



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

FIRST SECTION

CASE OF BORKOVIĆ v. CROATIA

(Application no. 4593/22)

JUDGMENT

STRASBOURG

1 October 2026

This judgment is final but it may be subject to editorial revision.

In the case of Borković v. Croatia,

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

Raffaele Sabato, *President*,

Frédéric Krenç,

Davor Derenčinović, *judges*,

and Liv Tigerstedt, *Deputy Section Registrar*,

Having regard to:

the application (no. 4593/22) 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”) on 17 January 2022 by two Croatian nationals, Mr Tomislav Borković and Ms Nevenka Borković (“the applicants”), who were born in 1964 and 1963 respectively, live in Vinkovci and were represented by Ms V. Šnur, a lawyer practising in Vinkovci;

the decision to give notice of the complaints concerning insufficient reasoning of domestic court decisions, legal certainty, length of proceedings and property rights to the Croatian Government (“the Government”), represented by their Agent, Ms Š. Stažnik, and to declare the remainder of the application inadmissible;

the parties’ observations;

Having deliberated in private on 10 September 2026,

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

SUBJECT MATTER OF THE CASE

1. The case concerns an award of legal representation costs to the applicants’ opponent in the civil proceedings, despite the same claim for costs having been submitted previously by the opponent’s lawyers in the bankruptcy proceedings brought against it, which was rejected. It raises issues under Article 6 of the Convention.

2. In 2008 the applicants instituted proceedings for damages against the U. company (“the company”) in the Osijek Commercial Court.

3. On 28 September 2012 bankruptcy proceedings were opened against the company. On 31 May 2013 the applicants thus withdrew their civil action and on 7 June 2013 the first-instance commercial court gave a decision establishing that the action had been withdrawn.

4. However, at the request of the bankruptcy administrator of 20 June 2013, which was never served on the applicants, on 28 October 2013 the Osijek Commercial Court gave a decision ordering the applicants to pay the company 229,053.50 Croatian kunas (HRK – equivalent to approximately 30,400 euros (EUR)) in respect of the costs incurred in the above-mentioned proceedings. The decision was based on (i) section 158(1) of the Civil Procedure Act, according to which a plaintiff who withdrew a civil action is

required to reimburse the respondent's costs of proceedings; and (ii) section 155 of the Civil Procedure Act, which provided that only those costs which had been necessary for the conduct of the proceedings were to be reimbursed. The amount awarded exclusively concerned the company's legal representation costs incurred in those proceedings.

5. The applicants appealed, arguing that the same claim – that is, the claim in respect of the lawyers' fees – had already been reported by the lawyers themselves in the bankruptcy proceedings brought against the company, but had been contested by the bankruptcy administrator because the lawyers had failed to issue an invoice for their services. By a decision of 11 December 2012, the Osijek Commercial Court instructed the lawyers to pursue their claim against the company in civil proceedings within eight days, but they never did so. The applicants argued that the lawyers' claim had thus been dismissed in the bankruptcy proceedings and had acquired the force of *res judicata*. In so far as the company had not previously paid its legal representation costs, nor had it been required to do so in the course of the bankruptcy proceedings, it could not claim reimbursement of those costs from the applicants.

6. By a decision of 4 March 2019, the High Commercial Court dismissed the applicants' appeal, but reduced the amount of costs to HRK 192,362.50 (equivalent to EUR 25,530). It rejected the applicants' argument that the same claim for costs had previously been dismissed in the bankruptcy proceedings, merely stating that it was of no relevance to the outcome of the case.

7. The applicants lodged a constitutional complaint, relying on, *inter alia*, Articles 6, 8 and 14 of the Convention. They argued that, in deciding on the costs of the proceedings, the domestic courts had erroneously interpreted and misapplied the relevant law, and that the High Commercial Court's decision had lacked any reasoning in respect of the arguments raised in their appeal.

8. Having examined their constitutional complaint primarily under Article 29 of the Constitution, the Constitutional Court declared it inadmissible by a decision of 22 September 2021, served on the applicants' representative on 27 September 2021.

9. Before the Court, the applicants complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 thereto that the domestic courts' decision on the costs of the proceedings had been arbitrary because of the domestic courts' alleged lack of reasoning in respect of their argument that the lawyers' claim had been dismissed in the bankruptcy proceedings and had acquired the force of *res judicata*. They also complained under Article 6 § 1 of the Convention about the length of the proceedings concerning the costs.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AS TO THE FAIRNESS OF THE PROCEEDINGS

10. The Government argued that the applicants had suffered no significant disadvantage on account of the alleged shortcomings in the domestic courts' reasoning because they had challenged only the grounds on the basis of which the costs had been awarded, not the amount of the costs. Since no issue arose in respect of the *res judicata* principle, the applicants would still have been required to pay the same amount of costs even if the High Commercial Court had addressed their arguments in that regard in more detail. In any event, they submitted that the applicants' complaint was manifestly ill-founded, since the issue of the costs of the civil proceedings, which concerned the amount the applicants owed to the company, had not been adjudicated in the bankruptcy proceedings, which concerned only the lawyers' claim against the company.

11. The Court finds the question whether the applicants have suffered no significant disadvantage inextricably linked to the merits of their complaint and therefore joins it to the merits.

12. Furthermore, the Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention for the reasons set out on the merits below, nor is it inadmissible on any other grounds. It must therefore be declared admissible.

13. The general principles concerning the right to a reasoned judgment have been summarised in *Aykhan Akhundov v. Azerbaijan* (no. 43467/06, §§ 86-88, 1 June 2023). In particular, the obligation to give reasons presupposes that parties to judicial proceedings can expect to receive a specific and explicit reply to the arguments decisive for the outcome of those proceedings (*ibid.*, § 86). The Court should not act as a fourth-instance body and will therefore not question under Article 6 § 1 the domestic courts' assessment, unless their findings can be regarded as arbitrary or manifestly unreasonable (*ibid.*, § 88).

14. In the present case, the applicants argued before the domestic courts that the company's claim for the reimbursement of its legal representation costs was unfounded as the company had neither paid, nor had been required to pay those costs, to its lawyers. This was because the lawyers' claim against the company had been dismissed in the bankruptcy proceedings and that decision had acquired the force of *res judicata* (see paragraph 5 above).

15. The Court observes that, in accordance with section 151 of the Civil Procedure Act, the costs of proceedings – which include a fee for the services of an advocate – comprise disbursements made during, or in relation to, the proceedings (see, for relevant domestic law, *Cindrić and Bešlić v. Croatia*, no. 72152/13, § 43, 6 September 2016). Consequently, the Court cannot but conclude that the issue of whether the company had actually incurred any

costs in respect of its legal representation was relevant to its claim against the applicants for the reimbursement of those same costs.

16. The Court does not find it necessary to examine whether the costs incurred in the civil proceedings had already been adjudicated with the force of *res judicata* in the bankruptcy proceedings. Instead, it notes that it is not in dispute between the parties that the company had neither made any disbursements to its lawyers in respect of its legal representation in the civil proceedings against the applicants, nor had it been required to do so. However, the High Commercial Court merely dismissed the applicants' arguments in that regard, without providing any reasons as to why it considered them to be irrelevant (see paragraphs 5 and 6 above). Given the decisive implications of this argument for the applicants' case, the Court considers that the High Commercial Court was required to give a specific and express response, irrespective of what would be its final conclusion (see *Jaćimović v. Croatia*, no. 22688/09, §§ 50-52, 31 October 2013). In the absence of any reasons provided by that court in this respect, the Court is not satisfied that the applicants received a fair hearing.

17. Having regard to this conclusion, there is no need to examine separately the applicants' complaint about the alleged breach of the principle of legal certainty (see paragraph 16 above).

18. In view of the above, the Court also dismisses the Government's objection previously joined to the merits (see paragraphs 10-11 above) and finds that there has been a violation of Article 6 § 1 of the Convention.

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

19. The Government submitted that the applicants had failed to properly exhaust domestic remedies, as they did not complain of a violation of the right to the peaceful enjoyment of their possessions in their constitutional complaint.

20. The Court notes that the applicants, who were represented by a lawyer, indeed did not rely on Article 1 of Protocol No. 1 to the Convention in their constitutional complaint, nor on the relevant provision of the Constitution which guarantees the right of ownership. More importantly, they did not raise, even in substance, that complaint (see paragraph 7 above). Nor did they respond to the Government's non-exhaustion objection, let alone challenge it.

21. In these circumstances, and having regard to its case-law on the matter (see *Fu Quan, s.r.o. v. the Czech Republic* [GC], no. 24827/14, § 172, 1 June 2023, and *Merot d.o.o. and Storitve Tir d.o.o. v. Croatia* (dec.), nos. 29426/08 and 29737/08, §§ 34-38, 10 December 2013), the Court finds that the Government's objection must be upheld.

22. It follows that this complaint is inadmissible under Article 35 § 1 of the Convention for non-exhaustion of domestic remedies and must be rejected pursuant to Article 35 § 4.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE LENGTH OF PROCEEDINGS

23. The relevant period to be taken into consideration began on 28 October 2013, when the Osijek Commercial Court issued its decision on the costs of the proceedings, and ended on 27 September 2021, when the Constitutional Court notified the applicants' representative of its decision (see paragraphs 4 and 7 above). It thus lasted almost seven years and 11 months at three levels of jurisdiction.

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

25. 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 of the relevant authorities and what was at stake for the applicants in the dispute (see *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

26. The Court has previously found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see, for example, *Parlov-Tkalčić v. Croatia*, no. 24810/06, §§ 56-65, 22 December 2009, and *Šundov v. Croatia*, no. 13876/03, §§ 19-31, 13 April 2006).

27. Having examined all the material submitted to it, the Court has not found any fact or argument capable of justifying the length of the proceedings in question in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

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

APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. The Court notes that the applicants failed to submit any claim for just satisfaction when asked to do so during the communication stage of the proceedings. Moreover, having regard to its case-law on the matter (see *Nagmetov v. Russia* [GC], no. 35589/08, § 61, 30 March 2017), it finds that the applicants' submissions relating to just satisfaction in the application form, made at the initial non-contentious stage of the proceedings, do not amount to a "claim" within the meaning of Rule 60 of the Rules of Court.

30. In the absence of a properly made “claim” for just satisfaction, and having regard to the possibility under domestic law for the applicants to seek the reopening of the civil proceedings (see *Lovrić v. Croatia*, no. 38458/15, § 24, 4 April 2017), the Court considers that in the circumstances of the present case there is no exceptional situation, within the meaning of its case-law (see *Nagmetov*, cited above, §§ 78-82, and *T.G. v. Croatia*, no. 39701/14, § 74, 11 July 2017), warranting the making of an award in that respect.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins* to the merits the Government’s objection concerning no significant disadvantage and *dismisses* it;
2. *Declares* the complaints about the fairness and excessive length of the civil proceedings admissible, and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of both the fairness and the length of the proceedings.

Done in English, and notified in writing on 1 October 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt
Deputy Registrar

Raffaele Sabato
President