



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

FIRST SECTION

CASE OF LESJAK v. CROATIA

(Application no. 25904/06)

JUDGMENT

STRASBOURG

18 February 2010

FINAL

18/05/2010

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

In the case of **Lesjak 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 28 January 2010,

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

PROCEDURE

1. The case originated in an application (no. 25904/06) 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, Mr Dražen Lesjak (“the applicant”), on 6 June 2006.

2. The applicant was represented by Mr O. Uskoković, an advocate practising in Varaždin. 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 give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1974 and lives in Trnovec Bartolovečki.

5. He was employed by the Varaždin Police Department where he worked in the catering service. In October 1999 he received his employment booklet (*radna knjižica*) by registered mail, and his employer had noted in it that his employment had been terminated on 4 October 1999. Enclosed with it, for the applicant to sign, was a draft mutual agreement to terminate his

employment, reference no. 511-14-07/1-4767/1-99, dated 4 October 1999 and signed by the employer.

6. The applicant refused to sign the draft agreement. Instead, on 4 November 1999 he made a request to the employer for the protection of his rights (*zahtjev za zaštitu prava*) arising from the employment relationship. However, no formal decision was given by the employer in response to the applicant's request. Rather, in a letter of 8 November 1999 the applicant was merely notified that his employment had been terminated because the catering service of the Varaždin Police Department had been outsourced to a third party for whom the applicant had refused to work.

A. Proceedings instituted by the applicant

7. On 11 November 1999 the applicant brought a civil action in the Varaždin Municipal Court (*Općinski sud u Varaždinu*) seeking reinstatement. He argued that his employment had been terminated against his will as he had never agreed with the employer to terminate it. Thus, the employer's actions had amounted to a dismissal, which was unlawful since no formal decision had been issued.

8. On 15 November 1999 the Municipal Court, considering that the Administrative Court was competent to hear the applicant's case, declined jurisdiction in the matter and declared his action inadmissible. On 3 December 1999 the Varaždin County Court (*Županijski sud u Varaždinu*) dismissed the applicant's appeal and upheld the first-instance decision. On 7 February 2001 the Supreme Court (*Vrhovni sud Republike Hrvatske*) declared inadmissible the applicant's subsequent appeal on points of law (*revizija*) against the second-instance decision. The case was then transferred to the Administrative Court.

9. On 4 November 2002 the Administrative Court (*Upravni sud Republike Hrvatske*) issued a decision whereby it invited the applicant's representative to specify which decision, that is, which administrative act, the applicant was challenging, and to submit two copies of it. The decision read as follows:

“In the administrative dispute of the plaintiff Dražen Lesjak ... against the decision of the respondent, the Ministry of the Interior of the Republic of Croatia (Varaždin Police Department) concerning the termination of his employment, [the plaintiff's] representative is invited, within the meaning of section 29 of the Administrative Disputes Act, to provide this court within ten days with:

- an express statement indicating which specific administrative act he is contesting by his action – it is necessary to indicate the [reference] number of the act, as well as its date of issue, and to provide this court with two copies of that decision.

If the [plaintiff's] representative does not correct the above shortcomings of the action, the court will declare it inadmissible as deficient.”

On 14 November 2002 the applicant's representative replied as follows:

“Acting upon the decision of the [Administrative Court] of 4 November 2002, the plaintiff states that he is unable to indicate the specific [reference] number of the administrative act, that is to say, a potential decision, because such an act has never been issued by the respondent and the plaintiff's employment contract was terminated in the manner indicated and described in the statement of claim [*‘u tužbi’*] [of 11 November 1999].”

On 20 February 2003 the Administrative Court declared the applicant's action inadmissible, finding that he had failed to rectify the shortcomings of his action as requested.

10. The applicant then lodged a constitutional complaint against the Administrative Court's decision. On 13 April 2006 the Constitutional Court (*Ustavni sud Republike Hrvatske*) dismissed the applicant's complaint and served its decision on his representatives on 11 May 2006.

B. Proceedings instituted by the applicant's colleague

11. On 15 March 2005 a certain Mrs B.Z., who had also been employed by the Varaždin Police Department and dismissed in the same way as the applicant, brought a civil action in the Varaždin Municipal Court seeking reinstatement. She was represented by an advocate from the same law firm as the advocate who represented the applicant in the above proceedings. In her action B.Z. explained that she used to work in the catering service of the Varaždin Police Department and that on 20 October 1999 she had received her employment booklet by registered mail and her employer had noted in it that her employment had been terminated on 4 October 1999. Enclosed with it, for her to sign, was a draft mutual agreement to terminate her employment, no. 511-01-62-20614/51-96, dated 4 October 1999 and signed by the employer. B.Z. further explained that she had refused to sign the draft agreement. Instead, she had made a request to the employer for the protection of her rights arising from the employment relationship. However, no formal decision had been given by the employer in response to her request. Rather, in a letter of 4 November 1999 she had merely been notified that her employment had been terminated because the catering service of the Varaždin Police Department had been outsourced to a third party.

12. On 18 November 1999 the Municipal Court, considering that the Administrative Court was competent to hear the plaintiff's case, declined jurisdiction in the matter and declared her action inadmissible. On 14 December 1999 the Varaždin County Court dismissed her appeal and upheld the first-instance decision. The case was then transferred to the Administrative Court.

13. On 15 March 2005 the Administrative Court issued a decision whereby it invited the plaintiff's representative to specify which decision,

that is, which administrative act, the plaintiff was challenging, and to submit two copies of it.

14. On 30 March 2005 the plaintiff's representative replied to the court's request. The relevant part of her reply read as follows:

“On the basis of its mutual agreement on the termination of employment contract number: 511-01-62-20614/51-96 of 4 October 1999, which agreement was signed only by the respondent ..., the respondent recorded the termination of employment in the plaintiff's employment booklet, and on 20 October 1999 the plaintiff received the employment booklet and the [abovementioned draft] mutual agreement by registered mail.

The plaintiff made a request to the respondent for the protection of her rights but on 4 November 1999 she received notification that her employment relationship with the respondent had been terminated because the respondent no longer provided catering services.

Since the provisions of the Labour Act prescribe that a written mutual agreement on the termination of an employment contract constitutes a legal way to terminate the employment contract if both parties sign it, and given that the plaintiff refused to sign the [abovementioned draft] mutual agreement, [that agreement] cannot be considered to have been concluded and could not have produced any legal effect. The respondent could only have dismissed the plaintiff for business reasons by giving her notice. Therefore, the termination of employment in question and the rescission of the employment contract represents a flagrant breach of the employee's rights because the respondent – contrary to the legislation in force – unilaterally rescinded the plaintiff's employment contract on the basis of a 'mutual agreement' the plaintiff did not sign and was not obliged to sign.”

The plaintiff's representative also emphasised that the Varaždin Municipal Court had already declined jurisdiction in the case and invited the Administrative Court, should it find that it did not have jurisdiction either, to apply to the Supreme Court in order to resolve the conflict of jurisdiction with the ordinary courts thereby created.

15. On 2 November 2005 the Administrative Court, considering that it did not have jurisdiction to examine the case, applied to the Supreme Court to resolve the conflict of jurisdiction with the ordinary courts. In its application the court wrote, *inter alia*:

“.. [It] is undisputed that the plaintiff concluded an employment contract of unlimited duration with the respondent on 1 January 1996 and that the respondent tried to rescind that contract by a mutual agreement ... which the plaintiff did not sign and which cannot in any case constitute an administrative act ... for which reason the Administrative Court cannot decide on [its] lawfulness.

This case does not concern a dispute where a decision on a right of a civil servant or an employee employed by a state organ is being contested. Rather, it concerns a mutual agreement on the termination of an employment contract, and its lawfulness cannot be reviewed by the Administrative Court.”

16. On 22 February 2006 the Supreme Court ruled that the Varaždin Municipal Court was the competent court to hear the B.Z's case.

II. RELEVANT DOMESTIC LAW

A. The Administrative Disputes Act

17. The Administrative Disputes Act (*Zakon o upravnim sporovima*, Official Gazette of the Socialist Federal Republic of Yugoslavia no. 4/1977, and Official Gazette of the Republic of Croatia nos. 53/1991, 9/1992 and 77/1992) regulates the procedure before the Administrative Court and in its relevant part provides as follows:

Section 6(1) provides that the proceedings before the Administrative Court (that is, an administrative dispute) may be initiated only against an administrative act.

Section 6(2) provides that an administrative act, within the meaning of that Act, is an act whereby a state organ in the exercise of public authority decides on a right or obligation of an individual or an organisation in some administrative matter.

Section 27(1) provides that a statement of claim must indicate, *inter alia*, the contested administrative act and must be accompanied by the original or a copy of the contested act.

Section 29(1) provides that if the action is incomplete or incomprehensible, the president of the panel shall invite the plaintiff to correct the shortcomings within a certain time-limit. In doing so, the president should instruct the plaintiff what has to be done and how and warn him or her of the consequences of failing to comply with the court's request.

Section 29(2) provides that if the plaintiff does not correct the shortcomings of his action within the time-limit fixed, and they are of such a nature as to prevent the court proceeding with the case, the court shall declare the action inadmissible as deficient.

Section 60 provides that if the Administrative Disputes Act does not contain specific provisions on the procedure before the Administrative Court (that is, in administrative disputes), the provisions of the Civil Procedure Act should apply *mutatis mutandis*.

Sections 52-59 provide for the remedy of reopening proceedings before the Administrative Court and regulate the procedure following a petition for reopening.

B. The Civil Procedure Act

18. 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 relevant time, provided as follows:

Section 22(1)

“If the court to which the case has been transferred ... considers that the court which has transferred the case or some other court has jurisdiction, it shall refer the case to the court competent to resolve that conflict of jurisdiction ...”

Section 23(2)

“The conflict of jurisdiction between courts of different types shall be resolved by the Supreme Court of the Republic of Croatia.”

...

Reopening of proceedings following a final judgment of the European Court of Human Rights in Strasbourg finding a violation of a fundamental human right or freedom

Section 428a

“(1) When the European Court of Human Rights has found a violation of a human right or fundamental freedom guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms or additional protocols thereto ratified by the Republic of Croatia, a party may, within thirty days of the finality of the judgment of the European Court of Human Rights, file a petition with the court in the Republic of Croatia which adjudicated in the first instance in the proceedings in which the decision violating the human right or fundamental freedom was rendered, to set aside the decision by which the human right or fundamental freedom was violated.

(2) The proceedings referred to in paragraph 1 of this section shall be conducted by applying, *mutatis mutandis*, the provisions on the reopening of proceedings.

(3) In the reopened proceedings the courts are required to respect the legal opinions expressed in the final judgment of the European Court of Human Rights finding a violation of a fundamental human right or freedom.”

THE LAW

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

19. The applicant complained that the refusal of the domestic courts to examine the merits of his case had breached his right of access to a court as provided for by Article 6 § 1 of the Convention, which reads as follows:

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

20. The Government contested that argument.

A. Admissibility

21. The Government argued that the applicant had failed to exhaust domestic remedies. They submitted that the applicant had failed to observe the procedural requirements of the domestic law in that he had not complied with the clear order of the Administrative Court requesting him to specify the reference number of the act he was challenging and provide copies thereof. Consequently, his action had been declared inadmissible.

22. The applicant replied that this issue concerned the merits of his complaint under Article 6 § 1 of the Convention and referred to his arguments outlined below (see paragraphs 31-33).

23. The Court finds that the question of exhaustion of domestic remedies is inextricably linked to the merits of this complaint. Therefore, to avoid prejudging the latter, both questions should be examined together. Accordingly, the Court holds that the question of exhaustion of domestic remedies should be joined to the merits.

24. The Court further notes 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

1. The arguments of the parties

(a) The Government

25. The Government first submitted that the observance of procedural requirements of domestic law constituted a permitted limitation on the right of access to a court. In the present case the applicant had asked the domestic courts to decide on the lawfulness of the termination of his employment. In doing so, he had first brought his action in an ordinary court, which had declined jurisdiction and transferred the case to the Administrative Court – a special court whose role was to provide judicial protection against decisions of the administrative authorities. The proceedings before the Administrative Court were normally instituted by bringing an action, in which it was necessary to specify the contested administrative act. After receiving the case, the Administrative Court had invited the applicant to specify which act he had been challenging and to provide a copy of the act.

26. The Government further claimed that the Administrative Court's request had indisputably been based on law, in particular, sections 27 and 29 of the Administrative Disputes Act. The request had been formulated clearly and the applicant could have acted upon it. In this regard, the Government deemed that special account should be taken of the fact that the applicant had been represented by qualified legal representatives who should have known the rules of procedure.

27. However, the applicant had ignored the Administrative Court's request. Instead, he had asserted that he was unable to provide the reference number of the administrative act. He had done so even though it was evident from the facts of the case that the applicant knew which act he was challenging and its reference number. In particular, the applicant was challenging "the mutual agreement to terminate the employment contract" of 8 November 1999, no. 511-14-07/1-5212/1-99. Therefore, in the Government's view, the applicant could and should have complied with the Administrative Court's order by notifying the court of the reference number of that act and by providing copies of it.

28. According to the Government, it could not be claimed that the Administrative Court's request had amounted to excessive formalism. To be able to decide on its jurisdiction, the Administrative Court needed to establish which act the applicant had been contesting, and after that decide whether that act constituted an administrative act. However, instead of providing the court with the act requested, the applicant had engaged in legal argumentation, claiming that the Ministry of the Interior had not issued any administrative act in respect of him. In this connection, the Government considered it necessary to make a clear differentiation between the procedural obligation to observe a court's formal request and the legal argumentation of the case, which the applicant had confused. The applicant should have complied with the Administrative Court's formal request and submitted the contested act by which his employment had been terminated. From the procedural point of view it was irrelevant whether the said act was indeed an administrative act or not. It had been for the Administrative Court to decide on that issue and proceed accordingly. The applicant had, of course, been free to argue that the draft mutual agreement of 8 November 1999 was not an administrative act and that the Administrative Court was not competent to examine his case. Nevertheless, he had been obliged to abide by that court's formal request and submit the said act, which had, beyond doubt, been in his possession.

29. In the Government's view, their arguments, as set out above, were further corroborated by the fact that in the proceedings in the case of the applicant's colleague, her legal representative had complied with a similar order issued by the Administrative Court and had clearly indicated the reference number of the act she was challenging. In addition, she had adduced legal arguments for her belief that the act in question was not an

administrative act, thereby enabling the Administrative Court to come to a decision on its jurisdiction.

30. In conclusion, the Government considered that the reason domestic courts had not decided on the merits of the applicant's action was that he had failed to comply with procedural requirements. Therefore, it could not be claimed that the applicant had not had the right of access to a court.

(b) The applicant

31. The applicant submitted, firstly, that it followed from the Supreme Court's decision of 22 February 2006 (see paragraph 16 above), in the case of his colleague, that the decisions of the ordinary courts to decline jurisdiction in his case had been wrong.

32. The applicant further submitted that, after the case had been transferred to the Administrative Court, that court had invited him to indicate the specific administrative act he was challenging, together with its date of issue and reference number. He had replied to that request within the time-limit fixed and explained that he was unable to meet it because no such act had been issued by the respondent, and that he had been dismissed in the manner described in his statement of claim (*tužba*) of 11 November 1999 (see paragraph 7 above). In the applicant's view, even before his reply, but especially after it, the Administrative Court should itself have realised, after examining the case file, that, because of the absence of the administrative act, it had no jurisdiction in the case. In other words, from his statement of claim, the documents enclosed with it and the decisions of the ordinary courts it was evident that before those courts he had constantly argued that he had been dismissed without any formal decision and that his employer's actions in fact amounted to tacit dismissal, which was unlawful. However, instead of declining jurisdiction and applying to the Supreme Court to resolve the conflict of jurisdiction with the ordinary courts, the Administrative Court had declared his action inadmissible on account of his alleged failure to comply with its request.

33. As to the Government's argument that he should nevertheless have specified that he had been contesting the draft mutual agreement of 8 November 1999 and submitted two copies of it to the Administrative Court, the applicant replied that that court already had the disputed draft mutual agreement in the case file and that it must have been aware of the circumstances of his dismissal. Moreover, taking into account the definition provided in section 6(2) of the Administrative Disputes Act, it was clear that only formal decisions could be considered administrative acts and therefore the draft agreement in question could by no means be viewed as an administrative act. Indeed, as he had not signed the draft agreement it could not have produced any legal effects, and therefore the draft agreement did not have the characteristics of a legal act, let alone of an administrative act.

34. In the light of the above, the applicant considered that it could not be argued that his right of access to a court had been respected.

2. *The Court's assessment*

35. The Court reiterates that Article 6 § 1 of the Convention secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. The right of access, namely the right to institute proceedings before a court in civil matters, constitutes one aspect of this “right to a court” (see, notably, *Golder v. the United Kingdom*, 21 February 1975, §§ 28-36, Series A no. 18). For the right of access to be effective, an individual must have a clear, practical opportunity to challenge an act interfering with his or her rights (see, for example, *Bellet v. France*, 4 December 1995, § 36, Series A no. 333-B). However, this right is not absolute, but may be subject to limitations. These are permitted by implication since the right of access by its very nature calls for regulation by the State. In this respect, the Contracting States enjoy a certain margin of appreciation, although the final decision as to the observance of the Convention's requirements rests with the Court. However, these limitations must not restrict or reduce the access left to an individual in such a way or to such an extent that the very essence of the right is impaired (see, for example, *Ashingdane v. the United Kingdom*, 28 May 1985, § 57, Series A no. 93).

36. Turning to the circumstances of the present case, the Court first notes that the role of the Administrative Court in the Croatian legal system is to review the lawfulness of administrative acts (see paragraph 17 above). The possible absence of an administrative act would therefore indicate that the Administrative Court did not have jurisdiction to examine the case. In such situations an action brought in the Administrative Court should be declared inadmissible for lack of jurisdiction, unless, as in the present case, the ordinary courts had first declined jurisdiction and transferred the case to the Administrative Court. If that was the case, the Administrative Court would be obliged to apply to the Supreme Court to resolve the conflict of jurisdiction with the ordinary courts, as provided in sections 22(1) and 23(2) of the Civil Procedure Act (see paragraph 18 above) taken in conjunction with section 60 of the Administrative Disputes Act (see paragraph 17 above).

37. However, in the instant case, the Administrative Court refused to examine the merits of the applicant's action not because it did not have jurisdiction but because the applicant had allegedly failed to comply with its request of 4 November 2002 to specify which administrative act he was contesting. In particular, the Administrative Court first invited the applicant to specify the administrative act he was challenging and provide two copies of it. In reply to that request the applicant explained that he was unable to do so because he had been dismissed without a formal decision, which fact was

actually his main argument in claiming that his dismissal had been unlawful. Despite that, the Administrative Court decided to declare his action inadmissible for failing to satisfy its request.

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

39. The Court further notes that section 6(2) of the Administrative Disputes Act provides that an administrative act is an act whereby a state organ, in the exercise of public authority decides on a right or obligation of an individual or organisation in some administrative matter. From that definition it is quite clear that an administrative act is always a formal decision. Therefore, the draft mutual agreement by which the applicant's employer wanted to terminate his employment (see paragraph 5 above) could by no means be considered to constitute such an act. This was clearly admitted by the Administrative Court in the case of the applicant's colleague (see paragraph 15 above) and by the Government in their observations. Moreover, the Administrative Court did not consider the employer's letter of 8 November 1999, which set out the reasons for the termination of the applicant's employment (see paragraph 6 above), an administrative act, nor did it hold so for a similar letter in the applicant's colleague's case.

40. The Court therefore considers that it was obvious from the documents already in the case file that the Administrative Court did not have jurisdiction in the applicant's case and that it was obliged to apply to the Supreme Court to resolve the conflict of jurisdiction with the ordinary courts (see paragraphs 15 and 36 above). Not doing so, but insisting instead that the applicant strictly comply with its request to submit an administrative act, and, eventually, declaring his action inadmissible for his failure to meet that request, amounts, in the Court's view, to excessive formalism. The Court cannot accept that the procedure followed by the Administrative Court should be so rigidly formal (see, *mutatis mutandis*, *Platakou v. Greece*, no. 38460/97, § 43, ECHR 2001-I).

41. In addition, as the Varaždin Municipal Court did not examine the merits of the applicant's action either, the Court notes that he was put in an impossible position, where his action was dealt with by ordinary courts and the Administrative Court but neither ruled on whether the termination of his employment was lawful (see, *mutatis mutandis*, *Platakou*, cited above, § 44). In the Court's view, that situation amounts to a denial of justice which impaired the very essence of the applicant's right of access to a court as

secured by Article 6 § 1 of the Convention (see, *mutatis mutandis*, *Beneficio Cappella Paolini v. San Marino*, no. 40786/98, § 29, ECHR 2004-VIII (extracts), and *Tserkva Sela Sosulivka v. Ukraine*, no. 37878/02, § 40, 28 February 2008).

42. Accordingly, the Court rejects the Government's objection as to the exhaustion of domestic remedies and finds that there has been a violation of Article 6 § 1 of the Convention in the present case.

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

43. The applicant also complained under Article 14 of the Convention, taken in conjunction with Article 6 § 1 thereof, that he had suffered discrimination because in the case of his colleague the domestic courts had resolved the conflict of jurisdiction and determined the competent court, after which they had proceeded with examining the merits of the case. Article 14 of the Convention reads as follows:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

44. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible (see, for example, *Airey v. Ireland*, no. 6289/73, Commission decision of 7 July 1977, Decisions and Reports (DR). 8, p.p. 42 and 50).

45. However, having regard to its above findings under Article 6 § 1 of the Convention, the Court considers that it is not necessary to examine whether, in this case, there has also been a violation of Article 14 thereof (see, among other authorities, *Airey v. Ireland*, 9 October 1979, § 30, Series A no. 32).

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

46. Lastly, the applicant complained under Article 13 of the Convention that, by refusing to examine the merits of his case, the domestic courts had denied him legal protection of his right to work. Article 13 of the Convention reads as follows:

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

47. The Government contested that argument.

48. The Court reiterates that Article 13 does not contain a general guarantee of legal protection of all substantive rights. It refers exclusively to

those cases in which the applicant alleges, on arguable grounds, that one of his rights or freedoms set forth in the Convention has been violated.

49. As the right to work is not included among the rights and freedoms guaranteed by the Convention, this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and should be rejected pursuant to Article 35 § 4 thereof (see *Sobczyk v. Poland* (dec.), nos. 25693/94 and 27387/94, 10 February 2000).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

50. 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

51. The applicant claimed 28,000 Croatian kunas (HRK) in respect of pecuniary damage sustained on account of unlawful dismissal. He also claimed EUR 10,000 euros (EUR) in respect of non-pecuniary damage.

52. The Government contested these claims.

53. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

54. On the other hand, the Court finds that the applicant must have sustained non-pecuniary damage. In this connection the Court first reiterates that the most appropriate form of redress in cases where it finds that an applicant has not had access to a court in breach of Article 6 § 1 of the Convention would, as a rule, be to reopen the proceedings in due course and re-examine the case in keeping with all the requirements of a fair hearing (see, for example, *Lungoci v. Romania*, no. 62710/00, § 56, 26 January 2006, and *Yanakiev v. Bulgaria*, no. 40476/98, § 90, 10 August 2006). It further notes that the Supreme Court has now established that ordinary (civil) courts have jurisdiction in cases raising similar issues to that of the applicant (see paragraph 16 above). Therefore, the applicant can now file a petition under section 428a of the Civil Procedure Act (see paragraph 18 above) with the Varaždin Municipal Court for the reopening of the proceedings in respect of which the Court has found a violation of Article 6 § 1 of the Convention. In these circumstances, ruling on an equitable basis, the Court awards the applicant EUR 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

55. The applicant also claimed HRK 1,708 for the costs and expenses incurred before the domestic courts and HRK 17,140.04 for those incurred before the Court, of which HRK 15,250 were for legal representation and HRK 1,890.04 for postal and translation expenses.

56. The Government contested these claims.

57. 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.

58. 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 of EUR 185 for costs and expenses in the domestic proceedings, plus any tax that may be chargeable on that amount.

59. As regards the applicant's claim for costs and expenses incurred before it, the Court notes that, apart from translation expenses, he failed to submit any relevant supporting documents proving that he had actually incurred any costs and expenses, although he was invited to do so. It follows that in respect of that part of his claim the applicant failed to comply with the requirements set out in Rule 60 § 2 of the Rules of Court. The Court therefore rejects it (Rule 60 § 3). On the other hand, it awards the applicant EUR 220 for translation expenses, plus any tax that may be chargeable to the applicant on that amount.

C. Default interest

60. 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. *Joins to the merits* the Government's objection as to the exhaustion of domestic remedies and rejects it;
2. *Declares* the complaint concerning access to a court and discrimination admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

4. *Holds* that there is no need to examine the complaint under Article 14 of the Convention;

5. *Holds*

(a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,405 (three thousand four hundred and five euros), plus any tax that may be chargeable to the applicant, in respect of non-pecuniary damage and costs and expenses, to be converted into Croatian kunas at the rate applicable on 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 18 February 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the concurring opinion of Judges Spielmann and Malinverni is annexed to this judgment.

C.L.R.
S.N.

JOINT CONCURRING OPINION OF JUDGES SPIELMANN AND MALINVERNI

1. We agree in all respects with the Court's conclusions as to the violation of Article 6 of the Convention.
2. However, given its importance, we would have liked the content of paragraph 54 to have been included in the operative part of the judgment as well, for reasons we have explained in detail in our joint concurring opinion in the case of *Vladimir Romanov v. Russia* (no. 41461/02, 24 July 2008) and, *mutatis mutandis*, in our partly dissenting opinion in the case of *Prežec v. Croatia* (no. 48185/07, 15 October 2009).
3. It is indeed essential that in its judgments the Court should not merely give as precise a description as possible of the nature of the Convention violation found but should also, in the operative provisions, indicate to the State concerned the measures it considers most appropriate to redress the violation.
4. Firstly, it is common knowledge that while the reasoning of a judgment allows the Contracting States to ascertain the grounds on which the Court reached a finding of a violation or no violation of the Convention, and is of decisive importance on that account for the interpretation of the Convention, it is the operative provisions that are binding on the parties for the purposes of Article 46 § 1 of the Convention. It is therefore a matter of some significance, from a legal standpoint, for part of the Court's reasoning to appear also in the operative provisions.
5. And indeed, what the Court says in paragraph 54 of the judgment is in our view of the utmost importance. It reiterates that the most appropriate form of redress in cases where it finds that the applicant has not had access to a court, in breach of Article 6 § 1 of the Convention, would, as a rule, be to reopen the proceedings in due course and re-examine the case in keeping with all the requirements of a fair hearing (the principle of *restitutio in integrum*).
6. The reason why we wish to stress this point is that it must not be overlooked that the amounts which the Court orders to be paid to victims of a violation of the Convention are, according to the terms and the spirit of Article 41, of a subsidiary nature. Wherever possible, the Court should therefore seek to restore the *status quo ante* for the victim. It should even, in cases such as the present one, reserve its decision on just satisfaction and examine this issue, where necessary, only at a later stage, should the parties fail to settle their dispute satisfactorily.
7. Admittedly, States are not required by the Convention to introduce procedures in their domestic legal systems whereby judgments of their Supreme Courts constituting *res judicata* may be reviewed. However, they are strongly encouraged to do so. We believe that where, as in the present

case, the respondent State has equipped itself with such a procedure (Article 428a of the Civil Procedure Act), it is the Court's duty not only to note the existence of the procedure, as paragraph 54 of the judgment does, but also to urge the authorities to make use of it, provided, of course, that the applicant so wishes. However, this is not legally possible unless such an exhortation appears in the operative provisions of the judgment.

8. By virtue of Article 46 § 2 of the Convention, supervision of the execution of the Court's judgments is the responsibility of the Committee of Ministers. That does not mean, however, that the Court should not play any part in the matter and should not take measures designed to facilitate the Committee of Ministers' task in discharging these functions.

9. To that end, it is essential that in its judgments the Court should not merely give as precise a description as possible of the nature of the Convention violation found but should also, in the operative provisions, indicate to the State concerned the measures it considers most appropriate to redress the violation.