

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

SECOND SECTION

CASE OF PAVLOVIĆ v. CROATIA

(Application no. 62744/19)

JUDGMENT

STRASBOURG

17 December 2024

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



In the case of Pavlović v. Croatia,

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

Pauliine Koskelo*, President*,
Jovan Ilievski,
Davor Derenčinović*, judges*,
and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 62744/19) 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") on 28 November 2019 by a Croatian national, Mr Rikard Pavlović ("the applicant"), who was born in 1966, lives in Split and was represented by Mr T. Vukičević, a lawyer practising in Split;

the decision to give notice of the application to the Croatian Government ("the Government"), represented by their Agent, Ms Š. Stažnik;

the parties' observations;

Having deliberated in private on 26 November 2024,

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

SUBJECT MATTER OF THE CASE

1. The application concerns the refusal of the domestic authorities in pre-bankruptcy settlement proceedings (*postupak predstečajne nagodbe*, hereafter "PBS proceedings") to examine the applicant's claim for payment of advocate's fees.

I. LEGAL BACKGROUND TO THE CASE

2. PBS proceedings were regulated by the Financial Operations and Pre-Bankruptcy Settlement Procedure Act (hereafter "PBS Act"), which entered into force on 1 October 2012.

3. The proclaimed aims of PBS proceedings were (i) enabling debtors which experienced financial difficulties to undergo financial restructuring with a view to becoming solvent again, and (ii) providing creditors with more favourable conditions for the settlement of their claims compared to (ordinary) bankruptcy proceedings.

4. PBS proceedings could be instituted only at the proposal of the debtor and were conducted before the domestic payments agency FINA and the relevant commercial court.

5. Creditors had to report their claims within thirty days from the publication of the announcement on FINA's website that PBS proceedings had been opened against the debtor. The debtor also had to make a list of its obligations to creditors.

6. Pursuant to section 54 of the PBS Act such a report had to contain, *inter alia*, "the legal basis of the claim and its amount" (*pravnu osnovu tražbine i njezinu visinu*) and "a proof of the existence of the claim and its amount" (*dokaz o postojanju tražbine i njezine visine*). Documents proving the claim or from which the claim originated had to be enclosed with the report. Incomplete reports were to be declared inadmissible.

7. Reported claims which the debtor accepted and those included in its list of obligations were to be examined in PBS proceedings.

8. The debtor and the creditors had to agree on a financial restructuring plan, which served as a basis for a future settlement. If approved by the relevant commercial court, the plan became a judicial settlement with the force of *res judicata*.

9. Section 71 provided that the opening of PBS proceedings produced legal effects in respect of all creditors' claims against the debtor generated before the opening of those proceedings, save for the claims of the so-called segregation and secured creditors and priority claims (*tražbine izlučnih i razlučnih vjerovnika i prioritetne tražbine*).

10. Section 81(2) provided that after the settlement became final it was no longer possible to bring a civil action or institute any other proceedings to pursue claims generated before the opening of PBS proceedings which had not been reported in those proceedings by the creditors or listed by the debtor as its obligations.

II. THE PBS PROCEEDINGS IN THE APPLICANT'S CASE

11. On 21 July 2015 the domestic payments agency FINA opened PBS proceedings against the company P. and invited the creditors to report their claims until 20 August 2015.

12. On 19 August 2015 the applicant reported his claim in the amount of 107,336.67 Croatian kunas (HRK; i.e. 14,246 euros (EUR)). The claim corresponded to the legal services he as an advocate had provided for the company in question. He enclosed a list of proceedings in which he had represented the company, list of actions undertaken in each of those proceedings, calculation of advocate's fees for each action, as well as calculation of the statutory default interest. The applicant also enclosed various documents from those proceedings as evidence that he had indeed undertaken those actions.

13. In a decision of 8 September 2015 FINA established that the documents submitted by the applicant proved the existence of a business relationship between him and the company P. but were not "the legal basis of the claim and an indisputable proof of [its] amount" (see paragraph 6 above). FINA therefore invited the applicant to supplement his report with "the legal basis of the claim, a proof of the existence of the claim and a proof of its amount" without any further specification.

14. In reply, on 15 September 2015 the applicant provided detailed explanation as to how, depending on the value of the subject-matter of the dispute in each case, he calculated the amount of advocate's fees pursuant to the Scale of Advocates' Fees.

15. By a decision of 6 October 2015, FINA declared the applicant's report inadmissible because he had not provided "the legal basis of the claim and a proof of its amount and existence".

16. The applicant appealed to the Ministry of Finance arguing that the legal basis for his claim was the power-of-attorney whereby the company P. authorised him to represent it in the proceedings listed in his report.

17. On 21 March 2016 the Ministry dismissed his appeal. It held that the applicant had not submitted any invoices.

18. The applicant then brought an action for judicial review in the Split Administrative Court against the Ministry's decision. He reiterated his appellate argument (see paragraph 16 above), added that an invoice was not the only proof of the existence of a claim and its amount, and asked that the director of the company P. be heard as a witness.

19. On 31 March 2017 the Administrative Court dismissed the applicant's action. It held that there had been a legal basis for the advocate-client relationship between the applicant and the company P. but that he had not furnished evidence of the existence of the claim and its amount such as invoices or a retainer agreement. The hearing of the witness proposed by the applicant had thus been unnecessary.

20. The applicant appealed arguing that the administrative and judicial authorities had not called into question the fact that he had provided legal services for the company P. or the authenticity of the supporting documents he has submitted as evidence. He also referred to the domestic case-law to the effect that an invoice was not a proof that a claim was well-founded.

21. On 15 February 2018 the High Administrative Court dismissed the appeal and upheld the first-instance judgment. It held that applicant's report had been justifiably declared inadmissible because he had not submitted any invoices.

22. The applicant then lodged a constitutional complaint alleging a violation of his right to a fair hearing and arguing that the decisions of the administrative and judicial authorities lacked reasons and were arbitrary.

23. On 15 May 2019 the Constitutional Court declared his constitutional complaint inadmissible, and on 29 May 2019 notified him of its decision. It held that the decisions of the administrative and judicial authorities were sufficiently reasoned and based on a constitutionally acceptable interpretation and application of the relevant law.

III. COMPLAINTS

24. The applicant complained, under Article 6 § 1 of the Convention, that the decisions of the domestic authorities had been arbitrary, insufficiently reasoned and that they amounted to excessive formalism, thus being in breach of his right of access to a court. He also complained of a breach of the principle of equality of arms in that the Split Administrative Court had refused to hear the witness he had proposed (see paragraphs 18-19 above).

25. The applicant also complained, under Article 13 of the Convention, about the Constitutional Court's decision to declare inadmissible his constitutional complaint.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION CONCERNING ACCESS TO A COURT

A. Admissibility

26. The Government submitted that the PBS proceedings did not concern the determination of "civil rights" and were by their nature non-contentious. Article 6 § 1 of the Convention was therefore inapplicable because its applicability in civil matters depended on the existence of a "dispute" over a civil right recognised under domestic law.

27. The Court first notes that the proceedings complained of did not consist only of the PBS proceedings but also of the ensuing judicial-review (administrative-dispute) proceedings and the proceedings before the Constitutional Court.

28. It further reiterates that the rights conferred by the domestic legislation can be substantive, or procedural, or, alternatively, a combination of both. Where a substantive right recognised in domestic law is accompanied by a procedural right to have that right enforced through the courts, there can be no doubt about the fact that there is a right within the meaning of Article 6 § 1 (see *Regner v. the Czech Republic* [GC], no. 35289/11, §§ 101-102, 19 September 2017).

29. Under Croatian law the right of advocates to obtain remuneration for their services is a substantive right recognised by section 18(1) of the Advocates' Act, which is accompanied by a procedural right to have it enforced, normally by bringing an action in the civil courts. The right in question is therefore "civil" both under Croatian law and for the purposes of Article 6 § 1 of the Convention.

30. Having regard to the relevant provisions of the PBS Act, it is clear that once PBS proceedings were opened against a client, the substantive right in

question could only be determined and enforced in those proceedings (see paragraphs 5, 7 and 9-10 above).

31. In the present case a dispute over the applicant's accompanying procedural right to have his substantive right enforced arose between him and the relevant administrative authorities when he appealed against FINA's decision to declare his report inadmissible (compare *Božić v. Croatia*, no. 22457/02, § 26, 29 June 2006).

32. The Government's objection must therefore be rejected.

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

B. Merits

34. The Court notes that FINA's decision to declare the applicant's report inadmissible as incomplete prevented him from pursuing his civil claim against the company P. both in the PBS or any other proceedings (see paragraph 10 above). It thus amounted to a restriction of his right of access to a court.

35. The relevant principles emerging from the Court's case-law concerning the right of access to a court are summarised in *Zubac v. Croatia* ([GC], no. 40160/12, §§ 76-79 and 90-99, 5 April 2018).

36. The Court notes that under section 54 of the PBS Act the creditors, when reporting their claims, had to enclose a "a proof of the existence of the claim and its amount", and that the domestic authorities ultimately found the applicant's report inadmissible because he had not fulfilled that requirement (see paragraphs 6, 13, 15 and 19 above). However, the clarification which kind of documents constituted such a proof (invoices, retainer agreement) came too late (see paragraphs 17, 19 and 21 above), namely at the time when the applicant could no longer supplement his report, it being understood that in its decision of 8 September 2015 FINA did not specify the type of documents requested (see paragraph 13 above).

37. Given that the Government did not provide any case-law examples or any other materials (for example, FINA's instructions, standardised forms etc.) existing at the relevant time from which the applicant could have discerned which documents he had to enclose with his report to fulfil the said requirement, the Court finds that this requirement was unforeseeable. The resultant restriction of his right of access to a court for failing to meet that requirement was therefore disproportionate and thus in breach of that right.

38. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. OTHER COMPLAINTS

39. The applicant also raised other complaints under Article 6 § 1 of the Convention and the complaint under Article 13 thereof (see paragraphs 24-25 above). Having regard to the facts of the case, the submissions of the parties, and its findings above, the Court considers that those complaints are to be considered absorbed by the applicant's access-to-court complaint. The Court therefore considers that it has dealt with the main legal question raised by the case and that there is no need to examine those remaining complaints (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. The applicant claimed 14,408 euros (EUR) in respect of pecuniary damage and EUR 10,000 in respect of non-pecuniary damage. He also claimed EUR 1,985 in respect of costs and expenses incurred before the domestic courts and EUR 1,327 for those incurred before the Court.

41. The Government contested these claims.

42. The Court considers that it cannot speculate as to whether the applicant's claim against the company P. was well-founded and what the eventual outcome might have been if it had been examined in the PBS proceedings. The Court therefore does not discern a sufficient causal link between the violation found and the pecuniary damage alleged. It therefore rejects this claim.

43. On the other hand, the Court awards the applicant EUR 8,300 in respect of non-pecuniary damage, plus any tax that may be chargeable.

44. As regards the costs and expenses, the Court first notes that the applicant, who is an advocate, represented himself before the domestic courts and lodged the application with the Court himself. The Court therefore awards him EUR 830 for his observations of 11 June 2021, which were prepared by his legal representative, plus any tax that may be chargeable to the applicant.

45. Since the applicant did not submit itemised particulars of his claim for costs and expenses or any relevant supporting documents, although he was invited to do so, the Court is unable to determine the amount of his postal expenses (if any), whether he paid any administrative or court fees in the domestic proceedings and whether he incurred translation expenses in the proceedings before the Court. It therefore does not award him any sum on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 6 § 1 of the Convention concerning access to a court admissible;

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

3. *Holds* that there is no need to examine the admissibility and merits of the remaining complaints;

4. *Holds,*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts:
      (i) EUR 8,300 (eight thousand three hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 830 (eight hundred and thirty 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;

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

Done in English, and notified in writing on 17 December 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Dorothee von Arnim Deputy Registrar	Pauliine Koskelo President