

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

FIRST SECTION

CASE OF SAMARDŽIĆ v. CROATIA

(Application no. 32486/14)

JUDGMENT

STRASBOURG

20 July 2017

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Samardžić v. Croatia,

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

Kristina Pardalos, *President,*
Ksenija Turković,
Tim Eicke, *judges,*

and Renata Degener, *Deputy Section Registrar,*

Having deliberated in private on 27 June 2017,

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

PROCEDURE

1. The case originated in an application (no. 32486/14) 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 Miroslav Samardžić ("the applicant"), on 15 April 2014.

2. The applicant was represented by Mr M. Ilić, a lawyer practising in Pula. The Croatian Government ("the Government") were represented by their Agent, Ms Š. Stažnik.

3. The applicant alleged, in particular, that he had been denied access to the Supreme Court.

4. On 30 June 2014 the above complaint under Article 6 § 1 of the Convention concerning access to a court was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1955 and lives in Pula.

A. Background to the case

6. In 1985 the applicant was employed by the T. company of Pula. On 22 August 1992 he sustained a work-related injury. He continued working for the T. company in another post.

7. On 6 February 2004 the applicant was made redundant following organisational changes within the company. The following day he

concluded an agreement with the T. company shortening the notice period for the termination of his employment.

8. On 19 February 2004 the applicant was given his redundancy notice and his employment was terminated on 23 February 2004.

9. On 9 April 2004 the applicant was granted a disability pension with effect from 24 February 2004 on the grounds of his inability to work.

B. Civil proceedings for damages

10. On 28 June 2004 the applicant instituted civil proceedings against the T. company in the Pula Municipal Court (*Općinski sud u Puli*). He alleged that he would have received more income if he had not sustained the work-related injury in 1992. He claimed damages relating to the difference between his disability pension and the salary he had received until the termination of his employment.

11. On 20 February 2008 the Pula Municipal Court dismissed his claim as unfounded.

12. The applicant appealed against the first-instance judgment, challenging all the factual and legal aspects of the case.

13. On 12 September 2011 the Pula County Court (*Županijski sud u Puli*), relying on section 373a of the Civil Procedure Act, dismissed the applicant's appeal as unfounded. It agreed with the outcome of the case but held that the first-instance court had failed to take into account all the facts from the proceedings that had supported the dismissal of the claim. The relevant part of the judgment reads as follows:

> "... this appellate court finds that although the first-instance court failed to take into account all the facts emerging from the first-instance proceedings which meant [the plaintiff's] claim had to be dismissed, the decision on dismissing the claim as unfounded is in any event correct, therefore the first-instance judgment is upheld by application of section 373a of the Civil Procedure Act.
>
> ...
>
> This appellate court therefore holds that the plaintiff's claim was certainly to be dismissed, but for the reasons set out in this appellate decision; that is, that the reasons the first-instance court stated in the reasoning of its decision would not suffice for the claim to be dismissed.
>
> Therefore the first-instance decision is upheld on the basis of section 373a of the Civil Procedure Act ..."

14. On 5 December 2011 the applicant lodged an appeal on points of law with the Supreme Court (*Vrhovni sud Republike Hrvatske*), challenging the lower courts' judgments. He stated that the appellate court had relied expressly on section 373a of the Civil Procedure Act, and that therefore he was lodging his appeal on points of law on the basis of section 382(1)(3) of that Act.

15. On 14 May 2013 the Supreme Court declared the applicant's appeal on points of law inadmissible on the grounds that the appellate court in fact had not applied section 373a of the Civil Procedure Act, and that therefore his appeal on points of law could not be allowed. The relevant part of the decision reads as follows:

> "The first-instance court and the appellate court found that the plaintiff had not been dismissed because of his inability to work caused by the work-related injury, but that his employment had been terminated by dismissal due to redundancy and that therefore there was no causal link between his dismissal and the granting of the disability pension, so his claim for damages ... was dismissed as unfounded.
>
> Therefore, in this court's assessment, the requirements for the application of section 373a of the Civil Procedure Act were not met, given that the appellate court did not establish, in the manner prescribed by section 373a of the Civil Procedure Act, a different set of facts to the one established by the first-instance court, but based its decision on the same facts."

16. The applicant subsequently complained to the Constitutional Court (*Ustavni sud Republike Hrvatske*) about the Supreme Court's decision on his appeal on points of law. He made no allegations of any violation of his rights in respect of the proceedings before the first-instance court or the appellate court.

17. On 16 October 2013 the Constitutional Court dismissed the applicant's constitutional complaint as manifestly ill-founded. The decision was served on the applicant's representative on 25 October 2013.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Civil Procedure Act

18. The relevant provisions of the Civil Procedure Act (*Zakon o parničnom postupku,* Official Gazette nos. 53/1991, 91/1992, 112/1999, 129/2000, 88/2001, 117/2003, 88/2005, 2/2007, 84/2008, 96/2008, 123/2008, 57/2011 and 25/2013), as in force at the material time, provided:

Section 373a

> "An appellate court shall by a judgment dismiss an appeal and uphold the first-instance judgment or by a judgment reverse the first-instance judgment, if it finds on the basis of the file:
>
> 1) that the relevant facts are undisputed between the parties, or
>
> 2) that they can be established on the basis of documents and evidence contained in the file, irrespective of whether the first-instance court took those documents or that evidence into account when delivering its decision.
>
> When delivering the decision referred to in paragraph 1 of this section, the appellate court is authorised to take into account facts whose existence the first-instance court

incorrectly established on the basis of other facts which, in the opinion [of the appellate court], were correctly established.

..."

Section 382

"The parties may lodge an appeal on points of law against an appellate court's judgment:

...

3) if the appellate court's judgment was rendered under sections 373a and 373b of this Act.

..."

B. Supreme Court case-law

19. In cases nos. Rev-x 1267/11-2 of 17 January 2012 and Revr 1433/11-2 of 14 March 2012, the Supreme Court held that for an appeal on points of law to be allowed on the basis of section 382(1)(3) of the Civil Procedure Act in relation to section 373a of that Act, it was not enough for the appellate court to have formally relied on section 373a of the Civil Procedure Act when rendering its decision, but that it must have been applied in substance.

20. In the case no. Rev-x 976/11-2 of 29 February 2012, the Supreme Court considered whether section 373a of the Civil Procedure Act applied even if an appellate court had not formally relied on that section in its decision.

THE LAW

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

21. Relying on Article 6 § 1 and Article 13 of the Convention, the applicant complained about the Supreme Court's refusal to examine his appeal on points of law on the merits. The Court observes that when the question of access to a court arises, the guarantees under Article 13 of the Convention are absorbed by those of Article 6 (see *Ernst and Others v. Belgium*, no. 33400/96, § 80, 15 July 2003). The Court, being master of the characterisation to be given in law to the facts of the case, will therefore examine this complaint solely under 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

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

(a) The applicant

23. The applicant submitted that he had lodged an appeal on points of law against the appellate court's judgment because the appellate court had relied expressly on section 373a of the Civil Procedure Act when delivering its judgment and had provided reasons for applying that section in substance. The applicant argued further that the Supreme Court had erred when holding that section 373a of the Act had not in fact been applied, submitting that the appellate court had clearly not based its decision on the same facts as the first-instance court.

(b) The Government

24. The Government submitted that the appellate court, by relying in purely formal terms on section 373a of the Civil Procedure Act in its judgment, could not have allowed an appeal on points of law as that section had to be applied in substance. The Government pointed out that the Supreme Court alone had had the competence to assess whether section 373a had indeed been applied, and thus whether an appeal on points of law on that basis had been allowed. The Government noted that the Supreme Court's case-law (see paragraphs 19-20 above) had made such requirements foreseeable in practice.

25. The Government argued that the appellate court had not established facts that were different to those of the first-instance court, but had merely had a different view of their relevance to the case. The Supreme Court had therefore correctly held that section 373a of the Civil Procedure Act, allowing for an appeal on points of law, had not been applied.

2. The Court's assessment

(a) General principles

26. The Court reiterates that Article 6 § 1 of the Convention secures to everyone the right to have a claim relating to his civil rights and obligations brought before a court (see *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, § 84, 29 November 2016). The right of

access, namely the right to institute proceedings before a court in civil matters, constitutes one aspect of this "right to court" (see, notably, *Golder v. the United Kingdom*, 21 February 1975, §§ 28-36, Series A no. 18). However, the right of access to a court is not absolute, but may be subject to limitations; these are permitted by implication since the right of access by its very nature calls for regulation by the State, regulation which may vary in time and in place according to the needs and resources of the community and of individuals (see *Lupeni Greek Catholic Parish and Others,* cited above, § 89, and *Stanev v. Bulgaria* [GC], no. 36760/06, § 230, ECHR 2012). Nonetheless, the limitations applied must not restrict the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see *Lupeni Greek Catholic Parish and Others*, cited above, § 89).

27. Furthermore, the Convention does not compel the Contracting States to set up courts of appeal in civil cases. 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, among many other authorities, *Andrejeva v. Latvia* [GC], no. 55707/00, § 97, ECHR 2009; *Egić v. Croatia*, no. 32806/09, § 46, 5 June 2014, and *Shamoyan v. Armenia*, no. 18499/08, § 29, 7 July 2015).

28. A particularly strict interpretation of a procedural rule may deprive an applicant of the right of access to court (see *Běleš and others v. the Czech Republic*, no. 47273/99, § 69, 12 November 2002, and *Zvolský and Zvolská v. the Czech Republic*, no. 46129/99, § 55, 12 November 2002). The manner in which Article 6 § 1 applies to courts of appeal or of cassation depends on the special features of the proceedings concerned, and account must be taken of the entirety of the proceedings conducted in the domestic legal order, and the court of cassation's role in those proceedings; the conditions of admissibility for an appeal on points of law may be stricter than for an ordinary appeal (see, for example, *Bulfracht Ltd v. Croatia*, no. 53261/08, § 35, 21 June 2011).

(b) Application of those principles to the present case

(i) As to whether there was a restriction of the applicant's right to a court

29. The Court observes that in the present case the appellate court expressly stated that it had delivered its judgment on the basis of section 373a of the Civil Procedure Act (see paragraph 13 above). In such cases, parties can lodge an appeal on points of law to the Supreme Court under section 382(1)(3) of the same Act (see paragraph 18 above). The

applicant relied on the appellate court's statement and the said provision, and lodged an appeal on points of law against the appellate court's judgment (see paragraph 14 above). The Supreme Court, however, declared the applicant's appeal on points of law inadmissible, finding that section 373a had not in fact been applied (see paragraph 15 above).

30. In the Court's view, the applicant cannot be regarded as having acted unreasonably in relying on the appellate court's statement and believing that he was entitled to lodge an appeal on points of law under section 382(1)(3) of the Civil Procedure Act. Consequently, the Supreme Court's decision declaring his appeal on points of law may be regarded as imposing a restriction on the applicant's right of access to a court. The Court must therefore examine whether that right was unduly restricted.

(ii) As to whether the restriction pursued a legitimate aim

31. As regards the courts of cassation appeal, the Court has held that given the special nature of their role, which is limited to reviewing whether the law has been correctly applied, the procedure followed in such courts may be more formal (see *Meftah and Others v. France* [GC], nos. 32911/96, 35237/97 and 34595/97, § 41, ECHR 2002 VII). In this connection, it is true that the right of access to a court requires that disputes concerning civil rights and obligations be examined by a "tribunal" which has full jurisdiction, that is, jurisdiction to examine all questions of fact and law relevant to the dispute before it (see *Terra Woningen B.V. v. the Netherlands*, 17 December 1996, § 52, *Reports of Judgments and Decisions* 1996-VI; *Beaumartin v. France*, 24 November 1994, § 38, Series A no. 296-B, and *Obermeier v. Austria*, 28 June 1990, § 70, Series A no. 179). In situations such as the one in the present case, where the matter was already examined by two lower courts who had jurisdiction to, and did examine all questions of fact and law, limiting jurisdiction of the Supreme Court to question of law only, cannot in itself raise any issue under Article 6 § 1 of the Convention. Indeed, the Court has stressed that there is no right under Article 6 to lodge an appeal in civil matters (see *Cibicki v. Poland*, no. 20482/03, § 30, 3 March 2009).

(iii) As to whether the restriction was proportionate to the legitimate aim pursued

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

v. Spain, 28 October 1998, § 43, *Reports* 1998-VIII; and *Majski v. Croatia (no. 2)*, no. 16924/08, § 68, 19 July 2011).

33. In the present case the Supreme Court declared the applicant's appeal on points of law inadmissible because it found that the appellate court had not established facts that were different to the facts found by the first-instance court, but had based its decision on the same facts (see paragraph 15 above). In particular, it found that both the first-instance court and the appellate court had established that the applicant had not been dismissed because of his inability to work caused by the work-related injury, but that his employment had been terminated by dismissal due to redundancy, and that therefore there had been no causal link between his dismissal and the granting of the disability pension. The Supreme Court thus concluded that section 373a of the Civil Procedure Act had not in fact been applied by the appellate court in the case and that therefore the applicant's appeal on points of law was not allowed.

34. The Court is of the opinion that it is within the competence of the Supreme Court, as the highest court examining appeals on points of law, to assess whether the requirements for lodging such an appeal in a particular case have been met. Consequently, unless its findings can be regarded as arbitrary or manifestly unreasonable, the Supreme Court is entitled to reach a different conclusion to an appellate court as to whether a particular provision guaranteeing the possibility of lodging an appeal on points of law was applied by the appellate court (see, *mutatis mutandis*, *Dobrić v. Serbia*, nos. 2611/07 and 15276/07, § 54, 21 June 2011). In the present case, having regard to the Supreme Court's assessment of the manner in which the appellate court delivered its judgment and the reasons given for its conclusion that the appellate court had not established facts that were different to those found by the first-instance court, but had based its decision on the same facts (see paragraph 15 above), the Court is of the opinion that the Supreme Court's decision cannot be regarded as either manifestly unreasonable or arbitrary to the extent that it is incompatible with the requirements of Article 6 § 1 of the Convention. The Court further notes that this decision appears consistent with the general approach of the Supreme Court to this issue (see paragraphs 19-20 above).

35. In the Court's view, the only issue that could arise in a situation such as the present one would be related to the (im)possibility to bring the case before the Constitutional Court in respect of complaints relating to proceedings before the first instance court and the appellate court. However, the Court notes that the applicant in the present case only complained to the Constitutional Court about the Supreme Court decision to declare his appeal on points of law inadmissible, a complaint the Constitutional Court dismissed as manifestly ill-founded. He did not allege that there had been any violation of his rights in the proceedings before the lower courts (see paragraph 16 above).

36. In view of the above, and having found no arbitrariness in the Supreme Court's decision, the Court does not consider that the applicant's right of access to a court was restricted in such a way or to such an extent that the very essence of that right was impaired.

37. There has accordingly been no violation of Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

38. The applicant also complained under Article 6 § 1 of the Convention about the outcome of the proceedings and that, in breach of Article 13 of the Convention, he did not have an effective remedy against the decision of the Supreme Court given that the Constitutional Court declared his constitutional complaint inadmissible.

39. 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 this part of the application does not disclose any appearance of a violation of the Convention. It follows that it is inadmissible under Article 35 § 3 as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning the applicant's right of access to court admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 6 § 1 of the Convention;

Done in English, and notified in writing on 20 July 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener	Kristina Pardalos
Deputy Registrar	President