

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

FIRST SECTION

CASE OF JOVIČIĆ v. CROATIA

(Application no. 23253/07)

JUDGMENT

STRASBOURG

21 June 2011

This judgment is final but it may be subject to editorial revision.



In the case of Jovičić v. Croatia,

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

Peer Lorenzen, *President,*
Elisabeth Steiner,
Khanlar Hajiyev, *judges,*
and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 31 May 2011,

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

PROCEDURE

1. The case originated in an application (no. 23253/07) 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, Ms Radojka Jovičić ("the applicant"), on 30 April 2007.

2. The Croatian Government ("the Government") were represented by their Agent, Mrs Š. Stažnik.

3. On 14 December 2009 the President of the First Section decided to communicate the complaint concerning the length of proceedings to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant, who is of Serbian origin, was born in 1950 and lives in Innsbruck, Austria.

5. On 29 July 1987 the Sisak Regional Office of the Croatian Pension Fund (*Hrvatski zavod za mirovinsko osiguranje, Područna služba u Sisku* – "the Regional Office"), after finding that due to her illness the applicant's ability to work had been reduced (*smanjena sposobnost za rad*), issued a decision awarding her the right to reduced working hours (*pravo na rad s polovicom radnog vremena*). On 15 October 1987 she was also awarded compensation for the loss of salary resulting from the reduced working hours (*pravo na naknadu osobnog dohotka zbog rada sa skraćenim radnim vremenom*).

6. The applicant had been receiving this compensation until September 1991 when she was forced to quit her job and leave Petrinja as the town was taken by the occupying forces. She settled in Zagreb as an internally displaced person.

7. The applicant submitted that she had instituted administrative proceedings before the Regional Office with a view that the payment of compensation for her reduced ability to work be resumed, by making a request to that end on 17 October 1991. The Government submitted that the applicant had done so only on 12 June 1995.

8. On 20 September 1995 the Regional Office decided to discontinue the administrative proceedings instituted by the applicant's request.

9. Following an appeal by the applicant, on 29 January 1996 the Central Office of the Croatian Pension Fund (*Hrvatski zavod za mirovinsko osiguranje, Središnja služba* – "the Central Office") quashed the first-instance decision and remitted the case to the Regional Office.

10. In the fresh first-instance proceedings, on 28 June 1999 the Regional Office issued a decision abolishing the applicant's right to compensation for reduced ability to work as of 21 September 1991. The applicant appealed.

11. On 29 October 1999 the Central Office dismissed the applicant's appeal and upheld the first-instance decision.

12. On 7 December 1999 the applicant brought an action in Administrative Court (*Upravni sud Republike Hrvatske*) contesting the second-instance decision.

13. On 14 November 2002 the Administrative Court quashed the Central Office's decision of 29 October 1999 for incomplete facts.

14. In the fresh appellate proceedings, on 6 February 2003 the Central Office quashed the first-instance decision of 28 June 1999 and remitted the case to the Regional Office.

15. In the fresh first-instance proceedings, on 23 July 2003 the Regional Office restored the applicant's right to compensation for reduced ability to work and decided that its payment should be resumed as of 1 July 1995. On 18 August 2003 the applicant appealed, arguing that she should also be paid the outstanding instalments of compensation for reduced ability to work in the period before 1 July 1995.

16. On 6 May 2004 the Central Office dismissed the applicant's appeal and upheld the first-instance decision of 23 July 2003.

17. On 29 June 2004 the applicant brought her second action in the Administrative Court challenging the second-instance decision of 6 May 2004.

18. On 25 January 2007 the Administrative Court again quashed the contested decision for incomplete facts.

19. In the fresh appellate proceedings, on 17 May 2007 the Central Office quashed the first-instance decision of 23 July 2003 and remitted the case to the Regional Office.

20. In the fresh first-instance proceedings, on 4 September 2007 the Regional Office adopted a new decision and dismissed the applicant's request for payment of compensation for reduced ability to work in the period prior to 1 July 1995. The applicant appealed on 10 October 2007.

21. On 29 November 2007 the Central Office quashed the first-instance decision of 4 September 2007 and remitted the case to the Regional Office.

22. As in the fresh first-instance proceedings the Regional Office did not issue a new decision within the statutory time-limit of sixty days, on 4 March 2008 the applicant lodged an appeal for failure to respond (*žalba zbog šutnje administracije*) with the Central Office.

23. On 13 May 2008 the Central Office allowed the applicant's appeal for failure to respond of 4 March 2008 and ordered the Regional Office to issue a decision in her case within thirty days.

24. On 16 July 2008 the Regional Office issued a decision dismissing again the applicant's request for payment of compensation for the period prior to 1 July 1995. The applicant appealed on 12 August 2008.

25. On 1 October 2008 the Central Office dismissed the applicant's appeal and upheld the first-instance decision of 16 July 2008.

26. On 1 December 2008 the applicant brought another action in the Administrative Court. She contested the decision of the Central Office of 1 October 2008.

27. On 10 June 2009 the Administrative Court dismissed the applicant's action.

28. On 19 August 2009 the applicant lodged a constitutional complaint with the Constitutional Court (*Ustavni sud Republike Hrvatske*) against the Administrative Court's judgment.

29. On 16 March 2011 the Constitutional Court declared inadmissible the applicant's constitutional complaint. It found that the applicant had not substantiated her complaint by any constitutional law arguments but had merely repeated the arguments raised in the proceedings before the Croatian Pension Fund and the Administrative Court. Therefore, the Constitutional Court had been unable to examine the merits of her constitutional complaint.

II. RELEVANT DOMESTIC LAW

A. The Constitutional Court Act

1. Relevant provisions

30. 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 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 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 an 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 an applicant for a violation of his or her constitutional rights ... The compensation shall be paid out of the State budget within three months of the date a request for payment is lodged."

2. The Constitutional Court's jurisprudence

31. In the period before 20 June 2007 the Constitutional Court when deciding constitutional complaints lodged under section 63 of the Constitutional Court Act concerning the length of proceedings pending before the Administrative Court, was not taking into consideration their overall duration as it was excluding the period during which the case had been pending before the administrative authorities. The case-law of the Constitutional Court in that period was summarised in *Božić v. Croatia*, no. 22457/02, § 23, 29 June 2006; *Počuča v. Croatia*, no. 38550/02, § 27, 29 June 2006; *Smoje v. Croatia*, no. 28074/03, § 34, 11 January 2007; and *Štokalo and others v. Croatia*, no. 15233/05, §§ 37-38, 16 October 2008).

32. Following the Court's judgments in the *Božić* and *Počuča* cases, on 20 June 2007 the Constitutional Court adopted a decision no. U-IIIA/4885/2005, which was published in the Official Gazette no. 67/2007 of 27 June 2007, whereby it changed its previous jurisprudence concerning the length of the proceedings before the Administrative Court. The Constitutional Court indicated that from then on it would also take into consideration the period during which the case had been pending before the administrative authorities if: (a) the complainants demonstrated that in that period they had resorted to remedies (an appeal and an action) for failure to respond, or (b) the main cause of the delay in that period had been repeated remittals mandated by incomplete findings of fact.

B. The Courts Act

1. Relevant provisions

33. The Courts Act (*Zakon o sudovima*, Official Gazette nos. 150/2005, 16/2007, 113/2008, 153/2009, 116/2010, 122/2010 (consolidated text) and 27/2011) entered into force on 29 December 2005. In its sections 27 and 28 it provided for a new remedy for the excessive length of proceedings, a request for the protection of the right to a hearing within a reasonable time. The new remedy replaced a constitutional complaint under section 63 of the Constitutional Court Act as the remedy for the length of proceedings. Sections 27 and 28 of the Courts Act, as in force at the material time, read as follows:

III. PROTECTION OF THE RIGHT TO A HEARING WITHIN A REASONABLE TIME

Section 27

"(1) A party to court proceedings who considers that the competent court failed to decide within a reasonable time on his or her rights or obligations or a criminal charge against him or her may lodge a request for the protection of the right to a hearing within a reasonable time with the immediately higher court.

(2) If the request concerns proceedings pending before the High Commercial Court of the Republic of Croatia, the High Court for Administrative Offences of the Republic of Croatia or the Administrative Court of the Republic of Croatia, the request shall be decided by the Supreme Court of the Republic of Croatia.

(3) The proceedings for deciding the request referred to in paragraph 1 of this section shall be urgent.

Section 28

(1) If the court referred to in section 27 of this Act finds the request well founded, it shall set a time-limit within which the court before which the proceedings are pending must decide on a right or obligation of, or a criminal charge against, the person who lodged the request, and shall award him or her appropriate compensation for the violation of his or her right to a hearing within a reasonable time.

(2) The compensation shall be paid out of the State budget within three months from the date the party's request for payment is lodged.

(3) An appeal, to be lodged within fifteen days with the Supreme Court, lies against a decision on the request for the protection of the right to a hearing within a reasonable time. No appeal lies against the Supreme Court's decision but one may lodge a constitutional complaint."

34. Until the 2009 Amendments to the Courts Act (*Zakon o izmjenama i dopunama Zakona o sudovima*, Official Gazette no. 153/2009), that entered

into force on 29 December 2009, a constitutional complaint under section 63 of the Constitutional Court Act could still be lodged against the Supreme Court's decisions rendered under sections 27(2) on 28(3) of the Courts Act.

2. The case-law of the Supreme Court

35. In the period between 29 December 2005 and 25 November 2007 the Supreme Court when deciding requests for the protection of the right to a hearing within a reasonable time lodged concerning the length of proceedings pending before the Administrative Court, followed the above described jurisprudence of the Constitutional Court (see paragraph 31 above) and was thus not taking into consideration their overall duration as it was excluding the period during which the case had been pending before the administrative authorities.

36. On 26 November 2007 the Supreme Court adopted a decision no. Uzp 309/07-6 bringing its own case-law in line with the change in the Constitutional Court's jurisprudence (see paragraph 32 above).

C. The Administrative Procedure Act

37. The relevant provisions of the Administrative Procedure Act (*Zakon o općem upravnom postupku*, Official Gazette of the Socialist Federal Republic of Yugoslavia 47/1986 (consolidated text), and Official Gazette of the Republic of Croatia no. 53/1991) governing an appeal for failure to respond (*žalba zbog šutnje administracije*), are set out in *Rauš and Rauš-Radovanović v. Croatia* (dec.), no. 43603/05, 2 October 2008.

D. The Administrative Disputes Act

38. The relevant provisions of the Administrative Disputes Act (*Zakon o upravnim sporovima*, Official Gazette of the Socialist Federal Republic of Yugoslavia no. 4/1977, and Official Gazette of the Republic of Croatia nos. 53/1991, 9/1992 and 77/1992) governing an action for failure to respond, *tužba zbog šutnje administracije*) are set out in *Rauš and Rauš-Radovanović*, cited above.

THE LAW

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

39. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

40. The Government contested that argument.

41. The applicant also complained under Article 13 of the Convention about the refusal of the administrative authorities to enforce the judgments of the Administrative Court.

42. The Court reiterates that it is master of the characterisation to be given in law to the facts of the case, and that it is therefore not bound by the characterisation given by the applicant or the Government. A complaint is characterised by the facts alleged in it and not merely by the legal grounds or arguments relied on (see, for example, *Şerife Yiğit v. Turkey* [GC], no. 3976/05, § 52, ECHR 2010-...; *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 54, ECHR 2009-...; and *Guerra and Others v. Italy*, 19 February 1998, § 44, *Reports of Judgments and Decisions* 1998-I).

43. In the Court's view the present case does not concern the non-enforcement in the strict sense where the enforcement of a court judgment is hindered by unjustified refusal of the domestic authorities to comply with a court judgment. Rather, the delay of the Croatian Pension Fund in complying with legal views expressed in the Administrative Court's judgments stems not from the Fund's refusal to do so but from the length of the administrative proceedings in question. The Court therefore considers that the applicant's complaint under Article 13 is absorbed by her length complaint.

A. Admissibility

44. The Government disputed the admissibility of this complaint arguing that the applicant had failed to exhaust domestic remedies.

1. The arguments of the parties

45. The Government submitted that in so far as the applicant's complaint concerned the length of the proceedings in their part before the Croatian Pension Fund she could have: (a) lodged an appeal for failure to respond to the Fund's Central Office under the Administrative Procedure Act (see paragraph 37 above) each time the Regional Office had failed to decide on

her request within the statutory time-limit of sixty days, and (b) brought an action for failure to respond in Administrative Court under the Administrative Disputes Act (see paragraph 38 above) each time the Central Office had failed to decide on her appeals within the statutory time-limit of sixty days. However, she had lodged an appeal for failure to respond for the first time only in March 2008 (see paragraph 22 above) and never brought an action for failure to respond.

46. To the extent that the applicant's complaint concerned the length of the proceedings in their part before the Administrative Court, the Government argued that in the period between 15 March 2002 and 29 December 2005 the applicant could have lodged a constitutional complaint under section 63 of the Constitutional Court Act (see paragraph 30 above), and after the last-mentioned date a request for the protection of the right to a hearing within a reasonable time with the Supreme Court (see paragraph 33 above). However, she had never resorted to either of these remedies.

47. The applicant denied the Government's arguments.

2. The Court's assessment

(a) As to the appeal and the action for failure to respond

48. The Court reiterates that in the *Božić* case it found that the main cause of the delay had been a deficiency in the procedural system allowing for repeated remittals mandated by incomplete findings of fact, and that an appeal and an action for failure to respond were neither designated for remedying that deficiency nor capable of doing so (see *Božić*, cited above, § 36). Since, in the Court's view, the length of the proceedings in the present case was also mainly caused by repeated remittals owing to the incomplete findings of fact and not by the failure of the domestic authorities to give their decisions within the statutory time-limits, it considers that the applicant, in order to exhaust domestic remedies, was not obliged to bring an action for failure to respond or use an appeal for failure to respond more assiduously.

(b) As to the constitutional complaint and the request for the protection of the right to a hearing within a reasonable time

49. Neither was the applicant obliged to lodge a constitutional complaint under section 63 of the Constitutional Court Act in the period between 15 March 2002 and 29 December 2005 nor a request for the protection of the right to a hearing within a reasonable time in the period between 29 December 2005 and 30 April 2007 (the date on which she lodged her application with the Court). Namely, as the Court noted in its judgments in the cases of *Počuča*, *Božić* and *Štokalo and others* (see *Počuča*, cited above, § 37; *Božić*, cited above, § 34; and *Štokalo and others*, cited above, § 64),

the Constitutional Court, when deciding constitutional complaints concerning the length of proceedings pending before the Administrative Court, was not taking into consideration their overall duration as it was excluding the period during which the case had been pending before the administrative authorities (see paragraph 31 above). That approach was followed by county courts and the Supreme Court after a constitutional complaint, as a remedy for the length of proceedings, was replaced by a request for the protection of the right to a hearing within a reasonable time when the new Courts Act entered into force on 29 December 2005 (see paragraph 35 above).

50. The Court has already noted that that approach of the Constitutional Court differed from the one of the Court as it did not cover all stages of the proceedings, and held that for that reason a constitutional complaint alone could not be considered an "effective" remedy within the meaning of Articles 35 § 1 and 13 of the Convention in respect of the length of administrative proceedings (see *Počuča*, cited above, loc. cit.; and *Božić*, cited above, loc. cit.).

51. The Court however notes that, following the Court's judgments in the *Božić* and *Počuča* cases, the Constitutional Court adopted a decision on 20 June 2007 (which was published in the Official Gazette on 27 June 2007) whereby it changed its previous jurisprudence concerning the length of the proceedings before the Administrative Court, and brought it into conformity with the Court's case-law (see paragraph 32 above). Nevertheless, that was after the applicant in the present case lodged her application with the Court on 30 April 2007. In this connection the Court reiterates that the issue whether domestic remedies have been exhausted is normally determined by reference to the date when the application was lodged with the Court (see *Baumann v. France*, no. 33592/96, § 47, ECHR 2001-V). While it is true that this rule is subject to exceptions which may be justified by the specific circumstances of each case (see, for example, *Brusco v. Italy* (dec.), no. 69789/01, ECHR 2001-IX; and *Nogolica v. Croatia* (dec.), no. 77784/01, ECHR 2002-VIII), the Court considers, having due regard to the subsidiary character of the Convention machinery, that in the present case there are no special circumstances to justify making an exception to that rule. Therefore, the applicant was not bound to lodge a constitutional complaint or a request for the protection of the right to a hearing within a reasonable time in order to exhaust domestic remedies as required by Article 35 § 1 of the Convention.

(c) As to the aggregate of remedies

52. The Court reiterates that even if a single remedy does not by itself entirely satisfy the requirement of "effectiveness", the aggregate of remedies afforded by domestic law may do so (see, for example, *Lukenda v. Slovenia*, no. 23032/02, § 67, 6 October 2005). Therefore it remains to be

examined whether or not the aggregate of remedies could satisfy the requirement

53. Since, as already noted above (see paragraph 48 above) an appeal and an action for failure to respond were not, in the circumstances of the present case, capable of accelerating the proceedings in their part before the Croatian Pension Fund, the Court is unable to conclude that these remedies could have increased the effectiveness of a constitutional complaint or a request for the protection of the right to a hearing within a reasonable time. As neither constitutional complaint nor a request for the protection of the right to a hearing within a reasonable time alone could be considered effective remedies for the length of administrative proceedings in the period before 20 June 2007 (see paragraphs 49-51 above), it follows that the aggregate of available remedies did not in the present case satisfy the requirement of "effectiveness" under Article 35 § 1 of the Convention (see *Božić*, cited above, § 36).

(d) Conclusion

54. In the light of the foregoing, it follows that the Government's objection of failure to exhaust domestic remedies must be dismissed.

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

B. Merits

1. Period to be taken into consideration

56. The period to be taken into consideration began only on 6 November 1997, the day after the entry into force of the Convention in respect of Croatia. However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time.

The period in question ended on 16 March 2011. It thus lasted thirteen years and four months for two levels of jurisdiction.

2. Reasonableness of the length of the proceedings

57. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Cocchiarella v. Italy* [GC], no. 64886/01, § 68, ECHR 2006-V; and *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

58. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see, for example, *Sefcsuk v. Hungary*, no. 37501/06, §§ 14 and 16-18, 9 December 2008).

59. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

60. The applicant further complained under Article 3 of the Convention that the manner in which the domestic authorities had dealt with her case amounted to degrading treatment. She also complained under Article 14 of the Convention and Article 1 of Protocol No. 12 thereto that she had been discriminated against on the basis of her Serbian origin.

61. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court considers that the present case does not disclose any appearance of a violation of any of the above Articles of the Convention. In particular, the case raises no issue under Article 3 of the Convention and there is no indication of discriminatory treatment because there is no evidence that the domestic authorities, when examining the applicant's case, were lead by improper motives such as the applicant's ethnic origin.

62. It follows that these complaints are inadmissible under Article 35 § 3 (a) of the Convention as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 thereof.

III. 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 53,041 euros (EUR) in respect of pecuniary damage and EUR 16,000 in respect of non-pecuniary damage.

65. The Government contested these claims.

66. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 9,600 in respect of non-pecuniary damage.

B. Costs and expenses

67. The applicant also claimed EUR 2,528.49 for the costs and expenses incurred before the Court.

68. The Government contested the claim.

69. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the applicant, who was not represented by a lawyer, the sum of EUR 100 for the proceedings before the Court.

C. Default interest

70. 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 excessive length of the proceedings admissible and the remainder of the application inadmissible;

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

3. *Holds*

(a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into Croatian kunas at the rate applicable at the date of settlement:

(i) EUR 9,600 (nine thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(ii) EUR 100 (hundred 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 21 June 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Peer Lorenzen
President