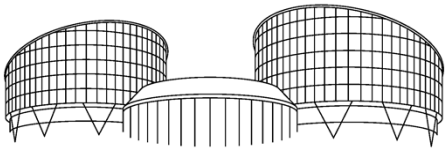

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF GLAVINIĆ AND MARKOVIĆ v. CROATIA

(Applications nos. 11388/15 and 25605/15)

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 (constitutional complaint and purely acceleratory remedy)

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.

In the case of Glavinić and Marković 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,
Pauliine Koskelo,
Tim Eicke,
Jovan Ilievski, *judges,*

and Abel Campos, *Section Registrar,*

Having deliberated in private on 6 November 2018, 16 June 2020 and 7 July 2020,

Delivers the following judgment, which was adopted on the last-mentioned date:

INTRODUCTION

1. The case originated in two applications (nos. 11388/15 and 25605/15) 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 two Croatian nationals, Ms Jela Glavinić ("the first applicant") and Mr Aleksander Marković ("the second applicant") on 27 February and 25 May 2015 respectively.

2. The first applicant was represented before the Court by Mr V. Margan and the second applicant by Ms R. Dozet Daskal, lawyers practising in Rijeka and Karlovac respectively. The Croatian Government ("the Government") were represented by their Agent, Ms Š. Stažnik.

3. The applicants alleged that the length of the proceedings in their cases had been excessive, and that the domestic authorities had not remedied the situation.

4. The Government were given notice of the applications on 1 September 2016 and 12 January 2017, respectively.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The first applicant was born in 1947 and the second applicant was born in 1936. The first applicant lives in Rijeka whereas the second applicant lives in Zagreb.

A. The proceedings in the first applicant's case

1. Principal proceedings

6. On 8 January 2003 a certain Ms D.M. brought a civil action in the Zadar Municipal Court (*Općinski sud u Zadru*) against the first applicant and three other defendants, seeking to have a gift contract declared null and void.

7. On 24 February 2003 the first applicant responded to the plaintiff's action. She agreed with the facts of the case as presented by the plaintiff.

8. On 10 July 2014 the Municipal Court pronounced a judgment whereby it dismissed the plaintiff's claim. The judgment was served on the applicant on 9 September 2014. In the absence of an appeal, it became final on 20 April 2015.

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

9. Meanwhile, on 24 October 2013 the first applicant lodged a request for protection of the right to a hearing within a reasonable time (*zahtjev za zaštitu prava na suđenje u razumnom roku*) with the President of the Zadar Municipal Court – a purely acceleratory remedy under the 2013 Courts Act (see paragraph 44 below).

10. On 24 December 2013 the president decided that the first applicant's request was well-founded. He ordered the judge hearing the case to give a decision in the above-mentioned civil proceedings (see paragraphs 6-8) within six months.

11. Since that time-limit had not been complied with, on 10 July 2014 the first applicant lodged a request with the Zadar County Court (*Županijski sud u Zadru*) for payment of appropriate compensation – a combined compensatory and acceleratory remedy under the 2013 Courts Act (see paragraph 45 below).

12. By a decision of 23 October 2014 the County Court awarded the first applicant 1,000 Croatian kunas (HRK)[1] in compensation for the violation of her right to a hearing within a reasonable time. It held that the length of proceedings had been excessive. It also held that the first applicant had contributed to their length "to a certain extent" by failing to attend the hearings of 9 April and 13 June 2014.

13. On 3 November 2014 the first applicant appealed, complaining that the amount awarded was too low. She argued that the hearing of 9 April 2014 was not adjourned because of her failure to attend but because one of the defendants had not been properly summoned. The hearing of 13 June 2014 had not been adjourned but had been held regardless of her absence. It

[1] Approximately, 130 euros (EUR) at the time.

thus could not have been argued, as the Zadar County Court had held (see paragraph 12 above), that she had contributed to the length of the proceedings by failing to attend those hearings.

14. By a decision of 15 December 2014 the Supreme Court (*Vrhovni sud Republike Hrvatske*) dismissed her appeal. That decision was served on the first applicant's representative on 8 January 2015.

B. The proceedings in the second applicant's case

1. Principal proceedings

15. On 20 July 2012 the second applicant applied to the Karlovac Municipal Court (*Općinski sud u Karlovcu*) for enforcement of the same court's judgment of 27 January 2010 whereby company T. had been ordered to perform construction works on a part of a residential building with a view to restoring it to its previous condition.

16. On 14 February 2013 the Municipal Court issued a writ of execution (*rješenje o ovrsi*). On 27 February 2013 company T. lodged an appeal against the writ.

17. On 10 February 2017 the Karlovac County Court (*Županijski sud u Karlovcu*) allowed the appeal, quashed the writ of execution and remitted the case to the first-instance court for fresh consideration.

18. In the fresh proceedings, on 5 July 2017 the Municipal Court issued a new writ of execution whereby it ordered company T. to comply with the judgment of 27 January 2010 (see paragraph 15 above) and carry out the required construction works within thirty days, or pay the applicant HRK 1,000[2] for each day exceeding that time-limit.

19. However, some three months before, on 10 April 2017 the Zagreb Commercial Court (*Trgovački sud u Zagrebu*) had issued a decision to open insolvency-like proceedings called "emergency administration proceedings" (*postupak izvanredne uprave*) against company T.'s parent company, company A. and all its subsidiary companies. The decision was adopted in application of the Emergency Administration of Key Commercial Companies Act, emergency legislation aimed at protecting the economy from the collapse of companies with more than 5,000 employees. As a result:

- all ongoing civil and enforcement proceedings against company A. and its subsidiary companies (including company T.) were stayed,
- all non-financial claims of their creditors, like the applicant's claim (see paragraph 15 above), were transformed into financial claims, and
- the creditors were invited to register their claims to the emergency administrator within sixty days.

[2] Approximately, EUR 135 at the time.

20. The second applicant registered his claim of HRK 1,400,000[3] to the emergency administrator, who did not contest it.

21. After company T. informed the Karlovac Municipal Court of these developments (see the previous paragraph) on 21 July 2017, the court by a decision of 17 October 2017 stayed the enforcement proceedings.

22. Meanwhile, on 4 July 2018, company A. and its creditors (almost 6,000 of them) had concluded a settlement, which the Zagreb Commercial Court had approved on 6 July 2018. Under the settlement the applicant is entitled to receive 14.4 % of his claim in financial instruments if the settlement is successfully implemented or 2.6% of his claim in financial instruments in the event of liquidation (winding up) of company A.

23. It would appear that the process of implementation of the settlement is still ongoing.

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

24. Meanwhile, on 19 September 2014 the second applicant lodged a request for protection of the right to a hearing within a reasonable time with the President of the Karlovac County Court – a purely acceleratory remedy under the 2013 Courts Act (see paragraph 44 below).

25. On 3 November 2014 the President of the Karlovac County Court dismissed the second applicant's request. Having found that the case was not complex and that there had been no delays attributable to the second applicant, the president nevertheless held that the length of the principal (enforcement) proceedings complained of had not been in breach of his right to a hearing within a reasonable time.

26. The second applicant then appealed to the Supreme Court, which dismissed his appeal on 15 December 2014.

27. On 3 February 2015 the second applicant lodged a request for protection of the right to a hearing within a reasonable time with the Constitutional Court. He relied on section 63 of the Constitutional Court Act (see paragraphs 31 and 37 below). His request read as follows:

> "By decision of the Karlovac County Court ... of 3 November 2014 the request for the [purely acceleratory remedy] ... was dismissed ...
>
> The complainant lodged an appeal against the said decision on 18 November 2014, but, by a decision of the Supreme Court ... of 15 December 2014, [his] appeal was dismissed ...
>
> The reasoning of the aforementioned decisions shows that those courts considered the request ill-founded because the legally relevant period ran from the submission of the application for enforcement on 20 July 2012 until the adoption of the decision on the request for the [purely acceleratory remedy]. Since therefore three years had not

[3] Approximately, EUR 188,500 at the time.

elapsed from the date on which the application for enforcement had been submitted, the complainant's right to a hearing within a reasonable time had not been breached.

The complainant lodged the request for [the purely acceleratory remedy] because enforcement proceedings are urgent under ... the Enforcement Act. [He therefore] considered that such conduct of the proceedings was in breach of his right to a hearing within a reasonable time and that by [lodging the said request] he would obtain the protection of [that] right ...

In particular, [the relevant provisions of] the Enforcement Act stipulate that the courts have to proceed urgently in enforcement proceedings. [T]herefore the principle of urgency is the guiding principle of enforcement proceedings.

[The Enforcement Act] stipulates that the first-instance court has to decide on the merits of an appeal within thirty days and forward the case to the second-instance court. [The] second-instance court has to adopt and dispatch a decision on the appeal within sixty days of receiving the case file or the appeal. It follows that the second-instance court had to issue a decision within ninety days of the lodging of the appeal, that is, no later than 27 May 2013.

The application for enforcement was lodged on 20 July 2012, the first-instance court issued a writ of execution on 14 February 2013, the enforcement debtor lodged an appeal on 27 February 2013, and the file was served on the second-instance court only on 11 September 2013. The case file has been with the Karlovac County Court since 11 September 2013 and the case has still not been decided to date.

Neither the first-instance nor the second-instance court [complied] with these statutory time-limits. They exceeded them several times over, which was not taken into account when deciding on the merits of the request [for the purely acceleratory remedy].

It is therefore clear that the complainant's right to a hearing within a reasonable time has been breached and that the President of the County Court should have set a fifteen-day time-limit for reaching a decision and dispatching it, since the statutory time-limit was sixty days.

The complainant considers that such conduct on the part of the courts was in breach of his right to a hearing within a reasonable time guaranteed by Article 29 paragraph 1 of the [Croatian] Constitution. Since he could not obtain the protection of his right to a hearing [within a reasonable time] before the President of the Karlovac County Court ... he is lodging this request [i.e. a constitutional complaint] under section 63(3) of the Constitutional Court Act and proposes ... that the [Constitutional] Court adopt the following:

D e c i s i o n

I. There has been a breach of the complainant's right to a hearing within a reasonable time in the enforcement proceedings against company T., in which he is the enforcement creditor ... [currently] pending before the Karlovac County Court ... upon the enforcement debtor's appeal of 28 February 2013 [lodged] against the writ of execution of the Karlovac Municipal Court of 14 February 2013 ...

II. The Karlovac County Court shall give a final decision and dispatch [it] within fifteen days.

III. Appropriate compensation in the amount of HRK 30,000 shall be paid to the complainant from the State budget funds within three months of the date on which a request for payment is lodged."

28. On 4 February 2015 the Constitutional Court (*Ustavni sud Republike Hrvatske*) invited the second applicant to submit a copy of the Supreme Court's decision which he had disputed in his constitutional complaint. On 11 February 2015 the second applicant did so, stating that he was submitting "the contested decision of the Supreme Court".

29. The Constitutional Court examined the second applicant's request of 3 February 2015 (see paragraph 27 above) as a constitutional complaint lodged under section 62 of the Constitutional Court Act (see paragraph 31 below) and, by a decision of 10 March 2015, declared it inadmissible. It found that the second applicant had contested the Supreme Court's decision of 15 December 2014 (see paragraph 26 above) and that such decisions were not open to constitutional review. The Constitutional Court's decision was served on the second applicant's representative on 27 March 2015. The relevant part of that decision read as follows:

> "1. The complainant lodged a constitutional complaint against the decision of the President of the Supreme Court ... of 15 December 2014 dismissing his appeal as ill-founded and upholding the Karlovac County Court's decision of 3 November 2014 whereby ... [the complainant's] request [for the purely acceleratory remedy] in the [enforcement] case before the Karlovac County Court was dismissed as ill-founded ...
>
> The Constitutional Court has no jurisdiction.
>
> 2. Section 62(1) of the Constitutional Court Act ... reads as follows:
>
> ...
>
> 3. In the constitutional court proceedings, it was established that the impugned decision does not constitute an individual act [i.e. a decision] within the meaning of section 62(1) of the Constitutional Act against which the Constitutional Court would have jurisdiction to provide constitutional protection."

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Constitution

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

Article 29(1)

> "Everyone is entitled to have [the 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."

B. Relevant legislation

31. 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."

32. The relevant provisions of the 2013 Courts Act (*Zakon o sudovima*, Official Gazette no. 28/13), which entered into force on 14 March 2013, read as follows:

PROTECTION OF THE RIGHT TO A HEARING WITHIN A REASONABLE TIME

Section 63

"A party to judicial proceedings which considers that the competent court did not decide within a reasonable time on its rights or obligations, or on a suspicion or accusation of a criminal offence, shall have the right to judicial protection in accordance with this Act."

Section 64

"(1) The legal remedies for protection of the right to a hearing within a reasonable time are:

1. a request for protection of the right to a hearing within a reasonable time,

2. a request for payment of appropriate compensation for the violation of the right to a hearing within a reasonable time.

(2) In the proceedings for deciding the requests referred to in paragraph 1 of this section the rules of non-contentious procedure shall apply *mutatis mutandis*, and, in principle, no hearing shall be held."

Section 65

"(1) A request for protection of the right to a hearing within a reasonable time shall be lodged with the court before which the proceedings are pending.

(2) The request shall be decided by the president of the court, unless he or she is the judge hearing the case, in which situation the request shall be decided by the vice-president of the court.

(3) The president of the court shall, within fifteen days of receipt of the request, ask the judge hearing the case [to submit] a report on the length of the proceedings, the reasons why [they] have not been concluded, and an opinion on the period [of time] within which the case may be decided. The president of the court may inspect the case file him or herself.

(4) The judge hearing the case shall submit the report immediately, but no later than fifteen days from the date the president of the court has asked him or her to do so.

(5) In deciding the request, the president of the court shall specifically take into account the type of the case, [its] factual and legal complexity, the conduct of the parties and the conduct of the court.

(6) The president of the court shall decide the request within sixty days of receipt."

Section 66

"(1) If the president of the court finds the request well-founded, he or she shall specify a time-limit of, as [a general] rule, a maximum of six months within which the judge must decide the case, unless the circumstances of the case warrant a longer time-limit. The decision finding the request well-founded need not be reasoned and cannot be appealed against.

(2) If the judge does not decide the case within the specified time-limit, he or she shall, within fifteen days of its expiry, submit a written report to the president of the court giving reasons for not having done so. The president of the court shall without delay forward the judge's report and his or her [own] observations to the president of the immediately higher court and the Ministry of Justice."

Section 67

"(1) If the president of the court finds the request unfounded, he or she shall dismiss it by a decision against which the [requesting] party shall have the right to appeal within eight days of receipt of the decision.

(2) The [requesting] party shall also have the right to appeal if the president of the court, within sixty days of receipt, does not decide the request.

(3) The appeal shall be decided by the president of the immediately higher court. If the request relates to proceedings pending before the Supreme Court, the appeal shall be decided by a panel of three judges of that court. The president of the immediately higher court or the panel may dismiss the appeal as unfounded and uphold the first-instance decision or reverse [that] decision."

Section 68

"(1) If the court does not decide the case referred to in section 65 of this Act within the specified time-limit, the [requesting] party may, within a further period of six months, lodge a request for payment of appropriate compensation for the violation of the right to a hearing within a reasonable time with the immediately higher court.

(2) If the request relates to proceedings pending before the High Commercial Court, the High Administrative Court or the High Court for Administrative Offences, the request shall be decided by the Supreme Court.

(3) The request referred to in paragraph 1 of this section shall be decided by a single judge.

(4) If the request relates to proceedings pending before the Supreme Court, the request shall be decided by a panel of three judges of that court.

(5) The immediately higher court shall decide the request within six months."

Section 69

"(1) The immediately higher court or the panel of the Supreme Court shall specify the time-limit within which the court before which the proceedings are pending must decide the case, and shall award [the requesting party] appropriate compensation for the violation of his or her right to a hearing within a reasonable time.

(2) The total amount of appropriate compensation awarded in a single case may not exceed 35,000 Croatian kunas.

(3) An appeal may be lodged with the Supreme Court within eight days against a decision on the request for payment of appropriate compensation for the violation of the right to a hearing within a reasonable time. The appeal shall be decided by a panel of three judges of that court, and, if the decision was given by the panel of the Supreme Court referred to in [section 68(4)] of this Act, the appeal shall be decided by a panel of five judges of that court.

(4) The decision awarding appropriate compensation for the violation of the right to a hearing within a reasonable time shall immediately after becoming final be forwarded to the president of the court before which the violation of the right to a hearing within a reasonable time occurred, the president of the Supreme Court, and the Ministry of Justice.

(5) The compensation referred to in paragraph 1 of this section shall be paid from the State budget.

(6) If the case referred to in paragraph 1 of this section is not decided within the specified time-limit, the court president shall, within fifteen days, submit a written report to the president of the immediately higher court and the Ministry of Justice giving reasons for not having done so."

C. Relevant practice

33. 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 paragraph 31 above and paragraph 37 below) was 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 38 and 43-45 below). The complainants could lodge such a constitutional complaint so long as the principal proceedings complained of were still pending. After the principal proceedings had ended, the complainants could, within thirty days of the last judicial decision being served, lodge a constitutional complaint under section 62 of the Constitutional Court Act (see paragraph 31 above), provided that they had made use of other length-of-proceedings remedies beforehand.

34. 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 paragraph 31 above and 37 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.

35. 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 Article 29 paragraph 1 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 2013 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 has expressed the view that the domestic remedy that is 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 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."

36. 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.

D. Development of length-of-proceedings remedies

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

37. 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 31 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. 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

38. 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 37 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.

39. 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 paragraphs 31 and 37 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.

40. 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).

41. 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).

42. 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 v. Croatia* (cited above, §§ 53-56 and 61-64).

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

43. The 2013 Courts Act (see paragraph 32 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 38 above), was made available only in limited circumstances as a complementary remedy (see paragraph 45 below).

44. 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 32 above).

45. 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 32 above).

THE LAW

I. JOINDER OF THE APPLICATIONS

46. Given that the applications at hand concern similar facts and complaints and raise identical issues under the Convention, the Court decides to join them, pursuant to Rule 42 § 1 of the Rules of the Court.

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

47. Both applicants complained that the length of their civil and enforcement proceedings had been incompatible with the "reasonable time" requirement laid down in Article 6 § 1 of the Convention. Specifically, the first applicant complained that she had been awarded insufficient compensation for the excessive length of the civil proceedings, and the second applicant complained that he had not received any compensation for the excessive length of the enforcement proceedings. The relevant part of Article 6 § 1 of the Convention 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..."

48. The period to be taken into consideration in the first applicant's case began when she was served with the plaintiff's statement of claim and thus learned of the proceedings, that is sometime between 8 January and 24 February 2003 (see paragraphs 6-7 above). It ended on 20 April 2015 when the judgment of 10 July 2014 became final (see paragraph 8 above). The period in question thus lasted twelve years and two months for one level of jurisdiction.

49. In the second applicant's case the period to be taken into consideration began on 20 July 2012 when he applied for enforcement and

has not yet ended (see paragraphs 15 and 23 above). It has so far lasted almost eight years.

A. Admissibility

50. The Government argued that the applicants had failed to exhaust domestic remedies and that the first applicant could no longer claim to be a victim of the violation complained of.

1. Exhaustion of domestic remedies

(a) Parties' submissions

(i) The Government

51. The Government first submitted that, in order to exhaust domestic remedies, the applicants had not been required to lodge constitutional complaints against the Supreme Court's decisions rendered in the proceedings following the use of remedies for protection of the right to a hearing within a reasonable time (see paragraphs 14 and 26 above), as such decisions were not amenable to constitutional review by means of an individual constitutional complaint under section 62 of the Constitutional Court Act (see paragraph 31 above).

52. The Government argued, however, that the applicants had nevertheless failed to comply with their exhaustion obligation under Article 35 § 1 of the Convention because they had not lodged constitutional complaints under section 63 of the Constitutional Court Act (see paragraph 31 above) to complain of the length of the principal proceedings in their cases. In this connection, the Government pointed out that a constitutional complaint under section 63 of the Constitutional Court Act was a remedy that the Court had already recognised as effective (they referred to the Court's decision in the *Slaviček* case, cited above).

(1) As regards the first applicant

53. The Government submitted that the first applicant had not fully availed herself of the domestic remedies because she had not lodged a constitutional complaint under section 63 of the Constitutional Court Act (see paragraph 31 and 37 above) alleging the excessive length of the civil proceedings in her case (see paragraphs 6-8 above).

54. In so arguing, the Government relied on the Constitutional Court's decision of 23 December 2014 (paragraphs 33-35 above) and the subsequent case-law[4] to demonstrate that, even though after 29 December 2005 the

[4] The Government referred to the Constitutional Court's decisions no U-IIIA-1031/2014 of 27 April 2016, U-IIIA-362/2014 of 16 November 2016, U-IIIA-8090/2014 of 24 November 2016, U-IIIA-745/2014 of 11 February 2015, U-III-2825/2002 of 7 April 2016 and U-IIIA-

right to a hearing within a reasonable time had been primarily and almost exclusively protected by the other length-of-proceedings remedies (see paragraphs 38-45 above), after the adoption of that decision a constitutional complaint under section 63 of the Constitutional Court Act had again become widely available to those complaining of a breach of that right, provided that they had availed themselves of those other remedies beforehand.

55. Specifically, pursuant to that decision of the Constitutional Court, those complaining of excessive length of proceedings could, if they had complied with the said exhaustion requirement, either (a) lodge a constitutional complaint under section 63 of the Constitutional Court Act where the principal proceedings complained of were still pending, or (b) where the principal proceedings had ended, lodge a constitutional complaint under section 62 of the same Act within thirty days of the last judicial decision being served on them. However, the first applicant had not done so and had thus failed to exhaust domestic remedies.

(2) As regards the second applicant

56. As regards the second applicant, the Government argued that, instead of lodging a constitutional complaint under section 63 of the Constitutional Court Act to complain of the length of the principal (enforcement) proceedings in his case (see paragraphs 15-23 above), he had lodged a constitutional complaint against the Supreme Court's decision of 15 December 2014 (see paragraph 26 above) rendered in the context of the proceedings instituted following the use of remedies for protection of the right to a hearing within a reasonable time (see paragraphs 24-29 above).

57. As regards the second applicant's assertion that he had in fact lodged the proper constitutional complaint (see paragraph 60 below), the Government argued that in reply to the Constitutional Court's request that he submit a copy of the contested decision (see paragraph 28 above), he should have made it clear that he had not been contesting a particular decision, but complaining about the length of the principal (enforcement) proceedings in his case.

(3) Conclusion

58. The Government maintained that both applications should therefore be declared inadmissible for non-exhaustion of domestic remedies.

(ii) The applicants

59. In her application to the Court the first applicant submitted that she had not lodged a constitutional complaint against the Supreme Court's

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2479/2005 of 16 November 2016.

decision of 15 December 2014 (see paragraph 14 above) because since 29 December 2009 the Constitutional Court had been declaring such constitutional complaints inadmissible for lack of jurisdiction (see paragraphs 40 and 51 above). In her observations in reply to those of the Government, she submitted that lodging a constitutional complaint to complain of the length of the principal proceedings while they had been ongoing or within thirty days after they had ended, as the Government suggested (see paragraphs 53-55 above), in addition to the length-of-proceedings remedies she had already resorted to under the 2013 Courts Act (see paragraphs 9-14 above), would only have led to additional and unnecessary costs and delays.

60. The second applicant submitted that on 3 February 2015 he had lodged a constitutional complaint under section 63 of the Constitutional Court Act but that the Constitutional Court had treated it as though it had been lodged under section 62 and had thus declared it inadmissible (see paragraphs 27 and 29 above).

(b) The Court's assessment

61. The Court reiterates that the purpose of the exhaustion rule is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to it (see, among many other authorities, *Paksas v. Lithuania* [GC], no. 34932/04, § 75, ECHR 2011 (extracts)). However, applicants are only required to exhaust domestic remedies which are available in theory and in practice at the relevant time and which are accessible, capable of providing redress in respect of their complaints and offering reasonable prospects of success (ibid., and *Sejdovic v. Italy* [GC], no. 56581/00, § 46, ECHR 2006-II).

(i) As regards the first applicant

62. The Court first notes that in the Government's own admission a constitutional complaint under section 63 of the Constitutional Court Act had again become widely available as a remedy for the excessive length of proceedings only after the Constitutional Court's decision of 23 December 2014 and only if the complainants had availed themselves of the other length-of-proceedings remedies beforehand (see paragraphs 33-35 and 54 above). Furthermore, according to the Government, that constitutional complaint could be lodged so long as the principal proceedings complained of were still pending or within thirty days of the end of the principal proceedings (more specifically, within thirty days of the last judicial decision in the principal proceedings being served on the complainant, see paragraph 55 above).

63. In the first applicant's case the last judicial decision adopted in the principal (civil) proceedings, was served on her on 9 September 2014 (see paragraph 8 above). Accordingly, the above-mentioned thirty-day time-limit for lodging a constitutional complaint under section 63 of the Constitutional Court Act expired on 9 October 2014. That was more than two months before the Constitutional Court, on 23 December 2014, adopted the landmark decision relied on by the Government whereby it changed its case-law and made the constitutional complaint under section 63 of the Constitutional Court Act widely available again. It would therefore appear that that constitutional complaint as a remedy for the excessive length of proceedings was not available to the first applicant and that she could not therefore have used it.

64. The Court however notes that in the first applicant's case the proceedings following the use of remedies for protection of the right to a hearing within a reasonable time (see paragraphs 9-14 above) finished later than the principal proceedings (see paragraphs 6-8 above). It could therefore be argued that the time-limit for lodging the constitutional complaint suggested by the Government should have been calculated from the moment she had been served with the last decision in those remedial proceedings, namely, from the service of the Supreme Court's decision of 15 December 2014 on the applicant's representative on 8 January 2015 (see paragraph 14 above). The thirty-day time-limit for lodging the constitutional complaint, running from the service of that decision thus expired on 7 February 2015.

65. In this connection the Court reiterates 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).

66. The Constitutional Court's decision relied on by the Government, adopted on 23 December 2014, was published in Official Gazette on 23 January 2015 (see paragraph 33 above). The Court therefore deems it reasonable to consider that the change in the Constitutional Court's practice must have become public knowledge from 23 July 2015. That was more than five months after the time-limit for lodging the constitutional complaint had expired in the first applicant's case (see paragraph 64 above), which means that at the time that time-limit was running she could not have yet been considered of being aware of the Constitutional Court's decision in question.

67. In these circumstances the Court cannot accept the Government's argument that the first applicant had not fully availed herself of the domestic remedies (see paragraph 53-55 above).

(ii) As regards the second applicant

68. The Court notes that in his constitutional complaint of 3 February 2015 the second applicant explicitly relied on section 63 of the Constitutional Court Act (see paragraph 27 above). Moreover, he did not enclose with his constitutional complaint any decisions adopted in relation to his request for the purely acceleratory remedy (see paragraphs 25-26 and 28 above), which might have suggested that he was challenging one of those decisions. He submitted the Supreme Court's decision only later, at the express request of the Constitutional Court (see paragraph 28 above).

69. These two elements are, in the Court's view, sufficient to eliminate any ambiguity as to whether in his constitutional complaint the second applicant was complaining of the excessive length of the principal (enforcement) proceedings as such under section 63 of the Constitutional Court Act (see paragraphs 15-17 and 31 above) or of the decisions adopted in the context of the proceedings instituted following his request for the purely acceleratory remedy under 2013 Courts Act (see paragraphs 25-26 above).

70. Yet, the Constitutional Court first invited him to submit a copy of the Supreme Court's decision he was (allegedly) contesting (see paragraph 28 above). Then, after he had provided a copy of the decision requested, the Constitutional Court examined his constitutional complaint as if it had been lodged under section 62 of the Constitutional Court and declared it inadmissible because such decisions were not open to constitutional review (see paragraphs 28-29 above). It did so even though, as noted above (see paragraph 68), the second applicant in his constitutional complaint had expressly relied on section 63 of the Constitutional Court Act and had not complained of the said decision of the Supreme Court but of the length of the principal (enforcement) proceedings as such, which were still pending at that time (see paragraph 15-17 and 27 above).

71. In these circumstances the Court cannot accept the Government's argument that the second applicant had not (properly) exhausted domestic remedies (see paragraph 56-57 above).

(iii) Conclusion

72. It follows from the foregoing (see paragraphs 64-71 above) that all the Government's objections regarding non-exhaustion of domestic remedies (see paragraphs 51-58 above) must be dismissed.

2. The first applicant's victim status

(a) Parties' submissions

73. The Government submitted that the Zadar County Court had allowed the first applicant's request for payment of appropriate compensation. It had acknowledged that the length of the proceedings in her case had been excessive and had awarded her compensation which was appropriate in the given circumstances (see paragraph 12 above). The violation complained of had, therefore, been remedied at the domestic level and, as a result, the first applicant had lost her victim status.

74. The first applicant argued that she could still claim to be a victim of the violation claimed, because the compensation she had been awarded was too low.

(b) The Court's assessment

75. The Court first notes that the civil proceedings in the first applicant's case lasted some twelve years and two months for one level of jurisdiction (see paragraph 48 above). It further notes that the Zadar County Court awarded her the equivalent of approximately EUR 130 (see paragraph 12 above). The compensation awarded by that court does not correspond to what the Court would have been likely to award under Article 41 of the Convention in respect of the same period, nor can it otherwise be regarded as adequate in the circumstances of the case (see the principles established under the Court's case-law in *Cocchiarella*, cited above, §§ 65-107, or *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 178-213, ECHR 2006-V).

76. Having regard to the above, the Court considers that the first applicant has not lost her victim status within the meaning of Article 34 of the Convention. It follows that the Government's objection concerning the first applicant's victim status has to be rejected.

3. Conclusion

77. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It also notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

78. 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). Similarly, to decide if the delay in the enforcement was reasonable, the Court will look at the complexity of the enforcement proceedings, how the applicant and the authorities behaved, and the nature of the award (see *Raylyan v. Russia*, no. 22000/03, § 31, 15 February 2007).

79. As regards the length of the civil proceedings in the first applicant's case, which lasted twelve years and two months for one level of jurisdiction (see paragraph 48 above), this is *a priori* unreasonable and calls for a global assessment. The overall length of those proceedings could be justified only under exceptional circumstances. The fact that on 23 October 2014 the County Court awarded the first applicant HRK 1,000 in compensation for the violation of her right to a hearing within a reasonable time without pointing to any exceptional circumstances (see paragraph 12 above) suggests that such exceptional circumstances were not present in her case and that the length of the proceedings indeed exceeded a reasonable time.

80. As regards the length of the consecutive enforcement and insolvency-like proceedings in the second applicant's case, which have together so far lasted almost eight years (see paragraph 49 above), the Court first notes that after the Zagreb Commercial Court's decision of 10 April 2017 those proceedings became very complex (see paragraphs 19-20 and 22-23 above). However, this cannot be said for the period before that date (see paragraphs 15-17 above), especially in view of the finding by the President of the Karlovac County Court in his decision of 3 November 2014 that the case was not complex and that there had been no delays attributable to the second applicant (see paragraph 25 above). The Court finds the delay in that period was mainly attributable to the authorities as it took almost four years for the Karlovac County Court to decide on the enforcement debtor's appeal (see paragraphs 16-17 above).

81. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of justifying the length of the judicial proceedings in the applicants' cases. Having regard to its case-law on the subject, the foregoing considerations are sufficient to enable the Court to conclude that in the applicants' cases the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

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

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

82. The second applicant also complained that he had been denied an effective remedy in respect of his complaint concerning the excessive length of the proceedings. He 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

83. The Court notes that this complaint is linked to the complaint examined under Article 6 § 1 above and must therefore likewise be declared admissible.

B. Merits

1. Parties' submissions

84. The Government submitted that the second applicant had had at his disposal effective remedies to complain of the excessive length of the proceedings:

- a constitutional complaint under section 63 of the Constitutional Court Act, of which he had not availed himself (in this connection the Government reiterated their arguments summarised in paragraphs 56-57 above), and

- length-of-proceedings remedies available under the 2013 Courts Act, of which the second applicant had availed himself, as he had lodged a request for the purely acceleratory remedy (see paragraphs 24-26 and 44 above).

85. As regards the effectiveness of a constitutional complaint under section 63 of the Constitutional Court Act, the Government reiterated their argument (see paragraph 52 above) that the Court had already recognised that remedy as effective.

86. As regards the purely acceleratory remedy under the 2013 Courts Act, the Government first referred to the Court's case-law requiring that length-of-proceedings remedies be capable of either preventing an impending violation of the right to a hearing within a reasonable time or awarding adequate compensation for the delays that had already occurred. A remedy was therefore effective if it could be used either to expedite a decision by the courts dealing with the case, or to provide the litigant with adequate redress for delays that had already occurred (the Government referred to *Novak*, cited above, § 46).

87. By lodging a request for the purely acceleratory remedy under the 2013 Courts Act, parties could obtain a decision from the court president ordering the judge hearing their case to adopt a decision within a specific time-limit (see paragraph 44 above). This, in the Government's view, satisfied the criteria (see paragraph 86 above) of effectiveness which length-of-proceedings remedies had to meet under the Court's case-law.

88. Lastly, the Government submitted that the fact that the domestic courts had refused the second applicant's request for the purely acceleratory

remedy (see paragraphs 25-26 above) had not rendered the remedy ineffective, as the right to an effective remedy did not guarantee the right to obtain a favourable decision.

89. The second applicant reiterated his complaint that he had not had an effective remedy to complain of the excessive length of the proceedings in his case. Not only had he not obtained compensation for the excessive length of the enforcement proceedings (see paragraphs 15-18 above) that had evidently lasted too long, but the Constitutional Court had not decided on the merits of his properly lodged constitutional complaint under section 63 of the Constitutional Court Act (in this connection he referred to his argument summarised in paragraph 60 above).

2. The Court's assessment

(a) As regards the constitutional complaint

90. The Court observes at the outset that its finding in the *Slaviček* case (cited above) that a constitutional complaint under section 63 of the Constitutional Court Act was an effective remedy for the excessive length of proceedings was adopted at a time when that was the only length-of-proceedings remedy in Croatia (see paragraph 37 above). More than eighteen years have passed since the adoption of that decision, and in the intervening period the remedies for excessive length of proceedings have undergone significant legislative and jurisprudential changes (see paragraphs 38-45 above).

91. However, the Court finds that in the present case it does not have to decide whether a constitutional complaint under section 63 of the Constitutional Court Act could still be considered an effective remedy for the excessive length of proceedings. That is so because, even when that was the only remedy for the excessive length of proceedings in Croatia, without calling into question the general effectiveness of that remedy, the Court was sometimes finding violations of Article 13 of the Convention in certain specific circumstances given that the effectiveness of remedies is assessed *in concreto* (see, for example, *Kirovogradoblenergo, PAT v. Ukraine*, no. 35088/07, § 26, 27 June 2013; and *Colozza and Rubinat v. Italy*, nos. 9024/80 and 9317/81, Commission decision of 9 July 1982, Decisions and Reports (DR) 9, pp. 146-147). For example, in the *Debelić* case the Court found a violation of that Article because the Constitutional Court had not decided on the substance of the constitutional complaint without a good reason (see *Debelić v. Croatia*, no. 2448/03, §§ 42-47, 26 May 2005).

92. Specifically, in *Debelić* the Court held that although the fact that a remedy did not lead to a favourable outcome did not render a remedy ineffective, the applicant's length complaint in that case had been arguable and he could therefore have expected the Constitutional Court to deal with the substance of his constitutional complaint, which it had not done

(ibid.). The Court considers that this conclusion applies with equal force in the present case where, as stated above (see paragraphs 68-71), the Constitutional Court likewise declared inadmissible the second applicant's constitutional complaint without a justified reason.

93. The Court therefore concludes that the constitutional complaint was not an effective remedy in the second applicant's case.

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

94. The Court first reiterates that a remedy for raising a complaint of a 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). 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 v. Italy* [GC], no. 64886/01, §§ 74-76, ECHR 2006-V). More specifically, in the *Cocchiarella* case (ibid, § 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."

95. In the *Novak* case, the Court made the following observations concerning the (effectiveness of the) remedies for protection of the right to a hearing within a reasonable time introduced by the 2013 Courts Act, and in particular concerning the purely acceleratory remedy as the primary remedy under that Act (see *Novak*, cited above, §§ 49-53):

> "49. The 2013 Courts Act provides for a purely acceleratory remedy as the primary remedy, whereas a combined compensatory-acceleratory remedy, identical to the one under the previous legislation ... is available only in limited circumstances as the complementary remedy (see paragraph 23 above).
>
> 50. In particular, under the 2013 Courts Act a party to ongoing judicial proceedings who considers that they have been unduly protracted has a right to lodge a purely acceleratory remedy, namely, the "request for the protection of the right to a hearing within a reasonable time" and request the president of the same court before which those proceedings are pending to expedite them by setting a time-limit of maximum six months within which the judge hearing the case must render a decision (see sections 63, 65(1) and (2) and 66(1) of the 2013 Courts Act ...).
>
> 51. The complementary (combined compensatory-acceleratory) remedy, namely, the '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 section 68(1) of the Courts Act ...). In the Court's view, this limited availability of the complementary remedy distinguishes the remedies available under the 2013 Courts Act from similar (combination of) remedies existing in

Slovenia and Montenegro, which the Court found to be effective (see *Grzinčič v. Slovenia*, no. 26867/02, § 82, ECHR 2007‑V (extracts); and *Vukelić v. Montenegro*, no. 58258/09, 4 June 2013). In particular, in each of those countries parties to judicial proceedings may, unlike in Croatia, ask for compensatory remedy as long as they resorted beforehand (successfully or unsuccessfully) to a purely acceleratory one.

52. Turning back to the purely acceleratory remedy (the 'request for the protection of the right to a hearing within a reasonable time'), the Court notes that the text of the relevant provisions of the 2013 Courts Act suggests that this remedy can be used by a party to judicial proceedings which considers that the competent court did not decide within a reasonable time on its rights or obligations, or on a suspicion or accusation of a criminal offence, and that the court president shall grant such a request if he or she finds it well-founded (see sections 63 and 66(1) of the 2013 Courts Act ...). Since it therefore appears that the court president can find such a request well-founded only if he or she agrees with the requesting party that the court did not decide within a reasonable time, it seems that the purely acceleratory remedy in question may be granted only if the length of proceedings has already been excessive. Accordingly, it would appear that if a party to judicial proceedings would resort to it in order to prevent the impending violation of the right to a hearing within a reasonable time, such request would be dismissed as ill-founded. It follows that this purely acceleratory remedy can only prevent further violations of the right to a hearing within a reasonable time in the proceedings in which such a violation has already occurred.

53. This feature markedly distinguishes that remedy from similar purely acceleratory remedies for the length of administrative proceedings such as an appeal and action/application for failure to respond, which the Court has recognised as effective (see *Pallanich v. Austria*, no. 30160/96, 30 January 2001; *Basic v. Austria*, no. 29800/96, ECHR 2001I; and *Rauš and Rauš-Radovanović v. Croatia* (dec.), no. 43603/05, 2 October 2008). Those remedies can be lodged sixty days (in Croatia) or six months (in Austria) after the institution of such proceedings. They are thus clearly capable of preventing a violation of the right to a hearing within a reasonable time before it occurs."

96. The Court sees no reason to depart from those findings in the present case, as the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion. In particular, it emphasises the finding that the purely acceleratory remedy in question can only prevent further violations of the right to a hearing within a reasonable time (ibid., § 52). That being so, and having regard to the relevant principles established in its case-law, in particular that an acceleratory remedy, when used to speed up proceedings which have already lasted too long, will be considered effective only if accompanied by a compensatory remedy (see paragraph 94 above), the Court considers that the purely acceleratory remedy under the 2013 Courts Act when applied alone, without the possibility of recourse to the complementary remedy cannot be considered effective.

97. In this connection the Court reiterates its finding in *Novak* that the secondary remedy available under the 2013 Courts Act, namely the complementary (combined compensatory-acceleratory) remedy (see sections 68 and 69 of the 2013 Courts Act, cited in paragraph 32 above, as well as paragraph 45 above), has the same characteristics as the previous

length-of-proceedings remedy under the 2005 Courts Act (see paragraphs 38 and 45 above) which the Court already recognised as effective (see *Novak*, cited above, § 56).

98. Nevertheless, the complementary remedy under the 2013 Courts Act is available only in limited circumstances, namely in situations 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 section 68(1) of the Courts Act, cited in paragraph 32 above, as well as paragraph 45 above). The complementary remedy remains unavailable in situations where the purely acceleratory remedy was granted and the judge hearing the case complied with the time-limit specified by the court president as well as in situations where the purely acceleratory remedy was denied.

99. Since in the present case the second applicant's purely acceleratory remedy was denied (see paragraphs 24-26 above), the complementary remedy was not available to him. Consequently, the purely acceleratory remedy the second applicant resorted to cannot be considered effective.

(c) Conclusion

100. The foregoing considerations (see paragraphs 90-99 above) are sufficient to enable the Court to conclude that the second applicant did not have an effective remedy to complain of the excessive length of the proceedings in his case.

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

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

102. 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

103. The first applicant claimed 20,000 euros (EUR) in respect of pecuniary and non-pecuniary damage. The second applicant claimed EUR 222,040 in respect of pecuniary damage and EUR 4,000 in respect of non-pecuniary damage.

104. The Government contested the claims.

105. The Court does not discern any causal link between the violations found and the pecuniary damage alleged. Therefore, in so far as the applicants' claims concern pecuniary damage, the Court rejects them.

106. On the other hand, the Court considers that the applicants must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards the first applicant EUR 3,900 and the second applicant EUR 4,000 under that head.

107. The Court wishes to specify that those sums are awarded for the violation of Article 6 § 1 of the Convention found in each applicant's case on account of the excessive length of proceedings. The Court finds no reason to make an additional award or increase the sum awarded to the second applicant on account of the violation of Article 13, owing to the inherent link between the two violations found in his case, which were both based on a similar set of circumstances.

B. Costs and expenses

108. The first applicant claimed EUR 3,500 for the costs and expenses incurred before the domestic courts and for those incurred before the Court. The second applicant claimed EUR 3,860 for the costs and expenses incurred before the Court.

109. The Government contested the claims.

110. 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 have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the first applicant the sum of EUR 275 for costs and expenses in the domestic proceedings and to award the first and second applicants EUR 1,000 each for the proceedings before the Court.

C. Default interest

111. 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 the applications;

2. *Declares* the applications admissible;

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

4. *Holds* that there has been a violation of Article 13 of the Convention in the second applicant's case;

5. *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 3,900 (three thousand nine hundred euros) to the first applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 4,000 (four thousand euros) to the second applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;

(iii) EUR 1,275 (one thousand two hundred and seventy-five euros) to the first applicant plus any tax that may be chargeable to her, in respect of costs and expenses;

(iv) EUR 1,000 (one thousand euros) to the second applicant, plus any tax that may be chargeable to him, in respect of costs and expenses.

(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 applicants' claims for just satisfaction.

Done in English, and notified in writing on 30 July 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos	Krzysztof Wojtyczek
Registrar	President

APPENDIX

No.	Application no.	Case name	Lodged on	Applicant Place of Residence Nationality	Represented by
1	11388/15	Glavinić v. Croatia	27/02/2015	**Jela GLAVINIĆ** Rijeka Croatian	Vladimir MARGAN
2	25605/15	Marković v. Croatia	25/05/2015	**Aleksander MARKOVIĆ** Zagreb Croatian	Renata DOZET DASKAL