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

Press Release
issued by the Registrar of the Court

ECHR 229 (2020)
30.07.2020

Remedies for excessive length of proceedings in Croatia found to be largely ineffective between March 2013 and May 2019

The cases of Kirinčić and Others v. Croatia (application no. 31386/17) and Marić v. Croatia (no. 9849/15) concerned complaints about violations of the right to a fair trial within a reasonable time and the lack of effective domestic remedies for such complaints.

In **Chamber** judgments[1] in the cases the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 6 § 1 (right to a fair trial/length of proceedings) of the European Convention on Human Rights, and,

a violation of Article 13 (right to an effective remedy) of the European Convention.

In *Kirinčić and Others v. Croatia*, the Court found that civil proceedings over property rights of more than 15 years had breached "the reasonable time" requirement of the Convention. The applicants' complaint to the Constitutional Court had not been an effective remedy as that court had not taken account of the overall length of the proceedings, just a much shorter period of five months.

The Court found that the length of the civil proceedings on compensation in the case of *Marić v. Croatia* which had lasted just over four years, was also excessive.

Furthermore, it found that the applicant had not been obliged to use the remedies for protracted proceedings under the 2013 Courts Act as they were not effective. In particular, the remedy to accelerate the proceedings could only be applied once they had already become excessively long while the compensatory remedy had too many restrictions.

The Court has also today delivered a judgment in **Glavinić and Marković v. Croatia** (application nos. 11388/15 and 25605/15), which concerns similar issues.

Principal facts

Kirinčić and Others v. Croatia

The applicants were Smiljka Kirinčić, Branka Ivančić and Smiljan Kirinčić. They are Croatian nationals born in 1932, 1952 and 1956 and live in Dobrinj and Rijeka (all in Croatia).

Between May 2000 and May 2015 the applicants, represented by the third applicant, were involved in proceedings to regulate the ownership of previously nationalised property. A first-instance decision in civil proceedings in October 2002, upheld on appeal in December 2006, found for them.

In February 2007 one of the defendants in the civil proceedings lodged an appeal on points of law, which the Supreme Court eventually dismissed in May 2015.

In November 2014 the applicants lodged a request for protection of the right to a hearing within a reasonable time with the President of the Supreme Court, a remedy under the 2013 Courts Act

1. Under Articles 43 and 44 of the Convention, these Chamber judgments are not final. During the three-month period following delivery, any party may request that a case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If a referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

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designed to accelerate proceedings. In May 2015 the President of the Supreme Court found the request well-founded and ordered that a decision on the appeal on points of law be issued within six months. However, a judgment had already been issued two days earlier, which was served on the applicants in October 2015.

The applicants lodged a constitutional complaint about the length of the proceedings in January 2015. The Constitutional Court dismissed the complaint in October 2016. It found that the time to be taken into account ran from the adoption of the decision by the President of the Supreme Court in May 2015 to the serving of the Supreme Court's decision on the appeal on points of law on the applicants in October 2015, which was just over five months. Their right to a hearing within a reasonable time had thus not been breached.

Marić v. Croatia

The applicant, Mirjana Marić, is a Croatian national who was born in 1951 and lives in Zagreb.

In October 2007 Ms Marić began proceedings for compensation against the City of Zagreb after a traffic accident caused by an icy road which had not been salted. Zagreb Country Court handed down the final judgment in appeal proceedings in March 2017, awarding her compensation for pecuniary and non-pecuniary damage, which was served on her in May 2017.

The applicant, relying on the 2005 Courts Act, lodged a request for the protection of the right to a hearing within a reasonable time in June 2010, which was ultimately dismissed by the Supreme Court in October 2011.

She lodged a constitutional complaint about excessive length of proceedings in January 2014, arguing that the remedy provided by a new Act, the 2013 Courts Act, was not effective.

The Constitutional Court dismissed her complaint for failure to use other remedies for excessive length of proceedings, notably those under the 2013 Courts Act. It could not assess her complaint in the abstract and doubts about the remedy's effectiveness did not mean she did not have to try it first.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right to a fair trial within a reasonable time) the applicants complained of the excessive length of the proceedings in their cases and, under Article 13 (right to an effective remedy), of the lack of effective domestic remedies for their complaints.

The applications were lodged with the European Court of Human Rights on 20 April 2017 and 19 February 2015 respectively.

Judgment in *Kirinčić and Others v. Croatia* was given by a Chamber of seven judges, composed as follows:
Krzysztof **Wojtyczek** (Poland), *President*,
Ksenija **Turković** (Croatia),
Aleš **Pejchal** (the Czech Republic),
Armen **Harutyunyan** (Armenia),
Pere **Pastor Vilanova** (Andorra),
Pauliine **Koskelo** (Finland),
Tim **Eicke** (the United Kingdom),

and also Abel **Campos**, *Section Registrar.*

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Aleš **Pejchal** (the Czech Republic),
Pauliine **Koskelo** (Finland),
Tim **Eicke** (the United Kingdom),
Jovan **Ilievski** (North Macedonia),
Raffaele **Sabato** (Italy),

and also Abel **Campos**, *Section Registrar*

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Decision of the Court

Article 6 § 1

Kirinčić and Others v. Croatia

The Court found that the proceedings overall had lasted 15 years and five months at three levels of jurisdiction. That was clearly excessive and could only be justified in exceptional circumstances, which were, however, not present. The Court found that the proceedings had failed to meet the "reasonable time" requirement and had violated Article 6 § 1.

Marić v. Croatia

Admissibility

The Government argued that the applicant's complaint was not admissible as she had not fully exhausted domestic remedies, in particular the procedure under the 2013 Courts Act. The applicant submitted that a Constitutional Court complaint had been the only effective remedy in her case.

The Court first held that the period to be taken into account was just over four years, running from when the 2013 Courts Act had come into force to when the final judgment had been served on her.

It observed that the 2013 Courts Act provided a two-step procedure for excessively long proceedings: first, it was possible to obtain a decision by the president of the court dealing with the case to accelerate the proceedings, which could provide a six-month deadline. Second, it was possible to obtain compensation for a violation of the right to a hearing within a reasonable time.

In its decision in *Novak v. Croatia* it had found that the first step of the procedure, the purely acceleratory remedy, could not be considered effective as it could only prevent further violations of the right to a hearing within a reasonable time when such a violation had already occurred. On the other hand, it had held in *Novak*, that the secondary, compensatory, remedy could be effective.

Nevertheless, the secondary remedy had restrictions: it could only be used where a complaint under the first, acceleratory remedy had been upheld and the judge hearing the case had failed to meet the deadline to deliver a judgment.

The question was thus whether the applicants had anyway to make use of the first leg of the remedy: the Court found that they did not. The availability of the secondary remedy was restricted to such an extent that it dispensed applicants from first having to use the primary, purely acceleratory remedy.

The Court considered it understandable that Ms Marić had not used the purely accelerator remedy as that would have gone beyond the duties incumbent on applicants under the Convention's admissibility rules. On the other hand, anyone who had used the first step of the procedure had to use the second step too in order to exhaust domestic remedies for the purposes of admissibility if the judge hearing the case had failed to meet the deadline to deliver a judgment.

Merits

The Court found that the Government had not put forward any fact or argument which justified the length of the proceedings in the applicant's case and there had been a breach of Article 6 § 1.

Article 13

Kirinčić and Others v. Croatia

The applicants submitted that they had never received any compensation for their protracted proceedings, which had lasted more than 15 years. The Government argued that the remedies available to the applicants had been effective.

The Court noted that in May 2015 the President of the Supreme Court had granted their request for a remedy to accelerate the proceedings in their case and had ordered that a judgment be delivered within six months. However, a judgment had already been delivered two days earlier.

Given that the proceedings had by that time lasted 15 years, the remedy could only be considered effective if it had been accompanied by a compensatory step. However, compensation was not possible as the deadline for the accelerated judgment had not been exceeded. The purely acceleratory remedy under the 2013 Courts Act had therefore not been an effective remedy for the applicants' complaint about the length of the proceedings.

The Court went on to examine whether the complaint to the Constitutional Court was effective. It noted that in December 2014 the Constitutional Court had decided that complaints about the length of proceedings could be made to it, if the other remedies had been used first.

The Court noted, however, that in the applicants' case the Constitutional Court had not taken into account the overall length of the proceedings, more than 15 years, but had only considered the period of about five months between the President of the Supreme Court granting their request for an acceleratory remedy and the delivery of the final judgment in their civil case.

It reiterated that a remedy to raise a complaint about length of proceedings could only be considered effective if it was capable of covering all stages of the proceedings and their overall length. It therefore found that a complaint under section 63 of the Constitutional Court Act was not an effective remedy for the applicants.

The Court noted that the Constitutional Court's decision in the applicants' case had reflected a practice which had existed between December 2014 and May 2018, which had definitely changed in March 2019, when the Constitutional Court had begun to consistently take account of the overall duration of proceedings. Since the decisions suggesting the change in practice were published in April and May 2019, the Court considered that that new practice must have become public knowledge from November 2019.

The Court concluded that between January 2015 and mid-May 2019 a constitutional complaint was not an effective remedy for complaints about the length of proceedings in cases where one of the other remedies had been granted. However, it was effective if such a remedy had been denied.

The applicants had thus not had an effective remedy to complain about the excessive length of the proceedings in their case and there had been a violation of Article 13.

Marić v. Croatia

The Court noted its findings in Ms Marić's case in relation to Article 6 § 1 and that it had dismissed the Government's objections of non-exhaustion of domestic remedies as she had not had to use the remedy available under the 2013 Courts Acts.

It concluded that there had also been a violation of Article 13 in her case.

Article 41 (just satisfaction)

The Court held that Croatia was to pay each of the applicants in *Kirinčić and Others v. Croatia* 9,000 euros (EUR) in respect of non-pecuniary damage and EUR 22 jointly in respect of costs and expenses.

It held that Croatia was to pay the applicant in *Marić v. Croatia* EUR 1,250 in respect of non-pecuniary damage and EUR 2,500 in respect of costs and expenses.

The judgment is available only in English.

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