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

FIRST SECTION

DECISION

Application no. 60123/16
Slaven ČOLAK
against Croatia

The European Court of Human Rights (First Section), sitting on 10 May 2022 as a Committee composed of:

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

Having regard to:

the application (no. 60123/16) against Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 12 October 2016 by a Croatian national, Mr Slaven Čolak, who was born in 1968 and lives in Zagreb ("the applicant") who was at the relevant time represented by Mr N. Berović, a lawyer practicing in Zagreb;

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

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns a court decision ordering the applicant to bear the costs in the amount of about 33,400 euros (EUR) for two adjourned hearings in civil proceedings which he had instituted against a bank.

2. On 6 March 2015 the applicant brought an action against a State-run bank (hereinafter "the respondent") with the Zagreb Civil Municipal Court seeking damages in the amount of 396,000,000 Croatian kunas (HRK; approximately EUR 52,800,000).

3. On 10 September 2015, the date on which a preparatory hearing in the case had been scheduled, the applicant filed with the court an extensive

submission of twenty-seven pages, together with one hundred pages of supporting documents and a DVD in reply to the respondent's submissions, which he had received more than three months before the scheduled hearing.

4. At the hearing held on that same day, the respondent requested adjournment because the applicant's submissions had been voluminous and filed belatedly for a proper reply. It also sought reimbursement of its costs of representation at that hearing in the amount of HRK 125,000 (approximately EUR 16,700) because the adjournment had been the applicant's fault. The applicant submitted that he had obtained the said evidence only the week before.

5. The court adjourned the hearing and stated that it would decide on the costs at a later date.

6. On the day before the second attempt to hold a preparatory hearing, the applicant filed a sixteen-page submission together with fifty-seven pages of supporting documents.

7. At the second preparatory hearing held on 12 January 2016, the respondent again requested adjournment and costs of representation in the same amount and for the same reasons. It also requested that the applicant be fined for multiple abuse of procedural rights.

8. The court again adjourned the hearing. It also ordered the applicant to pay the respondent the costs of representation for the two adjourned hearings in the amount of HRK 250,000 (approximately EUR 33,400), in accordance with section 156(1) of the Civil Procedure Act. The applicant was informed that, pursuant to the Civil Procedure Act, a separate appeal against that decision was not allowed.

9. Ultimately, on 1 June 2016, the court dismissed the applicant's claim in its entirety because it had been lodged outside the statutory time-limit. It further ordered the applicant to pay to the respondent another HRK 500,000 (approximately EUR 66,700) in respect of the remaining costs of the proceedings.

10. In his appeal against the first-instance judgment, the applicant contested the decision on the costs rendered together with the judgment on the merits. He did not contest the decision of 12 January 2016, ordering him to pay the costs of the two adjourned hearings. On 2 May 2017 the Zagreb County Court dismissed the applicant's appeal as unfounded.

11. Meanwhile, the applicant lodged a constitutional complaint against the court's decision of 12 January 2016, which was declared inadmissible by the Constitutional Court on 30 March 2016.

12. The applicant complained, under Article 6 § 1 and Article 13 of the Convention as well as under Article 1 of Protocol No. 1 thereto, about the unreasonable costs of the adjourned hearings and the lack of an effective remedy against that decision.

THE COURT'S ASSESSMENT

13. At the outset, the Court notes that, although no separate appeal is envisaged against a separate decision on costs, like the one adopted in the applicant's case (see paragraph 8 above), under section 378(2) of the Civil Procedure Act the applicant was not prevented from appealing against the decision on costs of 12 January 2016 in the appeal on the merits of the case. Contrary to his claim, he therefore had an effective remedy for his Convention grievances, which he did not use, and instead lodged an inadmissible constitutional complaint.

14. The Court would further note that the applicant's inflated claim for damages from the very outset had no reasonable prospect of success as it had been lodged outside the statutory time-limit, which in his case raised no unpredictability or novel legal issue (contrast *Cindrić and Bešlić v. Croatia*, no. 72152/13, § 107, 6 September 2016). Seeing that the applicant lost his claim in its entirety, he would have in any event had to bear the costs of the two hearings in question according to the "loser pays" rule, which in the Court's view is not incompatible with his right of access to court or his property rights (see *Derbuc and Svečak v. Croatia* (dec.), nos. 53977/14 and 41902/15, 15 March 2022).

15. Moreover, the applicant repeatedly filed voluminous last minute submissions with the court (see paragraphs 3 and 6 above), making it impossible for the respondent to reply to them in time and causing the adjournments of those hearings. Such behaviour was not only irresponsible in that the applicant knowingly ran the risk of having to pay the costs of the adjourned hearings irrespective of the outcome of the proceedings, but also caused additional unnecessary costs for the respondent.

16. It follows that this application is both manifestly ill-founded and inadmissible for failure to exhaust domestic remedies, and must be rejected under Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 2 June 2022.

Liv Tigerstedt Deputy Registrar	Péter Paczolay President