



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

FIRST SECTION

**CASE OF ISMETA BAČIĆ v. CROATIA**

*(Application no. 43595/06)*

JUDGMENT

STRASBOURG

19 June 2008

**FINAL**

***01/12/2008***

*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 Bačić v. Croatia,

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

Christos Rozakis, *President*,

Nina Vajić,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 29 May 2008,

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

## PROCEDURE

1. The case originated in an application (no. 43595/06) 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, Ms Ismeta Bačić (“the applicant”), on 17 October 2006.

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

3. On 7 May 2007 the Court decided to communicate the complaints concerning the applicant's right of access to a court and her right to peaceful enjoyment of her possessions to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1958 and lives in Zagreb.

5. On an unspecified date the applicant instituted civil proceedings before the Sveti Ivan Zelina Municipal Court (*Općinski sud u Svetom Ivanu Zelini*) against her former employer, Zelina Agricultural Enterprise

(*Poljoprivredni kombinat Zelina*), challenging her dismissal from work and seeking payment of her salary for the period of her unemployment. The first-instance judgment of 5 December 2000, granting the applicant's claims, awarded the applicant 42,161.47 Croatian kunas (HRK) together with statutory default interest.

The judgment was upheld by the Velika Gorica County Court (*Županijski sud u Velikoj Gorici*) on 15 January 2003.

6. Meanwhile, in a decision of 17 June 2002 the Zagreb Commercial Court (*Trgovački sud u Zagrebu*) opened bankruptcy proceedings against the applicant's former employer and invited all creditors to submit their claims to the bankruptcy administrator, appointed to the case by the Zagreb commercial Court, within thirty days. This was published in the Official Gazette no. 81/02 of 9 July 2002.

7. Examination hearings before the Zagreb Commercial Court were held on 24 September 2002 and 3 March 2003.

8. On 10 March 2003 the applicant lodged her claim, recognised by a final judgment, with the Zagreb Commercial Court before which the bankruptcy proceedings against her former employer had meanwhile been opened. The applicant argued that, since the civil proceedings she had instituted against her former employer before the ordinary courts (that is to say the competent municipal and county courts) had been pending, she considered that her claim had been adequately secured. In this connection she pointed to the provision obliging the regular courts to discontinue civil proceedings concerning any debtor against whom bankruptcy proceedings had been opened in the meantime.

9. On 16 April 2003 the Zagreb Commercial Court declared the applicant's request inadmissible as lodged out of time. It found that the examination hearing (*ispitno ročište*) had been held on 24 September 2002 and that after the expiry of three months from that date no further claims could be lodged in the bankruptcy proceedings. The relevant part of the decision reads as follows:

“In the bankruptcy proceedings against Zelina Agricultural Enterprise ... examination hearing was held and concluded on 24 September 2002.

The above-mentioned creditor submitted her claim on 15 April 2003, outside the three-month period following the first examination hearing.

Since the claim was submitted too late, that is to say after the period of three months following the first examination hearing, it is to be dismissed pursuant to section 176 paragraph 4 of the Bankruptcy Act.”

10. In her appeal lodged on 30 April 2004 the applicant stressed, *inter alia*, that the bankruptcy administrator had failed to comply with her duty under section 173 paragraph 2 of the Bankruptcy Act to include the applicant's claim in the list of claims of all the current and former employees of the debtor company and to submit it for her signature.

11. On 8 July 2003 the High Commercial Court (*Visoki trgovački sud Republike Hrvatske*) upheld the first-instance decision. In so far as relevant it held as follows:

“Under section 54 paragraph 3 of the Bankruptcy Act, in a decision on opening of bankruptcy proceedings a bankruptcy panel is obliged to invite all creditors to submit their claims to the administrator within a fixed time-limit, in accordance with the provisions of the Bankruptcy Act. The time-limit for submission of claims has to be fixed to no less than fifteen days and no longer than one month.

Claims submitted after the fixed time-limit may be examined at an examination hearing on the initiative of the administrator.

Claims submitted after the fixed time-limit which have not been examined at the examination hearing, as well as claims submitted within three months of the first examination hearing but not after the call for the final hearing has been published may be examined at one or more additional examination hearings which are to be scheduled by the administrator pursuant to a proposal made by the creditors who have failed to submit their claims on time, and on condition that they pay in advance and within fifteen days the costs of such a hearing.

Claims submitted after the expiry of the time-limit fixed in section 176 paragraph 2 of the Bankruptcy Act are to be declared inadmissible (argument under section 176 paragraphs 1, 2 and 4 of the Bankruptcy Act).

The first-instance court acted exactly as described above, in compliance with the Bankruptcy Act, when it declared inadmissible as being lodged out of time the claim submitted by the creditor Ismeta Bačić from Zagreb. The appellant does not dispute that the examination hearing in the bankruptcy proceedings against debtor Zelina Agricultural Enterprise based in Sveti Ivan Zelina was held and concluded on 29 September 2002. The conditions for submitting creditors' claims then ceased to exist and it is therefore of no significance whether the appellant submitted her claim on 10 March or 15 April 2003. In any event it was submitted out of time.

The only decision that a court could have adopted in such circumstances is the one pursuant to section 176 paragraph 4 of the Bankruptcy Act that the claim had to be declared inadmissible.

Therefore, there has been no wrongful application of the Bankruptcy Act provisions to the appellant's detriment and the impugned decision ought to be upheld in accordance with section 380 paragraph 1(2) of the Civil Procedure Act in conjunction with section 6 of the Bankruptcy Act.”

12. In her subsequent constitutional complaint the applicant argued that the administrator had failed to comply with her duty to inform her of the bankruptcy proceedings and allow her to lodge her claim against her former employer and had thus prevented her from securing the payment of her claim. On 23 March 2006 the Constitutional Court dismissed the applicant's complaint as being ill-founded. The relevant part of its decision reads as follows:

“The impugned judgment and the case file show that [the first] examination hearing in the bankruptcy proceedings against Zelina Agriculture Enterprise based in Sveti Ivan Zelina was held and concluded on 24 September 2002 and that the applicant as a creditor submitted her claim after the first examination hearing, on 15 April 2003.

Since the applicant submitted her claim after the time-limit fixed in Section 176 paragraph 2 of the Bankruptcy Act, the first-instance court declared her claim inadmissible as being lodged out of time pursuant to section 176 paragraph 4 of the Bankruptcy Act.

The High Commercial Court, in its decision on the applicant's appeal, stressed that the appeal was unfounded and that the Zagreb Commercial Court had correctly applied substantial law when it had declared the applicant's claim inadmissible as being lodged out of time.”

## II. RELEVANT DOMESTIC LAW

13. The Bankruptcy Act (*Stečajni zakon*, Official Gazette nos. 44/96, 29/99 and 129/00, as applicable at the relevant time) in the relevant parts provided as follows:

### **Section 24(3)**

“[After the bankruptcy proceedings have been opened] the bankruptcy administrator [assigned to the case] shall represent the debtor.”

### **Section 54(3)**

“In a decision on opening of the bankruptcy proceedings creditors shall be invited to submit their claims to the administrator, within a fixed time-limit. The time limit shall be fixed to no less than fifteen15 days and no longer than a month.”

### **Section 73(1)**

“All claims [against a debtor in bankruptcy proceedings] become payable when the bankruptcy proceedings are opened.”

### **Section 95(1)**

“The administrator [assigned to the case] shall intervene on behalf of the debtor in all pending civil proceedings concerning disputes about the debtor's assets.”

### **Section 96**

“Bankruptcy creditors shall enforce their claims against the debtor in bankruptcy proceedings only.”

**Section 173**

“(1) Bankruptcy creditors shall submit two copies of their claims to the bankruptcy administrator together with supporting documents confirming the existence of their claims.

(2) The bankruptcy administrator shall make a list of all claims which have become due before the opening of the bankruptcy proceedings of the present and former debtor's employees and submit the list to then be signed and the claims approved by the employees concerned ...

...”

**Section 175**

“(1) At the examination hearing the claims submitted shall be examined according to the amounts claimed and their rank.

(2) The administrator shall expressly state whether he accepts or contests each of the claims submitted.

...”

**Section 176**

“(1) Claims submitted after the fixed time-limit may be examined at a request of the bankruptcy administrator.

(2) Claims submitted after the fixed time-limit which have not been examined at the examination hearing, as well as the claims submitted within three3 months of the first examination hearing, but not after the call for the final hearing has been published, may be examined at one or more additional examination hearings, which shall be scheduled by the bankruptcy administrator pursuant to a proposal made by the creditors who have failed to submit their claims on time, and under the condition that they pay y advance of the costs of such a hearing in advance and within 15 days.

...

(4) Claims submitted after the expiry of the above time-limits shall be declared inadmissible.

...”

14. Section 212(5) of the Civil Procedure Act (*Zakon o parničnom postupku*) obliges a civil court to stay the proceedings pending before it where the insolvency bankruptcy proceedings have been instituted against any of the parties to the civil proceedings.

## THE LAW

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

15. The applicant firstly complained that her right to a fair trial had been infringed. She relied on Article 6 § 1 of the Convention, the relevant parts of which read as follows:

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

16. The Government contested that argument.

#### A. Admissibility

17. The Government argued that Article 6 § 1 of the Convention was not applicable in the present case because the bankruptcy proceedings had not involved a dispute and that in such proceedings the courts did not adjudicate on claims submitted by the parties, but only established the debtor's assets.

18. The applicant disagreed with these arguments.

19. The Court reiterates at the outset that the applicability of Article 6 § 1 to bankruptcy proceedings is beyond doubt (see *S.p.r.l. ANCA and Others v. Belgium*, no. 10259/83, Commission decision of 10 December 1984, Decisions and Reports 40, p. 170; *Interfina and Christian della Faille d'Huyse v. Belgium*, no. 11101/84, Commission decision of 4 May 1987, unreported; *Ceteroni v. Italy*, judgment of 15 November 1996, Reports of Judgments and Decisions 1996-V; *Bassani v. Italy*, no. 47778/99, §§ 13 and 14, 11 December 2003; *Capital Bank AD v. Bulgaria*, no. 49429/99, § 86, ECHR 2005 ... (extracts); and *Sukobljević v. Croatia*, no. 5129/03, § 37, 2 November 2006). Furthermore, the Court notes that under Croatian law if the bankruptcy proceedings are opened against a certain company its creditors are entitled to realise their claims against it only in the bankruptcy proceedings. Therefore, all civil proceedings against that company have to be stayed until the bankruptcy administrator, at the examination hearing in the bankruptcy proceedings, either accepts or opposes the claims reported by the creditors. If the bankruptcy administrator accepts a claim which was under examination in civil proceedings, the claim is considered finally determined and the civil proceedings consequently become obsolete. If he or she opposes such a claim, he or she has to take over the pending civil proceedings, which shall accordingly be resumed, and the claim determined therein. Therefore, the civil and the bankruptcy proceedings shall be taken as a whole for the purposes of Article 6 of the Convention (see *Sukobljević v. Croatia*, cited above, § 37).

20. The Court therefore considers that in the present case the determination of the applicant's "civil rights", within the meaning of Article 6 § 1 of the Convention, began in the civil proceedings and continued in the bankruptcy proceedings against the applicant's former employer, the applicant being one of the creditors. It follows that the Government's objection must be dismissed.

21. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

## **B. Merits**

22. The applicant complained that the administrator had not complied with her statutory duty under the relevant provisions of the Bankruptcy Act to intervene in the civil proceedings the applicant herself had instituted against her former employer. Furthermore, also contrary to the applicable rules, the Municipal Court conducting these civil proceedings had failed to discontinue these proceedings and to instruct her to submit her claim in the bankruptcy proceedings once the latter had been opened against her former employer. Thus, they had kept the applicant under the impression that her former employer was still operational, not raising the possibility that bankruptcy proceedings had been opened in the meantime.

23. What is more, the applicant alleged that the administrator had failed to comply with her statutory duty to include the applicant's claim in the list of claims of all present and former employers of the debtor company in the bankruptcy proceedings. The administrator had been under the duty not only to include the applicant's claim in such a list but also to submit it for the applicant's signature, thus ensuring that her claim would be examined in the proceedings.

24. The Government submitted that the administrator had no knowledge of the applicant's claim and that therefore she could not have included it in the list of claims of current and former employees of the debtor in the bankruptcy proceedings. Furthermore, all creditors had been informed of the opening of these proceedings when an advertisement to that effect had been published in the Official Gazette. However, the applicant had submitted her claim in the bankruptcy proceedings after all deadlines and therefore the national courts had to declare her claim inadmissible as being lodged out of time. Otherwise, her claim would have been accepted in contravention of the applicable laws and the applicant would have been treated more favourably than the other creditors without a justifiable reason.

25. The Court reiterates that Article 6 § 1 embodies the "right to a court", of which the right of access, that is the right to institute proceedings before a court in civil matters, constitutes one aspect (see *Golder v. the*

*United Kingdom*, judgment of 21 February 1975, Series A no. 18, pp. 13-18, §§ 28-36, and *Dubinskaya v. Russia*, no. 4856/03, § 39, 13 July 2006). The right is not however absolute; it is subject to limitations permitted by implication, in particular where the conditions of admissibility of an application are concerned, since by its very nature it calls for regulation by the State, which enjoys a certain margin of appreciation in this regard. Where the individual's access is limited either by operation of law or in fact, the Court will examine whether the limitation imposed impaired the essence of the right and in particular whether it pursued a legitimate aim and there was a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see, among other authorities, *Levages Prestations Services v. France*, judgment of 23 October 1996, *Reports of Judgments and Decisions* 1996-V, p. 1543, § 40; *Yagtzilar and Others v. Greece*, no. 41727/98, § 23, ECHR 2001-XII; and *Truhli v. Croatia*, no. 45424/99, § 25, 28 June 2001, with further references).

26. As to the present case, the Court notes at the outset that the applicant was able to bring her civil action seeking, *inter alia*, payment of her salary arrears for the period of her unemployment and that the first-instance court and the appellate court granted her claim. However, the applicant's request that her claim against her former employer be enforced in the bankruptcy proceedings was dismissed as being lodged out of time.

27. As to the role of the administrator in the proceedings, the Court observes that the administrator was appointed by the Zagreb Commercial Court and was entrusted with a duty to properly address all issues pertaining to the assets of the bankruptcy debtor, including the claims of any potential creditors against these assets. In this capacity she thus acted as a representative of the public authority.

28. The Court notes that under Section 95 paragraph 1 of the Bankruptcy Act the administrator is obliged to take over all civil proceedings concerning the debtor while Section 212(5) of the Civil Procedure Act requires that all such proceedings be stayed *ex lege* since all civil claims against a debtor in respect of whom bankruptcy proceedings have been instituted are to be examined exclusively in these proceedings.

29. In the present case, at the time when the bankruptcy proceedings at issue were opened the civil proceedings concerning the applicant's claim against the bankruptcy debtor were at the appellate stage. However, the administrator did not intervene in these proceedings, despite her duty to do so although she should have known of these proceedings. In any event, the Court considers that the State has to secure that a bankruptcy administrator acquaints herself with all concerns of the bankruptcy debtor that are relevant for the proper conduct of the bankruptcy proceedings, the pending claims against the debtor undoubtedly being such a concern.

30. The Court notes further that while section 173 paragraph 1 of the Bankruptcy Act requires that all creditors submit their claims against the

bankruptcy debtor to the bankruptcy administrator, its second paragraph imposes a duty on the administrator to make a list of claims of all current and former employers of the debtor in the proceedings and to submit that list to the employees concerned for their signature. In the Court's view, however, where such a situation of shared responsibility exists under domestic law, as it appears in the present case, imposing the duty of submitting her claim in the bankruptcy proceedings solely on the applicant, where she had already instituted civil proceedings against the debtor company, would amount to a disproportionate burden. In this connection the Court stresses that the administrator should have been aware of the civil proceedings of pecuniary nature previously instituted by the applicant against the bankruptcy debtor.

31. The Court is aware that there may be different views as to the consequences of a bankruptcy administrator's omissions considered above. On the other hand, it is also aware that the applicant was able and had a duty to report her claim in the bankruptcy proceedings regardless of the bankruptcy administrator's failure. However, the issue of shared responsibility and the duties of the bankruptcy administrator were not taken into account in the decisions of the domestic courts which confined themselves to stating that the applicant had not complied with the prescribed time limit.

32. In these circumstances the Court considers that the applicant was not afforded full guarantees of a fair hearing to the standards required under Article 6 § 1 of the Convention and that there has accordingly been a violation of that Article.

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

33. The applicant further complained that because her claim submitted in the bankruptcy proceedings had been declared inadmissible she was unable to enjoy her possessions, and thus her right to protection of property had been infringed. She relied on Article 1 of Protocol No. 1 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.”

34. The Government contested that argument.

35. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

36. The Court notes that the applicant's complaint under Article 1 of Protocol No. 1 overlaps with her complaint under Article 6 § 1 of the Convention and that both complaints concern the same facts. In view of its findings under Article 6 § 1 of the Convention, the Court considers that it is not necessary to examine whether, in this case, there has been a separate violation of Article 1 of Protocol No. 1.

### III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION AND ARTICLE 12 OF PROTOCOL NO. 1

37. Lastly, the applicant complained under Article 14 of the Convention and Article 1 of Protocol No. 12 that she had been discriminated against.

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

### IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. 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**

40. The applicant claimed HRK 145,000 in respect of non-pecuniary damage and the sum of HRK 42,161.47 together with the statutory default interest in respect of pecuniary damage.

41. The Government deemed the sum claimed excessive and unfounded as there had been no causal link between the violations complained of and the applicant's financial expectations.

42. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, the Court, accepting that the lack of guarantee of a fair trial has caused the applicant non-pecuniary damage which cannot be made good by the mere finding of a violation, awards her 5,000 euros (EUR) in that respect, plus any tax that may be chargeable to the applicant.

## B. Costs and expenses

43. The applicant also claimed HRK 3,739 for the costs and expenses incurred before the Court.

44. The Government made no comments in this respect.

45. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum claimed, that is EUR 515 plus any tax that may be chargeable to the applicant.

## C. Default interest

46. The Court considers it appropriate that the default interest 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 complaints concerning the applicant's right to a fair trial and her right to peaceful enjoyment of her possessions admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there is no need to examine the complaint under 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 which are to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:
    - (i) EUR 5,000 (five thousand euros) in respect of non-pecuniary damage plus any tax that may be chargeable;
    - (ii) EUR 515 (five hundred fifteen euros) in respect of costs and expenses plus any tax that may be chargeable;
  - (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;

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

Done in English, and notified in writing on 19 June 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen  
Registrar

Christos Rozakis  
President