



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

FIRST SECTION

CASE OF BEŽANIĆ AND BAŠKARAD v. CROATIA

(Applications nos. 16140/15 and 13322/16)

JUDGMENT

Art 1 P1 • Secure the payment of taxes • Lawful and proportionate domestic court decisions ordering applicants to pay real estate transfer tax • Wide margin of appreciation in the tax sphere not overstepped

STRASBOURG

19 May 2022

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 Bežanić and Baškarad v. Croatia,

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

Marko Bošnjak, *President*,

Péter Paczolay,

Krzysztof Wojtyczek,

Alena Poláčková,

Erik Wennerström,

Raffaele Sabato,

Davor Derenčinović, *judges*,

and Liv Tigerstedt, *Deputy Section Registrar*,

Having regard to:

the applications (nos. 16140/15 and 13322/16) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Croatian nationals, Mr Aleksandar Bežanić (“the first applicant”) and Mr Stipica Baškarad (“the second applicant”), on 27 March 2015 and 4 March 2016 respectively;

the decision to give notice to the Croatian Government (“the Government”) of the complaint concerning Article 1 of Protocol No. 1 and to declare inadmissible the remainder of the applications;

the parties’ observations;

Having deliberated in private on 26 April 2022,

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

INTRODUCTION

1. The present case concerns the applicants’ complaint that the domestic authorities’ decisions ordering them to pay real estate transfer tax had been in breach of their right to the peaceful enjoyment of their possessions, as guaranteed by Article 1 of Protocol No. 1 to the Convention.

THE FACTS

2. The applicants were born in 1973 and 1966 respectively and live in Rijeka. The first applicant was represented by Mr D. Beljan and the second applicant by Ms N. Mijolović, both lawyers practising in Rijeka.

3. The Government were represented by their Agent, Ms S. Stažnik.

4. The facts of the case may be summarised as follows.

I. BEŽANIĆ V. CROATIA, APPLICATION NO. 16140/15

A. Proceedings concerning the first applicant's request for tax exemption

5. On 26 January 2007 the first applicant purchased a flat in Rijeka. On 15 March 2007 he registered as his domicile (*prebivalište*) the address of his new flat.

6. On 20 March 2007 the first applicant lodged a request for tax exemption with the tax authorities. He relied on section 11(9) of the Real Estate Transfer Tax Act, which provided for the possibility of tax exemption for citizens who were making their first real estate purchase as a means of resolving their housing needs (see paragraph 30 below).

7. On 28 March 2007 the Rijeka Tax Office (*Ministarstvo financija – Porezna uprava, Područni ured Rijeka, Ispostava Rijeka*) delivered a decision finding that the first applicant was liable to pay real estate transfer tax in the amount of 28,192.32 Croatian kuna (HRK – approximately 3,760 euros (EUR)), but under section 11(9) of the Real Estate Transfer Tax Act he was exempt from paying HRK 23,437.63 (approximately EUR 3,125) out of that amount because the flat served to resolve his housing needs. It accordingly ordered him to pay the difference between the two amounts. The decision contained the following warning:

“[The amount of real estate transfer tax that the first applicant was exempted from paying] shall be collected if the conditions set out in section 11(10) of the Real Estate Transfer Tax Act are met.”

B. Annulling the decision concerning tax exemption

8. On 18 December 2009 the first applicant registered as his domicile a different address in Rijeka.

9. On 8 September 2010 the Rijeka Tax Office found that the first applicant had changed his domicile – that is to say, he no longer lived in the flat that he had purchased in order to resolve his housing needs. Citing section 11(10) of the Real Estate Transfer Tax Act, it annulled its decision of 28 March 2007 and ordered the first applicant to pay HRK 23,437.63 (approximately EUR 3,125) in real estate transfer tax.

10. The first applicant appealed against the above decision to the Finance Ministry (*Ministarstvo Financija, Samostalna služba za drugostupanjski upravni postupak*). He contended that under section 11(10) of the Real Estate Transfer Tax Act citizens lost the right to an exemption from paying real estate transfer tax only in the event that they sold or otherwise disposed of the real estate in question less than five years after acquiring it, or if the Tax Administration of the Finance Ministry (*Ministarstvo financija, Porezna uprava* – “the Tax Administration”) subsequently found that the conditions

for tax exemption had not been complied with. That provision never stipulated that changing one's domicile would annul the right to a tax exemption.

The first applicant furthermore contended that he had registered as his domicile the address of the above-mentioned purchased flat at the time of its purchase and had remained living there for more than two years. In June 2009 he had married and had moved to his wife's flat. However, by doing so, he had not done anything that would prompt his losing the tax exemption under section 11(10) of the Real Estate Transfer Tax Act.

11. On 15 April 2013 the Finance Ministry dismissed the first applicant's appeal as unfounded.

12. On 24 May 2013 the first applicant brought an administrative action before the Rijeka Administrative Court (*Upravni sud u Rijeci*).

13. On 30 September 2014 the Rijeka Administrative Court dismissed the first applicant's administrative action as unfounded. It held that, since the first applicant had changed his domicile less than five years after acquiring the flat and had no longer used the flat for the purpose of resolving his housing needs, he had ceased to comply with the statutory conditions for the tax exemption.

14. On 29 October 2014 the first applicant lodged a constitutional complaint with the Constitutional Court (*Ustavni sud Republike Hrvatske*), arguing, *inter alia*, that there had been a violation of his property rights.

15. On 17 December 2014 the Constitutional Court dismissed the first applicant's constitutional complaint as manifestly ill-founded. That decision was served on the first applicant's representative on 28 January 2015.

16. Meanwhile, in 2011, the sum of HRK 23,617.43 (approximately EUR 3,150) was collected from the first applicant by way of enforcement (the amount of HRK 23,437.63 (approximately EUR 3,125) in tax debt, plus HRK 179.80 (approximately EUR 25) in statutory interest on that amount).

II. BAŠKARAD V. CROATIA, APPLICATION NO. 13322/16

A. Proceedings concerning the second applicant's request for tax exemption

17. On 29 December 2008 the second applicant purchased a flat in Rijeka. On 23 January 2009 he registered as his domicile the address of that flat.

18. On the same day the second applicant lodged a request with the tax authorities for him to be declared exempt from paying real estate transfer tax. He relied on section 11(9) of the Real Estate Transfer Tax Act (see paragraph 30 below).

19. On 13 March 2009 the Rijeka Tax Office delivered a decision that found that the second applicant was liable to pay real estate transfer tax in the amount of HRK 22,506 (approximately EUR 3,000), but that under section 11(9) of the Real Estate Transfer Tax Act he was exempt from paying

the relevant tax in the full amount because the flat served to resolve his housing needs. The decision contained the following warning:

“[The amount in real estate transfer tax that the second applicant was exempted from paying] shall be collected if the conditions set out in section 11(10) of the Real Estate Transfer Tax Act are met.”

B. Annulling the decision concerning tax exemption

20. On 15 July 2009 the second applicant registered as his domicile a different address in Rijeka.

21. On 2 February 2012 the Rijeka Tax Office found that the second applicant had changed his domicile – that is to say, he had not purchased the flat for the purpose of resolving his housing needs. Citing section 11(10) of the Real Estate Transfer Tax Act, it annulled its decision of 13 March 2009 and ordered the second applicant to pay HRK 22,506 (approximately EUR 3,000) in real estate transfer tax.

22. The second applicant appealed to the Finance Ministry against the above decision. He contended that at the time of his purchasing the flat he had met all the statutory conditions for being declared exempt from paying real estate transfer tax. Several months later his mother’s health condition had deteriorated, and he had decided to move to her flat in order to take care of her. Under the relevant law, as in force at the time in question, his changing his domicile could not have prompted losing his right to exemption.

23. On 2 April 2013 the Finance Ministry dismissed the second applicant’s appeal as unfounded.

24. On 17 May 2013 the second applicant brought an administrative action before the Rijeka Administrative Court.

25. On 31 October 2014 the Rijeka Administrative Court dismissed the second applicant’s administrative action as unfounded. It held that tax exemption was only granted in the event of the relevant real estate being used to resolve one’s housing needs throughout the statutory five-year period. It further held that the 2011 Amendments to the Real Estate Transfer Tax Act (see paragraph 32 below) had not changed the essence of the real estate transfer tax scheme, but had regulated more precisely tax exemption for first-time purchases of real estate by, *inter alia*, expressly providing what had earlier already existed in the interpretation of the relevant provisions.

26. On 9 December 2014 the second applicant lodged a constitutional complaint with the Constitutional Court. He reiterated his arguments, alleging, *inter alia*, that there had been a violation of his property rights.

27. On 9 July 2015 the Constitutional Court dismissed the second applicant’s constitutional complaint as manifestly ill-founded. That decision was served on the second applicant’s representative on 10 September 2015.

28. Meanwhile, in 2012 the tax debt was collected from the second applicant.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT LEGISLATION

29. Section 5 of the 2000 General Tax Act (*Opći porezni zakon*, Official Gazette nos. 127/2000, with further amendments) provided that the law to be applied in respect of taxation-related cases was the law that was in force at the moment that the circumstances serving as the basis for taxation arose.

30. The relevant provisions of the Real Estate Transfer Tax Act (*Zakon o porezu na promet nekretnina*, Official Gazette nos. 69/1997, 26/2000, 127/2000 and 153/2002), as in force from 1 January 2003 until 25 February 2011, read as follows:

Section 9(1)

“The basis [*osnovica*] for [the calculation of] real estate transfer tax is the market value of the real estate [in question] at the moment that it is acquired.”

Section 10

“The real estate transfer tax rate is 5%.”

Section 11

“Real estate transfer tax shall not be paid by:

...

(9) citizens who are making their first purchase of real estate (a flat or a house) in order to resolve their housing needs, provided that:

(9.1) they have Croatian citizenship;

(9.2.) they are registering as their domicile [*da prijavljuju prebivalište*] ... the address at which the real estate (that they are purchasing) is located;

...

(9.5.) the citizen and his or her family members do not own other real estate (a flat or a house) that meets their housing needs ...;

...

(10) The tax referred to in paragraph 9 of this section shall be collected if the flat or house is disposed of less than five years after its acquisition, or if the Tax Administration subsequently finds that the conditions for tax exemption had not been complied with [*nisu bili ispunjeni*].

...”

Section 14

“A tax obligation arises ... at the moment of the conclusion of the agreement ... by which a piece of real estate is acquired.”

31. On 23 December 2010 the Croatian Government submitted to the Croatian Parliament (*Hrvatski sabor*) a draft proposal for amendments to the Real Estate Transfer Tax Act (*Prijedlog zakona o izmjenama i dopunama Zakona o porezu na promet nekretnina*). The relevant part of the draft proposal reads:

“Section 7 – In order to facilitate the processing of applications for tax exemption in respect of first-time purchases of real estate, and to determine the right to tax exemption in a uniform manner, the proposed amendments [would insert] provisions ... [m]ore precisely defining the circumstances under which real estate transfer tax [for which an exemption is granted] could subsequently be collected. Such an approach, with IT support, will have an impact on the ability to eliminate the possibility of the right to tax exemption being used twice, and will enable the timely subsequent collection of the real estate transfer tax ... in the event that the Tax Administration subsequently finds that the conditions for the exemption were not complied with.”

32. Amendments to the Real Estate Transfer Tax Act were introduced on 26 February 2011 (Official Gazette no. 22/2011). In so far as relevant to the case at issue, sections 11(9) and 11(10) were deleted, and section 11.a was introduced, which provided as follows:

“(1) Real estate transfer tax shall not be paid by citizens who, on the basis of the purchase agreement, are acquiring their first piece of real estate (a flat or a house) in order to resolve their housing needs, provided that the following conditions are cumulatively met:

(1.1.) they have Croatian citizenship;

(1.2) the citizen [in question] and the members of his or her family register as their domicile [*prijave prebivalište*] and live at [*borave*] ... the address where the real estate (that the citizen is acquiring) is located;

...

(6) The real estate transfer tax referred to in paragraph 1 of this section, which the citizen was exempted from paying, shall be paid subsequently if less than three years after acquiring the real estate:

(6.1.) the citizen disposes of or rents out his or her real estate ...;

(6.2.) the citizen or his or her spouse deregister their domicile or do not live there, or change the address at which they live;

(6.3.) the Tax Administration subsequently finds that the conditions for tax exemption were not met [*da nisu ispunjeni*].”

...”

33. The Real Estate Transfer Tax Act (*Zakon o porezu na promet nekretnina*, Official Gazette no. 115/2016), as in force from 1 January 2017, cancelled the possibility of tax exemption for citizens who were making their first real estate purchase as a means of resolving their housing needs.

34. The Domicile and Residence of Citizens Act (*Zakon o prebivalištu i boravištu građana*, Official Gazette no. 53/1991), which was in force between 8 October 1991 and 29 December 2012, defined a citizen’s domicile

(*prebivalište*) as the place where he or she settled with the intention of permanently living there. The relevant domestic case-law and the position of legal scholars on the topic are set out in the case of *Žaja v. Croatia* (no. 37462/09, §§ 33-36, 4 October 2016).

II. RELEVANT DOMESTIC COURTS' PRACTICE CONCERNING THE REAL ESTATE TRANSFER TAX ACT AS IN FORCE BEFORE THE 2011 AMENDMENTS

A. Administrative courts' case-law

35. In judgment no. UsI-539/12-7 of 21 August 2012, the Rijeka Administrative Court held that, by renting out her flat to a third person, the complainant had not used it to resolve her housing needs. She had therefore lost her tax exemption – regardless of the fact that the Real Estate Transfer Tax Act (as in force at the time in question) had not expressly prohibited her renting out the flat, and regardless of the circumstances that had led to her renting out the flat.

36. In judgment no. UsI-1515/12-13 of 8 November 2013, the Rijeka Administrative Court held that by changing her domicile – regardless of the reasons for doing so – the complainant had ceased to comply with one of the conditions for tax exemption set out under section 11(9) of the Real Estate Transfer Tax Act.

37. In judgment no. Usž-1940/15-2 of 4 February 2016, the High Administrative Court (*Visoki upravni sud Republike Hrvatske*) held that citizens had the right to change their domicile as they wished; however, given that maintaining the same domicile and living in the purchased real estate was a condition provided by law for exemption from paying real estate purchase tax, beneficiaries of such exemption were obliged to comply with that condition for the entire period provided by law, or risk losing their tax exemption.

B. Supreme Court's case-law

38. In judgment no. Uzz 2/12-2 of 7 November 2012, the Supreme Court held that under the Real Estate Transfer Tax Act, as in force before the 2011 Amendments, the complainant had not met the conditions for exemption from paying real estate transfer tax because at the very moment of his purchasing the flat it had already been evident that he had bought it for, *inter alia*, the purpose of renting it out during the summer months.

39. In judgment no. U-zpz 3/14-5 of 29 October 2014, concerning subsequently collecting the real estate transfer tax, the Supreme Court held as follows:

“[The act of] subsequently collecting the transfer tax, by the nature of things, presupposes that a person was already exempt from paying it, but that subsequently, circumstances stipulated by law were uncovered that would have led to a refusal of the request [to be exempted from paying the tax], had the relevant authority been aware of them when deciding on that request.

Therefore, the circumstances leading to the subsequent collecting of real estate transfer tax must have existed at the moment when the tax obligation arose, but either the person failed to report them, or the tax authority failed to establish them. The exception to this rule is the only expressly regulated circumstance – if the flat or house is disposed of less than five years after the acquisition of the real estate.

Accordingly, in this court’s view, and contrary to the administrative court’s view ... the relevant circumstances on the basis of which one could be exempted from paying taxes are those that existed at the moment the tax obligation arose, and not those that existed at the moment that a request was lodged for exemption from the payment of real estate transfer tax. Hence, the fact that the applicant – after acquiring her flat (and therefore after her tax obligation in that regard arose) – married a person who owned several pieces of real estate ... was of no influence on either the determination of her tax obligation or her exemption from paying the tax.”

C. Constitutional Court’s case-law

40. In its decision no. U-III-6439/12 of 9 January 2014 the Constitutional Court dismissed a constitutional complaint lodged by a complainant, who had purchased a flat in September 2006 and a month later had married a person who owned several pieces of real estate. The administrative tax authorities and the administrative court dismissed her request for tax exemption on the grounds that her husband owned several pieces of real estate and that the flat that she had purchased had not therefore served to resolve her housing needs. The Constitutional Court deemed such a conclusion not arbitrary.

41. Constitutional Court’s decision no. U-III-2426/2010 of 23 May 2014 concerned a case in which the administrative authorities (in 2007) and the administrative court (in 2010) held that the fact that the complainant had rented out his flat less than five years after purchasing it and changed his domicile, meant that he had not used it for the purpose of resolving his housing needs and could therefore not have been exempted from paying the real estate transfer tax. The Constitutional Court deemed such a conclusion not arbitrary.

42. Constitutional Court’s decision no. U-III-1311/2014 of 17 July 2015 concerned a case in which the complainant had changed his domicile less than five years after acquiring the flat. The complainant argued that his wife and child had remained living in the purchased flat, whereas his moving to a different address for a period of three and a half years had been temporary and prompted by work-related reasons.

The Constitutional Court quashed the Rijeka Administrative Court’s judgment and remitted the case, holding that its interpretation of the relevant

provisions of the Real Estate Transfer Tax Act had been arbitrary. The relevant parts of the Constitutional Court's decision read:

“The Administrative Court upheld the findings of the administrative authorities and their interpretation of section 11(10) of the Real Estate Transfer Tax Act that the term ‘disposing of [the real estate]’ could have the meaning of ‘changing domicile’ ...

The Constitutional Court is of the view that ... the interpretation of the Administrative Court – according to which subsequently changing domicile was sufficient [justification] not to grant the citizen tax exemption – did not follow from the relevant provisions of the Real Estate Transfer Tax Act.

Accordingly, the Constitutional Court cannot but find that the manner in which the Administrative Court interpreted and applied the relevant tax provisions in the particular case was anything but arbitrary... leading to a breach of the ... right to a fair trial...”

III. TAX ADMINISTRATION DOCUMENTS

43. The Government submitted the following documents, which had been issued by the Tax Administration:

44. A document entitled “Instruction regarding the manner of establishing the right to be exempt from paying real estate transfer tax on the basis of section 11(9), (11) and (13) of the Real Estate Transfer Tax Act” (*Uputa o načinu utvrđivanja prava na oslobođenje od plaćanja poreza na promet nekretnina temeljem članka 11. točka 9., 11. i 13. Zakona o porezu na promet nekretnina*). The relevant part of the document – issued on 20 January 2003, and intended for the use of the Tax Administration's local offices, read:

“The Tax Administration's local offices must keep a special registry of persons granted exemptions from paying real estate transfer tax on the basis of section 11 (9), (11) and (13) of the Real Estate Transfer Tax Act ... The Registry must contain information about the buyer and the seller of the real estate [in question], the date on which the agreement was concluded, and the number and date of the decision delivered. The date on which the agreement was concluded should be registered in order to oversee the five-year time-limit within which real estate transfer tax will be collected in the event that the conditions on the basis of which the exemption was granted cease to exist. If the buyer disposes of the real estate less than five years after purchasing it ... and he or she had been exempted from paying the relevant real estate transfer tax, the Tax Administration's local office shall collect the tax that he or she had been exempt from paying.”

45. The fifth edition of a brochure entitled “Taxation of real estate transfers” (*Oporezivanje prometa nekretnina*), issued in 2006, in so far as relevant for the present case, stated that an amount calculated in real estate transfer tax (but subject to exemption) would subsequently be collected if the flat or house was disposed of less than five years after its acquisition, or if the Tax Administration subsequently found that the conditions for the granted tax exemption had not been complied with.

46. Documents entitled “Tax Manual for Citizens” (*Porezni priručnik za građane*), issued in 2007, 2008 and 2009, in so far as relevant for the present case, contained the same information as the brochure above.

THE LAW

I. JOINDER OF THE APPLICATIONS

47. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

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

48. The applicants complained that, in ordering them to pay real estate transfer tax, the domestic authorities had infringed their right to peaceful enjoyment of their possessions as provided in Article 1 of Protocol No. 1 to the Convention, which reads as follows:

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

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

A. Admissibility

49. The Court notes that the complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. *The parties’ submissions*

(a) **The applicants**

50. The applicants submitted that the manner in which the domestic authorities had interpreted and applied section 11(10) of the Real Estate Transfer Tax Act in respect of their respective cases had been arbitrary and contrary to the principle of legal certainty. The law in force at the time had not prohibited first-time purchasers of real estate from changing their domicile less than five years after acquiring that real estate; it had only prohibited them from disposing of it – that is to say selling it or transferring its ownership to a third person in some other way.

51. They argued that they had purchased their respective flats for the purpose of resolving their housing needs. The first applicant submitted that he had moved to a different flat only after more than two years had passed, following his marriage. The second applicant contended that, even though some time after purchasing the flat he had changed his domicile in order to be able to care for his sick mother, his wife and two children had remained living in the purchased flat.

52. The applicants furthermore contended that at the moment of the respective purchases and the delivery of the respective decisions on tax exemption, they had complied with all the conditions for exemption from paying taxes, and that that was the only relevant consideration. In that regard, the first applicant relied on Supreme Court judgment no. U-zpz 3/14-5 of 29 October 2014 (see paragraph 38 above).

53. The first applicant added that the sum which the State had collected from him, had represented a significant amount of money for him.

(b) The Government

54. The Government contended that the purpose of tax exemption under section 11(9) of the Real Estate Transfer Tax Act was to encourage and facilitate citizens' efforts to resolve their housing needs by purchasing their first real estate. The aim of section 11(10) of the Real Estate Transfer Tax Act was to prevent abuse of the tax exemption system by checking whether citizens who had purchased their first real estate had really purchased it for the purpose of resolving their housing needs. The 2011 Amendments expressly provided what had previously already existed in practice.

55. The Government submitted that in the relevant period all tax officials had acted on the basis of the Instruction issued by the Tax Administration in 2003 (see paragraph 44 above). Namely, tax officials would periodically verify whether the conditions for exemption from paying real estate transfer tax had continued to be met throughout the statutory period, or whether the citizens had disposed of their real estate or had changed their domicile.

56. In the Government's view, anyone moving out of purchased real estate and changing his or her domicile before the expiry of the five-year time-limit following the acquisition of such real estate would have known that in so doing they would prompt the loss of the tax exemption.

57. In particular, during the relevant period the Tax Administration had published brochures and manuals for citizens laying out their rights and obligations regarding taxation (see paragraphs 45-46 above). Citizens had also been free to contact by telephone the Tax Administration and enquire about their obligations regarding taxation. Further to this, the decisions exempting the applicants from paying real estate transfer tax had contained a warning that the tax could subsequently be collected (see paragraphs 7 and 19 above).

58. In this connection, the Government argued that the administrative authorities' and the administrative courts' practice was clear and consistent; the conditions for being granted tax exemption under section 11(9) of the Real Estate Transfer Tax Act must have continued to be met during the entire five-year period following the purchase of the real estate.

59. The Government lastly argued that the Supreme Court judgment no. U-zpz 3/14-5 of 29 October 2014 could not be applied to the applicants' case since it concerned the question of whether, when granting an exemption from paying real estate transfer tax, the domestic authorities ought to take into account only the circumstances that existed at the moment that a tax obligation arose, or also those that came into existence subsequently, by the time that a request for tax exemption was lodged (see paragraph 38 above). In contrast, at the time of lodging their requests for tax exemption, the applicants had had their domicile registered at the respective addresses of the purchased real estate and had therefore complied with that particular statutory condition for tax exemption. However, as it had subsequently turned out, they had not purchased the real estate in question for the purpose of resolving their housing needs, because they had moved to a different address less than five years after purchasing their flats. The second applicant had clearly never intended to use the purchased flat to resolve his housing needs because he had changed his address only six months later, and his wife and children had never registered their domicile there. The Government submitted proof in support of their latter statement.

2. *The Court's assessment*

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

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

61. It remains to be considered whether the interference was lawful and was compatible with the proportionality principle inherent in that provision (see *Khodorkovskiy and Lebedev v. Russia*, nos. 11082/06 and 13772/05, §§ 869-70, 25 July 2013), having regard to the wide margin of appreciation enjoyed by the State in the tax sphere (see "*Bulves*" *AD v. Bulgaria*,

no. 3991/03, § 63, 22 January 2009, and *Gasus Dossier- und Fördertechnik GmbH*, cited above, § 60).

(b) Whether the interference was lawful

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

63. The Court has acknowledged in its case-law that however clearly drafted a legal provision may be, in any system of law there is an inevitable element of judicial interpretation. There will always be a need for the elucidation of doubtful points and for adaptation to changing circumstances. Again, while certainty is highly desirable, it may bring in its train excessive rigidity and the law must be able to keep pace with changing circumstances. Accordingly, many laws are inevitably couched in terms which, to a greater or lesser extent, are vague and whose interpretation and application are questions of practice (see *OAO Neftyanaya Kompaniya Yukos v. Russia*, no. 14902/04, § 568, 20 September 2011). The role of adjudication vested in the courts is precisely to dissipate such interpretational doubts as remain (see *Cantoni*, cited above, § 29).

64. Furthermore, in so far as the tax sphere is concerned, the Court’s well-established position is that States may be afforded some degree of additional deference and latitude in the exercise of their fiscal functions under the lawfulness test (see *National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v. the United Kingdom*, 23 October 1997, §§ 75 to 83, *Reports of Judgments and Decisions* 1997–VII, and *OAO Neftyanaya Kompaniya Yukos*, cited above, § 559).

65. In the present case the tax authorities initially exempted the applicants from paying real estate transfer tax, finding that they had complied with the statutory conditions to that account (see paragraphs 7 and 19 above). A few years later they annulled their decisions and ordered the applicants to pay the relevant amounts in real estate transfer tax, holding that changing domicile less than five years after purchasing the real estate had triggered the loss of their right to tax exemption under section 11(10) of the Real Estate Transfer Tax Act (see paragraphs 9 and 21 above).

66. The Court observes that at the time of purchasing their flats in 2007 and 2008 (see paragraphs 5 and 17 above) and changing their respective domiciles in 2009 (see paragraphs 8 and 20 above), the primary legislation in force did not expressly prohibit a person from changing his or her domicile (see paragraph 30 above). An express prohibition to change domicile was inserted into the Real Estate Transfer Tax Act in 2011 (see paragraph 32

above) and it is undisputed that the 2011 provision was inapplicable to the applicants' case.

67. The tax brochures and manuals published between 2006 and 2009 did not expressly warn against changing one's domicile either (see paragraphs 45-46 above). The domestic judgments referred to by the Government were delivered several years after the applicants had changed their domicile and could thus not have served as guidance for them (see paragraphs 35-38 above). There is no evidence that the administrative authorities' decisions issued in similar cases (see paragraph 41 above) were published and therefore accessible to the applicants.

68. However, the Court notes that the tax exemption in question was intended to benefit persons aiming to resolve their housing needs by purchasing their first real estate (see paragraph 54 above).

69. In that connection it notes that the interference with the applicants' rights had been based on section 11(9) and (10) of the Real Estate Transfer Tax Act, which allowed the tax authorities to verify whether citizens who had been granted tax exemption had indeed purchased the real estate for the purpose of resolving their housing needs, and to collect real estate transfer tax from them if it was determined that they had not.

70. This was made clear not only by section 11(9) of the Real Estate Transfer Tax Act (which provided that tax exemption was to be granted only to persons who purchased real estate for the purpose of resolving their housing needs and who, *inter alia*, registered as their domicile the address of the purchased real estate), but also by section 11(10) of the same Act (which provided for the possibility of subsequently collecting the real estate transfer tax in respect of which an exemption had been granted in the event of it being found that the conditions for the tax exemption had not been complied with) (see paragraph 30 above).

71. The available domestic case-law indicates that the power to annul a decision granting a tax exemption and to order the payment of real estate transfer tax had consistently been used by the domestic authorities in situations where it had been established that citizens who had benefitted from the exemption had not used the purchased real estate for accommodation purposes. In a number of rulings, the administrative courts, the Supreme Court and the Constitutional Court held that the fact that a citizen had moved out of a flat less than five years after acquiring it, changed his domicile and/or rented the flat to third persons indicated that the citizen had not used the purchased real estate for the purpose of resolving his or her housing needs (see paragraphs 35-38 and 40-41 above). Although the latter consistent rulings post-dated the applicants' situation (see paragraph 67 above), they demonstrate that the law could have been reasonably interpreted in the particular manner in question (see paragraph 63 above).

72. In the present case the first applicant himself admitted that some two years after purchasing his flat he had moved out and had established his

family life in another flat owned by his wife (see paragraph 51 above). Even though the second applicant contended that his wife and children had remained living in the purchased flat (see paragraph 51 above), the Government submitted proof that they had never registered their domicile there (see paragraph 59 above). The applicants never argued that their moving to a different address had been temporary and that they had intended to return to the purchased flats. In that connection the Court takes note of the definition of “domicile” and the relevant domestic case-law and the position of legal scholars on the topic referred to in paragraph 34 above. The applicants’ cases must therefore be distinguished from the factually particular situation which arose in the Constitutional Court’s decision of 17 July 2015 (see paragraph 42 above).

73. The Court furthermore notes that the applicants had a full opportunity to defend their interests and put forward all necessary evidence and arguments, which were examined by the domestic authorities, including the Constitutional Court, which found no arbitrariness in the administrative authorities’ and the Administrative Court’s conclusions (see paragraphs 15 and 27 above). In this connection, the Court reiterates that it is primarily for the national authorities, notably the courts, to interpret and apply domestic law and to establish the facts of the case (see *Streletz, Kessler and Krenz v. Germany* [GC], nos. 34044/96 and 2 others, § 49, ECHR 2001-II).

74. On the strength of the above, the Court concludes that in the present case there existed a sufficiently clear legal basis for annulling the decisions granting the applicants tax exemption and ordering them to pay real estate transfer tax. Such decisions were not arbitrary and were adequately foreseeable for the applicants.

(c) Whether the interference pursued a legitimate aim

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

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

76. The Court is satisfied that, subject to its findings in respect of the lawfulness of the decisions delivered by the domestic authorities, ordering the applicants to pay real estate transfer tax constituted a proportionate measure that was undertaken in pursuance of the legitimate aim of securing the payment of taxes.

77. The tax rate amounted to 5% of the market value of the purchased real estate (see paragraph 30 above). It was therefore not particularly high (contrast *N.K.M. v. Hungary*, no. 66529/11, §§ 66-76, 14 May 2013, where

the applicant complained about the imposition of 52% tax on her severance pay, and see, *mutatis mutandis*, *Cacciato v. Italy* (dec.), no. 60633/16, 16 January 2018, where the imposition of 20% tax on compensation awarded for the expropriation of land had fallen within the authorities' margin of appreciation and had not led to the compensation award being effectively nullified or led to undue financial hardship for the applicant).

78. Furthermore, by the decisions of 28 March 2007 and 13 March 2009 the applicants were made aware of the amount of money they would be required to pay in tax should they cease to qualify for the tax exemption (see paragraphs 7 and 19 above).

79. Lastly, in the Court's view, the payment of the tax had not affected the applicants' financial situation seriously enough for the measure to be considered as having imposed an individual and disproportionate burden on them as such (compare *Dukmedjian v. France*, no. 60495/00, §§ 55-59, 31 January 2006, and *OAO Neftyanaya Kompaniya Yukos*, cited above, § 606).

(e) Conclusion

80. Having regard to the above considerations and the wide margin of appreciation enjoyed by the State in the tax sphere, the Court considers that the decisions ordering the applicants to pay real estate transfer tax were lawful and did not amount to a disproportionate burden on them.

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* the applications admissible;
3. *Holds* that there has been no violation of Article 1 of Protocol No. 1 to the Convention.

Done in English, and notified in writing on 19 May 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt
Deputy Registrar

Marko Bošnjak
President