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

FIRST SECTION

DECISION

Applications nos. 53977/14 and 41902/15
Božo DERBUC and Lidija DERBUC against Croatia
and Bruno SVEČAK and Others against Croatia

The European Court of Human Rights (First Section), sitting on 15 March 2022 as a Chamber composed of:

Marko Bošnjak, *President,*
Péter Paczolay,
Krzysztof Wojtyczek,
Alena Poláčková,
Lorraine Schembri Orland,
Ioannis Ktistakis,
Davor Derenčinović, *judges,*

and Renata Degener, *Section Registrar,*

Having regard to the above applications lodged on 23 July 2014 and 18 August 2015, respectively,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

1. A list of the applicants is set out in the appendix. The first and second applicants were represented before the Court by Mr E. Crnovšanin, a lawyer practicing in Zagreb. The third to fifth applicants were represented by Ms B. Musulin, a lawyer practicing in Zagreb.

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

A. The circumstances of the cases

3. The facts of the cases, as submitted by the parties, may be summarised as follows.

1. The first and second applicants (application no. 53977/14)

4. On 5 August 1999 the first and second applicants' son, M.D., was injured in a motorcycle accident at the age of 16.

5. In 2002 the driver who had caused the accident was sentenced to six months' imprisonment suspended for two years.

6. By a final court judgment of 10 May 2005, M.D. was awarded damages for the injuries suffered in the accident in the amount of approximately 59,000 euros (EUR).

7. In 2004 the first and second applicants brought a civil action for damages in the Zagreb Municipal Court (*Općinski sud u Zagrebu*) against the insurance company E., on account of mental anguish they had suffered as a result of the severe disability that their son had sustained in the above accident. They submitted that their son's disability had been established at 80% and that he required aid in everyday needs, such as dressing and daily personal hygiene.

8. On 25 September 2008 the first-instance court ruled in the applicants' favour, awarding them non-pecuniary damage in the amount of 220,000 Croatian kunas (HRK; approximately 30,000 euros (EUR)) each and ordering the defendant to reimburse their costs of proceedings in the amount of HRK 106,420 (approximately EUR 14,500). The defendant had duly claimed reimbursement of costs of proceedings, but its claim was dismissed because the applicants fully succeeded with their claim.

9. Following an appeal by the defendant, on 3 March 2009 the Zagreb County Court (*Županijski sud u Zagrebu*) upheld the first-instance judgment.

10. Following an appeal on points of law (*revizija*) by the defendant, on 25 August 2010 the Supreme Court (*Vrhovni sud Republike Hrvatske*) reversed the lower courts' judgment and dismissed the first and second applicants' claim, finding that their son's degree of disability had not been sufficiently severe so as to justify awarding them damages. The applicants were also ordered to pay the defendant HRK 72,300 (approximately EUR 9,600) in costs of proceedings, which consisted of fees chargeable for the defendant's representation by advocates.

11. On 7 March 2011 the first and second applicants lodged a constitutional complaint against the Supreme Court's judgment. They complained that the excessive amount of costs and lack of legal certainty in the Supreme Court's case-law had violated their rights guaranteed under Article 29 of the Constitution and Article 6 of the Convention.

12. On 23 January 2014 the Constitutional Court (*Ustavni sud Republike Hrvatske*) dismissed the applicants' constitutional complaint.

2. The third, fourth and fifth applicants (application no. 41902/15)

13. On 7 October 2004 the third applicant's brother and the fourth and fifth applicants' son died in a car accident involving an unidentified vehicle.

14. On 7 November 2005 the third to fifth applicants instituted civil proceedings in damages before the Zagreb Municipal Civil Court against the Croatian Insurance Bureau (*Hrvatski ured za osiguranje*), a private entity that acts as an association of insurance companies in Croatia in cases of road traffic accidents involving unidentified vehicles. They sought compensation for non-pecuniary damage in the amount of HRK 222,000 (approximately EUR 30,000) and claimed costs and expenses of the proceedings in the amount of HRK 44,497.21 (approximately EUR 6,000), together with statutory default interest.

15. On 9 June 2009 the Zagreb Municipal Civil Court dismissed the third to fifth applicants' civil action on the grounds that the road accident had occurred because their relative had been drunk. The court ordered the applicants to pay the defendant HRK 57,252 (approximately EUR 7,800) for the costs and expenses of the proceedings.

16. On 25 January 2011 the Zagreb County Court dismissed the applicants' appeal but reduced the amount of costs to HRK 36,600 (approximately EUR 4,900).

17. The applicants then lodged an appeal on points of law with the Supreme Court, which was dismissed on 27 May 2014.

18. On 2 December 2014 the applicants lodged a constitutional complaint with the Constitutional Court arguing, *inter alia*, that the excessive award of costs of the proceedings had disproportionately restricted their right of access to a court.

19. On 19 February 2015 the Constitutional Court declared the applicants' constitutional complaint inadmissible as ill-founded.

B. Relevant domestic law and practice

20. The relevant provisions of domestic law have been summarised in *Čolić v. Croatia* (no. 49083/18, §§ 12-21, 18 November 2021).

21. In its judgment no. Rev-129/09-2 of 23 March 2010 the Supreme Court held that an insurance company, having its own lawyers, was not entitled to reimbursement of costs of representation by advocates under the Scale of Advocates' Fees and Reimbursement of their Costs.

22. On 22 October 2012, at the sitting of its Civil Law Department, the Supreme Court adopted the following legal stance, binding on all panels and judges of that court:

> "A legal person as party to proceedings is entitled to reimbursement of costs of civil proceedings (in accordance with sections 154 and 155 of the Civil Procedure Act) for representation by an attorney even when it employs qualified lawyers who had passed the bar exam and who meet the legal requirements to represent that legal person in court proceedings."

COMPLAINTS

23. All the applicants complained under Article 6 § 1 of the Convention that the excessive amount of costs they had been ordered to pay had violated their right of access to a court. The first and second applicants also complained that their rights guaranteed under Article 1 of Protocol No. 1 to the Convention were likewise violated.

24. The first and second applicants further complained under Article 6 § 1 of the Convention about the length of the proceedings and the lack of legal certainty caused by the Supreme Court's divergent views.

THE LAW

A. Joinder of the applications

25. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly.

B. Alleged violation of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1 to the Convention on account of costs of proceedings

26. The applicants complained under Article 6 § 1 of the Convention that the excessive amount of costs of proceedings that they had been ordered to pay had violated their right of access to a court. This provision, in so far as relevant, reads as follows:

Article 6 § 1

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

27. The first and second applicants also complained that the amount of costs of the proceedings that they had been ordered to pay had violated their rights guaranteed under Article 1 of Protocol No. 1 to the Convention, which reads as follows:

Article 1 of Protocol No. 1

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

1. The parties' arguments

28. The Government argued that the amounts of costs awarded against the applicants had not been excessive nor had they imposed a disproportionate burden on them. Once the domestic courts established that the applicants' respective claims were ill-founded, they had no choice but to apply the "loser pays" rule in respect of costs of litigation, which the Court had previously found compatible with the Convention. The domestic courts reviewed all costs claimed by the respective defendants and awarded them only those costs which had been necessary for the conduct of the proceedings.

29. As regards the first and second applicants' case, the Government clarified that the defendant had timely submitted a specified request for reimbursement of costs to the first-instance court and later to the higher courts. They also claimed that the costs order issued in their case had not disproportionately interfered with their property rights. The proceedings instituted by the applicants concerned a private-law dispute and did not pertain to any substantive rights enshrined in the Convention. The defendant had the right to hire an attorney, it was awarded costs after it had fully succeeded in the litigation. The Supreme Court's judgment on the merits was not arbitrary or unreasonable, the applicants' procedural rights in the proceedings had not been violated and the domestic courts took into account their financial situation.

30. The first and second applicants maintained that the Supreme Court's costs order in their case had unduly restricted their right of access to a court and threatened their subsistence. In addition to overturning the second-instance judgment and dismissing their claim, the Supreme Court also ordered them to pay unreasonable and unnecessary attorney costs to the insurance company, which could have been represented before the court by one of its employees qualified to represent parties in court proceedings and despite the fact that the defendant never properly claimed reimbursement of the costs of proceedings in accordance with the domestic law. Legal costs which were unnecessary should not have excessively burdened the applicants, who were in a difficult financial situation, as protected tenants caring for their disabled son and another child.

2. The Court's assessment

31. The general principles on access to court in cases concerning costs of proceedings have recently been summarised in *Čolić*, cited above, §§ 39-44).

32. The Court accepts that the requirement for the applicants to pay the costs of their defendants' representation in the respective proceedings may be viewed as a restriction hindering the right of access to a court, which pursued the legitimate aims of ensuring the proper administration of justice and protecting the rights of others by discouraging ill-founded litigation and excessive costs (see *Čolić*, cited above, § 45; *Klauz v.* Croatia, no. 28963/10,

§§ 81 and 84, 18 July 2013; and *Cindrić and Bešlić v. Croatia*, no. 72152/13, §§ 95-96, 119 and 121, 6 September 2016).

33. The Court has previously held that unreasonable costs of proceedings may raise an issue under the Convention primarily in cases in which a party succeeds with the grounds of the civil claim, but not with its entire amount and the costs of proceedings "consume" a large portion or even the entirety of the financial award in the case (see *Čolić,* § 46 and *Klauz*, § 76, both cited above). The Court also accepted that high litigation costs may exceptionally also raise an issue under the Convention in cases in which a party has been completely unsuccessful with the grounds of the claim, in situations where that party could for some reason not predict his or her own prospects of success because, for instance, the outcome of the proceedings in the case depended on the interpretation of a novel legal issue (see, for example, *Cindrić and Bešlić*, cited above, § 107).

34. In the present case, the applicants instituted civil proceedings against private insurance entities claiming damages incurred, respectively, due to severe bodily injury and death of their close relatives. The domestic courts ultimately rejected their civil claims in full, finding that the conditions for awarding them non-pecuniary damage claimed had not been fulfilled in their cases (see paragraphs 10 and 15 above). In particular, in the first and second applicants' case the Supreme Court held that the degree of their son's disability had not warranted an award of non-pecuniary damages to them as his parents. In the third to fifth applicants' case the domestic courts held that the applicants' relative had caused the tragic accident himself by drunk-driving and that the liability of the insurer had therefore been excluded.

35. In the Court's view, there is nothing arbitrary in the domestic courts' conclusions in the applicants' cases. The courts gave reasoned decisions at three levels of jurisdiction in adversarial proceedings. The applicants' cases did not concern situations in which their claims had been well-founded, but the amounts of costs awarded to their opponent had been so excessive that it "consumed" the successful part of their claims (contrast *Čolić*, cited above, § 46; and *Klauz*, cited above, §§ 91-93). Nor did they concern an issue where the domestic courts' jurisprudence, at the time of lodging of their claims, had been unclear (contrast *Cindrić and Bešlić*, cited above, §§ 106-07).

36. Furthermore, the Court notes that the applicants did not provide sufficient evidence before it to show that the amount of costs that they had been ordered to pay – which was significantly lower than in *Klauz* or *Cindrić and Bešlić* – was particularly burdensome in view of their particular financial situations (contrast *Cindrić and Bešlić*, cited above, § 109, which concerned a dispute against the State). Finally, the case did not concern reimbursement of costs incurred to the State represented by the State Attorney's Office, but to private entities represented by attorneys (contrast *Klauz*, cited above, § 95).

37. Having regard to the foregoing, the Court holds that ordering the applicants to bear the costs of the defendants' representation in the

proceedings complained of did not amount to a disproportionate restriction of their right of access to a court (contrast *Cindrić and Bešlić*, cited above, § 122; and *Klauz*, cited above, § 97).

38. The applicants' complaint under Article 6 § 1 of the Convention concerning their lack of access to a court is therefore manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

39. For the same reasons, the Court considers that the first and second applicants' complaint under Article 1 of Protocol No. 1 to the Convention is likewise manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

C. Remaining complaints under Article 6 § 1 of the Convention

40. Relying on Article 6 § 1 of the Convention, the first and second applicants further complained about the lack of legal certainty maintaining that the Supreme Court's case-law concerning the right of legal persons who employed qualified lawyers to be reimbursed costs of civil proceedings when represented by attorneys had been inconsistent. Relying on the Supreme Court's judgment no. Rev-129/09-2 of 23 March 2010 (see paragraph 21 above), in which that court had ruled that insurance companies employing qualified lawyers did not have the right to reimbursement of legal costs for attorney representation, the first and second applicants claimed that the Supreme Court had been the source of legal uncertainty on the issue. They also relied on a number of other Supreme Court rulings, which ordered each party to bear its own legal costs, in support of their contention that there had been long-lasting and profound inconsistencies in that court's case-law related to costs. Lastly, the first and second applicants also complained about the unreasonable length of proceedings in their case.

41. The Government submitted seven decisions of the Supreme Court, seven of county courts and twenty-two decisions of various municipal courts whereby all of them had found that legal persons which had been successful in civil proceedings had been entitled to reimbursement of costs of their representation by an advocate, regardless of the fact that they had employed in-house (corporate) lawyers who could have represented them before the courts. In only one case that was relied on by the applicants, Rev-129/09-2 of 23 March 2010, the Supreme Court had taken a different view, which was insufficient to show that its case-law had not been stable and consistent. In addition, in its binding legal stance of 22 October 2012, the Supreme Court clarified that legal persons had the right to reimbursement of costs of representation by attorneys.

1. Lack of legal certainty

42. The general principles applicable to cases concerning conflicting decisions in the case-law have been summarised in the case of *Nejdet Şahin and Perihan Şahin v. Turkey* ([GC], no. 13279/05, §§ 49-58 and 61, 20 October 2011). The Court has affirmed that those principles also applied in cases concerning disparities existing primarily in the case-law of the highest domestic court (see *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, § 117, 29 November 2016).

43. The Court observes that the Supreme Court's decision relied on by the applicants is indeed contrary to the conclusion reached in the applicants' case. However, it would appear from the examples of numerous court judgments submitted by the Government that the overwhelming body of the case-law followed the approach taken in the applicants' case, namely that legal persons employing qualified lawyers had the right to reimbursement of costs for attorney representation.

44. The Court further observes that the Supreme Court decision Rev-129/09-2 of 23 March 2010 relied on by the applicants would appear to be the only case where that court had taken the view opposite to its usual case-law (see paragraph 42 above). Indeed, the applicants were unable to produce further decisions of any domestic courts going in the same direction. The fact that in some judgments the Supreme Court held – or confirmed a ruling by a lower court – that each party was to bear its own costs of representation is not indicative of the inconsistency complained of, as it does not concern the specific issues of reimbursement of attorney costs to legal persons employing qualified lawyers.

45. In such circumstances, the Court cannot conclude that there had been long-lasting and profound differences in the Supreme Court's case-law. However, even assuming that some sort of inconsistency had existed at the material time, the Court is satisfied that the Supreme Court clarified the approach to be followed and confirmed the solution it had applied in the applicants' case in its binding legal stance of 22 October 2012 (see paragraph 22 above).

46. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

2. Length of proceedings

47. Finally, as regards the first and second applicants' complaint about the unreasonable length of the proceedings before the ordinary courts, where their case was pending between February 2004 and February 2011, the Court notes that between 29 December 2005 and 13 March 2013 a request for protection of the right to a hearing within a reasonable time under sections 27 and 28 of the 2005 Courts Act was recognised by the Court as an effective remedy under Article 13 of the Convention. This therefore meant that it had

to be exhausted for the purposes of Article 35 § 1 before any complaints concerning the excessive length of judicial proceedings in Croatia were brought before the Court (see *Pavić v. Croatia*, no. 21846/08, § 36, 28 January 2010). However, the applicants never availed themselves of that remedy. Accordingly, this part of their complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

48. As regards the length of the proceedings before the Constitutional Court, which lasted for about two years and ten months, in the circumstances of the present case the Court does not find this period excessive (see *Posedel-Jelinović v. Croatia*, no. 35915/02, § 26, 24 November 2005). It follows that the remainder of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 7 April 2022.

Renata Degener Section Registrar	Marko Bošnjak President

Appendix

Application no. 53977/14

No.	Applicant's Name	Birth year	Nationality	Place of residence
1	Božo DERBUC	1957	Croatian	Zagreb
2	Lidija DERBUC	1960	Croatian	Zagreb

Application no. 41902/15

No.	Applicant's Name	Birth year	Nationality	Place of residence
1	Bruno SVEČAK	1979	Croatian	Vrbovec
2	Ivan SVEČAK	1957	Croatian	Vrbovec
3	Vesna SVEČAK	1963	Croatian	Vrbovec