



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

FIRST SECTION

CASE OF GOLUBOVIĆ v. CROATIA

(Application no. 43947/10)

JUDGMENT

STRASBOURG

27 November 2012

FINAL

27/02/2013

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

In the case of Golubović v. Croatia,

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

Isabelle Berro-Lefèvre, *President*,
Elisabeth Steiner,
Nina Vajić,
Anatoly Kovler,
Khanlar Hajiyev,
Linos-Alexandre Sicilianos,
Erik Møse, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 6 November 2012,

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

PROCEDURE

1. The case originated in an application (no. 43947/10) 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 Veselin Golubović (“the applicant”), on 29 May 2010.

2. The applicant was represented by Mr M. Lukač, a lawyer practising in Zagreb. The Croatian Government (“the Government”) were represented by their Agent, Ms Š. Stažnik.

3. On 5 September 2011 the complaint concerning the alleged lack of impartiality of a second-instance court was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1940 and lives in Zagreb.

5. The applicant worked as a professor of philosophy at the Faculty of Philosophy of the University of Zagreb (*Filozofski fakultet Sveučilišta u Zagrebu* - hereinafter the “Faculty”).

6. On 2 March 1994 the Dean of the Faculty (hereinafter: the “Dean”), relying on section 21(1) and (2) of the Employment Relations Act, suspended the applicant from work (*stavljen na čekanje*) for a period of six

months on the minimum salary on the grounds that his job had become redundant. The applicant appealed against that decision to the Dean but his appeal was dismissed on 2 May 1994.

7. On 7 March 1995 the Dean, relying on section 23(1) of the Employment Relations Act, issued a decision to terminate the applicant's employment.

A. Civil proceedings concerning the Faculty's decision to suspend the applicant's employment (case no. Pr-1158/94)

8. On 26 May 1994 the applicant brought a civil action in the Zagreb Municipal Court (*Općinski sud u Zagrebu*) contesting the Dean's decisions of 2 March 1994 and 2 May 1994 and seeking payment of his full salary. The case file was assigned number Pr-1158/94. This subsequently changed a number of times and the case bore numbers Pr-3166/97, Pr-1143/99 and Pr-4675/00.

9. On 12 June 1995 the Zagreb Municipal Court declared the Faculty's decisions of 2 March 1994 and 2 May 1994 null and void and ordered that the applicant's salary for the period claimed be paid to him on the ground that the Faculty's decisions had been based on its lack of money for salaries which was not a lawful reason for suspending the applicant's employment.

10. The Faculty appealed against the above-mentioned judgment to the Zagreb County Court (*Županijski sud u Zagrebu*), and on 11 November 2007 that court quashed the first-instance judgment and remitted the case to the Zagreb Municipal Court for re-examination, on the grounds that all the relevant facts had not been established.

11. On 17 September 1998 the Zagreb Municipal Court declared the Faculty's decisions of 2 March 1994 and 2 May 1994 null and void on the same grounds as before ordering it to pay the salary claimed by the applicant.

12. Following an appeal by the Faculty, on 23 March 1999 the Zagreb County Court again quashed the first-instance judgment of the Zagreb Municipal Court and ordered a re-examination on the ground that the first-instance court had misinterpreted the relevant law.

13. The applicant complained to the Zagreb Municipal Court on 7 October 1999 that the Zagreb County Court had treated him differently from other parties in similar cases.

14. On 9 December 1999 the Zagreb Municipal Court again declared the Faculty's decisions of 2 March 1994 and 2 May 1994 null and void and ordered that salary claimed by the applicant be paid to him, stating that there had been no legal ground on which to suspend the applicant.

15. Following a further appeal by the Faculty, on 27 June 2000 the Zagreb County Court quashed the first-instance judgment and ordered a re-

examination, reiterating its previous reasoning that the Zagreb Municipal Court had failed to establish all the relevant facts.

16. On 21 November 2002 the Zagreb Municipal Court dismissed the applicant's action, on the ground that the Faculty's decision to suspend the applicant's employment had been lawful.

17. The applicant appealed against the above judgment, and on 18 January 2005 a panel of judges at the Zagreb County Court, including Judge D.M., dismissed the applicant's appeal and upheld the Zagreb Municipal Court's judgment of 21 November 2002. In its decision the court referred, *in passim*, to the parallel civil proceedings the applicant had instituted against the Dean's decision of 7 March 1995 terminating his employment (see paragraph 23). That part of the Zagreb County Court's judgment reads as follows:

"The case file shows that in case no. Pr-3903/99 [pending before the Zagreb Municipal Court] a judgment was adopted whereby the plaintiff's action challenging the defendant's decision of 7 March 1995 to permanently terminate the plaintiff's employment with the defendant was dismissed."

18. The applicant then lodged an appeal on points of law with the Supreme Court (*Vrhovni sud Republike Hrvatske*) on 20 March 2005.

19. In this appeal the applicant, *inter alia*, challenged Judge D.M. on grounds of bias. The applicant explained that in the parallel civil proceedings (case no. Pr-1158/95), Judge D.M. had sat as the president of the panel of the first-instance court. In those proceedings Judge D.M. had delivered the judgment against the applicant, to which the County Court had referred in its judgment of 18 January 2005 (see paragraphs 17 and 27). However, Judge D.M.'s judgment in those proceedings had later been quashed and the case remitted to the Zagreb Municipal Court for re-examination, after which that judge had on the resumption of proceedings, expressed a hostile attitude towards the applicant's representative on several occasions and had eventually issued the decision to stay those proceedings pending the outcome of the case no. Pr-1158/94 (see paragraphs 23-29).

20. On 21 December 2006 the Supreme Court dismissed the applicant's appeal on points of law. The relevant part of the Supreme Court's judgment reads as follows:

"The appellant considers that there was a serious breach of procedure in that the judge who had sat as the first-instance judge in proceedings between the same parties before the Zagreb Municipal Court no. Pr-3903/99, had also sat in the panel which handed down the second-instance judgment.

...

... there is no serious breach of procedure raised by the plaintiff because, under section 71 subsection 5 of the Civil Procedure Act, a judge is disqualified from sitting in a case only if he or she had previously participated in the same proceedings before a lower court, whereas the plaintiff in his appeal on points of law refers to a judge of

the second-instance court who did not sit as the first-instance judge in the case at issue but in another case before a lower court. ”

21. The applicant lodged a constitutional complaint with the Constitutional Court (*Ustavni sud Republike Hrvatske*) on 24 March 2007, in which he complained, *inter alia*, of the lack of impartiality of Judge D.M.

22. On 26 November 2009 the Constitutional Court declared the applicant’s constitutional complaint inadmissible. It found that even though the applicant had correctly relied on the relevant Articles of the Constitution, he had not substantiated his complaint by any constitutional law arguments but had merely repeated those arguments raised in the proceedings before the ordinary courts. Therefore, the Constitutional Court was unable to examine the merits of his constitutional complaint. Its decision was served on the applicant’s representative on 23 December 2009.

B. Civil proceedings concerning the Faculty’s decision to make the applicant redundant (case no. Pr-1158/95)

23. On 8 May 1995 the applicant brought a civil action in the Zagreb Municipal Court, asking that the Dean’s decision of 7 March 1995 be declared null and void and that all the money he had claimed be paid to him. The case file was assigned number Pr-1158/95. This subsequently changed and the case bore numbers Pr-3903/99 and Pr-10588/01.

24. Judge D.M. presided over the panel of the Zagreb Municipal Court in this case.

25. On 10 April 1997 the Zagreb Municipal Court accepted the applicant’s claim and ordered that his salary be paid on the ground that the applicant should not have been made redundant from work because of the Faculty’s lack of financial means.

26. Following an appeal by the Faculty on 7 November 1997, the Zagreb County Court on 23 March 1999 quashed the first-instance judgment and ordered a re-examination of the case on the ground that all the relevant facts had not yet been established.

27. On 22 March 2001 a panel of the Zagreb Municipal Court, presided over by Judge D.M., dismissed the applicant’s action on the ground that the impugned decision had been based on the relevant law.

28. The applicant lodged an appeal and on 20 November 2001 the Zagreb County Court quashed the judgment of 22 March 2001 and ordered a re-examination, on the ground that all the relevant facts had not been established.

29. On 22 May 2003 Judge D.M., acting as the president of the panel of the Zagreb Municipal Court, ordered that those proceedings be stayed until the adoption of a final decision in the case no. Pr-1158/94, since the outcome of those proceedings was crucial to the case.

30. The applicant lodged an appeal, complaining, *inter alia*, that Judge D.M. had expressed a hostile attitude towards his representative and his complaint.

31. On 22 May 2003 the Zagreb County Court dismissed the applicant's appeal as ill-founded.

II. RELEVANT DOMESTIC LAW

32. The relevant part of the Civil Procedure Act (*Zakon o parničnom postupku*, Official Gazette of the Socialist Federal Republic of Yugoslavia nos. 4/1977, 36/1977 (corrigendum), 36/1980, 69/1982, 58/1984, 74/1987, 57/1989, 20/1990, 27/1990 and 35/1991, and Official Gazette of the Republic of Croatia nos. 53/1991, 91/1992, 58/1993, 112/1999, 88/2001, 117/2003, 88/2005, 2/2007, 84/2008, 123/2008, 57/2011 and 148/2011) provides as follows:

Section 71

"A judge ... shall be disqualified from exercising his functions:

1. if he or she himself or herself is a party...;

...

5. if, in the same case, he or she participated in the proceedings before a lower court or other authority;

...

7. if other circumstances exist which cast doubt on his or her impartiality."

Under section 72 of the Civil Procedure Act, the grounds enumerated in section 71 subsections 1-6 are considered absolute grounds for the judge concerned to be automatically disqualified from sitting in the case. Subsection 7 concerns situations in which a judge is obliged to inform the president of his court of any circumstances which might cast doubt on his or her impartiality. The president of the court must then, in view of the circumstances of the given case, make a decision regarding the possible disqualification of the judge.

33. The relevant provisions of the Employment Relations Act (*Zakon o radnim odnosima*, Official Gazette of the Republic of Croatia nos. 19/1990, 28/1990 (corrigendum), 19/1992, 25/1992 (consolidated text), 26/1993 and 29/1994), which was in force between 11 May 1990 and 1 January 1996, read as follows:

Section 21

“(1) An employer may make an employee temporarily redundant if during a period of six months it cannot provide him or her with the job he or she has been assigned to.

(2) In the circumstances referred to in subsection 1 of this section, the employer may temporarily, but for a maximum period of six months:

- ...

- suspend the employee’s employment, during which period he or she has the right to a salary established by a collective agreement, ... , or the minimum salary;

- ...”

Section 23

“(1) The employer may make an employee permanently redundant if for a period exceeding six months it cannot provide him or her with the job he or she has been assigned to.”

THE LAW**I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION**

34. The applicant complained of a lack of impartiality on the part of the Zagreb County Court which on 18 January 2005 had decided on his appeal against the judgment of the Zagreb Municipal Court of 21 November 2002 dismissing his civil action by which he had contested the suspension of his employment. He relied on Article 6 § 1 of the Convention which, in so far as relevant, reads as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

A. Admissibility

35. The Government submitted that the applicant had not exhausted the domestic remedies and that he could not claim to be a victim of the violation he had complained of under the Convention, since he had waived his right to seek the removal of Judge D.M. from the civil proceedings in which that judge had presided over the first-instance panel (case no. Pr-1158/95). The applicant had only complained that Judge D.M. had been biased in the appeal on points of law which he had lodged in the separate proceedings

concerning the Faculty's decision to suspend his employment, in which Judge D.M. had participated as a member of the appeal panel (case no. Pr-1158/94).

36. The Government also stressed that, if he had considered that he had sustained damage on account of the lack of impartiality of Judge D.M., the applicant could have brought a civil action in respect of non-pecuniary damage against the State.

37. The applicant argued that before he had received the second-instance judgment of the Zagreb County Court of 18 January 2005, he could not have known that Judge D.M. would be a member of the appeal panel. Therefore, he had made his complaint of bias with regard to Judge D.M. in his appeal on points of law against that judgment.

38. The Court reiterates that neither the letter nor the spirit of Article 6 of the Convention prevents a person from waiving of his own free will, either expressly or tacitly, his entitlement to the guarantees of a fair trial (see *Kwiatkowska v. Italy* (dec.), no. 52868/99, 30 November 2000). However, a waiver of that right must be established in an unequivocal manner and must not run counter to any important public interest (see *Håkansson and Stureson v. Sweden*, 21 February 1990, § 66, Series A no. 171-A, and *McGonnell v. the United Kingdom*, no. 28488/95, § 44, ECHR 2000-II).

39. The Court notes that the applicant has made an allegation of bias on the part of the Zagreb County Court, referring to the fact that Judge D.M. was a member of the appeal panel which on 18 January 2005 dismissed the applicant's appeal against the first-instance judgment (case no. Pr-1158/94), although he had previously, as president of the first-instance panel, also dismissed the applicant's civil action in another but related set of civil proceedings (case no. Pr-1158/95). The applicant raised these same complaints in his appeal on points of law against the Zagreb County Court's judgment of 18 January 2005 and in his subsequent constitutional complaint (see paragraphs 19 and 21). Therefore, and in view of the fact that the applicant, not having been made aware of the composition of the appeal panel in advance, could not have asked for the prior removal of Judge D.M., it cannot be said that the applicant had waived, either expressly or tacitly, his right to an impartial tribunal. Likewise, it cannot be said that the applicant failed to exhaust domestic remedies in respect of the complaints he had brought before the Court.

40. The Court also notes, with regard to the Government's argument that the applicant had failed to request the removal of Judge D.M. in the case no. Pr-1158/95, in which the judge had presided over the first-instance panel, that those proceedings had been stayed well before 18 January 2005, when the impugned decision of the appeal panel was adopted (see paragraph 29). Therefore, whether or not the applicant had asked for the removal of Judge D.M. in the case no. Pr-1158/95 is of no relevance as regards his complaints

in the present case. This is because the applicant complained of the alleged bias of Judge D.M. as an appellate judge, based on the fact that he had earlier participated in the case no. Pr-1158/95 as a judge at first instance.

41. As to the Government's argument that the applicant had failed to bring a civil action against the State, the Court notes that the applicant's complaint concerns the alleged lack of fairness of the civil proceedings at issue. In the Court's view, such issues should be considered in the context of those proceedings. The applicant complained of a lack of impartiality on the part of Judge D.M. by means of the appropriate remedies he used in the context of these proceedings. Bringing a further civil action for damages against the State could in no way have remedied the situation of the alleged unfairness for the applicant. Therefore, the Court considers that the applicant properly exhausted the relevant domestic remedies.

42. It follows, therefore, that the Government's arguments must be rejected.

43. Having regard to the above facts, the Court considers 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 parties' arguments

44. The applicant submitted that Judge D.M. had been a member of the panel of the Zagreb County Court in the case no. Pr-1158/94, which on 18 January 2005 dismissed his appeal against the judgment of the Zagreb Municipal Court of 21 November 2002, by which his civil action against the Faculty's decision to suspend his employment had been dismissed. The appeal panel in its judgment had referred to a judgment unfavourable to the applicant adopted by Judge D.M. in the related set of civil proceedings (case no. Pr-1158/95), although that judgment had been quashed and the case remitted to retrial. In the applicant's view this suggested that the Zagreb County Court had not been impartial.

45. The Government argued that there had been no evidence to suggest that Judge D.M. had been biased, nor had the applicant claimed a subjective lack of impartiality on the part of the judge. As to the Court's objective test of impartiality, the Government stressed that there had been no reason to doubt the impartiality of Judge D.M. in the case no. Pr-1158/94. This is because the Zagreb County Court had thirteen appeal panels, each composed of three judges, to which cases were assigned, at random, by computer. Therefore, the fact that Judge D.M. had also sat on the appeal panel had been merely the result of the electronic assignment of cases.

46. The Government also stressed that Judge D.M. had only been a member of a three-judge panel and that he had not had a decisive vote in the adoption of the judgment. Moreover, the mere fact that judge D.M. had sat as a member of the appeal panel and that he had presided the first instance trial panel in the case no. Pr-1158/95, had not been in itself a reason for disqualification of that judge under the relevant domestic law.

2. *The Court's assessment*

(a) **General principles**

47. An analysis of the Court's case-law discloses two possible situations in which the question of a lack of judicial impartiality arises. The first is functional in nature: where the judge's personal conduct is not at all impugned, but where, for instance, the exercise of different functions within the judicial process by the same person, objectively justify misgivings as to the impartiality of the tribunal, which thus fails to meet the Convention standard under the objective test. The second is of a personal character and derives from the conduct of the judges in a given case. In terms of the objective test, such conduct may be sufficient to ground legitimate and objectively justified apprehensions, but it may also be of such a nature as to raise an issue under the subjective test and even disclose personal bias. In this context, therefore, whether a case falls to be dealt with under one test or the other, or both, will depend on the particular facts of the contested conduct (*Kyprianou v. Cyprus* [GC], no. 73797/01, § 121, ECHR 2005-XIII).

48. As regards the subjective test, the personal impartiality of a judge must be presumed until there is proof to the contrary (see *Padovani v. Italy*, 26 February 1993, § 26, Series A no. 257-B, and *Morel v. France*, no. 34130/96, § 41, ECHR 2000-VI).

49. As to the objective test, when applied to a judicial body sitting as a bench it means determining whether, quite apart from the personal conduct of any of the members of that body, there are ascertainable facts which may raise doubts as to its impartiality. In this respect even appearances may be of some importance or, in other words, "justice must not only be done, it must also be seen to be done". What is at stake is the confidence which the courts in a democratic society must inspire in the public. Thus, any judge in respect of whom there is a legitimate reason to fear a lack of impartiality must withdraw (see *Micallef v. Malta* [GC], no. 17056/06, §§ 96 and 98, ECHR 2009).

50. It follows that when it is being decided whether in a given case there is a legitimate reason to fear that a particular body lacks impartiality, the standpoint of those claiming that it is not impartial is important, but not decisive. What is decisive is whether the fear can be held to be objectively justified (see *Wettstein v. Switzerland*, no. 33958/96, § 44, ECHR 2000-XII).

(b) Application of these principles to the present case

51. The Court notes that the applicant's concerns regarding the impartiality of the Zagreb County Court stemmed from the fact that Judge D.M., who had previously been a member of the trial panel of the Zagreb Municipal Court in the case no. Pr-1158/95, participated in the appeal panel in a related set of proceedings which the applicant had brought against the Faculty (case no. Pr-1158/94).

52. As to the subjective test, the applicant did not adduce any evidence to rebut the presumption that Judge D.M. was impartial. In this connection the Court reiterates that the fact that Judge D.M. did not withdraw from dealing with the civil action on appeal following his earlier participation in another related set of civil proceedings, does not constitute the required proof (see, *mutatis mutandis*, *Sofri and Others v. Italy* (dec.), no. 37235/97, ECHR 2003-VIII; *Bracci v. Italy*, no. 36822/02, § 52, 13 October 2005; *Previti v. Italy* (dec.), no. 45291/06, § 258, 8 December 2009; and *Šorgić v. Serbia*, no. 34973/06, § 68, 3 November 2011).

53. As to the objective test, the Court notes that Judge D.M. was president of the first-instance panel in the case of the Zagreb Municipal Court concerning the applicant's action against the Faculty's decision of 7 March 1995 making him redundant (case no. Pr-1158/95). In parallel with these proceedings, the applicant had instituted another set of civil proceedings before the Zagreb Municipal Court concerning the Faculty's decisions of 2 March and 2 May 1994, suspending his employment (case no. Pr-1158/94). In the latter set of civil proceedings Judge D.M. acted as a member of the appeal panel of the Zagreb County Court which on 18 January 2005 decided the applicant's appeal against the first-instance judgment of the Zagreb Municipal Court of 21 November 2002 unfavourable to him.

54. The Court observes that on 22 May 2003 Judge D.M., as president of the first-instance panel in the case no. Pr-1158/95, ordered that the proceedings concerning the applicant's action against the Faculty's decision making him redundant be stayed until the final determination of the proceedings in the case no. Pr-1158/94 concerning the applicant's action against the decision suspending him from employment. Judge D.M. held that the outcome of the latter set of proceedings was a decisive issue in respect of the decision making the applicant redundant (see paragraph 29 above). Therefore, it would appear that these two sets of civil proceedings concerned the same set of inter-related facts which required a comprehensive determination of the applicant's interests arising in this context (see, *mutatis mutandis*, *Fatullayev v. Azerbaijan*, no. 40984/07, § 139, 22 April 2010, and *Šorgić*, cited above, § 69).

55. In this connection the Court notes that on 22 March 2001 the panel of the Zagreb Municipal Court, over which Judge D.M. presided, dismissed the applicant's civil action challenging his forced redundancy in the case no.

Pr-1158/95. That judgment was quashed on 20 November 2001 and the case was remitted to the Zagreb Municipal Court for a re-examination. Thus, although the judgment in question did not become final, it did suggest that Judge D.M. had already formed a view as to the merits of the applicant's case since he had held that the Faculty's decision to make the applicant redundant had been lawful (see paragraph 27).

56. The same judge also sat in the appeal panel of the Zagreb County Court which on 18 January 2005 dismissed the applicant's appeal against the first-instance judgment in the civil proceedings concerning the applicant's action challenging the decision to suspend his employment (case no. Pr-1158/94). Moreover, the appeal panel in its judgment referred to the judgment of 22 March 2001 handed down by Judge D.M., by which the applicant's civil action had been dismissed (see paragraph 17).

57. In those circumstances, where Judge D.M. first dismissed the applicant's civil action on its merits in one set of civil proceedings and then, in another, factually and legally related set of civil proceedings between the same parties, acted as an appeal judge at the Zagreb County Court, concerning the applicant's appeal against the first-instance judgment which was unfavourable to him, the Court accepts that the applicant did have objective grounds to doubt the impartiality on the part of the appeal court. The fact that Judge D.M. did not participate in the adoption of the decision that was challenged by the appeal is of no relevance, since he had already formed a view as to the merits of the applicant's claims before his case was brought before the Zagreb County Court (see *Bajaldžiev v. "the former Yugoslav Republic of Macedonia"*, no. 4650/06, § 37, 25 October 2011).

58. Furthermore, there is nothing in the case file to suggest that Judge D.M. considered the possibility of withdrawing from the case or that he had informed the president of the Zagreb County Court of the fact that he had previously acted in the related proceedings, although the relevant procedural law did provide for such a possibility (see *Mežnarić v. Croatia*, no. 71615/01, § 28, 15 July 2005). The Government submitted that that court had thirteen different appeal panel combinations at its disposal. Therefore, there was no problem to assign the applicant's case to a different panel.

59. The Court therefore finds that, on the facts of the case and considering the functional defect which it has identified, the impartiality of judge D.M. was capable of appearing open to doubt. The applicant's fears in this respect can thus be considered to have been objectively justified and the composition of the County Court's panel accordingly failed to meet the required Convention standard under the objective test (see *Kyprianou*, cited above, § 128).

60. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

61. The applicant also complained under Article 6 § 1 of the Convention about the length and the outcome of the civil proceedings, and under Article 14 of the Convention and Article 1 of Protocol No. 12 that he had been dismissed from his job because of his Serbian origin as well as on account of his political opinions and philosophical convictions.

62. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court considers that this part of the application does not disclose any appearance of a violation of the Convention. It follows that it is inadmissible under Article 35 § 3 as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

63. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

64. The applicant invited the Court to award him a non-pecuniary damage without specifying the sum.

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

66. Having regard to all the circumstances of the present case, the Court accepts that the applicant suffered non-pecuniary damage which cannot be compensated solely by the finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant 3,000 euros in respect of non-pecuniary damage, plus any tax that may be chargeable to him.

B. Costs and expenses

67. The applicant also claimed 108,510 Croatian kunas for costs and expenses incurred before the Court.

68. The Government considered the applicant's claim for costs and expenses excessive.

69. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as

to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicant the sum of 3,000 euros to cover costs and expenses for the proceedings before it.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the lack of impartiality of the second-instance court admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention in that the second-instance court in the applicant's case was not impartial;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amount, to be converted into Croatian kunas at the rate applicable at the date of settlement:
 - (i) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above 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* the remainder of the applicant's claim for costs and expenses.

Done in English, and notified in writing on 27 November 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President