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

FIRST SECTION

DECISION

Application no. 34499/16
Mladen MALI
against Croatia

The European Court of Human Rights (First Section), sitting on 20 September 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. 34499/16) 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 10 June 2016 by a Croatian national, Mr Mladen Mali ("the applicant"), who was born in 1943 and lives in Zagreb, and was represented by Mr Z. Novaković, a lawyer practising in Zagreb;

the decision to give notice of the complaint concerning the right to a reasoned judgment to the Croatian Government ("the Government"), represented by their Agent, Ms Š. Stažnik, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns civil proceedings which a company instituted against the applicant for payment of heating bills.

2. On 4 December 2014 the Zagreb Civil Municipal Court concluded the main hearing in the civil proceedings and informed the lawyers of both parties that the hearing for the pronouncement of the judgment would be held on 19 December 2014. It also warned them that, pursuant to section 335 of the Civil Procedure Act and section 98 of the 2013 Amendments to the Civil

Procedure Act, a party who failed to attend the hearing after being duly notified of it would be considered to have been served with the judgment on the day of its pronouncement, and a written copy of the judgment would be sent to that party in accordance with the provisions on the service of documents.

3. On 19 December 2014 the first-instance court pronounced a judgment in the applicant's favour. The applicant's lawyer was present at the hearing and was given a written copy of the judgment. The plaintiff company was not present at the hearing and the court stated that the judgment would be sent to it in accordance with the provisions on the service of documents.

4. The plaintiff company received a written copy of the judgment on 31 December 2014. The instructions on lodging an appeal incorporated in the judgment stated that the dissatisfied party had the right to appeal within eight days from the day of the receipt of the written copy of the judgment.

5. The plaintiff company lodged an appeal on 5 January 2015. In its appeal it stated that it had received the first-instance judgment on 19 December 2014.

6. In reply, the applicant argued that the appeal had been lodged out of time since under the applicable law, the plaintiff company was presumed to have been served with the first-instance judgment on 19 December 2014, as the company itself had confirmed.

7. On 28 April 2015 the appellate court overturned the first-instance judgment and ruled in the plaintiff company's favour. Before proceeding to examine the merits of the case it stated that the plaintiff company's appeal had been lodged in time, without giving any reasons for that conclusion.

8. In a subsequent constitutional complaint, the applicant complained that the appellate court's judgment lacked reasons as to his arguments concerning the timeliness of the plaintiff company's appeal. On 10 December 2015 the Constitutional Court declared the applicant's constitutional complaint inadmissible as not raising any constitutional issue. That decision was served on the applicant on 18 January 2016.

9. The applicant complained, under Article 6 § 1 of the Convention, that in the impugned civil proceedings the appellate court had failed to address his arguments as regards the timeliness of the opposing party's appeal.

THE COURT'S ASSESSMENT

10. The Court notes that under section 335 of the Civil Procedure Act as in force at the time, a party who failed to attend a hearing for the pronouncement of the judgment after being duly notified was considered to have been served with the judgment on the day of its pronouncement. In that situation the court would also post the judgment on its online court notice board, and a certified copy of the judgment could be collected by the party at the courthouse. Under section 98 of the 2013 Amendments to the Civil Procedure Act, until the online notice board was set up for a particular court,

a party who had been duly notified of a hearing for the pronouncement of a judgment was served with the judgment in accordance with the provisions on service of documents. The online court notice board was introduced at the Zagreb Civil Municipal Court on 26 January 2015.

11. It would follow that, as warned by the first-instance court (see paragraph 2 above), the opposing party in the applicant's case was considered to have been served with the judgment on the day of the hearing for the pronouncement of the judgment (19 December 2014). Collecting the judgment at the courthouse, publishing it on the online court notice board or sending it to the party by post appear simply to have been possible ways of providing such a party with a written copy of the judgment, with no effect on the running of the time-limit for lodging an appeal (see paragraph 3 above).

12. However, the Court notes that the instructions on lodging an appeal that were incorporated in the judgment at issue in the present case stated that a dissatisfied party had the right to appeal within eight days from the day of the receipt of the written copy of the judgment (see paragraph 4 above).

13. Under the case-law of the Croatian courts, if an information notice concerning available remedies wrongly indicates a time-limit which is longer than the one provided for by the relevant legislation, a remedy lodged by the party who relied on such wrong information cannot be declared inadmissible as being out of time (see the Supreme Court's decisions nos. Rev-57/1999-2 of 28 April 1999 and Rev-x 786/14-2 of 14 December 2016, as well as the Constitutional Court's decision no. U-III-3071/2006 of 18 March 2009).

14. Since the opposing party lodged its appeal on 5 January 2015, that is, within the eight-day statutory time-limit from the day of the receipt of the written copy of the judgment (31 December 2014 – see paragraphs 4 and 5 above), under domestic case-law its appeal could not have been declared inadmissible as being lodged out of time.

15. In these circumstances the Court finds that the applicant did not suffer a significant disadvantage on account of the fact that the appellate court did not address the timeliness of the opposing party's appeal in more detail before deciding the case on the merits (see, *mutatis mutandis*, *Grozdanić and Gršković-Grozdanić v. Croatia*, no. 43326/13, § 128, 28 January 2021).

16. The Court further notes that it has established clear and extensive case-law concerning complaints relating to a reasoned decision, which also includes cases brought against Croatia (see, for example, *Jaćimović v. Croatia*, no. 22688/09, §§ 46-53, 31 October 2013). Thus, an examination on the merits of the applicant's complaint would not add anything in this regard. The Court therefore concludes that respect for human rights, as defined in the Convention and the Protocols thereto, does not require an examination of this complaint on the merits.

17. In view of the above findings, the Court finds that the application is inadmissible under Article 35 § 3 (b) of the Convention because the applicant

has not suffered a significant disadvantage, and that it must therefore be rejected pursuant to Article 35 § 4.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 13 October 2022.

Liv Tigerstedt Deputy Registrar	Péter Paczolay President