CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 46953/99
by Mehmedalija OMEROVIĆ
against Croatia

The European Court of Human Rights (Fourth Section) sitting on 9 December 1999 as a Chamber composed of

Mr M. Pellonpää, *President*,
Mr G. Ress,
Mr I. Cabral Barreto,
Mr V. Butkevych,
Mrs N. Vajić,
Mr J. Hedigan,
Mrs S. Botoucharova, *judges*,

and Mr V. Berger, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 24 August 1998 by Mehmedalija Omerović against Croatia and registered on 22 March 1999 under file no. 46953/99;

Having regard to the report provided for in Rule 49 of the Rules of Court;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Croatian citizen, born in 1945 and living in Slatina, Croatia.

This is the applicant's second application. The previous one (number 41514/98) was declared inadmissible by the Commission in June 1998.

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

On 17 March 1986, the applicant was charged with aggravated assault before the Našice Municipal Court (*Općinski sud u Našicama*). On 9 November 1995, the Našice Municipal Court stayed the proceedings against the applicant due to the expiry of the time-limit for prosecution and stated that the Court would issue a separate decision on the costs of the proceedings.

On 20 May 1996, the Court dismissed the applicant's request for reimbursement of the costs of the proceedings, as the applicant did not submit relevant evidence in support of his claim. The Municipal Court instructed the applicant that he could lodge an appeal against that decision with the Požega County Court (*Županijski sud u Požegi*).

On 15 October 1996, the County Court, upon the applicant's appeal, remitted the case to the Municipal Court stating that the Municipal Court had both the trial and appellate jurisdiction on that issue. The County Court instructed the Municipal Court to deliver a decision upon the applicant's appeal.

On 30 December 1996 the Municipal Court again dismissed the applicant's request for the costs of the proceedings, again stating that the applicant did not submit the relevant evidence. Again, the Municipal Court instructed the applicant that he could lodge an appeal with the Požega County Court.

On 8 July 1997, the County Court dismissed the applicant's appeal as inadmissible. The Court stated that the Municipal Court wrongly instructed the applicant that the appeal was to be lodged with the County Court as the appellate court, while the Municipal Court for the applicant's case was both the first instance and the appellate court. However, the County Court held that, although the Municipal Court had not mentioned the applicant's appeal in its decision, it was evident that the Municipal Court actually ruled on the applicant's appeal, because the first decision by the Municipal Court had been delivered by a single judge, while the second decision of the Municipal Court was delivered by a special panel of three judges. According to the Criminal Procedure Act that panel was to act as an appellate body within the Municipal Courts for certain type of decisions of those courts. Furthermore, the County Court held that there was no right to appeal against the Municipal Court three-member panel decision on the costs of criminal proceedings.

On 25 July 1997, the applicant lodged a constitutional complaint with the Croatian Constitutional Court (*Ustavni sud Republike Hrvatske*), claiming, in substance, that his rights to fair trial and to an effective remedy have been violated. The complaint is still pending.

COMPLAINTS

The applicant complains under Article 6 § 1 of the Convention that he was deprived of a fair trial because he was given wrong instruction on the appellate jurisdiction, by the Našice Municipal Court twice. He also complains that his case before the Constitutional Court has not been heard within a reasonable time.

The applicant further complains under Article 13 of the Convention that he was deprived of the right to an effective remedy regarding his request for reimbursement of the costs of the criminal proceedings against him.

THE LAW

1. The applicant complains that the length of the proceedings regarding his constitutional claim has been excessive.

He invokes Article 6 § 1 of the Convention, the relevant part of which provides:

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

With regard to the complaints concerning excessive length of proceedings, the Court notes that, as to the period to be taken into consideration, it did not begin with the institution of the applicant's constitutional complaint on 25 July 1997, but only as from 5 November 1997, i.e. the date of entry into force of the European Convention on Human Rights in respect of Croatia. In order to determine the reasonableness of the length of time which elapsed after that date, account must be taken, however, of the state of the proceedings at that moment (see Foti and Others v. Italy judgment of 10 December 1982, Series A no. 56, p. 18, § 53).

As to the state of the proceedings on 5 November 1997, the Court observes that the applicant's constitutional claim had been pending before the Constitutional Court for three months and ten days.

The Court observes that the case is still pending. The period to be considered now amounts to a few weeks over two years.

The reasonableness of the length of the proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities (see, among many other authorities, the Cazenave de la Roche v. France judgment of 9 June 1998, *Reports* 1998-III, p. 1327, § 47).

Although the present case does not raise complex questions with regard to either legal or factual issues and the length of the proceedings cannot be attributed to the applicant's conduct, in the light of the above mentioned criteria and the facts of the present case, the Court observes that the period of two years and a few weeks is not excessive for the proceedings before the Constitutional Court. Therefore, the Court considers the applicant's allegation that the length of the proceedings regarding the applicant's constitutional claim before the Constitutional Court were excessive to be manifestly ill-founded within the

meaning of Article 35 § 3. Accordingly, the complaint must be rejected as inadmissible in accordance with Article 35 § 4 of the Convention.

2. The applicant further complains under Article 6 § 1 of the Convention that the proceedings regarding his request for reimbursement of the costs of the criminal proceedings against him, were unfair.

Under Article 35 § 1 of the Convention "the Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law".

In this respect the Court recalls that the purpose of the rule referred to above is to afford the Contracting States the opportunity of preventing or putting right - usually through the courts - the violations alleged against them before those allegations are submitted to the Court (see the Fressoz and Roire v. France judgment of 21 January 1999, to be published in official reports of the Court, § 37).

The Court observes that the applicant, in substance, alleged such an unfairness in his constitutional complaint. However, as the proceedings with the Constitutional Court regarding the applicant's complaint are still pending, the application is premature in regard to this allegation.

It follows that this part of the application must be rejected for non-exhaustion of domestic remedies, pursuant to Article 35 § 4 of the Convention.

3. The applicant also complains that he was deprived of the right to an effective remedy, regarding his request for reimbursement of the costs of the criminal proceedings against him.

He invokes Article 13 of the Convention which reads as follows:

> "Everyone whose rights and freedoms as set forth in this 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."

The Court observes that in the present case the applicant lodged his request for reimbursement of the costs of the criminal proceedings with the Našice Municipal Court. The decision was taken by a single judge. The applicant was entitled to appeal to the same court, and a panel of three judges, other than the judge who had decided in the first instance, was competent to rule on appeals in such matters. However, the Municipal Court wrongly instructed the applicant to lodge his appeal with the Požega County Court, and the applicant followed such an instruction. The County Court remitted the case to the Municipal Court. The Municipal Court ruled again on the matter of the costs of the criminal proceedings, this time sitting as a panel of three judges, which is the composition of that court in appellate matters. The applicant appealed against that decision to the County Court. However, such and appeal was not prescribed by law and the County Court declared that appeal inadmissible. The applicant subsequently lodged his constitutional complaint.

The Court notes that the applicant had a remedy in this matter, both before the Municipal Court and before the Constitutional Court. Therefore, there is no appearance of a breach of the applicant's rights under Article 13 of the Convention.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

For these reasons, the Court, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Vincent Berger
Registrar

Matti Pellonpää
President