



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

FIRST SECTION

CASE OF VUSIĆ v. CROATIA

(Application no. 48101/07)

JUDGMENT

STRASBOURG

1 July 2010

FINAL

01/10/2010

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

In the case of Vusić 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 10 June 2010,

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

PROCEDURE

1. The case originated in an application (no. 48101/07) 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 Zvonko Vusić (“the applicant”), on 14 September 2007.

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

3. On 3 September 2008 the President of the First Section decided to communicate the complaint concerning the right to a fair hearing 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 1962 and lives in Varaždin.

5. On 30 March 1988 the applicant brought a civil action in the Varaždin Municipal Court (*Općinski sud u Varaždinu*) against a certain J.V., seeking to recover possession of a house in Varaždin, claiming that the house had been donated to him. In his statement of claim (*tužba*) he indicated 1,000,000 former Yugoslav dinars (YUD) as the value of the subject matter of the dispute.

6. In his submission to the court of 1 March 2001 the applicant indicated that the value of the subject matter of the dispute was 101,000 Croatian kunas (HRK) and explained that he had adjusted the value in line with

inflation, the change of currency (see paragraphs 20-22 below) and the increase of his claim.

7. On 25 September 2001 the applicant amended his claim, seeking also to register ownership of the house in his name in the land register.

8. On 5 July 2002 the Municipal Court ruled against the applicant. On 26 November 2002 the Varaždin County Court (*Županijski sud u Varaždinu*) dismissed an appeal (*žalba protiv presude*) by the applicant and upheld the first-instance judgment.

9. On 6 March 2003 the applicant lodged an appeal on points of law (*revizija protiv presude*) against the second-instance judgment. On 26 March 2003 the Varaždin Municipal Court declared his appeal on points of law inadmissible *ratione valoris* because it considered that the value of the subject matter of the dispute was below the statutory threshold of HRK 100,000. It found that the value of the subject matter of the dispute indicated by the applicant in his statement of claim had been YUD 1,000,000, which, when converted into kunas, was HRK 1 (one kuna).

10. The applicant appealed against that decision (*žalba protiv rješenja*), arguing, *inter alia*, that in his submission of 1 March 2001 he had adjusted the value of the subject matter of the dispute and that the new value exceeded the statutory threshold of HRK 100,000. On 20 May 2003 the Varaždin County Court dismissed his appeal. It held that, pursuant to the Civil Procedure Act, the relevant value of the subject matter of the dispute was the one indicated by the plaintiff in the statement of claim and that subsequent changes were of no relevance. It also corrected the calculation of the first-instance court, stating that, when converted into kunas, the value of the subject matter of the dispute which the applicant had indicated in his statement of claim in fact amounted to only HRK 0.10 (ten lipas).

11. The applicant then lodged with the Supreme Court (*Vrhovni sud Republike Hrvatske*) a procedural appeal on points of law (*revizija protiv rješenja*) against that decision. On 25 February 2004 the Supreme Court, sitting as a panel composed of judges B.G., V.P.R., I.M., P.M. and G.G., quashed the lower-instances' decisions of 26 March and 20 May 2003. It held that, while it was true that the relevant value of the subject matter of a dispute was the one indicated by the plaintiff in the statement of claim, that rule did not apply if the plaintiff subsequently amended his or her claim. Because, in the present case, the applicant did amend his claim in his submission of 25 September 2001, in which he also demanded costs corresponding to the new value of the subject matter of the dispute indicated in his previous submission of 1 March 2001, the Supreme Court concluded that the applicant's appeal on points of law of 6 March 2003 was admissible. The Supreme Court returned the case to the first-instance court in order to serve the applicant's appeal on points of law of 6 March 2003 to the respondent party for reply (section 390(1) of the Civil Procedure Act). The relevant part of the Supreme Court's decision read as follows:

“I The plaintiff's appeal on points of law is well founded. Therefore, the decision of the Varaždin County Court, no. Gž-569/03 of 20 May 2003 and the decision of the Varaždin Municipal Court, no. P-274/92 of 26 March 2003 are hereby quashed and the case is remitted to the first-instance court for fresh proceedings.

II The costs of the proceedings [incurred] in respect of this appeal on points of law shall be decided in a final decision.

Reasons

...

The appeal on points of law is well-founded.

...

A decision on whether the appeal on points of law is well-founded depends on the resolution of the procedural question which value of the subject matter of the dispute is relevant.

Section 40(2) of the Civil Procedure Act provides that when an action does not concern a sum of money, the relevant value shall be the value of the subject matter of the dispute indicated by the plaintiff in the statement of claim.

Once the value of the subject matter of the dispute has been indicated in this way, the plaintiff is not allowed to change it in the subsequent course of the proceedings, except in a case in which the action has been amended, in which case instead of the value of the subject matter of the dispute indicated in the statement of claim, [the plaintiff] is authorised to indicate a new value of the subject matter of the dispute.

In the case at issue, the following facts are important for determining the relevant value of the subject matter of the dispute and the admissibility of the appeal on points of law:

1. By the action of 13 May 1998 the plaintiff sought that a certain immovable property be handed over into his possession, and indicated 1,000,000 [former Yugoslav] dinars as the value of the subject matter of the dispute, [the amount of] which today equals 0,10 [Croatian] kunas;

2. In the submission of 1 March 2001 the plaintiff indicated a new value of the subject matter of the dispute in the amount of 101,000 [Croatian] kunas;

3. By the submission of 25 September 2001 the plaintiff amended the action by adding to the existing claim that a certain immovable property be handed over into his possession the claim for issuance of the permission to register the property (*clausula intabulandi*), in order to record the ownership of that immovable property in the land register. In that submission, he specified the claim for costs of the proceedings in accordance with the value of the subject matter of the dispute of 101,000 [Croatian] kunas.

Having regard to such a procedural situation in respect of the value of the subject matter of the dispute, this court finds that in the case at issue the amount of 101,000 [Croatian] kunas has to be considered as the relevant value of the subject matter of the dispute, [that is,] the amount the plaintiff indicated in his submission of 1 March 2001 which [submission] preceded the amendment of the action. This is so because in the instant case it cannot be argued that the plaintiff has agreed that, even after the amendment of the action, the relevant value of the subject matter of the dispute should remain the one indicated in the statement of claim.

Namely, from the circumstances of the present case it may be rightly concluded that in his submission of 25 September 2001 the plaintiff failed to indicate the value of the subject matter of the dispute in the amount of 101,000 [Croatian] kunas, considering

that he had already done so in the submission of 1 March 2001. This is especially so if one takes into account the fact that in the submission of 25 September 2001 he specified his claim for costs of the proceedings in accordance with the newly indicated value of the subject matter of the dispute.

Finding for these reasons that the value of the subject matter of the dispute of 101,000 [Croatian] kunas is [the] relevant [value] for determining the admissibility of the appeal on points of law, it cannot but be concluded, in accordance with section 382(3) of the Civil Procedure Act and section 10(3) of the 1999 Amendments to the Civil Procedure Act, that the appeal on points of law is admissible.

For these reasons the first and the second-instance decisions had to be quashed pursuant to section 394(1) taken in conjunction with section 400 of the Civil Procedure Act, and the case remitted to the first-instance court for fresh proceedings so that it can proceed with the appeal on points of law in accordance with section 390 of the Civil Procedure Act.”

12. In the resumed proceedings, the Varaždin Municipal Court, in discharging its duties under section 390(3) of the Civil Procedure Act, forwarded the case file to the Supreme Court for a decision on the applicant's appeal on points of law of 6 March 2003.

13. On 23 February 2005 the Supreme Court, sitting as a panel composed of judges P.M., I.M., V.P.R., G.G. and B.H., declared the applicant's appeal on points of law of 6 March 2003 inadmissible *ratione valoris*, finding that the value of the subject matter of the dispute was below the statutory threshold of HRK 100,000. This time the court held that the relevant value of the subject matter of the dispute was the one indicated by the plaintiff in the statement of claim and that, in the present case, that value was YUD 1,000,000, which, when converted into kunas, amounted to HRK 0.10. The relevant part of the Supreme Court's decision reads as follows:

“The plaintiff's appeal on points of law against the judgment of the Varaždin County Court, no. Gž-1046/02 of 26 November 2002 is hereby declared inadmissible.

Reasons

...

The appeal on points of law is inadmissible.

Pursuant to section 382(2) of the Civil Procedure Act, an appeal on points of law is inadmissible in pecuniary disputes where ... the value of the subject matter of the dispute of the contested part of the final judgment does not exceed 100,000 [Croatian] kunas.

Pursuant to section 40(2) of the Civil Procedure Act, in a case where an action does not concern a sum of money, the relevant value shall be the value of the subject matter of the dispute indicated by the plaintiff in the statement of claim.

Pursuant to section 10(3) of the 1999 Amendments to the Civil Procedure Act, this provision applies to all proceedings in which a final decision of a second-instance court was rendered after the entry into force of the 1999 Amendments, [that is, after] 6 November 1999.

The case at issue concerns a pecuniary dispute where the claim is directed at the handover of (immovable) property, issuance of a land register document, so that, in accordance with the cited legislation, the relevant value of the subject matter of the dispute is the one indicated by the plaintiff in the statement of claim.

The value of the subject matter of the dispute indicated in the statement of claim is 1,000,000 [former Yugoslav] dinars, [the amount of] which after the denomination equals 0,1 [Croatian] kunas.

Given that the second-instance judgment of the Varaždin County Court, no. GŽ-1046/02 was rendered on 26 November 2002, it follows that the appeal on points of law is inadmissible.”

14. On 3 October 2005 the applicant lodged a constitutional complaint against that Supreme Court decision of 23 February 2005, alleging a violation of his constitutional right to a fair hearing by pointing out the discrepancy between that decision and the one of 25 February 2004. On 8 February 2007 the Constitutional Court (*Ustavni sud Republike Hrvatske*) dismissed the applicant's complaint and, on 15 March 2007, served its decision on his representative. It took note of the applicant's argument concerning conflicting decisions of the Supreme Court, but held that the contested decision was in line with the relevant provisions of the Civil Procedure Act and that the proceedings before the ordinary courts had not been contrary to his constitutional right to a fair hearing.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Constitutional Court Act

15. 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. Anyone 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 as regards suspicion or accusation of 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 (“constitutional right”)...

2. If another legal remedy is available in respect of 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 available, 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.”

B. The Civil Procedure Act

1. Relevant provisions

16. 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, provided as follows:

Chapter two

JURISDICTION AND COMPOSITION OF THE COURT

2. Subject matter jurisdiction

Determining the value of the subject matter of the dispute

Section 40

“(2) ... when an action does not concern a sum of money, the relevant value shall be the value of the subject matter of the dispute indicated by the plaintiff in the statement of claim (*u tužbi*).

(3) If, in the case referred to in paragraph 2 of this section, it is obvious that the value of the subject matter of the dispute indicated by the plaintiff is too high or too low, so that the question of ... the right to lodge an appeal on points of law arises, the court shall, at the latest at the preparatory hearing or, if no preparatory hearing was held, at the main hearing before the examination of the merits, quickly and in an appropriate manner verify the accuracy of the indicated value.

Chapter fourteen

ACTION

Content of an action

Section 186 (2)

“When the jurisdiction of the court or its composition, or the right to lodge an appeal on points of law, depends on the value of the subject matter of the dispute, and the object of an action is not the sum of money, the plaintiff shall in the statement of claim (*u tužbi*) indicate the value of the subject matter of the dispute.”

Chapter twenty three

JUDGMENT

Res judicata

Section 334

“(1) The court shall be bound by its judgment (*presuda*) as soon as it has been pronounced, and if the judgment has not been pronounced, as soon as it has been dispatched.

(2) A judgment shall not take effect on the parties until the day it is served on them.”

Chapter twenty four

[PROCEDURAL] DECISION

Section 343 (3) and (4)

“(3) The court shall be bound by its [procedural] decisions (*rješenja*) unless they concern the conduct of the proceedings or this Act provides otherwise.

(4) When a [procedural] decision is not going to be served in writing, it shall take effect on the parties as soon as it has been pronounced.”

Section 347

“Provisions of section 334 paragraph 2 ... of this Act shall also apply, *mutatis mutandis*, to [procedural] decisions (*rješenja*).

Chapter twenty six

EXTRAORDINARY REMEDIES

1. Appeal on points of law

Section 382(1) provides that the parties may lodge an appeal on points of law (*revizija protiv presude*) against the second-instance judgment if the value of the subject matter of the dispute of the contested part of the judgment exceeds a certain amount of money (statutory threshold). The

statutory threshold in civil (that is, non-commercial) cases was changed as follows:

Currency	Value	Period
YUD	5,000	1 July 1977 – 26 November 1982
YUD	50,000	27 November 1982 – 21 November 1987
YUD	800,000	22 November 1987 – 5 October 1989
YUD	8,000,000	6 October 1989 – 31 December 1989
YUD	800	1 January 1990 – 10 April 1990
YUD	8,000	11 April 1990 – 22 December 1991
HRD	8,000	23 December 1991 – 7 January 1993
HRD	3,000,000	8 January 1993 – 12 May 1994
HRK	3,000	13 May 1994 – 5 November 1999
HRK	100,000	after 6 November 1999

Section 388

“An appeal on points of law (*revizija protiv presude*) shall be lodged with the court which gave the first-instance judgment”

Section 389

“A belated, incomplete or [otherwise] inadmissible appeal on points of law (*revizija protiv presude*), shall be declared inadmissible by a decision of a single judge or the president of a panel, without holding a hearing.”

Section 390(1) and (3)

“(1) A single judge or the president of a panel of the first-instance court shall forward a copy of a timely, complete and admissible appeal on points of law to the opposing party, who may, within fifteen days of the service of the appeal on points of law, submit a reply to the appeal on points of law to the same court.

(3) After having received the reply to the appeal on points of law or after the expiry of the time-limit for replying to the appeal on points of law, a single judge or the president of a panel of the first-instance court shall forward directly to [the Supreme Court] the appeal on points of law and the reply to the appeal on points of law, if submitted, together with the case file.”

Section 400 (3)

“A [procedural] appeal on points of law (*revizija protiv rješenja*) shall always lie against the decision of the second-instance court upholding the decision of the first-instance court declaring the appeal on points of law inadmissible (*revizija protiv presude*).”

5.a. 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 judgment of the European Court of Human Rights becoming final, 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.”

2. The case-law of the Supreme Court

17. In its case no. Rev 885-05-2 of 9 November 2005 the Supreme Court held that the plaintiff was not authorised to subsequently change the value of the subject matter of the dispute indicated in his statement of claim unless he also amended the action (by increasing, supplementing or replacing the initial claim).

3. The doctrine

18. The Croatian legal doctrine (see S. Triva and M. Dika, *Gradansko parnično procesno pravo* (The Law of Civil Procedure), Zagreb, 2004, p. 356) describes the so-called internal binding effect of court decisions rendered in civil proceedings in the following manner:

“The court is in principle bound by its decisions rendered in the course of the proceedings. The court cannot itself alter its own binding decision because this can be done only by the court competent to decide on legal remedies against that decision. ...

The court is always bound by decisions rendered in the form of a judgment. If a judgment is to be pronounced, the court is bound by it as soon as it has been pronounced, and if the judgment is not to be pronounced, as soon as it has been dispatched.

The court is bound by decisions rendered in the form of a [procedural] decision unless they concern the conduct of the proceedings or the law provides otherwise.

The court may re-examine and decide again issues decided by a non-binding [procedural] decision whenever the need to do so arises.”

C. The 1999 Amendments to the Civil Procedure Act

19. On 6 November 1999 the Amendments to the Civil Procedure Act (*Zakon o izmjenama i dopunama Zakona o parničnom postupku*, Official Gazette of the Republic of Croatia no. 112/1999 of 29 October 1999) entered into force. They raised the statutory threshold for lodging an appeal on points of law (*revizija*) to the Supreme Court in civil matters from HRK 3,000 to HRK 100,000. Accordingly, from then on, for such an appeal to be admissible *ratione valoris* in civil matters, the value of the subject matter of the dispute had to exceed the latter amount. Section 10 provided that the Amendments were also immediately applicable to pending proceedings except to those cases in which an appeal on points of law had already been lodged.

D. Legislation relating to denominations of the domestic currency

20. The Act on the Change of the Value of the Dinar (*Zakon o promjeni vrijednosti dinara*, Official Gazette of the Socialist Federal Republic of Yugoslavia no. 83/89), which entered into force on 1 January 1990, established the new value of the Yugoslav dinar (YUD) so that one new dinar corresponded to 10,000 old dinars.

21. By the Decision on the Introduction of the Croatian Dinar as the Currency on the Territory of the Republic of Croatia (*Odluka o uvođenju hrvatskog dinara kao sredstva plaćanja na teritoriju Republike Hrvatske*, Official Gazette of the Republic of Croatia no. 71/1991), which entered into force on 23 December 1991, the Republic of Croatia introduced its own currency, the Croatian dinar (HRD). The Yugoslav dinar (YUD) was replaced by the Croatian dinar at an exchange rate of YUD 1 to HRD 1.

22. On 13 May 1994 the Decision on the Termination of the Validity of the Decision on the Introduction of the Croatian Dinar as the Currency on the Territory of the Republic of Croatia and on the Manner and Time of Calculation of Sums Expressed in Croatian Dinars into Kunas and Lipas (*Odluka o prestanku važenja Odluke o uvođenju hrvatskog dinara kao sredstva plaćanja na teritoriju Republike Hrvatske, te o načinu i vremenu preračunavanja iznosa izraženih u hrvatskim dinarima u kune i lipe*, Official Gazette of the Republic of Croatia no. 37/1994) entered into force, introducing the Croatian kuna (HRK) as the currency of the Republic of Croatia. It provided that the Croatian dinar should be replaced by the Croatian kuna at an exchange rate of 1,000 dinars to one kuna.

E. The Constitutional Court's jurisprudence

23. In decision no. U-III-2646/2007 of 18 June 2008 (Official Gazette of the Republic of Croatia no. 104/2008 of 12 September 2008), in a case where the plaintiff, who had brought his action in 1978, had sought payment of 48,600 German marks, the Constitutional Court found violations of the complainant's constitutional rights to equality before the courts and to a fair

hearing and quashed the Supreme Court's decision declaring the appeal on points of law inadmissible *ratione valoris*. The Constitutional Court held, *inter alia*:

“When the civil proceedings for payment of a relatively high amount of foreign currency have lasted thirty years, and the value of the subject matter of the dispute in [those proceedings] (which had at the time the action was brought greatly exceeded the amount prescribed for admissibility of an appeal on points of law) is being determined according to the nominal amount of the domestic currency (which had become worthless due to denomination) and not according to the real value of the amount sought, then such a long lapse of time always benefits one party. The outcome in its favour is due solely to the protracted nature of the proceedings, which upsets the other party's equal status before the law.”

24. In decision no. U-III-4361/2008 of 10 June 2009 (Official Gazette of the Republic of Croatia no. 87/2009 of 21 July 2009) in a similar case, the Constitutional Court confirmed the above jurisprudence.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE BREACH OF THE PRINCIPLE OF LEGAL CERTAINTY

25. The applicant complained that the Supreme Court had first, on 25 February 2004, declared his appeal on points of law admissible and then, on 23 February 2005, declared it inadmissible, without giving any reasons for departing from its previous decision. He relied on 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 ...”

26. The Government contested that argument.

A. Admissibility

27. 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 arguments of the parties

(a) The Government

28. The Government first submitted that, according to the Court's established case-law, neither Article 6 nor any other provision of the Convention or its Protocols guaranteed a right to have a civil case heard by three judicial instances. In other words, no provision of the Convention required the High Contracting Parties to grant persons within their jurisdiction an appeal to the Supreme Court on important legal questions. If a High Contracting Party made provision for such an appeal, it was entitled to prescribe the conditions under which it may be brought.

29. Thus, the Government argued that, in a situation such as in the present case – where two judicial instances had examined the merits of the applicant's action – the impossibility of lodging an appeal on points of law, in cases where the legislator had clearly prescribed the requirements for its admissibility, could not be considered to have been a violation of the right of access to a court or the right to a fair hearing.

30. The Government submitted that in the decision of the Supreme Court of 25 February 2004 the Supreme Court had not been authorised to decide on the admissibility of the applicant's appeal on points of law and had thus merely given its opinion regarding the determination of the value of the subject matter of the dispute. When, later, the case had been submitted to it, the Supreme Court had been allowed to give a different opinion regarding the value criterion. This was the case because the system of precedents did not exist in Croatia and the courts were not bound by their previous decisions or reasons given.

31. In the alternative, the Government argued that the decision declaring the applicant's appeal on points of law inadmissible had been based on law, in particular, the relevant provisions of the Civil Procedure Act and the 1999 Amendments to the Civil Procedure Act. This had been confirmed by the Constitutional Court, which in its decision of 8 February 2007 had found that the proceedings before the ordinary courts had been conducted in a manner compatible with the applicant's constitutional right to a fair hearing.

32. In particular, the Government noted that, by its submission of 1 March 2001, the applicant had attempted to increase the value of the subject matter of the dispute. However, because the costs of proceeding were calculated in relation to that value, to allow the plaintiff (in this case the applicant) to increase it unilaterally in any phase of the proceedings would run contrary to the interests of the respondent who could be forced to pay significantly higher costs. It was for that reason that the legislator prescribed that only the court was authorised to verify the value of the subject matter of the dispute if the plaintiff had set it too high or too low. However, pursuant to section 40(3) of the Civil Procedure Act, the court was authorised to do so only at the preparatory hearing and, if one was not

held, at the main hearing before the examination of the merits. The Government stressed that the court was not authorised to examine changes to the value of the subject matter of the dispute which occur on the basis of the application of laws and regulations in force, in particular on the basis of the legislation relating to denominations of the domestic currency.

33. According to the existing case law of the Supreme Court, the only situation in which a plaintiff would be allowed to change the value of the subject matter of the dispute during the proceedings would be a situation where the action had been amended, in which case the plaintiff would be authorised, at the same time, to indicate the new value of the subject matter of the dispute. However, the applicant had failed to do so because he had first indicated the new value of the subject matter of the dispute in his submission of 1 March 2001 and only subsequently, on 25 September 2001, amended his action by supplementing it with a new claim. Therefore, the first-instance court had taken as relevant the original value of the subject matter of the dispute indicated in the applicant's action of 30 March 1988 and calculated the costs of proceedings according to that value.

34. In the light of the foregoing, the Government considered that Croatian legislation had provided clear and unambiguous rules for cases where the value of the subject matter in the dispute had dropped owing to a change and devaluation of the domestic currency, and had regulated the effect of such changes on the right to lodge an appeal on points of law. In their view, there had therefore been no violation of Article 6 § 1 of the Convention.

(b) The applicant

35. The applicant reiterated that the Supreme Court had first, on 25 February 2004, declared his appeal on points of law admissible and then, without any valid explanation, on 23 February 2005, declared it inadmissible.

36. The applicant further argued that the Supreme Court's finding in its decision of 23 February 2005 that the value of the subject matter of the dispute had amounted to HRK 0.10 was absurd.

37. The applicant also submitted that, at the time that he had brought his action, he had the right to lodge an appeal on points of law, a right which he could not lose until the end of the proceedings. He argued that the decision of the Supreme Court of 23 February 2005 and the decision of the Constitutional Court of 15 March 2007 were contrary to the 1999 Amendments to the Civil Procedure Act which, in his view, had not had retroactive effects.

2. The Court's assessment

38. The Court reiterates that Article 6 of the Convention does not compel the Contracting States to set up courts of appeal or of cassation. However, where such courts do exist, the guarantees of Article 6 must be complied with, for instance, in that it guarantees to litigants an effective right of access to the courts for the determination of their "civil rights and

obligations” (see, for example, *Brualla Gómez de la Torre v. Spain*, 19 December 1997, § 37, *Reports of Judgments and Decisions* 1997-VIII).

39. Turning to the present case, the Court first notes that, contrary to the applicant's view, the 1999 Amendments to the Civil Procedure Act, which raised the statutory threshold for lodging an appeal on points of law to HRK 100,000, were applicable to his case (see paragraph 19 above). They followed a generally recognised principle that procedural rules apply immediately to the pending proceedings (see, *mutatis mutandis*, *Brualla Gómez de la Torre v. Spain*, cited above, §§ 35-36).

40. The Court further notes that, after the first and second-instance courts had ruled against him, the applicant lodged an appeal on points of law (*revizija protiv presude*) with the Supreme Court on 6 March 2003. While the lower courts declared that appeal on points of law inadmissible *ratione valoris*, on 25 February 2004 the Supreme Court quashed their decisions, clearly stating in a well-reasoned decision that the applicant's appeal on points of law was admissible (see paragraph 11 above).

41. However, following that decision, once the first-instance court had forwarded to the Supreme Court the case file and the applicant's appeal on points of law of 6 March 2003, that court, on 23 February 2005, declared it inadmissible *ratione valoris* without providing any explanation as to why it had departed from its previous decision of 25 February 2004. Furthermore, the same four judges (P.M., I.M., V.P.R. and G.G.) were sitting on both the five-member panels that gave the two contrary decisions (see paragraphs 11 and 13 above). The applicant's subsequent constitutional complaint was to no avail (see paragraph 14 above).

42. In the absence of any reference to the previous decision of 25 February 2004 on the same issue in the same case or a detailed reasoning by either the Supreme Court or the Constitutional Court, the Court cannot see why the two decisions were different. It is therefore impossible to know whether the Supreme Court in its decision of 23 February 2005 simply neglected its previous decision of 25 February 2004 or whether it consciously departed from it and, if so, for what reasons.

43. The Court takes note of the Government's argument that the Supreme Court's decision of 23 February 2005 was in line with that court's case-law, the argument of which is akin to the Constitutional Court's reasoning that the contested decision of the Supreme Court was “*in line with the relevant provisions of the Civil Procedure Act*” (see paragraph 14 above), implying that the decision of 25 February 2004 was not. However, the Court notes that, according to the domestic law, in particular section 343(3) of the Civil Procedure Act (see paragraphs 16 and 18 above), the Supreme Court was bound by its decision of 25 February 2004 as it did not concern the conduct of the proceedings. This means, *inter alia*, that this decision was binding for the same court in the subsequent course of the same proceedings.

44. Irrespective of these considerations, the Court reiterates that one of the fundamental aspects of the rule of law is the principle of legal certainty, a principle which is implied in the Convention (see *Beian v. Romania (no. 1)*, no. 30658/05, § 39, ECHR 2007-XIII (extracts)).

Conflicting decisions in similar cases stemming from the same court which, in addition, is the court of last resort in the matter, may, in the absence of a mechanism which ensures consistency, breach that principle and thereby undermine public confidence in the judiciary (see, for example, *Beian*, cited above, §§ 36-39; *Tudor Tudor v. Romania*, no. 21911/03, § 29, 24 March 2009; and *Iordan Iordanov and Others v. Bulgaria*, no. 23530/02, §§ 47-53, 2 July 2009), such confidence being one of the essential components of a State based on the rule of law. The Contracting States have the obligation to organise their legal system so as to avoid the adoption of discordant judgments (see *Vrioni and Others v. Albania*, no. 2141/03, § 58, 24 March 2009). The Court considers that this reasoning applies *a fortiori* in the present instance where the same court reached conflicting decisions in the same case. It also notes that it has previously found a violation of Article 6 § 1 of the Convention in similar circumstances (see *Kostadin Mihaylov v. Bulgaria*, no. 17868/07, 27 March 2008).

45. In the light of the foregoing, the Court considers that the existence of the two contradictory decisions of the Supreme Court in the same case is incompatible with the principle of legal certainty. The role of a higher court in a Contracting Party is precisely to resolve conflicts of jurisprudence, avoid divergences and ensure uniform application of law. Therefore, by adopting a new decision on the same issue in the same proceedings and thereby effectively overruling its previous decision, without any reference to it or reasoning to the contrary, the Supreme Court in the instant case itself became the source of uncertainty (see, *mutatis mutandis*, *Beian v. Romania* (no. 1), cited above, §§ 37-39). In this way it infringed the principle of legal certainty, inherent in Article 6 § 1 of the Convention.

46. There has accordingly been a violation of that Article.

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

47. The applicant further complained under Article 6 § 1 of the Convention that the Supreme Court had been neither independent nor impartial, as the change of its legal view described above could only be explained by outside pressure.

48. The Court considers that the mere fact that the Supreme Court gave contrary decisions in the same case does not mean, in the absence of other evidence, that it did so because of outside pressure. As the applicant did not substantiate this complaint further and because there is no other evidence to suggest that the domestic courts lacked independence or impartiality, the Court finds that this complaint is inadmissible under Article 35 § 3 as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention.

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

49. Lastly, the applicant complained that the length of the above-mentioned civil proceedings had been incompatible with the “reasonable time” requirement, laid down in Article 6 § 1 of the Convention.

50. The Court refers to its decision in the *Slaviček* case, where it held that since 15 March 2002 (when the 2002 Amendments to the Constitutional Court Act entered into force) a constitutional complaint under section 63 of the Constitutional Court Act has represented an effective domestic remedy in respect of the length of court proceedings in Croatia (see *Slaviček v. Croatia* (dec.), no. 20862/02, ECHR 2002-VII).

51. It follows that, in the period between 15 March 2002 and 23 February 2005, that is, while the impugned proceedings were pending before the ordinary courts, the applicant could have lodged a constitutional complaint about their length. However, he did not do so.

52. The length of the proceedings in their part before the Constitutional Court following the applicant's regular constitutional complaint of 3 October 2005, amounting to one year and five months, cannot in itself be considered unreasonable.

53. It follows that this complaint is inadmissible under Article 35 §§ 1 and 3 for non-exhaustion of domestic remedies and as manifestly ill-founded, respectively, and that it must be rejected pursuant to Article 35 § 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

54. 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

55. The applicant claimed 100,000 euros (EUR) in respect of pecuniary damage.

56. The Government contested that claim.

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

58. As regards the non-pecuniary damage, the Court first notes that the applicant's representative did not submit any claim in this respect. The Court further reiterates that the most appropriate form of redress in cases where it finds a 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). In this connection the Court notes that the applicant can now file a petition under section 428a of the Civil Procedure Act (see paragraph 16 above) for the reopening of the above-mentioned civil proceedings in respect of which the Court has found a violation of Article 6 § 1 of the Convention. Having regard to the foregoing, the Court considers that there is no call to award the applicant any sum on account of non-pecuniary damage.

B. Costs and expenses

59. The applicant also claimed HRK 32,254.80 for the costs and expenses incurred before the domestic courts and HRK 5,000 for those incurred before the Court.

60. The Government contested these claims.

61. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of 673 EUR for costs and expenses in the domestic proceedings and EUR 683 for the proceedings before the Court.

C. Default interest

62. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the unfairness of the proceedings on account of the alleged breach of the principle of legal certainty admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the breach of the principle of legal certainty;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,356 (one thousand three hundred and fifty six euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, 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;

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

Done in English, and notified in writing on 1 July 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 separate opinion of Judges Spielmann and Malinverni is annexed to this judgment.

C.L.R.
S.N.

JOINT CONCURRING OPINION OF JUDGES SPIELMANN AND MALINVERNI

In paragraph 58 the judgment states “that the most appropriate form of redress in cases where it finds a 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). In this connection the Court notes that the applicant can now file a petition under section 428a of the Civil Procedure Act (see paragraph 16 above) for the reopening of the above-mentioned civil proceedings in respect of which the Court has found a violation of Article 6 § 1 of the Convention.”

For reasons we have explained on many occasions,¹ we would very much have liked this principle, on account of its importance, to have been reflected in the operative part of the judgment.

That requirement appears to us to be all the more necessary in the present case, in view of the finding that, “[h]aving regard to the foregoing, the Court considers that there is no call to award the applicant any sum on account of non-pecuniary damage” (see paragraph 58).

¹ See our joint concurring opinions appended to the following judgments: *Vladimir Romanov v. Russia* (no. 41461/02, 24 July 2008); *Ilatovskiy v. Russia* (no. 6945/04, 9 July 2009); *Fakiridou and Schina v. Greece* (no. 6789/06, 14 November 2008); *Lesjak v. Croatia* (no. 25904/06, 18 February 2010); *Prežec v. Croatia* (no. 48185/07, 15 October 2009); and *Pavlenko v. Russia* (no. 42371/02, 1 April 2010).