The obligation to eliminate discrimination on the grounds of disability**

15. Both *de jure* and *de facto* discrimination against persons with disabilities have a long history and take various forms. They range from invidious discrimination, such as the denial of educational opportunities, to more “subtle” forms of discrimination such as segregation and isolation achieved through the imposition of physical and social barriers. For the purposes of the Covenant, “disability-based discrimination” may be defined as including any distinction, exclusion, restriction or preference, or denial of reasonable accommodation based on disability which has the effect of nullifying or impairing the recognition, enjoyment or exercise of economic, social or cultural rights. Through neglect, ignorance, prejudice and false assumptions, as well as through exclusion, distinction or separation, persons with disabilities have very often been prevented from exercising their economic, social or cultural rights on an equal basis with persons without disabilities. The effects of disability-based discrimination have been particularly severe in the fields of education, employment, housing, transport, cultural life, and access to public places and services.”

37. The CESCR reaffirmed its General Comment No. 5 in its General Comment No. 20: Non-discrimination in economic, social and cultural rights, E/C.12/GC/20, 2 July 2009, in the following terms:

**“B. Other status**

27. The nature of discrimination varies according to context and evolves over time. A flexible approach to the ground of “other status” is thus needed in order to capture other forms of differential treatment that cannot be reasonably and objectively justified and are of a comparable nature to the expressly recognized grounds in article 2, paragraph 2. These additional grounds are commonly recognized when they reflect the experience of social groups that are vulnerable and have suffered and continue to suffer marginalization. ...

**Disability**

28. In its general comment No. 5, the Committee defined discrimination against persons with disabilities as “any distinction, exclusion, restriction or preference, or denial of reasonable accommodation based on disability which has the effect of nullifying or impairing the recognition, enjoyment or exercise of economic, social or cultural rights”. The denial of reasonable accommodation should be included in national legislation as a prohibited form of discrimination on the basis of disability. States parties should address discrimination, such as prohibitions on the right to education, and denial of reasonable accommodation in public places such as public health facilities and the workplace, as well as in private places, e.g. as long as spaces are designed and built in ways that make them inaccessible to wheelchairs, such users will be effectively denied their right to work.”

## **B. Council of Europe**

### *1. Committee of Ministers Recommendation Rec(2006)5*

38. The relevant parts of Recommendation Rec(2006)5 of the Committee of Ministers to member States on the Council of Europe Action Plan to promote the rights and full participation of people with disabilities in society: improving the quality of life of people with disabilities in Europe 2006-2015, of 5 April 2006, read as follows:

**“1.2. Fundamental principles and strategic goals**

### 1.2.1. Fundamental principles

Member states will continue to work within anti-discriminatory and human rights frameworks to enhance independence, freedom of choice and the quality of life of people with disabilities and to raise awareness of disability as a part of human diversity.

Due account is taken of relevant existing European and international instruments, treaties and plans, particularly the developments in relation to the draft United Nations international convention on the rights of persons with disabilities.

...

### 1.3. Key action lines

People with disabilities should be able to live as independently as possible, including being able to choose where and how to live. Opportunities for independent living and social inclusion are first and foremost created by living in the community. Enhancing community living (No. 8) requires strategic policies which support the move from institutional care to community-based settings, ranging from independent living arrangements to sheltered, supportive living in small-scale settings. It also implies a co-ordinated approach in the provision of user-driven, community-based services and person-centred support structures.

### 2.7. Fundamental principles

The fundamental principles which govern this Action Plan are:

- non-discrimination;
- equality of opportunities;
- full participation in society of all persons with disabilities;

...

### 4.3. People with disabilities in need of high level of support

#### 4.4. Children and young people with disabilities

The needs of children with disabilities and their families must be carefully assessed by responsible authorities with a view to providing measures of support which enable children to grow up with their families, to be included in the community and local children's life and activities. Children with disabilities need to receive education to enrich their lives and enable them to reach their maximum potential.

Quality service provision and family support structures can ensure a rich and developing childhood and lay the foundation for a participative and independent adult life. It is important therefore that policy makers take into account the needs of children with disabilities and their families when designing disability policies and mainstream policies for children and families.”

2. *Parliamentary Assembly Resolution 1642(2009) on Access to rights for people with disabilities and their full and active participation in society, reaffirmed by the Parliamentary Assembly Recommendation 1854 (2009) of 26 January 2009*

39. The relevant part of Parliamentary Assembly Resolution 1642(2009) on Access to rights for people with disabilities and their full and active participation in society reads as follows:

“8. The Assembly considers that in order to enable the active participation of people with disabilities in society, it is imperative that the right to live in the community be upheld. It invites member states to:

...

8.2. provide adequate and sustained assistance to families, above all through human and material (particularly financial) means, to enable them to support their disabled family member at home; ...

12. The Assembly considers that the creation of a society for all implies equal access for all citizens to the environment in which they live. ...”

### **C. European Union**

40. The relevant provisions of the Charter of Fundamental Rights of the European Union (2000/C 364/01) read as follows:

#### **Article 21 Non-discrimination**

“1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.”

#### **Article 26 Integration of persons with disabilities**

“The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.”

41. On 17 July 2008, in case no. C-303/06, *S. Coleman v Attridge Law and Steve Law*, the Grand Chamber of the European Court of Justice (ECJ) addressed the question whether Directive 2000/78 of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, should be interpreted as prohibiting direct discrimination on grounds of disability only in respect of an employee who is himself

disabled, or whether the principle of equal treatment and the prohibition of direct discrimination applied equally to an employee who is not himself disabled but who is treated less favourably by reason of the disability of his child, for whom he is the primary provider of the care required by virtue of the child's condition. In this connection, the ECJ concluded:

“56. ... Directive 2000/78, and, in particular, Articles 1 and 2(1) and (2)(a) thereof, must be interpreted as meaning that the prohibition of direct discrimination laid down by those provisions is not limited only to people who are themselves disabled. Where an employer treats an employee who is not himself disabled less favourably than another employee is, has been or would be treated in a comparable situation, and it is established that the less favourable treatment of that employee is based on the disability of his child, whose care is provided primarily by that employee, such treatment is contrary to the prohibition of direct discrimination laid down by Article 2(2)(a).”

42. On 16 July 2015, in case no. C-83/14, *CHEZ Razpredelenie Bulgaria AD*, the Grand Chamber of the ECJ addressed the question of indirect discrimination on the grounds of ethnic origin relating to the interpretation of the Directive 2000/43/EC of 29 June 2000, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, and the Charter of Fundamental Rights of the European Union, in particular whether the principle of equal treatment should benefit only persons who actually possess the racial or ethnic origin concerned or also persons who, although not being of the racial or ethnic origin in question, nevertheless suffer less favourable treatment on those grounds. The relevant part of the judgment reads:

“56. ... the Court's case-law, already recalled in paragraph 42 of the present judgment, under which the scope of Directive 2000/43 cannot, in the light of its objective and the nature of the rights which it seeks to safeguard, be defined restrictively, is, in this instance, such as to justify the interpretation that the principle of equal treatment to which that directive refers applies not to a particular category of person[s] but by reference to the grounds mentioned in Article 1 thereof, so that that principle is intended to benefit also persons who, although not themselves a member of the race or ethnic group concerned, nevertheless suffer less favourable treatment or a particular disadvantage on one of those grounds (see, by analogy, judgment in *Coleman*, C-303/06, EU:C:2008:415, paragraphs 38 and 50).”

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TAKEN ALONE AND IN CONJUNCTION WITH ARTICLE 14 OF THE CONVENTION

43. The applicant complained of alleged discrimination occasioned by the unfair application of domestic tax legislation. He relied on Article 14 of the Convention and Article 1 of Protocol No. 1, which read as follows:

#### **Article 14**

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

#### **Article 1 of Protocol No. 1**

“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**

#### *1. The parties' submissions*

44. The Government argued that the applicant had failed to raise his complaint of discrimination during the proceedings before the administrative authorities concerning the adoption of the decision on his request for tax exemption. In particular, he had not relied on the provisions of the Prevention of Discrimination Act in his appeal against the first-instance decision, nor had he raised the matter in his administrative action before the High Administrative Court. Moreover, he could have instituted separate civil proceedings for damages under the Prevention of Discrimination Act but had failed to avail himself of that opportunity. He had thus failed to use the effective domestic remedies concerning the allegations of discrimination. The Government conceded that the Constitutional Court had not declared the applicant's constitutional complaint inadmissible for non-exhaustion of remedies, but they considered, without elaborating further on the matter, that the provision on exhaustion of remedies under the Constitutional Court Act had a different

scope and meaning from the rule on exhaustion of remedies under the Convention. The Government also pointed out that in his constitutional complaint the applicant had failed to cite the exact provision of the Constitution guaranteeing the right to property.

45. The applicant submitted that he had properly exhausted remedies before the administrative authorities and the Constitutional Court. In particular, his complaints at the domestic level concerning the alleged discrimination by dint of unfair application of the tax legislation had not been so different as to require a separate examination of the discrimination from the property complaint. Accordingly, by properly exhausting the administrative remedies he had not been required to pursue any other remedy under the Prevention of Discrimination Act with the same objective since it was the Court's well-established case-law that in the case of several potentially effective remedies an applicant was required only to use one of them. At all events, the Constitutional Court had not declared his constitutional complaint inadmissible for non-exhaustion of domestic remedies, which suggested that he had properly exhausted the relevant remedies before the administrative authorities. The applicant also emphasised that he had properly raised his complaints before the Constitutional Court, complaining in substance of a discriminatory violation of his property rights related to an unfair application of the tax legislation.

## 2. *The Court's assessment*

46. The Court reiterates that under Article 35 § 1 of the Convention, it may only deal with an application after all domestic remedies have been exhausted. States are dispensed from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system, and those who wish to invoke the supervisory jurisdiction of the Court as concerns complaints against a State are thus obliged to use first the remedies provided by the national legal system. The obligation to exhaust domestic remedies therefore requires an applicant to make normal use of remedies which are available and sufficient in respect of his or her Convention grievances. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 70-71, 25 March 2014; and *Gherghina v. Romania* (dec.) [GC], no. 42219/07, § 85, 9 July 2015).

47. Article 35 § 1 also requires that the complaints intended to be made subsequently in Strasbourg should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law and, further, that any procedural means that might prevent a breach of the Convention should have been used (see *Vučković and Others*, cited above, § 72).

48. However, in the event of there being a number of domestic remedies which an individual can pursue, that person is entitled to choose a remedy which addresses his or her essential grievance. In other words, when a remedy has been pursued, use of another remedy which has essentially the same objective is not required (see *T.W. v. Malta* [GC], no. 25644/94, § 34, 29 April 1999; *Moreira Barbosa v. Portugal* (dec.), no. 65681/01, ECHR 2004-V; and *Jeličić v. Bosnia and Herzegovina* (dec.), no. 41183/02, 15 November 2005; and *Jasinskis v. Latvia*, no. 45744/08, § 50, 21 December 2010).

49. The Court notes at the outset that it is undisputed between the parties that the Prevention of Discrimination Act provides two alternative avenues through which an individual can seek protection from discrimination. In particular, an individual may raise his or her complaint of discrimination in the proceedings concerning the main subject matter of a dispute, or he or she may opt for separate civil proceedings, as provided under section 17 of that Act (see paragraphs 26-27 above).

50. In the instant case, the applicant contended during the administrative proceedings that the competent tax authorities had failed to treat his situation differently when determining the question of tax exemption for solving his housing needs given the disability of his child and the needs of his family. However, the High Administrative Court considered those arguments irrelevant and declined to give any ruling to that effect (see paragraphs 15-16 above). The Court finds that the applicant thereby raised in substance his discrimination complaint concerning his property rights in these administrative proceedings (compare *Glor v. Switzerland*, no. 13444/04, § 55, ECHR 2009). He was therefore not required to pursue another remedy under the Prevention of Discrimination Act with essentially the same objective in order to meet the requirements of Article 35 § 1 of the Convention (see paragraph 48 above).

51. In any case, the Court notes that the Constitutional Court did not declare the applicant's constitutional complaint inadmissible for non-exhaustion of legal remedies, as was its practice in other cases concerning discrimination complaints where the appellants had not properly exhausted remedies before the lower domestic authorities (see paragraphs 29-30 above). Accordingly, the Court has no reason to doubt the applicant's proper use of remedies before the administrative and judicial authorities (see *Vladimir Romanov v. Russia*, no. 41461/02, § 52, 24 July 2008; *Bjedov v. Croatia*, no. 42150/09, § 48, 29 May 2012; and *Zrilić v. Croatia*, no. 46726/11, § 49, 3 October 2013).

52. As to the Government's argument that the applicant failed to cite the exact provision of the Constitution guaranteeing the right to property in his constitutional complaint, the Court notes that the applicant expressly relied on Article 14 of the Constitution, guaranteeing protection from discrimination, and complained of discrimination by the allegedly unfair

application of the relevant tax legislation (see paragraph 17 above). By explicitly raising his discrimination complaint, which was in substance related to his property rights, he thereby provided the Constitutional Court with the opportunity which is in principle intended to be afforded to Contracting States by Article 35 § 1 of the Convention, of putting right the violations alleged against them (see, among many other authorities, *Gäfgen v. Germany* [GC], no. 22978/05, §§ 144-146, ECHR 2010; *Lelas v. Croatia*, no. 55555/08, § 51, 20 May 2010; *Karapanagiotou and Others v. Greece*, no. 1571/08, § 29, 28 October 2010; *Bjedov*, cited above, § 48; *Tarbuk v. Croatia*, no. 31360/10, § 32, 11 December 2012; and *Jaćimović v. Croatia*, no. 22688/09, §§ 40-41, 31 October 2013).

53. The Court therefore rejects the Government's objection. It also notes that the applicant's complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

## **B. Merits**

### *1. The parties' submissions*

#### **(a) The applicant**

54. The applicant submitted that the domestic authorities had established his liability to pay the tax on the basis of an imprecise and unforeseeable provision and without a proper assessment of the particular circumstances of his case. Moreover, they had failed to make any assessment of proportionality of the interference with his property rights. The applicant therefore considered that the refusal to grant him the tax exemption imposed an excessive individual burden on him, contrary to Article 1 of Protocol No. 1. Whereas the applicant accepted that the domestic authorities enjoyed a wide margin of appreciation in matters of taxation, he pointed out that according to the Court's well-established case-law their discretion could not be exercised in a manner incompatible with Article 14 of the Convention.

55. The applicant pointed out that the reason for the rejection of his request for tax exemption was the fact that, under the domestic authorities' understanding of section 11(9.5) of the Real Property Transfer Act, the flat which he had owned had been suitable for the housing needs of his family, in view of its surface area (section 11(9.3) of the Real Property Transfer Act) and other infrastructural requirements. Further conditions, such as value of the previously owned property (section 11(9.6) of the Real Property Transfer Act), had had no bearing in the domestic authorities' assessment of his case. This had suggested that in a case such as his, where an individual had already owned a real property, the relevant law envisaged the

assessment of the suitability of the previously owned property as the central element for deciding on requests for tax exemption when buying a new real property suitable for living. However, in the applicant's view, the domestic authorities had failed to conduct a proper assessment of the circumstances of his case and thus obviously deprived him of adequate procedural means for the protection of his rights.

56. The applicant also pointed out that he had not sought any preferential status but had merely requested the authorities to exempt him from the obligation to pay tax due to the particular circumstances of his case. To the applicant, it was obvious that he had not sought tax exemption so as to become unjustly enriched, since he had sold his old flat in order to buy a smaller real property adapted to the his family's needs in relation to his son's disability.

57. The applicant further argued that accessibility, as a fundamental feature of housing, qualified as a basic infrastructure to be provided equally for all. Thus, any difference in treatment in that respect would imply discrimination. Moreover, in the light of the principle of reasonable accommodation, the decisions of the domestic authorities, which failed to adapt the definitions they had used with regard to the particular needs of persons with disabilities, suggested indirect discrimination or discrimination by failure to treat differently people whose situations significantly differed.

58. In the applicant's view, the reason for the discrimination was disability by association *vis-à-vis* the needs of his son, which had been ignored by the competent domestic authorities. In particular, their assessment of the basic infrastructural requirements for appropriate housing had been conducted with regard to the needs of able-bodied people, ignoring the fact that the existence of a lift for a disabled person was a fundamental and indispensable feature for housing commanded by the need for easy and unencumbered access. The authorities had thus discriminated him against by failing to interpret the term "property that satisfies a family's housing needs" in a way taking into consideration the accessibility of the property in question. This discriminatory treatment, in the applicant's view, had no reasonable justification, particularly given that the problem of accessibility impeded his son's ability to leave the flat, thereby restricting all his other rights, such as those to adequate health treatment, education and personal development. That consequently affected the entire family, which had had to cope with the problem of accessibility and also to bear a significant financial burden related to the son's disability.

**(b) The Government**

59. The Government accepted that there had been an interference with the applicant's property rights, but considered that such interference had been lawful, that it had pursued a legitimate aim of securing public finances and that it had been proportionate. Specifically, the Government stressed

that the State enjoyed a wide margin of appreciation in tax matters and that the domestic authorities had been best placed to assess individual cases. In the applicant's case, the domestic authorities had sufficiently taken into account his personal situation but had considered that he could not be exempted from taxation as he had not met the requirements under the relevant domestic law.

60. In particular, the Government submitted that section 11 of the Real Property Transfer Act clearly stated that a tax exemption could be granted only if the conditions under that provision had been cumulatively met. In the case at issue, the applicant had failed to meet two conditions. Firstly, the flat he had owned at the moment when he had bought the house objectively satisfied the requirements for adequate housing for him and his family. It had basic infrastructure and satisfied hygiene and technical requirements, and the tax authorities had no discretion in assessing the term "housing needs". In the Government's view, the tax authorities were neither equipped nor competent to objectively assess the numerous specific housing needs of persons who sought tax exemption. With regard to the second condition, the Government submitted that the applicant had not met the value requirement in that he had owned a flat of a significant value. Therefore, the fact that the building was not equipped with a lift had been irrelevant. It was in fact the intention of the relevant domestic law to provide tax exemption in order to assist individuals who were buying their first real property, and in particular those without property of a significant value. In the case at issue, the domestic authorities had acted within their margin of appreciation, and had accordingly assessed that the applicant did not need any such financial assistance, which had led them to dismiss his request for tax exemption. Accordingly, in the Government's view, no excessive individual burden had not been imposed on the applicant.

61. The Government also argued that there had been no discriminatory treatment of the applicant in relation to his child's disability because the reason for the dismissal of his tax exemption request was his financial situation. This had an objective and reasonable justification in that the State had sought to protect financially disadvantaged individuals. The applicant did not belong to that category of persons since he had owned a satisfactory flat.

62. The Government further stressed that the State, as a Party to the CRPD, had implemented a number of positive measures aimed at ensuring accessibility for disabled people, and that almost seventy per cent of public buildings in Zagreb had been adapted for that purpose. Moreover, a recent visit to Croatia by the United Nations Special Rapporteur on Disability had commended those efforts expended by the State. With regard, in particular, to the tax exemptions set out in the Real Property Transfer Act, the Government stressed that the positive measures implemented by the State were primarily aimed at financially disadvantaged individuals and that they

could not address the needs of all vulnerable groups. However, the State had put in place various tax benefits for disabled persons relating, for instance, to income and health services taxation. Moreover, in harmonising its activities with the relevant international standards, the State had adopted a National Strategy to Secure Equal Opportunities for Persons with Disabilities 2007-2015, and was actively implementing various measures at the national and local levels in order to meet the needs of disabled people.

**(c) The third-party intervention**

63. The third-party interveners submitted that the Court should have regard to the relevant standards of the CRPD, particularly those concerning the concepts of accessibility, non-discrimination and reasonable accommodation, in assessing the State's compliance with its Convention obligations concerning people with disabilities. They emphasised the intimate link between accessibility and reasonable accommodation, which were both ultimately geared to ensuring the effective enjoyment and exercise of the rights of such people on an equal footing with others. There were, however, differences between the two concepts, in that the general accessibility requirement should be met in anticipation of the accessibility needs of the disabled population, whereas reasonable accommodation included specific measures for a particular disabled individual, which had to be implemented immediately.

64. The third-party interveners further pointed out that international human rights law now demanded the prohibition of discrimination by association, which concerned cases of discrimination against an individual on the grounds not of his or her own characteristics but of his or her relation to someone else with the relevant characteristic. This principle was well established in several jurisdictions across Europe, and was also set out in the Croatian Prevention of Discrimination Act. Moreover, international human rights mechanisms had been increasingly calling for positive State action to ensure access to housing by persons with disabilities. National jurisdictions, particularly within the European Union, had started to implement the relevant measures, which also included tax rebates or exemptions.

65. The third-party interveners also argued that persons with disabilities had to be able to exercise their rights without discrimination. Moreover, living in inaccessible homes impeded participation in the life of the community and led to isolation and the segregation of disabled individuals and their entire families. In particular, they emphasised that failure to provide reasonable accommodation amounted to discrimination based on disability.

## 2. *The Court's assessment*

### (a) **General principles**

66. The Court notes that the central tenet of the applicant's complaint is his alleged discriminatory treatment in the application of the relevant tax legislation, contrary to Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1. The Court will therefore address his complaint in this respect on the basis of the relevant principles flowing from its case-law under Article 14 of the Convention.

67. The Court has consistently held that Article 14 complements the other substantive provisions of the Convention and its Protocols. It has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded thereby. Although the application of Article 14 does not presuppose a breach of those provisions – and to this extent it is autonomous – there can be no room for its application unless the facts at issue fall within the ambit of one or more of them. The prohibition of discrimination enshrined in Article 14 thus extends beyond the enjoyment of the rights and freedoms which the Convention and the Protocols thereto require each State to guarantee. It applies also to those additional rights, falling within the general scope of any Convention Article, for which the State has voluntarily decided to provide (see, among many other authorities, *E.B. v. France* [GC], no. 43546/02, §§ 47-48, 22 January 2008; and *Carson and Others v. the United Kingdom* [GC], no. 42184/05, § 63, ECHR 2010).

68. The Court has established in its case-law that only differences in treatment based on an identifiable characteristic, or status, are capable of amounting to discrimination within the meaning of Article 14 (see *Eweida and Others v. the United Kingdom*, no. 48420/10, § 86, 15 January 2013).

69. Generally, in order for an issue to arise under Article 14 there must be a difference in the treatment of persons in analogous, or relevantly similar, situations (see *X and Others v. Austria* [GC], no. 19010/07, § 98, 19 February 2013). However, not every difference in treatment will amount to a violation of Article 14. A difference of treatment is discriminatory if it has no objective and reasonable justification; in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised (see *Fabris v. France* [GC], no. 16574/08, § 56, ECHR 2013 (extracts); *Weller v. Hungary*, no. 44399/05, § 27, 31 March 2009; and *Topčić-Rosenberg v. Croatia*, no. 19391/11, § 36, 14 November 2013).

70. Moreover, Article 14 does not prohibit Contracting Parties from treating groups differently in order to correct "factual inequalities" between them. Indeed, the right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is also violated when States without an objective and reasonable justification fail to treat differently

persons whose situations are significantly different (see *Thlimmenos v. Greece* [GC], no. 34369/97, § 44, ECHR 2000-IV; *Stec and Others v. the United Kingdom* [GC], nos. 65731/01 and 65900/01, § 51, ECHR 2006-VI; and *Sejdić and Finci v. Bosnia and Herzegovina* [GC], nos. 27996/06 and 34836/06, § 44, ECHR 2009).

71. The Court has also accepted that a general policy or measure that has disproportionately prejudicial effects on a particular group may be considered discriminatory notwithstanding that it is not specifically aimed at that group, and that discrimination potentially contrary to the Convention may result from a *de facto* situation (see *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 175, ECHR 2007-IV; and *Kurić and Others v. Slovenia* [GC], no. 26828/06, § 388, ECHR 2012 (extracts)). This is only the case, however, if such policy or measure has no “objective and reasonable” justification, that is, if it does not pursue a “legitimate aim” or if there is not a “reasonable relationship of proportionality” between the means employed and the aim sought to be realised (see *S.A.S. v. France* [GC], no. 43835/11, § 161, ECHR 2014 (extracts)).

72. The Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment. The scope of the margin of appreciation will vary according to the circumstances, the subject matter and the background. The same is true with regard to the necessity to treat groups differently in order to correct “factual inequalities between them” (see *Stummer v. Austria* [GC], no. 37452/02, § 88, ECHR 2011).

73. On the one hand, wide margin is usually allowed to the State under the Convention when it comes to general measures of economic or social strategy, for example (see *Hämäläinen v. Finland* [GC], no. 37359/09, § 109, ECHR 2014). This also includes measures in the area of taxation. However, any such measures must be implemented in a non-discriminatory manner and comply with the requirements of proportionality (see *R.Sz. v. Hungary*, no. 41838/11, § 54, 2 July 2013). On the other hand, if a restriction on fundamental rights applies to a particularly vulnerable group in society that has suffered considerable discrimination in the past, then the State’s margin of appreciation is substantially narrower and it must have very weighty reasons for the restrictions in question. The reason for this approach, which questions certain classifications *per se*, is that such groups were historically subject to prejudice with lasting consequences, resulting in their social exclusion. Such prejudice could entail legislative stereotyping which prohibits the individualised evaluation of their capacities and needs. The Court has already identified a number of such vulnerable groups that suffered different treatment on account of their characteristic or status, including disability (see *Glor*, cited above, § 84; *Alajos Kiss v. Hungary*, no. 38832/06, § 42, 20 May 2010; and *Kiyutin v. Russia*, no. 2700/10, § 63, ECHR 2011). Moreover, with regard to all actions concerning children with

disabilities the best interest of the child must be a primary consideration (see paragraph 34 above; Article 7(2) CRPD). In any case, however, irrespective of the scope of the State's margin of appreciation the final decision as to the observance of the Convention's requirements rests with the Court (see, *inter alia*, *Konstantin Markin v. Russia* [GC], no. 30078/06, § 126, ECHR 2012 (extracts)).

74. Lastly, as regards the burden of proof in relation to Article 14 of the Convention, the Court has held that once the applicant has shown a difference in treatment, it is for the Government to show that it was justified (see *D.H. and Others*, cited above, § 177; *Kurić and Others*, cited above, § 389; *Vallianatos and Others v. Greece* [GC], nos. 29381/09 and 32684/09, § 85, ECHR 2013 (extracts)).

**(b) Application of these principles to the present case**

*(i) Whether the facts underlying the complaint fall within the scope of Article 1 of Protocol No. 1*

75. The Court notes that it is undisputed between the parties that the circumstances of the present case, concerning matters of taxation, fall within the scope of Article 1 of Protocol No. 1, rendering Article 14 of the Convention applicable. The Court sees no reason to hold otherwise (see, for example, *Burden v. the United Kingdom* [GC], no. 13378/05, § 59, ECHR 2008).

*(ii) Whether the disability of the applicant's child brought the applicant's situation within the term "other status" in Article 14 of the Convention*

76. The Court has already held that a person's health status, including disability and various health impairments fall within the term "other status" in the text of Article 14 of the Convention (see *Glor*, cited above, § 80; *Kiyutin*, cited above, § 57; and *I.B. v. Greece*, no. 552/10, § 73, ECHR 2013).

77. The present case concerns a situation in which the applicant did not allege discriminatory treatment related to his own disability but rather his alleged unfavourable treatment on the basis of the disability of his child, with whom he lives and for whom he provides care. In other words, in the present case the question arises to what extent the applicant, who does not himself belong to a disadvantaged group, nevertheless suffers less favourable treatment on grounds relating to the disability of his child (see paragraphs 41-42 above).

78. In this connection the Court reiterates that the words "other status" have generally been given a wide meaning in its case-law (see *Carson and Others*, cited above, § 70) and their interpretation has not been limited to characteristics which are personal in the sense that they are innate or inherent (see *Clift v. the United Kingdom*, no. 7205/07, §§ 56-59, 13 July

2010). For example, a discrimination issue arose in cases where the applicants' status, which served as the alleged basis for discriminatory treatment, was determined in relation to their family situation, such as their children's place of residence of (see *Efe v. Austria*, no. 9134/06, § 48, 8 January 2013). It thus follows, in the light of its objective and nature of the rights which it seeks to safeguard, that Article 14 of the Convention also covers instances in which an individual is treated less favourably on the basis of another person's status or protected characteristics.

79. The Court therefore finds that the alleged discriminatory treatment of the applicant on account of the disability of his child, with whom he has close personal links and for whom he provides care, is a form of disability-based discrimination covered by Article 14 of the Convention.

*(iii) Whether there was a difference of treatment between persons in relevantly similar positions or a failure to treat differently persons in relevantly different situations*

80. The Court further observes that the applicant alleged discriminatory treatment in the application of the domestic real property tax legislation in comparison to other persons purchasing real property in order to meet their housing needs, under circumstances where the property which they owned fell short of the housing needs of their families. In particular, the applicant contended that by selling his flat, situated on the third floor of a residential building in Zagreb, and moving to a house in Samobor, he had for the first time created housing conditions suited to his family's situation after the birth of his disabled child. This specifically relates to the fact that the residential building in which the flat was located was not equipped with a lift, making it increasingly difficult, as his son grew, for the applicant and his family to take him out of the flat to see a doctor, or to take him for physiotherapy and to kindergarten or school, and to meet his other social needs (see paragraph 10 above).

81. The Court notes that it is undisputed between the parties that the applicant's son was a person with profound and multiple disabilities and that he required full-time care and attention. This also conclusively follows from the report of the social care services which declared him 100% disabled (see paragraph 9 above). This raises the question whether the applicant's flat could be considered as accommodation meeting the housing needs of his family after the birth of his disabled child.

82. In the Court's view, there can be no question that the applicant's flat in Zagreb, which he had bought three years before the birth of his son, situated on the third floor of a residential building without a lift, severely impaired his son's mobility and consequently threatened his personal development and ability to reach his maximum potential, making it extremely difficult for him to fully participate in the community and the educational, cultural and social activities available for children. The absence

of a lift must have impaired the applicant's family's quality of life, particularly that of his son. The latter's situation might be compared to that of an able-bodied person who, for example, had a flat on the third floor of a residential building without appropriate access to it, or had limited access to the necessary relevant public amenities.

83. The Court therefore finds that in seeking to replace the flat in question by buying a house that was adapted to the needs of his family, the applicant was in a comparable position to any other person replacing a flat or a house by buying another real property equipped with, in the words of the relevant domestic tax legislation, basic infrastructure and technical accommodation requirements (see paragraph 24 above). His situation nevertheless differed with regard to the meaning of the term "basic infrastructure requirements" which, in view of his son's disability and the relevant national and international standards on the matter (see paragraphs 25 and 34-42 above), necessitated access to facilities such as, in the instant case, a lift.

84. However, the Court notes that the Samobor Tax Office considered that, given the surface area of the flat which the applicant had owned in Zagreb and the existence of infrastructure, such as electricity, water and access to other public utilities, it could not be said that the applicant had not had accommodation meeting the housing needs of his family. Accordingly, he was denied a tax exemption for the purchase of a property meeting the housing needs of his family, disregarding the applicant's arguments concerning his family's specific needs arising out of his child's disability (see paragraphs 11-12 above).

85. That decision was upheld by the Ministry and the High Administrative Court, pointing out that it could not be said that in buying the house the applicant had bought a property to meet his housing needs, given that, in their view, the flat he had owned met the basic infrastructure requirements. Again, as with the Samobor Tax Office, no consideration was given to the specific needs of the applicant's family in terms of his child's disability. Moreover, the High Administrative Court dismissed his arguments to that effect as irrelevant (see paragraphs 15-16 above). The Constitutional Court also refrained from addressing the matter (see paragraph 18 above).

86. In view of the foregoing considerations, the Court finds that there is no doubt that the competent domestic authorities failed to recognise the factual specificity of the applicant's situation with regard to the question of basic infrastructure and technical accommodation requirements to meet the housing needs of his family. The domestic authorities adopted an overly restrictive position on the applicant's particular case, by failing to take into account the specific needs of the applicant and his family when applying the condition relating to "basic infrastructure requirements" to their particular case, as opposed to other cases where elements such as the surface area of a

flat, or access to electricity, water and other public utilities, might have suggested adequate and sufficient basic infrastructure requirements.

87. It remains to be seen whether the same treatment of the applicant as that of any other buyer of real property had an objective and reasonable justification (see paragraphs 70 and 74 above).

*(iv) Whether there was objective and reasonable justification*

88. In justifying the decisions of the domestic authorities, the Government advanced two arguments. They argued, firstly, that the relevant domestic law laid down objective criteria for establishing the existence of basic infrastructure requirements of adequate housing, which left the administrative tax authorities no room for interpretation in individual cases, and secondly, that the applicant had not met the financial requirements for a tax exemption in view of his financial situation.

89. The Court cannot but observe that the first argument virtually amounts to a concession on the Government's part that the relevant domestic authorities were not empowered to seek a reasonable relationship of proportionality between the means employed and the aim sought to be realised in the applicant's particular case. Therefore, contrary to the requirements of Article 14 of the Convention, they were unable to provide objective and reasonable justification for their failure to correct the factual inequality inherent in the applicant's case (see paragraph 60 above).

90. Nevertheless, the Court, being well aware that it is in the first place for the national authorities, notably the courts, to interpret and apply the domestic law (see *Glor*, cited above, § 91), notes that the relevant provision of the Real Property Transfer Act is couched in rather general terms referring merely to the "basic infrastructure" and "hygiene and technical requirements" (see paragraph 24 above, section 11(9.5) of the Real Property Transfer Act).

91. The Court further observes that other relevant provisions of domestic law provide some guidance with regard to the question of basic requirements of accessibility for persons with disabilities. Thus, for instance, the by-law on the accessibility of buildings to persons with disabilities and reduced mobility considers the existence of a lift as one of the basic elements of accessibility for persons with disabilities (see paragraph 25 above). However, there is nothing to suggest that any of the competent domestic authorities in the present case gave any consideration to such enactments in the relevant domestic law capable of complementing the meaning of terms under the Real Property Transfer Act.

92. Moreover, the Court notes that by adhering to the requirements set out in the CRPD the respondent State undertook to take its relevant principles into consideration, 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 (see

paragraph 34-37 above), and in this sphere the domestic authorities have, as asserted by the Government, implemented certain relevant measures (see paragraph 62 above). In the case in question, however, the relevant domestic authorities gave no consideration to these international obligations which the State has undertaken to respect.

93. It accordingly follows, contrary to the Government's assertions, that the issue in the instant case is not the fact that the relevant domestic legislation left no room for an individual evaluation of the tax exemption requests of persons in the applicant's situation. The issue in the present case is rather that the manner in which the legislation was applied in practice failed to sufficiently accommodate the requirements of the specific aspects of the applicant's case related to the disability of his child and, in particular, to the interpretation of the term "basic infrastructure requirements" for the housing of a disabled person (compare *Topčić-Rosenberg*, cited above, §§ 40-49).

94. Furthermore, according to the second argument advanced by the Government, the applicant was excluded from the beneficiaries of the real property transfer tax exemption on the grounds of his financial situation, and in particular of the value of the flat he had previously owned in Zagreb. The alleged reason for this was the fact that the tax exemption under the Real Property Transfer Act was intended to afford financial protection to disadvantaged persons which, in the Government's view, the applicant was not (see paragraph 61 above).

95. The Court finds that, in principle, the protection of financially disadvantaged persons by means of the relevant measures of tax exemption could be considered as an objective justification for the alleged discriminatory treatment. Indeed, it would appear that the question of the financial situation of an individual applying for a real property transfer tax exemption was cumulatively relevant together with other factors when assessing his or her tax obligation (see paragraph 32 above and also paragraph 24 above, section 11(9.5) and (9.6) of the Real Property Transfer Tax Act).

96. However, as regards the applicant's particular case, the Court notes that it follows from all the decisions of the competent domestic authorities that the reason for excluding the applicant from the scope of tax exemption beneficiaries was the fact that his flat in Zagreb was considered as meeting the basic infrastructure requirements for the housing needs of his family (see paragraphs 12, 14 and 16 above). The only reference to the financial aspect of the tax exemption provision under the Real Property Transfer Act (see paragraph 24 above, section 11(9.6) of the Real Property Transfer Act) was made by the Ministry (see paragraph 14 above). However, this was done without any concrete assessment of the relevant financial aspects of the applicant's case, which was a well-established practice of the domestic

authorities in other cases where that provision was relied upon (see paragraph 33 above).

97. Accordingly, accepting the Government's argument to this effect would require the Court to speculate on the concrete relevance of the applicant's financial situation for his tax exemption request, within the meaning of the relevant domestic law (compare, by contrast, *Glor*, cited above, § 90). The Court is therefore unable to accept that the protection of financially disadvantaged persons was the reason justifying the impugned discriminatory treatment of the applicant.

98. In view of the above, and in particular in the absence of the relevant evaluation of all the circumstances of the case by the competent domestic authorities, the Court does not find that they provided objective and reasonable justification for their failure to take into account the inequality inherent in the applicant's situation when making an assessment of his tax obligation.

99. The Court therefore finds that there has been a violation of Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1.

100. This makes it unnecessary for the Court to consider separately the applicant's complaint under Article 1 of Protocol No. 1 taken alone (see, for example, *Zeman v. Austria*, no. 23960/02, § 42, 29 June 2006).

## II. ALLEGED VIOLATION OF ARTICLES 8 AND 14 OF THE CONVENTION

101. The applicant complained of a breach of the right to respect for his private and family life and his home related to the unfair and discriminatory application of domestic tax legislation. He relied on Articles 8 and 14 of the Convention.

102. The Government contested those allegations.

103. In the circumstances of the present case, the Court is of the view that the inequality of treatment of which the applicant claimed to be a victim has been sufficiently taken into account in the above assessment that has led to the finding of a violation of Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1. Accordingly, it finds that – while this complaint is also admissible – there is no cause for a separate examination of the same facts from the standpoint of Articles 8 and 14 of the Convention (see, for example, *Mazurek v. France*, no. 34406/97, § 56, ECHR 2000-II; and *Efe*, cited above, § 55).

## III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 12

104. The applicant further complained that he was discriminated against by the manner of application of the tax legislation which failed to

distinguish his situation from the general situation falling under the relevant provisions on tax exemption. He relied on Article 1 of Protocol No. 12.

105. The Government contested that argument.

106. The Court has already found that the manner of application of the tax legislation which failed to distinguish the applicant's situation from the general situation falling under the relevant provisions on tax exemption amounted to discrimination in breach of Article 14 taken together with Article 1 of Protocol No. 1.

107. Having regard to that finding, the Court considers that it is not necessary to examine separately whether, in this case, there has also been a violation of Article 1 of Protocol No. 12 to the Convention (compare *Sejdić and Finci*, cited above, § 51; and *Savez crkava "Riječ života" and Others v. Croatia*, no. 7798/08, §§ 114-115, 9 December 2010).

#### IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

108. 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."

##### A. Damage

109. The applicant claimed 11,010.00 euros (EUR) in respect of pecuniary damage concerning the amount of tax he had been obliged to pay, and EUR 10,000 in respect of non-pecuniary damage.

110. The Government considered the applicant's claim excessive, unfounded and unsubstantiated.

111. As to the pecuniary damage claimed, the Court, having regard to its findings concerning Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1 (see paragraph 99 above), concerning the discrimination against the applicant related to the application of the domestic tax legislation, considers that it cannot speculate on the extent of the applicant's domestic tax obligations, particularly related to the question whether his financial situation justifies a tax exemption (see paragraphs 95-97 above). Thus, being unable to assess the applicant's claim for pecuniary damage, the Court refers to the opportunity available to the applicant to request reopening of the proceedings in accordance with section 76 of the Administrative Disputes Act (see paragraph 28 above), which would allow for a fresh examination of his claim at the domestic level.

112. On the other hand, the Court considers that the applicant must have sustained non-pecuniary damage which is not sufficiently compensated by the finding of a violation. Ruling on an equitable basis, it awards the

applicant EUR 5,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on this amount.

### **B. Costs and expenses**

113. The applicant also claimed EUR 11,652.49 and 4,900 pounds sterling (GBP; approximately EUR 6,800) for the costs and expenses incurred before the domestic courts and for those incurred before the Court.

114. The Government considered the applicant's claim unfounded and unsubstantiated.

115. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 11,500 covering costs under all heads, plus any tax that may be chargeable.

### **C. Default interest**

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

**FOR THESE REASONS, THE COURT, UNANIMOUSLY,**

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1;
3. *Holds* that there is no need to examine separately the complaint under Article 1 of Protocol No. 1 taken alone;
4. *Holds* that no separate issue arises under Article 8 taken alone and in conjunction with Article 14 of the Convention, or under Article 1 of Protocol No. 12;
5. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted

into Croatian kunas (HRK) at the rate applicable at the date of settlement:

- (i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
  - (ii) EUR 11,500 (eleven thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 March 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith  
Registrar

Işıl Karakaş  
President