



ECHR finds that Croatian Supreme Court should not be bound by lower courts' errors

In today's **Grand Chamber** judgment¹ in the case of [Zubac v. Croatia](#) (application no. 40160/12) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 6 § 1 (access to court) of the European Convention on Human Rights.

The case concerned the Croatian Supreme Court's refusal to consider an appeal on points of law in a property claim. The Supreme Court had refused to examine the appeal because the value of the subject matter of the dispute had been below the statutory threshold. The applicant, Ms Zubac, complained that she had therefore been prevented from having access to the Supreme Court.

The Court found that restricting Ms Zubac's access to the Supreme Court had been justified. In particular, she had been responsible for making procedural errors in her case, which could have been avoided from the outset. Those errors had included her choice of legal representation when bringing her claim (a Montenegrin instead of a Croatian lawyer) and a failure to amend the value of the subject matter of the dispute before the case had gone to litigation, as required by law.

Furthermore, Ms Zubac, who had been assisted by a qualified lawyer from Croatia by the time litigation had started, could and should have been able to foresee that those errors would lead to the Supreme Court refusing her appeal on points of law, especially given that court's clear and consistent case-law in such cases.

Even though the lower courts had made an error when deciding Ms Zubac's claim according to the increased value of the subject matter of the dispute (which would have brought the claim over the minimum threshold for lodging an appeal), the Supreme Court should not be bound by such errors. In its decision, the Supreme Court had thus ensured legal certainty and proper administration of justice. Unlike the Chamber, the Grand Chamber therefore found that the Croatian Supreme Court had not been excessively formalistic in refusing to consider Ms Zubac's appeal on points of law.

Principal facts

The applicant, Vesna Zubac, is a Bosnia and Herzegovina national who was born in 1959 and lives in Bijela (the Republic of Montenegro).

In September 1992, Ms Zubac's father-in-law concluded a contract for the exchange of his house in Dubrovnik (the Republic of Croatia) for one in Trebinje (Republika Srpska, Bosnia and Herzegovina). After his death, his son and Ms Zubac's husband brought a civil action in the Dubrovnik Municipal Court in August 2002, seeking to declare the contract null and void on the basis that it had been signed under duress, owing to circumstances arising from the war in Croatia.

Ms Zubac's husband was represented by a lawyer from Montenegro until February 2005, when litigation on the case started and a lawyer from Croatia took over. At a hearing in April 2005 this lawyer increased the value of the subject matter of the dispute from 10,000 Croatian kunas (HRK – approximately 1,300 euros (EUR) at the time) to HRK 105,000 (approximately EUR 14,160 at the time), which was opposed by the defendants.

1. Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

The municipal court dismissed the claim in September 2005, ordering the claimants to pay the defendants' litigation costs and expenses, according to the increased value of the subject matter of the dispute. Since an appeal to the Dubrovnik County Court was also dismissed, Ms Zubac's husband lodged an appeal on points of law with the Supreme Court of Croatia. Further proceedings were taken over by Ms Zubac after her husband passed away.

In March 2011 the Supreme Court rejected the appeal, declaring that the value of the subject matter of the dispute was below the statutory threshold. Notably, the Supreme Court considered that the relevant value of the claim under consideration was the value stated on the claim documents (HRK 10,000), rather than that that was upheld by the lower courts (HRK 105,000). As the threshold value for making an appeal was HRK 100,000, the Supreme Court ruled the application inadmissible. It pointed out in particular that, under the relevant domestic law, the value of the subject matter of the dispute could only be changed at the latest at the preparatory hearing or at the first session of the main hearing before litigation on the merits of the case had begun. However, the subject matter of the dispute in Ms Zubac's case had only been increased at a later stage, and it could not therefore consider that an amendment to the claim had actually been made.

A subsequent complaint made by Ms Zubac to the Constitutional Court was declared inadmissible in November 2011.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (access to court) of the European Convention on Human Rights, Ms Zubac complained in particular that she had been prevented from having access to the Supreme Court of Croatia.

The application was lodged with the European Court of Human Rights on 30 May 2012.

In its Chamber [judgment](#) of 11 October 2016, the European Court held, by four votes to three, that there had been a violation of Article 6 § 1 (access to court) of the Convention. The Chamber found that the Supreme Court had applied the rules concerning the statutory minimum for lodging an appeal in an excessively formalistic manner and that that had been contrary to the general principle of procedural fairness inherent in Article 6.

On 6 March 2017 the Grand Chamber Panel accepted the Croatian Government's request that the case be referred to the Grand Chamber. A Grand Chamber hearing took place on 12 July 2017.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Guido **Raimondi** (Italy), *President*,
Angelika **Nußberger** (Germany),
Linos-Alexandre **Sicilianos** (Greece),
Ganna **Yudkivska** (Ukraine),
Helena **Jäderblom** (Sweden),
Luis **López Guerra** (Spain),
André **Potocki** (France),
Aleš **Pejchal** (the Czech Republic),
Faris **Vehabović** (Bosnia and Herzegovina),
Ksenija **Turković** (Croatia),
Síofra **O'Leary** (Ireland),
Alena **Poláčková** (Slovakia),
Georgios A. **Serghides** (Cyprus),
Tim **Eicke** (the United Kingdom),
Jovan **Ilievski** ("the former Yugoslav Republic of Macedonia"),
Jolien **Schukking** (the Netherlands),

Péter Paczolay (Hungary),

and also Søren Prebensen, *Deputy Grand Chamber Registrar.*

Decision of the Court

The Court found that the application of a statutory threshold for making an appeal to the Supreme Court was a legitimate and reasonable procedural requirement, in view of that court's role to deal only with matters of the requisite significance. Such a restriction also pursued the legitimate aims of observing the rule of law and the proper administration of justice.

It concluded that the Supreme Court's application of the rules concerning the statutory minimum for lodging an appeal had not disproportionately hindered Ms Zubac's right of access to a court, nor gone beyond the State's room for manoeuvre ("margin of appreciation") to regulate the rules on access to court and the application of those rules.

In coming to that conclusion, the Court noted that, Ms Zubac had been entirely responsible for making procedural errors in her case, which could have been avoided from the outset. Those errors had included her choice of legal representation when bringing her claim (a Montenegrin instead of a Croatian lawyer) and a failure to amend the value of the subject matter of the dispute before the case went to the litigation stage, as required under domestic law. Indeed, there was no dispute between the parties that up until the respondents had started litigating the case in February 2005, the value initially indicated could have been amended. Moreover, although represented by a Croatian lawyer at the time of litigation, she had not argued that she wanted to amend the value in question, only doing so at a later stage of the proceedings, namely in April 2005.

Furthermore, she could have foreseen that the errors would lead to her appeal on points of law being refused. In particular, the Supreme Court's case-law had been clear and consistent that appeals on points of law in cases where there was a subsequent change to the value of the subject matter of a dispute, as had happened in this case, were inadmissible. Moreover, Ms Zubac had been assisted by a qualified lawyer from Croatia when litigation had started and she had actually requested an amendment to the value. That lawyer could and should have been expected to know the requirements of domestic law and the Supreme Court's case-law. Therefore, the procedure to be followed for an appeal on points of law had been regulated in a coherent and foreseeable manner.

Finally, the Court found it difficult to accept that the Supreme Court should be bound by the errors of lower courts when determining the granting of access. On the contrary, the Supreme Court's decision had ensured legal certainty and the proper administration of justice. It had simply restored the rule of law in connection with an erroneous procedural step taken by Ms Zubac and the two lower courts on an issue affecting its jurisdiction. It had thereby upheld the principle of effectiveness in the administration of justice and, in such circumstances, no issue of excessive formalism should arise.

There had therefore been no violation of Article 6 § 1 of the Convention.

The judgment is available in English and French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.