

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

SECOND SECTION

DECISION

Application no. 7877/14
Mihaela NOVAK
against Croatia

The European Court of Human Rights (Second Section), sitting on 14 June 2016 as a Chamber composed of:

Işıl Karakaş, *President,*
Julia Laffranque,
Nebojša Vučinić,
Paul Lemmens,
Valeriu Griţco,
Ksenija Turković,
Stéphanie Mourou-Vikström, *judges,*

and Stanley Naismith, *Section Registrar,*

Having regard to the above application lodged on 10 January 2014,

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

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Ms Mihaela Novak, is a Croatian national, who was born in 1974 and lives in Selnica. She was represented before the Court by Ms M. Drča, an advocate practising in Zagreb.

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

A. The circumstances of the case

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

4. On 27 February 2008 the applicant sustained an injury at work.

1. Principal proceedings

5. On 13 September 2010 the applicant brought a civil action in the Čakovec Municipal Court (*Općinski sud u Čakovcu*) against her employer, company I., seeking compensation for pecuniary and non-pecuniary damage sustained.

6. On 6 October 2010 the applicant's statement of claim was forwarded to the defendant, which responded to it on 18 October 2010 by arguing that the injury had been exclusively her fault and by objecting to the level of compensation sought. The applicant made further submissions on 25 October 2010.

7. On 5 January, 25 May, 17 October and 20 December 2011 the applicant urged the court to schedule a hearing

8. The first hearing in the case was held on 12 March 2013 at which the applicant asked the court to obtain an opinion of a medical expert and opposed the defendant's proposal to examine certain witnesses.

9. On 22 May 2013 the court decided to obtain an opinion of a forensic expert in medicine and invited the applicant to advance the costs thereof. The applicant did so on 8 July 2013.

10. On 12 September 2013 the expert submitted his opinion suggesting that a further expert opinion of an expert in psychiatry be obtained.

11. On 3 October 2013 the defendant submitted its comments on the expert opinion whereas the applicant did so on 29 October 2013. In her submissions she endorsed the proposal to obtain a further expert opinion of an expert in psychiatry and amended her action in accordance with the opinion of a medical expert already obtained.

12. On 5 November 2013 the court decided to obtain an opinion of a forensic expert in psychiatry.

13. On 17 December 2013 the expert in psychiatry submitted her opinion.

14. On 10 January 2014 the applicant commented on the expert opinion and amended her action accordingly whereas, on 23 January 2014, the defendant contested that opinion.

15. On 13 March 2014 the court held a hearing at which it heard the parties and the two experts and examined four witnesses.

16. Further hearings were held on 29 April and 15 May 2014. At the latter hearing the court closed the main hearing and scheduled a hearing for pronouncement of the judgment for 2 June 2014.

17. By a judgment pronounced on 2 June 2014 the Municipal Court ruled for the applicant and awarded her 44,840 Croatian kunas (HRK) in compensation together with the accrued statutory default interest and HRK 18,300 in costs.

18. On 10 June 2014 the defendant appealed against that judgment.

19. By a decision of 30 October 2014 the Varaždin County Court dismissed the appeal by the defendant and upheld the first-instance judgment which thereby became final.

2. The proceedings following the applicant's request for protection of the right to a hearing within reasonable time

20. Meanwhile, on 1 October 2013 the applicant lodged a request for protection of the right to a hearing within a reasonable time with the President of the Čakovec Municipal Court. She relied on section 65 of the 2013 Courts Act (see paragraph 23 below).

21. On 11 November 2013 the President issued a decision holding that the applicant's request was well-founded and ordering the judge hearing the case to give a decision in the above civil proceedings within six months.

B. Relevant domestic law and practice

1. The Constitutional Court Act

22. Section 63 of the Constitutional Act on the Constitutional Court of the Republic of Croatia (*Ustavni zakon o Ustavnom sudu Republike Hrvatske*, Official Gazette of the Republic of Croatia no. 99/1999 with subsequent amendments– "the Constitutional Court Act"), reads as follows:

V. PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Section 62

"(1) Anyone may lodge a constitutional complaint with the Constitutional Court if he or she deems that the decision of a State authority, local or regional government, or a legal person vested with public authority, on his or her rights or obligations, or as regards suspicion or accusation of a criminal offence, has violated his or her human rights or fundamental freedoms, or the right to local or regional government, guaranteed by the Constitution ('constitutional rights')...

(2) If another legal remedy is available in respect of the violation of the constitutional rights [complained of], the constitutional complaint may be lodged only after this remedy has been exhausted.

(3) In matters in which an administrative action or, in civil and non-contentious proceedings, an appeal on points of law [*revizija*] is available, remedies shall be considered exhausted only after a decision on these legal remedies has been given."

Section 63

"(1) The Constitutional Court shall examine a constitutional complaint even before all legal remedies have been exhausted if the relevant court has failed to decide within a reasonable time on the rights or obligations of a party [to the proceedings] or as regards a suspicion or accusation of a criminal offence...

(2) If it finds the constitutional complaint for failure to decide within a reasonable time referred to in paragraph 1 of this section well-founded, the Constitutional Court

shall set a time-limit within which the relevant court must decide the case on the merits...

(3) In a decision issued under paragraph 2 of this section, the Constitutional Court shall award appropriate compensation to the complainant for the violation of his or her constitutional right ... to a hearing within a reasonable time. The compensation shall be paid from the State budget within three months of the date on which a request for payment is lodged."

2. The 2013 Courts Act

(a) Relevant provisions

23. The relevant provisions of the Courts Act of 2013 (*Zakon o sudovima*, Official Gazette no. 28/13), which entered into force on 14 March 2013, read as follows:

VI. PROTECTION OF THE RIGHT TO A HEARING WITHIN A REASONABLE TIME

Section 63

"A party to judicial proceedings which considers that the competent court did not decide within a reasonable time on its rights or obligations, or on a suspicion or accusation of a criminal offence, shall have the right to judicial protection in accordance with this Act."

Section 64

"(1) The legal remedies for the protection of the right to a hearing within a reasonable time are:

1. The request for protection of the right to a hearing within a reasonable time,

2. The request for payment of appropriate compensation for the violation of the right to a hearing within a reasonable time.

(2) In the proceedings for deciding the requests referred to in paragraph 1 of this section the rules of non-contentious procedure shall apply *mutatis mutandis*, and, in principle, no hearing shall be held."

Section 65

"(1) The request for protection of the right to a hearing within a reasonable time shall be lodged with the court before which the proceedings are pending.

(2) The request shall be decided by the President of the court unless he or she is the judge hearing the case, in which situation the request shall be decided by the Vice-President of the court.

(3) The President of the court shall, within 15 days of the receipt of the request, demand the judge hearing the case [to submit] a report on the length of the proceedings and the reasons why [they] have not been completed, as well as an opinion on the period within which the case could be decided. The President of the court may himself or herself inspect the case-file.

(4) The judge hearing the case shall submit the report immediately, but no later than 15 days from the time the President of the court demanded him or her to do so.

(5) In deciding on the request the President of the court shall in particular take into account the type of the case, [its] factual and legal complexity, the conduct of the parties and of the court.

(6) The President of the court shall decide on the request within 60 days of its receipt."

Section 66

"(1) If the President of the court finds the request well-founded, he or she shall specify a time-limit of, as rule, maximum six months within which the judge must decide the case, unless the circumstances of the case require setting a longer time-limit. The decision finding the request well-founded does not have to be reasoned and cannot be appealed against.

(2) If the judge does not decide the case within the specified time-limit, he or she must within 15 days of its expiry, submit a written report to the President of the court giving reasons for having failed to do so. The President of the Court shall without delay forward the judge's report and his or her [own] observations to President of the immediately higher court and to the Ministry of Justice."

Section 67

"(1) If the President of the court finds the request unfounded, he or she shall dismiss it by a decision against which the [requesting] party shall have the right to appeal within eight days of the receipt of the decision.

(2) The [requesting] party shall have the right to appeal also when the President of the court, within 60 days from receiving it, does not decide on the request.

(3) The appeal shall be decided by the President of the immediately higher court. If the request concerns the proceedings pending before the Supreme Court, the appeal shall be decided by a panel of three judges of that court. The President of the immediately higher court or the panel may dismiss the appeal as unfounded and uphold the first-instance decision or reverse [that] decision."

Section 68

"(1) If the court does not decide on the case referred to in section 65 of this Act within the specified time-limit, the [requesting] party may within a further period of six months lodge a request for payment of appropriate compensation for the violation of the right to a hearing within a reasonable time with the immediately higher court.

(2) If the request concerns the proceedings pending before the High Commercial Court, the High Administrative Court or the High Court for Administrative Offences, the request shall be decided by the Supreme Court.

(3) The request referred to in paragraph 1 of this section shall be decided by a decision of a single judge.

(4) If the request concerns the proceedings pending before the Supreme Court, the request shall be decided by a panel of three judges of that court.

(5) The immediately higher court shall decide on the request within six months."

Section 69

"(1) The immediately higher court or the panel of the Supreme Court shall specify the time-limit within which the court before which the proceedings are pending must decide the case, and shall award [the requesting party] appropriate compensation for the violation of his or her right to a hearing within a reasonable time.

(2) The total amount of appropriate compensation awarded in one case may not exceed 35,000 Croatian kunas.

(3) An appeal, to be lodged within eight days with the Supreme Court, lies against the decision on the request for payment of adequate compensation for the violation of the right to a hearing within a reasonable. The appeal shall be decided by a panel of three judges of that court, and, if the decision was rendered by the panel of the Supreme Court referred to in section 68 paragraph 4 of this Act, the appeal shall be decided by a panel of five judges of that court.

(4) The decision awarding appropriate compensation for the violation of the right to a hearing within a reasonable time shall immediately after becoming final be forwarded to the President of the court before which the violation of the right to a hearing within a reasonable time occurred, to the President of the Supreme Court and to the Ministry of Justice.

(5) The compensation referred to in paragraph 1 of this section shall be paid out of the State budget.

(6) If the case referred to in paragraph 1 of this section is not decided within the specified time-limit, the court president must within 15 days of its expiry, submit a written report to the President of the immediately higher court and the Ministry of Justice giving reasons for having failed to do so."

Section 70

"If before the European Court of Human Rights proceedings have been instituted for the protection of the right to a hearing within a reasonable time and the Government's representative before the European Court of Human Rights has requested information on the case from the [domestic] court before which the proceedings [complained of] are pending, that court shall inform the President of the immediately higher court, the President of the Supreme Court and the Ministry of Justice of the Government representative's request and of the reasons for the delay."

Section 141

"Requests for protection of the right to a hearing within a reasonable time received before the entry into force of this Act shall be dealt with in accordance with the provisions of the 2005 Courts Act."

(b) Relevant practice

24. On 23 December 2014 the Constitutional Court issued a decision no. U-IIIA-322/2014, where it held that complainants wishing to lodge constitutional complaints under section 63 of the Constitutional Court Act (see paragraph 22 above) to complain about the excessive length of ongoing judicial proceedings were first required to make full use of remedies available under the 2013 Courts Act (see paragraph 23 above). It therefore declared inadmissible a constitutional complaint lodged under section 63 of

the Constitutional Court Act (see paragraph 22 above) by the complainant who did not attempt to avail herself of those remedies before lodging her constitutional complaint. The Constitutional Court's decision was published in the Official Gazette no. 8/15 of 23 January 2015. The relevant part of that decision reads as follows:

> "3.1. It follows from the foregoing that since the introduction in 2005 in the domestic legal system of a new remedy (a request for protection of the right to hearing within a reasonable under sections 27 and 28 of the 2005 Courts Act), a constitutional complaint under section 63 of the Constitutional Court Act was no longer the only remedy in the Republic of Croatia for protection of the constitutional right to a hearing within a reasonable time. In other words, the Constitutional Court was no longer competent for the protection of the right to a hearing within a reasonable time in the first instance ...
>
> 5. ...
>
> - Apart from the general procedural requirements that every constitutional complaint must meet, a prerequisite for deciding on the constitutional complaint in which a violation of the constitutional right to a hearing within a reasonable time was alleged ([regardless of the fact] whether it was lodged under section 62 or section 63 of the Constitutional Court Act) is, as a rule, that the complainant had used beforehand all available remedies [to complain] against the unreasonable length of the proceedings.
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> V. THE CONSTITUTIONAL COURT'S ASSESSMENT
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> 6. The complainant [in the present case] considers that the remedies [provided in the 2013 Courts Act] are not 'an effective remedy in terms of Article 13 of the Convention'. In her constitutional complaint the complainant does not mention that she availed herself of those remedies. [T]herefore she is in fact asking the Constitutional Court to assess, in abstract terms, the effectiveness of the remedies provided by the 2013 Courts Act. What is more, she considers herself exempted from the requirement to use those remedies before addressing the Constitutional Court.
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> 7. The Constitutional Court cannot in these proceedings [instituted by individual constitutional complaint] enter into the assessment in abstract terms of the effectiveness of the legislative model for protection of the right to a hearing within a reasonable time provided in the 2103 Courts Act. It is sufficient to establish, in light of the position of the ECtHR, that this model provides for remedies which are in principle capable of accelerating judicial proceedings and awarding financial compensation for the violation of the right to a hearing within a reasonable time. In *Kudla v Poland* (judgment of the Grand Chamber, 26 October 2000, application no. 30210/96) the ECtHR has expressed the view that the domestic remedy that is available to the applicant for protection of the right to a hearing within a reasonable time can be considered effective in terms of Article 13 of the Convention for the Protection of Human rights and Fundamental Freedoms (...) if it prevents the alleged violation or its continuation or provides adequate redress for any violation that had already occurred (§ 158). In the ECtHR's view, Article 13 of the Convention offers an alternative: a remedy is effective if it can be used to either expedite a judicial decision before the violation occurs, or to ensure adequate redress for delays that have already occurred (§ 158).
>
> The same view the ECtHR expressed in the judgment *Scordino v. Italy (no. 1)* (judgment of the Grand Chamber, 29 March 2006, application no. 36813/97) and then

in the judgment *Sürmeli v. Germany* (judgment of the Grand Chamber, 8 June 2006, application no. 75529/01): ...

The Constitutional Court emphasises that the above-mentioned views of the ECtHR represent the current state of development in that court's case-law whose further development cannot be excluded, including changes in the presented legal views of the ECtHR.

8. The Constitutional Court considers that the complainant's superficial allegations or her doubts as to the effectiveness of the remedy, which is not clearly (*a priori*) ineffective, is not a sufficient reason to not use that remedy before lodging her constitutional complaint.

Given that the complainant in her constitutional complaint did not show that she had used all available remedies provided in the 2013 Courts Act (or demonstrated that she had used the remedies that had been at her disposal since 2007 when she had brought her civil action before an ordinary court), her constitutional complaint is inadmissible."

3. The 2005 Courts Act

(a) Relevant provisions

25. Sections 27 and 28 of the Courts Act (*Zakon o sudovima*, Official Gazette no. 150/05 with subsequent amendments), which was in force between 29 December 2005 and 13 March 2013, provided for a request for protection of the right to a hearing within a reasonable time as a remedy for the excessive length of judicial proceedings. The original text of those two provisions read as follows:

III. PROTECTION OF THE RIGHT TO A HEARING WITHIN A REASONABLE TIME

Section 27

"(1) A party to judicial proceedings who considers that the relevant court has failed to decide within a reasonable time on his or her rights or obligations or as regards a suspicion or accusation of a criminal offence may lodge a request for protection of the right to a hearing within a reasonable time with the immediately higher court.

(2) If the request concerns proceedings pending before the High Commercial Court of the Republic of Croatia, the High Court for Administrative Offences of the Republic of Croatia or the Administrative Court of the Republic of Croatia, the request shall be decided by the Supreme Court of the Republic of Croatia.

(3) The proceedings for deciding the request referred to in paragraph 1 of this section shall be urgent."

Section 28

"(1) If the court referred to in section 27 of this Act finds the request well-founded, it shall set a time-limit within which the court before which the proceedings are pending must decide on a right or obligation of, or on a suspicion or accusation of a criminal offence against, the person who lodged the request, and shall award him or her appropriate compensation for the violation of his or her right to a hearing within a reasonable time.

(2) The compensation shall be paid from the State budget within three months of the date on which the party's request for payment is lodged...

(3) An appeal, to be lodged with the Supreme Court within fifteen days, lies against a decision on a request for the protection of the right to a hearing within a reasonable time. No appeal lies against the Supreme Court's decision, but a constitutional complaint may be lodged."

26. Section 28 of the 2005 Courts Act was amended by the 2009 Amendments to the Courts Act (*Zakon o izmjenama i dopunama Zakona o sudovima*, Official Gazette no. 153/09 – the 2009 Amendments), which entered into force on 29 December 2009. Apart from other changes in that section, those Amendments brought changes to its paragraph 3, which became paragraph 5. In particular, in that paragraph a possibility to lodge an appeal against the first-instance decision of the Supreme Court to a three-member panel of the same court was introduced, whereas the reference to the possibility of lodging a constitutional complaint against such decision was omitted (for the text of that paragraph as amended by the 2009 Amendments, and further changes to it brought by the 2010 Amendments, see *Vrtar v. Croatia*, no. 39380/13, §§ 54-55, 7 January 2016).

(b) Relevant practice

27. After the entry into force of the 2009 Amendments to the 2005 Courts Act the Constitutional Court at a certain point, which cannot be clearly identified, established a practice that a constitutional complaint could no longer be lodged against any Supreme Court's decisions adopted in the context of proceedings instituted by a request for the protection of the right to a hearing within a reasonable time (see *Vrtar*, cited above, §§ 63-64 and 78). In particular, the Constitutional Court held that after those Amendments came into force, such decisions were no longer open to constitutional review under section 62 of the Constitutional Court Act by means of individual constitutional complaint (see paragraph 22 above).

COMPLAINTS

28. The applicant complained under Article 6 § 1 of the Convention that the length of the above civil proceedings had been excessive.

29. She also complained under Article 13 of the Convention that she had not had an effective remedy for her length complaint and, in particular, that the remedies provided in sections 63-70 of the 2013 Courts Act (see paragraph 23 above) could not be considered effective.

THE LAW

A. Alleged violation of Article 6 § 1 of the Convention

30. The applicant's first complaint relates to the length of the proceedings, which began on 13 September 2010 and ended on 30 October 2014 with the judgment of the Varaždin County Court (see paragraphs 5 and 19 above). They therefore lasted four years and one month for two levels of jurisdiction. According to the applicant, the length of the proceedings had been in breach of the "reasonable time" requirement laid down in Article 6 § 1 of the Convention, which reads as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

31. The Government disputed the admissibility of this complaint by arguing that the applicant had failed to exhaust domestic remedies and that it was, in any event, manifestly ill-founded.

Non-exhaustion of domestic remedies

(a) The parties' submissions

(i) The Government

32. The Government argued that the applicant had failed to exhaust domestic remedies in that she had not: (a) fully availed herself of remedies available under the 2013 Courts Act (see section 64(1) of that Act in paragraph 23 above), nor (b) lodged a constitutional complaint under section 63 of the Constitutional Court Act (see paragraph 22 above). In any event, the applicant could have, in the period before the entry into force of the 2013 Courts Act on 14 March 2013, resorted to the remedy available under the previous legislation (the 2005 Courts Act, see paragraph 25 above), which the Court had recognised as effective for the purposes of Articles 13 and 35 § 1 of the Convention (see *Pavić v. Croatia*, no. 21846/08, § 36, 28 January 2010).

(α) As regards the remedies available under the 2013 Courts Act

33. The Government first argued that the remedies provided under the 2013 Courts Act (see section 68(1) of the 2013 Courts Act in paragraph 23 above) satisfied the requirement of "effectiveness" and that the applicant had therefore been required to make full use of them in order to comply with the requirements of Article 35 § 1 of the Convention.

34. They submitted that main goal of that legislation had been to further enhance the efficiency of domestic courts and expedite the judicial proceedings by preventing excessive delays and, thus, potential violations of

the right to a hearing within a reasonable time. In particular, since the Court had in its case-law emphasised the need to prevent violations of the said right, Croatia had decided to introduce in its legal system an acceleratory remedy which the parties could use in cases of impending violations, namely, the "request for protection of the right to a hearing within a reasonable time" (see section 65 of the 2013 Courts Act in paragraph 23 above, hereafter "the purely acceleratory remedy"). By lodging that request parties could obtain a decision of the court president ordering the judge hearing their case to adopt a decision within a specific time-limit (see section 66(1) of the 2013 Courts Act in paragraph 23 above). That remedy thus constituted a remedy of preventive character enabling the domestic courts to issue a decision in due time and thereby prevent delays in proceedings from becoming excessive. Its purpose was primarily to provide a prompt and effective response to an impending violation of the right to a hearing within a reasonable time and prevent its occurrence in a timely manner.

35. That remedy was complemented by a combined compensatory-acceleratory remedy, namely, the "request for payment of appropriate compensation" (hereafter "the complementary remedy") which could be used in those cases where the above-described purely acceleratory remedy had failed to prevent the violation of the right to a hearing within a reasonable time, that is, in cases where the judge hearing the case had not delivered a decision within the time-limit specified by the court president (see section 68(1) of the 2013 Courts Act in paragraph 23 above). If that complementary remedy was granted the immediately higher court could award appropriate compensation for the excessive delay that had already occurred, and specify another time-limit within which the judge hearing the case had to adopt decision (see section 69(1) of the 2013 Courts Act in paragraph 23 above). It could therefore prevent further delays and provide redress for the existing ones.

36. The Government argued that the mere fact that those two remedies were different from the one available under the previous legislation, namely, the 2005 Courts Act (see paragraphs 25-26 above), was not sufficient to view them as ineffective. That was so because those two remedies satisfied the criteria of effectiveness which length-of-proceedings remedies must meet according the Court's case-law (see paragraphs 45-46 below). In particular, as described above (see paragraphs 34-35), they were, taken together, like the previous remedy (see paragraphs 25-26 above) able to both expedite the proceedings by setting a specific time-limit within which a decision had to be adopted, and award adequate compensation for the delays that had already occurred.

37. Turning to the present case the Government noted that the applicant had resorted (successfully) to the first of those two remedies, namely, to the "request for protection of the right to a hearing within a reasonable time" as

the purely acceleratory remedy, and obtained a ruling of the court president ordering the judge hearing her case to deliver a decision within six months (see paragraphs 20-21 above). The Government emphasised that at the time the court president had given her decision the proceedings complained of had thus far lasted some three years, which period could not have been considered excessive. For the Government, it was therefore evident that the court president had made the order with a view to preventing the impending violation of the applicant's right to a hearing within a reasonable time which had been likely to occur if the proceedings before the first-instance court would have been further delayed.

38. However, the Government further noted, the applicant had failed to avail herself of the second, complementary remedy, the "request for payment of appropriate compensation". While it is true that this complementary remedy was available only if the judge hearing the case did not comply with the time-limit for deciding the case specified by the court president, that was precisely what had happened in the applicant's case where such time-limit had been exceeded by two months (see paragraphs 17 and 21 above). The applicant thus had a chance to use the complementary remedy and thereby receive adequate compensation for the delays that had already occurred and prevent further delays by obtaining a decision setting another time-limit for deciding the case. However, she had not pursued that remedy and thus had not fully availed herself of the remedies available under the 2013 Courts Act. By failing to do so she had not exhausted domestic remedies.

(β) As regards the constitutional complaint

39. In the alternative, the Government argued that the applicant should have lodged a constitutional complaint under section 63 of the Constitutional Court Act, a remedy that the Court had already recognised as effective (see *Slaviček v. Croatia* (dec.), no. 20862/02, ECHR 2002-VII). In so arguing the Government relied in particular on the Constitutional Court's decision of 23 December 2014. While it was true that in that decision the Constitutional Court had held that it could examine constitutional complaints alleging violations of the constitutional right to a hearing with a reasonable time only if the remedies available under the 2013 Courts Act had been fully exhausted, it had, in the Government's view, also indicated its readiness to examine the effectiveness of those remedies in each individual case (see paragraph 24 above).

40. Therefore, had the applicant lodged such a complaint, the Constitutional Court would have been able to examine whether she had indeed been required to make full use of the said remedies, or whether she could have been exempted from doing so in view of their possible ineffectiveness in the particular circumstances of her case. If the Constitutional Court had found that the applicant had been exempted from

fully exhausting the remedies in question, it would have been able to itself assess whether the constitutional right in question had been violated and, if so, grant her appropriate compensation on that account.

41. Therefore, even assuming that the remedies provided in the 2013 Courts Act were indeed ineffective and that the applicant had not been required to pursue them, the Government maintained that she had nevertheless failed to exhaust domestic remedies because she had not lodged a constitutional complaint.

(ii) The applicant

42. The applicant argued that the 2013 Courts Act: (a) unjustifiably deprived litigants of compensatory remedy in cases where the judge hearing the case had reached a decision within the time-limit specified by the court president when granting the request for the purely acceleratory remedy, and (b) limited the level of compensation to HRK 35,000 regardless of the duration of the proceedings complained of (see sections 68(1) and 69(2) of the 2013 Courts Act in paragraph 23 above).

43. The remedies available under the 2013 Courts Act did not meet the criteria of effectiveness developed in the Court case-law because, while capable of preventing further delays in the proceedings where the violation of the right to a hearing within a reasonable time had already occurred, they failed to provide appropriate redress for that violation, except in limited number of cases where the time-limit specified by the court president was not met. For those reasons the applicant claimed that she had not been required to exhaust those remedies.

44. As regards the Government's contention that she should have lodged a constitutional complaint (see paragraphs 39-41 above), the applicant replied that under the case-law of the Constitutional Court decisions adopted in the context of proceedings instituted by a request for the protection of the right to a hearing within a reasonable time, were not decisions open to the Constitutional Court's review (see paragraph 27 above). Therefore, lodging a constitutional complaint against the court president's decision in her case, issued in response to such request, would have had no chance of success.

(b) The Court's assessment

(i) Relevant principles

45. The Court reiterates that under Article 35 § 1 of the Convention it may only deal with a matter after all domestic remedies have been exhausted. In that connection the Court points out that any applicant must have provided the domestic courts with the opportunity, which is in principle intended to be afforded to Contracting States, of preventing or putting right the violations alleged against them. That rule is based on the

assumption, reflected in Article 13 of the Convention – with which it has close affinity – that there is an effective remedy available in the domestic system in respect of the alleged breach (see, for example, *Mifsud v. France* (dec.) [GC], no. 57220/00, § 15, ECHR 2002-VIII). Also, even if a single remedy does not by itself entirely satisfy the requirements of Article 13, the aggregate of remedies provided for under domestic law may do so (see *Sürmeli v. Germany* [GC], no. 75529/01, § 98, ECHR 2006-VII; *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI; and *Božić v. Croatia*, no. 22457/02, § 35, 29 June 2006).

46. Remedies available to a litigant at domestic level for raising a complaint about the length of proceedings are "effective" within the meaning of Article 13 of the Convention if they prevent the alleged violation or its continuation, or provide adequate redress for any violation that has already occurred (see *Sürmeli*, cited above, § 99; *Mifsud*, cited above, § 17; and *Kudła*, cited above, § 158). A remedy is therefore effective if it can be used either to expedite a decision by the courts dealing with the case, or to provide the litigant with adequate redress for delays that have already occurred (see *Sürmeli*, loc. cit., § 99, ECHR 2006-VII; and *Mifsud*, loc. cit.).

47. However, an acceleratory remedy alone can only be considered effective when it is used to prevent an impending violation of the right to a hearing within a reasonable time. In other words, it will be effective only if it expedites the proceedings that have not yet become excessively long. By converse implication, if an acceleratory remedy is used to speed up the proceedings which have already lasted too long, it will not be considered effective unless accompanied by a compensatory remedy (see *Cocchiarella v. Italy* [GC] no. 64886/01, §§ 74-76, ECHR 2006-V). For example, in the case of *Holzinger v. Austria (no. 1)* (no. 23459/94, ECHR 2001-I) the Court held that a purely acceleratory remedy was effective and thus had to be exhausted in a situation where it was clearly capable of preventing the violation complained of from occurring. However, it reached a different conclusion in the situation where resorting to the same remedy and speeding up the proceedings could not have made up for delay which had already occurred (see *Holzinger v. Austria (no. 2)*, no. 28898/95, § 21, 30 January 2001). Specifically, in the *Cocchiarella* case (see *Cocchiarella*, cited above, § 76) the Court held as follows:

> "76. It is also clear that for countries where length-of-proceedings violations already exist, a remedy designed only to expedite the proceedings – although desirable for the future – may not be adequate to redress a situation in which the proceedings have clearly already been excessively long."

48. To sum up, a remedy for raising a complaint about the breach of the "reasonable time" requirement laid down in Article 6 § 1 of the Convention cannot be considered effective if it has neither preventive nor compensatory

effect in respect of the length of the proceedings complained of (see *Puchstein v. Austria*, no. 20089/06, § 31, 28 January 2010).

(ii) Application of the above principles to the present case

49. The 2013 Courts Act provides for a purely acceleratory remedy as the primary remedy, whereas a combined compensatory-acceleratory remedy, identical to the one under the previous legislation (see paragraph 25 above), is available only in limited circumstances as the complementary remedy (see paragraph 23 above).

50. In particular, under the 2013 Courts Act a party to ongoing judicial proceedings who considers that they have been unduly protracted has a right to lodge a purely acceleratory remedy, namely, the "request for the protection of the right to a hearing within a reasonable time" and request the president of the same court before which those proceedings are pending to expedite them by setting a time-limit of maximum six months within which the judge hearing the case must render a decision (see sections 63, 65(1) and (2) and 66(1) of the 2013 Courts Act in paragraph 23 above).

51. The complementary (combined compensatory-acceleratory) remedy, namely, the "request for payment of appropriate compensation", is available only in cases where the judge hearing the case did not comply with the time-limit for deciding the case specified by the court president when granting the request for the purely acceleratory remedy (see section 68(1) of the Courts Act in paragraph 23 above). In the Court's view, this limited availability of the complementary remedy distinguishes the remedies available under the 2013 Courts Act from similar (combination of) remedies existing in Slovenia and Montenegro, which the Court found to be effective (see *Grzinčič v. Slovenia*, no. 26867/02, § 82, ECHR 2007‑V (extracts); and *Vukelić v. Montenegro*, no. 58258/09, 4 June 2013). In particular, in each of those countries parties to judicial proceedings may, unlike in Croatia, ask for compensatory remedy as long as they resorted beforehand (successfully or unsuccessfully) to a purely acceleratory one.

52. Turning back to the purely acceleratory remedy (the "request for the protection of the right to a hearing within a reasonable time"), the Court notes that the text of the relevant provisions of the 2013 Courts Act suggests that this remedy can be used by a party to judicial proceedings which considers that the competent court did not decide within a reasonable time on its rights or obligations, or on a suspicion or accusation of a criminal offence, and that the court president shall grant such a request if he or she finds it well-founded (see sections 63 and 66(1) of the 2013 Courts Act in paragraph 23 above). Since it therefore appears that the court president can find such a request well-founded only if he or she agrees with the requesting party that the court did not decide within a reasonable time, it seems that the purely acceleratory remedy in question may be granted only if the length of proceedings has already been excessive. Accordingly, it would appear that if

a party to judicial proceedings would resort to it in order to prevent the impending violation of the right to a hearing within a reasonable time, such request would be dismissed as ill-founded. It follows that this purely acceleratory remedy can only prevent further violations of the right to a hearing within a reasonable time in the proceedings in which such a violation has already occurred.

53. This feature markedly distinguishes that remedy from similar purely acceleratory remedies for the length of administrative proceedings such as an appeal and action/application for failure to respond, which the Court has recognised as effective (see *Pallanich v. Austria*, no. 30160/96, 30 January 2001; *Basic v. Austria*, no. 29800/96, ECHR 2001-I; and *Rauš and Rauš-Radovanović v. Croatia* (dec.), no. 43603/05, 2 October 2008). Those remedies can be lodged sixty days (in Croatia) or six months (in Austria) after the institution of such proceedings. They are thus clearly capable of preventing a violation of the right to a hearing within a reasonable time before it occurs.

54. In the present case the Court does not find it necessary to assess, in abstract terms, the effectiveness of remedies (see paragraphs 47-48 above) provided by the 2013 Court Act. That is so for the following reasons:

55. In the present case the applicant resorted to the purely acceleratory remedy, which was granted and the judge hearing the case ordered to deliver a decision within six months, which he exceeded by two months (see paragraphs 17 and 21 above). This fact opened the possibility for the applicant to seek compensation by lodging the complementary remedy envisaged by the 2013 Courts Act (see paragraphs 23 and 51 above).

56. This complementary remedy has the same characteristics as the previous one under the 2005 Courts Act (see paragraph 25 above) which was in the period between 29 December 2005 and 13 March 2013 recognised by the Court as an effective under Article 13 of the Convention and that had to be exhausted for the purposes of Article 35 § 1 before the complaints concerning excessive length of judicial proceedings in Croatia were brought before the Court (see *Pavić*, cited above, § 36).

57. It follows that the applicant in the specific circumstances of her case had an effective remedy to complain about the excessive length of the proceedings in question. However, she failed to avail herself of that remedy.

58. It is true that this complementary remedy became available to the applicant only in mid-May 2014, when it became evident that the judge hearing the case exceed the time-limit for delivery of a decision specified by the court president (see paragraphs 16-17 and 21 above). That was after she had lodged her application with the Court on 10 January 2014. It is also true that the issue whether domestic remedies have been exhausted is normally determined by reference to the date when the application was lodged with the Court (see *Baumann v. France*, no. 33592/96, § 47, ECHR 2001‑V (extracts)).

59. However, the Court has, in the specific context of exhaustion of domestic remedies for the excessive length of proceedings, declared similar applications inadmissible as premature in situations where the compensatory remedy was available "reasonably promptly" after the applicant had resorted to purely acceleratory remedy, which could not have remedied the delays that had already occurred (see *Žunič v. Slovenia* (dec.), no. 24342/04, §§ 43-55, 18 October 2007; and contrast with *Robert Lesjak v. Slovenia*, no. 33946/03, §§ 47-56, 21 July 2009).

60. In the present case, as already noted above (see paragraph 58) the complementary (combined compensatory-acceleratory) remedy became available to the applicant in mid-May 2014, that is some seven and a half months after she had lodged her "request for the protection of the right to a hearing within a reasonable time" (see paragraphs 20 above). The Court therefore considers that the possibility to obtain compensation arose for the applicant "reasonably promptly" (see, by converse implication, *Robert Lesjak*, cited above, § 53) after she had resorted to that purely acceleratory remedy.

61. It follows that this complaint is inadmissible under Article 35 § 1 of the Convention for non-exhaustion of domestic remedies and must therefore be rejected pursuant to Article 35 § 4 thereof.

62. In view of this conclusion the Court does not find it necessary to address the Government's further arguments as to why the applicant had failed to exhaust domestic remedies (see paragraphs 32 and 39-41 above), or to address their remaining inadmissibility objection (see paragraph 31 above).

B. Alleged violation of Article 13 of the Convention

63. The applicant further complained that the remedies provided in the 2013 Courts Act were not effective, and that therefore after its entry into force she had not had an effective remedy whereby she could complain at the domestic level of the excessive length of the civil proceedings in question. She relied on Article 13 of the Convention, which reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

64. The Government disputed the admissibility of this complaint by arguing that it was manifestly ill-founded.

65. The Government and the applicant relied on their respective arguments summarised in paragraphs 32-41 and 42-44 above.

66. The Court refers to its above findings according to which the applicant's complaint under Article 6 § 1 of the Convention is inadmissible for non-exhaustion of domestic remedies (see paragraphs 49-61 above).

67. It follows that this complaint is also inadmissible under Article 35 § 3 (a) of the Convention as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 thereof.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 7 July 2016.

Stanley Naismith
Registrar

Işıl Karakaş
President