



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

FIRST SECTION

CASE OF PARLOV-TKALČIĆ v. CROATIA

(Application no. 24810/06)

JUDGMENT

STRASBOURG

22 December 2009

FINAL

22/03/2010

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 Parlov-Tkalčić v. Croatia,

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

Anatoly Kovler, *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 3 December 2009,

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

PROCEDURE

1. The case originated in an application (no. 24810/06) 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, Mrs Marija Parlov-Tkalčić (“the applicant”), on 12 June 2006.

2. The applicant was represented by Mrs D. Večerina, an advocate practising in Zagreb. The Croatian Government (“the Government”) were represented by their Agent, Mrs Š. Stažnik.

3. On 18 September 2007 the President of the First Section decided to communicate the complaints concerning length and impartiality to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1948 and lives in Zlatar.

A. Background to the case

5. In July 1991 the applicant had a road traffic accident. Since the insurance company C.O. (“the company”) refused to compensate the

resultant damage, on 8 July 1992 she instituted civil proceedings against it in the Zlatar Municipal Court (*Općinski sud u Zlataru*).

6. On 15 March 1993 the Municipal Court ruled in the applicant's favour ordering the company to pay her the amount of 222,501 Croatian dinars (HRD) together with the statutory default interest accruable from 19 August 1991. The applicant collected the judgment debt on 16 July 1993.

7. However, in the meantime, on 2 July 1993 the Municipal Court issued a decision rectifying a clerical error in its judgment of 15 March 1993. Instead of ordering the company to pay the statutory default interest accruable from 19 August 1991 on the entire amount of damages awarded, (HRD 222,501), in the rectified judgment the court ordered the company to do so only on the part of that amount, namely HRD 22,501, which was the amount awarded in respect of pecuniary damage. The company was ordered to pay the accrued interest on the remaining amount of HRD 200,000 only with effect from 15 March 1993.

8. The decision on rectification was served on the applicant's representative on 26 July 1993.

B. Criminal complaint against the applicant

9. On 10 September 1993 judge M.M., who was at the time the President of the Zlatar Municipal Court, filed a criminal complaint against the applicant with the Zlatar Municipal State Attorney's Office considering that she had committed a criminal offence. M.M. stated in his complaint that at the beginning of July 1993 a certain Z.F.C., a lawyer employed with the insurance company C.O., had come to his office explaining the clerical error in the Municipal Court's judgment of 15 March 1993 and asking him to influence the applicant – who was working at the time as an advocate – with a view to returning the unlawfully obtained amount. After explaining the error and mentioning that it had been rectified by the Municipal Court's decision of 2 July 1993, judge M.M. stated:

“... despite the rectification of the judgment, the advocate Marija Parlov-Tkalčić, to date does not want to return the unlawfully appropriated money to [the company] C.O., Zabok, for which reason the civil proceedings no. P-330/93 were instituted [against her].

Since we consider that the act of the advocate Marija Parlov-Tkalčić also contains elements of criminal liability, we are reporting it to you with a view to investigating it and, possibly, instituting criminal proceedings against her ...”

10. On 15 September 1993 the Zlatar Municipal State Attorney requested transfer of jurisdiction because he was a friend of the applicant. On 22 September 1993 the case was transferred to the Krapina Municipal State Attorney who, on 24 January 1994 indicted the applicant before the

Zlatar Municipal Court charging her with a criminal offence of misappropriation (*utaja*).

11. However, on 3 February 1994 the judge assigned to hear the case requested that the case be transferred to another court as its president had actually filed a criminal complaint against the applicant. On 8 March 1994 the Supreme Court (decision no. Kr-103/1994-3) granted the request and decided to transfer the case to the Krapina Municipal Court (*Općinski sud u Krapini*). The decision in its relevant part read as follows:

The ... judge [assigned to hear the case] of the Zlatar Municipal Court made a request that the criminal proceedings ... against Marija Parlov-Tkalčić ... be conducted before the Krapina Municipal Court.

The request is substantiated by the fact that the accused Marija Parlov-Tkalčić is an advocate with her office in Zlatar and that the criminal complaint against her was filed by the president of the Zlatar Municipal Court, which may objectively cast doubt on the impartial administration of justice if the proceedings are to be conducted before the Zlatar Municipal Court.

The request is well-founded.

The circumstances highlighted in the request of the ... judge [assigned to hear the case] constitute in the present instance important reasons within the meaning of section 31(1) of the Criminal Procedure Act for transferring territorial jurisdiction from the Zlatar Municipal Court to the Krapina Municipal Court ...

12. On 28 November 1997 the Krapina Municipal Court dismissed the charges against the applicant given that the prosecution for the offence she had been charged with had in the meantime become time-barred (*apsolutna zastara*).

C. Civil proceedings for unjust enrichment

13. Meanwhile, on 26 August 1993 the insurance company C.O. brought a civil action for unjust enrichment against the applicant in the Zlatar Municipal Court seeking to recover the overpaid interest. The statement of claim was served on the applicant on 7 September 1993.

14. On 25 April 1997 the applicant made a counter-claim.

15. The court held hearings on 29 April and 2 December 1999 and 29 March and 5 July 2000.

16. At the last-mentioned hearing the Zlatar Municipal Court gave judgment against the applicant, ordering her to pay the plaintiff 12,525 Croatian kunas (HRK) together with the statutory default interest accruable from 26 July 1993, as well as HRK 4,381.25 in costs. It also declared her counter-claim inadmissible in one part while dismissing it in the remaining part.

17. On 11 January 2001 the applicant appealed to the Zlatar County Court (*Županijski sud u Zlataru*) asking at the same time for transfer of

jurisdiction (*svrsishodna delegacija nadležnosti*) from both the Zlatar Municipal Court and the Zlatar County Court. She argued, *inter alia*, that the Zlatar County Court could not be expected to be impartial in the examination of her appeal given that judge M.M. – who had in the meantime become the president of that court – had previously filed a criminal complaint against her.

18. The Government submitted that judge M.M. had been appointed the president of the Zlatar County Court on 14 June 1996 but that this court had become operational only on 15 March 1999.

19. On 31 May 2001 the Supreme Court (*Vrhovni sud Republike Hrvatske*) dismissed the applicant's request for transfer of jurisdiction. It held that the circumstances relied on by the applicant did not cast doubt on the professional and objective examination of her appeal by the Zlatar County Court. Thus, there was no important reason justifying the requested transfer.

20. On 16 March 2005 the Zlatar County Court dismissed the applicant's appeal and upheld the first-instance judgment. The decision was served on the applicant on 20 April 2005.

21. On 20 May 2005 the applicant lodged a regular constitutional complaint under section 62 of the Constitutional Court Act against the second-instance judgment. Relying on Article 29 of the Constitution, she claimed, *inter alia*, that her constitutional right to an impartial court had been violated because the impugned judgment had been delivered by the court whose president had previously filed a criminal complaint against her relying on the same facts as those relied on by the first- and second-instance courts when giving their decisions. On 3 November 2005 the Constitutional Court (*Ustavni sud Republike Hrvatske*) dismissed her constitutional complaint. The decision was served on the applicant on 21 December 2005.

D. The proceedings following the applicant's constitutional complaint about the length of proceedings

22. Meanwhile, on 27 January 2005 the applicant lodged a constitutional complaint under section 63 of the Constitutional Court Act complaining about the length of the above civil proceedings for unjust enrichment. The Constitutional Court examined the length of the proceedings in the period during which they were pending before the ordinary courts thus excluding the period of some seven months while the case was pending before the Constitutional Court itself (see paragraph 21 above). On 15 February 2006 it found a violation of the applicant's constitutional right to a hearing within a reasonable time and awarded her HRK 5,000 in compensation.

E. Organisation of the Zlatar County Court and the rules governing allocation of cases

23. According to information provided by the Government in reply to a request made by the Court, the Zlatar County Court has a civil and a criminal division. The civil division has six judges sitting in two different panels. The president of the court sits on one of the panels. The criminal division has three judges, and judges of the civil division sit with them when necessary. The cases are assigned to judges according to Rule 33 of the Court Rules (see paragraph 40 below). Thus, before being allocated to judges, cases are listed in chronological order according to the time when they were received at the court. After that, cases are allocated to judges in the alphabetical order of the panel presidents' last names. However, account is being taken of whether some of the judges participated in the first-instance proceedings in a particular case. If they did, the case is not assigned to them.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Constitution

24. Article 29 § 1 of the Constitution (*Ustav Republike Hrvatske*, Official Gazette of the Republic of Croatia no. 41/2001 of 7 May 2001) reads as follows:

“In the determination of his rights and obligations or of any criminal charge against him, everyone is entitled to a fair hearing within a reasonable time by an independent and impartial court established by law.”

B. Relevant legislation

1. The Constitutional Court Act

25. The relevant part of the 1999 Constitutional Act on the Constitutional Court of the Republic of Croatia (*Ustavni zakon o Ustavnom sudu Republike Hrvatske*, Official Gazette of the Republic of Croatia no. 99/1999 of 29 September 1999 – “the Constitutional Court Act”), as amended by the 2002 Amendments (*Ustavni zakon o izmjenama i dopunama Ustavnog zakona o Ustavnom sudu Republike Hrvatske*, Official Gazette of the Republic of Croatia no. 29/2002 of 22 March 2002), which entered into force on 15 March 2002, reads as follows:

Section 62

“1. Everyone may lodge a constitutional complaint with the Constitutional Court if he or she deems that the decision of a state authority, local or regional self-government, or a legal person invested with public authority, on his or her rights or obligations, or about suspicion or accusation for a criminal offence, has violated his or her human rights or fundamental freedoms, or right to local or regional self-government, guaranteed by the Constitution (hereinafter: constitutional right)...

2. If another legal remedy is allowed against the violation of the constitutional rights [complained of], the constitutional complaint may be lodged only after this remedy has been exhausted.

3. In matters in which an administrative action or, in civil and non-contentious proceedings, an appeal on points of law [*revizija*] are allowed, remedies shall be considered exhausted only after the decision on these legal remedies has been given.”

Section 63

“(1) The Constitutional Court shall examine a constitutional complaint whether or not all legal remedies have been exhausted if the competent court fails to decide a claim concerning the individual's rights and obligations or a criminal charge against him or her within a reasonable time ...

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

(3) In a decision issued under paragraph 2 of this section, the Constitutional Court shall assess appropriate compensation for the applicant for the violation of his or her constitutional rights ... The compensation shall be paid out of the State budget within three months from the date a request for payment is lodged.”

2. *The Civil Procedure Act*

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

Section 68

“The highest court of a certain type in the Republic of Croatia may, following a proposal by the party or the competent court, assign another court from its territory to decide a certain case if this would obviously facilitate the proceedings or for other important reasons.”

Section 71

A judge ... shall be disqualified from exercising his or her functions:

...

6) if other circumstances exist to cast doubt on his or her impartiality.

Section 73

(1) Parties may also request withdrawal [of a judge]...

(2) A party may request withdrawal of a judge of a higher court in the appeal or a reply thereto...

Section 74

(1) The party's request for withdrawal of a judge shall be decided by the president of the court.

(2) Should the party request withdrawal of the president of the court, such request shall be decided by the president of the immediately higher court.

3. The Courts Act

27. The relevant provisions of the Courts Act (*Zakon o sudovima*, Official Gazette of the Republic of Croatia nos. 3/1994, 100/1996, 131/1997, 129/2000, 67/2001, 17/2004 and 141/04), as in force at the material time, read as follows:

28. Section 26(1) provided that the president of a court exercised the duties related to court administration in accordance with the law and court rules.

29. Section 30(2) provided that the president of the court or the relevant division of the court was authorised to suspend the service of a decision delivered by a single judge or panel of judges, which was contrary to the legal view adopted by another judge or panel, until the differences in legal views were discussed at the meeting of the division of the court. If the division adopted the view contrary to that decision, a judge or panel which delivered it had to decide the case again.

30. Sections 52-52c read as follows:

a) Performance of judge's duties**Section 52**

President of the court in which a judge exercises his or her duties determines for the preceding calendar year:

1. whether a judge delivered the number of decisions which he or she had to deliver pursuant to the framework criteria for the performance of judges, where [the president of the court] shall determine the result of judge's work according to the types of cases, in absolute numbers and in percentage,

2. whether a judge respected the time-limits within which he or she has to pronounce, prepare and send a decision, indicating whether the time-limits were fully respected or respected in more or less than 75% of the cases,

3. how many appeals were lodged against the first-instance decisions and what were the decisions delivered in the appellate proceedings ([that is whether the first-instance decisions were] upheld, quashed or reversed), in absolute numbers and in percentage, and how many decisions were quashed for serious procedural errors,

4. how many extraordinary remedies were lodged against the second-instance decisions ([that is whether the second-instance decisions were] upheld, quashed or reversed), in absolute numbers and in percentage terms.

5. ...

Section 52a

If a judge did not deliver the number of decisions he or she had to deliver pursuant to the framework criteria for the performance of judges, because he or she was charged with exceptionally difficult and complex cases, it shall be assumed that he or she achieved the adequate result in his or her work, increased by 10%. That fact shall be stated in the operative provisions of the decision in which the president of the court determines the performance of the judge's duties.

Section 52b (1)

The circumstances from section 52 and 52 a of this Act shall be established for the preceding calendar year by the president of the court in a decision that has to be delivered at the latest by 28 February of the current year.

Section 52c

(1) A judge who is not satisfied with a decision of the president of the court may appeal against it within eight days of its service.

(2) The appeal shall be lodged with the president of the higher court through the president of the court which delivered the decision.

31. Sections 53 and 53a provided that judicial panels were the competent organs for appraisal of judges in the process of their permanent appointment to judicial office as well as in the process of their appointment to another court.

32. Judicial panels were organs formed for the territories of each county court and were composed of a certain number of judges of the county court at issue and judges of the municipal courts operating on the territory of that county court.

33. A judicial panel had to appraise a judge appropriately according to all the elements listed in section 52. In doing so it had to take into consideration the final decision of the president of the court on the performance of that judge's duties as well as other documents related to his or her work.

34. Section 63 provided that a judge had to inform the president of the court about every job it accepted and all business it undertook. The president of the court was to decide whether a job or business was incompatible with the judicial office. The judge could appeal against the president's decision to the Minister of Justice.

35. Section 73a defined the president of a court as a judge who, apart from his or her judicial function, exercises the duties related to court administration.

36. Section 73g(1) provided:

Section 73g (1)

A judge shall be relieved of the duty of president of the court if in the supervision of court administration it is established that:

1. the president of the court does not exercise his or her duties related to court administration in accordance with the applicable regulations or in timely fashion,
2. [he or she] breaches the rules governing assignment of cases, either directly or by failure to supervise,
3. [he or she], by breaching the applicable regulations or in some other way, violates the principle of judicial independence in the administration of justice,
4. [he or she] does not submit requests to institute disciplinary proceedings in cases prescribed by law.

4. The National Judicial Council Act

37. The National Judicial Council Act (*Zakon o državnom sudbenom vijeću*, Official Gazette of the Republic of Croatia nos. 58/1993, 49/1999, 129/2000 and 150/2005) regulates the composition, powers and operation of the authority competent to decide on the appointment and dismissal of judges – the National Judicial Council. It regulates, in particular, the process of appointment of judges, disciplinary offences in the exercise of judicial office and disciplinary proceedings against judges. The relevant provisions of the Act, as in force at the material time, read as follows:

38. Sections 16-18 regulated the procedure of appointment of judges. After receiving applications from the candidates for the vacant post of a judge, the Minister of Justice had to, before submitting the list of candidates to the National Judicial Council, request an opinion about the candidates from the respective judicial panels (see paragraphs 31-33 above). Section 17

provided that the competent judicial panel, before issuing its own opinion on a certain candidate, could request information on the candidate from the president of the court in which that judge had been exercising his or her duties.

39. Sections 20-30 regulated disciplinary proceedings against judges. Sections 20(2), 24(1) and 28 read as follows:

Section 20

(1) ...

(2) Disciplinary offences are:

1. ...

2. unjustified failure to exercise judicial duties, or failure to exercise them in timely fashion,

3. exercising service or activities, or doing business incompatible with judicial office,

4. ...

...

(3) Disciplinary proceedings for an offence from paragraph 2 subparagraph 2 of this section shall be instituted in particular if:

- a judge, without justified reason, is not preparing and sending court decisions within the statutory time-limits,

- ...

- without justified reason, the number of decisions delivered [by a judge] in one year is below the average in the Republic of Croatia.

Section 24 (1)

If there is a reasonable suspicion that a judge has committed a disciplinary offence, the president of the court in which that judge exercised his or her duties is obliged to make a request that the disciplinary proceedings be instituted against [that judge].

Section 28

(1) A judge shall be suspended from exercising his or her duties if criminal proceedings are instituted against him or her for a criminal offence punishable by more than five years' imprisonment, or while he or she is in detention.

(2) ...

(3) The decision on suspension in the case from paragraph 1 of this section shall be delivered by the president of the court.

5. *The Court Rules*

40. The Court Rules (*Sudski poslovnik*, Official Gazette of the Republic of Croatia nos. 80/1997, 20/1998, 118/2001, 49/2003, 32/2004, 9/2006, 116/2008, 125/2008 and 146/2008) are a subordinate legislation regulating internal operation of courts. The relevant provisions, as in force at the material time, read as follows:

Rule 2

The internal operation of the court is separate from adjudication.

Rule 8

(1) The president of the court supervises the correct and timely discharge of all duties in the court.

(2) Supervision is effectuated through inspection of the work of court panels, single judges..., inspection of files, decision and decisions of higher courts..., review of the registration books..., supervision of the work of the court's central office...

Rule 9 (1)

1. The president of the court coordinates the work of court divisions and other organisational units in the court. When the president of the court notices inconsistent practices or practices contrary to existing regulations or departure from established case-law of higher courts in the operation of divisions, panels or single or investigation judges, he or she shall submit his or her observations for discussion at the meetings of judges.

Rule 33 (2) to (5)

(2) Cases are assigned to judges by the president of the court in courts having no divisions or by the president of a division in courts having divisions.

(3) Before assigning cases to judges, cases are listed in a chronological order...

(4) Cases are then assigned in alphabetical order of judges within the court or a division, taking into account the equal distribution of cases during the year, the type and complexity of cases. Second-instance cases are assigned in alphabetical order of the panel presidents, who then assign the cases in alphabetical order to the judges who are members of the panel.

(5) Should certain cases not be immediately assigned to judges, due to a backlog of cases or higher workload of judges, the president of the court or a division shall, pursuant to the criteria set forth in paragraphs 2 and 3 of this section, without delay assign those cases to judges.

Rule 34

(1) As an exception to the provision of Rule 33 of the Court Rules whereby a case had to be assigned to a certain judge, the case shall in the event of [his or her] objective indisposition be assigned to the judge in the court or a division [whose name is] next in the alphabetical order.

(2) The procedure prescribed in paragraph 1 of this section shall also apply to cases that have already been assigned to judges who are objectively indisposed from conducting the proceedings due to withdrawal, absence from work, particularly high workload or for other justified reasons, when this is necessary to ensure lawful and efficient operation of the court and the protection of the right of the parties to the administration of justice without undue delay.

Rule 43 (2)

The yearly holiday plan is determined by the president of the court after obtaining opinions of the organisational units of the court, bearing in mind the needs of service and the wishes of the employees.

C. The case-law of the Supreme Court on transfer of jurisdiction*1. Criminal cases*

41. Section 31 of the Criminal Procedure Act of 1993 (*Zakon o krivičnom postupku*, Official Gazette of the Socialist Federal Republic of Yugoslavia nos. 4/1977, 13/1985, 36/1977, 26/1986, 74/1987, 57/1989 and 3/1990, and Official Gazette of the Republic of Croatia nos. 53/1991, 91/1992, 34/1993 (consolidated text), 38/1993 (corrigendum) and 28/1996) and section 32 of the Criminal Procedure Act of 1997 (*Zakon o kaznenom postupku*, Official Gazette of the Republic of Croatia nos. 110/1997, 27/1998 (corrigendum), 58/1999, 112/1999, 58/2002, 143/2002 (corrigendum), 62/2003 (consolidated text) and 115/2006) provided that the immediately higher court could, following a proposal by an investigation judge, single judge, president of the panel or state attorney, assign another court from its territory to decide a case if that would obviously facilitate the proceedings or for other important reasons. In cases involving the applicant and/or the Zlatar Municipal Court, the Supreme Court applied the above provisions in the following way:

42. Apart from the above case no. Kr-103/1994-3 (see paragraph 11 above), the Supreme Court dealt with one more criminal case involving the applicant. In its decision no. Kr-419/1990-2 of 9 January 1991 the Supreme Court granted a request for transfer of jurisdiction from the Zlatar Municipal Court to another court submitted by the single judge of that court in the case where the applicant was the accused in criminal proceedings instituted by one of the judges of that court as a private prosecutor.

43. In other cases involving the Zlatar Municipal Court the Supreme Court granted requests for transfer of jurisdiction in the cases where: the accused was the mother of that court's employee R.Š. (decision no. Kr-64/1990-3 of 4 April 1990), the accused was the head of the land registry division of that court (Kr-196/1990-2 of 31 May 1990), the private prosecutor was the sister of one of the court's employees (Kr-315/1993-2 of 12 October 1993), the second accused was the sister of an employee of the court, R.Š. (Kr-316/1993-3 of 12 October 1993), the injured party was a brother-in-law of an employee of the court, R.Š. and one of the witnesses her sister (Kr-43/1994-3 of 21 April 1994), the injured party instituted criminal proceedings by private prosecution against the president of the court, judge M.M. (Kr-316/1994-4 of 4 January 1995), the accused was a lay assessor (*sudac porotnik*) of that court (Kr-88/03-3 of 22 April 2003), the accused were employees of the Krapina Social Welfare Centre with whom the court cooperated on a daily bases in cases against juvenile offenders and cases involving offences committed against minors (Kr-138/06-3 of 17 October 2006). In the last-mentioned case the Supreme Court reasoned that the circumstance on the basis of which it granted the request for transfer of jurisdiction:

“... should be viewed in the light of the fact that the particular case concerns a working environment with a small number of employees, which inevitably leads to daily contact between them.”

2. Civil cases

44. In its practice the Supreme Court applied section 68 of the Civil Procedure Act (see paragraph 26 above) in the following way:

(a) Cases involving the applicant

45. Apart from the case no. Gr-91/1992-2 of 21 May 1992, to which the applicant referred to in her observations (see paragraph 77 below) and in which it granted the request for transfer of jurisdiction from the Zlatar Municipal Court to another court, the Supreme Court did not deal with any other civil case involving the applicant.

(b) Cases involving the Zlatar Municipal Court or the Zlatar County Court

(i) Cases in which requests for transfer of jurisdiction were granted

46. In its decision no. Gr-107/1994 of 21 June 1994 the Supreme Court granted the request for transfer of jurisdiction from the Zlatar Municipal Court to another court submitted by the respondent in a case where the wife of one of the plaintiffs was employed at that court. The Supreme Court held that this fact alone would not constitute an important reason for transfer of jurisdiction but nevertheless granted the request, taking into account that the

court in question was a small court, which had also agreed with the plaintiff's request, in order to dispel any suspicion as regards its impartiality.

47. In its decision no. Gr-140/1995-2 of 12 April 1995 the Supreme Court granted a request for transfer of jurisdiction from the Zlatar Municipal Court to another court submitted by the respondent in a case where the plaintiff was employed as the head accountant of that court. In so deciding the Supreme Court reasoned as follows:

“Zlatar Municipal Court falls into the category of small courts. Its seat is in a small place [town] and it is common knowledge that the connection between people in institutions in small places and with a small number of employees is always stronger.”

48. In its decision no. Gr1-749/04-2 of 28 April 2005 the Supreme Court granted the request submitted by the Zlatar Municipal Court for transfer of jurisdiction from that court to another one in the case where the plaintiff was a lay assessor of the same court.

49. In its decision no. Gr-309/1994-2 of 13 June 1995 the Supreme Court granted a request for transfer of jurisdiction from the Zlatar Municipal Court to another court submitted by the plaintiffs. The Supreme Court ruled that the fact that the plaintiffs had made a criminal complaint against the president of the Zlatar Municipal Court and against one of the judges, coupled with that court's statement made in reply to the request for transfer of jurisdiction that some of its judges and the president intended to file a criminal complaint against the plaintiffs, was an important reason for transfer of jurisdiction.

50. In other cases involving the Zlatar Municipal Court the Supreme Court granted requests for transfer of jurisdiction in cases where: the parties were the brother-in-law and the sister-in-law of the president of that court (decision no. Gr-11/1990 of 14 February 1990), the respondents were the sister and the brother-in-law of R.Š., an employee of the land registry division of the court (decision no. Gr-148/1998-2 of 29 July 1998), the second respondent's wife was employed by the Zlatar Municipal Court and the plaintiff had until recently been lay assessor of the same court (decision no. Gr1-538/05-2 of 25 October 2005), the respondent was the husband of the typist employed with the court and assigned to the only judge, apart from the court's president, who dealt with civil cases (decision no. Gr1-214/06-2 of 19 May 2006).

(ii) Cases in which requests for transfer of jurisdiction were refused

51. In its decision no. Gr-883/00-2 of 14 December 2000 the Supreme Court refused a request submitted by the Zabok Municipal Court for transfer of jurisdiction from that court to another one in the case where the president of the Zlatar County Court sued the State, challenging the authenticity of a document he had authenticated while a judge of the Zlatar Municipal Court. The Supreme Court ruled that the fact that the plaintiff was the president of

the appellate court in the matter was not an important reason for transfer of jurisdiction.

52. In other cases involving the Zlatar Municipal Court or the Zlatar County Court the Supreme Court refused requests for transfer of jurisdiction in cases where: the wife of a former president of the Zlatar Municipal Court had worked in the same company as the plaintiff (decision no. Gr-474/1990-2 of 27 December 1990), the plaintiff's representative was a former judge of that court (decision no. Gr-397/1995-2 of 10 January 1995), a former judge of the Zlatar County Court was the father-in-law of the legal representative of the enforcement creditor (decision no. Gr-826/1999-2 of 16 March 2000), the plaintiff's representative was a former judge of the Zlatar Municipal Court (decision no. Gr1-140/02-2 of 13 March 2002).

(c) Civil cases involving a criminal complaint

53. In its decision no. Gr-354/1991-2 of 19 November 1991 the Supreme Court refused a request submitted by the Krapina Municipal Court for transfer of jurisdiction from that court to another one, holding that the fact that the Krapina Municipal Court had filed a criminal complaint for insult against the plaintiff was not an important reason for transfer of jurisdiction.

54. In its decision no. Gr-7/1999-2 of 18 March 1999 the Supreme Court, in refusing the request for transfer of jurisdiction, stated as a matter of principle that making a criminal complaint by one of the parties to the proceedings against the judge assigned to hear the case did not constitute an important reason for transfer of jurisdiction to another court. It followed and further developed this practice in the subsequent cases, for example, cases nos. Gr-88/1999-2 of 5 May 1999, Gr-79/00-2 of 14 June 2000, Gr-738/00-2 of 11 October 2000, Gr-106/01-2 of 6 June 2001, Gr-530/01-2 of 5 September 2001 and Gr-828/01-2 of 20 December 2001, in which it refused requests for transfer of jurisdiction submitted by one of the parties to the proceedings and based solely on the fact that he or she had previously filed a criminal complaint against the judge assigned to hear the case and/or the president or other judges or employees of the court at issue. In case no. Gr-965/01-2 of 27 December 2001 the Supreme Court reached the same conclusion but also took into account the nature of the dispute and the fact that the case was being examined by a court with many judges.

55. The only exception to this line of case-law was case no. Gr2-159/02-2 in which the Supreme Court on 8 April 2003 granted the request for transfer of jurisdiction from the Pag Municipal Court to another court submitted by the plaintiff in a case where he had challenged the validity of a certain entry in the land register of that court. The Supreme Court held that the fact that the plaintiff had filed criminal complaints against the judge in the case and against the president of the Pag Municipal Court who had previously approved the impugned entry in the land register,

was an important reason for transfer of jurisdiction in the particular circumstances because the court in question had only (these) two judges.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE EXCESSIVE LENGTH OF PROCEEDINGS

56. The applicant complained that the length of the above civil proceedings for unjust enrichment was incompatible with the “reasonable time” requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair... hearing within a reasonable time by an ... impartial tribunal established by law.”

57. The Government contested that argument.

58. The Court considers that the period to be taken into consideration began on 6 November 1997, the day after the entry into force of the Convention in respect of Croatia. However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time. In this connection the Court notes that the proceedings commenced on 26 August 1993 when the insurance company C.O. brought a civil action for unjust enrichment against the applicant and that the statement of claim was served on her on 7 September 1993. Consequently, the case had already been pending for some four years and two months before the ratification.

59. The proceedings ended on 21 December 2005 when the Constitutional Court's decision of 3 November 2005 was served on the applicant (see paragraph 21 above). They thus lasted some eight years and one month after the ratification, for three levels of jurisdiction.

A. Admissibility

60. The Government submitted that the applicant could no longer claim to be a victim within the meaning of Article 34 of the Convention since the Constitutional Court had granted the applicant's constitutional complaint, found a violation of her constitutional right to a hearing within a reasonable time and awarded her compensation. The violation complained of had, therefore, been remedied before the domestic authorities and the applicant had lost her victim status.

61. The applicant disagreed.

62. The Court notes that the Constitutional Court awarded the applicant the equivalent of approximately 683 euros (EUR). This amount is manifestly unreasonable having regard to what the Court would have been likely to award her under Article 41 of the Convention. It therefore cannot be regarded as adequate in the circumstances of the case (see the principles established under the Court's case-law in *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 65-107, ECHR 2006-V). Accordingly, the applicant can still claim to be a “victim” of a violation of her right to a hearing within reasonable time, and the Government's objection must therefore be dismissed.

63. Having regard to the above facts the Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It also notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

64. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Cocchiarella v. Italy* [GC], cited above, § 68, and *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

65. The Court concurs with the Constitutional Court that the proceedings in question had lasted an unreasonably long time as it has itself frequently found violations of Article 6 § 1 of the Convention in cases raising similar issues to the one in the present case (see, for example, *Škare v. Croatia*, no. 17267/03, 15 June 2006). Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

There has accordingly been a breach of Article 6 § 1.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE LACK OF IMPARTIALITY

66. The applicant further complained, also under Article 6 § 1 of the Convention, that the domestic courts that had examined her case in the civil proceedings for unjust enrichment lacked impartiality, in particular because the president of the second-instance court had previously filed a criminal complaint against her concerning the facts of the case.

67. The Government contested that argument.

A. Admissibility

68. 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

1. The parties' arguments

(a) The Government

69. The Government first highlighted that the president of the Zlatar County court, judge M.M., had not participated in any way in the civil proceedings instituted against the applicant, neither in the proceedings at the first-instance nor in the appellate proceedings. Moreover, the judges who had adjudicated the case had had no personal interests in the outcome of the proceedings. Thus, as the applicant provided no evidence concerning the partiality of the judges who had heard the case, it followed that there had been no appearance of subjective partiality.

70. As regards the objective test, the Government first emphasised that M.M. had filed his criminal complaint against the applicant in his capacity as a president of the court, and not in his own name. In doing so he had acted pursuant to the relevant provisions of the Criminal Procedure Act according to which all state authorities and legal entities were under a duty to report criminal offences subject to public prosecution that had been reported to them or about which they had learned themselves. The Government further emphasised that under Croatian law failure to report a criminal offence is in itself a criminal offence. The fact that, following M.M.'s criminal complaint, the Krapina Municipal State Attorney Office had instituted criminal proceedings against the applicant, in the Government's view, showed that there was a reasonable suspicion that a criminal offence had indeed been committed.

71. Second, the Government pointed out that the powers conferred on the president of the court by the Courts Act and the Court Rules concerned only the internal operation of courts. Thus, the function of the president of a court was an administrative one strictly separated from the judicial function and hence did not empower the court president to carry out judicial supervision in any way or to have any influence on decisions rendered by other judges in particular cases.

72. Third, the Government extensively cited the Supreme Court's case-law, which, in their view, demonstrated that transfer of jurisdiction was being granted only exceptionally, and when it was really justified, having regard to the fact that judges were independent and decided the cases according to the Constitution and laws. For example, the fact that one of the parties was the next of kin of any of the judges of a court in question was, in principle, assessed to be an important reason for transfer of jurisdiction. However, the Supreme Court had rejected requests for transfer of jurisdiction in situations when a party would refer to this fact only after becoming dissatisfied with court decisions (case no. Gr1 386/06). Neither was a subjective belief that judges were biased considered to be an important reason for transfer of jurisdiction, because judges were generally presumed to be objective and to follow the law when hearing cases (case no. Gr1 180/04). For the same reason, a request for transfer of jurisdiction alleging that one of the parties to the proceedings had been a judge acquainted with the judges of the court in question had been rejected (case no. Gr1-111/05). Furthermore, although the Supreme Court had granted many requests for transfer of jurisdiction when court employees were parties to the proceedings, it had rejected such requests in situations when the court at issue had been a large court with a large number of judges (case no. Gr1-804/03). Also, the Supreme Court had held in several cases that the fact that a party to the proceedings had filed a criminal complaint against one or all of the judges of the court in question or against its president was not a reason for transfer of jurisdiction (cases nos. Gr1-919/03, Gr1-851/03 and Gr7/1999).

73. Against that background, the Government noted that at the time when the first-instance civil proceedings for unjust enrichment had been instituted against the applicant before the Zlatar Municipal Court, as well as in the subsequent three years, M.M. was the president of the court. However, at that time the applicant had not asked for jurisdiction to be transferred to another court. Only in the appellate proceedings had she requested transfer of jurisdiction from the Zlatar County Court due to, *inter alia*, the alleged bias of its president, judge M.M. This conduct by the applicant had clearly been motivated by her dissatisfaction with the first-instance judgment, because she had not found it necessary to request transfer of jurisdiction to another court before the courts expressed certain legal views in the case.

74. Lastly, the Government pointed out that a long period of time (more than seven years) had elapsed between the time when the criminal complaint was filed against the applicant and the time when the applicant lodged her appeal with the Zlatar County Court. In this period, M.M. had not participated in the criminal proceedings in any way, nor was he informed about their outcome. Also, he had no personal interest in either the criminal or civil proceedings against the applicant. Therefore, the

Government considered this another reason why there was no objectively justified fear that, after such a long time, M.M. would have had any bias towards the applicant in exercising his duties as president of the court.

75. In sum, the Government considered in the light of the foregoing that there were no objective reasons for the applicant to fear that the Zlatar County Court would not be impartial in the determination of her civil rights and obligations.

(b) The applicant

76. The applicant pointed out that in the criminal proceedings against her the Krapina Municipal State Attorney's Office had requested transfer of jurisdiction from the Zlatar Municipal Court to the Krapina Municipal Court and that on 8 March 1994 the Supreme Court had granted that request (see paragraph 11 above).

77. Moreover, the applicant drew the Court's attention to another case, in which she as an advocate had represented a plaintiff, a certain Ž.P., against the association A.Z. In that case her client had been dismissed from his job and had sued his employer seeking reinstatement. At the same time he had requested transfer of jurisdiction from Zlatar Municipal Court to another court because the decision on dismissal had been signed by the president of the respondent association, who also happened to be the president of the Zlatar Municipal Court. In its decision no. Gr-91/1992-2 of 21 May 1992 the Supreme Court allowed the requested transfer of jurisdiction from the Zlatar Municipal Court to the Zabok Municipal Court.

2. The Court's assessment

78. The Court reiterates that, according to its constant case-law, the existence of impartiality for the purposes of Article 6 § 1 must be determined according to a subjective test where regard must be had to the personal conviction and behaviour of a particular judge, that is, whether the judge held any personal prejudice or bias in a given case; and also according to an objective test, that is to say by ascertaining whether the tribunal itself and, among other aspects, its composition, offered sufficient guarantees to exclude any legitimate doubt in respect of its impartiality (see, *inter alia*, *Fey v. Austria*, 24 February 1993, §§ 27, 28 and 30, Series A no. 255-A; and *Wettstein v. Switzerland*, no. 33958/96, § 42, ECHR 2000-XII).

79. As to the subjective test, the personal impartiality of a judge must be presumed until there is proof to the contrary (see *Wettstein*, cited above, § 43).

80. As to the objective test, it must be determined whether there exist ascertainable facts which may raise doubts as to the impartiality of the judges who decide the case. This implies that, in deciding whether in a given case there is a legitimate reason to fear that a tribunal lacks impartiality, the standpoint of the person concerned is important but not

decisive. What is decisive is whether this fear can be held to be objectively justified (see *Wettstein*, cited above, § 44, and *Ferrantelli and Santangelo v. Italy*, 7 August 1996, § 58, *Reports of Judgments and Decisions* 1996-III).

81. The Court observes at the outset that in the present case judge M.M. did not sit on the panel of the Zlatar County Court which decided the applicant's appeal, nor did the applicant adduce any evidence to indicate personal bias on the part of any of the judges in that panel. Rather, she questioned that court's partiality on account of the fact that the judge M.M., who was its president, had previously filed a criminal complaint against her based on the same facts on which the plaintiff had based its action for unjust enrichment. The Court therefore considers that the personal impartiality of the judges who decided on the applicant's appeal is not at issue in the present case and considers that the complaint of lack of impartiality must be examined from the standpoint of the objective impartiality test.

82. Thus, the Court is called upon to determine whether the circumstances related to the president of the court at issue, could have compromised the impartiality of the whole tribunal as such. The Court reiterates that in cases of this kind even appearances may be of a certain importance or, in other words, "justice must not only be done, it must also be seen to be done" (see *De Cubber v. Belgium*, 26 October 1984, § 26, Series A no. 86). What is at stake is the confidence which the courts in a democratic society must inspire in the public (see *Wettstein*, loc. cit.; and *Castillo Algar v. Spain*, 28 October 1998, § 45, *Reports* 1998-VIII).

83. However, while appearances have a certain importance, they are not decisive in themselves. One must frequently look beyond appearances and concentrate on the realities of the situation (see, *mutatis mutandis*, *De Jong, Baljet and Van den Brink v. the Netherlands*, 22 May 1984, § 48, Series A no. 77). Therefore, in order to establish whether the applicant's alleged fears as to partiality were objectively justified, the appearances have to be tested against the objective reality behind them.

84. Looking behind the appearances, the Court does not find that the realities of the situation in the present case conflicted with the applicant's right to a hearing by an impartial tribunal.

85. In this connection the Court first reiterates that judge M.M., was not a member of the panel of the Zlatar County Court which examined the applicant's appeal. It also takes note of the Government's arguments that: (a) M.M. filed the criminal complaint against the applicant in his official capacity (see paragraph 70 above), (b) more than seven years elapsed between that time and the time when she lodged her appeal (see paragraph 74 above), and (c) he had no personal interest in either the criminal or civil proceedings against her (see paragraphs 69 and 74 above).

86. The Court further reiterates that the concepts of independence and objective impartiality are closely linked (see, for example, *Findlay v. the United Kingdom*, 25 February 1997, § 73, *Reports of Judgments and*

Decisions 1997-I) and that it is sometimes difficult to dissociate them (see, for example, *Bochan v. Ukraine*, no. 7577/02, § 68, 3 May 2007). As regards the issue of “independence”, the Court further reiterates that in order to establish whether a tribunal can be considered “independent” for the purposes of Article 6 § 1, regard must be had, *inter alia*, to the manner of appointment of its members and their term of office, the existence of safeguards against outside pressures and the question whether it presents an appearance of independence (see, among many other authorities, *Findlay*, loc. cit.). However, judicial independence demands that individual judges be free not only from undue influences outside the judiciary, but also from within. This internal judicial independence requires that they be free from directives or pressures from the fellow judges or those who have administrative responsibilities in the court such as the president of the court or the president of a division in the court (see, by implication, *Daktaras v. Lithuania*, no. 42095/98, ECHR 2000-X; *Bochan*, cited above; and *Moiseyev v. Russia*, no. 62936/00, § 182, 9 October 2008). The absence of sufficient safeguards securing the independence of judges within the judiciary and, in particular, *vis-à-vis* their judicial superiors, may lead the Court to conclude that an applicant's doubts as to the (independence and) impartiality of a court may be said to have been objectively justified (see, for example, *Daktaras*, cited above, §§ 36 and 38; *Bochan*, cited above, § 74; and *Moiseyev*, cited above, § 184).

87. Therefore, the question for the Court to examine in the present case is whether the judges of the Zlatar County Court who were the members of the panel that decided the applicant's appeal in the civil proceedings for unjust enrichment were sufficiently independent of that court's president (see, *mutatis mutandis*, *Findlay*, cited above, § 75).

88. In this connection the Court first notes that under Croatian law court presidents perform only administrative (managerial and organisational) functions, which are strictly separated from judicial function, that is, from adjudication of individual cases (see paragraphs 28 and 40 above). Judge M.M. could not therefore take advantage of his hierarchical position to give the rapporteur or other members of the panel instructions as to how to decide on the applicant's appeal, and there is nothing to indicate that he did so in her case.

89. Furthermore, while it is true that judge M.M., as the president of the Zlatar County Court, was charged with an administrative duty to, *inter alia*, assign cases to judges, the Court notes that Croatian legislation at the material time contained rules governing the distribution of cases to judges within courts, which means that cases were not distributed by the court presidents at their own discretion. As it transpires from the information submitted by the Government (see paragraph 23 above) and the Court Rules (see paragraph 40 above), in the Zlatar County Court civil cases were first listed in chronological order and then assigned by the president of the court

to one of the two panel presidents in alphabetical order of their last names, who further assigned them, also in alphabetical order, to one of the judges within the panels. The only exception to this rule was envisaged for situations where a judge to whom the case was to be assigned had participated in the first-instance proceedings in the same case and therefore was not allowed to examine it. While it is true that the president of the court could reassign cases for important reasons such as a longer illness or a judge's particularly high workload, such reassignment was also subject to objective criteria set forth in Rule 34 of the Court Rules. The Court further notes that under section 73g(1) of the Courts Act, a breach by the president of the court of the above rules on assignment of cases was one of the grounds for his or her removal from the office (see paragraph 36 above). The Court therefore concludes that Croatian law in force at the material time provided for adequate safeguards against arbitrary exercise of court presidents' duty to (re)assign cases to judges (see, by converse implication, *Moiseyev v. Russia*, no. 62936/00, § 182, 9 October 2008).

90. It follows that judge M.M. could not have influenced the choice of the judge rapporteur or the composition of the panel and that in this respect the present case is to be distinguished from the *Daktaras* case (cited above) where the president of the criminal division of the Supreme Court chose the judge rapporteur and the members of the panel. Nor, in contrast to the *Moiseyev* case (cited above), is there any evidence that judge M.M. reassigned the applicant's case. Furthermore, in the *Daktaras* case, the proceedings before the Supreme Court, of which the applicant complained about, were instituted by the petition of the president of that court's criminal division whereas in the instant case judge M.M. played no role in bringing the civil action for unjust enrichment or in the ensuing proceedings against the applicant.

91. The Court must further examine whether there were any other elements in the (hierarchical) relationship between judges who decided the applicant's appeal and the president of the Zlatar County Court, which were capable of curbing their internal independence. At a more general level the question is whether the powers conferred on the court presidents under the Croatian law were capable of generating latent pressures resulting in judges' subservience to their judicial superiors or, at least, making individual judges reluctant to contradict their president's wishes, that is to say, of having "chilling" effects on the internal independence of judges. In answering that question it has to be borne in mind that any supervision of the work of judges involves a certain risk to their internal independence and that it is impossible to devise a system that would completely eliminate that risk.

92. In this respect the Court first notes that under Croatian law as in force at the relevant time the court presidents, *inter alia*, played a role in the appraisal of judges (see paragraphs 30 and 31 above), were giving opinions to judicial panels who proposed candidates for judges to the National

Judicial Council (see paragraph 38 above), were authorised to initiate disciplinary proceedings against judges before the National Judicial Council and decide on their temporary suspension (see paragraph 39 above). However, in neither of these areas the court presidents had exclusive powers or unfettered discretion. In particular, a judge who received an unfavourable appraisal from the president of the court in which he or she was working could have appealed against it to the president of the immediately higher court (see paragraph 30 above). The appraisal of judges in sensitive situations of their permanent appointment or career advancement was within the purview of judicial panels composed of their peers, which were only required to take into consideration the final opinion of the president of the court on the performance of the judge in question (see paragraph 33 above). What is more, these panels were only giving opinions on candidates for judicial office to the Minister of Justice. He or she was the one submitting the list of candidates to the National Judicial Council, which was the only authority competent to finally decide on the appointment of judges (see paragraph 38 above). As regards the power to discipline judges, the court presidents could only institute disciplinary proceedings against judges (see paragraph 39 above) whereas the authority to conduct disciplinary proceedings and acquit or impose a penalty lay exclusively with the National Judicial Council (see paragraph 37 above). While the court presidents had the authority to temporarily suspend the judges, they could have done so only if criminal proceedings were instituted against a judge or if he or she was in detention (see paragraph 39 above).

93. It follows that, in particular as regards career advancement and discipline, i.e. in the areas that could potentially have the most significant impact on the internal independence of judges, the powers of the court presidents were rather limited.

94. For these reasons, the Court considers that Croatian law at the material time had adequate mechanisms to prevent improper interferences coming from within the judiciary, and that the powers vested in the court presidents could not have reasonably been viewed as running counter, or having “chilling” effects on, the internal independence of judges.

95. In the light of the foregoing, the Court is satisfied that the judges of the Zlatar County Court who examined the applicant's appeal were sufficiently independent of that court's president. Therefore, the Court considers that the applicant's fears as regards the lack of impartiality of the Zlatar County Court were not objectively justified.

96. This finding is further corroborated by the applicant's own behaviour. In particular, the Court notes that the applicant did not ask for transfer of jurisdiction while her case was pending before the Zlatar Municipal Court, even though judge M.M. was the president of that court for almost three years after the plaintiff had brought its action for unjust enrichment against her, but did so only in her appeal against the first-

instance judgment. The Court finds it difficult to reconcile such conduct with the applicant's alleged fears concerning the lack of impartiality of the second-instance court on account of the fact that judge M.M. was its president.

97. There has accordingly been no violation of Article 6 § 1 of the Convention as regards the requirement for an impartial tribunal.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

98. The applicant complained under Article 6 § 1, Articles 13 and 14 of the Convention and Article 1 of Protocol No. 12 thereto about the outcome of the above proceedings alleging that the domestic courts had erred in the application of the relevant provisions of substantive law.

99. The Court notes that the applicant complained about the outcome of the proceedings, which, unless arbitrary, the Court is unable to examine under Article 6 § 1 of the Convention. In the light of all the material in its possession, the Court considers that in the present case the applicant was able to submit her arguments before courts which addressed those arguments in decisions that were duly reasoned and not arbitrary. The case therefore does not disclose any appearance of a violation of Article 6 § 1 of the Convention on account of the outcome of the proceedings or of any other Article of the Convention relied on by the applicant.

100. 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

101. 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

102. The applicant claimed 75,573.68 Croatian kunas (HRK) in respect of pecuniary damage and HRK 100,000 in respect of non-pecuniary damage.

103. The Government contested these claims.

104. 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, it awards the applicant 400 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

105. The applicant did not submit a claim for just satisfaction in respect of the costs and expenses. Accordingly, the Court considers that there is no call to award her any sum on that account.

C. Default interest

106. 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

1. *Declares* unanimously the complaints concerning the excessive length of the proceedings and lack of impartiality admissible and the remainder of the application inadmissible;
2. *Holds* unanimously that there has been a violation of Article 6 § 1 of the Convention on account of the excessive length of the proceedings;
3. *Holds* by five votes to two that there has been no violation of Article 6 § 1 of the Convention on account of the lack of impartiality;
4. *Holds* unanimously
 - (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, EUR 400 (four hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Croatian kunas at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 22 December 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Anatoly Kovler
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the partly dissenting opinion of Judge Jebens joined by Judge Spielmann is annexed to this judgment.

A.K.
S.N.

PARTLY DISSENTING OPINION OF JUDGE JEBENS JOINED BY JUDGE SPIELMANN

1. I agree that there has been a violation of Article 6 § 1 of the Convention on account of the excessive length of the proceedings. However, for the reasons set out below I disagree with the majority that there has been no violation of Article 6 § 1 on account of the lack of impartiality of the court.

2. There exist in my opinion ascertainable facts with regard to the initial procedure before the Zlatar County Court which may raise doubts as to that court's impartiality in the civil case against the applicant. The combination of these facts and the internal relationships within the court shows in my view that the applicant's fear of the judges' lack of impartiality was objectively justified.

3. First, it should be noted that though the President of the Zlatar County Court, like all state officials, must report on criminal offences which came to his knowledge, he would first have to make his own evaluation as to the question of criminal liability. Thus, there is an element of discretion when it comes to reporting a possible criminal offence to the Prosecutor's office, which implies that the President is not obliged to pass on any allegation of a criminal offence.

4. In the present case it should be noted that the Court President had been approached by a lawyer employed with the insurance company C. O., who had explained the company's claim to him. The President sided with the company's view, and filed a criminal complaint against the applicant with the Zlatar Municipal State Attorney's Office. He stated that the applicant had refused to return "the unlawfully appropriated money", and added that "for which reason the civil proceedings ...were instituted against her". Furthermore, he stated that the applicant's act "also contains elements of criminal liability", for which reason "we are reporting it to you with a view to investigating it and, possibly, instituting criminal proceedings (against her)...", see para. 9 of the judgment.

5. It follows from this that the intervention by the President of the Zlatar County Court was relevant for that court's adjudication of the civil claim against the applicant in several ways. Firstly, the President referred to, and indeed confirmed the veracity of the same objective facts as those which were relevant in the civil case. Secondly, he had presented arguments in support even of the applicant's subjective liability, by stating that she was also liable to criminal prosecution. Therefore, while the opinion expressed by the Court President referred to the civil claim, it went beyond what was necessary in a civil case. Thirdly, the Court President had filed the criminal complaint at the request of the insurance company C.O., which was the plaintiff in the civil case against the applicant.

6. In these circumstances, I cannot see that it matters that the Court President filed the criminal complaint against the applicant in his official capacity, as argued by the majority, or that it is important that he had no personal interest in the proceedings against her, see para. 85 of the judgment. I attach more weight to the ties which exist between the President and the judges of the same court, and in which respect the Zlatar County Court is no exception.

7. It is of course true that the President could not instruct the judges who participated in the civil case against the applicant on how to vote, as stated by the majority in Para. 88 of the judgment. However, the President was charged with administrative duties, of which some directly affected the judges.

8. One important duty of the President was to assign cases to the judges at the court. With respect to this the majority has stressed that the cases were not distributed by the President at his own discretion, and argued at length that the Court rules on this gave the President practically no room for choice. However, I cannot accept as a fact that the President was stripped of practically any power in this respect, as the majority seems to suggest, see paras 89 and 90 above. Therefore, there is in my view no reason to make a distinction between the present case and the *Daktaras case* (cited above) in this respect.

9. The Court President also had considerable influence on questions concerning the other judges' career, whether it was advancement or disciplinary proceedings against judges. I refer in this respect to the facts described in detail by the majority in para. 92 of the judgment, but disagree with the conclusion that the President's powers "were rather limited", see para. 93. For instance, I cannot see that it matters much that the President's unfavourable appraisal of a judge can be appealed against or that his opinion on which judges should be appointed permanently and which should not is not a final decision. The fact that the President had a strong influence in such matters is in my opinion more important in this respect.

10. For these reasons I conclude that the Court President's far-reaching opinion with respect to the applicant's case deprived the other judges in the same court of their impartiality, because of their subordinate position and dependence of the President in different respects. The present case should therefore have been transferred to another court, as was done in the criminal case against the applicant, for the same reasons, see para. 11 of the judgment, in that the lapse of time between the President's expressed opinion and the civil proceedings is in my opinion not relevant in this respect.