



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

FIRST SECTION

CASE OF RADOŠ AND OTHERS v. CROATIA

(Application no. 45435/99)

JUDGMENT

STRASBOURG

7 November 2002

FINAL

07/02/2003

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 Radoš and Others v. Croatia,

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

Mrs F. TULKENS, *President*,

Mr P. LORENZEN,

Mrs N. VAJIĆ,

Mr E. LEVITS,

Mr A. KOVLER,

Mr V. ZAGREBELSKY,

Mrs E. STEINER, *judges*,

and Mr S. NIELSEN, *Deputy Section Registrar*,

Having deliberated in private on 17 October 2002,

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

PROCEDURE

1. The case originated in an application (no. 45435/99) against the Republic of Croatia lodged with the Commission under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by six Croatian nationals, Mr Zvonimir Radoš, Mr Goran Lajnert, Mr Dmitar Malešević, Mr Branko Jugović, Mr Stjepan Živković and Mr Gojko Mikecin (“the applicants”), on 23 December 1996.

2. The applicants were represented by the second applicant Mr Goran Lajnert, a lawyer practising in Zagreb. The Croatian Government (“the Government”) were represented by their Agent, Mrs Lidija Lukina-Karajković.

3. The applicants alleged that several sets of proceedings concerning their civil claims for re-payment of loans had exceeded the “reasonable time” requirement in Article 6 § 1 of the Convention and that they had no remedy at their disposal in respect of the length of these proceedings.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. 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.

6. By a decision of 23 October 2001 the Court declared the application partly admissible and joined the question concerning the exhaustion of domestic remedies to the merits.

7. The applicants and the Government each filed observations on the merits (Rule 59 § 1). The Court has decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 2 *in fine*). On 19 and

26 July 2001, respectively the Government and the applicants replied in writing to each other's observations.

8. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section.

9. On 4 July 2002, following a friendly settlement, the Court adopted a partial judgment in respect of the sixth applicant Mr Gojko Mikecin.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

10. The first to fifth applicants were born in 1929, 1970, 1934, 1929 and 1934 respectively and live in Zagreb.

11. During 1992 the applicants lent various sums of money to a number of agencies that were supposed to pay back the loans within periods ranging from 2 to 12 months and at interest rates ranging from 10 to 30 % per month (so called "financial engineering"). As these agencies failed to re-pay the loans, the applicants instituted civil proceedings against the agencies and their alleged owners.

1. Proceedings instituted by the first applicant Zvonimir Radoš

a. Proceedings against B.J.

12. On 18 October 1993 the applicant filed an action with the Zagreb Municipal Court (*Općinski sud u Zagrebu*) seeking payment of his loan in the amount of 10,000 German Marks (DEM).

13. The preliminary hearing scheduled for 24 January 1994 was adjourned.

As on 15 February 1994 the presiding judge resigned from her office, the case was transferred to another judge in October 1996.

14. The next hearing scheduled for 6 December 2000 was adjourned because the presiding judge was absent.

15. The hearing scheduled for 20 April 2001 was adjourned because B.J. did not appear. As the documents indicated that she had been released from detention on remand, the court invited the applicant to submit her new address. When the applicant informed the court that he did not know B.J.'s new address, the court requested the Ministry of Interior (*Ministarstvo unutarnjih poslova Republike Hrvatske*) to submit B.J.'s new address. The Ministry of Interior informed the court that B.J. had changed her name into B.Č.

16. The hearings scheduled for 21 September 2001 and 4 April 2002 were adjourned because B.J. had not collected a notice of the hearing date.

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

b. Proceedings against B.B.

17. On 18 October 1993 the applicant filed an action with the Zagreb Municipal Court for re-payment of his loan in the amount of DEM 20,000.

18. Before the period to be examined by the Court several hearings were held and several adjourned. The hearing scheduled for 18 June 1997 was adjourned because B.B. did not appear. The court invited the applicant to submit the number of the case-file concerning criminal proceedings against B.B. before the same court.

As the applicant failed to do so, the court itself found the file number, but was unable to review that file because it was sent to the Zagreb County Court (*Županijski sud u Zagrebu*) on 13 June 1997. The court repeated its request to examine the file on 15 November 1998, 15 September 1999 and 5 September 2000.

19. As neither party appeared at the hearing scheduled for 11 April 2001 the court found that the applicant had withdrawn his claim.

The applicant appealed against that decision stating that he had been ill on the date of the hearing. On 23 May 2001 the court invited the applicant to submit evidence as to the fact that he had been ill. The applicant appeared before the court on 13 June 2001 and stated that he had no medical documentation.

On 5 July the court sent the case-file to the Zagreb County Court as the appellate court. However that court found that the applicant's appeal in effect had been a request to resume the proceedings. Consequently, on 22 October 2001 the case-file was returned to the Zagreb Municipal Court.

It appears that the proceedings are pending before the Zagreb Municipal Court.

2. Proceedings instituted by the second applicant Goran Lajnert against company F.I.M. and its owner, Đ.M.

20. On 6 May 1993 the applicant, together with 244 other plaintiffs, filed an action for re-payment of their loans with the Zagreb Municipal Court. The applicant claimed a sum of DEM 28,000.

21. Before the period to be examined by the Court two hearings were held.

On 17 July 1997 the court dismissed the claims of 43 plaintiffs, but not in respect of the second applicant. As on 24 September 1997 the plaintiffs whose claims were dismissed appealed against that decision, the case file was sent to the Zagreb County Court (*Županijski sud u Zagrebu*) on 29 September 1997, for consideration on appeal.

22. On 14 July 1998 the Zagreb County Court upheld the first instance decision except in respect of one of the plaintiffs.

23. On 10 February 1999 the Zagreb Municipal Court invited the plaintiffs' counsel to submit a certificate from the registry of the Zagreb Commercial Court (*Trgovački sud u Zagrebu*) regarding the legal status of F.I.M.

On 10 March 1999 the plaintiffs' counsel withdrew the claim in respect of F.I.M.

24. The next hearing took place on 18 June 1999.

25. At the hearing on 14 October 1999 the court heard Đ.M. and then adopted judgment rejecting all claims. The judgment was served on the plaintiffs' counsel on 26 September 2000. On 4 October 2000 the plaintiffs' counsel appealed against the judgment.

The Zagreb County Court, as the appellate court, found that the appeal was submitted by Mr Lajnert on behalf of all plaintiffs although he had not had a power of attorney. The case file was therefore returned to the Zagreb Municipal Court on 20 September 2001. On 27 September 2001 the Zagreb Municipal Court invited Mr Lajnert to submit a power of attorney to represent the other plaintiffs.

It appears that the proceedings are pending on appeal before the Zagreb County Court.

3. Proceedings instituted by the third applicant DMITAR MALEŠEVIĆ

a. Proceedings against company V.M.M and its owner, B.J.

26. On 1 June 1993 the applicant, together with 603 other plaintiffs, filed an action with the Zagreb Municipal Court for re-payment of their loans. The applicant claimed DEM 16,500.

27. Before the period to be taken into account one hearing was held and one was adjourned.

28. At the next hearing on 2 February 1998 the court invited the plaintiffs to submit additional documentation.

Although they failed to submit that documentation, the next hearing was held on 10 April 2000. The plaintiffs asked the court to hear several witnesses but were unable to submit their addresses.

On 10 November 2000 the court invited the plaintiffs to submit further evidence necessary to proceed with the case. The plaintiffs claimed that they were members of the "Association of the Financial Engineering Investors V.M.M.", but did not submit either its registration certificate or its articles of association. Furthermore, three plaintiffs failed to submit evidence as to their investments into the "financial engineering" and seven plaintiffs failed to submit their addresses.

29. At the hearing on 15 December 2000 the plaintiffs' counsel submitted the registration certificate and the articles of association as well as the addresses of the witnesses to be heard.

30. At the hearing on 31 January 2001 the court heard one witness. It invited again the plaintiffs' counsel to submit evidence in respect of three plaintiffs as to their investments into the "financial engineering" as well as the addresses of seven plaintiffs.

On 22 February 2001 the plaintiffs submitted the requested addresses and asked the court to allow them an additional period of 30 days to submit evidence in respect of three plaintiffs as to their investments into "financial engineering".

On 2 May 2001 the plaintiffs submitted evidence in respect of two plaintiffs as to their investments but were unable to produce such evidence for the third plaintiff. They also changed their claims.

31. At the next hearing scheduled for 17 September 2001 the court stayed the proceedings because the plaintiffs' representative did not appear.

On 1 October 2001 the applicant filed a request to resume the proceedings.

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

b. Proceedings against company F.I.S. and its owner, J.S.

32. On 21 December 1994 the applicant filed an action with the Zagreb Municipal Court for re-payment of his loan in the amount of Swiss Francs (CHF) 15,000.

33. Before the period to be examined by the Court two hearings were adjourned. It turned out that F.I.S. had ceased to exist and that J.S. had changed her address. In 1995 the court invited the applicant to submit her correct address within 30 days.

On 14 May 1998 the court repeated its request.

On 25 May 1998 the applicant submitted J.S.'s new address.

34. On 21 July 1998 the court ordered the applicant to request the Social Welfare Centre (*Centar za socijalnu skrb*) to appoint a legal representative for J. S.

On 11 December 1998 the Zagreb Social Welfare Centre informed the court that by a decision of 8 December 1998 it had appointed a legal representative for J.S.

35. At the next hearing on 7 April 1999 the representative gave her reply to the applicant's claim. The applicant informed the court that he had obtained J.S.'s new address and asked the court to invite J.S. to the next hearing.

36. At the next hearing on 21 May 1999 the applicant was heard. J.S. failed to appear. Her representative asked the court to enclose the case-file concerning the criminal proceedings against J.S. before the same court.

However, the court was unable to enclose the criminal case file as the criminal proceedings against J.S. were still pending.

According to the Government, on 28 December 2000 the court requested the Zagreb Commercial Court's registry to submit a certificate regarding the

legal status of F.I.S. It turned out that on 18 July 2001 the Zagreb Commercial Court had instituted ex officio proceedings for liquidation of F.I.S.

37. At the next hearing on 19 December 2001 the court concluded the proceedings.

4. Proceedings instituted by the fourth applicant Branko Jugović

a. Proceedings against company T.I.A. and its owner, I.A.

38. On 5 October 1995 the applicant, together with five other plaintiffs, filed an action with the Zagreb Municipal Court for re-payment of their loans. The applicant claimed a sum of DEM 5,000.

39. Before the period to be examined by the Court one hearing was adjourned.

40. A hearing scheduled for 14 May 1998 was adjourned because the defendants did not appear. T.I.A. had ceased to exist and I.A. had failed to collect the notice of the hearing date.

41. At the hearing on 22 October 1998 the defendants' counsel gave his reply to the plaintiffs' claim. The court invited I.A. to give his additional detailed reply to the plaintiffs' claim within 8 days.

42. The next hearing scheduled for 7 June 1999 was adjourned because four plaintiffs, including the applicant, who were supposed to be heard, failed to appear. It turned out that the applicant had failed to collect the notice of the hearing date as well as another plaintiff, while two other plaintiffs had changed their addresses.

On 21 July 1999 the plaintiffs' counsel submitted their addresses.

43. The next hearing scheduled for 2 April 2001 was adjourned because I.A. did not appear.

44. At hearing on 15 October 2001 the court heard one of the plaintiffs and then asked the plaintiffs to specify their claims and submit further documents.

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

b. Proceedings against company M.J.B. and its owner, B.J.

45. On 5 October 1995 the applicant, together with ten other plaintiffs, filed an action for re-payment of their loans with the Zagreb Municipal Court. The applicant claimed a sum of DEM 5,000.

46. Before the period to be examined by the Court one hearing was adjourned.

47. On 12 January 1998 the court requested the Ministry of Interior to submit B.J.'s correct address.

On 3 February 1998 the Ministry of Interior informed the court that B.J.'s address was unknown.

48. The next hearing scheduled for 2 April 2001 was adjourned as B.J. did not appear. The documents showed that she was unknown at the address indicated. According to the registry of the Ministry of Interior, however, she remained registered at the same address.

On 21 May 2001 the plaintiffs' counsel asked the court to request the Social Welfare Centre to appoint a legal representative for B.J.

On 24 May 2001 the court invited again the Ministry of Interior to submit B.J.'s address.

On 7 September 2001 the court ordered the Zagreb Police Department (*Policijska uprava zagrebačka*) to make an on the spot inquiry about B.J.'s address. The police found out that she had left the address where she was registered and that her new address was unknown.

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

c. Proceedings against company M.B.B. and its owner, B.B.

49. On 5 October 1995 the applicant, together with ten other plaintiffs, filed an action for re-payment of their loans with the Zagreb Municipal Court. The applicant claimed a sum of DEM 6,000.

50. Before the period to be examined by the Court two hearings were adjourned.

51. The court scheduled the next hearing for 6 November 1997 and invited B.B. to submit the evidence he relied on in his written reply to the plaintiffs' claims. However, he failed to do so and also did not appear at the hearing. The plaintiffs' counsel submitted that B.B. was found guilty for fraud in criminal proceedings conducted before the same court in connection with the plaintiffs' loans. On 10 November 1997 the plaintiffs' counsel submitted the number of the criminal case-file against B.B.

On 14 November 1997 the court requested the criminal case-file against B.B. from the criminal division of the Zagreb Municipal Court, but the case-file was at the Zagreb County Court pending decision on appeal.

The court repeated its request to enclose the criminal case-file on 22 October 1998, 11 March and 22 November 1999 and 24 October 2000, but the case-file was at the Public Prosecutor's Office (*Ured državnog odvjetništva*).

52. At the next hearing on 2 April 2001 the court invited the applicant to submit a copy of the judgment finding B.B. guilty for fraud.

On 17 April 2001 the applicant informed the court that the first instance judgment in the criminal proceedings against B.B. had been quashed and the case remitted to the court of first instance for re-trial.

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

d. Proceedings against company T.K.M. and its owner, T.K.

53. On 5 October 1995 the applicant filed an action with the Zagreb Municipal Court for re-payment of his loan in the amount of DEM 7,000.

54. Before the period to be examined by the Court one hearing was held and one was adjourned.

55. On 29 October 1999 the court invited the applicant's counsel to submit T.K.'s address within 30 days.

On 25 November 1999 the applicant's counsel submitted T.K.'s new address.

On 28 June 2000 the court invited the applicant's counsel to submit within 30 days a notice from the registry of the Zagreb Commercial Court concerning the legal status of T.K.M.

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

5. Proceedings instituted by the fifth applicant Stjepan Živković

a. Proceedings against company E. and its owner, S.D.

56. On 24 January 1994 the applicant filed an action for re-payment of his loan, in the amount of DEM 13,540, with the Zagreb Municipal Court.

57. Before the period to be examined by the Court, first instance judgment awarding the applicant's claim in part and rejecting it in part was adopted. This judgment was quashed on appeal in the part rejecting the applicant's claim and the case was remitted for re-trial to the court of first instance.

58. The hearings scheduled for 19 March, 7 and 20 April 1998 before the Zagreb Municipal Court were adjourned since S.D. failed to appear.

59. At the next hearing on 7 May 1998 the court adopted a judgment awarding the rest of the applicant's claim. The judgment became final on 16 June 1998.

According to the Government, the applicant has not sought to enforce the judgment.

b. Proceedings against B.B.

60. On 27 January 1994 the applicant filed an action with the Zagreb Municipal Court for re-payment of his loan in the amount of DEM 11,052.

61. Before the period to be examined by the Court several hearing were held and several adjourned and on 14 May 1997 the court adopted judgment rejecting the applicant's claim.

On 18 September 1997 the applicant appealed against the judgment.

On 21 November 2000 the proceedings ended by the Zagreb County Court's decision upholding the first instance judgment.

c. Proceedings against M.J.B. and its owner, B.J.

62. On 5 July 1994 the applicant filed an action with the Zagreb Municipal Court for re-payment of his loan in the amount of DEM 10,000; 980,000 HRK; and CHF 18,350.

63. The preliminary hearings scheduled for 8 November 1994, 26 September 1995, 7 February, 24 April, 10 September and 2 December 1996 and 12 February 1998 were adjourned as B.J. failed to appear.

64. At the hearing on 22 April 1998 B.J. replied to the applicant's claim. On 26 June 1998 the applicant specified his claim.

65. At the hearing on 1 July 1998 the applicant and a witness were heard.

From 10 September 1998 to 12 October 2000 the court unsuccessfully attempted on many occasions to consult the case-file concerning criminal proceedings against B.J. before the same court.

66. At the hearing on 12 October 2000 the court adopted a judgment finding in favour of the applicant. The judgment became final on 16 January 2001.

According to the Government, the applicant has not sought the enforcement of the judgment.

d. Proceedings against F.I.M. and its owner, Đ.M.

67. On 5 July 1994 the applicant filed an action for re-payment of his loan in the amount of DEM 23,800 with the Zagreb Municipal Court.

68. Before the period to be examined by the Court several hearings were held and several adjourned.

69. The hearing scheduled for 5 December 1997 was adjourned because the witnesses invited did not appear.

70. At the hearing on 18 April 1998 one witness was heard. The court requested the Varaždin Police Department (*Policajska uprava varaždinska*) to submit the address of another witness.

On 9 July 1998 the Varaždin Police Department submitted the requested address.

71. At the hearing on 5 March 1999 Đ.M. gave her testimony. The court invited the Zagreb Commercial Court to submit a certificate from its registry regarding the legal status of F.I.M. and decided to examine the criminal case-file against Đ.M. However, the criminal case-file could not be consulted because the criminal proceedings were pending.

72. The hearings scheduled for 15 December 2000 and 22 February 2001 were adjourned because Đ.M. did not appear.

73. At the next hearing the court heard the applicant and Đ. M.

74. At the next hearing on 2 October 2001 the court stayed the proceedings because the applicant did not appear.

On 2 November 2001 the applicant filed a request to resume the proceedings.

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

II. RELEVANT DOMESTIC LAW

75. 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.”

Section 26 of the Constitutional Act on the Changes of the Constitutional Act on the Constitutional Court (entered into force on 15 March 2002, published in the Official Gazette no. 29 of 22 March 2002 – hereinafter “The Act of 15 March 2002” – *Ustavni zakon o izmjenama i dopunama Ustavnog zakona o Ustavnom sudu Republike Hrvatske*) introduced a new Section 59 (a), which subsequently became Section 63 of the 2002 Constitutional Act on the Constitutional Court. The relevant parts of that Section read as follows:

(1) The Constitutional Court shall examine a constitutional complaint even before all legal remedies have been exhausted in cases when a competent court has not decided within a reasonable time a claim concerning the applicant’s rights and obligations or a criminal charge against him ...

(2) If the constitutional complaint ... under paragraph 1 of this Section is accepted, the Constitutional Court shall determine a time-limit within which a competent court shall decide the case on the merits...

(3) In a decision under paragraph 2 of this Article, the Constitutional Court shall fix appropriate compensation for the applicant in respect of the violation found concerning his constitutional rights ... The compensation shall be paid from the State budget within a term of three months from the date when the party lodged a request for its payment.

THE LAW

I. THE GOVERNMENT’S PRELIMINARY OBJECTION

76. The Court recalls that in the decision on the admissibility of the application the question relating to the exhaustion of domestic remedies was joined to the merits.

77. The Government invited the Court to reject the application on the ground that the applicants had failed to exhaust domestic remedies. In this respect they alleged that the applicants 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.

78. The applicants disagreed with the Government.

79. The Court recalls that in the Horvat case (see *Horvat v. Croatia* no. 51585/99, 26 July 2001, §§ 41-43, 45, ECHR 2002-...), it found that the proceedings pursuant to Section 59(4) of the 1999 Constitutional Court's Act could not be considered as an effective remedy in respect of the length of the proceedings.

The Court finds no reason to come to a different conclusion in the present case.

The Court notes that the Government have not made any argument in connection with the issue of the exhaustion of domestic remedies with reference to Section 63 of the 2002 Constitutional Act on the Constitutional Court.

Consequently the Government's preliminary objection as to the exhaustion of domestic remedies must be rejected (see, *mutatis mutandis*, *Aydin v. Turkey*, no. 23178/94, Commission decision of 28 November 1994, Decisions and Reports 79, pp. 116, 119).

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

80. The applicants alleged that the proceedings concerning their 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

81. As to the beginning of the proceedings, the Court observes that both sets of the proceedings instituted by the first applicant commenced on 18 October 1993.

The proceedings instituted by the second applicant commenced on 6 May 1993.

The two sets of proceedings instituted by the third applicant commenced on 1 June 1993 and 21 December 1994, respectively.

All four sets of proceedings instituted by the fourth applicant commenced on 5 October 1995.

Four sets of the proceedings instituted by the fifth applicant commenced on 24 and 27 January 1993 and on 5 July 1994.

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).

82. As to the end of the proceedings the Court notes that all sets of the proceedings instituted by the first and fourth applicants, as well as the proceedings against V.M.M. and B.J., instituted by the third applicant and the proceedings against F.I.M. and its owner, Đ.M., instituted by the fifth applicant, are still pending before the court of first instance. The proceedings instituted by the second applicant are pending before the appellate court. The period to be examined by the Court in respect of these sets of proceedings has amounted to about five so far.

As to the proceedings instituted by the third applicant, the Court notes that in the proceedings against F.I.S. and its owner, J.S., the first instance court concluded the trial on 19 December 2001. Therefore, the period to be examined by the Court lasted four years, one month and fourteen days.

As to the remaining two sets of proceedings instituted by the fifth applicant, the Court notes that the proceedings against company E. and its owner S.D. ended by the first instance judgment of 7 May 1998. The proceedings against M.J.B. and its owner, B.J. ended by the first instance judgment of 12 October 2000. Therefore, in the period to be examined by the Court the first set of the proceedings lasted for six months while the second set of the proceedings lasted for two years, eleven months and seven days.

83. 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 the proceedings instituted by the first applicant had lasted four years, eleven months and twelve days.

The proceedings instituted by the second applicant had lasted four years and six months.

The proceedings instituted by the third applicant against V.M.M. and B.J. lasted four years, six months and twenty-four days, while the proceedings against F.I.S. and J.S. had lasted three years, one month and fifteen days.

The proceedings instituted by the fourth applicant had lasted two years and eleven months.

The proceedings instituted by the fifth applicant against company E. and its owner S.D. as well as the proceedings against B.B. had lasted for about three years and two months while the proceedings against M.J.B. and its

owner B.J. and F.I.M. and its owner Đ.M. had lasted for three years and four months.

B. Applicable criteria

84. 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

85. The Government invited the Court to conclude that the application did not disclose any appearance of a violation of Article 6 of the Convention, in particular having in mind the time elapsed after the entry of the Convention into force in respect of Croatia. They submitted that the cases disclosed factual complexity as many of them involved a significant number of plaintiffs.

They submitted further that the subject matter of the applicants' cases did not call for particular urgency in deciding them. They referred to the Court's case-law arguing that the cases that do call for special urgency are those that relate to family law matters or to payment of damages to the victims of traffic accidents, those that involve the interests of a great number of persons and the cases concerning dismissal from work.

The Government argued that the behaviour of the applicants contributed to the delays as they had failed to appear at hearings, to inform the court about their new addresses as well as of those of the defendants and to submit documentation they had relied upon in their claims. They had also failed to seek speeding up of the proceedings.

With respect to the behaviour of domestic authorities, the Government claimed that the domestic courts showed diligence in the conduct of the proceedings. In particular, the Government pointed out that in the civil proceedings the courts were limited in their activity as they could not take procedural steps on their own initiative but mostly according to the requests of the parties. The Zagreb Municipal Court had held hearings at regular intervals, although the workload at the civil department of that court was huge and each judge was assigned some nine hundred to one thousand cases. The judges had also been changed in many cases.

86. The applicants disagreed with the Government.

D. The Court's assessment

87. The Court has examined the course of the proceedings instituted by the applicants within the period after the entry of the Convention into force in respect of Croatia.

1. Proceedings instituted by the first applicant Zvonimir Radoš

88. The Court notes that in the proceedings against B.J. no hearing was held or any other procedural step taken between 6 November 1997 and 6 December 2000. The hearing scheduled for the later date was adjourned due to the absence of the presiding judge. The next hearing was scheduled for 20 April 2001. It follows that the overall period of inactivity, entirely attributable to the domestic authorities, amounted to three years, five months and fifteen days.

89. In the proceedings against B.B. there was no hearing from 6 November 1997 until 11 April 2001. In that period the first instance court made four unsuccessful requests for a criminal file against the defendant, which created a delay in the proceedings. The Court considers that this delay of three years, five months and six days is attributable to the domestic authorities.

2. Proceedings instituted by the second applicant Goran Lajnert

90. The Court notes that there was no procedural activity from 5 November 1997 until 10 February 1999, when the first instance court invited the plaintiffs' counsel to submit a certificate concerning the legal status of company F.I.M.

Thus, the period of inactivity amounted to one year, three months and five days. Furthermore, it took almost five and half years before the first instance court sought a relevant certificate from the plaintiffs although it could have done so at the beginning of the proceedings.

3. Proceedings instituted by the third applicant DMITAR Malešević

91. The Court notes that in the proceedings against company V.M.M. and its owner, B.J., the case lay dormant from 2 February 1998 until 10 April 2000, which amounted to two years, two months and eight days.

The Court notes that the applicant's counsel failed to appear at one hearing.

92. In respect of the proceedings against company F.I.S. and its owner, J.S., the Court notes that there was no activity between 21 May 1999 and 28 December 2000 which amounted to one year, seven months and seven days.

4. Proceedings instituted by the fourth applicant Branko Jugović

93. The Court notes that in the proceedings against company T.I.A. and its owner I.A. one hearing was adjourned due to the applicant's absence.

Within the period to be taken into account, hearings were held twice per year.

94. In respect of the proceedings against company M.J.B. and its owner, B.J., the Court notes that the case lay dormant between 3 February 1998 and 2 April 2001 which amounted to three years, one month and twenty-nine days.

95. In the proceedings against company M.B.B. and its owner, B.B., there was no hearing held between 6 November 1997 and 2 April 2001. Within that period the first instance court made four unsuccessful attempts to consult a criminal case-file against B.B. This caused a delay of three years, four months and twenty-six days, attributable to the domestic authorities.

96. In the proceedings against T.K.M. and its owner, T.K., no hearing has been held since the Convention entered into force in respect of Croatia, which amounts to almost five years.

Within that period the first instance court asked the applicant's counsel to submit T.K.'s address which he did immediately. The court also invited the applicant's counsel, on 28 June 2000, more than four and half years after the proceedings were instituted to submit a certificate concerning the legal status of T.K.M., although it could have been requested at the beginning of the proceedings.

5. Two sets of the proceedings instituted by the fifth applicant Stjepan Živković.

97. The Court notes that in the proceedings against M.J.B. and its owner B.J., the first instance court unsuccessfully attempted to consult a criminal case-file against B.J. from 10 September 1998 until 12 October 2000, which caused delay of two years, one month and two days.

98. In respect of the proceedings against company F.I.M. and its owner, Đ.M., the Court does not find any significant periods of inactivity. However, the Court notes that the proceedings have so far been pending before the court of first instance for about eight years and three months, out of which a period of about four years and ten months after the ratification of the Convention.

The Court's findings with regard to the above eleven sets of proceedings

99. In the light of the periods of inactivity and the overall duration of the above proceedings, even if some of the applicants, to some degree, contributed to the length 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).

100. In the light of the criteria laid down in its case-law (see, *inter alia*, the *Humen v. Poland* [GC], no 26614/95, 15 October 1999, § 60, unpublished, and *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, ECHR 2000-IV) and having regard to all the circumstances of the case, the Court considers that the length of the above 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 eleven sets of proceedings.

6. Two other sets of the proceedings instituted by the fifth applicant

101. The Court observes firstly that the proceedings against company E. and its owner, S.D., commenced on 24 January 1994 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.

The proceedings ended on 7 May 1998. They therefore lasted for four years, three months and thirteen days, of which a period of six months and one day 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 three years nine months and eleven days.

Within the period to be taken into account the case had been examined by the court of first instance, which had scheduled four hearings, before adopting judgment in the applicant's favour.

The Court finds that the hearings were scheduled at regular intervals and the delays that occurred were not so long as to violate the "reasonable time" requirement.

102. The Court observes further that the proceedings against B.B., commenced on 27 January 1994 when the applicant lodged his civil action with the Zagreb Municipal Court.

The proceedings ended on 21 November 2000. They therefore lasted for six years, nine months and twenty-four days, of which a period of three years and fifteen 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 three years nine months and eight days.

Within the period to be taken into account the case had been examined by the appellate court, following the applicant's complaint of 18 September 1997 against the first instance judgment of 14 May 1997.

The Court finds that the period which elapsed after the entry into force of the Convention does not appear excessive having in mind that the case was examined by the appellate court.

103. Consequently, in respect of the above two sets of the proceedings instituted by the fifth applicant, there has been no violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

104. The applicants also submitted that they had no effective remedy whereby they could raise the issue of the excessive length of the proceedings. This, in their 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.”

105. The Government invited the Court to find this part of the application manifestly ill-founded. They contended that the applicants 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 applicants’ cases.

106. 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). However, following the *Horvat* judgment the Croatian Parliament introduced a new Section 63 of the 2002 Constitutional Court’s Act which replaced former Section 59(4). In the *Slaviček* case the Court found that this new Section provided an effective remedy in respect of complaints concerning length of proceedings (see, *Slaviček v. Croatia*, cited above).

107. The Court finds no reason to come to a different conclusion in the present case, in respect of the proceedings that are still pending before domestic courts. Consequently, there has been no violation of Article 13 of the Convention since there exists now a domestic remedy whereby the applicants may enforce their right to a hearing within a reasonable time as guaranteed by Article 6 § 1 of the Convention.

108. However, the Court further notes that the proceedings instituted by the third applicant against company F.I.S. and its owner J.S. were concluded on 19 December 2001. As to the fifth applicant, the proceedings against company E. and its owner S.D. were concluded on 7 May 1998, the proceedings against B.B. were concluded on 21 November 2000 and the proceedings against company M.J.B. and its owner, B.J. were concluded on 12 October 2000.

The Court finds that at the material time there existed no effective remedy in Croatia which could adequately address the issue of the alleged excessive length of proceedings.

It follows that in respect of these four sets of proceedings there has been a violation of Article 13 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

109. 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

110. In respect of pecuniary damage the first applicant sought to recover the money he had invested and in respect of non-pecuniary damage he left it to the Court to assess the amount.

The second applicant failed to make any request in this respect.

The third applicant sought 20,000 Swiss Francs in respect of both pecuniary and non-pecuniary damage.

The fourth applicant sought 150,000 Croatian Kunas.

The fifth applicant sought 55,640 German Marks and 18,350 Swiss francs in respect of both pecuniary and non-pecuniary damage.

111. 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.

112. The Court recalls that the violation it has found relates solely to the length of the civil proceedings before the competent tribunals. The applicants' claims for compensation for pecuniary damage relate, however, to their investments into the so called financial engineering. In these circumstances, no causal link has been established between the violation found and the pecuniary damage alleged. The applicants' claims under this head must therefore be rejected.

113. The Court accepts that the applicants suffered damage of a non-pecuniary nature as a result of the length of the proceedings. Making its assessment on an equitable basis and having regard to the circumstances of the case – in particular the number of proceedings in respect of each applicant and the overall duration of those proceedings – the Court awards the first applicant 2,500 euros (EUR); the third applicant EUR 2,500; the fourth applicant EUR 4,800 and the fifth applicant EUR 2,500.

B. Costs and expenses

114. The applicants did not seek reimbursement for costs and expenses. Accordingly, the Court does not award any sum in this respect.

C. Default interest

115. The Court considers that the default interest should be fixed at a rate equal to the marginal lending rate of the European Central Bank plus three percentage points.

THE COURT UNANIMOUSLY

1. *Dismisses* the Government's preliminary objection;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of eleven sets of proceedings;
3. *Holds* that there has been no violation of Article 6 § 1 of the Convention in respect of the proceedings instituted by the fifth applicant against company E. and its owner S.D. and against B.B.;
4. *Holds* that there has been a violation of Article 13 of the Convention in respect of one set of proceedings instituted by the third applicant and three sets of proceedings instituted by the fifth applicant;
5. *Holds* that there has been no violation of Article 13 of the Convention in respect of the other proceedings;
6. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts in respect of non-pecuniary damage:
 - (i) EUR 2,500 (two thousand and five hundred euros) to the first applicant;
 - (ii) EUR 2,500 (two thousand and five hundred euros) to the third applicant;
 - (iii) EUR 4,800 (four thousand and eight hundred euros) to the fourth applicant;
 - (iv) EUR 2,500 (two thousand and five hundred euros) to the fifth applicant.

all 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 a rate equal to the marginal lending rate of the European Central Bank plus three percentage points shall be payable from the expiry of the above-mentioned three months until settlement;

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

Done in English, and notified in writing on 7 November 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Deputy Registrar

Françoise TULKENS
President