CORTE EUROPEA DEI DIRITTI DELL'UOMO - SECONDA SEZIONE
CASO LJASKAJ CONTRO CROAZIA (ricorso n. 58630/11)
SENTENZA
STRASBURGO, 20 dicembre 2016
NON DEFINITIVO

STRALCIO

…

PROCEDURA

1. Il caso trova origine in una domanda (ric. n. 58630/11) contro la Repubblica di Croazia proposta a questa Corte ai sensi dell'art. 34 della Convenzione per la protezione dei Diritti dell'Uomo e delle Libertà fondamentali ("la Convenzione") da un cittadino croato, il sig. Prek Ljaskaj ("il ricorrente") in data 8.9.11.
2. Il ricorrente è stato rappresentato dal sig. D. Pedić, un avvocato esercente in Popovača. Il governo croato ("il Governo") è stato rappresentato dal suo Agente, la sig.ra Š. Stažnik.
3. Il ricorrente ha allegato che una decisione di vendere la sua causa in una procedura esecutiva per un quinto del suo valore aveva violato la Convenzione.
4. Il 28.5.14 la doglianza relativa al diritto di proprietà del ricorrente è stata comunicata al Governo e, per il resto, la domanda è stata dichiarata inammissibile, ai sensi dell'art. 54 § 3 delle Regole della Corte.

I FATTI

I. LE CIRCOSTANZE DEL CASO

5. Il ricorrente nacque nel 1942 e vive a Kutina.
6. Il 12.2.1989 concluse un contratto di vendita con la sig.ra M.A., il sig. J.A. e il sig. Z.A., con cui questi gli vendettero una casa in Kutina per 47.000 DM. Poiché il ricorrente pagò in effetti solo 30.000 DM, essi intrapresero contro di lui una causa civile alla Corte municipale di Kutina (Općinski sud u Kutini), richiedendo il pagamento dei restanti 17.000 DM.
7. Con una sentenza della Corte municipale di Kutina del 20.5.94, che divenne definitiva il 30.11.94, il ricorrente fu condannato a pagare ai venditori (d'ora in avanti "i creditori") l'equivalente di 17.000 DM in valuta nazionale, oltre agli interessi obbligatori di mora (con decorrenza dal 15.12.89) e le spese di lite.
8. Il 12.3.03 i creditori si rivolsero alla stessa Corte (d'ora in avanti "il giudice dell'esecuzione") per l'esecuzione di quella sentenza. In particolare, essi chiesero (a) l'equivalente di 8.691,96 € in kune croate (HRK), con gli interessi suddetti, (b) le spese delle dette cause civili per 1.860 kune oltre interessi di mora dal 20.5.94 e (c) le spese del processo esecutivo.
9. Il 18.3.03 il giudice dell'esecuzione emise un decreto di esecuzione (rješenje o ovrsi) per l'appropriazione e la vendita della proprietà immobiliare del ricorrente, in particolare la sua casa, per soddisfare la pretesa dei creditori.
10. Durante la procedura di esecuzione un esperto nominato dal giudice stimò il valore della casa in 384.197 kune (circa € 52.067 a quel tempo).
11. Dopo due infruttuosi tentativi di vendita all'asta il 16 febbraio e il 23 marzo 2005 il giudice dell'esecuzione, ad una terza asta, il 13.4.05 vendette la casa e la aggiudicò ai creditori per 100.000 kune. E tanto in forza della sezione 97(4) della legge sulle esecuzioni del 1996, come emendata nel 1999 (d'ora in avanti "la legge riformata nel 1999"), secondo la quale ad un terza asta pubblica una proprietà immobiliare potrebbe essere venduta senza restrizione quanto al prezzo più basso (v. paragrafi 25 e 26 più avanti).
12. Poiché i creditori non pagarono il prezzo di acquisto entro il termine fissato, il giudice revocò la sua decisione del 13.4.05 e diede nuovamente corso al terzo tentativo d'asta.
13. Alla terza asta, tenuta il 10.12.08, il giudice dell'esecuzione vendette la casa e la aggiudicò a un certo sig. D.D. per 50.000 kune (circa € 6.940 a quel tempo). Il giudice basò nuovamente

la sua decisione sulla sezione 97(4) della legge sulle esecuzioni del 1996, come riformata nel 1999 (vedi paragrafo 11 sopra e paragrafi 25-26 più avanti).

14. In accoglimento dell'appello del ricorrente, il 1.4.09 la Corte di contea di Sisak (Županijski sud u Sisku) annullò la decisione del 10.12.08 di aggiudicare la casa del ricorrente al sig. D.D. e rinviò la causa. Stabilì che il giudice dell'esecuzione aveva male interpretato la sezione 97(4) e che la gravata decisione era in contrasto con la sezione 6 della legge sulle esecuzioni perché quel giudice non aveva rispettato la dignità del ricorrente e il requisito che l'esecuzione doveva essere la meno onerosa possibile per il debitore (vedi paragrafo 30 più avanti). Notò che il prezzo di vendita non era sufficiente a coprire nemmeno la metà del debito, che il 13.4.05 era giunto all'ammontare di 107.974,40 kune (circa € 14.587 del tempo), significando che la vendita della casa del ricorrente non aveva raggiunto *lo scopo principale della procedura di esecuzione – principalmente, di soddisfare la pretesa dei creditori*. La parte rilevante della decisione recita:
…
15. Nel processo esecutivo riassunto il giudice dell'esecuzione fissò una terza asta pubblica, che fu tenuta il 12.5.09 ed alla quale la casa del ricorrente fu di nuovo venduta al sig. D.D., ma questa volta per 70.000 kune (circa € 9.486 del tempo).
16. In conformità a tanto, con una decisione del 3.6.09 il giudice aggiudicò la casa del ricorrente a D.D. e il ricorrente impugnò tale decisione, sostenendo che la sua casa era stata venduta a meno di un quinto del suo valore, ciò che non era stato sufficiente a soddisfare pienamente le pretese dei creditori. Nel far questo egli richiamò le ragioni date dalla Corte di contea di Sisak nella sua decisione del 1.4.09 (v. paragrafo 14 sopra).
17. Il 2.10.09 i creditori esecutanti informarono il giudice dell'esecuzione che le loro pretese erano state pienamente soddisfatte.
18. Con una decisione del 20.12.10 la Corte di contea di Sisak rigettò l'appello del ricorrente e confermò la decisione del 3.6.09 di aggiudicare la casa del ricorrente a D.D. (v. paragrafo 16 sopra). La parte rilevante della decisione della Corte di contea, che fu notificata all'avvocato del ricorrente il 12.1.11, recita: *Non è contestato che il 3.6.09 un terzo pubblico incanto fu tenuto, nel quale la proprietà del debitore fu venduta per 70.000 kune. Il terzo pubblico incanto fu tenuto secondo la sezione 97(4) della legge sulle esecuzioni, che prevede che, se una proprietà non è venduta ad una seconda asta, il giudice deve, da quindici a trenta giorni dal secondo incanto, fissare un terzo incanto al quale la proprietà può essere venduta senza restrizioni quanto al più basso prezzo [calcolato in proporzione al suo] valore stabilito.*
19. Il giorno 11.2.11 il ricorrente propose ricorso costituzionale allegando la violazione del suo diritto ad eguale trattamento davanti alla legge e del suo diritto di proprietà, come garantito dall'art. 14, paragrafo 2 e art. 48 della Costituzione croata (vedi paragrafo 22 più avanti). Nel far questo, egli ripeté, in sostanza, gli argomenti sollevati nel suo appello.
20. Il 19.5.11 la Corte costituzionale (Ustavni sud Republike Hrvatske) dichiarò inammissibile il ricorso del ricorrente per non essere la decisione gravata soggetta a ricorso costituzionale. La decisione fu notificata all'avvocato del ricorrente il 6.6.11.
21. Nel frattempo, con una decisione del 14.2.11 il giudice dell'esecuzione distribuì il ricavato della vendita ai creditori esecutanti e, con una decisione del 18.5.11 ordinò al ricorrente di liberare la casa. L'appello del ricorrente contro queste decisioni fu rigettato dalla Corte di contea di Sisak.

II. LEGGE NAZIONALE RILEVANTE

A. LA COSTITUZIONE

22. Gli articoli rilevanti della Costituzione della Repubblica di Croazia (Ustav Republike Hrvatske, Gazzetta Ufficiale n. 56/90, e successivi emendamenti) recitano:
Articolo 16

(1) I diritti e le libertà possono essere limitati solo dalla legge per proteggere i diritti e le libertà di altro, l'ordine pubblico, la pubblica morale o la salute.
(2) Ogni restrizione di diritti e libertà dovrà essere proporzionata alla natura della necessità di tale restrizione in ogni caso particolare.
Articolo 14 (2)
Ognuno è uguale davanti alla legge.
Articolo 29 (1)
Ognuno ha il diritto che un giudice indipendente e imparziale, stabilito dalla legge, decida equamente ed in un tempo ragionevole sui suoi diritti ed obblighi, o per quanto riguarda il sospetto o le accuse di un crimine.
Articolo 48
Il diritto di proprietà è garantito.
La proprietà comporta obbligazioni. I proprietari e coloro che usano le proprietà devono contribuire al benessere generale.

B. Legislazione rilevante

1. La legge sulla corte costituzionale

…

23. Le prescrizioni rilevanti …

2. La legge sull'esecuzione

(a) previsioni che limitano la vendita degli immobili per meno di un certo prezzo

24. La sezione 163 della legge sul processo esecutivo (Zakon o izvršnom postupku, Gazzetta Ufficiale della Repubblica Socialista Federale di Yugoslavia, n. 20/78, con gli emendamenti successivi, e Gazzetta Ufficiale della Repubblica di Croazia nn. 53/91 e 91/92), la quale fu in vigore dal 1.10.78 al 10.8.96, previde che la proprietà immobiliare non avrebbe potuto essere venduta in un processo esecutivo per meno dei due terzi del suo valore come stabilito da un esperto nominato dal giudice.
25. La sezione 97 della legge sull'esecuzione del 1996 (Ovršni zakon, Gazzetta Ufficiale n. 57/96, con emendamenti successivi, di qui in avanti "la legge del 1996"), la quale fu in vigore tra l'11.8.96 e il 14.10.12, in origine previde che la proprietà immobiliare non avrebbe potuto essere venduta in un pubblico incanto per meno dei quattro quinti del suo valore e ad un secondo pubblico incanto per meno della metà del valore, sempre come stimato da un esperto nominato dal giudice.
26. Quella previsione fu dapprima modificata dalla Riforma del 1999 (Zakon o izmjenama i dopunama Ovršnog zakona, Gazzetta Ufficiale n. 29/99), che entrò in vigore il 20.3.99. In forza di questa, gli immobili non avrebbero potuto essere venduti in un processo esecutivo a meno dei tre quarti del loro valore, sempre come stimato da un esperto nominato dal giudice, al primo incanto ed a meno della metà al secondo. Questi emendamenti previdero pure un terzo incanto, al quale gli immobili avrebbero potuto essere venduti senza restrizioni quanto al più basso prezzo.
27. La disposizione in questione fu ulteriormente emendata nel 2003 (Zakon o izmjenama i dopunama Ovršnog zakona, Gazzetta Ufficiale n. 173/03) (d'ora in avanti "la Riforma del 2003"), che entrò in vigore l'8.11.03. Quest'emendamento abolì la possibilità di un terzo incanto, abrogando il paragrafo introdotto dalla precedente riforma del 1999 e per il quale gli immobili potevano essere venduti ad un tale terzo incanto senza restrizioni. La Riforma del 2003 previde pure che se la proprietà non poteva essere venduta ad un secondo incanto (per non meno della metà del suo valore) allora il processo esecutivo andava interrotto. Le disposizioni transitorie rilevanti di questa Riforma recitano:
Sezione 102.
(1) Le disposizioni di questa legge si applicano alle procedure [esecutive] pendenti quando la decisione di primo grado non è stata ancora adottata prima della sua entrata in vigore.

(2) Le disposizioni di questa Legge si applicano altresì alle altre procedure [esecutive] intraprese prima della data della sua entrata in vigore, se in queste procedure la decisione di prima istanza è stata annullata dopo quella data e la causa rimessa rinviata al primo giudice per un nuovo processo.

28. La sezione 97 della legge sulle esecuzioni del 1996 fu infine emendata dalla Riforma del 2005 (Zakon o izmjenama i dopunama Ovršnog zakona, Gazzetta Ufficiale n. 88/05), che entrò in vigore il 28.7.05. In forza di questi emendamenti gli immobili non avrebbero potuto essere venduti in una procedura esecutiva ad un primo incanto a meno di due terzi del loro valore, come stimato da un esperto nominato dal giudice, e ad un secondo incanto a meno di un terzo.

… omissis …

B. MERITO

1. Le tesi delle parti.

(a) Il ricorrente.

52. Il ricorrente sostiene che la decisione di vendere la sua casa nella procedura esecutiva per meno di un quinto del suo valore è stata contraria alla legge sull'esecuzione ed ai principali precedenti nazionali, che avevano proibito la vendita degli immobili nelle procedure esecutive per importi così bassi (vedi paragrafi 33-34 e 37-40 sopra).

53. Il ricorrente argomenta che la vendita della sua casa era sì stata basata sulla sezione 97(4) della legge sulle esecuzioni, come in vigore al tempo dei fatti (vedi paragrafo 26 sopra). Comunque, tanto non significava che la vendita fosse stata legittima. Egli mise in evidenza che la disposizione in questione non era stata di natura obbligatoria (*ius cogens*) e che soltanto concedeva la possibilità di vendere gli immobili senza restrizioni quanto al più basso prezzo. Quella disposizione andava interpretata alla luce delle altre disposizioni della legge sulle esecuzioni, specialmente alla luce del principio enunciato nella sezione 6, secondo il quale il giudice dell'esecuzione doveva rispettare la dignità del debitore e assicurare che l'esecuzione fosse il meno possibile onerosa per lui (vedi paragrafo 30 sopra). A sostegno dei suoi argomenti si affida alle tesi espresse dalla decisione dalla Corte di contea di Sisak del 1.4.09 (vedi paragrafo 14 sopra).

54. Il ricorrente ancora sostiene che lo scopo del processo esecutivo è di soddisfare le ragioni dei creditori ma in maniera che assicuri che sia rispettata la dignità del debitore e che l'esecuzione sia la meno onerosa possibile per lui. Nel presente caso la casa del ricorrente (del valore di 384.197 kune) era stata venduta per sole 70.000 kune per soddisfare le pretese dei creditori di 107.974,40 kune. Ciò aveva significato che il suo debito non era stato pagato ma che egli aveva ciononostante perso la sua casa. La sua dignità era stata così severamente violata mentre lo scopo del processo esecutivo non era stato raggiunto.

(b) Il Governo.

55. Il Governo sostiene che le decisioni delle corti nazionali di vendere la casa del debitore non sono state illegittime, arbitrarie o manifestamente irragionevoli.

56. Per quanto riguarda l'illegittimità, il Governo dapprima deduce che le corti nazionali hanno applicato la corretta versione della sezione 97(4) della legge sulle esecuzioni, in particolar modo quella emendata nel 1999 (vedi paragrafo 26 sopra). Il Governo spiega che l'impugnata procedura era stata intrapresa e che il pignoramento autorizzato rispettivamente il 12 e il 18 marzo 2003 (vedi paragrafi 8 e 9 sopra). Tanto era accaduto prima dell'entrata in vigore della successiva Riforma del 2003 dell'8.11.03, per la quale gli immobili avrebbero potuto essere venduti al massimo ad un secondo incanto e per non meno di un terzo del loro valore. Avuto riguardo alla disciplina transitoria della Riforma del 2003 (vedi sezione 102 di questa al paragrafo 27 sopra), doveva essere applicata la precedente legge del 1999. Questa aveva consentito un terzo incanto per gli immobili a qualsiasi prezzo, comprendendosi che questa era una possibilità piuttosto che un obbligo, come statuito dalla Corte di contea di Sisak nella sua decisione del 1.4.09 (vedi paragrafo 14 sopra).

57. Per quanto riguarda la questione se le decisioni dei giudici nazionali di vendere la casa del ricorrente fossero state arbitrarie o manifestamente irragionevoli, il Governo dapprima ricorda che il debito del ricorrente originò dalla sua mancanza, fin dal 1989, nell'onorare parte del suo debito per il prezzo di acquisto della sua casa (vedi paragrafo 6 sopra). Ciò significava che il ricorrente aveva avuto venti anni per onorare il suo debito volontariamente e così prevenire la vendita forzata della sua casa. Non aveva fatto così neppure dopo gli infruttuosi primo e secondo incanto (vedi paragrafo 11 sopra), ciò che aveva dato corso alla possibilità di vendere la casa ad un terzo incanto senza restrizioni quanto al prezzo più basso.

58. Era vero che il 1.4.09 la Corte di contea di Sisak aveva annullato la decisione di prima istanza in base alla quale la casa del ricorrente era stata venduta ad un terzo incanto per 50.000 kune. Era stato stabilito che, consentendo quella vendita, il giudice dell'esecuzione non aveva, in violazione della sezione 6 della legge sull'esecuzione, sufficientemente rispettato la dignità del debitore e il requisito che l'esecuzione fosse la meno onerosa possibile per lui. La Corte di contea era giunta a quella conclusione, tra l'altro, perché l'ammontare per il quale la casa era stata venduta non era sufficiente a saldare neppure la metà del debito, ciò che aveva frustrato il vero scopo del processo esecutivo, vale a dire il soddisfacimento delle ragioni del creditore (v. paragrafo 14 sopra).

59. Comunque, queste doglianze erano state prese in considerazione nel successivo corso del processo. In particolare, la casa del debitore era stata venduta per un prezzo più alto (vedi paragrafo 15 sopra) ed era stato evidente che non avrebbe potuto essere venduta per un prezzo maggiore. Inoltre, lo scopo del processo esecutivo era stato raggiunto, perché i creditori avevano dichiarato che ricevendo quell'ammontare essi consideravano soddisfatto interamente il loro credito (vedi paragrafo 17 sopra).

60. Avuto riguardo a quanto precede ed al fatto che le pretese dei creditori erano state soddisfatte, il Governo conclude che la decisione di vendere la casa del ricorrente nella procedura esecutiva in questione non poteva considerarsi arbitraria, manifestamente irragionevole o comunque contraria al suo diritto al pacifico godimento delle sue proprietà.

2. Le valutazioni della Corte.

61. La Corte nota innanzitutto che la procedura esecutiva nella presente controversia concerne una disputa civile tra privati. I principi rilevanti della giurisprudenza di questa Corte sono riassunti in Anheuser-Busch Inc. c. Portogallo ([GC], n. 73049/01, § 83, ECHR 2007-I), e, più analiticamente, in Zagrebačka banka d.d. c. Croatia (n. 39544/05, §§ 250-251, 12 dicembre 2013).

62. Come la sua giurisprudenza dimostra, il compito della Corte nella presente controversia è valutare perciò se la decisione dei giudici nazionali di vendere la casa del ricorrente era conforme alla legge nazionale e, se sì, se non era arbitraria o manifestamente irragionevole.

63. In questa connessione la Corte dapprima nota che la decisione dei giudici nazionali di vendere la casa del ricorrente aveva una base legale nella legge nazionale, perché era fondata sulla sezione 97(4) della legge sulle esecuzioni. Anche se le disposizioni transitorie delle Riforme del 2003 e del 2005 (vedi paragrafi 27-28 sopra) possono dar luogo a differenti interpretazioni in ordine a quale versione fosse applicabile al tempo dei fatti, le parti sembrano concordare che fosse quella del 1999 (vedi paragrafi 25-26 sopra). La Corte non vede ragioni per statuire diversamente.

64. Comunque, la Corte nota pure che in un certo numero di casi la Corte costituzionale croata e la Corte suprema croata hanno ritenuto che applicare la detta disposizione meccanicamente e vendere la proprietà immobiliare dei debitori per un prezzo simbolico (da 1 kuna a 15.560 kune) insufficiente a soddisfare le pretese dei creditori era contrario alla Costituzione e alla legge (vedi paragrafi 33-40 sopra). Per di più, nella sua decisione n. Rev. 701/14-2 del 4.11.14 la Corte suprema si è spinta a concludere che la disposizione in questione era per la sua intima natura contraria al comune senso morale e pertanto socialmente inaccettabile e che, senza che contasse che era stata in vigore, "era un'istituzione legale immorale, per cui una vendita basata su un'istituzione di tale immoralità è nulla" (vedi paragrafo 40 sopra). Infine, nella relazione di accompagnamento alla legge che ha abrogato quella disposizione, il Governo della Croazia ha affermato che quella era

“ingiusta e irragionevole”, apriva la porta a “vari abusi” ed era contraria al diritto di proprietà costituzionalmente garantito (vedi paragrafo 41 sopra).

65. La Corte ribadisce ancora una volta che il principio di legalità esige che le disposizioni nazionali applicabili siano sufficientemente accessibili, precise e prevedibili nella loro applicazione (v., per es., Centro Europa 7 s.r.l. e Di Stefano c. Italia [GC], n. 38433/09, § 187, ECHR 2012). In particolare, una regola è “prevedibile” quando un individuo è in grado – se del caso con appropriato consiglio [tecnico] – di prevedere, fino ad un grado che è ragionevole secondo le circostanze, le conseguenze che una azione data può produrre (ibid., § 141), e quando essa offre una misura di protezione contro interferenze arbitrarie da parte delle autorità pubbliche (ibid., § 143).

66. A tale riguardo la Corte nota che le conseguenze negative derivanti dalla rigida applicazione della sezione 97(4) della legge sulle esecuzioni hanno motivato la Corte costituzionale e la Corte suprema ad intervenire per fornire un’interpretazione più flessibile di quella disposizione (vedi paragrafi 33-40 e 64 sopra). Comunque, i loro lodevoli tentativi di alleviare quelle conseguenze sono esitati in una sfortunata situazione, perché i criteri per vendere la proprietà ad un terzo pubblico incanto sono diventati confusi e difficili da prevedere (così creando incertezza del diritto), e troppo spazio è stato lasciato per applicazioni divergenti della legge. L’intervento legislativo della Riforma del 2003, entrato in vigore l’8.11.03 (vedi paragrafo 27 sopra), infine mise una fine a questa situazione.

67. Nel caso del ricorrente questa imprevedibilità è illustrata dal fatto che dapprima la Corte di contea di Sisak, nella sua decisione del 1.4.09, considerò la vendita della sua casa, del valore di 384.197 kune, per sole 50.000 kune contraria alla legge (vedi paragrafo 14 sopra), mentre intorno ad un anno e mezzo più tardi, nella sua decisione del 20.10.10, la stessa corte considerò accettabile la vendita di quella proprietà a 70.000 kune (vedi paragrafo 18 sopra). Nel far questo, la Corte omise di spiegare come vendere la proprietà del ricorrente per un extra di 20.000 kune potesse ovviare alle criticità espresse nella sua precedente decisione.

68. Infine, la Corte nota che, salvo che per il periodo durante il quale la Riforma del 1999 è stata in vigore, la disciplina nazionale sulle esecuzioni non ha mai ammesso la vendita degli immobili per meno di un terzo del suo valore come stimato da un esperto nominato dal giudice (v. paragrafi 24-29 sopra). Nel caso di specie, la proprietà del ricorrente è stata venduta per molto meno di quello (vedi paragrafi 10 e 15 sopra).

69. Le precedenti considerazioni sono sufficienti a consentire alla Corte di concludere che, poiché la legislazione applicabile al tempo dei fatti mancava della richiesta protezione contro le interferenze arbitrarie da parte delle pubbliche autorità (vedi paragrafi 65-66 sopra), la decisione dei giudici nazionali di vendere la casa del ricorrente per meno di un terzo del valore stabilito dal perito nominato dal giudice non era legittima nelle circostanze date.

70. C’è stata, pertanto, una violazione dell’art. 1 del protocollo n. 1 [addizionale] alla Convenzione.

…

A. DANNI

72. Il ricorrente chiede 314.197 kune a titolo di danno patrimoniale – quale differenza tra il valore stabilito dall’esperto nominato dal giudice di 384.197 kune (vedi paragrafo 10 sopra) e il prezzo di 70.000 kune per il quale è stato venduto il bene.

73. Il Governo contesta questa pretesa.

74. La Corte ribadisce che, salvo che per il periodo in cui è stata in vigore la riforma del 1999, la legislazione nazionale sull’esecuzione non ha mai consentito una vendita dell’immobile del debitore per meno di un terzo del suo valore, come stabilito da un perito nominato dal giudice (vedi paragrafo 68 sopra). La Corte riconosce pertanto appropriato riconoscere al ricorrente la differenza tra l’ammontare per il quale la sua casa è stata venduta (vedi paragrafo 15 sopra) e un terzo del suo valore, come stabilito dal perito nominato dal giudice (vedi paragrafo 10 sopra). Pertanto riconosce al ricorrente € 7.870 a titolo di danno patrimoniale, più ogni tassa che fosse dovuta su tale importo.

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THE EUROPEAN COURT OF HUMAN RIGHTS

SECOND SECTION

CASE OF LJASKAJ v. CROATIA

(Application no. 58630/11)

JUDGMENT

STRASBOURG

20 December 2016

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Ljaskaj 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,
Stéphanie Mourou-Vikström,
Georges Ravarani, judges,

and Stanley Naismith, Section Registrar,

Having deliberated in private on 22 November 2016,

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

PROCEDURE

1. The case originated in an application (no. 58630/11) 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 Prek Ljaskaj ("the applicant"), on 8 September 2011.

2. The applicant was represented by Mr D. Pedić, an advocate practising in Popovača. The Croatian Government ("the Government") were represented by their Agent, Ms Š. Stažnik.

3. The applicant alleged that a decision to sell his house in enforcement proceedings for less than one-fifth of its value had been in breach of the Convention.

4. On 28 May 2014 the complaint concerning the applicant's right of property was communicated to the Government and the remainder of the application was declared inadmissible, pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1942 and lives in Kutina.

6. On 12 February 1989 he concluded a sale contract with Ms M.A., Mr J.A. and Mr Z.A. whereby they sold him a house in Kutina for 47,000 German marks (DEM). Because the applicant actually paid only DEM 30,000 they brought a civil action against him in the Kutina Municipal Court (Općinski sud u Kutini) seeking payment of the remaining DEM 17,000.

7. By a judgment of the Kutina Municipal Court of 20 May 1994, which became final on 30 November 1994, the applicant was ordered to pay to the sellers (hereinafter "the creditors") the equivalent of DEM 17,000 in domestic currency, together with accrued statutory default interest (running from 15 December 1989) and the costs of the proceedings.

8. On 12 March 2003 the creditors applied to the same court (hereinafter "the enforcement court") for enforcement of that judgment. Specifically, they sought (a) the equivalent of 8,691.96 euros (EUR) in Croatian kunas (HRK), together with accrued statutory default interest running from 15 December 1989, (b) the costs of the above civil proceedings in the amount of HRK 1,860, together with accrued statutory default interest (running from 20 May 1994), and (c) the costs of the enforcement proceedings.

9. On 18 March 2003 the enforcement court issued a writ of execution (rješenje o ovrsi) in respect of the seizure and sale of the applicant's immovable property, in particular his house, with a view to settling the creditors' claim.

10. During the enforcement proceedings a court-appointed expert assessed the value of the applicant's house at HRK 384,197[1].

11. After two unsuccessful attempts on 16 February and 23 March 2005 to sell it through public auction, the enforcement court on 13 April 2005 at a third public auction sold the house and awarded it to the enforcement creditors for HRK 100,000. In so doing it relied on section 97(4) of the 1996 Enforcement Act, as amended in 1999, (hereinafter "the 1999 Amendments") under which at a third public auction a debtor's immovable property could be sold without restrictions regarding the lowest price (see paragraphs 25-26 below).

12. Since the creditors did not pay the purchase price within the set time-limit, on 28 November 2006 the court set aside its decision of 13 April 2005 and re-ran the third public auction.

13. At a third public auction, held on 10 December 2008, the enforcement court sold the applicant's house and awarded it to a certain Mr D.D. for HRK 50,000[2]. The court again based its decision on section 97(4) of the 1996 Enforcement Act, as amended by the 1999 Amendments (see paragraph 11 above and paragraphs 25-26 below).

14. Following an appeal by the applicant, on 1 April 2009 the Sisak County Court (Županijski sud u Sisku) quashed the decision of 10 December 2008 to award the applicant's house to Mr D.D. and remitted the case. It held that the enforcement court had misinterpreted section 97(4) and that the contested decision was in breach of section 6 of the Enforcement Act because that court had not sufficiently respected the applicant's dignity and the requirement that the enforcement be the least onerous for the debtor (see paragraph 30 below). It noted that the purchase price was not sufficient

to cover even half of the debt, which on 13 April 2005 had amounted to HRK 107,974.40[3], meaning that the sale of the applicant's house had not achieved the main purpose of the enforcement proceedings – namely, the settlement of the creditors' claim. The relevant part of that decision reads:

"The enforcement debtor ... justly complains about the sale of the property [in question] ... for an amount significantly lower than its established value.

...

By having sold for HRK 50,000 a property [worth] HRK 384,197, the first-instance court evidently misinterpreted ... [section 97(4) of the Enforcement Act].

That is so because the rule contained in section 97(4) is not of a mandatory nature [ius cogens], as it merely allows that property ... to be sold at a third public auction without restrictions regarding the lowest price ... (the text of that provision literally reads ' ... may be sold ...').

... the enforcement court has to interpret the said provision in the light of the basic principles of [enforcement] procedure, as well as in accordance with the purpose sought to be achieved by the proceedings.

By selling for HRK 50,000 property [worth] HRK 384,197 and awarding it to the buyer, the first-instance court breached section 6 of the Enforcement Act, which imposes the duty on an enforcement court, in carrying out an enforcement, to respect the debtor's dignity and make [the enforcement] the least onerous for him or her.

Furthermore, the purpose of enforcement proceedings is to settle the claim of an enforcement creditor. Having regard to the fact that the creditors' claim in these proceedings on 13 April 2005 ... amounted to HRK 107,974.40 and that now, on account of the lapse of time and accrued [default] interest, it is [even] higher ..., given that the established value of the property is three times higher than the debt, and since the price offered at the last public auction would not settle even half of the debt, it is reasonable to conclude that accepting the said offer was in breach of section 6 of the Enforcement Act and that it cannot be held that the sale in question was carried out with a view to achieving the purpose of enforcement proceedings – namely, settling the creditor's claim."

15. In the resumed proceedings the enforcement court again scheduled a third public auction, which was held on 12 May 2009 and at which the applicant's house was again sold to D.D. but this time for HRK 70,000[4].

16. Accordingly, by a decision of 3 June 2009 the court awarded the applicant's house to D.D. The applicant appealed against that decision, arguing that his house had been sold for less than one-fifth of its value, which had not been sufficient to settle the creditors' claim in full. In so doing he referred to the reasons given by the Sisak County Court in its decision of 1 April 2009 (see paragraph 14 above).

17. On 2 October 2009 the enforcement creditors informed the enforcement court that they considered that their claim had been settled in full.

18. By a decision of 20 December 2010 the Sisak County Court dismissed the applicant's appeal and upheld the decision of 3 June 2009 to award the applicant's house to D.D. (see paragraph 16

above). The relevant part of the County Court's decision, which was served on the applicant's representative on 12 January 2011, reads:

"It is not disputed that on 3 June 2009 a third public auction was held, at which the debtor's property was sold for HRK 70,000. The third public auction was carried out in accordance with section 97(4) of the Enforcement Act, which provides that if a property is not sold at a second auction, the court shall, within 15 to 30 days [of the second auction], schedule a third auction at which the property may be sold without restrictions regarding the lowest price [calculated in proportion to its] established value."

19. On 11 February 2011 the applicant lodged a constitutional complaint alleging violations of his right to equality before the law and his right of ownership, as guaranteed by Article 14 paragraph 2 and Article 48 of the Croatian Constitution (see paragraph 22 below). In so doing he repeated, in substance, the arguments raised in his appeal.

20. On 19 May 2011 the Constitutional Court (Ustavni sud Republike Hrvatske) declared the applicant's constitutional complaint inadmissible on the grounds that the contested decision was not open to constitutional review. That decision was served on the applicant's representative on 6 June 2011.

21. Meanwhile, by a decision of 14 February 2011 the enforcement court distributed the proceeds of the sale to the enforcement creditors, and by a decision of 18 May 2011 ordered the applicant's eviction from the house. The applicant's appeals against those decisions were dismissed by the Sisak County Court.

II. RELEVANT DOMESTIC LAW

A. The Constitution

22. The relevant Articles of the Constitution of the Republic of Croatia (Ustav Republike Hrvatske, Official Gazette no. 56/90, with subsequent amendments) read:

Article 16

"(1) Rights and freedoms may be only restricted by law in order to protect the rights and freedoms of others, the legal order, public morals or health.

(2) Each restriction of rights and freedoms should be proportionate to the nature of the necessity for such a restriction in each particular case."

Article 14(2)

"Everyone shall be equal before the law."

Article 29(1)

"Everyone has the right that an independent and impartial court established by law decides fairly and within a reasonable time on his rights or obligations, or as regards suspicion or accusation of a criminal offence."

Article 48

“The right of ownership shall be guaranteed.

Ownership entails obligations. Owners and users of property shall contribute to the general welfare.”

B. Relevant legislation

1. The Constitutional Court Act

23. The relevant provision of the 1999 Constitutional Act on the Constitutional Court of the Republic of Croatia (Ustavni zakon o Ustavnom sudu Republike Hrvatske, Official Gazette no. 99/99, with subsequent amendments – hereinafter “the Constitutional Court Act”), which has been in force since 15 March 2002, reads:

V. PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Section 62(1)

“(1) Anyone may lodge a constitutional complaint with the Constitutional Court if he or she deems that the decision of a State authority, local or regional government, or a legal person vested with public authority, on his or her rights or obligations or in respect of a suspicion or accusation regarding [such person having committed] a criminal offence, has violated his or her human rights or fundamental freedoms ..., as guaranteed by the Constitution (‘constitutional rights’) ...”

2. Enforcement legislation

(a) Provisions limiting the sale of immovable property for less than a certain price

24. Section 163 of the Enforcement Procedure Act (Zakon o izvršnom postupku, Official Gazette of the Socialist Federal Republic of Yugoslavia, no. 20/78, with subsequent amendments, and Official Gazette of the Republic of Croatia nos. 53/91 and 91/92), which Act was in force between 1 October 1978 and 10 August 1996, provided that immovable property could not be sold in enforcement proceedings for less than two-thirds of its value, as established by a court-appointed expert.

25. Section 97 of the Enforcement Act of 1996 (Ovršni zakon, Official Gazette, no. 57/96, with subsequent amendments, hereinafter “the 1996 Enforcement Act”), which Act was in force between 11 August 1996 and 14 October 2012, originally provided that immovable property could not be sold in enforcement proceedings at a first public auction for less than four-fifths of its value, and at a second public auction for less than half of its value, as established by a court-appointed expert.

26. That provision was first amended by the 1999 Amendments to the 1996 Enforcement Act (Zakon o izmjenama i dopunama Ovršnog zakona, Official Gazette, no. 29/99), which entered into force on 20 March 1999. Under those Amendments immovable property could not be sold in enforcement proceedings at a first public auction for less than three-quarters of its value and at a second public auction for less than half of its value, as established by a court-appointed expert. Those amendments also provided for a third public auction at which such immovable property might be sold without restrictions regarding the lowest price.

27. The provision in question was further amended by the 2003 Amendments to the 1996 Enforcement Act (Zakon o izmjenama i dopunama Ovršnog zakona, Official Gazette, no. 173/03)

(hereinafter “the 2003 Amendments”), which entered into force on 8 November 2003. Those Amendments abolished the possibility of a third public auction by repealing the paragraph introduced by the previous amendments under which immovable property might be sold at such a third auction without restrictions. The 2003 Amendments also provided that if a property could not be sold at a second public auction (for no less than half of its value) then the enforcement proceedings had to be discontinued. The relevant transitional provision of those Amendments provided as follows:

Section 102

(1) The provisions of this Act shall apply to ongoing [enforcement] proceedings in cases where the first-instance decision has not been adopted before its entry into force.

(2) The provisions of this Act shall also apply to other [enforcement] proceedings instituted before the date of its entry into force, if in those proceedings the first-instance decision was quashed after that date and the case remitted to the first-instance court for fresh proceedings.”

28. Section 97 of the 1996 Enforcement Act was last amended by the 2005 Amendments (Zakon o izmjenama i dopunama Ovršnog zakona, Official Gazette, no. 88/05), which entered into force on 28 July 2005. Under those amendments immovable property could not be sold in enforcement proceedings at a first public auction for less than two-thirds of such property’s value, and at a second public auction for less than one-third of its value, as established by a court-appointed expert. If the property could not be sold at a second public auction (for no less than one-third of its value) then the enforcement proceedings had to be discontinued. The relevant transitional provision of those Amendments provided as follows:

Section 123

(1) The provisions of this Act shall apply to enforcement ... proceedings instituted after its entry into force.

(2) The provisions of this Act shall also apply to other enforcement ... proceedings instituted before the date of its entry into force if in those proceedings the first-decision was quashed after that date and the case was remitted to the first-instance court for fresh proceedings.”

29. Section 102 of the Enforcement Act of 2012 (Official Gazette, nos. 112/12 and 25/13), which Act entered into force on 15 October 2012, provides that immovable property cannot be sold in enforcement proceedings for less than half of its value, as established by a court-appointed expert.

(b) Other relevant provisions

30. Section 6 of the Enforcement Act of 1996 provided as follows:

Protection of the enforcement debtor’s dignity

Section 6

“In carrying out enforcement... [the enforcement court] shall respect the enforcement debtor’s dignity ... and [shall ensure] that the enforcement ... is the least onerous for him or her.”

31. Sections 69, 70 and 89 of the Enforcement Act of 1996 provided as follows:

Extent of the enforcement of financial claims

Section 69

“The enforcement of financial claims shall be ordered and carried out to the extent necessary to settle those claims.”

Protection of an enforcement debtor who is a natural person

Section 70(1) and (5)

“(1) The enforcement of financial claims cannot be carried out in respect of those assets (property or rights) of a natural person ... that are necessary to meet the basic living needs of the enforcement debtor and the persons whom he or she has a statutory duty to support.

(5) Residential property ... shall not be considered as assets necessary to meet the basic living needs of the enforcement debtor and the persons whom he or she has a statutory duty to support ...”

The complaint of insufficient [resale] value

Section 89(3)

“The court shall, depending on the circumstances, assess whether a sale is worthwhile in view of the anticipated extent of the partial settlement [of the claim] of the enforcement creditor who applied for enforcement.”

3. Civil Procedure Act

32. The relevant provision of the Civil Procedure Act (Zakon o parničnom postupku, Official Gazette of the Socialist Federal Republic of Yugoslavia no. 4/77, with subsequent amendments, and Official Gazette of the Republic of Croatia no. 53/91, with subsequent amendments), which has been in force since 1 July 1977, reads as follows:

Section 3(3)

“The court shall not give effect to the dispositions of the parties which are contrary to mandatory rules and ... public morals.”

C. Relevant practice

1. The Constitutional Court’s case-law

33. By decision no. U-III-488/2001 of 22 January 2004 the Constitutional Court quashed the decisions of the enforcement court whereby the debtor’s (complainant’s) house (home) and two plots of land worth HRK 62,267[5] had been sold to the enforcement creditor at a third public auction for HRK 1[6] in order to settle a debt of HRK 19,708[7]. The Constitutional Court found violations of the complainant’s rights to equality before the law and the right to fair proceedings, as guaranteed by Article 14 § 2 and Article 29 § 1 of the Croatian Constitution (see paragraph 22 above). It held as follows:

“By the sale of the complainant’s immovables for only HRK 1 and their acquisition by the enforcement creditor, the principle of enforcement procedure provided in section 6 of the Enforcement Act was seriously breached. The enforcement carried out by the impugned decisions did not satisfy the basic demand of enforcement proceedings – [namely,] the enforced settlement of the creditor’s claim ..., but amounts [instead] to a punishment of the enforcement debtor ...

The complainant rightly points out that in the present case section 3(3) of the Civil Procedure Act, under which a court must not give effect to the dispositions of the parties which are contrary to mandatory rules and ... public morals, was also breached.

In particular, even though section 97(4) of the Enforcement Act provides that at a third auction immovable property may be sold without restrictions regarding the lowest price, that provision in and of itself cannot exclude the application of section 3 of the Civil Procedure Act as a general rule that applies to all the dispositions of the parties in civil proceedings.

In particular, the court points to the erroneous interpretation of section 97(4) of the Enforcement Act [by] the second-instance court, [which] attributes to that provision a mandatory character (jus cogens), despite its clear and undisputed non-mandatory nature (‘the immovable property may be sold’). ... [Given] the fact that the value of the complainant’s property is three times higher than the enforcement creditor’s claim, it is therefore obvious that the enforcement courts allowed dispositions on the part of the enforcement creditor [which were] contrary to public morals and the purpose sought to be achieved by that sale (the settlement of the debt by the complainant as a joint guarantor).

...

In the opinion of this court, the errors [made] by the enforcement courts during the proceedings were of such seriousness that the complainant, as an enforcement debtor, was put in a disadvantageous position compared to the other party to the proceedings (the enforcement creditor), and that these errors have led to a situation in which the decisions adopted in the present case may, given the way in which the relevant law was applied, be considered arbitrary.

Consequently, the court finds that the complainant’s constitutional rights, as guaranteed by Articles 14 paragraph 2 and 29 paragraph 1 of the Constitution have been violated by the contested decisions.”

34. The Constitutional Court advanced the same reasons in its decision no. U-III-1112/2001 of 19 February 2004, which quashed the decision of the enforcement court whereby the debtor’s (complainant’s) one-third share in the ownership of a house (home) and in three plots of land worth DEM 65,000 had been sold to the enforcement creditor at a third public auction for HRK 1[8] in order to settle a debt of DEM 4,167. In that case the Constitutional Court found a violation of the complainant’s right to fair proceedings, as guaranteed by Article 29 § 1 of the Croatian Constitution (see paragraph 22 above).

35. By its decision no. U-III-2674/2004 of 16 February 2005 the Constitutional Court dismissed a constitutional complaint lodged by the enforcement creditor against the decisions of the enforcement courts whereby they refused to sell at a third public auction the enforcement debtor’s share in property worth HRK 281,700.35[9] to the enforcement creditor for HRK 15,650[10] in order to settle claims of EUR 2,070.07 and HRK 2,100[11].

36. Likewise, in case no. U-III-74/2003 the Constitutional Court in its decision of 15 June 2005 dismissed a constitutional complaint lodged by the enforcement creditor against the decision of the second-instance court whereby that court had reversed the decision of the first-instance enforcement court and discontinued the enforcement. By the first-instance decision the enforcement court had sold the debtor's house (which was worth HRK 388,426.80[12]) to the enforcement creditor at a third public auction for HRK 10,000[13] in order to settle a debt of HRK 600,000[14]. The Constitutional Court endorsed the reasoning of the second-instance court that by selling the debtor's house for a symbolic price the purpose of enforcement had not been achieved because the debtor had lost his property while the creditor's claim had remained unsettled.

37. By decision no. U-III-1297/2006 of 5 March 2009 the Constitutional Court quashed the decision of the enforcement court whereby the debtor's (complainant's) house and a plot of land worth HRK 410,300[15] had been sold to the enforcement creditor at a third public auction for HRK 10,000[16] in order to settle a debt of HRK 195,757.78[17]. The court found a violation of the complainant's right to fair proceedings, as guaranteed by Article 29 § 1 of the Croatian Constitution, and referred to its earlier decisions (see paragraphs 22 and 33-34 above). It held as follows:

"The sale of the complainant's immovable property, which was – despite its established value of HRK 410,300 – sold at public auction for HRK 10,000, does not comply with the principle of proportionality, or with the aim and purpose of enforcement proceedings.

...

The Constitutional Court notes that under section 97(4) of the Enforcement Act [as amended by the 1999 Amendments] at a third public auction an [enforcement] court may sell immovable property without restrictions regarding the lowest price ..., but does not have to do so because that provision is not of a mandatory nature.

The Constitutional Court emphasises that this statutory authority does not exclude the principle of proportionality. [That means that] when selling immovable property at a third public auction without restrictions regarding the lowest price ... the court should take into account the purpose of enforcement, which is to settle the enforcement creditor's claim.

The Constitutional Court finds that in this case, by carrying out enforcement in the manner described, the [enforcement] courts violated the principle of proportionality enunciated in Article 16 of the Constitution, because by selling the complainant's immovable property at a third public auction at a price that is far below [its] established value ... the purpose of enforcement proceedings – that is to say the enforced settlement of the enforcement creditor's claim – was not achieved.

In this way the constitutional right to fair proceedings guaranteed by Article 29 paragraph 1 of the Constitution has ... been violated."

38. In its decision no. U-III-5072/2013 of 9 January 2014 the Constitutional Court found a violation of the complainant's right to fair proceedings, as guaranteed by Article 29 § 1 of the Croatian Constitution (see paragraph 22 above), and quashed the decisions of the enforcement court, inter alia because the debtor's (complainant's) house (worth HRK 604,878[18]) had been sold to the enforcement creditor in order to settle a debt of 14,000 DEM and HRK 4,645.50[19].

2. The Supreme Court's practice

39. By judgment no. Gzz 265/03-2 of 22 April 2004 the Supreme Court (Vrhovni sud Republike Hrvatske) dismissed a request for the protection of legality (an extraordinary remedy) lodged by the Principal State Attorney of Croatia and upheld the lower courts' decisions whereby they had refused to sell the enforcement debtor's immovable property (worth HRK 485,846.96[20]) for HRK 1[21] with a view to settling the enforcement creditor's claim of HRK 121,509.92[22], and discontinued the enforcement proceedings. The Supreme Court held as follows:

"In the request for the protection of legality it is argued that the decision to discontinue the enforcement is contrary to section 97(4) of the Enforcement Act, as amended by the 1999 Amendments, because at a third auction the debtor's immovable property could be sold without restrictions regarding the lowest price ... It is argued that the creditor's claim, which exceeds half of the established value of the debtor's property, would be settled by such a sale.

[That section] stipulates that if the property is not sold at a second public auction, the court has to ... schedule a third public auction, at which the property may be sold without restrictions regarding the lowest price ... The phrase that the property may be sold "without restrictions" is, in view of this court, to be [interpreted in the light of] the principle ... enunciated in section 6 of the Enforcement Act, under which in carrying out enforcement [the enforcement court] must respect the enforcement debtor's dignity and [ensure] that the enforcement is the least onerous for him or her. The main purpose of enforcement is the settlement of the creditor's claim and, consequently, the fulfillment of the debtor's obligations. Carrying out an enforcement which does not lead to even the partial settlement of the creditor's claim is contrary to the purpose for which enforcement is being carried out, because the debtor still has to settle the creditor's claim, but is at the same time left without the object in respect of which the enforcement was ordered and carried out. Having regard to the foregoing, the lower courts did not misapply the provisions of the Enforcement Act when they refused the creditor's offer made at the public auction of 8 October 2001, which resulted in the discontinuation of the enforcement."

40. By decision no. Rev 701/14-2 of 4 November 2014 the Supreme Court ruled in favour of the heirs of the enforcement debtor and declared enforcement inadmissible in the case (in which the house of the enforcement debtor, the value of which had been assessed at HRK 201,748.80[23], had been sold to the enforcement creditor – a bank – for HRK 1[24]). It held as follows:

"Having regard to the purpose of and the rationale behind the public auction of mortgaged immovable property – namely, settling the creditor's claim from the proceeds of the sale – it cannot but be concluded that [this] purpose was not achieved by selling [the debtor's] mortgaged property at public auction for HRK 1 only ... and by awarding the property sold in this way to the [creditor], ... [T]he creditor's claim has remained unsettled, despite the sale of the mortgaged property.

It is true that the legal basis for doing so existed in section 97(4) of the Enforcement Act, as in force at the time. However, given the effects of the application of that provision in the present case, namely:

- that the purpose of the enforcement was not achieved by selling the property at public auction for only HRK 1,

- that the [creditor] for the amount of HRK 1 bought the property that constituted [the debtor's] family home, the value of which had been previously established in the enforcement proceedings at HRK 201,748.80,

it cannot but be concluded that such purchase of the immovable property was based on a provision which by its very nature was contrary to public morals and as such socially unacceptable. That this is [indeed] so is witnessed by the fact that the legislature, recognising the negative effects of section 97(4) of the Enforcement Act, amended the said provision by [passing] the 2003 Amendments, which stipulated that if property was not sold at a second public auction, the court had to discontinue the proceedings.

... under section 6 of the Enforcement Act an enforcement court is required for the duration of the entire enforcement proceedings to respect the dignity of the debtor [in question], and by applying section 3 of the Civil Procedure Act must not give effect to [parties'] dispositions which are contrary to public morals.

To sell in enforcement proceedings someone's house for the amount of HRK 1, which for him and his family has the character of a family home, [and] where the value of the house being sold has been set at over HRK 200,000, is not only demeaning for that person but actually amounts to a violation of that person's dignity to the point of it being degrading. That is certainly contrary to section 6 of the Enforcement Act.

Therefore, regardless of the fact that section 97(4) of the Enforcement Act was in force at the time that the [the enforcement] creditor bought the [the debtor's] property, the said provision was essentially an immoral legal institution, which is why a sale based on such an immoral institution results in nullity, within the meaning of section 103 of the Obligations Act."

D. Other relevant documents

41. The relevant part of the explanatory report on the final version of the draft amendments to the Enforcement Act of August 2003 which the Government of Croatia presented to the Croatian Parliament, which led to the adoption of the 2003 Amendments to the Enforcement Act (see paragraph 27 above), reads as follows:

"The provisions [of section 97 of the Enforcement Act] proposed to be repealed allow the sale of immovable property at a third public auction even for the sum of 1 HRK. That is unjust and unreasonable, and at the same time [gives scope for] various abuses.

If at a third public auction the enforcement creditor buys the immovable property, the enforcement debtor will lose it but will not free himself of the debt. ...

Any provision which allows that someone, without the consent of the owner, almost for free, acquires ownership of [that owner's] property is contrary to Article 48 of the Croatian Constitution."

THE LAW

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

42. The applicant complained, under Article 6 § 1 of the Convention, that his house had been sold in the enforcement proceedings for less than one-fifth of its value. The Court, being master of the characterisation to be given in law to the facts of the case, considers, having regard to its case-law (see, for example, Kanala v. Slovakia, no. 57239/00, 10 July 2007, Zehentner v. Austria, no. 20082/02, §§ 33 and 70-79, 16 July 2009, and Rousk v. Sweden, no. 27183/04, 25 July 2013), that

this complaint falls to be examined under Article 1 of Protocol No. 1 to the Convention, which reads as follows:

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

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

43. The Government contested that argument.

A. Admissibility

1. The submissions of the parties

44. The Government submitted that the applicant had failed to comply with the six-month rule because he had mistakenly believed that the constitutional complaint he had lodged against the second-instance decision of 20 December 2010 (see paragraphs 18 above) had constituted an effective remedy to be used for the purposes of Article 35 § 1 of the Convention, and had thus been capable of interrupting the running of the six-month time-limit prescribed in that Article.

45. They explained that, according to the established practice of the Constitutional Court, decisions adopted in the context of enforcement proceedings whereby a debtor’s property sold at a public auction was awarded to the highest bidder were not open to constitutional review by means of an individual constitutional complaint. That practice had been further publicised by the Constitutional Court’s publication on its website of the instructions for filling out a constitutional complaint form – a document containing a list of decisions not open to constitutional review. Decisions adopted in the context of enforcement proceedings whereby a debtor’s property sold at a public auction was awarded to the highest bidder had been on that list. In the Government’s view, the applicant, who had been represented by an advocate, should have been aware of that practice.

46. Consequently, the final decision within the meaning of Article 35 § 1 of the Convention for the purposes of calculating the six-month time-limit in the applicant’s case was not the Constitutional Court’s decision of 19 May 2011 (see paragraph 20 above), but the Sisak County Court’s decision of 20 December 2010, which had been served on his representative on 12 January 2011 (see paragraph 18 above). However, he had lodged his application with the Court on 8 September 2011 (see paragraph 1 above) – that is to say, more than six months later.

47. The applicant did not comment on this issue.

2. The Court’s assessment

48. The Court first notes that in the case of Vrtar v. Croatia (no. 39380/13, §§ 71-85, 7 January 2016), it has already rejected a similar objection raised by the Government and sees no reason to reach a different conclusion in the present case. That is so because under section 62 of the Constitutional Court Act, anyone who considers that his or her rights, as guaranteed by the Constitution, have been infringed by a decision of a State or public authority determining any of his rights or obligations may lodge a constitutional complaint against such a decision (see paragraph 23 above), it being understood that the right of ownership (on which the applicant relied in his

constitutional complaint – see paragraph 19 above) is, like the right to a hearing within a reasonable time in the Vrtar case, guaranteed by the Croatian Constitution (see paragraph 22 above).

49. In any event, the Court notes that the Constitutional Court has examined on the merits more than a few constitutional complaints similar to that of the applicant and quashed a number of decisions delivered by enforcement courts whereby debtors' immovable property had been sold at third public auctions without restrictions regarding the lowest price (see paragraphs 19, 33-34 and 37-38 above).

50. In view of the above, the Government's objection regarding the applicant's alleged non-compliance with the six-month rule must be dismissed.

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

B. Merits

1. The submissions of the parties

(a) The applicant

52. The applicant argued that the decision to sell his house in the enforcement proceedings for less than one-fifth of its value had been contrary to the Enforcement Act and the consistent case-law of the domestic courts, which had prohibited the sale of immovable property in enforcement proceedings for such low amounts (see paragraphs 33-34 and 37-40 and above).

53. The applicant submitted that the sale of his house had indeed been based on section 97(4) of the Enforcement Act, as in force at the material time (see paragraph 26 above). However, that did not mean that the sale had been lawful. He emphasised that the provision in question had not been of a mandatory nature (jus cogens) and had only allowed for the possibility to sell immovable property without restrictions regarding the lowest price. That provision had had to be interpreted in the light of other provisions of the Enforcement Act, especially in the light of the principle enunciated in its section 6, under which the enforcement court had had to respect the enforcement debtor's dignity and ensure that the enforcement would be the least onerous for him or her (see paragraph 30 above). In support of his arguments he relied on the views expressed in the Sisak County Court's decision of 1 April 2009 (see paragraph 14 above).

54. The applicant further argued that the purpose of enforcement proceedings was to settle creditors' claims in a manner that ensures that debtors' dignity is respected and the enforcement was the least onerous for them. In the present case the applicant's house (worth HRK 384,197) had been sold for only HRK 70,000 to settle the creditors' claim of HRK 107,974.40. This had meant that his debt had not been paid but that he had nevertheless lost his house. His dignity had thus been severely violated while the purpose of the enforcement proceedings had not been achieved.

(b) The Government

55. The Government argued that the decisions of the domestic courts to sell the applicant's house had not been unlawful, arbitrary or manifestly unreasonable.

56. As regards lawfulness, the Government first submitted that the domestic courts had applied the correct version of section 97(4) of the Enforcement Act, namely, the one amended by the 1999 Amendments (see paragraph 26 above). The Government explained that the impugned enforcement proceedings had been instituted and the writ of execution issued on 12 and 18 March 2003 respectively (see paragraphs 8-9 above). That had been before the entry into force of the later 2003 Amendments on 8 November 2003, under which immovable property could be sold at the latest at a second public auction and for a minimum of one-third of its value. Having regard to the transitional provisions of the 2003 Amendments (see section 102 of the 2003 Amendments in paragraph 27 above), that meant that the earlier 1999 Amendments had applied. Those earlier amendments had allowed the sale of immovable property at a third public auction at any price, it being understood that that had been a possibility rather than an obligation, as stated by the Sisak County Court in its decision of 1 April 2009 (see paragraph 14 above).

57. As regards the issue of whether the domestic courts' decisions to sell the applicant's house had been arbitrary or manifestly unreasonable, the Government first submitted that the applicant's debt had stemmed from his failure to pay part of the purchase price for his house; that debt had been incurred back in 1989 (see paragraph 6 above). This meant the applicant had had twenty years to settle that debt voluntarily and thereby prevent the sale of his house in enforcement proceedings. He had not done so, even after the attempts to sell the house at the first and the second public auctions had failed (see paragraph 11 above), which had opened the possibility of the house being sold at a third public auction without restrictions regarding the lowest price.

58. It was true that on 1 April 2009 the Sisak County Court had quashed the first-instance decision whereby the applicant's house had been sold at a third public auction for HRK 50,000. It had held that by allowing that sale the enforcement court had not, contrary to section 6 of the Enforcement Act, sufficiently respected the applicant's dignity and the requirement that the enforcement be the least onerous for him. The County Court had come to that conclusion, inter alia, because the amount for which the applicant's house had been sold had not been sufficient to settle even half of the debt, which had frustrated the very purpose of the enforcement, namely, the settlement of the creditors' claim (see paragraph 14 above).

59. However, these concerns had been addressed in the subsequent course of the enforcement proceedings. In particular, the applicant's house had been sold for a higher amount (see paragraph 15 above) and it had been evident that it could not have been sold for more. Moreover, the purpose of enforcement had been achieved because the creditors had stated that in receiving that amount they considered their claim to have been settled in full (see paragraph 17 above).

60. Having regard to the foregoing and the fact that the creditors' claim had had to be settled, the Government argued that the decision to sell the applicant's house in the enforcement proceedings in question could not be considered arbitrary, manifestly unreasonable or otherwise contrary to his right to peaceful enjoyment of his possessions.

2. The Court's assessment

61. The Court notes at the outset that the enforcement proceedings in the present case concern a civil-law dispute between private parties. Relevant principles emerging from the Court's case-law in such type of cases are summarised in Anheuser-Busch Inc. v. Portugal ([GC], no. 73049/01, § 83, ECHR 2007-I), and, in more detail, in Zagrebačka banka d.d. v. Croatia (no. 39544/05, §§ 250-251, 12 December 2013).

62. As its case-law bears out, the Court's task in the present case is therefore to assess whether the domestic courts' decision to sell the applicant's house was in accordance with domestic law and, if so, whether it was not arbitrary or manifestly unreasonable.

63. In this connection the Court first notes that the domestic courts' decision in the present case to sell the applicant's house had a legal basis in domestic law as it was based on section 97(4) of the Enforcement Act. Even though transitional provisions of the 2003 and 2005 Amendments to that Act (see paragraphs 27-28 above) may give rise to different interpretations as to which version of that provision was applicable at the material time, the parties seem to agree that it was the one amended by the 1999 Amendments (see paragraphs 25-26 above). The Court sees no reason to hold otherwise.

64. However, the Court also notes that in a number of cases the Croatian Constitutional Court and the Supreme Court have expressed the view that applying the said provision mechanically and selling debtors' immovable property for a symbolic price (ranging from HRK 1 to HRK 15,650) not sufficient to settle the creditors' claims was contrary to the Constitution and the law (see paragraphs 33-40 above). What is more, in its decision no. Rev 701/14-2 of 4 November 2014 the Supreme Court even went so far as to conclude that the provision in question was "by its very nature contrary to public morals and as such socially unacceptable" and that, regardless of the fact that it had been in force, "it was an essentially immoral legal institution, which is why a sale based on such an immoral institution results in nullity" (see paragraph 40 above). Lastly, in the explanatory report on the bill which resulted in the enactment of legislation that abolished that provision, the Government of Croatia stated that it was "unjust and unreasonable", opened the door to "various abuses", and was contrary to the constitutionally-guaranteed right of ownership (see paragraph 41 above).

65. The Court further reiterates that the principle of lawfulness also presupposes that the applicable provisions of domestic law are sufficiently accessible, precise and foreseeable in their application (see, for example, Centro Europa 7 S.r.l. and Di Stefano v. Italy [GC], no. 38433/09, § 187, ECHR 2012). In particular, a rule is "foreseeable" when an individual is able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (ibid., § 141), and when it affords a measure of protection against arbitrary interferences by the public authorities (ibid., § 143).

66. In this respect the Court notes that the negative consequences ensuing from the rigid application of section 97(4) of the Enforcement Act prompted the Constitutional Court and the Supreme Court to intervene by providing a more flexible interpretation of that provision (see paragraphs 33-40 and 64 above). However, their laudable attempts to alleviate those consequences resulted in an unfortunate situation wherein the criteria for selling property at a third public auction became blurred and difficult to foresee (thus creating legal uncertainty), and too much room was left for diverging applications of the law. The legislative intervention in the form of the 2003 Amendments, which entered into force 8 November 2003 (see paragraph 27 above), finally put an end to this situation.

67. In the applicant's case this unforeseeability is illustrated by the fact that the Sisak County Court first, in its decision of 1 April 2009, considered the sale of his house, worth HRK 384,197, for HRK 50,000, contrary to the law (see paragraph 14 above), whereas around one and a half years later, in its decision of 20 December 2010, the same court considered acceptable the sale of that property for HRK 70,000 (see paragraph 18 above). In so doing that court failed to explain how selling the applicant's property for an extra HRK 20,000 addressed the concerns expressed in its earlier decision.

68. Lastly, the Court notes that, save for the period during which the 1999 Amendments were in force, the domestic enforcement legislation has never allowed the sale of immovable property for below one-third of its value, as established by a court-appointed expert (see paragraph 24-29 above). In the present case the applicant's property was sold for much less than that (see paragraphs 10 and 15 above).

69. The foregoing considerations are sufficient to enable the Court to conclude that, because the legislation applicable at the material time lacked the requisite protection against arbitrary interferences by the public authorities (see paragraphs 65-66 above), the domestic courts' decision to sell the applicant's house for less than one-third of the value established by the court-appointed expert was not lawful in the given circumstances.

70. There has, accordingly, been a violation of Article 1 of Protocol No. 1 to the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

71. 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

72. The applicant claimed HRK 314,197 in respect of pecuniary damage – that is the amount arrived at by deducting the HRK 70,000 for which his house was sold from HRK 384,197 (its value, as established by the court-appointed expert – see paragraph 10 above).

73. The Government contested that claim.

74. The Court reiterates that, save for the period in which the 1999 Amendments were in force, the domestic enforcement legislation has never allowed the sale of debtors' immovable property for less than one-third of its value, as established by court-appointed experts (see paragraph 68 above). The Court therefore finds it appropriate to award the applicant the difference between the amount for which his house was sold (see paragraph 15 above) and one-third of its value, as established by the court-appointed expert (see paragraph 10 above). It therefore awards the applicant EUR 7,870 in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

75. The Court further notes that the applicant did not submit any claim in respect of non-pecuniary damage. It therefore does not award him any sum under that head.

B. Costs and expenses

76. The applicant did not submit any claim for costs and expenses incurred in the proceedings before the domestic courts or before this Court. The Court therefore considers that there is no call to award him any sum on that account.

C. Default interest

77. 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

1. Declares, unanimously, the application admissible;

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

3. Holds, by five votes to two,

(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, EUR 7,870 (seven thousand eight hundred and seventy euros), plus any tax that may be chargeable, in respect of pecuniary damage, to be converted into Croatian kunas at the rate applicable at the date of settlement:

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

4. Dismisses, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 December 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley NaismithIşıl Karakaş
RegistrarPresident

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

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

JOINT DISSENTING OPINION OF JUDGES LEMMENS AND RAVARANI

1. To our regret we are unable to join the majority in their finding of a violation of Article 1 of Protocol No. 1 to the Convention.

A. The complaint, and the majority's approach to it

2. First of all, we would like to note that the applicant complained about the application by the enforcement court of section 97(4) of the Enforcement Act, as amended in 1999. According to the applicant, the said provision did not oblige the court to sell the property at any price during a third auction. He argued that on the basis of that provision, read in combination with section 6 of the Act, the court could have sold the property only if the sale respected his dignity as enforcement debtor and if the enforcement was the least onerous for him. By selling his house at the price that was

offered at the third auction, the court had violated his dignity and put him in a very difficult situation, thus acting in disregard of section 6 of the Act (see paragraphs 52-54 of the judgment).

We consider that this is a complaint about the lawfulness of the court's interference with the applicant's right of property.

3. While the majority agree that the interference was based on section 97(4) of the Enforcement Act (see paragraph 63 of the judgment), they find a violation of Article 1 of Protocol No. 1 because of the lack of "foreseeability" of the provision in question (see paragraph 65 of the judgment). In our opinion, the majority thus do not examine the complaint as brought before the Court. While the applicant directed his criticism at the court applying the law, the majority direct their criticism at the legislature for having enacted a law that was not sufficiently foreseeable in its application.

It is difficult for us to accept such an approach. In our opinion, the Court should limit itself to examining the complaint as brought by the applicant.

B. The Court's limited role in reviewing whether domestic law has been correctly interpreted and applied by the domestic courts

4. We would also like to underline that this case is about the sale of the applicant's property in the context of enforcement proceedings. As is noted by the majority, the actions taken by the State authorities are to be situated within a horizontal relationship between creditors (Ms M.A., Mr J.A. and Mr Z.A.) and a debtor (the applicant) (see paragraph 61 of the judgment).

In so far as the applicant contests the lawfulness of the decisions taken by the domestic courts, it is important to note that the Court's jurisdiction in such a context is limited. In particular, it is not its function to take the place of the domestic courts, its role being rather to ensure that the decisions of those courts are not flawed by arbitrariness or otherwise manifestly unreasonable (see Anheuser-Busch Inc. v. Portugal [GC], no. 73049/01, § 83, ECHR 2007-I, and Zagrebačka banka d.d. v. Croatia, no. 39544/05, § 250, 12 December 2013, both cited in paragraph 61 of the judgment).

While the majority refer to this limited role for the Court (see paragraph 62 of the judgment), they in fact go beyond the sole assessment of the potential arbitrariness or manifest unreasonableness of the domestic courts' decisions and assess the quality of the law which has been applied in the instant case.

C. The lawfulness of the decision to sell the applicant's house

5. While our approach to the case would have been different from that of the majority, in the present separate opinion we will nevertheless also address the questions discussed by the majority. We will first examine whether the law applied by the courts was foreseeable and afforded legal protection against arbitrary application. We will then turn to the question whether the decision to sell the applicant's house was flawed by arbitrariness or otherwise manifestly unreasonable.

Whether section 97(4) of the Enforcement Act was foreseeable and afforded legal protection against arbitrary application

6. As quoted in the judgment (see paragraph 65), a rule is foreseeable when an individual is able to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action

may entail (see, among many others, Centro Europa 7 S.r.l. and Di Stefano v. Italy [GC], no. 38433/09, § 141, ECHR 2012). However, such consequences need not be foreseeable with absolute certainty. Rather, the law must be able to keep pace with changing circumstances (ibid.).

Domestic law must also afford a measure of legal protection against arbitrary interferences by public authorities with the rights safeguarded by the Convention (see paragraph 65 of the judgment). Consequently, the law must indicate with sufficient clarity the scope of any discretion conferred on the competent authorities and the manner of its exercise (see Hasan and Chaush v. Bulgaria [GC], no. 30985/96, § 84, ECHR 2000-XI; Maestri v. Italy [GC], no. 39748/98, § 30, ECHR 2004-I; Sanoma Uitgevers B.V. v. the Netherlands [GC], no. 38224/03, § 82, 14 September 2010; and also Centro Europa 7 S.r.l. and Di Stefano, cited above, § 143).

7. According to the majority, legal uncertainty was created by the Constitutional Court and the Supreme Court after they had provided a "flexible" interpretation of section 97(4) of the Enforcement Act, making the criteria for selling property at a third public auction "blurred and difficult to foresee" and leaving "too much room ... for diverging applications of the law" (see paragraph 66 of the judgment). The unforeseeability of the application of the law was, according to the majority, illustrated in the applicant's case by the fact that the Sisak County Court had first, in its decision of 1 April 2009, considered the sale of the applicant's house for HRK 50,000 contrary to the law, while the same court had later found, on 20 December 2010, that the sale of that property for HRK 70,000 was acceptable. In doing so, in the majority's view, "that court failed to explain how selling the applicant's property for an extra HRK 20,000 addressed the concerns expressed in its earlier decision" (see paragraph 67 of the judgment).

8. In our view, the text of section 97(4) of the Enforcement Act, as amended in 1999, was very clear. It provided that after two unsuccessful attempts to sell the immovable property at a minimum of respectively three-quarters and half of its value, a third auction could take place at which the property could be sold without restrictions regarding the minimum price.

It is true that the Constitutional Court and the Supreme Court indicated that the fact that the law did not set a minimum price to be obtained at the third auction did not mean that the property could be sold at any price whatsoever. Indeed, section 97(4) of the Enforcement Act had to be applied in conformity with Article 29 § 1 of the Constitution (right to fair proceedings), which implied respect for the principle of proportionality as enunciated in Article 16 § 2 of the Constitution (see the Constitutional Court's case-law cited in paragraphs 33-38 of the judgment), and in combination with section 6 of the Enforcement Act, which established the general rule that the enforcement court must respect the debtor's dignity and ensure that the enforcement is the least onerous for him or her (see in particular the Supreme Court's case-law cited in paragraphs 39-40 of the judgment).

However, we do not see how these clarifications, intended to protect debtors against a blind application of section 97(4) of the Enforcement Act, rendered the application of that provision unforeseeable. Nor do we think that the fact that the Sisak County Court arrived at different decisions illustrates that the law was unforeseeable in its application. As we will explain below (see § 10), the circumstances in December 2010 were crucially different from those in April 2009, and those differences justified the difference in outcome.

9. The majority conclude their analysis by stating that the applicable legislation lacked the required protection against arbitrary interferences by the public authorities (see paragraph 69 of the judgment). While the majority are not very clear about the grounds for coming to such a conclusion, we believe that they may in fact be relying on two elements. On the one hand, as indicated above, the majority point to the fact that the law made it possible for the Sisak County Court to uphold the sale of the applicant's house for HRK 70,000, about one and a half years after it had found that a sale for HRK 50,000 did not sufficiently respect the applicant's dignity and was too onerous for him (see paragraph 67 of the judgment). On the other hand, the majority note that, save for the period when the applicable 1999 amendments were in force, the domestic enforcement legislation had never allowed the sale of immovable property for less than one-third of its value (see paragraph 68 of the judgment).

10. We do not think that the different decisions of the Sisak County Court are an illustration of the fact that the law did not offer protection against arbitrary application by the courts. When the Sisak County Court examined on 1 April 2009 the outcome of the third auction (of 10 December 2008), it noted that the purchase price (HRK 50,000) was not sufficient to cover even half of the debt. It therefore concluded that by accepting the offer the first-instance court had breached section 6 of the Enforcement Act, and that the sale in question did not achieve the purpose of the enforcement proceedings (see paragraph 14 of the judgment). When it examined on 20 December 2010 the outcome of the new third auction (of 12 May 2009), the situation was very different: not only had the applicant's house been sold for a higher amount (HRK 70,000), but also, and more importantly, the purpose of enforcement had been achieved because the creditors' claim had been settled in full, following the latter's declaration to that effect (see paragraphs 15 and 17 of the judgment). It was in these very different circumstances that the court concluded that the new auction had been carried out in accordance with section 97(4) of the Enforcement Act (see paragraph 18 of the judgment).

We cannot but note that the law made it possible for the competent court to reject the sale when the applicant's rights had not been sufficiently respected, and to uphold it when they had been respected. There is therefore nothing, in our opinion, that warrants the conclusion that the law did not offer sufficient protection against arbitrary interferences by the courts.

The fact that in some of the earlier or later versions of section 97(4) of the Enforcement Act the legislature set a minimum price of one-third of the value of the property to be sold does not mean that the 1999 version did not allow the courts to offer the requisite protection.

Whether the decision to sell the applicant's house constituted an arbitrary or otherwise manifestly unreasonable application of the law

11. Despite the foreseeability of the relevant legal provisions, the domestic courts' decision to sell the applicant's house could still be considered arbitrary or manifestly unreasonable, and therefore constitute an "unlawful" application of domestic law, in particular having regard to the fact that the sale price amounted to less than one-fifth of the estimated value of the house (see the applicant's argument as mentioned in paragraph 52 of the judgment). This is an issue not explicitly examined by the majority. In our opinion, given the private-law context of the dispute before the domestic courts, this should have been the focus of the Court's assessment of the lawfulness of the interference with the applicant's property right.

12. At the outset we note that the applicable law did not, by the sole virtue of its provisions, automatically lead to arbitrary or manifestly unreasonable decisions by the courts. Rather, the relevant law tended to ensure a fair balance between the respective rights and interests of the creditor and the debtor in providing for three successive auctions, only the third one being able to lead to a sale for a low price, in the event that the first two auctions were unsuccessful.

Thus, the only question is whether in the present case the decision of the Sisak County Court to approve the sale of the applicant's house, pursuant to section 97(4) of the Enforcement Act in its 1999 version, was arbitrary or manifestly unreasonable.

13. In our view, the outcome of the enforcement proceedings can hardly be described as arbitrary or manifestly unreasonable.

First, it has to be recalled that the debtor (the applicant) had for many years (between 1994 and 2003) had the opportunity to settle his debt voluntarily and thereby to prevent the sale of his house. When he did not come forward, the creditors applied for enforcement of the judgment rendered in their favour, and a writ of execution was issued. In the ensuing enforcement proceedings several attempts between 2005 and 2008 to sell the house were unsuccessful. The house was eventually sold in 2009 for the amount of HRK 70,000.

Second, it is true that this amount equalled only 18.21% of the estimated value of the applicant's house (HRK 384,197). However, this percentage is to be compared to the percentages obtained in the cases that have come before the Constitutional Court and the Supreme Court, cited in paragraphs 33-40 of the judgment. In the cases where judgments of enforcement courts were quashed, the property had been sold for a symbolic price of HRK 1, or for an amount that was respectively 5.5%, 2.57%, 2.43% and 1.15% of the estimated value of the property. The amount in the present case was thus substantially higher than in the cited cases. Moreover, the value of the sale in the present case was sufficient to prompt the creditors to declare their claim to be settled in full and thus to release the applicant from his obligations. Contrary to the situations in the above-mentioned cases, the purpose of enforcement was therefore achieved by the settlement of the creditors' claim.

Third, and in line with the foregoing, we want to emphasise that, since the purpose of enforcement proceedings is the settlement of the creditors' claim, an additional comparison can be made to assess the relative value of the price obtained: under Croatian law, the theoretical value of the house to be sold is assessed by an independent expert and the outcome of the sale is compared with this value (here: HRK 384,197 to HRK 70,000). In the present case, the owner's debt was alleviated not merely by HRK 70,000, but by an additional HRK 37,974 (the part of the claim abandoned by the creditors), making a total of HRK 107,974. The sale thus reduced his liabilities by HRK 107,974. The ratio of HRK 107,974 to HRK 384,197 amounts to 28.10%. This is the real advantage the applicant received from the sale of his house as his entire debt was subsequently declared settled. This percentage is very close to the minimum of one-third set as the lowest limit at a public auction in some of the later amendments to section 97(4) of the Enforcement Act (see paragraph 68 of the judgment). It is at any rate, in our opinion, too high for the Court to step in and to declare that the outcome in the proceedings was arbitrary or manifestly unreasonable.

14. In the light of the foregoing, we therefore conclude that the domestic courts' decision to sell the applicant's house cannot be considered arbitrary or manifestly unreasonable. Contrary to the majority, we are therefore of the opinion that the impugned judgment of the Croatian enforcement court did not constitute an unlawful interference with the applicant's right to the peaceful enjoyment of his possessions.

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[1] Approximately 52,067 euros (EUR) at that time.

[2] Approximately EUR 6,940 at that time.

[3] Approximately EUR 14,587 at that time.

[4] Approximately EUR 9,486 at that time.

[5] Approximately EUR 7,779 at the time.

[6] Approximately EUR 0.12 at the time.

[7] Approximately EUR 2,462 at the time.

[8] Approximately EUR 0,13 at the time.

[9] Approximately EUR 36,738 at the time.

[10] Approximately EUR 2,041 at the time.

[11] Approximately EUR 274 at the time.

[12] Approximately EUR 53,119 at the time.

[13] Approximately EUR 1,368 at the time.

[14] Approximately EUR 82,052 at the time.

[15] Approximately EUR 55,430 at the time.

[16] Approximately EUR 1,351 at the time.

[17] Approximately EUR 26,446 at the time.

[18] Approximately EUR 79,254 at the time.

[19] Approximately EUR 609 at the time.

[20] Approximately EUR 61,663 at the time.

[21] Approximately EUR 0.13 at the time.

[22] Approximately EUR 15,422 at the time.

[23] Approximately EUR 26,295 at the time.

[24] Approximately EUR 0.13 at the time.