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

FIRST SECTION

DECISION

Application no. 69108/17
Oliver ŽULIĆ
against Croatia

The European Court of Human Rights (First Section), sitting on 5 July 2022 as a Committee composed of:

Erik Wennerström, *President,*
Lorraine Schembri Orland,
Ioannis Ktistakis, *judges,*
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 69108/17) 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 15 September 2017 by a Croatian national, Mr Oliver Žulić, who was born in 1976 and lives in Kršan ("the applicant") who was represented by Mr B. Zustović, a lawyer practising in Pazin;

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

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the costs of proceedings in the applicant's case against a bank, and the alleged divergence in domestic case-law on the matter.

2. On 18 March 2015 the applicant brought a civil action before the Labin Municipal Court against a bank (i) seeking that a clause in a loan agreement he had concluded with that bank concerning the existence of a variable interest rate be declared partially null and void, and (ii) claiming reimbursement of overpaid interests. The respondent bank contested the claim in its entirety.

3. On 16 December 2015, following adoption of new legislation, the applicant and the bank concluded an annex to their loan agreement, whereby they changed the interest rate and the currency of the loan. The bank notified the court thereof on 25 January 2016.

4. On 16 June 2016 the applicant withdrew his civil action stating that he had settled the dispute with the bank out of court and that the bank had complied with the claim in its entirety.

5. At the main hearing held on 20 June 2016, the bank's representative agreed to the withdrawal of the claim. However, he stated that by concluding the annex, the mutual relations of the parties were not resolved in the manner identical to the applicant's claim and that thus the withdrawal had not been the result of the bank satisfying that claim. Both parties claimed their costs of representation in the civil proceedings.

6. By a decision of 28 June 2016, the court found that the civil action had been withdrawn and awarded the applicant reimbursement of his costs. It further stated that, had the applicant not withdrawn his claim, he would have nevertheless succeeded with it in the proceedings. Both parties appealed.

7. On 22 February 2017 the Slavonski Brod County Court overturned the first instance decision and ordered each party to bear their own costs. It stated that, although the proceedings had not been concluded by a court settlement, in the circumstances the provision of section 159(1) of the Civil Procedure Act (see paragraph 11 below) should be applied by analogy to the decision on the costs of proceedings.

8. The applicant then lodged an appeal on points of law (*revizija*) against the decision on the costs, which was declared inadmissible by the Supreme Court.

9. The Constitutional Court declared the applicant's subsequent constitutional complaint inadmissible. The applicant's lawyer received this decision on 26 May 2017.

10. The applicant complained, under Article 6 § 1 and Articles 13 and 14 of the Convention as well as Article 1 of Protocol No. 1 thereto, about the failure of the domestic courts to order reimbursement of his costs of proceedings. In particular, he maintained that the court decision in his case ordering that each party bear their own litigation costs had been contrary to the Supreme Court's well-established case-law and that the jurisprudence of the domestic court on the matter had been divergent.

THE COURT'S ASSESSMENT

11. The Court notes at the outset that section 158(1) of the Civil Procedure Act (hereinafter: "the CPA") provides that a plaintiff who withdraws a civil action is required to reimburse the respondent's costs of proceedings, unless the action was withdrawn immediately after the respondent had complied with the claim. In the latter case, the respondent has to reimburse the costs of

proceedings to the plaintiff. According to section 159(1) of the CPA, in a case of a court settlement, each party is to bear his or her own costs of proceedings.

12. The Court further notes that the domestic courts indeed had different approaches in numerous similar cases lodged by individuals concerning bank loans in Swiss francs. Applying section 158(1) of the CPA, some courts held that the banks should bear the costs of the proceedings because the plaintiffs withdrew their civil actions immediately after the banks complied with their claims[1], whereas other courts were of the opinion that the plaintiffs were to reimburse the costs of the proceedings to the banks because by concluding annexes to the loan agreements they had in reality not complied with their claims[2]. Finally, like in the applicant's case, some courts decided to interpret such annexes as an out-of-court settlements and to apply by analogy section 159(1) of the CPA, which provides that each party was to bear their own costs of the proceedings.[3]

13. As to the latter approach, it is true that the Supreme Court stated in its decision no. Rev-2046/10 of 27 June 2012 that section 159(1) of the CPA was not to be applied by analogy to out-of-court settlements. Instead, in cases such as the applicant's, the courts were to apply section 158(1) of the CPA, determining in each particular case whether the plaintiff's claim had indeed been complied with taking into account the content of the claim, the plaintiff's withdrawal and the content of the respondent's comment on the notification of the withdrawal, as well as the enclosed evidence (see the Supreme Court's Conclusion No. 4, no. Su-IV-201/17 of 2 June 2017).

14. The applicant in the present case claimed that, according to section 158(1) of the CPA, the bank should have been ordered to reimburse him his costs of the proceedings. In order for that to be the case, two criteria had to be met: the bank had to comply with his claim, and the withdrawal had to follow immediately after such fulfilment.

15. Contrary to the Government's observations, the mere fact that the applicant withdrew his claim only some months after the bank had allegedly complied with it, does not mean that he had lost the right to reimbursement of the costs of the proceedings (see, for example, decision of the High Commercial Court no. Pž-4146/13 of 6 November 2013). What is crucial is whether the bank in fact complied with the claim as formulated by the applicant.

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1. See, for example, decisions of the County Court Osijek no. Gž-677/16 of 24 March 2016, County Court Zagreb no. Gž-4590/16 of 28 June 2016 and County Court Rijeka no. Gž-2343/16 of 8 November 2017, County Court Zadar no. Gž-1386/16 of 10 February 2017, County Court Velika Gorica no. Gž-800/18 of 25 March 2019 and County Court Bjelovar no. Gž-397/17 of 26 July 2019.

2. See, for the example, decisions of the County Court Zagreb no. Gž-2953/16 of 26 April 2016, County Court Varaždin, Permanent Office Koprivnica no. Gž-782/16 of 18 May 2016 and County Court Šibenik no. Gž-916/17 of 26 April 2017.

3. See, for example, decisions of the County Court Slavonski Brod no. Gž-1302/16 of 19 October 2016 and County Court Sisak no. Gž-1426/16 of 27 January 2017.

16. In that connection, the Court notes that in his statement of claim the applicant sought to declare null and void the variable interest rate contained in the loan agreement, as well as to reimburse him overpaid interests (see paragraph 2 above). However, the annex to the loan agreement amended the interest rate and the currency of the loan but contained no reference to the ongoing court proceedings or their costs, or to the right to compensation for allegedly overpaid interest (see paragraph 3 above). Furthermore, the bank expressly stated that by signing the annex it had not complied with the claim as formulated by the applicant. What is more, the first instance court stated that the applicant would have succeeded in the proceedings had he not withdrawn his action (see paragraph 6 above), which in turn implied that the bank did not comply with his claim because in that case his claim would have been dismissed as ill-founded. In such circumstances, the Court is not convinced that it can be said that the bank complied with the applicant's claim or that section 158(1) of the CPA would have been applied in the applicant's favour so as to award him reimbursement of his costs.

17. The Court further notes that, by virtue of the domestic court's decision on costs, the applicant was not put in a position where any financial award in his favour had been consumed by the costs he had been ordered to pay to the respondent (see, *a contrario*, *Čolić v. Croatia*, no. 49083/18, § 59, 18 November 2021). On the contrary, the applicant was merely ordered to pay the costs of his own legal representative, which is an inherent aspect of litigation and cannot in the circumstances be construed as a disproportionate restriction of his right of access to court or of his property rights.

18. In conclusion, even though the second instance court might have wrongly applied the domestic law in the applicant's case and there had been a certain divergence in the case-law on the matter (see paragraph 13 above), taking into account that the applicant was not obliged to pay any costs of the proceedings to the bank and that the decision on the costs would most likely have been financially less favourable to the applicant had section 158(1) of the CPA been applied, the Court finds that the applicant suffered no significant disadvantage in the circumstances.

19. In light of the above and regard being had to the previous cases against Croatia concerning costs of proceedings (see *Čolić*, cited above; *Klauz v. Croatia,* no. 28963/10, 18 July 2013; and *Cindrić and Bešlić v. Croatia,* no. 72152/13, 6 September 2016), the Court is of the view that the complaints raised in the present case do not concern an important question of principle, which might justify examining them any further, nor does respect for human rights require such an examination.

20. The conditions of this inadmissibility criterion having therefore been satisfied, the Court finds that this application must be declared inadmissible under Article 35 §§ 3 (b) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 1 September 2022.

Liv Tigerstedt Deputy Registrar	Erik Wennerström President