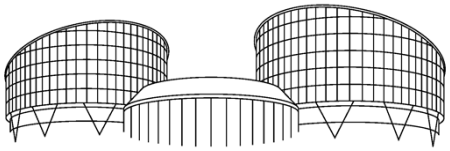

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF GOGIĆ v. CROATIA

(Application no. 1605/14)

JUDGMENT

Art 6 § 1 (civil) • Access to court • Applicant unable to obtain final determination of dispute concerning compensation • Series of omissions and uncertainties created by the domestic courts • Burden of court's errors not to be borne by applicant • Interference unjustified

STRASBOURG

8 October 2020

FINAL

08/01/2021

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Gogić v. Croatia,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Krzysztof Wojtyczek, *President,*
Ksenija Turković,
Linos-Alexandre Sicilianos,
Aleš Pejchal,
Armen Harutyunyan,
Pere Pastor Vilanova,
Pauliine Koskelo, *judges,*

and Abel Campos, *Section Registrar,*

Having deliberated in private on 1 September 2020,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 1605/14) 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") by a Croatian national, Mr Ivan Gogić ("the applicant"), on 18 December 2013.

2. The applicant was represented by Ms N. Owens, a lawyer practising in Zagreb. The Croatian Government ("the Government") were represented by their Agent, Ms Š. Stažnik.

3. The applicant complained, in particular, of his lack of access to a court and a breach of his right to the peaceful enjoyment of possessions. He relied on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

4. On 31 March 2016 the above complaints were communicated to the Government and the remainder of the application was declared inadmissible, pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1985 and lives in Zagreb.

6. On 7 January 2003 the applicant signed a contract as a professional basketball player (hereinafter "the contract") with a basketball club, D. (hereinafter "the club").

7. In 2005 the applicant asked the Competition Committee of the Croatian Basketball Federation (*Povjerenstvo za natjecanje Hrvatskog košarkaškog saveza* – hereinafter "the Committee"), the Federation's regulatory body, to cancel his contract and that he be paid what he was owed for playing.

8. On 18 July 2005 the Committee allowed the applicant's request, cancelled the contract and ordered the club to pay the applicant 14,500 euros (EUR) or 105,995 Croatian kunas (HRK).

9. The club lodged an appeal against the decision of 18 July 2005 with the Court of Arbitration of the Croatian Basketball Federation (*Arbitraža Hrvatskog košarkaškog saveza*; hereinafter "the Court of Arbitration") and on 29 July 2005 that court upheld the decision of 18 July 2005.

10. The club failed to comply with the arbitration decision by paying the amount due to the applicant.

11. On 23 September 2008 the applicant brought a civil action in the Zagreb Municipal Civil Court (*Općinski građanski sud u Zagrebu*; hereinafter "the Municipal Court") against the club, seeking payment of EUR 14,500 EUR or HRK 105,995 because the club had failed to comply with the arbitration decision.

12. On 8 June 2010 the Municipal Court held that the decision of the Court of Arbitration was an enforceable decision (*ovršna isprava*). It also stressed that the applicant's claim constituted in substance an application for the enforcement of the decision of the Court of Arbitration, which was to be considered as an enforceable arbitration award (*ovršna odluka arbitražnog suda*) and which fell under the jurisdiction of the Zagreb County Court (*Županijski sud u Zagrebu*; hereinafter "the County Court"). It therefore declined jurisdiction in favour of that court.

13. After an appeal by the club, on 20 March 2012 the County Court quashed the first-instance court's decision and declared the applicant's action inadmissible on the grounds of *res judicata.* It agreed with the first-instance court's conclusion that decisions of the Croatian Basketball Federation constituted enforceable arbitration awards. However, the County Court held that the applicant's claim could not be considered as constituting an application for enforcement, given that it had not been submitted in the correct manner. In view of its finding that the arbitration decision had the force of *res judicata*, the County Court dismissed the applicant's civil action. It also ordered the applicant to pay the club HRK 11,459.50 in costs. That decision was served on the applicant's representative on 18 June 2012.

14. On 6 July 2012, relying on the County Court's decision the applicant lodged an application with that court (sitting as a court of first instance) for the enforcement of the decision of the Court of Arbitration.

15. On 11 September 2012 the County Court issued an enforcement order against the club, as the debtor.

16. The club then lodged an appeal with the Supreme Court (*Vrhovni sud Republike Hrvatske*), and on 14 November 2012 the Supreme Court quashed the enforcement order and declared the application for the enforcement inadmissible. It held that the Court of Arbitration was not an arbitration tribunal within the meaning of the relevant domestic law and that its decision did not constitute a valid basis for enforcement and could not be directly enforced.

17. On 14 February 2013 the applicant lodged a constitutional complaint; on 20 June 2013 the Constitutional Court (*Ustavni sud Republike Hrvatske*) ruled it inadmissible as manifestly ill-founded.

18. The decision of the Constitutional Court was served on the applicant's representative on 10 July 2013.

II. RELEVANT DOMESTIC LAW

19. According to the relevant provisions of the Arbitration Act (*Zakon o arbitraži*, Official Gazette no. 88/2001), arbitration is a trial before an arbitral tribunal, regardless of whether it is organised or facilitated by an arbitration institution or not (section 2(1)(1)). An arbitral tribunal is a non-State body that draws its mandate to decide cases from an agreement between the parties concerned (section 2(1)(3)). The decision of the arbitral tribunal shall have, in respect of the parties, the force of a final judgment unless the parties have expressly agreed that it may be contested before an arbitral tribunal at a higher instance (section 31).

20. Under the relevant provisions of the Enforcement Act (*Ovršni zakon*, Official Gazette no. 112/2012, with further amendments), an enforceable decision of an arbitral tribunal is considered to constitute an enforceable title (section 23(3)).

21. According to the relevant provisions of the Statute of the Croatian Basketball Federation (*Statut Hrvatskog košarkaškog saveza*), the Federation's Court of Arbitration is an independent body which decides on complaints against, *inter alia*, the decisions of the Committee (section 53(1)).

22. The relevant provisions of the Civil Procedural Act (*Zakon o parničnom postupku*, Official Gazette no. 53/1991, with further amendments) concerning the lodging of an appeal on points of law are set out in the case of *Zubac v. Croatia* [GC], no. 40160/12, §§ 33 and 101, 5 April 2018).

23. According to section 371 of the Obligations Act (*Zakon o obveznim odnosima*, Official Gazette no. 53/1991, with further amendments), the general statutory limitation period for vindicating claims is five years.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

24. The applicant complained that he had not had access to a court, as provided 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 fair ... hearing ... by [a] ... tribunal ..."

25. The Government contested that argument.

A. Admissibility

1. The parties' arguments

26. The Government stressed the fact that, following the decision of the County Court of 20 March 2012 rejecting his civil action, the applicant had immediately instituted enforcement proceedings before that court, even though he had had further remedies at his disposal. In particular, he could have lodged an extraordinary appeal on points of law against the said decision of the County Court. The Government also submitted that the applicant had failed to bring another civil action concerning his claim following the Supreme Court's decision of 14 November 2012.

27. The applicant submitted that, according to the established case-law of the Court, an extraordinary appeal on points of law did not constitute a remedy to be exhausted. Moreover, he had had no legal interest in lodging an extraordinary appeal on points of law against the County Court's decision of 20 March 2012, since that court had suggested that he could directly satisfy his claim through enforcement proceedings. As to the Government's argument that he should have brought another civil action following the Supreme Court's decision of 14 November 2012, the applicant stressed that he could not have been expected to use again the same legal avenue that he had unsuccessfully used previously. In any event, he could not bring another claim as his claim had become time-barred.

2. The Court's assessment

28. The Court notes that there is no dispute between the parties that Article 6 is applicable to the proceedings in question. In view of the fact that the matters in dispute concern a claim for compensation, the Court has no reason to doubt the applicability of Article 6 § 1 of the Convention (see, for instance, *Georgiadis v. Greece*, 29 May 1997, § 37, *Reports of Judgments and Decisions* 1997-III, and *Shulepova v. Russia*, no. 34449/03, § 60, 11 December 2008).

29. With regard to the Government's argument that the applicant should have lodged an extraordinary appeal on points of law against the County Court's decision of 20 March 2012, the Court notes that in that decision the County Court had ruled that the Court of Arbitration's decision in the applicant's favour in fact constituted sufficient basis for enforcement act, which, for the purpose of the civil proceedings, had the force of *res judicata*. In these circumstances, the Court agrees with the applicant that he did not have a legal interest in lodging an extraordinary appeal on points of law since his pecuniary claim arising from the Court of Arbitration's decision was not placed in doubt. Moreover, following that decision, it was not unreasonable for the applicant to resort to enforcement proceedings in order to satisfy his claim. Accordingly, the Court does not consider that he was required to lodge an appeal on points of law. It therefore rejects the Government's objection in this respect.

30. As to the Government's argument that the applicant should have lodged another civil action concerning his claim following the Supreme Court's decision of 14 November 2012, the Court finds that it is closely related to the applicant's complaint of a lack of access to a court and should therefore be joined to the merits.

31. The Court furthermore finds that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It also notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' arguments

32. The applicant stressed that after the Court of Arbitration had made the award he had tried to have that arbitration award implemented by bringing a civil action in the Municipal Court seeking its recognition. His civil action had been dismissed on the grounds that the decision of the Court of Arbitration had created a *res judicata* effect concerning his compensation claim against the club. It had also been held that he should seek the enforcement of the arbitration award through enforcement proceedings. The applicant pointed out that he had accordingly instituted enforcement proceedings. However, after he had obtained a decision on enforcement from the County Court, the Supreme Court, following an appeal lodged by the club, had quashed that enforcement order, holding that the Court of Arbitration's decision had not constituted a valid basis for enforcement and could not be directly enforced. In the applicant's view, he had thereafter not been required (and nor would he have been able to) institute fresh civil proceedings. Moreover, in the meantime his claim had become time-barred.

In sum, the conduct of the domestic courts had prevented him from realising his claim against the club.

33. The Government maintained that the applicant had had the possibility of instituting the civil proceedings anew on the basis of the Supreme Court's finding that the arbitration award had not constituted an enforceable decision and had thus not had the force of *res judicata*. In the Government's view, even if the applicant had considered that there had been a lack of clarity in the relevant domestic law and the courts' case-law as to the nature of the arbitration awards, the Supreme Court had clarified that point by adopting a decision in the applicant's case, in accordance with the law. However, the fact that the County Court had earlier ruled differently had not been a result of arbitrariness but simply an error in its assessment, which the Supreme Court (in accordance with its constitutional role) had then rectified. In the Government's view, there could therefore be no question of a breach of the applicant's right of access to a court.

2. The Court's assessment

34. The Court notes at the outset, having regard to the Supreme Court's findings in the present case (see paragraph 16 above), that the case at issue raises an issue of access to a court rather than enforcement of an arbitration award.

35. The Court refers to the general principles regarding access to a court, as set out in the cases of *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, § 84-90, 116 ECHR 2016 (extracts), and *Zubac v. Croatia* [GC], no. 40160/12, §§ 76-79, 5 April 2018.

36. The right of access to a court under Article 6 § 1 of the Convention guarantees not only the right to institute proceedings but also the right to obtain the "determination" of the dispute by a court (see, among many other authorities, *Lupeni*, cited above, § 86).

37. In the present case, the Court notes that the applicant was able to institute proceedings in the relevant court by lodging a civil action against the club seeking payment of the amount due to him (see paragraph 11 above). However, he never succeeded in obtaining a resolution of his dispute with the club over his compensation claim. This is because the lower courts considered that he should have instituted enforcement proceedings rather than ordinary civil proceedings. However, after he complied with that instruction, the Supreme Court held that he should have in fact instituted ordinary civil proceedings and not enforcement proceedings.

38. It thus follows that the applicant was not able to obtain a final "determination" of his dispute with the club concerning his compensation claim. There has therefore been an interference with his right of access to a court. It remains to be seen whether that interference was justified.

39. In this connection, the Court notes that throughout the domestic proceedings the applicant properly used all legal avenues available to him. Indeed, he first claimed compensation from the club through civil proceedings; according to the subsequent finding of the Supreme Court, this was the appropriate procedural avenue to be taken, given the circumstances of the case. However, the Municipal Court and the County Court erroneously dismissed his claim, finding that the arbitration award had created a *res judicata* effect. They also suggested that he should institute enforcement proceedings, which, as already noted above, the Supreme Court eventually found to be an inappropriate procedural avenue.

40. It follows from the above that there is nothing that can be imputed to the applicant with regard to his conduct in the proceedings. He constantly pursued his case in a manner in accordance with the relevant law and the instructions given by the domestic courts. It is rather owing to a series of omissions and uncertainties created by the domestic courts that the applicant's case eventually remained undetermined. Moreover, the Court notes that according to the applicant the relevant statutory limitation period expired. His claim thus became time-barred and cannot be pursued through civil proceedings (see paragraphs 23 and 32 above); the Government did not contest this in their submissions.

41. Given these circumstances, and in accordance with the Court's case-law regarding adverse consequences of errors made during proceedings (see *Zubac*, cited above, § 90), the Court finds that the burden of the errors made in the applicant's case cannot be borne by him.

42. It therefore follows that the interference in question cannot be considered to be justified.

43. The Court accordingly rejects the Government's objection (which it previously joined to the merits – see paragraph 29 above) and finds that there has been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

44. The applicant complained of a breach of his right to the peaceful enjoyment of his possessions owing to the fact that he had not been able to obtain the "determination" of his pecuniary claim. He relied on Article 1 of Protocol No. 1 to the Convention.

45. The Court notes that this part of the application is closely linked to the complaint under Article 6 § 1 of the Convention regarding access to a court and must therefore be declared admissible. Having regard to its findings above that the domestic courts have denied an opportunity to the applicant to obtain an examination on the merits of its case, and had thereby violated the applicant's right of access to a court, the Court concludes that there is no need to examine this complaint separately as it has already been

examined under Article 6 § 1 (compare *Ateş Mimarlik Mühendislik A.Ş. v. Turkey*, no. 33275/05, § 60, 25 September 2012).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

47. The applicant claimed pecuniary damage in the amount of EUR 14,500 (together with statutory default interest), corresponding to the award of compensation that the club had had to pay him, and EUR 2,055.62 for the costs and expenses of the civil and enforcement proceedings that he was obliged to pay to the club. He also claimed the amount of EUR 10,000 in respect of non-pecuniary damage.

48. The Government considered the applicant's claim to be unsubstantiated and unfounded.

49. The Court finds that the finding of a violation of the Convention in the present case relates to the impossibility of the applicant to obtain before the domestic courts determination of his claim against the club, as recognised in the award made by the Court of Arbitration in his favour in the amount of EUR 14,500. As already noted above, owing to the circumstances leading to the finding of a violation, the applicant's claim became time-barred under the relevant domestic law (see paragraph 40 above). Given these circumstances, the Court finds it appropriate to award the sum of EUR 14,500 claimed by the applicant. On the other hand, the Court notes that the applicant has failed to specify the amount of the statutory default interest on this amount; it thus rejects the part of the claim relating to statutory default interest. The Court furthermore considers that the applicant should be compensated for the amount of EUR 2,055.62, which he was obliged to bear as a consequence of the dismissal of his actions at the domestic level. The Court therefore makes an award of pecuniary damages in the amount of EUR 16,555.62.

50. Moreover, ruling on an equitable basis, the Court awards the applicant EUR 6,000 in respect of non-pecuniary damage.

B. Costs and expenses

51. The applicant also claimed EUR 6,560.60 for the costs and expenses of his legal representation incurred before the domestic courts and for those

incurred before the Court. The applicant asked that the award for costs and expenses of the proceedings be paid into his representative's bank account.

52. The Government contested this claim.

53. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the sum claimed for costs and expenses in the domestic proceedings, as well as the proceedings before the Court. This amount should be paid into the applicant's representative's bank account.

C. Default interest

54. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join to the merits the Government's objection of non-exhaustion of domestic remedies and rejects it;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

4. *Holds* that there is no need to examine separately the complaint under Article 1 of Protocol No. 1 to the Convention;

5. *Holds*

   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

      (i) EUR 16,555.62 (sixteen thousand five hundred fifty-five euros and sixty-two cents), plus any tax that may be chargeable to the applicant on that amount, in respect of pecuniary damage;

      (ii) EUR 6,000 (six thousand euros), plus any tax that may be chargeable to the applicant on that amount, in respect of non-pecuniary damage;

      (iii) EUR 6,560.60 (six thousand five hundred sixty euros and sixty cents), plus any tax that may be chargeable to the applicant on that

amount, in respect of costs and expenses, which is to be paid to the applicant's representative's bank account;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 8 October 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos	Krzysztof Wojtyczek
Registrar	President