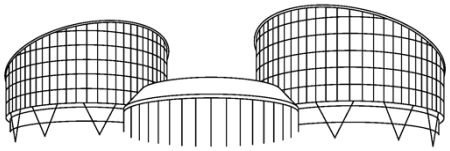

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF MIRJANA MARIĆ v. CROATIA

(Application no. 9849/15)

JUDGMENT

Art 6 § 1 (civil) • Reasonable time •Excessive length of proceedings Art 13 (+Art 6) •Lack of effective remedy in respect of length of proceedings cases (purely acceleratory remedy introduced by the 2013 Courts Act and constitutional complaint)

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 Mirjana Marić v. Croatia,

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

Krzysztof Wojtyczek, *President,*
Ksenija Turković,
Aleš Pejchal,
Pauliine Koskelo,
Tim Eicke,
Jovan Ilievski,
Raffaele Sabato, *judges,*
and Abel Campos, *Section Registrar,*

Having regard to:

the application (no. 9849/15) 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 a Croatian national, Ms Mirjana Marić ("the applicant"), on 19 February 2015;

the decision to give notice of the complaints concerning the length of proceeding and the ineffectiveness of remedies in that respect to the Croatian Government ("the Government") and to declare inadmissible the remainder of the application;

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 effectiveness of domestic remedies for excessively lengthy proceedings introduced by the 2013 Courts Act.

THE FACTS

2. The applicant was born in 1951 and lives in Zagreb. She was represented by Mr Z. Novaković, a lawyer practising in Zagreb.

3. The Croatian Government ("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.

I. MAIN PROCEEDINGS

5. On 31 October 2007 the applicant brought a civil action in the Zagreb Municipal Civil Court (*Općinski građanski sud u Zagrebu*) against the City of Zagreb and the municipal company Z.H., seeking compensation for injuries sustained in 2005 in a road traffic accident caused by an icy and

untreated (that is to say unsalted) road. On 17 January 2008 the company C.O. joined the proceedings as an intervener in support of the defendants.

6. On 21 January 2008 the applicant requested that the court call two witnesses and obtain the opinion of a road traffic expert.

7. At a hearing held on 24 June 2008 the court decided to obtain a report from the national meteorological service regarding the weather conditions on the day of the accident. The report was received on 3 October 2008.

8. At a hearing held on 22 September 2008 the court heard the applicant. The two witnesses failed to attend the hearing.

9. In the period between 8 December 2008 and 25 January 2011 the court scheduled eight hearings. One was adjourned because the judge assigned to hear the case was ill, and six were adjourned because the two witnesses had either not been properly summoned or failed to attend. On 5 June 2009 the judge fined those witnesses and ordered that they be brought to court by the police. Afterwards only one hearing was held, on 14 October 2010, at which the court heard a third witness, whose testimony in the meantime had been requested by the applicant.

10. One of the two absent witnesses was eventually heard at a hearing held on 22 February 2011. The applicant eventually, on 5 March 2014, withdrew her request to call the remaining witnesses, whose non-attendance seemed to have been for health reasons.

11. On 1 June 2011 the court decided to obtain the opinion of a road traffic expert. On 7 June 2011 the expert submitted his opinion and was heard at a hearing held on 8 December 2011.

12. At a hearing held on 19 April 2012 the court decided to obtain the joint opinion of a team of medical experts in order to assess the non-pecuniary damage sustained by the applicant. They submitted their report on 21 September 2012, which the court then forwarded to the parties for comment. In the period between 23 November 2012 and 25 January 2013 the parties exchanged observations regarding the expert report.

13. A hearing scheduled for 12 September 2013 was adjourned because the experts could not attend. They were heard at the next hearing, which was held on 21 February 2014.

14. At a hearing held on 5 March 2014 the court again heard the applicant, who repeated the testimony she had given on 22 September 2008 (see paragraph 8 above).

15. On 20 May 2014 the Municipal Court closed the main hearing and by a judgment of 3 July 2014 ruled partly in favour of the applicant.

16. On 11 July 2014 the applicant lodged an appeal and a request to supplement the judgment because no decision had been taken regarding statutory default interest on the costs of the proceedings. The defendants lodged their appeals on 10 and 21 July 2014 respectively. On 26 August 2014 the applicant responded to the defendants' appeals.

17. By two decisions adopted on 19 January 2015 the Municipal Court first rectified its judgment of 3 July 2014 and then supplemented it with a decision regarding statutory default interest on the costs of the proceedings.

18. On 10 March 2015 the applicant and the first defendant appealed against the decision to supplement the judgment. After sending the appeals for response to the other party, the Municipal Court forwarded the case to the Zagreb County Court (*Županijski sud u Zagrebu*).

19. On 3 October 2016 the County Court returned the case to the Municipal Court, requesting that it correct some errors in the operative part of the first-instance judgment of 3 July 2014. After correcting those errors in a decision of 21 November 2016, the Municipal Court again forwarded the case to the Zagreb County Court.

20. By a judgment of 21 March 2017 the Zagreb County Court allowed both appeals in part and dismissed them in part. The applicant was eventually awarded 19,000 Croatian kunas (HRK) in compensation for non-pecuniary damage, HRK 17,630 in compensation for pecuniary damage, and HRK 12,647.57 in costs. The County Court's judgment was served on the applicant's representative on 23 May 2017.

II. PROCEEDINGS FOLLOWING THE USE OF REMEDIES FOR PROTECTION OF THE RIGHT TO A HEARING WITHIN A REASONABLE TIME

A. Proceedings following the applicant's request under the 2005 Courts Act

21. Meanwhile, on 1 June 2010 the applicant, relying on the relevant provisions of the 2005 Courts Act (see paragraphs 34-38 below), lodged a request with the Zagreb County Court for protection of her right to a hearing within a reasonable time, complaining that the length of the above-mentioned civil proceedings (see paragraphs 5-9 above) had been excessive.

22. By a decision of 18 February 2011 the Zagreb County Court dismissed her request, finding that the length of the proceedings complained of had not exceeded a reasonable time.

23. On 17 October 2011 the Supreme Court (*Vrhovni sud Republike Hrvatske*) dismissed an appeal by the applicant and upheld the County Court's decision.

B. Proceedings following the applicant's constitutional complaint

24. On 20 January 2014 the applicant lodged a constitutional complaint under section 63 of the Constitutional Court Act (see paragraphs 27 and 36 below), again complaining of the excessive length of the above-mentioned

civil proceedings (see paragraphs 5-13 above). She argued that the length-of-proceedings remedies provided by the 2013 Courts Act (see paragraph 30 below) were ineffective. She did not mention the fact that she had previously had recourse to the length-of-proceedings remedy provided by the 2005 Courts Act (see paragraphs 21-23 above).

25. By decision no. U-IIIA-322/2014 of 23 December 2014 the Constitutional Court declared the applicant's constitutional complaint inadmissible on the grounds that she had not previously attempted to avail herself of other length-of-proceedings remedies, notably those available under the 2013 Courts Act (see paragraphs 39-41 below).

26. The applicant's case was the first in which the Constitutional Court held that, despite the availability of (other) length-of-proceedings remedies, a constitutional complaint under section 63 of the Constitutional Court Act (see paragraphs 27 and 29 below) was still available to persons complaining of the excessive length of ongoing judicial proceedings – but only if they had first availed themselves of other length-of-proceedings remedies.

27. The relevant part of the Constitutional Court's decision in the applicant's case reads as follows:

> "3.1. ... since the introduction in 2005 into 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 at 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 under section 62 of the Constitutional Court Act (against the decision on the merits ... after the available remedies have been exhausted) or in proceedings initiated by a constitutional complaint under section 63 of the Constitutional Court Act;
>
> - apart from the general procedural requirements that every constitutional complaint must meet, a prerequisite for deciding 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 previously used 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 by the 2013 Courts Act] are not 'an effective remedy within the meaning 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 by the 2013 Courts Act. It is sufficient to establish, in the light of the position of the ECHR, 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 *Kudła v. Poland* (judgment of the Grand Chamber, 26 October 2000, application no. 30210/96), the ECHR expressed the view that the domestic remedy that had been available to the applicant for protection of the right to a hearing within a reasonable time could be considered effective within the meaning of Article 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms ... if it prevented the alleged violation or its continuation or provided adequate redress for any violation that had already occurred (§ 158). In the ECHR'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 ECHR 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 ECHR 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 clearly not (*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 the available remedies provided by 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."

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. THE CONSTITUTION

28. 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

A. Constitutional Court Act

29. 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 for the violation of the constitutional rights [complained of], the constitutional complaint may be lodged only after this remedy has been used.

(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."

B. 2013 Courts Act

30. 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:

VI. 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."

Section 70

"If, before the European Court of Human Rights proceedings have been instituted for protection of the right to a hearing within a reasonable time and the Government's representative before the European Court of Human Rights has requested information on the case from the [domestic] court before which the proceedings [complained of] are pending, that court shall inform the president of the immediately higher court, the president of the Supreme Court and the Ministry of Justice of the Government representative's request and the reasons for the delay."

Section 141

"Requests for protection of the right to a hearing within a reasonable time received before the entry into force of this Act shall be dealt with in accordance with the provisions of the 2005 Courts Act."

III. RELEVANT PRACTICE

31. The Constitutional Court, referring to its landmark decision in the applicant's case, has applied the rules concerning the exhaustion of remedies established therein in its subsequent case-law. It has systematically examined the merits of 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 previously had recourse to other available length-of-proceedings remedies (either those under the 2005 Courts Act when that legislation was in force, or those under the 2013 Courts Act). Otherwise, it has consistently declared such constitutional complaints inadmissible if the complainants did not make use of the above-mentioned length-of-proceedings remedies.

32. By decision no. U-I-1553/2013 and others of 16 October 2018 (Official Gazette 99/18 of 9 November 2018) the Constitutional Court

rejected a petition for (abstract) constitutional review and thus refused to review the constitutionality of sections 63 to 70 of the 2013 Courts Act, namely the provisions concerning the remedies for the excessive length of proceedings.

IV. DEVELOPMENT OF LENGTH-OF-PROCEEDINGS REMEDIES

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

33. 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 29 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).

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

34. 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 33 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.

35. 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 29 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.

36. 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).

37. 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).

38. 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

39. The 2013 Courts Act, which entered into force on 14 March 2013, introduced a purely acceleratory remedy as the primary remedy (see paragraph 30 above). A combined compensatory and acceleratory remedy, identical to that under the previous legislation (see paragraph 34 above), was made available only in limited circumstances as a complementary remedy (see paragraph 41 below).

40. 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 use a purely acceleratory remedy, namely 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 30 above).

41. 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 30 above).

THE LAW

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

42. The applicant complained that the length of the above-mentioned civil proceedings 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..."

A. Admissibility

1. The parties' arguments

(a) The Government

43. The Government disputed the admissibility of this complaint on the grounds that the applicant had not (properly) exhausted domestic remedies. Specifically, they argued: (i) that the applicant had not availed herself of the remedies available under the 2013 Courts Act (see paragraphs 30 and 39-41 above), and (ii) that in her constitutional complaint (see paragraph 24 above) she had failed to mention that she had previously used the remedy available under the 2005 Courts Act (see paragraphs 21-23 and 34-38 above).

(i) As regards the remedies available under the 2013 Courts Act

44. The Government first argued that the remedies provided by the 2013 Courts Act were effective and that the applicant had therefore been required to use them in order to comply with the requirements of Article 35 § 1 of the Convention. However, she had not done so.

45. 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 specified time-limit (see section 66 of the 2013 Courts Act, cited in paragraph 30 above, as well as paragraph 40 above). That remedy was therefore preventive in nature, enabling the domestic courts to issue a decision promptly and thereby prevent delays in proceedings from becoming excessive. Its purpose was primarily to provide a prompt and effective response to an impending violation of the right to a hearing within a reasonable time and prevent its occurrence in a timely manner.

46. That remedy was complemented by a remedy combining compensatory and acceleratory elements (see section 69 of the 2013 Courts Act, cited in paragraph 30 above, as well as paragraph 41 above). That complementary remedy could be used in cases where the purely acceleratory remedy had failed to prevent the violation of the right to a hearing within a reasonable time, that is, in cases where the judge hearing the case had not delivered a decision within the time-limit specified by the court president (see section 68(1) of the 2013 Courts Act in paragraph 30 above). If that complementary remedy was granted, the immediately higher court could award appropriate compensation for the excessive delay that had already occurred, and specify another time-limit within which the judge hearing the case had to adopt a decision (see section 69(1) of the 2013 Courts Act in paragraph 30 above). It could therefore prevent further delays and provide redress for existing ones.

47. Those two remedies, taken together, satisfied both alternative criteria of effectiveness that length-of-proceedings remedies had to meet under the Court's case-law. More specifically, the Court's case-law required that such 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 (the Government referred to *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 74-76, ECHR 2006 V, and *Puchstein v. Austria*, no. 20089/06, § 31, 28 January 2010).

48. The Government then referred to the Court's findings in *Novak v. Croatia* ((dec.), no. 7877/14, §§ 55-57, 7 July 2016), which they considered applicable to the present case. In *Novak*, the applicant had used the purely acceleratory remedy under the 2013 Courts Act, but had failed to use the complementary remedy to seek compensation. The latter remedy had the same characteristics as the remedy under the 2005 Courts Act, which the Court had recognised as effective. The Court had therefore held that, in the circumstances of that particular case, the applicant had had an effective remedy at her disposal to complain of the excessive length of the proceedings.

49. Lastly, the Government emphasised that, according to the well-established case-law of the Court, an applicant had to make use of

domestic remedies which were likely to be effective and that the existence of mere doubts as to the prospects of success of a particular remedy which was not obviously futile was not a valid reason for failing to pursue that avenue of redress (they referred to *Tamm v. Estonia* (dec.), no. 15301/04, 2 September 2008, and *Vrtar v. Croatia*, no. 39380/13, § 82, 7 January 2016).

50. In the present case the applicant, instead of using the remedies available under the 2013 Courts Act and testing their effectiveness, had lodged a constitutional complaint in which she had asked the Constitutional Court to assess, in abstract terms, the effectiveness of the model of protection of the right to a hearing within a reasonable time introduced by that Act. Her case had been the first in which the Constitutional Court had had to address the issue of the effectiveness of the length-of-proceedings remedies under the then new 2013 Courts Act. Since the applicant had lodged her constitutional complaint when the Act had been in force for less than a year (see paragraphs 24 and 30 above), the Constitutional Court had not even been able to examine it in any relevant context.

51. Therefore, before seeking the Constitutional Court's protection, the applicant should have first used the domestic remedies adopted precisely to protect the right to a hearing within a reasonable time. However, she had not done so.

(ii) As regards the constitutional complaint

52. The Government further submitted that in her constitutional complaint (see paragraph 24 above) the applicant had not indicated that three years prior to lodging it she had availed herself of the remedy available under the 2005 Courts Act (see paragraphs 21-23 and 34-38 above).

53. Consequently, the Constitutional Court had declared her constitutional complaint inadmissible because she had not used the length-of-proceedings remedies available either under the 2005 or the 2013 Courts Act (see paragraphs 25-27 above). The Government also pointed out that after the decision in her case the Constitutional Court had consistently examined the merits of constitutional complaints alleging violations of the right to a hearing within a reasonable time if the complainants had previously had recourse to other available length-of-proceedings remedies, including those available under the 2005 Courts Act (see paragraph 31 above).

54. The Government admitted that the applicant's case had been a leading case and that she therefore could not have known that her use of the length-of-proceedings remedies under the 2005 Courts Act would be relevant for the Constitutional Court's decision in her case. However, the Government considered that it would have been expected and reasonable to

have mentioned that fact in a constitutional complaint in which she had complained specifically of the excessive length of the proceedings.

(iii) Conclusion

55. In the light of the foregoing (see paragraphs 43-54 above), the Government invited the Court to find the applicant's complaint concerning the excessive length of proceedings inadmissible on the grounds that she had failed to (properly) exhaust domestic remedies.

(b) The applicant

56. The applicant submitted that the remedies provided by the 2013 Courts Act were ineffective. She had therefore used the only effective remedy available to her, namely a constitutional complaint under section 63 of the Constitutional Court Act (see paragraphs 29 and 33 above). When lodging her constitutional complaint (see paragraph 24 above), she could not have known that her use of the length-of-proceedings remedy provided by the 2005 Courts Act would be relevant (see paragraphs 21-23 and 34-38 above), and therefore had not mentioned it.

(i) As regards the remedies available under the 2013 Courts Act

57. The applicant submitted that the Government had correctly identified the relevant principles established in the Court's case-law, notably those set out in the *Cocchiarella* case (cited above, §§ 74-76), but had failed to correctly apply them to her case.

58. The applicant explained that the 2013 Courts Act provided for judicial protection of the right to a hearing within a reasonable time in two separate steps, before different authorities (see section 64 of the 2013 Courts Act, cited in paragraph 30 above). The precondition for obtaining that protection was set out in section 63 of that Act. The text of that provision suggested that judicial protection of the right to a hearing within a reasonable time was available to those who considered that the competent court had not decided their case within a reasonable time (see section 63 of the 2013 Courts Act, cited in paragraph 30 above). That meant that such protection was available only when the violation of the right to a hearing within a reasonable time had already occurred. That being the precondition for judicial protection of that right, the applicant considered it evident that the remedies provided by the 2013 Courts Act were not preventive in nature, it being understood that for a remedy to be preventive, it had to prevent the occurrence of the violation, and not only expedite proceedings which had already lasted too long.

59. Consequently, the purely acceleratory remedy provided by sections 65 to 67 of the 2013 Courts Act was ineffective because the court president could grant a request for that remedy and set a time-limit for reaching a

decision only when the violation of the right to a hearing within a reasonable time had already occurred (see sections 63 and 66 of the 2013 Courts Act, cited in paragraph 30 above). Since the court president had no power to award any compensation for such a violation, the remedy in question only prevented a further violation of that right, which rendered it ineffective in the light of the principles established in the Court's case-law.

60. Parties could seek compensation only if the violation continued beyond the time-limit set by the court president, and no later than six months from the date of expiry of that time-limit (see section 68 of the 2013 Courts Act, cited in paragraph 30 above).

61. The applicant further contested the Government's argument that the Court's findings in *Novak* were applicable to her case. For the applicant, the two cases were different in some important aspects. More specifically, in *Novak*, the applicant had used the purely acceleratory remedy under the 2013 Courts Act, but had failed to avail herself of a further remedy, namely the complementary (combined compensatory-acceleratory) remedy. Furthermore, in *Novak*, the applicant had not lodged a constitutional complaint – which was an effective remedy – whereas the applicant in the present case had brought her case directly to the Constitutional Court, claiming that the system of remedies provided by the 2013 Courts was totally ineffective (see paragraph 24 above).

(ii) As regards the constitutional complaint

62. The applicant further submitted that a constitutional complaint under section 63 of the Constitutional Court Act (see paragraphs 29 and 33 above) had been the only effective remedy at her disposal. In her constitutional complaint she had challenged the effectiveness of the remedies for protection of the right to a hearing within a reasonable time introduced by the 2013 Courts Act (see paragraph 24 above) and had presented strong arguments as to why they were ineffective.

63. Contrary to the Government's submission (see paragraph 50 above), she had not sought an abstract constitutional review of the relevant provisions of the 2013 Courts Act, as they were clearly not unconstitutional. Rather, she had argued that the length-of-proceedings remedies provided by that Act were ineffective in the light of the Court's case-law.

64. The applicant further submitted that her case had been a landmark case and that the Constitutional Court's decision in her case had been a point of reference in its case-law ever since (see paragraphs 26 and 31 above). The legal view adopted by that court for the first time in her case was that prior exhaustion of the length-of-proceedings remedies available under the 2005 or 2013 Courts Act was a criterion for the admissibility of constitutional complaints lodged under section 63 of the Constitutional Court Act (see paragraphs 25-27 above).

65. Since the decision in her case had therefore been a landmark decision establishing new case-law, she could not have known that her use of the remedy under the 2005 Courts Act (see paragraphs 21-23 and 34-38 above) would be of any relevance for the Constitutional Court's decision in her case. That was all the more true because the legal view adopted by that court in her case, and which had become the cornerstone of the new case-law, had no basis in the relevant legislation, but was purely a judicial creation. It was not a result of any method of legal interpretation, but an act of that court's "judicial activism".

66. That the legal view adopted actually had no express or implicit foundation in the relevant legislation was evident from the text of section 63 of the Constitutional Court Act, which provided that a constitutional complaint under that provision (the so-called "extraordinary constitutional complaint") – the purpose of which was, *inter alia*, to provide constitutional protection of the right to a hearing within a reasonable time – could be lodged "even before all legal remedies have been exhausted" (see paragraph 29 above).

67. Lastly, the applicant submitted, by adopting the above-mentioned legal view and reiterating it in its subsequent case-law, the Constitutional Court did in fact indicate, albeit not explicitly, that the length-of-proceedings remedies provided by the 2013 Courts Act were ineffective.

(iii) Conclusion

68. In the light of the foregoing (see paragraphs 56-67 above), the applicant invited the Court to find her complaint concerning the excessive length of proceedings admissible because she had exhausted the only domestic remedy that had been effective for that complaint.

2. The Court's assessment

(a) Scope of the case

69. The Court firstly notes that when lodging her application with the Court, the applicant did not mention in her application form that she had previously availed herself of the length-of-proceedings remedy available under the 2005 Courts Act (see paragraphs 21-23 and 34-38 above). That suggested that in the period before the 2013 Courts Act had entered into force on 14 March 2013 (see paragraph 30 above) the applicant had not used that remedy – which had been both effective (see paragraph 37 above) and available to her – to complain of the excessive length of the proceedings in her case, which had up to then already lasted five years and some four and a half months at one level of jurisdiction (see paragraphs 5-12 above).

70. Therefore, when on 14 September 2017 the Government were given notice of her complaints concerning the length of the proceedings and the

ineffectiveness of remedies in that respect, the President of the Section, acting as a single judge pursuant to Rule 54 § 3 of the Rules of Court, declared her length-of-proceedings complaint inadmissible for non-exhaustion of domestic remedies in so far as it concerned the period before the entry into force of the 2013 Courts Act.

71. It follows that the relevant period to be examined is the period between 14 March 2013 (when the 2013 Courts Act entered into force – see paragraphs 30 and 39 above) and 26 May 2017 (when the County Court's judgment of 21 November 2016 was served on the applicant's representative – see paragraph 20 above). It thus lasted four years and some two and a half months at two levels of jurisdiction.

(b) Exhaustion of domestic remedies

(i) As regards the remedies available under the 2013 Courts Act

72. The Court 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*, cited above, § 48). 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). More 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."

73. 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."

74. The Courts 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 (see paragraph 72 above), the Court considers that the purely acceleratory remedy under the 2013 Courts Act cannot be considered effective.

75. However, 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 30 above, as well as paragraph 41 above), has the same characteristics as the previous length-of-proceedings remedy under the 2005 Courts Act (see paragraphs 34 and 41 above) which the Court already recognised as effective (see *Novak*, cited above, § 56).

76. 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 30 above, as well as paragraph 41 above). The complementary remedy remains unavailable in situations where the purely acceleratory remedy was denied, as well as in situations where it was granted and the judge hearing the case complied with the time-limit specified by the court president.

77. Therefore, in view of the relevant provisions of the 2013 Courts Act, the question arises whether, in order to comply with their exhaustion obligation under Article 35 § 1 of the Convention, applicants may be required to have recourse to the purely acceleratory remedy if doing so could, under certain circumstances, open the possibility for them to use the complementary remedy, which is effective.

78. In this connection the Court reiterates that under the 2013 Courts Act, the availability of the secondary, complementary, remedy – which is in itself effective – is limited only to 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 paragraph 41 and 76 above). In the Court's view this means that the availability of the complementary remedy is restricted to such an extent that it dispenses applicants from first having recourse to the primary, purely acceleratory, remedy.

79. To hold otherwise would mean compelling applicants to use the purely acceleratory remedy – which is, when applied alone, ineffective – in the hope that it would be granted but not implemented, as only in that scenario would the secondary, complementary, remedy, which is in itself effective, become available to them. Compelling them to do so would be contrary to the principle that the exhaustion rule must be applied with some degree of flexibility and without excessive formalism because it is being applied in the context of machinery for the protection of human rights (see, among many other authorities, *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 116, ECHR 2007-IV).

80. The Court therefore considers it understandable that the applicant in the present case did not use the purely acceleratory remedy under the 2013 Courts Act as this would have gone beyond the duties incumbent on applicants pursuant to Article 35 § 1 of the Convention.

81. Lastly, the Court finds it important to emphasise that where applicants have nevertheless used the purely acceleratory remedy – which, as noted above (see paragraph 78), they are not required to use – and where, in the limited circumstances described above (see paragraph 35 and 76), the complementary remedy thereafter became available to them (see *Novak*, cited above, §§ 55, 57 and 61), they must use that complementary remedy in order to exhaust domestic remedies. Those specific circumstances, which were present in the *Novak* case (ibid.), do not obtain in the instant case.

(ii) As regards the constitutional complaint

82. The Government argued that the applicant did not (properly) exhaust domestic remedies as she failed to mention in her constitutional complaint (see paragraphs 43 and 52 above) that she had previously used the remedy available under the 2005 Courts Act (see paragraphs 21-23 and 34-38 above). In this connection the Court notes that in its decision of 23 December 2014 declaring the applicant's constitutional complaint inadmissible the Constitutional Court (see paragraphs 25-27 above) for the first time established a rule that before lodging constitutional complaints concerning the excessive length of proceedings under section 63 of the Constitutional Court Act, complainants were required to first avail themselves of other length-of-proceedings remedies. Those other length-of-proceedings remedies could have been the remedies available under the 2013 Courts Act (see paragraphs 39-41 above) or the remedy available under 2005 Courts Act (see paragraph 34-38 above). It would therefore appear that the applicant's constitutional complaint would not have been declared inadmissible, had she informed the Constitutional Court that she had previously used the remedy available under the 2005 Courts Act (see paragraphs 21-23 above).

83. However, the Court finds it sufficient to note that the applicant's case was the first in which the Constitutional Court established the above exhaustion requirement. She could not therefore have known that her recourse to the remedy available under the 2005 Courts Act (see paragraphs 21-23 and 34-38 above) was information that would be relevant for the admissibility of her constitutional complaint and that she should have therefore mentioned it.

84. It is true, as the Government pointed out (see paragraph 54 above), that the applicant should have mentioned that information for other reasons. However, regrettable as her omission may be, the Court finds that it has no bearing on her compliance with her obligation under Article 35 § 1 of the Convention.

(iii) Conclusion as to the exhaustion of domestic remedies

85. It follows from the above (see paragraphs 72-84 above) that the Government's objections as to the exhaustion of domestic remedies must be dismissed.

(c) Conclusion as to the admissibility

86. 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

1. The parties' arguments

87. The applicant submitted that the proceedings in her case had lasted more than nine years, which had been excessive. The delays in her case had not been caused by its complexity but by the inefficient conduct of the proceedings. By way of illustration, she pointed out that the Municipal Court had had to rectify its judgment twice and supplement it (see paragraphs 17 and 19 above). This had caused substantial delays because the parties had exercised the right to appeal against each decision to rectify or supplement the judgment and the case file had had to be transferred back and forth between the Municipal and the County Court (see paragraphs 17-19 above). Moreover, it had taken two months for the County Court to serve its judgment on her (see paragraph 20 above).

88. The Government submitted that the length of the proceedings had not been excessive, in view of their complexity. They explained that three parties (the applicant as the plaintiff and two defendants) and an intervener had participated in the proceedings and that two expert opinions had had to be obtained, the first by a road traffic expert and the second by a team of three medical experts (see paragraphs 5 and 11-12 above). After the experts had prepared their respective opinions, they had had to be examined by the court and the parties at a hearing (see paragraphs 11-12 above). Furthermore, the case had required that several witnesses be heard and the delays in the proceedings had primarily been due to their repeated failure to attend court, which had prompted the Municipal Court to fine them and obtain their attendance with the assistance of the police (see paragraphs 8-10 above).

2. The Court's assessment

89. 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 applicant and the relevant authorities and what was at stake

for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII). In connection with the latter point, the Court further reiterates that special diligence is called for in cases concerning the determination of compensation for victims of road accidents (see, for example, *Silva Pontes v. Portugal*, 23 March 1994, § 39, Series A no. 286-A, 6 October 2005; *Poje v. Croatia*, no. 29159/03, § 26, 9 March 2006; and *Mészáros v. Hungary*, no. 21317/05, § 15, 21 October 2008).

90. 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 instant case, as the delays in the relevant period (see paragraph 71 above) were mainly attributable to the authorities. In particular, the Court notes that:

- while it is true that the hearing scheduled for 12 September 2013 was adjourned because the experts could not attend, it took the Municipal Court more than five months to schedule the next one (see paragraph 13 above);

- the Municipal Court's omission to decide on the part of the applicant's claim as well as other errors in its judgment which twice required rectification, caused a delay of two years and more than four months in deciding the applicant's appeal (see paragraphs 15-19 above).

91. Having regard to its case-law on the subject, the foregoing considerations are sufficient to enable the Court to conclude that in the present case 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.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

92. The applicant further complained that in Croatia there was no effective remedy to complain of the excessive length of proceedings. She 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

93. 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

94. The Government and the applicant relied on their respective arguments summarised in paragraphs 43-54 and 56-67 above.

95. The Court first reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudła*, cited above, § 156). It further refers to its above findings under Article 6 § 1 of the Convention for which it dismissed the Government's inadmissibility objection based on the non-exhaustion of domestic remedies (see paragraphs 72-85 above), which apply with equal force to the merits of this complaint.

96. The Court therefore considers that in the present case there has also been a violation of Article 13 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

97. 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

98. The applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage.

99. The Government contested the claim as excessive.

100. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards her EUR 1,250 under that head.

B. Costs and expenses

101. The applicant also claimed EUR 4,840 for the costs and expenses incurred before the Constitutional Court and those incurred before the Court.

102. The Government contested the claim as excessive, unsubstantiated and unsupported by any documents.

103. 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 sum of EUR 2,500 covering costs under all heads.

C. Default interest

104. 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 applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Croatian kunas at the rate applicable at the date of settlement:
      (i) EUR 1,250 (one thousand two hundred and fifty euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable to the applicant, 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;

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

Abel Campos
Registrar

Krzysztof Wojtyczek
President