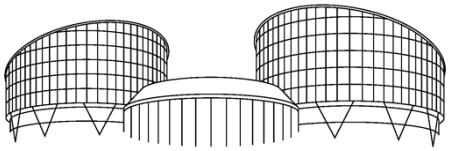

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF KIRINČIĆ AND OTHERS v. CROATIA

(Application no. 31386/17)

JUDGMENT

Art 6 § 1 (civil) • Reasonable time • Excessive length of civil proceedings Art 13 (+ Art 6) • Lack of effective remedy in respect of length of proceedings cases (purely acceleratory remedy and constitutional complaint) • Change in the Constitutional Court's

STRASBOURG

30 July 2020

FINAL

30/10/2020

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Kirinčić and Others v. Croatia,

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

Krzysztof Wojtyczek, *President,*
Ksenija Turković,
Aleš Pejchal,
Armen Harutyunyan,
Pere Pastor Vilanova,
Pauliine Koskelo,
Tim Eicke, *judges,*
and Abel Campos, *Section Registrar,*

Having regard to:

the application (no. 31386/17) 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") by three Croatian nationals, whose names are listed in the Appendix ("the applicants"), on 20 April 2017;

the decision to give notice of the application to the Croatian Government ("the Government");

the parties' observations;

Having deliberated in private on 16 June 2020,

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

INTRODUCTION

1. The case concerns the length of civil proceedings and the effectiveness of domestic remedies for excessively lengthy proceedings, specifically, of a constitutional complaint.

THE FACTS

2. A list of the applicants is set out in the appendix. The applicants were all represented by the third applicant, Mr Smiljan Kirinčić, an advocate practising in Rijeka.

3. The Government were represented by their Agent, Ms Š. Stažnik.

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

5. The second and third applicants' grandfather, Mr J.K., was the owner of a two-storey building which he had built in 1934 in Šilo, on the island of Krk.

6. On 26 December 1960 the building was nationalised by the socialist authorities. Subsequently, during the socialist period, the building was turned into a hotel.

7. On 1 January 1997 the Restitution Act entered into force. It enabled former owners of confiscated or nationalised property, or their heirs in the first line of succession (direct descendants or a spouse), to obtain under certain conditions either restitution of or compensation for property appropriated during the socialist regime.

I. CIVIL PROCEEDINGS

A. Main proceedings

8. On 15 May 2000 J.K.'s heir, A.K., brought a civil action in the Krk Municipal Court (*Općinski sud u Krku*) against two joint-stock companies, seeking the annulment of a sale contract of 2 March 1990 whereby one company had sold the above-mentioned building to the other.

9. The plaintiff claimed that he had owned the building before it had been nationalised by the socialist authorities and transferred into social ownership. He also claimed that during the socialist period, the municipal authorities had a quasi-ownership right over the plot of land on which the building stood, namely, the right of use (*pravo korištenja*). Under the Restitution Act socially-owned property in respect of which the State or municipal authorities had the right of use had to be restored to its former owners. By concluding the above-mentioned sale contract, which the plaintiff considered fictitious, the two companies had tried to acquire the property and profit from its sale, thereby circumventing the Restitution Act.

10. During the proceedings the plaintiff was represented by his son, the third applicant, who is an advocate.

11. On 25 May 2001 A.K. died.

12. In a judgment of 2 October 2002 the Krk Municipal Court ruled for the plaintiff and declared the impugned sale contract null and void.

13. By a judgment of 6 December 2006 the Rijeka County Court (*Županijski sud u Rijeci*) dismissed appeals by the defendants and upheld the first-instance judgment, which thereby acquired the force of *res judicata*.

14. On 2 February 2007 the first defendant lodged an appeal on points of law (*revizija*), alleging various breaches of procedure and, concurrently, applied for reopening of the proceedings (see paragraphs 31-36 below).

15. On 18 May 2007 the Krk Municipal Court sent the case file to the Supreme Court (*Vrhovni sud Republike Hrvatske*) for a decision on the appeal on points of law.

16. On 28 May 2007, the Krk Municipal Court received the applicants' reply to the appeal on points of law.

17. On 16 August 2007 the Supreme Court returned the case file to the Krk Municipal Court. In the accompanying letter it:

- noted that the case file contained a request for reopening and an appeal on points of law;

- advised the Municipal Court that where remedies had been sought for concurrently, as in the present case, the Municipal Court had to decide which of those remedies it should examine first, having regard to the grounds on which they had been lodged;

- instructed the Municipal Court to send the appeal on points of law to the State Attorney, as provided for by law.

18. By a decision of 17 December 2007 the Krk Municipal Court decided to first examine the appeal on points of law and to stay the proceedings on the request for reopening. That decision became final on 7 April 2008.

19. On 18 April 2008 the Krk Municipal Court sent the case file to the Supreme Court again, indicating that it had complied with its instructions of 16 August 2007 (see paragraph 17 above).

20. In a letter to the Municipal Court of 21 May 2008, the Supreme Court noted that its previous instruction to send the appeal on points of law to the State Attorney (see paragraph 17 above) had not been complied with. Accordingly, on 12 August 2008 the Supreme Court returned the case file to the Municipal Court. The Krk Municipal Court eventually sent the appeal on points of law to the State Attorney on 11 July 2008.

21. In a letter to the Municipal Court of 24 November 2009, the Supreme Court noted that the first defendant in the appeal on points of law had stated that the plaintiff had died (see paragraph 11 above). It instructed the Municipal Court to verify that allegation and "in the event that it was correct, proceed in accordance with the law".

22. In May 2010 the Municipal Court notified the parties of the above-mentioned letter (see paragraph 21).

23. In his submissions of 16 June 2010, the third applicant explained that after his father's death (see paragraph 11 above) he had taken over the proceedings as his heir and thus had not continued to act as his father's legal representative but had been acting on his own behalf. Two days later, on 18 June 2010, the Municipal Court forwarded those submissions to the Supreme Court together with the case file.

24. On 9 July 2010 the Supreme Court returned the case file to the Municipal Court for the third time, this time with an instruction to invite A.K.'s other heirs, and in particular his wife, to take over the proceedings.

25. On 7 April 2011 the Municipal Court asked the applicants to indicate who the late A.K.'s heirs were.

26. In his submissions of 11 April 2011, the third applicant informed the Municipal Court that he, as A.K.'s son, and the first and second applicants as A.K.'s wife and daughter, respectively, were A.K.'s statutory heirs. However, in the inheritance proceedings both he and the second applicant had renounced their share in A.K.'s estate in favour of their mother. The

first applicant had therefore been declared A.K's sole heir. The third applicant also enclosed a power-of-attorney whereby the first and second applicants authorised him to represent them in the proceedings.

27. On 10 May 2011 the Municipal Court forwarded those submissions to the Supreme Court together with the case file.

28. On 31 May 2011 the Supreme Court indicated to the Municipal Court that it would be expedient to first examine the request for reopening.

29. On 11 December 2014 the Municipal Court again sent the case file to the Supreme Court and informed it of the parties' agreement that the appeal on points of law should be examined first (see paragraph 33 below).

30. By a judgment of 26 May 2015 the Supreme Court dismissed the first defendant's appeal on points of law of 2 February 2007 as ill-founded. The Supreme Court's judgment was served on the applicants on 30 October 2015.

B. Proceedings following the request for reopening

31. In its request for reopening of 2 February 2007 (see paragraph 14 above) the first defendant submitted that the plaintiff, A.K., had died in 2001, during the first-instance proceedings (see paragraph 11 above), and that the third applicant as his son could not have continued to act as his legal representative because the power-of-attorney A.K. had given to the third applicant had been extinguished by A.K.'s death. The fact that the third applicant had continued to act as his late father's legal representative had constituted a serious breach of procedure.

32. On 25 May 2007 the applicants submitted their reply to the first defendant's request for reopening of the proceedings.

33. On 12 July 2013 and 22 July 2014 the Municipal Court held hearings with a view to deciding whether to reopen the proceedings. At the second of those two hearings the applicants and the first defendant eventually agreed that the appeal on points of law should be examined first.

34. In their submissions of 20 November 2015 the applicants asked the Krk Municipal Court to dismiss the request for reopening because it was evident from the Supreme Court's judgment that there had been no serious breach of procedure on the grounds relied on by the first defendant (see paragraph 31 above).

35. On 25 November 2015 the Municipal Court decided to resume the proceedings on the first defendant's request for reopening, which had been stayed since 17 December 2007 (see paragraph 18 above).

36. On 16 February 2016 the Municipal Court held a hearing and adopted a decision whereby it dismissed the first defendant's request for reopening. The decision became final on 12 April 2016.

C. Proceedings following the use of remedies for protection of the right to a hearing within a reasonable time

1. The first set of proceedings

37. Meanwhile, on 25 May 2002 the applicants lodged a constitutional complaint under section 63 of the Constitutional Court Act (see paragraphs 53 and 62 below). They complained of the excessive length of (i) the restitution-related administrative proceedings (see paragraph 47-48 below) and (ii) the civil proceedings (see paragraphs 8-11). Specifically, they asked the Constitutional Court (*Ustavni sud Republike Hrvatske*) to issue a decision whereby it would (i) find a violation of their constitutional right to a hearing within a reasonable time; (ii) set a time-limit for the Krk Municipal Court to issue a decision in their case; and (iii) award them appropriate compensation.

38. By a decision of 16 May 2003 the Constitutional Court declared inadmissible the applicants' constitutional complaint because the Krk Municipal Court had in the meantime given a judgment in their case (see paragraph 12 above). It did not refer to the restitution-related administrative proceedings.

2. The second set of proceedings

39. On 26 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 purely acceleratory remedy under the 2013 Courts Act (see paragraphs 69-70 below). They argued that the Supreme Court had not decided on the first defendant's appeal on points of law for more than seven and a half years. They asked the President of the Supreme Court to allow their request, set the shortest possible time-limit for deciding the appeal on points of law and award them appropriate compensation.

40. On 1 December 2014 the Supreme Court declined jurisdiction to decide on the applicants' request and sent it to the Krk Municipal Court.

41. On 8 January 2015 the applicants lodged their second constitutional complaint under section 63 of the Constitutional Court Act (see paragraphs 53 and 63 below), complaining about the length of the civil proceedings (see paragraphs 8-30). The relevant part of their constitutional complaint reads as follows:

> **II. Constitutional rights considered to have been breached**
>
> "The complainants consider that there was a breach of their constitutional right to have the case concerning their rights or obligations decided within a reasonable time by a competent court. The civil action was brought on 15 May 2000, which means that **15 years** have passed since the action was brought.
>
> The complainants emphasise that their right to a hearing within a reasonable time guaranteed by Article 29 paragraph 1 of the Croatian Constitution and by Article 6 § 1

> of the ... Convention was breached by the Supreme Court. In particular, the Supreme Court did not render a decision on their timely-lodged, complete and admissible appeal on points of law. The applicants therefore ask the Constitutional Court to award them each appropriate compensation on the basis of section 63(2) and (3) of the Constitutional Court Act."

In the part of the constitutional complaint concerning relevant facts, the applicants listed chronologically all of the decisions adopted and procedural steps taken during the civil proceedings (see paragraphs 8-30 above) and stated:

> "In the said case the Supreme Court has not dealt with the appeal on points of law for **7 years and 7 months,** so that the proceedings have lasted in total **14 years and 7 months**.
>
> Therefore, the proceedings at first and second instance, until a *res judicata* decision, lasted in total 6 years, whereas 7 years and 10 months have passed from the lodging of the appeal on points of law until the present day."

They also enclosed the statement of claim of 15 May 2000 and the judgment of the Krk Municipal Court of 2 October 2002 (see paragraphs 8 and 12 above) with their constitutional complaint.

42. On 4 February 2015 the Krk Municipal Court informed the Supreme Court that a final judgment had been adopted (see paragraph 13 above) in the case and that the proceedings were currently pending before the Supreme Court following an appeal on points of law.

43. On 16 February 2015 the Municipal Court invited the third applicant to furnish the power-of-attorney whereby the first and second applicants had authorised him to represent them in the proceedings following their request for protection of the right to a hearing within a reasonable time. The third applicant did so on 27 February 2015.

44. On 25 March 2015 the Municipal Court declined jurisdiction to decide on the applicants' request and forwarded the case to the Supreme Court.

45. By a decision of 28 May 2015 the President of the Supreme Court decided that the applicants' request was well-founded. He ordered that a decision on the appeal on points of law be given within six months, even though such a decision had been adopted two days previously (see paragraph 30 above).

46. By a decision of 5 October 2016 the Constitutional Court dismissed the applicants' constitutional complaint, and on 20 October 2016 served its decision on the applicants. The relevant part of that decision reads as follows:

D E C I S I O N

> "The constitutional complaint is dismissed.

R e a s o n s

I. PROCEEDINGS BEFORE THE CONSTITUTIONAL COURT

1. [The applicants] lodged a constitutional complaint on 8 January 2015, considering that their constitutional right to a hearing within a reasonable time guaranteed by Article 29 paragraph 1 of the Croatian Constitution had been breached on account of the excessive length of the proceedings pending before the Supreme Court.

2. For the purposes of the constitutional court proceedings, case file no. ... was obtained from the [Krk Municipal Court].

II. OVERVIEW OF ... THE PROCEEDINGS [COMPLAINED OF]

3. By a decision of ... 28 May 2015 the President of the Supreme Court allowed the applicants' request for protection of the right to a hearing within a reasonable time as well-founded and ordered the Supreme Court to give a decision in the case within six ... months.

By a judgment of 26 May 2015 the Supreme Court dismissed the appeal on points of law by the first defendant against the Rijeka County Court's judgment of ... 6 December 2006.

The Supreme Court's judgment ... of 26 May 2015 was served on the complainants' representative on 30 October 2015.

...

V. MERITS OF THE CONSTITUTIONAL COMPLAINT

10. The Constitutional Court reiterates that the reasonableness of the length of proceedings must always be assessed in the light of the circumstances of a particular case and in accordance with the following criteria: the complexity of the case, the conduct of the complainant and the relevant authorities, and the importance of the subject matter of the case for the complainant.

1) Length of the proceedings

11. At the time of deciding on the constitutional complaint the case was closed by the Supreme Court's judgment ... of 26 May 2015.

This judgment was served on the complainants' representative on 30 October 2015.

The constitutional complaint was lodged on 8 January 2015.

12. The Constitutional Court considered, as the legally relevant period, the period from the adoption of the decision of the President of the Supreme Court ... of 28 May 2015 until the date on which the complainants were served with the Supreme Court's judgment ... of 30 October 2015, whereby the proceedings had ended. [The proceedings thus] lasted in total five (5) months and three (3) days.

2) Complexity of the case

13. The Constitutional Court finds that the present case was not complex.

3) Conduct of the competent courts

14. The Constitutional Court established that in the considered, legally relevant period, the proceedings were conducted before the Supreme Court, and that [they] ended by the Supreme Court's judgment ... of 26 May 2015, which was made two days before the request for protection of the right to a hearing within a reasonable time was decided.

4) Conduct of the complainants

15. The Constitutional Court finds that the complainants, as plaintiffs, during the legally relevant period, did not contribute to the length of the proceedings.

VI. THE CONSTITUTIONAL COURT'S ASSESSMENT

16. The Constitutional Court finds that the civil proceedings in the legally relevant period lasted five (5) months and three (3) days.

By a decision of ... 28 May 2015 the President of the Supreme Court allowed the applicants' request for protection of the right to a hearing within a reasonable time as well-founded and ordered the Supreme Court to give a decision in the case within six ... months.

Given that that the constitutional complaint was lodged because of the length of the proceedings the length of which had already been decided upon, and having regard to the fact that the proceedings had ended and that the Supreme Court's [judgment] had been served on the complainants within six (6) months, the Constitutional Court finds that the complainants' constitutional right to a hearing within a reasonable time guaranteed by Article 29 paragraph 1 of the Constitution was not breached."

II. OTHER RELEVANT PROCEEDINGS

47. On 12 June 1997 A.K. and his brother, as J.K.'s sons (see paragraph 5 above), relying on the Restitution Act (see paragraph 7 above), instituted administrative proceedings before the relevant local authority department, seeking restitution of the building nationalised in 1962 by the socialist authorities (see paragraph 6 above).

48. After A.K.'s death in 2001 (see paragraph 11 above), the applicants, as his heirs, took over the proceedings.

49. By a decision of 23 May 2019 the relevant local authority department, relying on the findings in the civil proceedings (see paragraphs 8-30), awarded the ownership of the building to the applicants and A.K.'s brother (the second and third applicants' uncle).

50. One of the companies which had been a defendant in the aforementioned civil proceedings and had acted as an interested third party in the restitution proceedings appealed against that decision.

51. It would appear that the proceedings are currently pending on appeal before the Ministry of Justice as the second-instance authority.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. THE CONSTITUTION

52. The relevant Article of the Constitution of the Republic of Croatia (*Ustav Republike Hrvatske*, Official Gazette no. 56/90, with subsequent amendments) reads as follows:

Article 29(1)

"Everyone is entitled to have [a case concerning] their rights or obligations, or [concerning] a suspicion or accusation of a criminal offence, decided fairly and within a reasonable time by an independent and impartial court established by law."

II. RELEVANT LEGISLATION

53. The relevant provisions 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") read 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 regarding 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."

54. The relevant provisions of the 2013 Courts Act (*Zakon o sudovima*, Official Gazette no. 28/13), which entered into force on 14 March 2013, are set out in *Novak v. Croatia* ((dec.), no. 7877/14, § 23, 7 July 2016).

III. RELEVANT PRACTICE

55. On 23 December 2014 the Constitutional Court issued decision no. U-IIIA-322/2014, which was published in Official Gazette no. 8/15 of 23 January 2015. It held that a constitutional complaint under section 63 of the Constitutional Court Act (see paragraphs 53 above and 63 below) was still available to persons complaining of excessive length of ongoing judicial proceedings, but only if they had first availed themselves of other length-of-proceedings remedies (see paragraphs 64 and 69-71 below). The complainants could lodge such a constitutional complaint so long as the proceedings complained of were still pending. After the proceedings had ended, complainants had thirty days from the date of the last judicial decision being served in which to lodge a constitutional complaint under section 62 of the Constitutional Court Act (see paragraph 53 above), provided that they had made use of other length-of-proceedings remedies beforehand.

56. In the case at issue, the Constitutional Court declared inadmissible a constitutional complaint lodged by the complainant under section 63 of the Constitutional Court Act (see paragraphs 53 above and 63 below) on the grounds that she had not attempted to avail herself of length-of-proceedings remedies under the 2013 Courts Act before lodging her constitutional complaint.

57. The relevant part of that decision reads as follows:

> "3.1. ... since the introduction in 2005 in the domestic legal system of a new remedy (a request for protection of the right to a hearing within a reasonable time 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 no longer had jurisdiction in the first instance to protect the right to a hearing within a reasonable time...
>
> 5. Having regard to paragraph 1 of Article 29 of the Croatian Constitution and sections 62 and 63 of the Constitutional Court Act, and given that ... the 2013 Courts Act provides legal remedies for speeding up judicial proceedings, the Constitutional Court establishes the following rules regarding its jurisdiction to protect the constitutional right to a hearing with a reasonable time:
>
> - a violation of the right to a hearing within a reasonable time ... as well as the effectiveness of legal remedies under the 2013 Courts Act may in each individual case be examined in proceedings initiated by a constitutional complaint lodged on the basis of section 62 of the Constitutional Court Act (against the decision on the merits ... after available remedies have been exhausted) or in proceedings initiated by a constitutional complaint on the basis of section 63 of the Constitutional Court Act;
>
> - apart from the general procedural requirements that every constitutional complaint must meet, a prerequisite for deciding on a constitutional complaint in which a violation of the constitutional right to a hearing within a reasonable time has been alleged ([regardless of] whether it was lodged under section 62 or section 63 of the

Constitutional Court Act) is, as a rule, that the complainant has used beforehand all available remedies [to complain] against the unreasonable length of the proceedings.

V. THE CONSTITUTIONAL COURT'S ASSESSMENT

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.

7. The Constitutional Court cannot in these proceedings [instituted by an 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 expressed the view that the domestic remedy that was 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 ensure adequate redress for delays that have already occurred (§ 158).

The ECtHR expressed the same view 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, further development of which cannot be excluded...

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 not to have used 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 for in the 2013 Courts Act (nor did she demonstrate that she had used the remedies that had been at her disposal since 2007 when she brought her civil action before an ordinary court), her constitutional complaint is inadmissible."

58. The Constitutional Court, referring to the above decision, has applied the rules concerning exhaustion of remedies established therein in its subsequent case-law. It has systematically examined on the merits constitutional complaints lodged under section 62 or 63 of the Constitutional Court Act alleging violations of the right to a hearing within

a reasonable time if the complainants had resorted to other available length-of-proceedings remedies beforehand (either those under the 2005 Courts Act when that legislation was in force, or those under the 2013 Courts Act). Otherwise, it has consistently been declaring such constitutional complaints inadmissible if the complainants had not made use of the other above-mentioned length-of-proceedings remedies.

59. In the period after the adoption of the decision of 23 December 2014 (see paragraphs 55-57 above) until 10 May 2018 the Constitutional Court, when examining constitutional complaints lodged under section 63 of the Constitutional Court Act, was not taking into account the overall length of the proceedings complained of in cases where one of the other existing length-of-proceedings remedies the complainants were required to use had been granted. In such cases it only took into account the length of the period between the lower courts' decision granting a remedy under the 2005 or 2013 Courts Act and its own decision on the constitutional complaint.[1] On the other hand, in cases where those remedies had been denied, the Constitutional Court examined the overall length of the proceedings complained of.

60. On 30 May 2018 the Constitutional Court adopted two decisions (decisions no. U-IIIA-4375/2017 and U-IIIA-2945/2017) and on 6 June 2018 four decisions (decisions no. U-IIIA-4132/2017, U-IIIA-985/2018, U-IIIA-987/2018 and U-IIIA-990/2018) in which it had departed from that practice (see paragraph 59 above) and examined the overall length of the proceedings complained of in cases where length-of-proceedings remedies had been granted. All those decisions were published on the court's website and the first two were also published in Official Gazette on 6 and 31 July 2018 respectively.

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[1] This approach was applied in the following 40 decisions: U-IIIA-1138/2012 and U-IIIA-1139/2012 of 25 February 2015, U-IIIA-5891/2013 of 2 July 2015, U-IIIA-2409/2012 of 17 July 2015, U-IIIA-5995/2013 of 16 March 2016, U-IIIA-547/2011 of 30 March 2016, U-IIIA-5072/2011 of 4 May 2016, U-IIIA-1914/2014 and U-IIIA-8135/2014 of 3 June 2016, U-IIIA-7830/2014 of 13 July 2016, U-IIIA-4492/2015 of 21 September 2016, U-IIIA-7572/2014 and U-IIIA-4605/2015 of 28 September 2016, U-IIIA-13/2013, U-IIIA-1557/2014 and U-IIIA-140/2015 of 5 October 2016, U-IIIA-3235/2015 and U-IIIA-362/2014 of 16 November 2016, U-IIIA-2751/2013 of 24 November 2016, U-IIIA-3179/2014 of 22 December 2016, U-IIIA-3015/2015 of 8 February 2017, U-IIIA-1755/2015 and U-IIIA-2426/2014 of 16 February 2017, U-IIIA-2160/2015 of 8 March 2017, U-IIIA-6623/2014 of 30 March 2017, U-IIIA-2581/2016 of 5 April 2017, U-IIIA-2794/2015 and U-IIIA-2108/2015 of 27 April 2017, U-IIIA-8128/2014 of 11 May 2017, U-IIIA-6667/2014 and U-IIIA-7940/2014 of 7 March 2018, U-IIIA-1742/2015 and U-IIIA-6199/2014 of 29 March 2018, U-IIIA-4707/2015 of 9 April 2018, U-IIIA-507/2017 of 19 April 2018, U-IIIA-145/2018, U-IIIA-988/2018 and U-IIIA-989/2018 of 25 April 2018, U-IIIA-59/2017 of 3 May 2018 and U-IIIA-986/2018 of 10 May 2018 The only decision adopted in that period where the Constitutional Court did take into account the overall length of proceedings was decision no., U-IIIA-8090/2014 of 24 November 2016.which concerned inheritance proceedings.

61. However, by the end of 2018 the Constitutional Court adopted three decisions (decisions no. U-IIIA-2760/2016 of 5 September 2018, U-IIIA-5453/2016 of 13 September 2018 and U-IIIA-6346/2016 of 14 November 2018) in which it had followed the old approach (see paragraph 59 above). All three decisions were published on the court's website and the last two were also published in Official Gazette on 5 and 19 December 2018 respectively.

62. Nonetheless, in all of its decision adopted in 2019[2] the Constitutional Court followed the new approach enunciated in the decisions adopted on 30 May and 6 June 2018 (see paragraph 60 above). The first decisions in 2019 concerning length-of-proceedings complaints were adopted on 19 March 2019, namely decisions no. U-IIIA-2344/2016, U-IIIA-3798/2017, U-IIIA-1976/2017 and U-IIIA-1467/2018 which were all published on the court's website. On 26 April 2019 the second and fourth, and on 12 May 2019 the third of those four decisions were also published in Official Gazette.

IV. DEVELOPMENT OF LENGTH-OF-PROCEEDINGS REMEDIES

A. Period between 15 March 2002 and 28 December 2005 – a constitutional complaint under section 63 of the Constitutional Court Act

63. In the period between 15 March 2002 and 28 December 2005 a party to pending judicial proceedings in Croatia could have complained of their excessive length directly to the Constitutional Court by lodging a constitutional complaint under section 63 of the Constitutional Court Act (see paragraph 53 above). That provision, which is still in force, empowers that court, if it finds the constitutional complaint well-founded, both to expedite the proceedings complained of by ordering ordinary courts to deliver a decision within a specified time-limit, and to award compensation for any non-pecuniary damage sustained. The Court recognised that remedy as effective in terms of Article 13, which also meant that potential applicants had to use it in order to comply with the requirements of Article 35 § 1 of the Convention, before lodging applications with the Court (see *Slaviček v. Croatia* (dec.), no. 20862/02, ECHR 2002-VII).

[2] See decisions no U-IIIA-653/2019 of 3 April 2019, U-IIIA-1058/2018 of 9 April 2019, U-IIIA-2978/2018 of 23 May 2019, U-IIIA-4256/2017 of 19 June 2019, U-IIIA-454/2018, U-IIIA-425/2018, U-IIIA-2231/2018 and U-IIIA-5007/2016 of 26 June 2019, U-IIIA-546/2019 and U-IIIA-4243/2018 of 9 July 2019, U-IIIA-2359/2019 of 18 September 2019, U-IIIA-3454/2019 of 16 October 2019, U-IIIA-2281/2018 of 23 October 2019, U-IIIA-5242/2017 of 30 October 2019, U-IIIA-3065/2019 of 13 November 2019, U-IIIA-3549/2018 of 14 November 2019, U-IIIA-2618/2017 of 3 December 2019, U-IIIA-4624/2017 of 18 December 2019 and U-IIIA-3236/2018 of 19 December 2019.

B. Period between 29 December 2005 and 13 March 2013 – the remedy under sections 27 and 28 of the 2005 Courts Act and the 2009 Amendments thereto

64. In order to reduce the Constitutional Court's workload as regards length-of-proceedings complaints, some of its powers in that regard were transferred to the ordinary courts following the entry into force of the 2005 Courts Act on 29 December 2005. From then on, litigants could complain of the excessive length of their pending judicial proceedings by lodging a "request for protection of the right to a hearing within a reasonable time" under sections 27 and 28 of the 2005 Courts Act with the court at the next level of jurisdiction. Like the Constitutional Court under the earlier system (see paragraph 63 above), the higher court could both accelerate the proceedings complained of by ordering the lower court to deliver a decision within a specified time-limit, and award compensation for any non-pecuniary damage sustained.

65. Under the original wording of the 2005 Courts Act, the Constitutional Court remained the authority of last resort, as litigants were entitled to lodge constitutional complaints against Supreme Court decisions adopted in proceedings instituted following their request for protection of the right to a hearing within a reasonable time. In addition, litigants could lodge a constitutional complaint under the relevant provisions of the Constitutional Court Act (see paragraph 53 above) in two limited situations:

- they could complain of the excessive length of the ongoing proceedings under section 63 of that Act if, at the time of lodging the constitutional complaint, their case was pending before the Supreme Court, and

- if the proceedings had ended, they could complain of the excessive length of those proceedings by lodging a constitutional complaint under section 62 of that Act within thirty days of the last judicial decision being served.

66. After the entry into force of the 2009 Amendments to the 2005 Courts Act on 29 December 2009, the case-law of the Constitutional Court developed so that it was no longer possible to lodge constitutional complaints under section 62 of the Constitutional Court Act against such decisions of the Supreme Court (see *Vrtar v. Croatia*, no. 39380/13, §§ 54-56, 62-64 and 78, 7 January 2016). The constitutional complaint remained available in two limited situations described above (see the previous paragraph).

67. In the period between 29 December 2005 and 13 March 2013 a request for protection of the right to a hearing within a reasonable time under sections 27 and 28 of the 2005 Courts Act was recognised by the Court as an effective remedy under Article 13 of the Convention. This therefore meant that it had to be exhausted for the purposes of Article 35 § 1 before any complaints concerning the excessive length of judicial

proceedings in Croatia were brought before the Court (see *Pavić v. Croatia*, no. 21846/08, § 36, 28 January 2010).

68. The relevant domestic law and practice concerning length-of-proceedings remedies in Croatia in the period between 29 December 2005 and 13 March 2013 is set out in detail in *Vrtar* (cited above, §§ 53-56 and 61-64).

C. Period after 13 March 2013 – remedies introduced by the 2013 Courts Act

69. The 2013 Courts Act (see paragraph 54 above), which entered into force on 14 March 2013, introduced a purely acceleratory remedy as the primary remedy. A combined compensatory and acceleratory remedy, identical to the one under the previous legislation (see paragraph 64 above), was made available only in limited circumstances as a complementary remedy (see paragraph 71 below).

70. In particular, under the 2013 Courts Act a party to pending judicial proceedings who considers that those proceedings have been unduly protracted has the right to seek a purely acceleratory remedy, namely, to lodge a "request for protection of the right to a hearing within a reasonable time", and to ask the president of the court before which those proceedings are pending to expedite them by setting a time-limit of a maximum of six months within which the judge hearing the case must give a decision (see sections 65 to 67 of the 2013 Courts Act, cited in paragraph 54 above).

71. A complementary remedy (combining compensatory and acceleratory elements), namely a "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 sections 68 and 69 of the 2013 Courts Act, cited in paragraph 54 above).

THE LAW

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

72. The applicants complained that the length of the civil proceedings (see paragraphs 8-30 above) had been incompatible with 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 ..."

73. The Court reiterates that where, as in the present case, the applicants have taken over the proceedings as heirs they can complain of the entire

length of the proceedings (see, for example, *Cocchiarella v. Italy* [GC] no. 64886/01, §§ 113-114, ECHR 2006‑V, and *M.Ö. v. Turkey*, no. 26136/95, § 25, 19 May 2005). It also notes that the applicants in the present case did not complain of any delays in deciding the request for the reopening of the proceedings (see paragraphs 14 and 31-36 above), which the Court would, in any event, not be able to examine given that under its well-established case-law Article 6 § 1 is normally not applicable to proceedings following such requests (see, among many other authorities, *Bochan v. Ukraine (no. 2)* [GC], no. 22251/08, § 42, ECHR 2015).

74. The period to be taken into consideration thus began on 15 May 2000 when the applicants' predecessor, A.K., brought his civil action (see paragraph 8 above) and ended on 30 October 2015 when the Supreme Court's judgment of 26 May 2015 was served on the applicants (see paragraph 30 above; see also *Debelić v. Croatia*, no. 2448/03, §§ 19-23, 26 May 2005 and *Škare v. Croatia*, no. 17267/03, §§ 22-23, 15 June 2006). It thus lasted more than fifteen years and five months for three levels of jurisdiction.

A. Admissibility

1. Submissions by the parties

75. The Government disputed the admissibility of this complaint on the basis that the applicants had not (properly) exhausted domestic remedies.

76. The Government submitted that in their application before the Court the applicants had complained of the overall length of the civil proceedings (see paragraphs 8-30 and 72 above) with a particular emphasis on the length of the proceedings before the Supreme Court (see paragraphs 14-30 above). However, in their constitutional complaint of 8 January 2015 (see paragraph 41 above) they had complained exclusively of the length of the proceedings in the period during which the case had been pending before the Supreme Court. The Government therefore invited the Court to declare the applicants' complaint inadmissible for non-exhaustion of domestic remedies in so far as it concerned the period during which the case had been pending before the first and second-instance courts (see paragraphs 8-13 above).

77. Likewise, the Government argued, the applicants had not used any other remedy available to them (see paragraphs 63-64 above) to complain of the length of the proceedings in that period.

78. The applicants replied that in their constitutional complaint of 8 January 2015 they had complained of the overall length of the civil proceedings while placing particular emphasis on the then ongoing proceedings before the Supreme Court, which had accounted for more than half of the total length. That they had indeed not complained only of the

period when the case had been pending before the Supreme Court was evident from the content of their constitutional complaint (see paragraph 41 above), in which they had:

- referred to the length of the proceedings lasting almost fifteen years;
- given an overview of the entire proceedings by listing in chronological order all submissions, procedural events and file numbers, rather than referring only to the period before the Supreme Court;
- submitted the statement of claim of 15 May 2000 and the judgment of the Krk Municipal Court of 2 October 2002 (see paragraphs 8 and 12 above).

79. The applicants also stated that, contrary to the Government's argument (see paragraph 77 above), they had availed themselves of the length-of-proceedings remedies in respect of the period before the case had reached the Supreme Court. Specifically, on 25 May 2002 – namely when the proceedings had been pending before the Krk Municipal Court – they had lodged their first constitutional complaint in the case, but the Constitutional Court had declared it inadmissible (see paragraphs 37-38 above).

80. In their comments on the applicants' observations, the Government argued that in their first constitutional complaint, of 25 May 2002 (see paragraph 37 above), the applicants had mainly complained of the length of the restitution-related administrative proceedings (see paragraphs 47-48 above) rather than of the length of the civil proceedings which, in any event, at the time had lasted only two years (see paragraphs 8-11 above).

2. The Court's assessment

81. The Court, having regard to the content of the applicants' second constitutional complaint, of 8 January 2015, and the documents submitted therewith finds it evident that the applicants complained of the overall length of the civil proceedings while emphasising in particular the period during which the case had been pending before the Supreme Court (see paragraph 41 above).

82. By way of observation the Court also notes that in their first constitutional complaint, of 25 May 2002, the applicants complained of the excessive length of both the restitution-related administrative proceedings and the civil proceedings (see paragraph 37 above). The Government's argument that in the aforementioned constitutional complaint the applicants complained mainly of the restitution-related administrative proceedings and thus had not properly exhausted domestic remedies as regards the civil proceedings (see paragraph 80 above) seems unconvincing in view of the fact that following that constitutional complaint, the Constitutional Court examined only the length of the civil proceedings (see paragraph 38 above).

83. It follows that the Government's objections as to the exhaustion of domestic remedies must be rejected.

84. The Court further notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

85. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicants and the relevant authorities, and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

86. The Court considers that the length of the civil proceedings in the applicants' case, which lasted more than fifteen years and five months for three levels of jurisdiction (see paragraph 74 above), is *a priori* unreasonable and calls for a global assessment. Their overall length could be justified only under exceptional circumstances. The fact that on 28 May 2015 the President of the Supreme Court granted the applicants' request for the purely acceleratory remedy (see paragraph 45 above) suggests that such exceptional circumstances were not present in their case and that the length of the proceedings indeed exceeded a reasonable time.

87. Having regard to its case-law on the subject (see, for example, *Erdös v. Hungary*, no. 38937/97, §§ 30-38, 9 April 2002, and *László Károly v. Hungary* [Committee], no.41571/07, §§ 9-10, 9 October 2012), the foregoing considerations are sufficient to enable the Court to conclude that in the applicants' case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

88. There has accordingly been a breach of Article 6 § 1.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

89. The applicants complained that the remedies they had resorted to in order to complain of the excessive length of the civil proceedings had not been effective. They 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."

A. Admissibility

90. The Court considers that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

B. Merits

1. Submissions by the parties

(a) The applicants

91. The applicants submitted that despite all the domestic remedies they had resorted to (see paragraphs 37, 39 and 41 above) in order to complain of the length of proceedings, they had not received any compensation for proceedings that had lasted over fifteen years.

92. The applicants also submitted that a constitutional complaint was not an effective remedy to complain of the excessive length of the civil proceedings because the Constitutional Court had examined only the period between 28 May 2015, when the President of the Supreme Court had adopted the decision on the acceleratory remedy, and 30 October 2015, when the Supreme Court's judgment of 26 May 2015 on the appeal on points of law had been served on them. In that way it had reduced the length of proceedings that had lasted more than fifteen years to only five months.

(b) The Government

93. The Government replied that the period to be taken into consideration by the Constitutional Court when examining constitutional complaints concerning excessive length of proceedings depended on the outcome of the other length-of-proceedings remedies the complainants had to exhaust beforehand (see paragraphs 55 and 58-59 above). Specifically:

- if those remedies were successful, that is, if the remedies had been granted and the time-limit set for adoption of a decision in the impugned main proceedings had been complied with, the starting date was the date when the remedy in question had been granted, and the end date was the date when the decision sought, after being adopted in the main proceedings, had been served on the complainants;

- if those remedies were dismissed, the starting date was the date when the impugned proceedings had commenced, and the end date was the date when the Constitutional Court decided on the constitutional complaint.

94. Given that in the applicants' case the President of the Supreme Court had on 28 May 2015 granted their purely acceleratory remedy (see paragraph 45 above), the Constitutional Court had taken into account only the period between that date and 30 October 2015, when the Supreme Court's judgment of 26 May 2015 on the appeal on points of law had been served on the applicants (see paragraphs 30 and 46 above).

95. The Government then reiterated their argument (see paragraph 76) that the applicants, in their constitutional complaint of 8 January 2015 (see paragraph 41 above), had complained only of the length of the proceedings before the Supreme Court. When deciding on 28 May 2015 on their purely acceleratory remedy (see paragraph 45 above), the President of the Supreme Court had taken into account the length of the proceedings before that court prior to that date, and the Constitutional Court, when deciding on the applicants' constitutional complaint, had taken into account the length of proceedings after that date (see paragraph 46 above). Therefore the purely acceleratory remedy and the constitutional complaint, taken together, had taken into account the total length of the proceedings the applicants had actually complained of domestically, namely, the full length of the proceedings before the Supreme Court. Those remedies had therefore been effective.

96. The Government further argued that likewise, it could not be claimed that those remedies were ineffective just because the applicants had not obtained compensation. The Government submitted that under the Court's case-law compensation was due only if a violation of the right to a hearing within a reasonable time had occurred, which had not been so in the present case. The President of the Supreme Court, by the decision of 28 May 2015 granting the applicants' purely acceleratory remedy and ordering that court to deliver a decision within a specified time-limit, had expedited the proceedings and thus prevented such a violation from occurring, rather than preventing continuation of an already existing violation.

2. The Court's assessment

97. The Court reiterates that 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 *Novak v. Croatia* (dec.), no. 7877/14, § 48, 7 July 2016). Thus, if an acceleratory remedy is used to speed up proceedings which have already lasted too long, it will not be considered effective unless accompanied by a compensatory remedy (ibid, § 47, and *Cocchiarella*, cited above, §§ 74-76). Specifically, in the *Cocchiarella* case (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."

98. Turning to the present case, the Court must now examine whether the remedies resorted to by the applicants in order to complain of the

excessive length of the civil proceedings – namely, the purely acceleratory remedy under the 2013 Courts Act and a constitutional complaint – were effective.

(a) As regards the purely acceleratory remedy under the 2013 Courts Act

99. The Court notes that on 28 May 2015 the President of the Supreme Court granted the applicants' purely acceleratory remedy and ordered that a decision on the appeal on points of law be given within six months, even though such a decision had been adopted two days previously, on 26 May 2015 (see paragraphs 30 and 39 above).

100. At the time the President of the Supreme Court gave his decision on the above-mentioned remedy, the civil proceedings complained of had already lasted more than fifteen years (see paragraph 8-30 above). In those circumstances, the purely acceleratory remedy could have been considered effective only if accompanied by a compensatory remedy (see paragraph 97 above).

101. However, since the time-limit set by the President of the Supreme Court for the adoption of a decision on the appeal on points of law was not exceeded, the applicants, unlike the applicant in the *Novak* case, did not have an opportunity to seek a further remedy under the 2013 Courts Act, a complementary remedy, and obtain compensation for the excessive length of the proceedings in their case (see paragraph 71 above, and *Novak*, cited above, §§ 55-57).

102. It follows that the purely acceleratory remedy under the 2013 Courts Act was not an effective remedy for the applicants' length-of-proceedings complaint.

(b) As regards the constitutional complaint

103. The Court notes that a constitutional complaint under section 63 of the Constitutional Court Act was the first remedy for excessive length of proceedings in Croatia which the Court recognised as effective (see paragraphs 53 and 63 above and *Slaviček v. Croatia* (dec.), no. 20862/02, ECHR 2002 VII). It was the only length-of-proceedings remedy in Croatia in the period between 15 March 2002 and 28 December 2005 (see paragraph 63 above).

104. However, since the Constitutional Court became overloaded with length-of-proceedings cases, subsequent reforms concerning appropriate remedies were introduced in an attempt to relieve the Constitutional Court of that burden by completely substituting the constitutional complaint for other length-of-proceedings remedies (see paragraphs 64-67 and 69-71 above).

105. Nonetheless, with the Constitutional Court decision of 23 December 2014 a constitutional complaint under section 63 of the

Constitutional Court Act again became available to those who availed themselves of existing length-of-proceedings remedies (see paragraphs 55-57 above), notably those introduced by the 2013 Courts Act (see paragraphs 69-71 above).

106. In view of the renewed possibility of lodging a constitutional complaint under section 63 of the Constitutional Court Act, the Court considers that the issue of the effectiveness of the remedies under the 2013 Courts Act becomes a secondary issue. In particular, even if those remedies are ineffective, litigants complaining of lengthy proceedings could, after having used them, lodge a constitutional complaint (see paragraph 105 above).

107. Therefore, the main issue in the present case is whether the constitutional complaint in question was effective.

108. In this connection, the Court reiterates that in the *Slaviček* case (cited above) it has already found the aforementioned remedy effective in the period when that was the only length-of-proceedings remedy available in Croatia (see paragraphs 53, 63 and 103 above).

109. Yet, in its decision in the applicants' case, the Constitutional Court did not take into account the overall length of the proceedings complained of, which had lasted more than fifteen years (see paragraph 46 above). Instead, it examined only a period of some five months, namely the period between 28 May 2015, when the President of the Supreme Court had decided on the applicants' request for a purely acceleratory remedy, and 30 October 2015, when the Supreme Court's judgment of 26 May 2015 on the appeal on points of law had been served on them (see paragraphs 30 and 45-46 above).

110. In this connection, the Court reiterates that a remedy available to a litigant at domestic level for raising a complaint about the length of proceedings is "effective", within the meaning of Article 13 and Article 35 § 1 of the Convention only if it is capable of covering all stages of the proceedings complained of and thus, in the same way as a decision given by the Court, of taking into account their overall length (see, for example, *Počuča v. Croatia*, no. 38550/02, § 35, 29 June 2006 and the cases cited therein; and *Rutkowski and Others v. Poland*, nos. 72287/10 and 2 others, §§ 180-83 and 211-16, 7 July 2015).

111. It follows that a constitutional complaint under section 63 of the Constitutional Court Act was not an effective remedy for the applicants' length-of-proceedings complaint.

112. The approach adopted by the Constitutional Court in the applicants' case reflects its practice at the time. In particular, an analysis of its case-law indicates that in the period subsequent to the adoption of the landmark decision of 23 December 2014 until 30 May 2018 the Constitutional Court, when examining constitutional complaints lodged under section 63 of the Constitutional Court Act, was not taking into account the overall length of

the proceedings complained of in cases where one of the other length-of-proceedings remedies the complainants were required to use had been granted (see paragraphs 58-59 above). In such cases, as confirmed by the Government (see paragraph 93 above), the Constitutional Court was instead taking into account the length of the impugned proceedings only in the period between the lower courts' decision granting one of those remedies and its own decision on the constitutional complaint (see paragraph 59 above and 117 below).

113. In view of these considerations (see paragraph 112 above), the Court notes that its above finding that a constitutional complaint was not an effective remedy for the applicants' length-of-proceedings complaint (see paragraph 111 above) extends beyond the sole interests of the applicants in the instant case. It therefore finds it important to make the following general observations (see paragraphs 114-116 below).

114. Six decisions adopted on 30 May and 6 June 2018, in which the Constitutional Court examined the overall duration of the proceedings complained of (see paragraph 60 above), announced a shift in the above-mentioned practice (see paragraph 59 above). However, in view of the fact that three decisions from November 2018 were still in line with the previous practice (see paragraph 61 above), it could not be said with sufficient certainty that before 2019 – in which all decisions were in line with the new approach (see paragraph 62 above) – the Constitutional Court had abandoned the previous practice.

115. The Court has held that in cases like the present one, where the remedy in question was the result of interpretation by the courts, it normally takes six months for such a development of the case-law to acquire a sufficient degree of legal certainty before the public may be considered to be effectively aware of the domestic decision which had established the remedy and the persons concerned be enabled and obliged to use it (see, for example, *Savickas v. Lithuania* (dec.), no. 66365/09, 12845/10 and 28367/11, § 86, 15 October 2013, and *Provide S.r.l. v. Italy*, no. 62155/00, § 18, 5 July 2007).

116. In this connection the Court notes that the first decisions in 2019 confirming the shift in the Constitutional Court's practice were adopted on 19 March 2019 and were published in Official Gazette at the end of April and in mid-May 2019 (see paragraph 62 above). The Court therefore deems it reasonable to consider that the change in the Constitutional Court's practice must have become public knowledge from 1 November 2019.

117. Conversely, the Court concludes that in the period between 23 January 2015, when the Constitutional Court's decision of 23 December 2014 was published in Official Gazette (see paragraph 55 above), and mid-May 2019 (see paragraph 116 above), a constitutional complaint, though available, was not an effective remedy for length-of-proceedings complaints in Croatia in cases where one of the other length-of-proceedings

remedies had been granted (see paragraphs 59 and 112 above). The constitutional complaint in that period was however an effective remedy in cases where one of the other length-of-proceedings remedies had been denied (see paragraph 93 above).

(c) Conclusion

118. The foregoing considerations are sufficient to enable the Court to conclude that the applicants did not have an effective remedy to complain of the excessive length of the civil proceedings in their case.

119. There has accordingly been a violation of Article 13 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

120. 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

121. The applicants claimed 273,000 euros (EUR) in respect of pecuniary damage and EUR 75,000 in respect of non-pecuniary damage. The applicants explained that the civil proceedings complained of had been decisive for the outcome of the concurrent restitution proceedings (see paragraphs 47-51 above) as the favourable outcome of the civil proceedings entitled them to seek the restitution in kind of the land nationalised from their predecessor (see paragraph 5 above). The land was very valuable because a hotel had been built on it (see paragraph 6 above). The length of the civil proceedings had thus delayed the restitution proceedings and the return of the land to them. The sum of EUR 273,000 corresponded to lost profits they would have, in their view, obtained had the civil proceedings ended within a reasonable time in which scenario the land would have already been returned to them.

122. The Government contested those claims as being excessive.

123. The Court notes that the restitution-related proceedings are still pending: the first-instance administrative authority ruled in the applicants' favour but the case is currently pending on appeal (see paragraphs 47-51 above). The Court therefore does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards each applicant EUR 9,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

124. The applicants also claimed EUR 7,572 for the costs and expenses incurred before the domestic courts and for those incurred before the Court.

125. The Government contested that claim. They pointed out that the applicants had been represented by the third applicant, who was the first applicant's son and the second applicant's brother. That being so, and given that the applicants had not submitted any receipts or invoices related to their legal representation by the third applicant, the Government expressed serious doubts as to whether the applicants had actually incurred any representation costs.

126. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum.

127. The Court accepts the Government's argument (see paragraph 125 above) that, because the applicants were represented by the third applicant in both the domestic and the Strasbourg proceedings, they are not entitled to any costs in that respect. On the other hand, it awards the applicants jointly the sum of EUR 22 for the postal expenses incurred in the domestic proceedings and in those before the Court.

C. Default interest

128. 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. *Declares* the application admissible;

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

3. *Holds* that there has been a violation of Article 13 of the Convention;

4. *Holds,*
   (a) that the respondent State is to pay the applicants, 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 Croatian kunas at the rate applicable at the date of settlement:
      (i) EUR 9,000 (nine thousand euros) to each applicant, in respect of non-pecuniary damage, plus any tax that may be chargeable;

(ii) EUR 22 (twenty-two euros) to the applicants jointly, in respect of costs and expenses, plus any tax that may be chargeable to them;

(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;

5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Abel Campos	Krzysztof Wojtyczek
Registrar	President

APPENDIX

No.	Applicant's Name	Nationality Year of birth	Place of residence
1	Smiljka KIRINČIĆ	Croatian 1932	Dobrinj
2	BRANKA IVANČIĆ	Croatian 1952	Rijeka
3	SMILJAN KIRINČIĆ	Croatian 1956	Rijeka