

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

FIRST SECTION

CASE OF ČIKANOVIĆ v. CROATIA

(Application no. 27630/07)

JUDGMENT

STRASBOURG

5 February 2015

FINAL

05/05/2015

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



In the case of Čikanović v. Croatia,

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

Isabelle Berro, *President,*
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Paulo Pinto de Albuquerque,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 13 January 2015,

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

PROCEDURE

1. The case originated in an application (no. 27630/07) 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 Pavle Čikanović ("the applicant"), on 28 May 2007.

2. The applicant was represented by Mr S. Radobuljac and Mrs L. Horvat, advocates practising in Zagreb. The Croatian Government ("the Government") were represented by their Agent, Ms Š. Stažnik.

3. The applicant alleged, in particular, that decisions of the domestic courts dismissing part of his claim for salary arrears had violated his right to a fair hearing.

4. On 24 March 2011 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1952 and lives in Vukovar.

6. The applicant worked for the Borovo Municipality until 16 January 1991, when he was made redundant.

7. On 28 March 1991 the applicant brought a civil action against the Borovo Municipality in the Vukovar Municipal Court (*Općinski sud u Vukovaru*), seeking reinstatement and salary arrears.

8. By a partial judgment (*djelomična presuda*) of 15 October 1996, the Vukovar Municipal Court annulled the decision on the applicant's dismissal as unlawful and ordered his reinstatement within eight days of the judgment becoming final. At the same time, the court decided to wait until the partial judgment became final before examining the applicant's claim for salary arrears. The relevant part of the partial judgment in question reads as follows:

> "The decision of the defendant, the Borovo Municipality, ... of 16 January 1991 on the termination of the plaintiff's [the applicant's] employment is hereby annulled,
>
> ... the defendant, the Borovo Municipality, is ordered to reinstate the plaintiff in his post ... and to acknowledge his employment-related rights ..., and to do so within eight days of this judgment becoming final ...
>
> On the remaining part of the claim and the [claim for] costs and expenses [the court] shall decide by a definitive [i.e. later] judgment."

The judgment was served on the applicant's representative on the same day, and on the defendant on 13 November 1996.

9. On 5 December 1996 the defendant, represented by the Zagreb State Attorney's Office, appealed against the partial judgment. The applicant received a copy of that appeal on 27 January 1997.

10. In the meantime, after having submitted several written requests for reinstatement to the Borovo Municipality without success, on 17 December 1996 the applicant wrote to the President of the Vukovar County Court (*Županijski sud u Vukovaru*) seeking help in that regard. In particular, he submitted that on 26 November and 16 December 1996 he had requested the Vukovar Municipal Court to certify that its partial judgment had become final (see paragraph 8 above) by adding a stamped endorsement to that effect (*klauzula pravomoćnosti* – "certificate of finality"). He alleged that his requests had been refused orally with the explanation that the defendant's appeal of 5 December 1996 had prevented the judgment from becoming final.

11. On 6 February 1997 the applicant lodged a response to the defendant's appeal, arguing, *inter alia,* that the Vukovar Municipal Court should declare the appeal inadmissible as it had been lodged out of time.

12. By a decision of 28 March 1997 the Vukovar Municipal Court declared the defendant's appeal inadmissible as having been lodged outside the statutory time-limit, finding that the last day for lodging the appeal had been 28 November 1996. The defendant appealed against that decision.

13. On 30 September 1997 the applicant took early retirement on grounds of disability.

14. By a decision of 2 July 1998 the Vukovar County Court dismissed the defendant's appeal against the Vukovar Municipal Court's decision of 28 March 1997 (see paragraph 12 above).

15. On 13 October 1998 the Vukovar Municipal Court stamped the applicant's copy of its partial judgment of 1996 (see paragraph 8 above) to indicate that it had become final. The stamp indicated that the partial judgment had become final on 29 November 1996.

16. In the resumed proceedings concerning the salary arrears (see paragraph 8 above), by a judgment of 28 April 2004 the Vukovar Municipal Court found for the applicant and ordered the defendant to pay him salary arrears for the period between 1 March 1991 and 1 October 1997, that is, 110,226.19 Croatian kunas (HRK) in total, together with the accrued statutory default interest.

17. However, following an appeal by the defendant, on 16 June 2004 the Vukovar County Court reversed the first-instance judgment, dismissing the applicant's action in its entirety. That court noted, *inter alia*, that under section 238 of the Enforcement Act (see paragraph 30 below) an employee could apply for the enforcement of a judgment ordering his reinstatement within thirty days of its becoming final. The partial judgment (see paragraph 8 above) had become final on 29 November 1996 (see paragraph 15 above and paragraph 27 below) but the applicant had never applied for its enforcement, and he should have done so by 29 December 1996. The County Court therefore held that the applicant had not only lost the right to seek reinstatement but consequently also the right to receive salary arrears.

18. On 23 July 2004 the applicant lodged an appeal on points of law (*revizija*) against the second-instance judgment. He argued that he could not possibly have applied for enforcement of the partial judgment (see paragraph 8 above) by 29 December 1996 because at that time the defendant's appeal of 5 December 1996 (see paragraph 9 above) against the partial judgment had still been pending and he had consequently been unaware that the partial judgment had become final. That the partial judgment had actually become final on 29 November 1996 had become apparent to him only on 13 October 1998, when it had been confirmed by the stamped endorsement of the Vukovar Municipal Court. However, since he had retired on 30 September 1997 (see paragraph 13 above), he had not been able to apply for enforcement of the partial judgment and seek reinstatement.

19. On 8 December 2004 the Supreme Court (*Vrhovni sud Republike Hrvatske*) quashed the second-instance judgment in part and upheld it in part. In particular, it quashed the second-instance judgment in the part dismissing the applicant's claim for salary arrears for the period between 1 March 1991 and 29 December 1996 (that is, for HRK 76,477.7, together with the accrued statutory default interest) and in that part remitted the case to the first-instance court. However, it upheld the second-instance judgment in the part dismissing the applicant's claim for salary arrears for the period between 29 December 1996 and 1 October 1997 (that is, for

HRK 33,748.42, together with the accrued statutory default interest). The relevant part of that judgment reads as follows:

> "In dismissing the plaintiff's claim for payment of salary arrears for the period between 1 March 1991 and 29 December 1996 [the County Court] misapplied the substantive law.
>
> In the proceedings it was established that the defendant's decision on the termination of the plaintiff's employment ... had been annulled by the final partial judgment of the Vukovar Municipal Court of 15 October 1996, [whereby] the defendant had [also] been ordered to reinstate the plaintiff ...
>
> It was [further] established that the [partial] judgment in question had become final on 29 November 1996, and that the plaintiff had not instituted enforcement proceedings for reinstatement within the thirty-day time-limit laid down in section 238 of the Enforcement Act.
>
> Given that the [partial] judgment in question is final, the plaintiff is entitled to the rights he would have acquired had the annulled decision never been rendered. Therefore, the defendant has to pay the plaintiff the salary arrears ... as if the unlawful decision on dismissal had never existed.
>
> ...
>
> Since the lower courts erred in law, the factual background was not properly established. The appeal on points of law is therefore allowed [in part] and the impugned judgment quashed in the part whereby the plaintiff's claim for salary arrears for the period between 1 March 1991 and 29 December 1996 was dismissed. In that part the case is remitted to the first-instance court.
>
> ...
>
> As regards the [part of the contested] judgment whereby the plaintiff's claim for salary arrears for the period after 29 December 1996 was dismissed, it is to be noted that the lower courts correctly applied the substantive law in dismissing the plaintiff's claim as unfounded. In particular, the plaintiff failed to institute enforcement proceedings for reinstatement within the strict thirty-day time-limit set forth in section 238 of the Enforcement Act ... It follows that the plaintiff did not work from 29 December 1996 onwards owing to his own omission. He is therefore not entitled to salary arrears for that period.
>
> For these reasons the appeal on points of law has to be dismissed ... in so far as it contests that part of the impugned judgment ..."

20. On 8 December 2004 the applicant lodged a constitutional complaint against the Supreme Court's judgment, alleging a violation of his constitutional right to a fair hearing. In so doing he repeated the argument raised in his appeal on points of law.

21. On 20 November 2006 the Constitutional Court (*Ustavni sud Republike Hrvatske*) dismissed the applicant's constitutional complaint, serving its decision on the applicant's representative on 29 November 2006. The relevant part of that decision reads as follows:

> "...
>
> *The constitutional complaint is unfounded.*

...

As regards the complainant's argument that he could not have obtained a certificate of finality and thus observed [the statutory time-limit laid down in] section 238 of the Enforcement Act, the Constitutional Court finds ...

... that this [argument] cannot be raised for the first time in a constitutional complaint. Rather, it should have been raised in proceedings before the ordinary courts.

Moreover, the complainant's submissions suggest that he never instituted enforcement proceedings for reinstatement, but only unsuccessfully contacted the defendant on several occasions requesting to be returned to work. The complainant therefore lost the right to salary arrears from 29 December 1996 onwards owing to his own failure to undertake the procedural steps required by section 238 of the Enforcement Act ..."

22. Meanwhile, in the resumed proceedings following the part of the Supreme Court's decision of 8 December 2004 remitting the case (see paragraph 19 above), by a judgment of 27 January 2006 the Vukovar Municipal Court ordered the Borovo Municipality to pay the applicant salary arrears for the period between 1 March 1991 and 29 December 1996.

23. By a judgment of 13 July 2007 the Vukovar County Court dismissed an appeal by the defendant and upheld the first-instance judgment.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Civil Procedure Act

1. Relevant provisions

24. The relevant part of the Civil Procedure Act (*Zakon o parničnom postupku*, Official Gazette of the Socialist Federal Republic of Yugoslavia no. 4/77 with subsequent amendments, and Official Gazette of the Republic of Croatia no. 53/1991 with subsequent amendments), which has been in force since 1 July 1977, provides as follows:

Res judicata

Section 333(1)

A judgment which can no longer be contested by an appeal shall become final where it decides on the plaintiff's claim or on a counter-claim.

Section 334(2)

A judgment shall not take effect in respect of the parties until the day it is served on them.

The right to an appeal

Section 348(2)

An appeal lodged in time shall prevent a judgment from becoming final in the part contested by the appeal."

25. Section 328 provides for a time-limit within which a judgment debtor can voluntarily comply with (execute) the judgment (*paricijski rok* – "the grace period"). The lodging of an (admissible) appeal suspends the running of the grace period. The provision reads as follows:

"When a judgment debtor has been ordered to do something by the judgment, the court shall set a time-limit for performance.

Unless special legislation provides otherwise, the time-limit for performance shall be fifteen days. However, if the performance does not entail payment of money the court may set a longer time-limit. ...

The time-limit for performance shall start running on the first day after the service of a copy of the judgment on the judgment debtor."

26. Section 428a provides for the remedy of reopening proceedings on the ground of a judgment of the Court finding a violation of the Convention. That provision reads as follows:

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 at first instance in the proceedings in which the decision violating the human right or fundamental freedom was rendered, for the setting aside of the decision [in question].

(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 observe the legal views expressed in the final judgment of the European Court of Human Rights finding a violation of a fundamental human right or freedom."

2. The doctrine

27. According to Croatian legal scholars (see, for example, Triva, Siniša, Dika, Mihajlo: Građansko parnično procesno pravo [Civil Procedure Law], Narodne novine, Zagreb, 2004, pp. 636-638) a first-instance judgment adopted in civil proceedings becomes final in the following situations: (a) when the statutory time-limit for appeal expires in respect of both

parties and no appeal has been lodged, (b) when both parties waive their right to appeal, (c) when the parties withdraw their appeals, and (d) when the second-instance court dismisses the appeal on the merits and upholds the first-instance judgment. In particular:

> "As long as it is possible to have recourse to an ordinary remedy (an appeal ...) a decision may not become final. [Recourse to an] ordinary remedy prevents a decision from becoming final regardless of whether [that remedy] is well- or ill-founded. However, if it is not admissible [an ordinary remedy] does not prevent a decision from becoming final. [In such cases] a decision becomes final [at the same time] as if such a remedy had not been resorted to."

B. The Enforcement Act

1. Relevant provisions

28. The relevant part of the Enforcement Act of 1996 (*Ovršni zakon*, Official Gazette of the Republic of Croatia, no. 57/96 with subsequent amendments), which was in force between 11 August 1996 and 14 October 2012, at the material time provided as follows:

Enforceability of a [court] decision

Section 23(1)

> "A court decision ordering [the judgment debtor] to give or do something shall be enforceable if it has become final and if the time-limit for voluntary performance [that is, the grace period – *paricijski rok*] has expired. The time-limit for voluntary performance runs from the date the decision is served on the enforcement debtor [the judgment debtor], unless the law provides otherwise."

Certificate of enforceability

Section 33(1) and (2)

> "(1) If an application for enforcement is lodged with a court which did not decide on the claim at first instance, the application must be accompanied by the original or a copy of the enforcement title having the certificate of enforceability ...
>
> (2) A certificate of enforceability shall be issued by the court or [other] authority which adjudicated on the claim at first instance."

29. Section 37(5), as in force at the material time, provided that the enforcement court was not entitled to dismiss of its own motion an application for enforcement based on a court judgment which, by the time the application was being decided upon, had become final but had not yet become enforceable. By implication, the enforcement court had to dismiss an application for enforcement if it was based on a court judgment which had not become final. Section 37(5) read as follows:

> "The court shall not of its own motion dismiss an application for enforcement based on a final judicial decision [notably, a judgment] ... solely on the ground that it has not

become enforceable at the time the application for enforcement is being decided upon ..."

30. Chapter 21 of the Enforcement Act regulated the enforcement of judgments ordering the reinstatement of employees. The relevant provision of that Chapter reads as follows:

The time-limit for lodging an application for enforcement

Section 238

"An application for enforcement [on the basis of an enforcement title ordering an employer to reinstate an employee ...] may be lodged within a time-limit of thirty days from the date the enforcement creditor acquires the right to lodge such application."

2. Relevant practice

31. In its decision no. Gž 1798/99 of 18 January 2000, the Zagreb County Court adopted the following interpretation as regards the calculation of the time-limit provided in section 238 of the Enforcement Act:

"According to section 238 of the Enforcement Act, an application for enforcement [of a judgment ordering reinstatement] may be lodged within thirty days from the date the [employee as an] enforcement creditor acquires the right to lodge such application.

Given that the present case concerns [a judgment] against which an appeal had been lodged, it should be considered that the enforcement creditor acquired the right to apply for enforcement within thirty days from the date on which he received the second-instance [judgment], as it was only at that time that he learned of its content."

32. In its decision no. Gžovr-1313/03 of 20 July 2004 (published on 1 January 2006 in the Supreme Court's publication *Izbor odluka Vrhovnog suda Republike Hrvatske* [Selection of decisions of the Supreme Court of the Republic of Croatia], no. 1/2005), the Zagreb County Court somewhat corrected its earlier interpretation (see the preceding paragraph) by holding as follows:

"The [employee as an] enforcement creditor acquired [the right to apply for enforcement of the judgment ordering his reinstatement] after the expiry of the grace period within which the [employer] could have voluntarily complied with the judgment, [it being understood that] the grace period was calculated from the date on which [the employer] received the second-instance judgment.

Given that both parties were served with the second-instance judgment on 24 April 2003, from that day started to run, first the eight-day grace period for voluntary compliance, and then the strict thirty-day time-limit [for applying for enforcement], which expired on 1 June 2003. Since the application for enforcement had been lodged on 13 June 2003, the first-instance court correctly held that it was lodged out of time and declared it inadmissible ...

Contrary to the enforcement creditor's [the employee's] argument, the time-limit for applying for the enforcement of a judgment ordering reinstatement does not depend on that judgment being stamped with a certificate of enforceability, and thus did not start to run from the time when [the applicant] 'was able to obtain the certificate of finality and enforceability' but from the time he acquired the right to lodge the

application for enforcement, and that was when he was served with the second-instance judgment. Therefore ... that time-limit is not calculated from 19 May 2003 when the 'enforcement creditor's representative was able obtain the certificate of finality and enforceability', as the enforcement creditor repeatedly argues in the appeal.

...

The time-limit provided in section 238 of the Enforcement Act within which employees may apply for enforcement of a judgment ordering their reinstatement is a strict time-limit, which means that by non-observance of that time-limit employees lose their right to be reinstated and, consequently, all [ensuing] employment-related claims (salary) ...

...

[Therefore,] the question whether the enforcement creditor's claim for payment of salary arrears in the period between the date on which the judgment [ordering his reinstatement] became final and the date of reinstatement is well-founded or not depends on whether he ... attempted to return to work or not. Since the enforcement creditor failed to observe the above-mentioned strict time-limit provided in section 238 of the Enforcement Act, which resulted in his application for enforcement being declared inadmissible, he is not entitled to the salary arrears sought."

33. In its decision no. Gž 1222/06 of 18 May 2006 (published on 2 January 2007 in the Supreme Court's publication *Izbor odluka Vrhovnog suda Republike Hrvatske*, no. 2/2006), the Dubrovnik County Court held as follows:

"The thirty-day time-limit provided in section 238 of the Enforcement Act is calculated from the day the second-instance [judgment] is served on the [employee as an] enforcement creditor and not from the day the [first-instance] judgment becomes final."

34. Under the case-law of the Croatian courts the rules governing the certificate of enforceability provided in the legislation on enforcement proceedings apply, *mutatis mutandis*, to the "certificate of finality" (*potvrda o pravomoćnosti*, *klauzula pravomoćnosti*), that is, the stamp attesting that a judgment has acquired the force of *res judicata* (see, for example, Supreme Court decisions nos. Gzz-6/1990-2 of 27 June 1990, Gž 19/1994-2 of 4 October 1994, Gž 14/1994-2 of 13 October 1994, Gr1 582/05-2 of 20 December 2005, and Gž 9/07-2 of 11 October 2007).

3. The doctrine

35. Croatian legal scholars have expressed the following opinion as to how the time-limit provided for in section 238 of the Enforcement Act is to be calculated (see, in particular, Dika, Mihajlo: *Građansko ovršno pravo* [Civil Enforcement Law], Narodne novine, Zagreb, 2007, p. 718):

"The time-limit is strict. On its expiry the enforcement creditor loses the right to seek compulsory reinstatement. An application for enforcement lodged after the expiry of that time-limit should be declared inadmissible.

The time-limit [in question] should in principle be calculated from the moment the enforcement title [for example, a judgment] becomes enforceable. However, given that the enforcement creditor has to exercise his or her right within that time-limit, the moment when that time-limit starts to run has to correspond to the moment when the enforcement creditor learns that [the judgment sought to be enforced] has become enforceable. One often has to wait some time to find out whether and [, if so] when the enforcement debtor [the judgment debtor] has received the first-instance [judgment] and whether he or she has appealed against it [, and if so] when the second-instance [judgment] dismissing the appeal and upholding the first-instance judgment was served on the enforcement debtor and when the grace period for voluntary compliance which started to run from the service of that [second-instance judgment] expired. Therefore, it should be understood that the thirty-day time-limit should start to run from the day the court was able to issue the certificate of enforceability.

On the expiry of the time-limit for applying for enforcement of the judgment ordering reinstatement, the enforcement creditor loses all employment-related rights *pro futuro*.

Given that the court is not entitled to declare inadmissible of its own motion an application for enforcement based on a final court judgment ... simply because [the judgment sought to be enforced] has not been stamped with a certificate of enforceability at the time the application for enforcement is being decided upon, or to dismiss such application because the judgment to be enforced has not become enforceable (section 37(5) [of the Enforcement Act], it should be understood that the employee would be entitled to apply for enforcement even before [the judgment sought to be enforced] became enforceable ..."

C. The Courts Act

36. Section 67 of the Courts Act (*Zakon o sudovima*, Official Gazette, nos. 3/94, 75/95, 100/96, 115/97, 131/97, 129/00, 67/01, 5/02, 101/03, 117/03, 17/04 and 141/04), which Act was in force between 22 January 1994 and 28 December 2005, provided for the State's (tort) liability for judicial misconduct. The relevant part of that section reads as follows:

Section 67(1) and (2)

"(1) The Republic of Croatia shall be liable for damage a judge causes to citizens or legal entities in the exercise of judicial duties by breaking the law or by his or her malpractice.

(2) The Republic of Croatia may seek reimbursement of the sum paid only if the judge caused the damage intentionally or by gross negligence."

III. RELEVANT INTERNATIONAL LAW

The International Law Commission's Draft Articles on Responsibility of States for Internationally Wrongful Acts

37. The relevant provision of the Draft Articles on Responsibility of States for Internationally Wrongful Acts, as adopted by the United Nations' International Law Commission on 9 August 2001 at its fifty-third session read as follows:

PART ONE

THE INTERNATIONALLY WRONGFUL ACT OF A STATE

(...)

CHAPTER II

ATTRIBUTION OF CONDUCT TO A STATE

Article 4

Conduct of organs of a State

"1. The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State.

2. An organ includes any person or entity which has that status in accordance with the internal law of the State."

THE LAW

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

38. The applicant complained that the decisions of the domestic courts dismissing his claim for salary arrears for the period between 29 December 1996 and 1 October 1997 because he had not applied by the former date for enforcement of the partial judgment of 15 October 1996 ordering his reinstatement, even though he had been unable to do so, had violated his right to a fair hearing. 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 fair ... hearing ... by [a] ... tribunal ..."

A. Admissibility

39. The Government disputed the admissibility of this complaint on two grounds. They argued that the applicant had failed to exhaust domestic remedies and that, in any event, he had failed to comply with the six-month time-limit.

1. Non-exhaustion of domestic remedies

(a) The parties' arguments

40. The Government argued that the applicant had failed to exhaust available domestic remedies since he could have brought a civil action against the State seeking damages for judicial misconduct (see paragraph 36 above).

41. The applicant made no comment in this regard.

(b) The Court's assessment

42. The Court notes that it has previously dismissed similar non-exhaustion objections by the Government (see *Tarbuk v. Croatia*, no. 31360/10, § 33, 11 December 2012, and *Peruško v. Croatia*, no. 36998/09, § 56, 15 January 2013) and sees no reason to hold otherwise in the present case. It follows that the Government's objection as regards non-exhaustion of domestic remedies must be dismissed.

2. Compliance with the six-month rule

(a) The parties' arguments

43. The Government argued that the applicant had failed to comply with the six-month time-limit since there was a discrepancy between the date on the application form (28 May 2007) and the date of the Court's stamp acknowledging receipt of the application form (6 June 2007).

44. The applicant did not comment on this issue.

(b) The Court's assessment

45. As regards the date when the application was lodged with the Court, the Court has previously held that the date of the postmark recording the date on which an application was sent is treated as the date of the application, and not the date of receipt stamped on the application (see, for example, *Kipritçi v. Turkey*, no. 14294/04, § 18, 3 June 2008). However, the Court has declared applications inadmissible where it has detected a significant discrepancy between the date of writing the application form and the date of posting it, if the latter fell outside the six-month time-limit (see, for example, *Arslan v. Turkey* (dec.), no. 36747/02, 21 November 2002).

46. In the present case the date on which the application form was written and the date of the postmark recording when the application was sent is the same, namely 28 May 2007.

47. Since the Constitutional Court's decision of 20 November 2006, that is, the final domestic decision for the purposes of Article 35 § 1 of the Convention, was served on the applicant's representative on 29 November 2006 (see paragraph 21 above), it follows that he lodged his application with the Court five months and twenty-eight days later. Therefore, the Government's objection as to the non-observance of the six-month rule must be dismissed.

3. Conclusion

48. The Court further notes that this application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) 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 parties' arguments

49. The applicant submitted that he had requested the Vukovar Municipal Court to issue a certificate of finality in respect of its partial judgment of 15 October 1996 ordering his reinstatement on both 26 November and 16 December 1996 (see paragraphs 8 and 10 above). However, he had obtained that certificate only on 13 October 1998 (see paragraph 15 above). In his view, that delay had prevented him from applying for enforcement of that partial judgment, which impracticability the domestic courts had failed to take into account when dismissing his claim for salary arrears for the period between 29 December 1996 and 1 October 1997 (see paragraphs 17, 19 and 21 above).

50. The Government submitted that the applicant had not provided any evidence in support of his allegation that he had been unable to obtain the certificate of finality earlier. In particular, there was no proof that he had ever applied to the first-instance court to obtain that certificate. In any event, the Government further argued, the applicant could have applied for the enforcement of the partial judgment ordering his reinstatement even without the certificate of finality. That was so for several reasons, all of which the applicant must have been aware of because he was represented by a qualified representative (an advocate). First, under the domestic law a judgment became final and enforceable when the statutory requirements were met, and not when the competent court so certified (see paragraph 32 above). Second, section 33(1) of the Enforcement Act (see paragraph 28 above) had not required that an application for enforcement be accompanied

by a certificate of (finality and) enforceability if it was to be lodged with the same court which had adopted the judgment sought to be enforced. That had been precisely the situation in the applicant's case. Third, since in his reply to the defendant's appeal of 5 December 1996 (see paragraph 11 above) the applicant had argued that the appeal had been lodged out of time, he must have been aware that the partial judgment ordering his reinstatement had already become final when the statutory time-limit for that appeal expired (see paragraph 27 above). The Government therefore concluded that the applicant's loss of salary arrears was solely attributable to his own failure to institute enforcement proceedings in due time.

2. The Court's assessment

51. The Court notes at the outset that in the present case the sole reason relied on by the domestic courts for dismissing the applicant's claim for salary arrears for the period between 29 December 1996 and 1 October 1997 was that he had not, within thirty days of it becoming final applied for enforcement of the partial judgment of 15 October 1996 ordering his reinstatement, and thus, in their view, failed, to observe the time-limit set forth in section 238 of the Enforcement Act (see paragraphs 17, 19, 21 and 30 above).

52. In this connection, the Court first refers to its constant case-law according to which a person who has obtained an enforcement title against the State cannot be required to resort to enforcement proceedings in order to have it executed (see, for example, *Lukavica v. Croatia*, no. 39810/04, § 32, 5 July 2007; *Cocchiarella v. Italy* [GC], no. 64886/01, § 89, ECHR 2006-V; *Reynbakh v. Russia*, no. 23405/03, § 24, 29 September 2005; and *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004).

53. The Court further considers that this principle applies with equal force in the situation such as the one in the present case where the applicant has obtained judgment against the local authorities, namely, the Municipality of Borovo. That is so because from the Court's perspective the hierarchy between different organs of the State is not relevant while examining an application before it. Municipalities are public-law entities which exercise public authority and whose acts or failures to act, notwithstanding the extent of their autonomy *vis-à-vis* the central organs, can engage the responsibility of the State under the Convention (see, for example, *Döşemealtı Belediyesi v. Turkey* (dec.), no. 50108/06, 23 March 2010; *Danderyds Kommun v. Sweden* (dec.), no. 52559/99, 7 June 2001; and *Yavorivskaya v. Russia*, no. 34687/02, § 25, 21 July 2005). This case-law of the Court is in line with customary international law in this sphere reflected in the International Law Commission's Draft Articles on Responsibility of States for Internationally Wrongful Acts. According to Article 4 of the Draft Articles the conduct of any State organ is considered an act of that State under international law whatever its character as an

organ of the central Government or of a territorial unit of the State (see paragraph 37 above). The fact that the municipality was represented by the State Attorney's Office (see paragraph 9 above) further corroborates this principle in the present case.

54. Since, therefore, an individual who has obtained final and enforceable judgment against the local authorities cannot be required to subsequently bring enforcement proceedings in order to execute it, the Court finds it evident that such individual must likewise not suffer any adverse consequences for his or her failure to do so.

55. The Court reiterates that in the instant case the domestic courts denied the applicant's claim for salary arrears in the relevant period precisely and solely because he had failed to seek enforcement of the partial judgment ordering his reinstatement delivered against the local authorities. It also notes that the applicant had after the delivery of that judgment on a number of occasions requested the local authorities to reinstate him, which fact was acknowledged but considered irrelevant by the domestic courts (see paragraphs 10 and 21 above). It thus cannot be argued that the applicant gave up his claim to be reinstated or that the local authorities were unaware of the judgment (see, *mutatis mutandis*, *Lukavica*, loc. cit.).

56. The foregoing considerations would normally suffice for the Court to find a violation of Article 6 § 1 of the Convention in the present instance. However, the Court will nevertheless proceed with its examination because it considers that the way the domestic courts applied the relevant domestic law in the applicant's case could have wider implications for the rights of employees to have the judgments ordering their reinstatement enforced against private employers.

57. Therefore, leaving aside the fact that the partial judgment ordering the applicant's reinstatement was delivered against the local authorities, the Court notes the following.

58. Under the Croatian law in force at the material time one could apply for enforcement even without the certificate of (finality and) enforceability if the application for enforcement was lodged with the same court which had adopted the judgment sought to be enforced (see paragraph 28 above). One could even seek enforcement of a judgment that had not yet become enforceable (see paragraph 29 above). However, these two options were available only if the judgment sought to be enforced had already become final (see paragraph 29 above). In other words, non-final judgments could never be enforced.

59. In the present case the fact that the partial judgment of 15 October 1996 had become final already on 29 November 1996 became evident only on 2 July 1998 (see paragraph 14 above). That was approximately one and a half year after the expiry of the time-limit within which, according to the domestic courts, the applicant should have sought enforcement of that judgment (see paragraph 17 above).

60. Given that section 238 of the Enforcement Act did not refer to the date on which the judgment ordering reinstatement had become final or enforceable as the starting date of the time-limit prescribed therein but, more generally, to the moment an employee had "acquired the right" to apply for enforcement (see paragraph 30 above), it would appear that the text of that provision gave the domestic courts ample opportunity to take that one-and-a-half year interval into account. Furthermore, the case-law of the domestic courts developed in the application of that provision, as well as the opinions of legal scholars, seem to suggest that the starting date of that time-limit was the date when an employee had learned (normally by being served with the second-instance judgment) of the fact that the judgment sought to be enforced had become final (see paragraphs 31-33 and 35 above). Since the domestic courts in the applicant's case in their judgments did not deal with the practical implications of the above-mentioned interval, it is difficult to discern whether they simply overlooked it or consciously regarded it as irrelevant.

61. Be it as it may, those courts did not take that interval into account and dismissed the applicant's claim for salary arrears on the ground of his alleged non-compliance with the time-limit which, as calculated by the domestic courts, he was in the given circumstances not in a position to observe. This impaired the very essence of the applicant's right of access to court as secured by Article 6 § 1 of the Convention.

62. Therefore, there has been a violation of that Article in the present case.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

63. 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

64. The applicant claimed 30,514.56 Croatian kunas (HRK) in respect of pecuniary damage, which corresponds to salary arrears for the period between 29 December 1996 and 1 October 1997, together with the accrued statutory default interest. He also sought 5,000 euros (EUR) in respect of non-pecuniary damage.

65. The Government contested these claims.

66. As regards the applicant's claim for pecuniary damage, the Court reiterates that a judgment in which it finds a breach imposes on the respondent State a legal obligation to put an end to the breach and make

reparation for its consequences. If national law does not allow – or allows only partial – reparation to be made, Article 41 empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, §§ 32-33, ECHR 2000-XI). In this connection the Court notes that under section 428a of the Civil Procedure Act (see paragraph 26 above) an applicant may seek the reopening of the civil proceedings in respect of which the Court has found a violation of the Convention. Given the nature of the applicant's complaint and the reason for which it has found a violation of Article 6 § 1 of the Convention, the Court considers that in the present case the most appropriate way of repairing the consequences of that violation is to reopen the proceedings complained of (see *Vrbica v. Croatia*, no. 32540/05, §§ 83-84, 1 April 2010). As it follows that the domestic law allows such reparation to be made, the Court considers that there is no call to award the applicant any sum in respect of pecuniary damage.

67. On the other hand, the Court finds that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, the Court awards him EUR 2,500 under that head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

68. The applicant claimed HRK 6,150 for the costs and expenses incurred before the domestic courts (in particular before the Constitutional Court), and EUR 3,000 for those incurred before the Court.

69. The Government contested these claims.

70. 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 are 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 EUR 770 for the costs and expenses incurred in the proceedings before the Constitutional Court and EUR 850 for those incurred in the proceedings before the Court, plus any tax that may be chargeable to the applicant.

C. Default interest

71. The Court considers it appropriate that the default interest rate 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 application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

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, the following amounts, to be converted into Croatian kunas at the rate applicable at the date of settlement:
      (i) EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,620 (one thousand six hundred and twenty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (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;

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

Done in English, and notified in writing on 5 February 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Isabelle Berro President