



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

FIRST SECTION

CASE OF ČOLIĆ v. CROATIA

(Application no. 49083/18)

JUDGMENT

Art 6 § 1 (civil) • Access to court • Art 1 P1 • Peaceful enjoyment of possessions • Disproportionate costs order against applicant in private civil proceedings amounting to double his compensation award • Access-to-court guarantees applicable with equal strength to private disputes and those involving the State • Application of relevant domestic legislation not within acceptable margin of appreciation allowed to the domestic courts

STRASBOURG

18 November 2021

FINAL

18/02/2022

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

In the case of Čolić v. Croatia,

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

Péter Paczolay, *President*,

Ksenija Turković,

Alena Poláčeková,

Gilberto Felici,

Erik Wennerström,

Raffaele Sabato,

Lorraine Schembri Orland, *judges*,

and Renata Degener, *Section Registrar*,

Having regard to:

the application (no. 49083/18) 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 Ljupko Čolić (“the applicant”), on 12 October 2018;

the decision to give notice to the Croatian Government (“the Government”) of the application;

the parties’ observations;

Having deliberated in private on 19 October 2021,

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

INTRODUCTION

1. The case concerns civil proceedings in which, despite his success in obtaining damages against a private individual who had physically assaulted him, the applicant was ordered to pay the defendant’s costs of the proceedings in an amount higher than that which he had actually been awarded in damages.

THE FACTS

2. The applicant was born in 1939 and lives in Zagreb. He was represented by Mr E. Geber, a lawyer practising in Zagreb.

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

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. On 25 November 2003 the applicant brought a civil action for damages in the Zagreb Municipal Civil Court (*Općinski građanski sud u Zagrebu*) against a certain B.H., alleging that he had been physically assaulted by him at a restaurant in Zagreb on 27 December 2001. The applicant claimed a total of 32,200 Croatian kunas (HRK – approximately 4,350 euros (EUR)). The defendant challenged the applicant’s claim as unfounded, claiming that he had never assaulted him and that he could have

sustained the alleged injury by slipping on ice. As a precaution, the defendant also objected to the amount of damages claimed.

6. On 29 December 2009 the court obtained an expert medical opinion, which estimated the amount of damage sustained by the applicant. In line with that opinion, on 8 February 2010 the applicant reduced his initial claim to HRK 12,860 (approximately EUR 1,730). In particular, he claimed HRK 4,000 in respect of physical pain suffered, HRK 5,000 in respect of fear, HRK 3,500 in respect of mental anguish caused by loss of amenities of life and HRK 360 in respect of assistance and care by other persons.

7. On 20 December 2011 the first-instance court gave judgment, awarding the applicant a total of HRK 8,360 (approximately EUR 1,130) in damages and HRK 9,750 (approximately EUR 1,310) in costs. In particular, the court awarded him HRK 3,500 in respect of physical pain suffered, HRK 4,500 in respect of fear, and HRK 360 in respect of assistance and care by other persons. The court dismissed his claim in the amount of HRK 3,500 in respect of mental anguish caused by loss of amenities of life because it established that his injuries did not have lasting consequences. At the same time, the court dismissed the remainder of his claim and ordered him to pay the defendant HRK 14,886 (approximately EUR 2,000) in costs. The relevant part of that judgment reads as follows:

“The decision on the costs of the proceedings is based on sections 154 and 155 of the Civil Procedure Act. The court considered the value of the subject-matter in dispute to be HRK 32,200, as indicated in the statement of claim, and later HRK 12,860, as indicated by the plaintiff in his finally specified claim submitted on 8 February 2010.

Furthermore, the court also took into account in its deliberations the provisions of the Scale of Advocates’ Fees ..., in particular the provisions in force at the time when ... the party’s lawyer conducted each specific activity.

... the total costs of the part of the proceedings [up until 8 February 2010] amount to HRK 17,687.40. Since the [applicant] succeeded with 25.96% of his claim in this part of the proceedings, he is entitled to costs in the amount of HRK 4,591.65.

... the total costs of the part of the proceedings [from 8 February 2010 onwards] amount to HRK 2,767.50. Since the [applicant] succeeded with 65.01% of his claim in this part of the proceedings, he is entitled to costs of HRK 1,799.15.

The court awards the [applicant] the full costs advanced for expert witness opinions in the total amount of HRK 3,360.00, since these were necessary for the conduct of the proceedings and to properly establish the facts.

Therefore, the [applicant] is awarded a total of HRK 9,750.80 in costs.

The [applicant] is also awarded, at his request, interest on the costs of the civil proceedings.

... the defendant’s full costs in the part of the proceedings [up until 8 February 2010] amount to HRK 17,220.00. Since the respondent had a degree of success of 74.04% in this part of the proceedings, he is entitled to costs of HRK 12,749.69.

...the defendant's full costs in the part of the proceedings [from 8 February 2010 onwards] amount to HRK 3,997.50. Since the respondent had a degree of success of 34.99% in this part of the proceedings, he is entitled to costs of HRK 1,389.73.

The court awards the defendant the full ... costs advanced for expert witness opinions in the total amount of HRK 738, since these were necessary for the conduct of the dispute and to properly determine the facts.

Therefore, [the defendant] is awarded a total of HRK 14,886.42 in costs."

8. On 20 May 2014, on appeal, the Zagreb County Court (*Županijski sud u Zagrebu*) reversed in part the first-instance judgment concerning costs and awarded the applicant a sum of additional HRK 6,906.97 (approximately EUR 930). In particular, the appellate court took into account the fact that the applicant had sued for damages for physical assault, that the defendant had incurred no additional costs because of the initially higher claim, and that the costs of the proceedings had mainly been incurred in order to prove that the claim was well-founded and not the exact amount of the damage suffered. The relevant part of that judgment reads as follows:

"In awarding litigation costs, all the circumstances of the case should have been taken into account because the manner in which the provision on the reimbursement of the proportionate part of the costs was applied in the first-instance judgment did not achieve the otherwise justified aim. Firstly, it should be taken into account that the case concerns damages caused by the respondent's physical assault on the [applicant]. The defendant did not have to bear increased costs due to the claim which was initially set too high. In addition, during the proceedings the respondent challenged the grounds and the amount of the civil claim, and the litigation costs were incurred in relation to proving that the claim was well-founded.

Therefore, for these reasons, when awarding the costs of the civil proceedings, the degree of success in the proceedings should have been assessed in accordance with the civil claim ultimately set and the decision on costs has to be amended to that effect.

By correctly applying the substantive law, the first-instance court calculated the [applicant's] litigation costs in the total amount of HRK 20,454.90. Since the [applicant] succeeded with 65.01% of his claim in this case, he is entitled to costs in the amount of HRK 13,297.73, plus the costs of expert witness opinions in the amount of HRK 3,360.00, that is, a total of HRK 16,657.73, an amount which the defendant is required to reimburse to him in full [pursuant to] section 154(1) of the Civil Procedure Act. Therefore, in addition to the HRK 9,750.80 awarded to the [applicant] in the first-instance judgment, this court awards him a further amount of HRK 6,906.97 in respect of the costs of the civil proceedings. Since the defendant has not succeeded in the litigation, his claim for reimbursement of the costs of the civil proceedings is dismissed (section 154(1) of the Civil Procedure Act)."

9. On 11 February 2015 the Supreme Court (*Vrhovni sud Republike Hrvatske*) examined an extraordinary appeal on points of law (*izvanredna revizija*) lodged by the defendant. It overturned the second-instance decision and upheld the first-instance court's decision on the costs. It also ordered the applicant to pay the defendant a further amount of HRK 1,875 (approximately EUR 250) in respect of the costs of the proceedings

regarding the appeal on points of law. The Supreme Court considered that, when calculating the parties' costs in a case where the value of the subject-matter in dispute had changed during the course of the proceedings, the costs of each individual procedural activity had to be determined in relation to the value of the subject-matter of the dispute at the time of conducting the activity, in proportion to the parties' degree of success.

10. On 14 March 2016 the applicant lodged a constitutional complaint against the Supreme Court's decision, alleging violations of his rights to a fair hearing and to protection of property.

11. On 29 March 2018 the Constitutional Court (*Ustavni sud Republike Hrvatske*) declared the applicant's constitutional complaint inadmissible on the grounds that the contested decision was not amenable to constitutional review. That decision was served on his representative on 12 April 2018.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC LEGISLATION

12. The relevant provisions 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), as in force at the material time, read as follows:

Section 151

“(1) Costs of proceedings include disbursements made during, or in relation to, the proceedings.

(2) Costs of proceedings also include fees for the services of advocates and other persons legally entitled to remuneration.”

Section 154

“(1) A party who loses a case completely shall reimburse the costs of the opposing party and his or her intervener.

(2) If a party succeeds in the proceedings in part, the court may, having regard to the success achieved, order that each party bear its own costs or that one party reimburse the other party and the intervener the corresponding part of the costs.(3) The court may decide that one party shall reimburse in full the costs incurred by the opposing party and his or her intervener if the opposing party was unsuccessful in respect of only a relatively insignificant part of his or her claim, and where no special costs were generated [as a result].”

Section 155

“(1) In deciding which costs shall be reimbursed to a party, the court shall take into account only those costs which were necessary for the conduct of the proceedings.

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When deciding which costs were necessary and their amount, the court shall carefully consider all the circumstances.

(2) If there is a prescribed scale of advocates' fees or other costs, the costs shall be awarded in accordance with that scale."

Section 186

"(1) A civil action shall contain a specific claim regarding the main claim and ancillary claims, the facts on which the plaintiff is basing the claim, evidence to support these facts and other information which must be enclosed with every submission (section 106).

(2) When the jurisdiction, composition of the court, type of proceedings, right to lodge an appeal on points of law, authorisation for representation or right to payment of costs depend on the value of the subject matter of the dispute, and the subject of the claim is not a sum of money, the plaintiff shall indicate in the civil action the value of the subject matter of the dispute ..."

Section 190

"(1) The plaintiff may amend the civil action until the conclusion of the main hearing.

(2) After service of the civil action on the defendant, the consent of the defendant is required for amendment of the civil action; but even if the defendant objects, the court may allow the amendment if it deems it expedient for the final resolution of relations between the parties.

(3) The defendant shall be deemed to have agreed to the amendment of the civil action if he or she begins litigation based on the amended civil action without previously objecting to the amendment ..."

13. In 2019 section 154(2) of the Civil Procedure Act was amended to read as follows:

"If parties succeed in the proceedings in part, the court shall first establish the percentage in which each of them succeeded, and will then subtract the percentage of the party which succeeded to a lesser degree from that of the party that succeeded to a greater degree; following which it will establish the amount of ... total costs of the party which succeeded to a greater degree and which had been necessary for the proper conduct of the proceedings and award that party part of such total costs corresponding to the percentage remaining following the above calculation of the parties' success in the proceedings. Proportion of success in the proceedings is assessed on the basis of the final claim, also taking into account the success of proving the grounds of the claim."

14. The Scale of Advocates' Fees and Reimbursement of their Costs (*Tarifa o nagradama i naknadi troškova za rad odvjetnika*, Official Gazette no. 142/12 with subsequent amendments – "the Scale of Advocates' Fees") provides that an advocate's fees in a civil case are, as a matter of principle, calculated in proportion to the value of the subject matter of the dispute (the amount in controversy) for every procedural activity. The value of the subject matter of the dispute normally corresponds to the sum the plaintiff is seeking to obtain through his or her civil action. Scales 7 to 9 provide that

the fees for drafting a statement of claim or the defendant's reply to it and for attendance at a hearing are as follows:

Value of the subject matter of the dispute (HRK)	Fee (HRK)
0 – 2,500	250
2,500 – 5,000	500
5,000 – 10,000	750
10,000 – 100,000	1,000
100,000 – 250,000	2,500
250,000 – 500,000	5,000

II. RELEVANT DOMESTIC PRACTICE

A. The Supreme Court's guidelines and practice

15. On 6 June 1980 the Civil Division of the Supreme Court adopted an opinion, which was forwarded to the lower courts as a practice direction. It stated that section 154(2) of the Civil Procedure Act was to be interpreted as follows:

“1. In the event of partial success in [civil] proceedings ([section 154(2)] of the Civil Procedure Act), it is necessary to interpret the terms ‘partial success’ and ‘corresponding part of the costs’ not only qualitatively but also quantitatively, that is, by taking into account [both] the substance and quantum of the allowed or dismissed part of the claim. Therefore:

(a) where the defendant disputed the substance of the claim in its entirety or only the substance of certain parts of the claim (such as a certain type of damage and such like), because of which an expert opinion had to be prepared or other evidence taken, the costs of which were advanced by the plaintiff, the plaintiff is entitled to have those costs reimbursed in their entirety, irrespective of the level of the amount [of damages] awarded;

(b) where the defendant disputed only the amount of compensation sought for a particular type of non-pecuniary damage, the court has to assess whether the plaintiff should be entitled to have costs related to the determination of the level of non-pecuniary damages he or she advanced reimbursed in their entirety or only in part.”

16. On 29 November 2002 the Supreme Court adopted The Orientation Criteria and Sums for Determining the Level of Compensation for Non-Pecuniary Damage (*Orijentacijski kriteriji i iznosi za utvrđivanje visine pravične novčane naknade nematerijalne štete* – hereafter “the Guidelines”), which were published on 30 December 2002 and 30 June 2003 in the Supreme Court's publication *Izbor odluka Vrhovnog suda Republike Hrvatske* (Selection of decisions of the Supreme Court of the Republic of Croatia), nos. 2/2002 and 1/2003. The Guidelines specified the

following amounts in HRK to be awarded for various types of non-pecuniary damage:

Physical pain, per day	severe		370
	moderate		220
	mild		70
Fear	2,200 – 30,000		
Mental anguish caused by loss of amenities of life	up to 25%		7,500 for every 10%
	between 25% and 40%		11,000 for every 10%
	between 40% and 60%		22,000 for every 10%
	between 60% and 80%		45,000 for every 10%
	between 80% and 100%		75,000 for every 10%
Mental anguish for death of a close relative	Death of a spouse or child		220,000
	Loss of an unborn child		75,000
	Death of a parent	for a child who was in that parent's custody	220,000
		for a child	150,000
	Death of a brother or sister		75,000
Mental anguish for disfigurement	severe	very visible to third persons	37,000
		only occasionally visible	22,000
	moderate	very visible to third persons	22,000
		only occasionally visible	11,000
	mild	very visible to third persons	5,000
		only occasionally visible	2,500
Mental anguish for particularly severe disability of an immediate family member	Disability of a spouse		220,000
	Disability of a parent	for a child who was in that parent's custody	220,000
		for a child	150,000

17. In case no. Rev 1083/09-2 of 15 October 2009, the Supreme Court upheld the lower courts' decision to award the plaintiff the entire costs he had incurred in civil proceedings for damages, even though he had only been awarded 65% of the amount of damages sought. In so deciding, the Supreme Court held as follows:

"... this court has, on [the issue of] partial success of a party in [civil] proceedings and the application of [section 154(2)] of the Civil Procedure Act, already adopted a legal opinion at a session of [its] Civil Division on 6 June 1980. The legal opinion adopted at that session ... suggests that when assessing the costs of the proceedings, it is necessary to interpret the terms 'partial success' and 'corresponding part of the costs' not only quantitatively but also qualitatively.

That means that, where the defendant disputed the substance of the claim in its entirety, because of which costs were incurred, the plaintiff is entitled to have those costs reimbursed in their entirety, irrespective of the level of the amount [of damages]

awarded. Therefore, [section 154(2)] of the Civil Procedure Act should, in the event of partial success in the proceedings, in principle, apply in the manner suggested by the appellant on points of law but also, as an exception, in the way the lower courts applied it in the present case. The lower courts assessed the costs of the proceedings in this case by taking into account the fact that they were only incurred because the substance of the claim was disputed and not the level of non-pecuniary damages sought. The present case [thus] concerns precisely the application of the aforementioned qualitative approach in the assessment of the costs of the proceedings.”

18. In case no. Rev 495/10 of 9 November 2010, the Supreme Court upheld the lower court’s decision that each party bear its own costs in civil proceedings for damages, even though the plaintiff had succeeded in terms of substance and had been awarded 54% of the amount of damages sought because the defendant admitted during the proceedings that the claim was well-founded and only disputed the amount. In so deciding, the Supreme Court held as follows:

“... on [the issue of] partial success of a party in [civil] proceedings and the application of [section 154(2)] of the Civil Procedure Act, this court has already adopted a legal opinion at a session of [its] Civil Division on 6 June 1980. That legal opinion ... suggests that, when assessing the costs of the proceedings, it is necessary to interpret the terms ‘partial success’ and ‘corresponding part of the costs’ not only quantitatively but also qualitatively.

That means that, where the defendant disputed the substance of the claim in its entirety, because of which costs were incurred, the plaintiff is entitled to have those costs reimbursed in their entirety, irrespective of the level of the amount [of damages] awarded. Therefore, [section 154(2)] of the Civil Procedure Act should, in the event of partial success in the proceedings, in principle, apply in the manner suggested by the appellant on points of law but also, as an exception, in the way the lower courts applied it in the present case. The lower courts assessed the costs of the proceedings in this case by taking into account the fact that they were only incurred because the grounds of the claim were disputed and not the level of non-pecuniary damage sought. The present case [thus] concerns precisely the application of the aforementioned qualitative approach in the assessment of the costs of the proceedings.”

19. In case no. Rev 725/14-2 of 23 October 2014, the Supreme Court upheld the lower courts’ decision that each party bear its own costs incurred in civil proceedings regarding a labour dispute, considering the amount of the claim sought and the success of the parties in the proceedings. In so deciding, the Supreme Court held as follows:

“... in *Klauz v. Croatia*, the ECHR did not find that awarding the costs of the proceedings to the defendant by applying [section 154(2)] of the Civil Procedure Act in accordance with the legal opinion adopted at the session of the Civil Division on 6 June 1980 was in itself contrary to the Convention, but held that there had been a violation of Article 6 § 1 of the Convention and Article 1 of the Protocol 1 to the Convention regarding the amount the plaintiff had been ordered to pay for the defendant’s costs of the proceedings, in the light of all the specific circumstances of the case, in which the plaintiff sought compensation from the State, represented by the State Attorney’s Office, for ill-treatment caused by a police officer.

In the present case, the second-instance court's decision is compatible with the stance of the ECHR in *Klauz v. Croatia*, because, given all the circumstances of the present case (civil proceedings between private parties, in which the appellant on points of law claimed protection from harassment (discrimination) at work and damages for infringement of her personality rights), it ordered that each party bear its own costs of the proceedings. That is to say, the court used the discretion awarded to it under [section 154(2)] of the Civil Procedure Act, interpreting that provision in line with the purpose and objective of the legal norm (teleological interpretation), because, given the amount of the claim and [percentage of] success of the parties in the proceedings, had the costs been calculated in accordance with the success of the parties [qualitatively], they would have been even more unfavourable for the plaintiff."

20. In case no. Rev 1645/17-3 of 19 September 2017, the Supreme Court reversed in part the lower court's decision concerning costs in civil proceedings for damages and ordered the defendant to pay the plaintiff part of his costs, even though the plaintiff had only succeeded with less than 30% of the claim. In so deciding, the Supreme Court held as follows:

"In accordance with the success of the parties, and particularly acknowledging the fact that the plaintiff succeeded in full with the grounds of his claim and that an expert opinion had been obtained, the court considers that in the circumstances of the present case, the plaintiff is entitled to the reimbursement of HRK 31,500 in respect of the costs of legal representation by an advocate ...

The court holds that in the present case, particularly given the fact that the defendant is the State..., which is responsible for the ill-treatment of the plaintiff, and that it is therefore not a classic civil dispute between private parties, there is no room for a strict mechanical application of [section 154(2)] of the Civil Procedure Act (in the court's view, that provision should be applied qualitatively, not just quantitatively) because that would be disproportionate to the legitimate aim of [section 154(2)] of the Civil Procedure Act when it requires one of the parties to reimburse the other's costs of the proceedings in accordance with their success in the proceedings, those costs being calculated in proportion to the value of the subject matter in dispute. Indeed, in the present case, strict application of that section would be unfair because it would mean that the plaintiff (who succeeded with 29.6% of the total amount of damages sought) would have to reimburse the defendant (given its success in the remaining 70.04%) a considerable portion of the costs of the proceedings, and he would, in fact, lose a 'large' part of the damages awarded (in that regard, [see] the ECHR's judgment) ..."

21. In case no. Rev-3002/2014-3 of 11 July 2018, the Supreme Court reversed in part the lower court's judgment and the decision on costs in civil proceedings for damages and ordered the State as the defendant to pay the plaintiff part of the costs of the proceedings corresponding to his success in the proceedings. In so deciding, the Supreme Court held as follows:

"When deciding on the costs of the proceedings, it must be pointed out that the total costs of the proceedings for the plaintiff amount to HRK 80,100. Bearing in mind the plaintiff's partial success in the proceedings, in accordance with [section 154(2)] of the Civil Procedure Act, he had to be awarded costs ... in the amount of HRK 32,040. The plaintiff's claim for damages was finally determined in full in this judgment and can be qualified as a possession protected by Article 1 of the Protocol 1 to the

Convention ... The plaintiff's partial success cannot, in this case, result in his obligation to pay the [State's] costs of the proceedings or the second-instance court's conclusion that each party bear their own costs, because that would ultimately constitute an interference with the plaintiff's right to the peaceful enjoyment of his possessions ([see] the ECHR's judgment *Klauz v. Croatia*...)."

B. The Constitutional Court's case-law

22. In case no. U-III-617/2011 of 2 July 2015, the Constitutional Court upheld the lower courts' decision ordering the plaintiff to reimburse the defendant the part of the costs corresponding to their respective success in the proceedings. In doing so, the Constitutional Court expressly stated that it had considered the general principles applicable to that case in the light of the Court's judgment in *Klauz v. Croatia* (no. 28963/10, 18 July 2013).

23. In its decision no. U-I-3004/2014 of 6 June 2017, the Constitutional Court rejected a petition for review of the constitutionality of section 91 of the State Attorney's Act, which provides that State Attorney's Offices are to be awarded costs of proceedings in the same amount as lawyers. In doing so, the Constitutional Court expressly stated:

"The Constitutional Court notes, however, that any possible arbitrary interpretation and application of the relevant provisions of the Civil Procedure Act concerning costs of proceedings to State Attorney's Offices is amenable to constitutional review in proceedings initiated by a constitutional complaint under section 62 of the Constitutional Court Act."

24. In case no. U-III-4029/2013 of 19 December 2017, the Constitutional Court quashed the lower courts' decision on costs which obliged the plaintiff to reimburse the defendant's costs in accordance with the success achieved in civil proceedings for damages. In so deciding, the Constitutional Court held as follows:

"... the Constitutional Court holds that the second-instance court and the Supreme Court applied [section 154(2)] of the Civil Procedure Act mechanically, without taking into account the special circumstances of the present case. It is paradoxical that the State's legal fees for the State Attorney's Office 'take' not only the entire compensation awarded to the plaintiff, but that the plaintiff at the end of the proceedings, in which he succeeded entirely in terms of the substance of the claim, owes the State's costs of the proceedings, which substantially exceed the amount of the compensation awarded. The Constitutional Court holds that the procedural sanction for bringing an inflated claim in the circumstances of the present case is too severe and cannot be justified from the aspect of a fair trial. Therefore, the Constitutional Court holds that the decision of the Zagreb County Court and the Supreme Court on costs was not proportionate to the legitimate aim pursued by [section 154(2) ...] and that its application in the present case resulted in a restriction which impaired the very essence of the applicant's right of access to court guaranteed by Article 29 § 1 of the Constitution and Article 6 § 1 of the Convention."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

25. The applicant complained of a breach of his right of access to a court owing to the excessive award of costs to the defendant. 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

26. The Government submitted that the final decision in the applicants' case had been the judgment of the Supreme Court of 11 February 2015 (see paragraph 9 above), and not the Constitutional Court's decision of 29 March 2018 (see paragraph 11 above). As the applicant had been represented by a lawyer, he should have known that, according to the Constitutional Court's practice, a constitutional complaint was not a remedy to be used in respect of complaints concerning costs of proceedings.

27. The applicant disagreed.

28. The Court notes that it has already examined the same inadmissibility argument and rejected it in the case of *Pavlović and Others v. Croatia* (no. 13274/11, §§ 30-39, 2 April 2015). It sees no reason to depart from that conclusion in the present case.

29. The Court further notes that the Constitutional Court has occasionally, though not consistently, examined complaints concerning costs of proceedings raised under section 62 of the Constitutional Court Act (see paragraphs 22 and 23 above). What is more, in its Revised Action Report submitted to the Committee of Ministers within the framework of the execution of judgments in the cases of *Klauz* (cited above) and *Cindrić and Bešlić v. Croatia* (no. 72152/13, 6 September 2016), the Croatian Government submitted that as of the Constitutional Court's decision of 6 June 2017 (see paragraph 23 above), a constitutional complaint was to be considered an effective remedy for complaints concerning costs of proceedings.

30. In view of the foregoing, it cannot therefore be said that applicants wishing to submit to the Court complaints related to excessive costs are dispensed from filing a constitutional complaint beforehand. In the same vein, it would be contrary to the principle of subsidiarity to hold that a constitutional complaint should not have been exhausted just because at the time the Constitutional Court's practice suggested that the decision being contested was not amenable to constitutional review. To do so would not

only ignore the fact that such practice may evolve but would, more importantly, remove any incentive for such evolution as applicants would systematically address their complaints to the Court without giving the Constitutional Court an opportunity to change its practice (see *Vrtar v. Croatia*, no. 39380/13, § 76, 7 January 2016). The decisions whereby the Constitutional Court departed from its standard practice and examined constitutional complaints concerning costs of proceedings (see paragraphs 22-24 and 29 above) only reinforce this view and the resulting conclusion that the applicant cannot be blamed for lodging a constitutional complaint against the decision on costs in his case.

31. It follows that the Government's objection regarding non-compliance with the six-month rule must be rejected.

32. The Court further notes that this 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' arguments

33. The applicant maintained that his right of access to court had been unduly restricted by the excessive amount of costs he had been ordered to pay, despite having succeeded with his civil claim for damages. He claimed compensation for non-pecuniary damage caused to him by B.H. in accordance with the findings of the expert witnesses. If he had to be afraid to make a claim based on his subjective feeling of fear that it would not be successful or that he would have to pay unreasonable costs to the defendant, then such a situation was in breach of Article 6 § 1 of the Convention, irrespective of whether the defendant was the State or a natural or legal person.

34. The applicant explained that he had insisted on hearing and confronting two witnesses precisely because B.H. had denied any responsibility for the incident and the burden of proof had been on the applicant to show that the incident and damage had actually occurred. The applicant eventually proved that the defendant had been responsible for causing the damage, but nonetheless had had to pay him for the costs he had incurred in denying his liability.

35. The Government argued that the present case differed significantly from *Klauz* and *Cindrić and Bešlić* (both cited above), in that it concerned a civil dispute between private parties, in which the respondent had had to hire a lawyer and pay for such services from his own pocket. Furthermore, the proceedings had not concerned a serious violation of the applicant's human rights by State agents, but rather a physical assault committed by a private individual.

36. Acknowledging that the “loser pays” rule in respect of costs of proceedings had amounted to a restriction on the applicant’s right of access to a court, the Government reiterated that the rule in question was not *per se* incompatible with Article 6. The provisions governing costs of civil proceedings had been clear and precise, and accessible to the applicant, who had been represented by a lawyer. Moreover, their application in the present case had been foreseeable and in accordance with the principle of legal certainty.

37. The Government stressed that, while the applicant had significantly reduced his initial civil claim over the course of the proceedings, it had nonetheless remained excessive. Had he set the value of the subject matter in dispute in accordance with the opinion of the expert witnesses, who had found that he had not suffered any permanent loss of amenities of life, the resulting costs for both him and the respondent would have been significantly lower. The applicant’s insistence on confronting two witnesses, one of whom had repeatedly failed to attend court, had also resulted in significant costs.

38. The Government maintained that the domestic courts had not applied the provisions on the reimbursement of costs in an arbitrary or mechanical way. Instead, they had consistently applied that domestic law and the 1980 Supreme Court legal opinion, while taking into account the specific circumstances of the case.

2. *The Court’s assessment*

(a) **General principles**

39. The general principles regarding access to court are summarised in the case of *Zubac v. Croatia* ([GC], no. 40160/12, §§ 76-79, 5 April 2018) as follows:

“40. The right of access to a court must be “practical and effective”, not “theoretical or illusory” ... This observation is particularly true in respect of the guarantees provided for by Article 6, in view of the prominent place held in a democratic society by the right to a fair trial ...

41. However, the right of access to the courts is not absolute but may be subject to limitations; these are permitted by implication since the right of access by its very nature calls for regulation by the State, which regulation may vary in time and in place according to the needs and resources of the community and of individuals (see *Stanev v. Bulgaria* [GC], no. 36760/06, § 230, ECHR 2012). In laying down such regulation, the Contracting States enjoy a certain margin of appreciation. Whilst the final decision as to observance of the Convention’s requirements rests with the Court, it is no part of the Court’s function to substitute for the assessment of the national authorities any other assessment of what might be the best policy in this field. Nonetheless, the limitations applied must not restrict the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means

employed and the aim sought to be achieved (see *Lupeni Greek Catholic Parish and Others*, cited above, § 89, with further references).”

42. As regards costs of proceedings, the Court has already held that the imposition of a considerable financial burden after the conclusion of proceedings may constitute a restriction on the right to a court guaranteed by Article 6 § 1 of the Convention (see *Stankov v. Bulgaria*, no. 68490/01, § 54, 12 July 2007; *Klauz v. Croatia*, no. 28963/10, § 77, 18 July 2013 and *Zustović v. Croatia*, no. 27903/15, § 98, 22 April 2021).

43. Furthermore, in *Klauz* (cited above), the Court held that the “loser pays” rule in section 154(1) of the Civil Procedure Act could be viewed as a restriction hindering the right of access to court aimed at discouraging potential litigants from bringing unfounded actions or submitting exaggerated claims before the courts (*ibid.*, §§ 81 and 84).

44. The Court has further confirmed that such a restriction on the right of access to court cannot be regarded as *per se* incompatible with Article 6 § 1 of the Convention (see *Stankov*, cited above, § 52, and *Harrison McKee v. Hungary*, no. 22840/07, § 22, 3 June 2014). However, the amount of costs assessed in the light of the particular circumstances of a given case is a material factor in determining whether or not a person enjoyed the right of access to court (see *Klauz*, cited above, § 82).

(b) Application of the general principles to the present case

45. Bearing in mind its conclusion in *Klauz* (cited above, § 81), the Court considers that in the present case there was a restriction on the applicant’s right of access to court. It must further review whether there was a reasonable relationship of proportionality between the means employed and the legitimate aim sought to be achieved by means of that restriction.

46. The Court notes at the outset that unreasonable costs of proceedings may raise an issue under the Convention primarily in cases in which a party succeeds, at least in part, with the grounds of the civil claim, but not with its entire amount (see *Klauz*, cited above, § 76, and *Stankov*, cited above, § 51). It is in those cases that very high costs of proceedings may “consume” a large portion or even the entirety of the party’s financial award in the case. In the Court’s view, if there are no weighty reasons to justify such a result, such a situation makes the litigation pointless and renders that party’s right to a court merely theoretical and illusory (see, *mutatis mutandis*, *Stankov*, cited above, § 54).

47. The Court has previously held that high litigation costs may exceptionally also raise an issue under the Convention in cases in which a party has been completely unsuccessful with the grounds of the claim, in situations where that party could for some reason not predict his or her own prospects of success because, for instance, the outcome of the proceedings in the case depended on the interpretation of a novel legal issue (see, for example, *Cindrić and Bešlić*, cited above, § 107).

48. In that connection, the Court reiterates that it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law. This applies in particular to the interpretation by courts of rules of a procedural nature. The Court's role is confined to ascertaining whether the effects of such an interpretation are compatible with the Convention (see, for example, *Tejedor García v. Spain*, 16 December 1997, § 31, *Reports of Judgments and Decisions* 1997-VIII, and *Pérez de Rada Cavanilles v. Spain*, 28 October 1998, § 43, *Reports* 1998-VIII).

49. In the present case, the Court notes that the applicant's claim was deemed well-founded and that he was awarded about 75% of his final claim for damages. While it is true that, as submitted by the Government, the applicant's claim for one aspect of the damage sustained, namely mental anguish resulting in loss of amenities of life in the amount of some HRK 4,000 was dismissed in full, this does not alter the fact that he still succeeded in proving the occurrence of the act in question and its causal link to the damage actually suffered by him.

50. The Court further notes that the applicant was awarded damages in the amount of HRK 8,360 and at the same time was ordered to pay the defendant's costs in the amount of HRK 16,760, that is to say, approximately double the amount he had been awarded in damages. Although, in contrast to *Klauz*, the applicant in the present case did not suffer ill-treatment at the hands of the authorities and his case admittedly did not concern the State's duty to compensate for wrongs attributable to its authorities, the Court considers that what was at stake for him in the present case was nonetheless a well-founded claim for damages caused by an attack on his physical integrity by a private individual.

51. In addition, the applicant incurred around HRK 20,000 of his own costs of representation by an advocate, of which only about HRK 10,000 had been reimbursed to him (see paragraph 7 above). In total, the applicant thus spent around HRK 36,000 on the court proceedings which ended in his favour, whereas he was only awarded about HRK 18,000, that is to say, half of the amount.

52. The Court will next examine whether there were particularly weighty reasons to justify such an outcome (see paragraph 46 above).

53. In this connection, the Court takes note of the Government's contention that the present case differs from *Klauz* and *Cindrić and Bešlić* (both cited above) in that the respondent in the proceedings in question was a private individual and not the State. However, the Court considers that the access-to-court guarantees apply with equal strength to private disputes as they do to those involving the State. This is so because in both types of proceedings a party can be forced to bear a disproportionate financial burden in the form of costs of proceedings, which can ultimately result in a breach of that party's right of access to court (see, *mutatis mutandis*, *Hoare v. the United Kingdom* (dec.), no. 16261/08, § 64, 12 April 2011). At the

same time, the Court considers that the fact that the defendant in the present case was a private party forms but an element in assessing the proportionality of the restriction of the applicant's right of access to court (see, *mutatis mutandis*, *Harrison McKee*, cited above, § 32; see also *Egill Einarsson v. Iceland* (no. 2), no. 31221/15, §§ 37 and 40, 17 July 2018, albeit the latter in a different context).

54. The Government further argued that the applicant had initially lodged an unjustifiably exaggerated civil claim, which had resulted in the high costs of the proceedings he had ultimately been ordered to pay. In this connection, the Court first observes that under domestic law at the material time, plaintiffs in civil proceedings were required to indicate the value of the subject matter in dispute when lodging their statement of claim and were, in principle, unable to increase it afterwards without the consent of the defendant (see paragraph 12 above). The Court reiterates at the same time that non-pecuniary damage is inherently difficult to assess and frequently involves research into previous cases in order to establish, on the basis of similar circumstances, the likely amount of any award of compensation (see *Stankov*, § 62, and *Klauz*, § 88, both cited above).

55. In the present case, the applicant first claimed HRK 32,000 (approximately EUR 4,350) for non-pecuniary damage sustained because of a physical attack by the defendant. After obtaining the relevant expert opinions, the applicant reduced his claim to around HRK 12,000 (approximately EUR 1,600), specifically HRK 4,000 in respect of physical pain suffered, HRK 5,000 in respect of fear, HRK 3,500 in respect of mental anguish caused by loss of amenities of life and HRK 360 in respect of assistance and care by other persons (see paragraph 6 above). Regard being had to the Guidelines of the Supreme Court on the possible amounts of non-pecuniary damage to be awarded for each of the applicant's claims (see paragraph 16 above), the Court does not consider the applicant's claim exaggerated.

56. Furthermore, the Court notes that the Scale of Advocates' Fees, in accordance with which the costs of each procedural activity are to be calculated depending on the value of the subject matter in dispute, provided for the same remuneration of lawyer's costs for claims set between HRK 10,000 and HRK 100,000 (see paragraph 14 above). In such circumstances, the Court cannot but agree with the second-instance court that the defendant did not bear any additional costs because the applicant had initially set his claim at HRK 32,000 and then reduced it to HRK 12,000 (see paragraphs 5, 6 and 8 above).

57. The Government also argued that the domestic courts had not applied the provisions on the reimbursement of costs in an arbitrary or mechanical way, but consistently with the Supreme Court's 1980 legal opinion. In this connection, the Court notes that that legal opinion sought to clarify the application of the admittedly vaguely worded section 154 of the

Civil Procedure Act, which left a considerable amount of discretion to the courts in deciding costs of proceedings in cases of partial success (see *Klauz*, cited above, § 94). The legal opinion required the courts not only to assess the “quantitative” success of the parties, that is to say, the mere percentage of success of each party, but also their “qualitative” success, thus allowing the courts to take into account other factors, such as the well-foundedness of the claim (see, in this sense, the amended section 154(2) of the 2019 Civil Procedure Act cited at paragraph 13 above). It also transpires from the Supreme Court’s case-law (see paragraphs 17-21 above) that the above-mentioned legal opinion served as a sort of corrective factor in the context of potentially unfair or excessive costs awards against successful claimants.

58. The Court further notes that throughout the proceedings the defendant disputed the grounds of the applicant’s claim by seeking to prove that he had never physically assaulted him and thus never inflicted any damage. Only as a precaution did the defendant also object to the amount of damages claimed by the applicant (see paragraph 5 above). The Court does not consider that the Supreme Court took this sufficiently into account in the present case. Instead, and contrary to previous cases on the matter (see paragraphs 17-21 above), it mechanically considered that, during the initial part of the proceedings when most procedural activities seemed to have taken place, the applicant had “quantitatively succeeded” with only some 25% of the amount claimed. At the same time, it disregarded the fact that the applicant had “qualitatively” succeeded with the grounds of his claim, that is to say, he had successfully proved the fact that the damage caused to him by the defendant had actually occurred.

59. In sum, the Court finds that the proceedings in the applicant’s case resulted in the absurd outcome that the applicant, who had proved that he had been physically attacked by B.H., was ordered to pay in costs to him double the amount which he had been awarded in damages as a result of the attack (see paragraph 50 above) and that the Government have failed to put forward sufficiently convincing reasons to justify this. Consequently, the Court considers that the manner in which the Supreme Court applied the domestic legislation in the applicant’s case fell outside the acceptable margin of appreciation allowed to the domestic courts under Article 6 § 1.

60. The foregoing considerations are sufficient to enable the Court to conclude that in the circumstances of the present case the impugned restriction impaired the very essence of the applicant’s right of access to court. There has accordingly been a violation of Article 6 § 1 of the Convention.

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

61. The applicant also complained that the excessive costs order in the present case had violated his property rights, contrary to 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

62. The Government disputed the admissibility of this complaint on the same grounds as the applicant’s complaint under Article 6 § 1 concerning the excessive costs of the proceedings (see paragraph 26 above).

63. The applicant disagreed.

64. The Court refers to its above findings that the six-month inadmissibility objection by the Government must be rejected (see paragraphs 28-31 above) and considers that the same conclusion applies *mutatis mutandis* in the context of Article 1 of Protocol No. 1 to the Convention (see *Klauz*, cited above, § 106).

65. The Court further notes that this 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

66. The parties relied on their respective arguments summarised in paragraphs 33-38 above.

67. The Court reiterates that an applicant may allege a violation of Article 1 of Protocol No. 1 only in so far as the impugned decisions relate to his or her “possessions” within the meaning of that provision. “Possessions” can be “existing possessions” or claims that are sufficiently established to be regarded as “assets”. A claim may be regarded as an asset only when it is sufficiently established to be enforceable (see, for example, *Stran Greek Refineries and Stratis Andreadis v. Greece*, 9 December 1994, § 59, Series A no. 301-B). As the applicant’s claim for compensation in the present case was acknowledged in the amount awarded to him by the final judgment of the Supreme Court of 11 February 2015, the Court considers

that this claim was sufficiently established to qualify as an “asset” protected by Article 1 of Protocol No. 1.

68. The Court has previously held that a substantial reduction of the amount of that claim resulting from the duty to pay the costs of the proceedings constitutes an interference with the applicant’s right to peacefully enjoy his possessions (see *Cindrić and Bešlić*, cited above, §§ 91-92), even in disputes between private parties (see *Hoare v. the United Kingdom* (dec.), no. 16261/08, §§ 49-51, 12 April 2011, and *Agis Antoniadis v. the United Kingdom*, no. 15434/89, Commission decision of 15 February 1990, D.R. 64, p. 237).

69. Having regard to its case-law on the subject (see, in particular, *Perdigão v. Portugal* [GC], no. 24768/06, §§ 63-79, 16 November 2010) and to the reasons for which it has found a violation of Article 6 § 1 on account of the excessive costs of the proceedings (see paragraphs 53-59 above), the Court considers that the interference in question was provided for by law, was in the general interest but did not strike the requisite fair balance between the general interest involved and the applicant’s right to the peaceful enjoyment of his possessions. Consequently, it was not proportionate.

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

III. 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 12,767.83 (approximately EUR 1,740) in respect of pecuniary damage.

73. The Government contested that claim.

74. In view of the nature of the violations found, the Court awards the applicant the amount claimed in full, plus any tax that may be chargeable.

B. Costs and expenses

75. The applicant also claimed HRK 12,500 (approximately EUR 1,700) for the costs and expenses incurred before the Court and HRK 6,250 (approximately EUR 850) in respect of costs related to the lodging of his constitutional complaint.

76. The Government contested those amounts.

77. 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 were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,550 covering costs under all heads, plus any tax that may be chargeable to the applicant.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 1 of Protocol No.1 to the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Croatian kunas at the rate applicable at the date of settlement:
 - (i) EUR 1,740 (one thousand seven hundred and forty euros), plus any tax that may be chargeable, in respect of pecuniary damage;
 - (ii) EUR 2,550 (two thousand five hundred and fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

ČOLIĆ v. CROATIA JUDGMENT

Done in English, and notified in writing on 18 November 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

{signature_p_2}

Renata Degener
Registrar

Péter Paczolay
President