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

FIRST SECTION

DECISION

Application no. 3669/16
Vlado ĐURKAN against Croatia
and 2 other applications
(see appended list)

The European Court of Human Rights (First Section), sitting on 11 January 2022 as a Committee composed of:

Krzysztof Wojtyczek, *President,*
Erik Wennerström,
Ioannis Ktistakis, *judges,*
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the above applications against Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by the applicants, represented by lawyers, on various dates (see the appended table for details);

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

the parties' observations;

Having deliberated, decides as follows:

SUBJECT-MATTER OF THE CASE

1. The applications concern the applicants' right of access to the Supreme Court in discrimination-related cases. Section 23 of the Prevention of Discrimination Act provides that an appeal on points of law with the Supreme Court shall be allowed in all cases concerning allegations of discrimination.

2. Under the Civil Procedure Act ("the CPA") in force at the material time, parties could lodge an appeal on points of law with the Supreme Court in very limited circumstances, such as in certain types of employment disputes, or if the value of the subject-matter in dispute reached a certain threshold (so-called "ordinary" appeal on points of law under section 382(1)

of the CPA, cited in paragraph 26 of *Mirenić-Huzjak and Jerković v. Croatia* (dec.), no. 72996/16, 24 September 2019). In all other cases, parties could lodge a so-called "extraordinary" appeal on points of law only if they persuaded the Supreme Court that their case raised a point of substantive or procedural law which was important for the uniform application of the law (section 382(2) of the CPA). In the latter situation, the parties were expected to formulate specific questions and explain why the point raised in their case was important for ensuring the uniform application of the law.

3. The first applicant instituted proceedings against his employer alleging discrimination based on his religion. His appeal on points of law was declared inadmissible on 12 May 2015. The Supreme Court held that, according to section 399(2) of the CPA, all appeals on points of law lodged under separate legislation were to be considered "extraordinary", and that the applicant had failed to formulate specific questions or explain why his case raised an issue of uniform application of the law.

4. The second applicant succeeded with an anti-discrimination lawsuit against his employer and, in separate proceedings, claimed damages on that account. On 4 April 2018 the Supreme Court declared his appeal on points of law lodged in the subsequent compensation proceedings inadmissible finding that it did not fulfil the criteria of admissibility of either an "ordinary" or "extraordinary" appeal on points of law.

5. The third applicant, an association involved in promotion and protection of LGBTI rights, lodged a class action against a religion teacher of an elementary school because she had allegedly told the children during class that homosexuality was "an illness". On 6 April 2016 the Supreme Court declared the third applicant's appeal on points of law inadmissible for the failure to meet the relevant statutory requirements for lodging an "extraordinary" appeal on points of law.

6. The applicants complained, under Article 6 § 1 of the Convention, about the unjustified restriction of their right of access to the Supreme Court maintaining that their appeals on points of law should have been treated as "ordinary" and therefore not declared inadmissible.

7. The third applicant also complained, under Article 6 § 1 taken alone and in conjunction with Article 14 of the Convention, about the excessive length and the unfairness of the domestic proceedings, including the lack of a public hearing and the failure to hear witnesses.

THE COURT'S ASSESSMENT

I. PRELIMINARY REMARKS

8. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single decision.

9. The Court further considers that it is not necessary to examine the various inadmissibility objections raised by the Government in the present applications, as they are in any event inadmissible for the reasons set out below.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF ACCESS TO COURT

10. The general principles concerning access to court have been summarised in *Zubac v. Croatia* [GC], no. 40160/12, §§ 76-99, 5 April 2018.

11. 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).

12. The Court further reiterates that 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 that the conditions of admissibility of an appeal on points of law may be stricter than for an ordinary appeal (see, for example, *Kozlica v. Croatia*, no. 29182/03, § 32, 2 November 2006).

13. In order to satisfy itself that the very essence of the applicants' right of access to court was not impaired, the Court must examine whether the Supreme Court's decisions to declare their appeals on points of law inadmissible could be regarded as foreseeable having regard to the relevant legislation and the case-law at the material time (see *Majski v. Croatia (no. 2)*, no. 16924/08, § 69, 19 July 2011).

14. In that connection, the Court observes that there had been an initial uncertainty as to the interpretation of section 23 of the Prevention of Discrimination Act. As a new law, adopted in 2009 by a two-third majority of the Parliament, the Prevention of Discrimination Act was intended to offer a high level of protection against discrimination in line with the European Union law and other international standards. Its section 23 provided that in all discrimination-related cases an appeal on points of law was always allowed. At the same time, however, it did not specify which of the two types of appeal on points of law prescribed by the CPA were to be allowed – the ordinary or extraordinary one (see paragraph 2 above).

15. However, in 2011 a new section 399(2) of the CPA was introduced, according to which all appeals on points of law lodged under separate legislation were to be considered "extraordinary". As the Government pointed out, this occurred some two years after the enactment of the

Prevention of Discrimination Act and several years before the applicants lodged their respective appeals on points of law.

16. The subsequent practice of the Supreme Court on the matter, objectionable or not, has been clear and consistent. Save for one decision adopted in 2013, which applied the CPA as in force before 2011, all later decisions available to the Court indicate that, since 2014, the Supreme Court has consistently interpreted section 23 of the Prevention of Discrimination Act in light of section 399(2) of the CPA. Consequently, it considered all appeals on points of law lodged in anti-discrimination cases "extraordinary" and declared inadmissible those which did not satisfy the strict admissibility criteria prescribed by law.

17. Given that the applicants were represented by qualified attorneys, they should have been aware of the Supreme Court's practice at the relevant time. In the Court's view, any restriction of the applicants' access to the Supreme Court had thus been foreseeable.

18. Finally, the Court notes that the situation complained of no longer obtains. Firstly, the 2019 Amendments to the CPA expressly included discrimination-related cases in the list of cases in which an ordinary appeal on points of law was allowed. Secondly, by its decision U-III-2639/2017 of 4 February 2020 the Constitutional Court changed its case-law and found the Supreme Court's understanding of appeals of point of law in discrimination-related cases as "extraordinary" in breach of the right of access to court. Thirdly, in April 2021 the Supreme Court amended its practice in the interpretation of admissibility of appeals on points of law in discrimination-related cases, finding that an ordinary appeal on points of law was always allowed even in cases lodged before the 2019 Amendments to the CPA.

19. All of the above factors formed part of a positive development concerning appeals on points of law in discrimination-related cases, which are now always interpretated as "ordinary" and therefore always allowed. In view of the wide margin of appreciation afforded to Contracting States in matters of access to the highest courts in the country, the authorities cannot be reproached for not having acted any earlier in the circumstances (see, *mutatis mutandis*, *Petrovic v. Austria*, 27 March 1998, § 41, *Reports* 1998-II). To the contrary, the Court can accept that such positive developments may at times require thorough legal reflection and a certain passage of time (compare, *mutatis mutandis*, *Strøbye and Rosenlind v. Denmark*, nos. 25802/18 and 27338/18, § 119, 2 February 2021).

20. In the light of the foregoing, this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

21. The third applicant also raised other complaints under the Convention (see paragraph 7 above).

22. The Court has examined those complaints and considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, they either do not meet the admissibility criteria set out in Articles 34 and 35 of the Convention or do not disclose any appearance of a violation of the rights and freedoms enshrined in the Convention or the Protocols thereto.

It follows that this part of the application must be rejected in accordance with Article 35 § 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 3 February 2022.

Liv Tigerstedt Deputy Registrar	Krzysztof Wojtyczek President

APPENDIX

No.	Application no.	Application title	Lodged on	Applicant Year of Birth Place of Residence Nationality	Represented by
1.	3669/16	Đurkan v. Croatia	17/12/2015	Vlado Đurkan 1973 Oborovo Croatian	Nataša Owens
2.	58090/19	Krešić v. Croatia	31/10/2019	Dario Krešić 1972 Munich Croatian	Ana Bandalo
3.	6689/20	Lezbijska grupa Kontra v. Croatia	22/01/2020	Lezbijska grupa Kontra Zagreb	Sanja Bezbradica Jelavić