



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

FIRST SECTION

CASE OF DELIĆ v. CROATIA

(Application no. 48771/99)

JUDGMENT

STRASBOURG

27 June 2002

FINAL

27/09/2002

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 Delić v. Croatia,

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

Mr C.L. ROZAKIS, *President*,

Mrs F. TULKENS,

Mr P. LORENZEN,

Mrs N. VAJIĆ,

Mr E. LEVITS,

Mr A. KOVLER,

Mrs E. STEINER, *judges*,

and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 6 June 2002,

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

PROCEDURE

1. The case originated in an application (no. 48771/99) 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 Petar Delić (“the applicant”), on 1 June 1999.

2. The Croatian Government (“the Government”) were represented by their Agent, Ms Lidija Lukina Karajković.

3. The applicant alleged, in particular, that several sets of proceedings concerning his civil claims for re-payment of loans had exceeded the “reasonable time” requirement and that he had no remedy at his disposal in respect of the length of these proceedings.

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

5. By a decision of 23 October 2001 (Rule 54 § 4), the Court declared the application partly admissible.

6. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The Court decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 2 *in fine*). The parties replied in writing to each other's observations.

7. On 1 November 2001 the application was allocated to the First Section. Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. During 1992 the applicant lent various sums of money to a number of companies in Zagreb for periods ranging from three to twelve months at a rate of interest ranging from 5 to 31% (so-called financial engineering). As these companies failed to repay the loans, the applicant instituted ten different sets of proceedings for re-payment of his loans.

1. Proceedings against A.K.M and its owner, A.K.

9. On 29 June 1993 the applicant filed an action with the Zagreb Municipal Court against A.K.M and its owner, A.K for re-payment of his loan in the amount of 70,000 Austrian schillings (ATS).

10. At the preliminary hearing on 22 November 1993 the applicant's counsel withdrew the claim in respect of A.K.M. He also requested leave to file additional submissions within eight days.

11. On 1 December 1993 the applicant's counsel filed additional submissions specifying the claim.

12. According to the Government, following the resignation of the judge in charge of the case a certain period of time elapsed before the case was assigned to another judge.

13. The next hearing, scheduled for 15 September 2000, was adjourned due to maintenance work on the court building's electrical circuit.

14. At the next hearing, on 14 December 2000, the court exempted the applicant from paying the court fees. The documents showed that A.K. was unknown at the address indicated.

15. The hearing scheduled for 23 March 2001 was adjourned because A.K. did not appear. The court invited the applicant to adjust his claim to the monetary system in Croatia and to specify his interest claim, which the applicant did on 10 October 2001. The case is presently pending before the court of first instance.

2. Proceedings against T.I.A. and its owner, I.A.

16. On 12 October 1993 the applicant, together with four other plaintiffs, filed an action with the Zagreb Municipal Court against T.I.A. and its owner, I.A for re-payment of their loans. The applicant claimed the sum of ATS 70,000.

17. On 14 December 1993 the court refused to allow the plaintiffs' representative to represent him as he had, in other proceedings, been charged with providing unlicensed legal services. The plaintiffs appealed

against that decision. On 24 May 1994 the Zagreb County Court (*Županijski sud u Zagrebu*) dismissed the plaintiffs' appeal.

18. According to the Government, the judge in this case resigned from her duties. The judge to whom the case was transferred was on maternity leave. The case was therefore re-transferred to another judge.

19. At the next hearing, on 28 June 2000, the defendants' counsel replied to the applicant's claim stating that the same claim had already been decided by the Zabok Municipal Court (*Općinski sud u Zaboku*).

20. At the hearing on 10 December 2001 the court exempted the applicant from paying the court fees. It appears that the proceedings are still pending before the Zagreb Municipal Court.

3. *Proceedings against T.T.B. and its owner, T.B.*

21. On 15 October 1993 the applicant, together with two other plaintiffs, filed an action with the Zagreb Municipal Court against T.T.B. and its owner, T.B. for re-payment of their loans. The applicant claimed the sum of 6,000 German Marks (DEM).

22. A preliminary hearing scheduled for 13 January 1994 was adjourned because T.B. did not appear. The documents showed that the address indicated on the notice of the hearing date did not exist.

On 17 January 1994 the plaintiffs submitted T.B.'s correct address.

23. A hearing scheduled for 8 April 1994 was adjourned because T.B. again did not appear. The documents showed that she had failed to collect the notice of the hearing date.

24. A hearing scheduled for 10 June 1994 was also adjourned due to T.B.'s absence. The documents showed that she had changed her address.

On 15 June 1994 the plaintiffs submitted T.B.'s new address.

25. At a hearing on 10 October 1994 the court stayed the proceedings because the plaintiffs failed to appear.

On 19 January 1995 the plaintiffs requested the court to resume the proceedings.

26. Hearings scheduled for 18 September 1995 and 18 January 1996 were adjourned due to T.B.'s absence. The court requested the Ministry of the Interior to submit T.B.'s address.

27. A hearing scheduled for 20 May 1996 was adjourned because T.B.'s counsel did not submit a letter of authorisation.

28. At a hearing on 7 September 2000 the plaintiffs stated that they wished to produce additional evidence.

29. On 10 January 2001 T.B. filed her reply to the plaintiffs' claim.

30. At the hearing on 19 January 2001 the court exempted the applicant and one other plaintiff from paying the court fees and the remaining plaintiff did not appear. The court served T.B.'s reply on the plaintiffs and invited them to submit their comments within thirty days.

31. The next hearing, scheduled for 12 June 2001, was adjourned due to the illness of the presiding judge. It appears that the proceedings are presently pending before the court of first instance.

4. Proceedings against M.B.B. and its alleged owner, B.B.

32. On 15 October 1993 the applicant, together with fifteen other plaintiffs, filed an action with the Zagreb Municipal Court against M.B.B. and its owner, B.B for re-payment of their loans. The applicant claimed the sum of 5,000 DEM.

According to the Government, the applicant failed to submit any evidence concerning the relationship between the company M.B.B. and its alleged owner, B. B.

33. At a hearing on 8 September 2000 a number of plaintiffs and B.B. did not appear. The court severed the proceedings in respect of the plaintiffs who did appear at the hearing, including the applicant, and invited them to specify their claims.

34. At a hearing on 14 September 2001 the court exempted the applicant from paying the court fees.

35. The next hearing was held on 18 October 2001. It appears that the proceedings are presently pending before the court of first instance.

5. Proceedings against A.Š.M. and its owner, A.Š.

36. On 15 October 1993 the applicant, together with three other plaintiffs, filed an action with the Zagreb Municipal Court against company A.Š.M. and its owner, A.Š for re-payment of their loans. The applicant claimed the sum of DEM 12,000.

37. A preliminary hearing scheduled for 16 June 1994 was adjourned because A.Š. did not appear. The documents showed that she had changed her address. The court invited the plaintiffs to submit her new address within thirty days.

38. A hearing scheduled for 5 April 1995 was adjourned because A.Š. again failed to appear. The documents showed that the address indicated on the notice of the hearing date did not exist.

39. At the hearing on 9 May 1995 the court pronounced judgment by default.

40. On 20 September 1996 a lawyer, M.P., informed the court that he was the legal representative of A.Š. and requested the court to re-open the proceedings. Following the hearing on whether A.Š. had received the judgment, the court annulled its judgment by default on 24 March 1998 and resumed the proceedings.

41. At a hearing on 15 September 1998 the court requested the plaintiffs to submit evidence in support of their claim.

42. At a hearing on 11 December 1998 the court heard three plaintiffs.

43. At a hearing on 12 February 1999 the court heard the remaining plaintiff.

44. A hearing scheduled for 15 April 1999 was adjourned due to A.Š.'s absence. Her counsel informed the court that she had given birth. The court requested the Zagreb Commercial Court to submit a certificate from its registry regarding the legal status of A.Š.M. On 23 April 1999 the court repeated that request.

On 17 May 1999 the requested certificate was submitted.

45. A hearing scheduled for 24 June 1999 was adjourned because A.Š. did not appear. Her counsel informed the court that she was ill.

46. A hearing on 2 November 1999 was adjourned because A.Š. was absent again. She telegraphed the court to inform it that her child was ill.

47. At a hearing on 1 February 2000 the court heard A.Š. The plaintiffs asked the court to hear several witnesses but failed to provide their names.

On 8 February 2000 the plaintiffs submitted the names of the witnesses.

48. At the next hearing, on 11 October 2000, the proceedings were concluded and the court gave judgment awarding the applicant's claim in part and rejecting it in part. On 11 June 2001 A.Š. appealed against the judgment. On 14 June 2001 the court attempted to serve the appeal on the applicant in order for him to submit his reply, but he did not collect it.

On 10 October 2001 the applicant informed the court that he had received a copy of A.Š.'s appeal.

On 23 October 2001 the case-file was sent to the Zagreb County Court as the appellate court, where it is presently pending.

6. Proceedings against T.M.T. and its owner, M.T.

49. On 3 June 1993 the applicant filed an action with the Zagreb Municipal Court against T.M.T. and its owner, M.T for re-payment of his loan in the amount of DEM 10,000.

50. The preliminary hearing was held on 21 October 1993.

51. On 4 July 1994 the court refused the applicant's counsel the right to represent the applicant.

52. The judge in that case subsequently resigned from her office and the case was transferred to another judge.

53. A hearing scheduled for 12 November 1997 was adjourned because of M.T.'s absence.

54. At a hearing scheduled for 18 February 1998, the court stayed the proceedings because the applicant failed to appear.

On 22 May 1998 the applicant requested the court to resume the proceedings.

55. A hearing scheduled for 10 March 1999 was adjourned.

56. At a hearing on 4 June 1999 the applicant gave testimony.

57. Due to the applicant's absence from the hearing on 15 October 1999, the court struck the case out. According to the Government, the court had

attempted to deliver that decision to the applicant fifteen times since then but he did not collect it. Finally, on 6 September 2000 the decision was served on the applicant by the court's process server.

58. On 20 September 2000 the applicant filed a motion to resume the proceedings (*prijedlog za povrat u prijašnje stanje*) and also appealed against the above decision.

59. At a hearing on 12 March 2001 the court dismissed the applicant's motion.

7. Proceedings against D. and its owner, D.T.

60. On 8 June 1993 the applicant filed an action with the Zagreb Municipal Court against D. and its owner, D.T for re-payment of his loan in the amount of DEM 10,000.

61. At a hearing scheduled for 21 October 1993 the court decided to stay the proceedings because the applicant did not appear.

On 7 February 1994 the applicant requested the court to resume the proceedings.

62. The judge in that case subsequently resigned from her duties and the case was transferred to another judge.

63. On 18 May 1999 the court invited the applicant to adjust his claim and to submit further evidence. The letter was sent by registered mail but the applicant did not collect it.

64. On 24 September 1999 the court invited the applicant to submit the defendants' addresses.

65. On 6 November 1999 the court requested the Zagreb Commercial Court to submit a certificate from its registry regarding the legal status of D.

66. A hearing scheduled for 3 February 2000 was adjourned since neither party appeared. The documents showed that the applicant had not collected the notice of the hearing date.

67. The next hearing, scheduled for 13 June 2000, was adjourned due to D.T.'s absence. The documents showed that D. had ceased to exist while D.T. had received the notice of the hearing date. The applicant's counsel asked the court to allow him to submit the defendants' addresses within sixty days.

On 11 July 2000 the applicant's counsel informed the court that he had not been able to verify the required addresses.

68. On 22 November 2000 the court stayed the proceedings in respect of D. The proceedings concerning D.T. are still pending.

8. Proceedings against E. and its owner, F.Š.

69. On 12 October 1993 the applicant filed an action with the Zagreb Municipal Court against E. and its owner, F.Š for re-payment of his loan in the amount of ATS 70,000.

70. A preliminary hearing scheduled for 2 April 1996 was adjourned because the defendants did not appear.

71. A hearing scheduled for 5 July 1996 was adjourned because the applicant had informed the court that he was ill.

72. The next hearing, scheduled for 24 September 1996, was adjourned because the judge was appointed to another court.

73. On 15 April 1999 the court invited the applicant to inform it whether he wanted to proceed with his claim. The letter was sent three times by registered mail but the applicant did not collect it. The court then attempted to serve the letter on the applicant through its process server, but the applicant was absent. The process stuck a notice to the applicant's door informing him that the letter would be served on him on 6 July 1999. As the applicant was absent again the letter was left at his door.

74. The next hearing, scheduled for 9 February 2000, was adjourned because neither party appeared. The documents showed that the applicant had not collected the notice of the hearing date.

75. Due to the applicant's absence at a hearing on 17 September 2001 the court terminated the proceedings.

9. Proceedings against L.K.M. and its owner, K.L.

76. On 22 April 1993 the applicant filed an action with the Zagreb Municipal Court against L.K.M. and its owner, K.L. for re-payment of his loan in the amount of DEM 10,000.

77. As the defendants did not appear at the hearing on 18 October 1993 the court pronounced judgment by default.

Subsequently, the defendants filed a motion to resume the proceedings.

78. At a hearing on 1 February 1994 the court annulled its judgment by default. It also stayed the proceedings because the applicant did not appear.

As the applicant did not file a request to the court to resume the proceedings within four months, on 14 June 1994 the court struck the case out.

The applicant appealed against the above decision and also filed a motion to resume the proceedings.

79. On 15 July 1994 the Zagreb Municipal Court sent the case-file to the Zagreb County Court. That court remitted the case to the Zagreb Municipal Court in order to determine the applicant's motion.

80. At a hearing on 12 June 1995 the Zagreb Municipal Court annulled its decision of 14 June 1994.

81. Hearings scheduled for 21 November 1995 and 14 March 1996 were adjourned because K.L. did not appear.

82. A hearing scheduled for 16 September 1996 was adjourned because the judge in the case had not been re-appointed.

83. The next hearing, scheduled for 10 September 1998, was adjourned because K.L. did not appear.

84. At a hearing on 19 March 1999 the applicant gave testimony. The court invited the Zagreb Commercial Court to submit a certificate from its registry concerning the legal status of L.K.M..

On 29 September 1999 the Zagreb Commercial Court submitted the requested certificate.

85. Subsequently, the presiding judge died and the case-file lay dormant for a certain period before it was assigned to another judge.

86. At a hearing on 28 June 2000 the applicant's counsel withdrew the claim in respect of L.K.M. As K.L. did not appear the hearing was adjourned.

87. A hearing scheduled for 26 September 2000 was adjourned because K.L. again failed to appear.

88. The next hearing was scheduled for 5 April 2001 but the applicant asked the court to re-schedule it because he was unable to attend.

It appears that the proceedings are pending before the court of first instance.

10. Proceedings against F.C.F. and its owner, K.F.

89. On 28 October 1993 the applicant filed an action with the Zagreb Municipal Court against F.C.F. and its owner, K.F. for re-payment of his loan in the amount of DEM 14,500 and ATS 5,000.

90. The preliminary hearing, scheduled for 8 March 1994, was adjourned because neither party appeared. The documents showed that the applicant had received the notice of the hearing date, but K.F.'s address was incorrect.

On 13 March 1995 the court invited the applicant to submit K.F.'s correct address.

On 28 March 1995 the applicant submitted the requested address.

91. A hearing scheduled for 15 June 1995 was adjourned since K.F. did not appear. The documents showed that his address had been incorrect again. The court again invited the applicant to submit K.F.'s correct address. The court repeated that request on 9 December 1996.

92. The next hearing, scheduled for 5 June 1997, was adjourned as neither party appeared.

On 6 June 1997 the court again invited the applicant to submit K.F.'s correct address. The applicant did not collect the letter, sent by registered mail on three occasions.

On 25 June 1999 the applicant submitted K.F.'s address in the United States.

93. The hearing scheduled for 2 March 2000 was adjourned as neither party appeared.

94. The hearing scheduled for 14 December 2000 was adjourned because K.F. was absent. The proceedings are presently pending before the court of first instance.

II. RELEVANT DOMESTIC LAW

95. Section 59 (4) of the Constitutional Act on the Constitutional Court (which entered into force on 24 September 1999 - hereinafter “the Constitutional Court Act” - *Ustavni zakon o Ustavnom sudu*) reads as follows:

“The Constitutional Court may, exceptionally, examine a constitutional complaint prior to exhaustion of other available remedies if it is satisfied that a contested act, or failure to act within a reasonable time, grossly violates a party's constitutional rights and freedoms and that, if it does not act, a party will risk serious and irreparable consequences.”

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

96. The Government invited the Court to reject the application on the ground that the applicant had failed to exhaust domestic remedies. In this respect they alleged that the applicant had not lodged a constitutional complaint under Section 59 (4) of the Constitutional Court Act which exceptionally allowed the Constitutional Court to examine a constitutional complaint before exhaustion of other available remedies in cases where it was satisfied that there was a serious risk that the party's constitutional rights and freedoms might have been violated and that serious and irreparable consequences might have resulted from the failure of the relevant authorities to reach a decision.

97. The applicant disagreed with the Government.

98. The Court finds that the question of whether the requirement of the exhaustion of domestic remedies has been satisfied in the present case is closely related to the question of the existence of an effective remedy under Article 13 of the Convention. Therefore, the Court will examine this question in relation to Article 13 of the Convention.

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

99. The applicant alleged that the proceedings concerning his various claims for re-payment of loans had not been concluded within a reasonable time as required by Article 6 § 1 of the Convention, the relevant part of which reads:

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

A. Period to be taken into account

100. The Court observes that the proceedings commenced on 22 April 1993, 3 and 8 and 29 June 1993 and 12, 15 and 28 October 1993, respectively, when the applicant lodged ten different civil actions for repayment of loans. However, the period which falls within the Court's jurisdiction did not begin on those dates, but on 6 November 1997, after the Convention entered into force in respect of Croatia (see *Horvat v. Croatia*, no. 51585/99, § 50, 26 July 2001, to be published in the Court's official reports). The proceedings in respect of A.K.M and A.K.; T.I.A. and I.A.; T.T.B. and T.B.; M.B.B. and B.B.; D. and D.T.; L.K.M. and K.L. and F.C.F. and K.F. are currently pending before the court of first instance, while the proceedings against A.Š.M. and A.Š. are pending before the appellate court. They have therefore lasted for about nine years so far, of which a period of about four years and six months falls to be examined by the Court.

The proceedings against T.M.T. and M.T. were terminated on 15 October 1999, thus lasting for about six years altogether, of which a period of one year, eleven months and ten days falls to be examined by the Court.

The proceedings against E. and F.Š. were concluded on 17 September 2001, thus lasting for about eight years altogether, of which a period of three years, ten months and twelve days falls to be examined by the Court.

101. The Court reiterates that in order to determine the reasonableness of the length of time in question, regard must be had, however, to the state of the case on 5 November 1997 (see, among other authorities, *Styranowski v. Poland*, no. 28616/95, § 46, ECHR 1998-VIII). In this connection the Court notes that at the time of entry into force of the Convention in respect of Croatia all ten sets of proceedings had lasted for about four years.

B. Applicable criteria

102. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case, the conduct of the applicant and of the relevant authorities, and the importance of what is at stake for the applicant in the litigation (see, as recent authorities, *Humen v. Poland* [GC], no. 26614/95, § 60, 15 October 1999, unreported, and *Mikulić v. Croatia*, no. 53176/99, § 38, 7 February 2002, to be published in the Court's official reports).

C. The parties' submissions

103. The Government submitted that the application did not disclose any appearance of a violation of Article 6 of the Convention, in particular having regard to the time elapsed after the entry into force of the Convention in respect of Croatia. They submitted further that the subject matter of the applicant's cases did not call for particular urgency in deciding them. They referred to the Court's case-law, arguing that the cases that did call for special urgency were those that related to family-law matters or to payment of damages to the victims of road accidents, those that involved the interests of a great number of persons and cases concerning dismissal from work.

As to the behaviour of the applicant, they contended that he had contributed to the delays because he had failed to appear at hearings and had not submitted the addresses of the defendants. He had also failed to collect the courts' decisions on many occasions.

With respect to the behaviour of the domestic authorities, the Government claimed that the domestic courts had shown diligence in the conduct of the proceedings. Furthermore, part of the proceedings had taken place during the war in Croatia when the normal operation of the courts was impaired.

104. The applicant disagreed with the Government.

D. The Court's assessment

1. Proceedings against A.K.M and A.K.; against T.I.A. and I.A.; against T.T.B. and T.B.; against M.B.B. and B.B.; against A.Š.M. and A.Š.; against D. and D.T.; against E. and F.Š.; against L.K.M. and K.L.; against F.C.F. and K.F.

105. The Court notes that in the period to be taken into account the seven sets of proceedings (against A.K.M and A.K.; T.I.A. and I.A.; T.T.B. and T.B.; M.B.B. and B.B.; D. and D.T.; L.K.M. and K.L. and F.C.F. and K.F.) have all been pending before the court of first instance for about four years and six months.

The proceedings against A.Š.M. and A.Š. were pending before the court of first instance for almost three years and they have been pending before the appellate court for about one year and seven months.

The proceedings against E. and F.Š. were pending before the court of first instance for about three years and ten months.

106. The Court notes further that within the above periods the case against A.K.M and A.K. lay dormant between 6 November 1997 and 15 September 2000, which amounts to more than two years and ten months.

The case against T.I.A. and I.A. lay dormant between 6 November 1997 and 28 June 2000, which amounts to more than two and half years.

The case against T.T.B. and T.B. lay dormant between 6 November 1997 and 7 September 2000, which amounts to one year, ten months and one day.

The case against M.B.B. and B.B. lay dormant between 6 November 1997 and 8 September 2000, which amounts to **two years**, ten months and three days. The case again lay dormant between 8 September 2000 and 14 September 2001, which amounts to one year and five days.

As to the case against A.Š.M. and A.Š. the Court notes that within the period from 15 April 1999 until 1 February 2000 the first-instance court adjourned three hearings due to the defendant's absence. The case then lay dormant between 8 February 2000 and 11 October 2000, which amounts to eight months and one day.

The case against D. and D.T. lay dormant between 6 November 1997 and 18 May 1999, which amounts to one year, six months and twelve days.

The case against E. and F.Š. lay dormant between 6 November 1997 and 15 April 1999, which amounts to one year, five months and three days.

The case against L.K.M. and K.L. lay dormant between 6 November 1997 and 10 September 1998, which amounts to ten months and four days. The case again lay dormant for nine months between 29 September 1999 and 28 June 2000.

The case against F.C.F. and K.F. lay dormant between 6 November 1997 and 25 June 1999, which amounts to one year, seven months and nineteen days. The case again lay dormant for eight months and seven days between 25 June 1999 and 2 March 2000 and again for nine months and twelve days between 2 March 2000 and 14 December 2000.

In the light of these periods of inactivity and the overall duration of the proceedings, even if the applicant somewhat contributed to the lengths of the proceedings, the Court is not persuaded by the Government's explanations for the delays. It reiterates that it is for the Contracting States to organise their legal systems in such a way that their courts can guarantee the right to everyone to obtain a final decision on disputes relating to civil rights and obligations within a reasonable time (see, among other authorities, *Horvat v Croatia*, cited above, § 59).

107. In the light of the criteria laid down in its case-law and having regard to all the circumstances of the case, the Court considers that the length of the proceedings failed to satisfy the reasonable time requirement. There has, accordingly, been a violation of Article 6 § 1 of the Convention in respect of these nine sets of proceedings.

3. Proceedings against T.M.T. and M.T.

108. The Court observes firstly that the proceedings commenced on 3 June 1993 when the applicant lodged his civil action with the Zagreb

Municipal Court. However, the period which falls under the Court's jurisdiction began on 6 November 1997, after the Convention entered into force in respect of Croatia.

On 15 October 1999 the Zagreb Municipal Court struck the case out.

It is true that the applicant subsequently filed a motion to resume the proceedings, which was dismissed. That part of the proceedings does not concern the determination of the applicant's civil rights and obligations and therefore Article 6 of the Convention did not apply to it.

Accordingly, the proceedings which the Court will examine ended on 15 October 1999. They therefore lasted for about six years and four months, of which a period of one year, eleven months and ten days falls to be examined by the Court.

The Court notes that at the moment of the entry into force of the Convention in respect of Croatia the proceedings had lasted for four years five months and two days.

The Court notes that within the period to be taken into account the case had been examined by the court of first instance, which scheduled six hearings. After the proceedings were stayed on 18 February 1998, due to the applicant's absence, it took him more than three months to request that the proceedings be resumed.

The Court finds that within the period which elapsed after the entry into force of the Convention hearings were scheduled at regular intervals and the delays that occurred were not so long as to violate the "reasonable time" requirement.

Consequently, in that connection, there has been no violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

109. The applicant also submitted that he had no effective remedy whereby he could raise the issue of the excessive length of the proceedings. This, in his view, amounted to a violation of Article 13 of the Convention, which provides:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

110. The Government invited the Court to find this part of the application manifestly ill-founded. They contended that the applicant had the possibility of lodging an application under section 59(4) of the 1999 Constitutional Court Act. In the Government's view, that option represented an effective remedy in respect of the length of the proceedings in the applicant's cases.

111. The Court notes that in the *Horvat* case it found that section 59(4) of the 1999 Constitutional Court Act did not represent an effective remedy in respect of the length of civil proceedings (see *Horvat v. Croatia*, cited above, § 65).

112. The Court finds no reason to come to a different conclusion in the present case. Consequently, there has been a violation of Article 13 of the Convention in so far as the applicant has no domestic remedy whereby he may enforce his right to a hearing within a reasonable time as guaranteed by Article 6 § 1 of the Convention. Accordingly, the Court also dismisses the Government's preliminary objection as to the exhaustion of domestic remedies.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

113. 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

114. In respect of non-pecuniary damage, the applicant sought the sum of 150,000¹ Croatian Kunas (HRK).

115. The Government asked the Court to assess the amount of just satisfaction to be awarded on the basis of its case-law in civil cases in which normal diligence was required.

116. The Court accepts that the applicant suffered damage of a non-pecuniary nature as a result of the length of the civil proceedings instituted by him. Making its assessment on an equitable basis and having regard to the circumstances of the case - in particular to the fact that it concerns nine sets of proceedings, the overall duration of those proceedings and the applicant's personal situation - the Court awards the applicant 7,000 euros (EUR).

B. Costs and expenses

117. In costs and expenses for his legal representation the applicant sought 24,4% of whatever sum the Court awards.

118. The Government invited the Court to assess the costs and expenses incurred by the applicant.

¹ Approximately 20,280 euros.

119. The Court reiterates that an award can be made in respect of costs and expenses only in so far as they have been actually and necessarily incurred by the applicant and are reasonable as to quantum. In the present case, on the basis of the information in its possession and the above-mentioned criteria, the Court observes that there is no element in the file suggesting that the applicant has incurred, before the domestic courts, any extra costs and expenses because of the length of the proceedings. As to the legal costs and expenses incurred before it, the Court awards the applicant EUR 180.

C. Default interest

120. According to the information available to the Court, the statutory rate of interest applicable in Croatia at the date of adoption of the present judgment is 18% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's preliminary objection concerning the exhaustion of domestic remedies;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of nine sets of the proceedings;
3. *Holds* that there has been no violation of Article 6 § 1 of the Convention in respect of the proceedings against T.M.T. and M.T.;
4. *Holds* that there has been a violation of Article 13 of the Convention in respect of nine sets of the proceedings;
5. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 7,000 (seven thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 180 (one hundred and eighty euros) in respect of costs and expenses;both of which should be converted into the national currency of the respondent State (Croatian Kuna) at the rate applicable at the date of settlement;

(b) that simple interest at an annual rate of 18% shall be payable from the expiry of the above-mentioned three months until settlement;

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

Done in English, and notified in writing on 27 June 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President