

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

FIRST SECTION

CASE OF ŽIC v. CROATIA

(Applications nos. 54115/15, 193/16 and 398/16)

JUDGMENT

STRASBOURG

19 May 2022

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



In the case of Žic v. Croatia,

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

Péter Paczolay, *President,*
Alena Poláčková,
Davor Derenčinović, *judges,*
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the applications (nos. 54115/15, 193/16 and 398/16) 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 27 October, 10 December and 29 December 2015 respectively by a Croatian national, Ms Seadeta Žic, born in 1955 and living in Rijeka ("the applicant") who was represented by Mr M. Zrilić, a lawyer practicing in Rijeka;

the decision to give notice to the Croatian Government ("the Government"), represented by their Agent, Mrs Š. Stažnik, of the complaints concerning the applicant's inability to have an enforcement title against a local authority executed, the breach of the principle of legal certainty and the domestic courts' refusal to award her salary arrears and to declare inadmissible the remainder of the applications;

the parties' observations;

Having deliberated in private on 26 April 2022,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the applicant's inability to have an enforcement title against a local authority executed and to obtain salary arrears.

2. The applicant worked for the Rijeka Municipality until 1991, when she was made redundant. On 29 July 1992 she obtained a judgment against the Municipality ordering her reinstatement. The judgment became final on 10 February 1993 and enforceable on 18 March 1993.

3. Meanwhile, on 30 December 1992, following a reorganisation of local government in Croatia, the Municipality ceased to exist, and its powers were transferred to the newly founded local government units the Rijeka Township and the Primorsko-Goranska County.

4. The applicant instituted three sets of proceedings where the first one concerns (non-)enforcement of the principal judgment and the remaining two concern payment of salary arrears.

I. ENFORCEMENT PROCEEDINGS

5. On 8 September 1993 the applicant applied for the enforcement of the judgment of 29 July 1992 against the Township. On 22 July 1994 the enforcement court ordered the Township to reinstate the applicant.

6. Upon a civil action by the Township, in 2002 the civil courts declared the enforcement inadmissible, finding that it was the County, and not the Township, which had succeeded the obligation to reinstate the applicant. On 3 June 2015 the Constitutional Court dismissed the applicant's constitutional complaint.

II. FIRST SET OF CIVIL PROEEDINGS FOR SALARY ARREARS

7. In 1993 the applicant instituted civil proceedings against the Township seeking payment of salary arrears for the period between 1 August 1991 and 1 January 1994. In 1995 the civil courts ruled in favour of the applicant and she received the entire amount of salary arrears awarded to her.

8. However, following an appeal on points of law by the Township, in 1999 the Supreme Court quashed that judgment.

9. Meanwhile, in 1998, the applicant instituted another set of civil proceedings against the Township, seeking payment of salary arrears for the period from 1 September 1997 onwards. Following the Supreme Court's decision of 1999, these proceedings were joined to those instituted in 1993.

10. In 2011 the civil courts dismissed the applicant's claim for salary arrears for the period between 1 September 1997 and 30 April 2007, noting that the enforcement of the judgment of 29 July 1992 had been declared inadmissible in respect of the Township. They also held that the question whether the Township was liable to pay her salary arrears for the period between 1 August 1991 and 1 January 1994 had to be resolved in the civil proceedings which the Township had meanwhile instituted against her (see paragraph 18 below).

11. On 9 June 2015 the Constitutional Court dismissed the applicant's constitutional complaint.

III. SECOND SET OF CIVIL PROEEDINGS FOR SALARY ARREARS

12. In 1994 the applicant instituted civil proceedings against the Township and the County seeking payment of salary arrears for the period between 1 February 1994 and 1 September 1997. In 1999 the civil courts allowed her claim in respect of the Township and dismissed it in respect of the County. The applicant received the entire amount of salary arrears awarded to her.

13. In 2002 the Supreme Court, following an appeal on points of law by the Township, reversed that judgment and dismissed the applicant's claim in

respect of the Township. It found that in fact it was the County which had succeeded the obligation to reinstate her and was thus liable to pay her salary arrears.

14. On 7 July 2005 the Constitutional Court quashed the Supreme Court's judgment and remitted the case to the first-instance court. It found that the Supreme Court had wrongly applied the relevant domestic law when concluding that the Township had not had an obligation to reinstate the applicant.

15. In the resumed proceedings the applicant sought a declaratory judgment stating that the Township had been liable to pay her salary arrears for the period between 1 January 1994 and 31 August 1997.

16. Her declaratory action was eventually declared inadmissible. In particular, the Supreme Court held that the applicant had not had any legal interest to seek a declaratory judgment, because she had already obtained the salary arrears, regardless of the fact that the judgment had subsequently been quashed. It deemed that the question whether the Township was liable to pay her salary arrears had to be resolved in the civil proceedings which the Township had meanwhile instituted against her (see paragraph 18 below).

17. On 9 June 2015 the Constitutional Court dismissed the applicant's constitutional complaint.

IV. OTHER RELEVANT FACTS

18. Meanwhile, following the decisions of the Supreme Court of 1999 and 2002 (see paragraphs 8 and 13 above), the Township instituted civil proceedings against the applicant seeking repayment of salary arrears initially awarded to her by the final judgments in 1995 and 1999 (see paragraphs 7 and 12 above). The civil courts ruled against the applicant. The proceedings are currently pending before the Constitutional Court.

V. COMPLAINTS

19. The applicant complained under Article 6 § 1 of the Convention that she was never reinstated in her post, despite having obtained an enforcement title to that effect against a local authority; that the domestic courts' decisions delivered against her had contradicted the Constitutional Court's decision of 7 July 2005 and were thus in breach of the principle of legal certainty; and that the domestic courts' decisions refusing her claims for salary arrears amounted to a breach of her rights under Article 1 of Protocol No. 1.

THE COURT'S ASSESSMENT

I. JOINDER OF THE APPLICATIONS

20. Having regard to the intertwined subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

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

21. The applicant complained that the judgment of 29 July 1992 obtained against a local authority remained unenforced.

22. Given the fact that the applicant's entitlement to enforcement of the judgment subsisted subsequent to the Convention's entry into force in respect of Croatia on 5 November 1997 and that the judgment has not been enforced yet, the Court finds that it has temporal jurisdiction and dismisses the Government's objection in this regard (compare *Krstić v. Serbia*, no. 45394/06, § 68, 10 December 2013).

23. The Court furthermore 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.

24. The Court observes that the reason stated by the domestic courts to ultimately refuse the enforcement of the judgment was that the applicant sought its enforcement against the wrong local authority, namely, against the Township instead of the County (see paragraph 6 above).

25. In this connection the Court reiterates that according to its constant case-law 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, *Cocchiarella v. Italy* [GC], no. 64886/01, § 89, ECHR 2006‑V; *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004; and *Reynbakh v. Russia*, no. 23405/03, § 24, 29 September 2005). The Court has frequently found violations of Article 6 § 1 of the Convention in cases where the State or a local authority had failed to comply with an enforceable judgment in the applicant's favour (see, for example, *Reynbakh*, cited above, §§ 27-28, and *Čikanović v. Croatia*, no. 27630/07, § 53, 5 February 2015).

26. If the applicant was thus not even required to resort to enforcement proceedings, it follows that she cannot suffer adverse consequences for directing her application for enforcement against the allegedly wrong authority. This is even more so in the situation of the present case where it was not clear which local authority had to reinstate the applicant, and where the domestic courts were delivering conflicting decisions on that issue. In such situations it is not incumbent on the applicant to identify the proper authority (see *Kostadin Mihaylov v. Bulgaria*, no. 17868/07, 27 March 2008) but for the State to facilitate such identification (see *Plechanow v. Poland*, no. 22279/04, § 109, 7 July 2009).

27. The foregoing considerations are sufficient for the Court to find that in the present case there has been a violation of Article 6 § 1 of the Convention regarding the non-enforcement of the judgment of 29 July 1992.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOOL NO. 1 TO THE CONVENTION

28. The applicant also complained that the domestic courts' decisions refusing her claims for salary arrears amounted to a breach of her right to the peaceful enjoyment of her possessions under Article 1 of Protocol No. 1.

29. As to the Government's objection that she failed to properly exhaust domestic remedies by not claiming salary arrears from the County, the Court finds that the issue is closely linked to the substance of the applicant's complaint and must therefore be joined to the merits (see *Plechanow*, cited above, §§ 93-94).

30. The Court furthermore finds that the complaint is not manifestly illfounded within the meaning of Article 35 § 3 (a) of the Convention, nor is it inadmissible on any other ground. It must therefore be declared admissible.

31. From the decisions of the domestic courts it is evident that the applicant's claims for salary arrears were ultimately rejected only because she had sued the wrong local authority, that is, for the same reason her application for enforcement of the judgment ordering her reinstatement was denied (see paragraph 6 above). Her claims for salary arrears thus had a sufficient basis in national law to be protected by Article 1 of Protocol No. 1.

32. The Court notes that the applicant's complaint under Article 1 of Protocol No. 1 is linked to her Article 6 § 1 complaint above. Accordingly, reiterating its findings in paragraphs 25-27 above, and referring to its case-law (see *Plechanow*, cited above, §§ 99-112), the Court considers that the State has failed to comply with its positive obligation to provide measures safeguarding the applicant's right to the effective enjoyment of her possessions.

33. It follows that the Government's objection concerning non-exhaustion of domestic remedies must be dismissed, and the Court concludes that there has been a violation of Article 1 of Protocol No. 1.

IV. OTHER COMPLAINTS

34. The applicant also complained under Article 6 § 1 of the Convention about the breach of the principle of legal certainty because the domestic courts' decisions in all three sets of proceedings were in contradiction with the decision of the Constitutional Court of 7 July 2005 (see paragraph 14 above).

35. Having regard to the facts of the case, the submissions of the parties, and its findings above, the Court considers that it has examined the main legal

questions raised in the present case. It thus considers that there is no need to give a separate ruling on the admissibility and merits of the remaining complaint (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

36. The applicant claimed 87,974 euros (EUR) in respect of pecuniary damage, which corresponds to salary arrears for the period between 1 September 1997 and 30 April 2007, together with the accrued statutory default interest. She also sought EUR 150,000 in respect of non-pecuniary damage, 90,258 Croatian kunas (HRK) in respect of costs and expenses incurred before the domestic courts and HRK 40,000 for those incurred before the Court. The Government contested these claims.

37. The Court finds that in the present case the most appropriate way of repairing the consequences of the violations found is to reopen the civil proceedings complained of (compare *Čikanović*, cited above, § 66). Since under section 428a of the Croatian Civil Procedure Act an applicant may seek the reopening of the civil proceedings in respect of which the Court has found a violation of the Convention, there is no call to award the applicant any sum in respect of pecuniary damage (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, §§ 32-33, ECHR 2000-XI).

38. On the other hand, the Court finds that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards her EUR 7,800 under that head, plus any tax that may be chargeable on that amount.

39. Having regard that the applicant can seek the reopening of the three sets of domestic civil proceedings and thereby obtain a fresh decision on costs before the civil courts and the Supreme Court (see paragraph 37 above), the Court considers it reasonable to award the sum of EUR 2,600 for the costs and expenses incurred before the Constitutional Court and EUR 4,000 for those incurred before the Court, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the complaints concerning non-enforcement of a judgment rendered in the applicant's favour under Article 6 § 1 of the Convention and the rejection of her claims for salary arrears under Article 1 of Protocol No. 1 admissible;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the non-enforcement of the judgment rendered in the applicant's favour;

4. *Holds* that there has been a violation of Article 1 of Protocol No. 1 of the Convention on account of the rejection of the applicant's claims for salary arrears;

5. *Holds* that there is no need to examine the admissibility and merits of the complaint under Article 6 § 1 of the Convention concerning the alleged breach of the principle of legal certainty;

6. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
   (i) EUR 7,800 (seven thousand eight hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (ii) EUR 6,600 (six thousand six 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 19 May 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt Deputy Registrar	Péter Paczolay President