



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

FIRST SECTION

CASE OF HRDALO v. CROATIA

(Application no. 23272/07)

JUDGMENT

STRASBOURG

27 September 2011

FINAL

27/12/2011

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

In the case of Hrdalo v. Croatia,

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

Anatoly Kovler, *President*,

Nina Vajić,

Peer Lorenzen,

Khanlar Hajiyeu,

Mirjana Lazarova Trajkovska,

Julia Laffranque,

Linos-Alexandre Sicilianos, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 6 September 2011,

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

PROCEDURE

1. The case originated in an application (no. 23272/07) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Croatian national, Mr Nikša Hrdalo (“the applicant”), on 27 April 2007.

2. The applicant was represented by Mr D. Orlić, an advocate practising in Dubrovnik. The Croatian Government (“the Government”) were represented by their Agent, Mrs Š. Stažnik.

3. The applicant alleged, in particular, that in the administrative proceedings concerning his removal from office the domestic authorities had breached the principle of equality of arms, violated his right to be presumed innocent and harmed his reputation.

4. On 9 February 2010 the President of the First Section decided to give notice to the Government of the complaints concerning the alleged unfairness of the administrative proceedings, presumption of innocence and respect for private life. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1958 and lives in Dubrovnik.

A. The circumstances of the case

6. On 27 November 2003 the Government of Croatia appointed the applicant Head of the Dubrovnik-Neretva County State Administration Office with effect from 1 January 2004.

1. Criminal proceedings against the applicant

7. Meanwhile, on 30 June 2002 the applicant's neighbour Mrs I.Š.-H. filed a criminal complaint against him with the police authorities in Dubrovnik. She alleged that on 29 June 2002 the applicant had demolished a separating wall erected between their backyards by her husband and broken one of the windows of her house. In her statement of 13 January 2003, Mrs I.Š.-H. added that during the incident of 29 June 2002 the applicant had also shouted that she and her family should come out so that he could kill them.

8. On 12 December 2003 the Metković Municipal State Attorney's Office (*Općinsko državno odvjetništvo u Metkoviću*) indicted the applicant before the Dubrovnik Municipal Court (*Općinski sud u Dubrovniku*) accusing him of the criminal offences of uttering threats and damaging another's property, and invited the court to issue a penal order in accordance with section 446 of the Criminal Procedure Act (see paragraph 21 below).

9. On 18 December 2003 a single judge of the Dubrovnik Municipal Court issued a penal order (*kazneni nalog*) against the applicant under section 446 of the Criminal Procedure Act, finding him guilty as charged and imposing a prison sentence of two months, suspended for two years. The applicant was not informed of, and did not participate in, those proceedings. The order was served on the applicant on 3 January 2004.

10. On 9 January 2004 the applicant lodged an objection (*prigovor*) against the penal order arguing that he had not committed the criminal offences for which he had been convicted, and that he had not been given an opportunity to defend himself and present evidence.

11. On 8 May 2006 the Dubrovnik Municipal Court set aside its penal order of 18 December 2003 and dropped the charges against the applicant under section 353 of the Criminal Procedure Act without any further explanation.

2. Administrative proceedings following the applicant's removal from office

12. Meanwhile, by a decision of 17 March 2004 the Government of Croatia removed the applicant from his position as Head of the Dubrovnik-Neretva County State Administration Office on the grounds that he had been found guilty of a criminal offence by the judgment of the Dubrovnik Municipal Court of 18 December 2003. The decision reads as follows:

DECISION

“Nikša Hrdalo is hereby relieved of his duties as Head of the Dubrovnik-Neretva County State Administration Office.

Reasons

Section 52(3) of the State Administration System Act provides that the heads of the regional offices of the State administration are appointed and removed by the Government of Croatia upon a proposal of the State secretary of the Central Public Administration Office on the basis of a previously conducted public competition.

By a decision of the Government of Croatia ... of 27 November 2003 Nikša Hrdalo was appointed Head of the Dubrovnik-Neretva County State Administration Office.

By judgment no. K 386/03 of the Dubrovnik Municipal Court of 18 December 2003, Nikša Hrdalo was found guilty of a criminal offence against the rights and freedoms of man and the citizen defined in Article 129 § 2 of the Criminal Code and classified as uttering threats, in conjunction with a criminal offence against property defined in Article 222 § 1 of the Criminal Code and classified as damaging another's property. [As a consequence, he] received ... a prison sentence of two months and fifteen days, suspended for two years.

Having regard to foregoing, the State secretary of the Central Public Administration Office considered that keeping Nikša Hrdalo as Head of the Dubrovnik-Neretva County State Administration Office could harm the probity of the civil service.

In accordance with the above, the State secretary of the Central Public Administration Office proposed that the Government of Croatia relieve Nikša Hrdalo of his duties as Head of the Dubrovnik-Neretva County State Administration Office. The Government of Croatia accepted this proposal.

That being so, it was decided as indicated in the operative part.”

The operative part of the decision was published in the Official Gazette of the Republic of Croatia no. 36/2004 of 22 March 2004.

13. On 18 March 2004 the daily newspaper *Slobodna Dalmacija* reporting from the Government's meeting of 17 March 2004, reported on the applicant's removal from office. A small article entitled “Removals and appointments [*Razrješenja i imenovanja*]” in its relevant part read as follows:

“In Dubrovnik-Neretva County the Government relieved Nikša Hrdalo, the incumbent Head of the State Administration Office, of his duties. ... Nikša Hrdalo was relieved of his duties because of a non-final judgment imposing a ... prison sentence of two months and fifteen days, suspended for two years, for a criminal offence against a freedom of man.”

14. On 31 March 2004 the same daily published an article entitled “Removed because of a non-existent ‘judgment’ [*Smijenjen zbog nepostojeće presude*]?”, which described the circumstances surrounding the applicant’s removal from office and gave him the opportunity to present his view.

15. On 20 April 2004 the applicant brought an administrative action in Administrative Court against the Government of Croatia challenging the decision on his removal.

16. On 24 June 2004 the Government of Croatia submitted their reply to the applicant’s action. That reply was not forwarded to the applicant. The relevant part of the Government of Croatia’s reply read as follows:

“...The decision which is the subject of this administrative dispute does not disclose any breach of law raised by the plaintiff. The decision to relieve Nikša Hrdalo of his duties as Head of the Dubrovnik-Neretva County State Administration Office was adopted in accordance with section 52(3) of the State Administration System Act. ...

It is undisputed that, by judgment no. K 386/03 of the Dubrovnik Municipal Court of 18 December 2003, Nikša Hrdalo was found guilty of a criminal offence against the rights and freedoms of man and the citizen – uttering threats – defined in Article 129 § 2 of the Criminal Code, in conjunction with a criminal offence against property – damaging another’s property – defined in Article 222 § 1 of the Criminal Code, and that he received ... a prison sentence of two months and fifteen days, suspended for two years.

The plaintiff argues that the present case concerns a penal order issued in accordance with section [446] of the Criminal Procedure Act, to which he objected within the statutory time-limit, and that therefore there is no final judgment [against him] which could constitute an impediment to recruitment to the civil service set out in section 8 of the Civil Servants Act.

However, the plaintiff ignores the fact that his removal from office was not owing to the existence of impediments to recruitment to the civil service set out in section 8 of the Civil Servants Act. The discovery that, at the time of recruitment to the civil service or at the time of appointment to the position of Head of the Dubrovnik-Neretva County State Administration Office, an impediment set out in section 8 of the Civil Servants Act had existed, would have resulted in the termination of employment in the civil service by operation of law, pursuant to section 118 ... of the Civil Servants Act. However, the present case does not concern such circumstances or the termination of employment in the civil service. Rather, [it concerns] the plaintiff’s removal from his position as Head of the State Administration Office ..., where the impugned decision is not based on impediments to recruitment to the civil service but on circumstances concerning the plaintiff which were considered liable to ... harm the probity of the State Administration Office and the entire civil service. Criminal proceedings pending against a head of a State administration office may give a negative impression to the public and arouse suspicion as regards the diligent and

lawful conduct of those employed in the State administration office run by such a person.

The plaintiff contests the right of the Government of Croatia to remove a head of [a State administration] office at their own discretion ...

Contrary to the plaintiff's argument, we consider that the Government of Croatia are entitled to remove a head of a State administration office at their own discretion because that is undoubtedly provided for by section 52 of the State Administration System Act. ...

Given that the contested decision was adopted in the procedure and in the manner prescribed by law, and that grounds ... for quashing or declaring [it] null and void do not exist, we propose that the Administrative Court dismiss the action as unfounded."

17. On 15 September 2004 the Administrative Court dismissed the applicant's action finding that the contested decision of 17 March 2004 had been based on section 30(4) of the Government of Croatia Act (see paragraph 23 below) and section 52(3) of the State Administration System Act (see paragraph 22 below). The relevant part of the Administrative Court judgment reads as follows:

"... the said laws indisputably show that the Government of the Republic of Croatia ... are entitled to remove a head of a State administration office ... at their own discretion ...

... in the reasoning for their decision, the defendant authority [that is, the Government of Croatia] ... stated the circumstances which influenced that decision. In particular, having regard to the complaints submitted about the plaintiff's work, and the fact that criminal proceedings are pending against him before the Dubrovnik Municipal Court ... for a criminal offence against the rights and freedoms of man and the citizen (the criminal offence of uttering threats defined in Article 129 § 2 of the Criminal Code), in conjunction with a criminal offence against property (the criminal offence of damaging another's property defined in Article 222 § 1 of the Criminal Code), the State secretary of the Central Public Administration Office in its proposal ... of 15 March 2004 considered that the plaintiff should be relieved of [his] duties as Head of the State Administration Office because keeping him in that position could harm the probity of the civil service. That proposal was accepted by the defendant authority which, at the session held on 17 March 2004, adopted a decision on his removal. Contrary to the plaintiff's arguments, by doing so [the defendant authority] did not examine ... whether his [career in the] civil service should be terminated pursuant to section 118 of the Civil Servants Act, in which case it should be taken into account whether or not a civil servant had been convicted by a final judgment of a criminal offence against the rights and freedoms of man and the citizen. However, pending criminal proceedings for such a criminal offence, or even the adoption of a non-final judgment, may, given the position of the head of a State administration office, harm the probity of the office run by such a person and the entire civil service. Namely, the conduct of the plaintiff which led to the institution of those criminal proceedings, and its negative connotations in the public perspective, harms his personal reputation and may arouse suspicion among citizens as regards the diligent and lawful operation of the State administration office run by such a person."

18. On 15 January 2005 the applicant lodged a constitutional complaint against the Administrative Court's judgment alleging violations of, *inter alia*, his constitutional rights to a fair hearing, presumption of innocence, and respect for his dignity, reputation and honour. He argued that he had been removed from office on the basis of a non-final conviction secured in criminal proceedings of which he had not been aware and in which he had not had the opportunity to participate.

19. On 12 October 2006 the Constitutional Court (*Ustavni sud Republike Hrvatske*) dismissed the applicant's complaint and served its decision on him on 29 November 2006. The relevant part of that decision reads as follows:

"The complainant further alleges a violation of Article 28 of the Constitution which provides that everyone shall be [presumed] innocent and no one may consider him guilty of a criminal offence until his guilt has been established by a final court judgement.

The contested judgment was not delivered in proceedings in which the complainant's guilt was being determined, but [in proceedings] where the lawfulness of [an] administrative decision ... was examined.

The Constitutional Court therefore finds that the complainant's [right] provided for in Article 28 of the Constitution has not been breached by the contested judgment.

...

The complainant also alleges a violation of Article 35 of the Constitution, which guarantees to everyone respect for, and legal protection of, his personal and family life, dignity, reputation and honour.

The Constitutional Court finds that the complainant's [right] provided for in Article 35 of the Constitution had not been breached by the contested judgment because that judgment and the prior decision were rendered in lawfully conducted proceedings and are based on relevant legislation."

II. RELEVANT DOMESTIC LAW

A. The Constitution

20. The relevant Articles of the Constitution of the Republic of Croatia (*Ustav Republike Hrvatske*, Official Gazette of the Republic of Croatia nos. 56/1990, 135/1997, 8/1998 (consolidated text), 113/2000, 124/2000 (consolidated text), 28/2001 and 41/2001 (consolidated text), 55/2001 (corrigendum) and 76/2010) read as follows:

Article 28

“Everyone shall be [presumed] innocent and no one may consider him guilty of a criminal offence until his guilt has been established by a final court judgement.”

Article 35

“Everyone shall be guaranteed respect for, and legal protection of, his personal and family life, dignity, reputation and honour.”

B. The Criminal Procedure Act

21. The relevant part of the Criminal Procedure Act (Official Gazette of the Republic of Croatia nos. 110/1997, 27/1998 (corrigendum), 58/1999, 112/1999, 58/2002, 143/2002 (corrigendum), 62/2003 (consolidated text) and 115/2006), which was in force between 1 January 1998 and 1 January 2009, reads as follows:

Section 353

A judgment dismissing the charges shall be adopted in the event that:

- 1) the court has no jurisdiction in the matter;
- 2) the proceedings were conducted without having been requested by an authorised prosecutor;
- 3) the prosecutor dropped the charges during the trial;
- 4) the required request or consent for prosecution has not been provided, or the authorised person or State body has withdrawn the request or consent;
- 5) the defendant has already been finally convicted or acquitted in respect of the offence in issue or the criminal proceedings against him or her have been terminated ...;
- 6) the defendant is exempt from criminal prosecution owing to amnesty or pardon, or if criminal prosecution has become barred owing to statutory limitation or the existence of other circumstances excluding criminal prosecution.”

Section 446

“In respect of criminal offences under the competence of a single judge and where the State Attorney has learned of a criminal offence from a reliable criminal complaint, he or she may ask in an indictment that a court issue a penal order (*kazneni nalog*) whereby the court shall impose on the defendant a sentence or an alternative measure without holding a trial.

...”

C. The State Administration System Act

22. The relevant provision of the State Administration System Act (*Zakon o sustavu državne uprave*, Official Gazette of the Republic of Croatia nos. 75/1993, 48/1999, 15/2000, 59/2001, 190/2003 (consolidated text), 199/2003 and 79/2007), as in force at the material time, read as follows:

Section 52(3)

“The head of the regional State administration office is appointed and removed by the Government of Croatia upon a proposal of the State secretary responsible for public administration on the basis of a previously conducted public competition.”

D. The Government of Croatia Act

23. The relevant provision of the Act on the Government of the Republic of Croatia (*Zakon o Vladi Republike Hrvatske*, Official Gazette nos. 101/1998, 15/2000, 117/2001, 199/2003 and 77/2009 – “the Government of Croatia Act”), which entered into force on 5 August 1998, reads as follows:

Section 30(4)

“A decision (*rješenje*) shall be adopted on appointments or dismissals or other individual matters within the Government’s purview.”

E. The Civil Servants Act

24. The Civil Servants Act (*Zakon o državnim službenicima i namještenicima*, Official Gazette no. 27/2001) was in force between 30 March 2001 and 1 January 2006.

25. Section 8(1) set out impediments to recruitment to the civil service and provided that such an impediment existed in respect of a person who had been convicted by a final judgment for, *inter alia*, a criminal offence against the rights and freedoms of man and the citizen, or a criminal offence against property.

26. Section 118 provided that a civil servant’s employment was to be terminated by operation of law, *inter alia*, when the judgment by which he or she had been convicted for a criminal offence referred to in section 8(1) of the same Act became final, or when it was discovered that an impediment referred to in the same section had existed at the time of recruitment.

F. The Administrative Disputes Act

27. Sections 52-59 of the Administrative Disputes Act (*Zakon o upravnim sporovima*, Official Gazette of the Socialist Federal Republic of Yugoslavia no. 4/1977, and Official Gazette of the Republic of Croatia nos. 53/1991, 9/1992 and 77/1992) provide for the remedy of reopening of proceedings before the Administrative Court and regulate the procedure following a petition for reopening. In particular, section 52 reads as follows:

“Proceedings ... shall be reopened upon a petition by a party:

1) if the party learns of new facts or discovers, or gains the opportunity to use, new evidence on the basis of which the dispute would have been resolved more favourably for him or her had these facts or evidence been presented or used in the previous court proceedings;

...

3) if the decision was based on a judgement rendered in a criminal or civil case and that judgement was later set aside by another final court decision;

...

A reopening shall be allowed on the grounds set forth in subsections (1) and (5) of this section, only if the party was unable, through no fault of his or her own, to raise these grounds in the previous proceedings.”

28. Section 60 provides that if the Administrative Disputes Act does not contain specific provisions on procedure before the Administrative Court (that is, in administrative disputes), the provisions of the Civil Procedure Act should apply *mutatis mutandis*.

G. The Civil Procedure Act

29. The relevant provision of the Civil Procedure Act (*Zakon o parničnom postupku*, Official Gazette of the Socialist Federal Republic of Yugoslavia nos. 4/1977, 36/1977 (corrigendum), 36/1980, 69/1982, 58/1984, 74/1987, 57/1989, 20/1990, 27/1990 and 35/1991, and Official Gazette of the Republic of Croatia nos. 53/1991, 91/1992, 58/1993, 112/1999, 88/2001, 117/2003, 88/2005, 2/2007, 84/2008 and 123/2008) reads as follows:

5.a. Reopening of proceedings following a final judgment of the European Court of Human Rights in Strasbourg finding a violation of a fundamental human right or freedom

Section 428a

“(1) When the European Court of Human Rights has found a violation of a human right or fundamental freedom guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms or additional Protocols thereto ratified by the Republic of Croatia, a party may, within thirty days of the judgment of the European Court of Human Rights becoming final, file a petition with the court in the Republic of Croatia which adjudicated in the first-instance in the proceedings in which the decision violating the human right or fundamental freedom was rendered, to set aside the decision by which the human right or fundamental freedom was violated.

(2) The proceedings referred to in paragraph (1) of this section shall be conducted by applying, *mutatis mutandis*, the provisions on the reopening of proceedings.

(3) In the reopened proceedings the courts are required to respect the legal opinions expressed in the final judgment of the European Court of Human Rights finding a violation of a fundamental human right or freedom.”

THE LAW

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

30. The applicant complained that the above administrative proceedings concerning his removal from office had been unfair. In particular, he complained that the Government of Croatia’s reply of 24 June 2004 to his administrative action of 20 April 2004 had never been served on him and that therefore he had not had an opportunity to comment on it. He relied on Article 6 § 1 of the Convention, the relevant part of which reads as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

31. The Government contested that argument.

A. Admissibility

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

B. Merits

1. *The arguments of the parties*

32. The Government averred that the proceedings had been fair. The applicant had been granted access to court as his case had been examined by both the Administrative Court and the Constitutional Court, which were both independent and impartial courts established by law. The Administrative Court had conducted the proceedings within a reasonable time and in accordance with the relevant procedural law. That court had addressed all the arguments presented by both the applicant and the Government of Croatia, and rendered a reasoned judgment based on the legislation in force. In particular, the Government argued that the principle of equality of arms had also been respected in the applicant's case and that he had had the opportunity to present his arguments to the Administrative Court under the same conditions as the opposing party.

33. The applicant maintained his position that he had not had an opportunity to respond to the arguments raised in the Government of Croatia's reply to his administrative action as that reply had never been served on him.

2. *The Court's assessment*

34. The Court reiterates that the principle of equality of arms, which is one of the elements of the broader concept of a fair hearing, requires each party to be given a reasonable opportunity to present its case under conditions that do not place it at a substantial disadvantage *vis-à-vis* its opponent (see, among many other authorities, *Dombo Beheer B.V. v. the Netherlands*, 27 October 1993, § 33, Series A no. 274, and *Ankerl v. Switzerland*, 23 October 1996, § 38, *Reports of Judgments and Decisions* 1996-V). Each party must be given the opportunity to have knowledge of and comment on the observations filed or evidence adduced by the other party (see, for example, *Ruiz-Mateos v. Spain*, 23 June 1993, § 63, Series A no. 262, and *Wynen v. Belgium*, no. 32576/96, § 32, ECHR 2002-VIII).

35. Turning to the present case, the Court first notes that on 24 June 2004 the Government of Croatia, being the opposing party (the defendant) in the administrative proceedings at issue, submitted a reply to the applicant's action in the Administrative Court of 20 April 2004, requesting that the action be dismissed (see paragraph 16 above). It is not contested that this reply was not forwarded to the applicant and that he had no opportunity to comment on it.

36. The Government of Croatia's reply contained a reasoned opinion on the merits of the applicant's action. The Court has repeatedly held that in such a situation the effect which the observations actually had on the judgment is of little consequence (see *Steck-Risch and Others*

v. Liechtenstein, no. 63151/00, § 57, 19 May 2005) because it is for the parties to a dispute to state whether or not a document calls for their comments (see *Ziegler v. Switzerland*, no. 33499/96, § 38, 21 February 2002). What is particularly at stake here is the litigants' confidence in the workings of justice, which is based on, *inter alia*, the knowledge that they have had the opportunity to express their views on every document in the file (see, for example, *Ziegler*, cited above).

37. What is more, the Government of Croatia did not confine themselves in their reply to restating the reasons given in the decision the applicant was contesting by his action. Rather, they advanced new arguments in support of their decision, in reply to those raised by the applicant in his action. For example, the Government of Croatia argued that they had been entitled to remove the applicant from office at their own discretion and that in doing so they had been entitled to rely on the non-final judgment convicting him of a criminal offence since the case had not concerned the termination of his employment in the civil service but his removal from office (see paragraph 16 above). The Administrative Court relied on those (new) arguments raised by the Government of Croatia in their reply and even incorporated them in its judgment of 15 September 2004 dismissing the applicant's action (see paragraph 17 above). It was therefore all the more needful to give the applicant an opportunity to comment on them if he had wished to do so.

38. It follows that in the present case, respect for the right to a fair hearing, guaranteed by Article 6 § 1 of the Convention, required that the applicant be given an opportunity to have knowledge of and to comment on the reply submitted by the opposing party, namely the Government of Croatia (see *Steck-Risch and Others*, cited above, § 58). However, the applicant was not afforded this opportunity. This deficiency was not remedied by the fact that the applicant could and did complain to the Constitutional Court, as the latter does not carry out a full review of the case (see *Steck-Risch and Others*, cited above, § 56).

39. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see, for example, *Ziegler*, cited above, §§ 33-40; *Steck-Risch and Others*, cited above, §§ 51-59; *Bartenbach v. Austria*, no. 39120/03, §§ 32-34, 20 March 2008; and *Schaller-Bossert v. Switzerland*, no. 41718/05, §§ 39-43, 28 October 2010). Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case.

40. There has accordingly been a violation of Article 6 § 1 of the Convention in the instant case on account of the breach of the principle of equality of arms.

II. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

41. The applicant further complained that, by referring in the above-mentioned administrative proceedings to the pending criminal proceedings against him and the non-final conviction of 18 December 2003 as grounds for his removal from office, the domestic authorities had violated his right to be presumed innocent. He relied on Article 6 § 2 of the Convention, which reads as follows:

“Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.”

42. The Government disputed the admissibility of this complaint on two grounds. They argued that the applicant had failed to exhaust domestic remedies and that, in any event, the complaint was manifestly ill-founded.

1. Non-exhaustion of domestic remedies

(a) The arguments of the parties

43. The Government submitted that, after the Dubrovnik Municipal Court had on 8 May 2006 set aside its penal order of 18 December 2003 and dropped the charges against the applicant, he could have filed a petition for the reopening of the proceedings before the Administrative Court relying on section 52 of the Administrative Disputes Act.

44. The applicant replied that a petition for the reopening of proceedings was an extraordinary legal remedy which he had not been obliged to exhaust.

(b) The Court’s assessment

45. The Court reiterates that according to its established case-law, a petition for the reopening of proceedings does not, as a rule, constitute an effective remedy for the purposes of Article 35 § 1 of the Convention (see *Riedl-Riedenstein and Others v. Germany* (dec.), no. 48662/99, 22 January 2002; *Babinsky v. Slovakia* (dec.), no. 35833/97, 11 January 2000; and *Uskela v. Sweden*, no. 10537/83, Commission decision of 10 October 1985, Decisions and Reports (DR) 44, p. 98). Even though there are exceptions to that rule (see, for example, *Kiiskinen and Kovalainen v. Finland* (dec.), no. 26323/95, 1 June 1999; *Nikula v. Finland* (dec.), no. 31611/96, 30 November 2000; and *K.S. and K.S. AG v. Switzerland*, no. 19117/91, Commission decision of 12 January 1994), the Court does not find it necessary to examine whether in the present case there were any special circumstances that would justify departure from the general rule. For the Court it is sufficient to note that in its judgment of 15 September 2004 the Administrative Court held that the mere institution of criminal proceedings and existence of a non-final judgment against the applicant were sufficient

to justify his removal from office. That being so, the Court does not see how the fact that the Dubrovnik Municipal Court had on 8 May 2006 set aside its penal order of 18 December 2003 and dropped the charges against the applicant, would have lead to a different outcome of the proceedings before the Administrative Court.

46. It follows that the Government's objection of failure to exhaust domestic remedies must be dismissed.

2. Whether the complaint is manifestly ill-founded

(a) The arguments of the parties

(i) The Government

47. The Government argued that the proceedings complained of had not involved the determination of a criminal charge against the applicant but concerned a review of the lawfulness of the Government of Croatia's decision of 17 March 2004. In those proceedings the issue had been the applicant's removal from office on the basis of the Government of Croatia's discretionary power to appoint and remove State officials and not his termination of employment in the civil service on account of the commission of a criminal offence. After his removal from his position of Head of the Dubrovnik-Neretva County State Administration Office the applicant had remained in the civil service and had been transferred to another position. Therefore, the applicant's right to be presumed innocent had not been called into question in those proceedings.

48. The Government pointed out that during the proceedings before the domestic authorities, as well as in the proceedings before the Court, the applicant had wrongly spoken of his dismissal being due to the commission of a criminal offence and referred to section 118 taken in conjunction with section 8(1) of the Civil Servants Act (see paragraphs 25 and 26 above). As already explained above (see the preceding paragraph), the Government emphasised that the applicant's case had not concerned the termination of the applicant's career in the civil service owing to the commission of a criminal offence. Had it been so, the presumption of the applicant's innocence would have been the crucial factor in a decision to dismiss him. Furthermore, if the domestic authorities had considered him guilty of a criminal offence he would not have been able to remain in the civil service, let alone be transferred to another position, because his service would have been terminated by operation of law. Rather, the applicant had been removed from his position of Head of the Dubrovnik-Neretva County State Administration Office on the basis of section 52(3) of the State Administration System Act because the Government of Croatia had considered, within its discretionary powers, that the mere institution of

criminal proceedings against him and the adoption of a non-final judgment of 18 December 2003 were circumstances which could harm the probity of the civil service by casting doubt on the diligent and lawful operation of the State administration office he had been running.

(ii) *The applicant*

49. The applicant admitted that the domestic authorities had never expressly stated that he had committed a criminal offence. However, they had repeatedly mentioned that the mere institution of criminal proceedings against him and the adoption of the non-final judgment of 18 December 2003 had been enough to justify his removal from office. For the applicant, such reasoning was sufficient to violate his presumption of innocence.

(b) **The Court's assessment**

50. The Court reiterates that the presumption of innocence will be violated if a judicial decision or a statement by a public official concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proved guilty according to law. It suffices, even in the absence of any formal finding, that there is some reasoning suggesting that the court or the official regards the accused as guilty (see, for example, *Böhmer v. Germany*, no. 37568/97, § 54, 3 October 2002). A fundamental distinction must be made between a statement that someone is merely suspected of having committed a crime and a clear declaration, in the absence of a final conviction, that an individual has committed the crime in question (see, for example, *Peša v. Croatia*, no. 40523/08, § 141, 8 April 2010).

51. The Court notes at the outset that on 12 December 2003 criminal proceedings were instituted against the applicant on counts of uttering threats and damaging another's property, and that on 18 December 2003 the Dubrovnik Municipal Court issued a penal order finding him guilty as charged and imposing a suspended prison sentence (see paragraphs 8 and 9 above). It further notes that on 8 May 2006 the same court set aside its penal order, dropped the charges against the applicant and discontinued the criminal proceedings against him (see paragraph 11 above). Therefore, for the purposes of Article 6 the applicant was charged with a criminal offence, which warrants the application of that provision in respect of those criminal proceedings.

52. The Court further reiterates that the scope of Article 6 § 2 is not limited to pending criminal proceedings, but may extend to judicial decisions taken after the discontinuation of such proceedings or following an acquittal, in so far as the issues raised in these cases are a consequence of and concomitant to the criminal proceedings concerned, in which the applicant was the "accused" (see *Mouillet v. France (no. 2)* (dec.), no. 27521/04, ECHR 2007-X, and the cases cited therein). The scope of

Article 6 § 2 thus also extends to various administrative proceedings conducted simultaneously with the criminal proceedings against an applicant or after the conclusion of criminal proceedings ending without a decision finding the accused guilty in so far as there are such links between the criminal proceedings and the parallel administrative proceedings as to justify extending the scope of Article 6 § 2 to cover the latter (see *Vassilios Stavropoulos v. Greece*, no. 35522/04, 27 September 2007; *Paraponiaris v. Greece*, no. 42132/06, 25 September 2008, and *Çelik (Bozkurt) v. Turkey*, no. 34388/05, 12 April 2011).

53. The Court considers that in the present case the reliance of the domestic authorities in the above administrative proceedings on the pending criminal proceedings against the applicant and his non-final conviction as reasons justifying his removal from office created a “link” between the criminal and the administrative proceedings, which justifies the extension of the scope of Article 6 § 2 to cover the latter (see, *mutatis mutandis*, *Çelik (Bozkurt)*, cited above, § 34).

54. The further issue to be determined in the present case is whether in the above administrative proceedings the domestic authorities, by their conduct, the reasons given for their decisions or the language used in their reasoning, cast doubt on the applicant’s innocence and thus undermined the principle of the presumption of innocence, as guaranteed by Article 6 § 2 of the Convention (see *Vassilios Stavropoulos*, cited above, § 37). The Court reiterates that one of the functions of Article 6 § 2 is to protect an acquitted person’s reputation from statements or acts that follow an acquittal which would seem to undermine it (see *Taliadorou and Stylianou v. Cyprus*, nos. 39627/05 and 39631/05, § 26, 16 October 2008).

55. In this connection the Court notes that both the Government of Croatia and the Administrative Court justified the applicant’s removal from office by arguing that the mere institution of criminal proceedings and the existence of a non-final conviction for a criminal offence could be viewed negatively in the eyes of the public and thus damage the probity of the civil service in general (see paragraphs 12, 16 and 17 above). The Court considers that there is nothing in the language used that would call his innocence into question. Neither the decision of 17 March 2004 nor the judgment of 15 September 2004 states or implies that the applicant was criminally liable for the offences with which he had been charged in the above criminal proceedings. Therefore, in the absence of any express or implied indication which could undermine the applicant’s innocence, there is nothing to suggest that the decisions of the domestic authorities in the present case reflect the opinion that the applicant was guilty of those offences or of any other criminal offence.

56. It follows that this complaint is inadmissible under Article 35 § 3 (a) of the Convention as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 thereof.

III. OTHER ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION

57. The applicant also complained, without further substantiating these complaints, of a violation of his rights under Article 6 § 3 (a) and (b) of the Convention, which reads as follows:

“3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

...”

58. The Court notes that the above criminal proceedings ended in the applicant’s favour as on 8 May 2006 the Dubrovnik Municipal Court set aside its penal order of 18 December 2003 and dropped the charges against him (see paragraph 11 above). In these circumstances, the applicant cannot claim to be a victim of violations of Article 6 § 3 of the Convention in respect of those proceedings (see, *mutatis mutandis*, *Doubtfire v. the United Kingdom* (dec.), no. 31825/96, 23 April 2002). It follows that, in so far as they concern the above criminal proceedings, these complaints are inadmissible and must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

59. The Court further notes that the above administrative proceedings were not criminal in nature and that Article 6 § 3 is therefore not applicable. It follows that, to the extent that these complaints concern the above administrative proceedings, they are inadmissible under Article 35 § 3 (a) of the Convention and must be rejected pursuant to Article 35 § 4 thereof.

IV. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

60. The applicant also complained that, by referring in the decision of 17 March 2004 – which had been reported in the media – to his non-final conviction of 18 December 2003 as a ground for his removal from office, the domestic authorities had harmed his reputation. He relied on Article 8 of the Convention, which reads as follows:

“1. Everyone has the right to respect for his private ... life ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

61. The Government disputed the admissibility of this complaint on three grounds. They argued that the applicant had failed to exhaust domestic remedies, that Article 8 was inapplicable and that, in any event, the complaint was manifestly ill-founded.

1. Non-exhaustion of domestic remedies

62. The Government and the applicant both relied on the arguments summarised in paragraphs 43-44 above.

63. The Court refers to its findings under Article 6 § 2 of the Convention (see paragraphs 45-46 above), which apply with equal force to the complaint made in the context of Article 8 of the Convention.

64. It follows that the Government's objection of failure to exhaust domestic remedies must be dismissed.

2. Applicability

(a) The arguments of the parties

65. The Government argued that the right to work and employment, let alone the right to hold a certain office, were not rights covered by Article 8 of the Convention. Nor did the Convention provide for the right to employment in the civil service.

66. The applicant did not comment on this issue.

(b) The Court's assessment

67. The Court reiterates that "private life" is a broad term not susceptible to exhaustive definition (see *Niemietz v. Germany*, 16 December 1992, § 29, Series A no. 251-B), and that individuals' right to reputation is an element of their "private life" protected under Article 8 of the Convention (see, for example, *Chauvy and Others v. France*, no. 64915/01, § 70, ECHR 2004-VI; *Pfeifer v. Austria*, no. 12556/03, § 38, ECHR 2007-XII; and *Petrina v. Romania*, no. 78060/01, § 28, 14 October 2008).

68. For the Court, there is no doubt that, even if an accused person is acquitted, the fact of standing trial itself has serious implications for the accused and may cause damage to his or her reputation.

69. Furthermore, the Court has previously held that an administrative dismissal may, in certain circumstances (for example, in situations where the applicant was never convicted of the commission of the offences in relation to which he was dismissed), constitute an interference with the rights guaranteed by Article 8 of the Convention when it affects the enjoyment of an individual's "private life" by effectively prejudicing his or her moral and psychological integrity and reputation (see *Kyriakides v. Cyprus*, no. 39058/05, § 52, 16 October 2008, and *Taliadorou and Stylianou*, cited above, § 56).

70. However, the Court also reiterates that in order for Article 8 to come into play, the attack on personal honour and reputation must attain a certain level of gravity and in a manner causing prejudice to personal enjoyment of the right to respect for private life (see *A. v. Norway*, no. 28070/06, § 64, 9 April 2009).

71. Nevertheless, the Court considers that in the present case it may leave open the issue whether the damage to the applicant's reputation, caused by the fact that the decision on his removal from office referred to his prior non-final conviction, was of such a gravity to bring Article 8 into play. This is so because this complaint is in any event inadmissible for the reasons set out below.

3. Whether the complaint is manifestly ill-founded

(a) The arguments of the parties

(i) The Government

72. The Government submitted that there had been no interference with the applicant's right to respect for his private life. Although removed from his office, the applicant had not lost his job in the civil service, but had been transferred to another post. In their view, his reputation could not have been harmed by the decision on removal, or the subsequent judgements of the Administrative Court and the Constitutional Court. Indeed, there was nothing to indicate that the applicant's removal from office had any effect on his private life. Lastly, the Government emphasised that the applicant had held the post of Head of the State Administration Office for only a little more than two months, which was a relatively short period of time to build a professional reputation in a service of that kind.

73. If the Court were to find that there had been an interference with the applicant's right to respect for his private life, the Government averred that this interference had been lawful, that it pursued a legitimate aim and had been necessary in a democratic society.

74. The interference had been lawful because it had been based on the State Administration System Act and the Government Act. It pursued the legitimate aim of protecting the reputation of the civil service and maintaining public confidence in the functioning of the institutions. The interference in question had been necessary in a democratic society because there had been no other way of achieving those legitimate aims.

(ii) The applicant

75. The applicant reiterated that his reputation had been tarnished because the text of the decision on his removal from office of 17 March

2004 – which in its reasoning cited the operative provisions of the penal order against him of 18 December 2003 – had been reported in the media.

(b) The Court's assessment

76. Even assuming that in the present case the applicant's removal from office on account of his non-final conviction harmed his reputation to such a degree that it constituted an interference with his right to respect for his private life, the Court considers that this interference was prescribed by law as it was based on section 52(3) of the State Administration System Act (see paragraph 22 above).

77. It further accepts that the interference in the present case pursued the legitimate aim as it intended to protect the reputation or rights of others, namely the probity of the civil service (see *Pay v. the United Kingdom* (dec.), no. 32792/05, 16 September 2008).

78. As to the proportionality of the interference, the Court agrees that persons appointed to a public office must enjoy public confidence, and that this confidence may be undermined by the mere suspicion that the person in question has committed a criminal offence. It further notes that under Croatian law the Government of Croatia have the power to appoint and remove heads of regional State administration offices at their own discretion. That being so, and given the fact that the applicant in the present case was not dismissed from, but transferred to another post within the civil service, the Court considers that his removal from his position as Head of the Dubrovnik-Neretva County State Administration Office on account of his non-final conviction of 18 December 2003 was not disproportionate to the legitimate aim pursued by that interference.

79. It follows that this complaint is inadmissible under Article 35 § 3 (a) of the Convention as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 thereof.

V. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 12 TO THE CONVENTION

80. Lastly, the applicant complained that he had been discriminated against on account of his political affiliation. He explained that he was a member of the Social Democratic Party and that his removal from office had been orchestrated by the Croatian Democratic Union after that party had won parliamentary elections in November 2003. He relied on Article 1 of Protocol No. 12 to the Convention, which reads as follows:

“1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.”

81. The Court notes that the applicant claimed that his removal from office had been motivated by his political affiliation with the Social Democratic Party. That being so, the interference which in the applicant’s view lead to his discriminatory treatment occurred at the moment of his removal from office. This happened on 17 March 2004 when the Government of Croatia adopted the decision on his removal (see, *mutatis mutandis*, *Jovanović v. Croatia* (dec.), no. 59109/00, ECHR 2002-III). However, this was before 1 April 2005, the date of entry into force of Protocol No. 12. The subsequent proceedings before the Administrative Court and the Constitutional Court are to be seen as the exercise of available domestic remedies aimed at redressing the interference, which cannot bring it within the Court’s temporal jurisdiction (see *Blečić v. Croatia* [GC], no. 59532/00, § 77, ECHR 2006-III).

82. It follows that this complaint is incompatible *ratione temporis* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected pursuant to Article 35 § 4.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

83. 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

84. The applicant claimed 2,320,610.60 Croatian kunas (HRK) in respect of pecuniary damage sustained on account of loss of earnings. He expressly stated that he did not claim any non-pecuniary damage.

85. The Government contested that claim.

86. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

87. Furthermore, as the applicant did not submit any claim in respect of non-pecuniary damage, the Court considers that there is no call to award him any sum on that account.

B. Costs and expenses

88. The applicant did not submit any claim for costs and expenses incurred in the proceedings before the domestic courts or before this Court.

The Court therefore considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the breach of the principle of equality of arms admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Dismisses* the applicant's claim for just satisfaction.

Done in English, and notified in writing on 27 September 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Anatoly Kovler
President