

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

SECOND SECTION

CASE OF BLAGAJAC v. CROATIA

(Application no. 50236/16)

JUDGMENT

STRASBOURG

9 May 2023

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



In the case of Blagajac v. Croatia,

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

Pauliine Koskelo*, President*,
Lorraine Schembri Orland,
Davor Derenčinović*, judges*,

and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 50236/16) 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 22 August 2016 by a Croatian national, Mr Alen Blagajac, born in 1969 and living in Zagreb ("the applicant"), who was represented by Ms V. Drenški Lasan, a lawyer practising in Zagreb;

the decision to give notice of the complaints concerning the fairness of proceedings, notably equality of arms, and lawfulness of the search of his laptop and mobile phones 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 decision to reject the Government's objection to examination of the application by a Committee;

Having deliberated in private on 11 April 2023,

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

SUBJECT MATTER OF THE CASE

1. The case concerns criminal proceedings against the applicant, who was an attorney-at-law, on charges of giving a bribe in a large-scale bribery case involving a number of land registry officials. In the course of the investigation, the applicant and several other accused were subject to secret surveillance, and material obtained thereby was used as evidence in the criminal proceedings against him.

2. Between June and August 2007, at the request of the Office for the Suppression of Corruption and Organised Crime (hereinafter "the OSCOC"), the Zagreb County Court ordered covert following and technical recording of telecommunications of a number of individuals, including the applicant, under the suspicion of offering and/or receiving a bribe and abuse of office of land registry officials. The said measures were expanded and prolonged several times, ultimately being lifted in respect of the applicant on 9 December 2007.

3. On 11 December 2007, on the basis of a court order, the police searched the applicant's flat and temporarily seized his laptop. The search was

witnessed by two persons and the applicant, who had refused legal representation, and who had no objections to the search or the contents of the search record, which he signed.

4. On the same day, the police also searched the applicant's law office and his car, seizing various documents. An investigation judge and a representative of the Croatian Bar Association were present at those searches, the applicant made no objections and signed the search records.

5. On 11 December 2007, during the applicant's arrest, two mobile phones were temporarily seized from him, for which he signed a receipt on temporary seizure. He was released on 31 January 2007.

6. At the OSCOC's request, on 17 December 2007, the Zagreb County Court opened an investigation against the applicant and twenty-five other persons. The applicant did not appeal against that decision.

7. At the OSCOC's request, the Zagreb County Court ordered a search of the applicant's laptop and two mobile phones for 5 March 2008; the applicant objected to the search relating to data before the date when the surveillance measures had been ordered against him. He did not object to the conduct or the course of the search, or to the contents of the record, which he signed.

8. On 31 December 2008 the OSCOC filed an indictment against the applicant and other defendants, transferring the materials obtained through secret surveillance to the trial court. The applicant appealed claiming that he had been unable to consult the case file containing the materials obtained though secret surveillance, but his appeal was dismissed without a clear reply to that complaint.

9. At the hearings held on 22 and 23 October and 18 December 2009, and on 26 April 2010, the applicant was served with transcripts of CD audio recordings made during the secret surveillance, which had been prepared by an IT expert witness. The relevant materials were also played back at the various hearings. The applicant was heard before the trial court on 15 December 2010.

10. On 29 December 2010 the Zagreb County Court convicted the applicant of bribing land registry officials. He was sentenced to six months' imprisonment suspended for three years and prohibited from practicing law for one year. The parties appealed.

11. On 15 May 2012 the Supreme Court received a reasoned opinion by the State Attorney's Office of the Republic of Croatia on the legal and factual issues in the case, asking that the applicant's appeal be dismissed and that his punishment be increased. These submissions were never forwarded to the defence.

12. The Supreme Court scheduled an appeal session for 10 and 11 April 2013, to which the applicant and his defence lawyer were summoned.

13. On 11 April 2013 the Supreme Court dismissed the applicant's appeal as unfounded and upheld the first-instance judgment.

14. On 25 May 2016 the Constitutional Court dismissed a constitutional complaint by the applicant as unfounded. This decision was served on the applicant on 7 June 2016.

15. The applicant complained: (a) about the unlawfulness of the search of his laptop and mobile phones and the use of evidence so obtained in proceedings against him; (b) about his inability to consult the case file on secret surveillance, the fact that the materials so obtained were used as evidence in the criminal proceedings against him and his consequent lack of time to prepare his defence; (c) about the fact that reasoned submissions of the State Attorney's Office in the course of the appeal proceedings were not forwarded to the defence.

THE COURT'S ASSESSMENT

I. PRELIMINARY ISSUE

16. The applicant died on 13 October 2020. On 16 November 2020 his wife expressed her wish to continue the application on his behalf, which the Government opposed.

17. According to its well-established case-law on the matter (see *Mile Novaković v. Croatia*, no. 73544/14, §§ 33-34, 17 December 2020, with further references), the Court considers that the applicant's wife as his heir has standing to continue the proceedings in the applicant's stead and rejects the Government's objection in this respect.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

18. The general principles concerning search of property have been summarized in *Dragan Petrović v. Serbia* (no. 75229/10, §§ 69-73, 14 April 2020).

19. The search of the applicant's laptop and mobile phones amounted to an interference with the applicant's right to respect for his private life and correspondence under Article 8 of the Convention (see, for example, *Särgava v. Estonia*, no. 698/19, § 85, 16 November 2021).

20. The said interference was based on law, namely Articles 213 and 211b § 2 of the Code of Criminal Procedure. To the extent that the applicant complains that the search had been unlawful because of the absence of an investigating judge and a representative of the Croatian Bar Association as required under section 17 of the Attorney's Act, the Government explained that such presence was required only in case of search of the applicant's person or his law office. However, there was no such requirement for the search of movable property, such as a laptop or mobile phones, as further confirmed by the practice of the Supreme Court they submitted. The Court sees no reason to disagree. Moreover, it notes that the said search was

conducted on the basis of a written and reasoned court order in the presence of the applicant, who was able to note any alleged irregularity or unlawfulness in the relevant record, or refuse to sign it altogether, but he did not do so.

21. The said interference also pursued the legitimate aim of fight against corruption and prevention of organised crime and was in the circumstances not disproportionate to that aim, nor has the applicant argued that it jeopardised his legal professional privilege in any way (contrast *Särgava*, cited above, §§ 92-110).

22. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

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

A. Alleged non-disclosure and use of evidence obtained by special investigative measures

23. The general principles concerning the non-disclosure and use of evidence obtained by special investigative measures have been summarized in *Matanović v. Croatia* (no. 2742/12, §§ 149-159, 4 April 2017).

24. As regards the evidence adduced before the trial court, the Court notes that the applicant was served with the transcripts of the audio recordings prepared by an IT expert whose independence and impartiality were never called into question (compare *Matanović*, cited above, § 164). Those recordings were also played back at the trial and the applicant was given ample opportunity to contest their content, but he never did so. There is therefore nothing allowing the Court to conclude that the applicant was prevented from adequately preparing his defence with regard to the evidence adduced before the trial court (compare *Matanović*, cited above, §§ 163-169).

25. In so far as the applicant complained that he was unable to consult the remainder of the materials obtained through secret surveillance, the Government submitted that, as of the opening of the investigation, the applicant could have consulted the OSCOC's case file which contained all the surveillance materials, but he never did so. According to the Government, OSCOC submitted the entire contents of the file on the secret measures to the Zagreb County Court along with the bill of indictment, so the applicant could have also consulted the relevant materials in that court's file, but he did not. The applicant maintained that he had never been aware of the existence of the OSCOC's file, and that he had tried to consult another file containing the recorded materials but was told that the file in question had been archived. He submitted no evidence in that respect.

26. The Court cannot but note that the OSCOC's file was referred to in the decision to open the investigation against the applicant and its existence thus must have been known to him at least from that moment onwards (see paragraph 6 above). The applicant's assertion that he had not been aware

of that file during the investigation does thus not seem very credible. Moreover, there is no evidence in the case file that the applicant ever requested access to the materials in question in the case-files indicated by the Government, nor does he seem to have consistently complained about his alleged inability to do so, there being no mention of any such complaint in the court hearing records or indeed in the first-instance judgment (compare and contrast *Matanović*, cited above, §§ 170-187).

27. In the light of all the material in its possession, the Court considers that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention. The foregoing conclusion makes it unnecessary for the Court to examine the applicant's allegations separately from the standpoint of Article 6 § 3 (b), since they amount to a complaint that he did not receive a fair trial (see *Matanović*, cited above, § 149).

B. Use of evidence obtained by allegedly unlawful search

28. The Court declared the applicant's complaint about the alleged unlawfulness of the search of his laptop and mobile phones inadmissible (see paragraph22 above).

29. That implies that the search in question and the evidence thus obtained were not unlawful, since a requirement that any interference with an applicant's rights protected under Article 8 has to be based in law is inherent in the guarantees of that Article. The Court further finds that the applicant's allegations in that respect do not disclose any appearance of a violation of the fair trial guarantees, within the meaning of Article 6 § 1 of the Convention (see, *mutatis mutandis*, *Bosak and Others v. Croatia*, nos. 40429/14 and 3 others, § 77, 6 June 2019).

30. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

C. Alleged violation of the principle of equality of arms as regards the submissions of the State Attorney's Office of the Republic of Croatia

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

32. It observes that it has repeatedly found violations of Article 6 § 1 of the Convention on the grounds that reasoned submissions of the competent State Attorney's Office were not forwarded to the defence (*see Zahirović v. Croatia*, no. 58590/11, §§ 42-50, 25 April 2013; *Lonić v. Croatia*, no. 8067/12, §§ 83-86, 4 December 2014; *Bosak and Others*, cited above,

§§ 91-101; and *Romić and Others v. Croatia*, nos. 22238/13 and 6 others, §§ 91-95, 14 May 2020; and contrast *Šimundić v. Croatia* (dec.), no. 22388/16, §§ 20-22, 26 March 2019).

33. In the above-mentioned cases, the Court addressed the same arguments as those put forward by the Government in the present case. 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.

34. There has accordingly been a violation of Article 6 § 1 of the Convention in this regard.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. The applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage for a breach of Article 6 and EUR 6,000 in respect of a breach of Article 8. He also claimed 37,500 Croatian kunas (HRK; approximately EUR 5,000) in respect of costs and expenses incurred before the domestic courts and before the Court.

36. The Government contested those claims.

37. On the basis of the violation found, the Court awards the applicant EUR 1,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

38. Furthermore, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicant the sum of EUR 850 for costs and expenses incurred in the proceedings before the domestic courts and EUR 1,000 for those incurred before the Court, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 6 § 1 of the Convention concerning failure to forward the reasoned submissions of the State Attorney's Office to the defence in the course of the appeal proceedings admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the failure to forward the reasoned submissions of the State Attorney's Office to the defence in the course of the appeal proceedings;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts:
      (i) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,850 (one thousand eight hundred fifty 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;

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

Done in English, and notified in writing on 9 May 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Dorothee von Arnim Deputy Registrar	Pauliine Koskelo President