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

SECOND SECTION

DECISION

Application no. 20791/19
Hrvoje ĆALUŠIĆ
against Croatia

The European Court of Human Rights (Second Section), sitting on 27 May 2025 as a Committee composed of:

Jovan Ilievski*, President*,
Péter Paczolay,
Davor Derenčinović*, judges*,
and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 20791/19) 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 11 April 2019 by a Croatian national, Mr Hrvoje Ćalušić ("the applicant"), who was born in 1983, lives in Zagreb and was represented by Ms V. Drenški Lasan, a lawyer practising in Zagreb;

the decision to give notice of the complaints under Article 6 §§ 1 and 3 (c) and (d) of the Convention concerning the alleged unfairness of the criminal proceedings against the applicant owing to the use of expert evidence and the applicant's absence from the session of the appeal panel to the Croatian Government ("the Government"), represented by their Agent, Ms Š. Stažnik, and to declare inadmissible the remainder of the application;

the parties' observations;

the formal declarations accepting a friendly settlement for the complaint raised under Article 6 §§ 1 and 3 (c) of the Convention concerning the applicant's absence from the session of the appeal panel;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns complaints about unfairness of the criminal proceedings, in which the applicant was tried together with three other

persons, owing to the use of expert evidence and the applicant's absence from the session of the appeal panel.

2. On 26 May 2015 the Zagreb Municipal Criminal Court found the applicant guilty of using a forged document and sentenced him to six months' imprisonment, suspended for two years. In particular, the court established that in May 2012 the applicant had instituted enforcement proceedings against a certain V.D., who had died in April 2012, on the basis of a debenture (*zadužnica*) which had stated that V.D., in his capacity as a debtor, had given the applicant consent to collect a claim in the amount of 100,000 Croatian kunas, even though that debenture had been forged, of which circumstance the applicant had been aware.

3. The facts that the debenture had been forged and that the applicant had been aware of that were established on the basis of: (i) a statement by a notary public confirming that she had never certified the debenture in question but that the certificate indicated on the document had been taken over from an entirely different document she had certified; (ii) a graphological expert report which had found that the debenture had not been signed by V.D.; (iii) the circumstance that the information in the debenture had in part been filled in by the applicant's employee and co-accused in the trial, I.A., and in part by Z.R. – the son of the lawyer who had initiated the enforcement proceedings against V.D. on the applicant's behalf – as confessed by I.A. and Z.R. and confirmed by the graphological expert report, and (iv) conflicting statements given by the applicant, I.A. and T.M., a witness, who had each given a different version of the events involving the debenture (the applicant stated that V.D. had handed over to him a debenture which had been duly completed, signed and verified by a notary; I.A. stated that the applicant had instructed him to fill in a blank debenture, which he and the applicant had then handed over to V.D., and T.M. stated that he had accompanied the applicant when the latter had received the filled-in debenture from V.D.).

4. The graphological expert report which found that the debenture had not been signed by V.D. (see paragraph 3 above) had been commissioned by the public prosecutor, during the pre-trial investigation. It was prepared by D.M., a graphological expert employed at the forensics centre established within the Ministry of the Interior and a sworn-in court expert. The report was prepared on the basis of the original debenture in question and the undisputed signatures of V.D., the applicant and the other accused in the trial. Expert D.M. was heard at a hearing during the trial, where the defence was able to ask him questions. After hearing expert D.M., the trial court concluded that he had provided an independent, impartial, professional and comprehensive report, and that there were no inconsistencies or uncertainties warranting the commissioning of another graphological expert report. In its judgment, the trial court added that D.M. was a permanent court expert who had provided clear findings, had replied to all questions and, contrary to the objections by the defence, had used V.D.'s undisputed signatures in preparing his report.

5. The public prosecutor lodged an appeal against the trial court's judgment (see paragraph 2 above), asking that the applicant be sentenced to an unconditional prison sentence. The applicant also lodged an appeal, challenging the factual and legal grounds for his conviction and requesting that he be present at the session of the appeal panel.

6. On 12 May 2016 the Bjelovar County Court held a session without informing the applicant or his lawyer of it and, in so far as relevant, upheld the trial court's judgment in the part concerning the applicant.

7. On 11 October 2018 the Constitutional Court dismissed the applicant's subsequent constitutional complaint as unfounded.

8. Before the Court, the applicant complained, under Article 6 §§ 1 and 3 (d) of the Convention, about a breach of the principle of equality of arms, alleging that he had been convicted on the basis of a graphological expert report which had been: (i) obtained by the public prosecutor during the pre-trial investigation; and (ii) drawn up by the forensics centre of the Ministry of the Interior, the body that had lodged the criminal complaint against him; and that the domestic courts had dismissed his request for an independent expert examination.

9. He also complained, under Article 6 §§ 1 and 3 (c) of the Convention, that he had not been given an opportunity to be present at the session of the appeal panel.

THE COURT'S ASSESSMENT

A. Alleged violation of Article 6 §§ 1 and 3 (c) of the Convention

10. The applicant complained that he had not been given an opportunity to be present at the session of the appeal panel in the criminal proceedings against him, in breach of Article 6 §§ 1 and 3 (c) of the Convention (see paragraph 9 above).

11. On 13 and 28 March 2025 the Court received friendly settlement declarations signed by the parties under which the applicant agreed to waive any further claims against Croatia in respect of the facts giving rise to the complaint under Article 6 §§ 1 and 3 (c) of the Convention against an undertaking by the Government to pay him 4,000 euros to cover any non-pecuniary damage as well as costs and expenses, which will be free of any taxes that may be chargeable to the applicant. The sum will be payable within three months from the date of notification of the decision taken by the Court to strike the part of the case under Article 6 §§ 1 and 3 (c) of the Convention out of its list of cases. In the event of failure to pay this sum within the said three-month period, the Government undertook to pay simple interest on it, from the expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points. The payment will constitute the final

resolution of the part of the case under Article 6 §§ 1 and 3 (c) of the Convention.

12. The Court notes that the friendly settlement declarations signed by the parties also had regard to the following:

- the Court's judgments in the cases of *Zahirović v. Croatia*, no. 58590/11, §§ 54-64, 25 April 2013; *Lonić v. Croatia*, no. 8067/12, §§ 90-102, 4 December 2014; *Arps v. Croatia*, no. 23444/12, §§ 24-29, 25 October 2016, and *Bosak and Others v. Croatia*, nos. 40429/14 and 3 others, §§ 105-109, 6 June 2019, where the Court found violations of Article 6 §§ 1 and 3 (c) of the Convention on account of applicants not being allowed to be present at the session of the appeal panel in the criminal proceedings against them;

- the fact that the amendments made to the relevant domestic law in the wake of the *Arps* judgment removed the source of the violation arising in the case (see *Romić and Others v. Croatia*, nos. 22238/13 and 6 others, § 68, 14 May 2020), and

- the possibility provided by Article 502 § 2 of the Croatian Code of Criminal Procedure to seek reopening of the criminal proceedings on the basis of a Court's decision striking out an application following the parties' friendly settlement (see *Alić v. Croatia* (dec.), no. 39158/21, §§ 13 and 14, 23 May 2023).

13. The Court takes note of the friendly settlement reached between the parties regarding the complaint under Article 6 §§ 1 and 3 (c) of the Convention. It is satisfied that the settlement is based on respect for human rights as defined in the Convention and its Protocols and finds no reasons to justify a continued examination of that part of the application (see Article 39 of the Convention).

14. Accordingly, the application should be struck out of the Court's list of cases in so far as it relates to Article 6 §§ 1 and 3 (c) of the Convention.

B. Alleged violation of Article 6 §§ 1 and 3 (d) of the Convention

15. As for the applicant's complaint about the use of expert evidence (see paragraph 8 above), the Court reiterates that the term "witnesses" under Article 6 § 3 (d) of the Convention has an autonomous meaning which also includes expert witnesses (see *Danilov v. Russia*, no. 88/05, § 109, 1 December 2020). The appointment of experts is relevant in assessing whether the principle of equality of arms has been respected (see *Gaggl v. Austria*, no. 63950/19, § 49, 8 November 2022). The Court has already held that the mere fact that experts whose reports were used in proceedings were appointed by one of the parties – accused persons or prosecutors – does not suffice to render those proceedings unfair. Although this fact may give rise to apprehension as to the neutrality of such experts, such apprehension, while having a certain importance, is not decisive. What is decisive is the position

occupied by the experts throughout the proceedings, the manner in which they performed their functions and the way the judges assessed the expert opinion, and whether the doubts raised by appearances can be held objectively justified (see *Poletan and Azirovik v. the former Yugoslav Republic of Macedonia*, nos. 26711/07 and 2 others, §§ 94 and 98, 12 May 2016).

16. In the present case, the Court firstly notes that the graphological expert report was not the only piece of evidence on which the domestic courts based their finding of the applicant's guilt (see paragraph 3 above). Furthermore, the applicant had the opportunity to challenge the expert's opinion in adversarial proceedings. He was able to ask him questions directly at the hearing before the trial court (see paragraph 4 above) and also to raise his doubts concerning the expert's independence and impartiality before the trial court, the appellate court and the Constitutional Court (see, by contrast, *Danilov*, cited above, §§ 111 and 120). The domestic courts examined the expert report, the expert's credibility, the authenticity of the material and methods he used to prepare the report, and explained in detail why they had no doubts about the objectivity and quality of the expert report and its findings (see paragraph 4 above).

17. In the light of the domestic courts' reasoning and the elements before it, the Court does not consider the applicant's apprehensions to be objectively justified.

18. The Court further notes that the trial court gave reasons why it had refused to commission another graphological expert report (see paragraph 4 above). Both the appellate court and the Constitutional Court dismissed the applicant's arguments in this regard, noting that the refusal to take further expert evidence had not prejudiced the applicant's defence rights.

19. The Court sees no reason to hold otherwise and concludes that the fact that the domestic courts took into account the impugned expert evidence and refused to take the proposed additional expert evidence did not restrict the applicant's defence rights to an extent that he was not afforded a fair trial within the meaning of Article 6 §§ 1 and 3 (d) of the Convention.

20. In the light of the above considerations, the Court finds that this part of the application is manifestly ill-founded and must therefore be declared inadmissible in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Decides to strike the application out of its list of cases as regards the complaint under Article 6 §§ 1 and 3 (c) of the Convention in accordance with Article 39 of the Convention;

Declares the remainder of the application inadmissible.

Done in English and notified in writing on 19 June 2025.

Dorothee von Arnim Deputy Registrar	Jovan Ilievski President