

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

SECOND SECTION

CASE OF CETINJA v. CROATIA

(Application no. 6959/17)

JUDGMENT

STRASBOURG

9 May 2023

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



In the case of Cetinja 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. 6959/17) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 17 January 2017 by a Croatian national, Mr Aleksandar Cetinja, born in 1988 and living in Rijeka ("the applicant"), who was represented by Mr E. Bradamante, a lawyer practising in Rijeka;

the decision to give notice of the complaints concerning property, fairness of the proceedings and the principle of *nullum crimen sine lege* 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;

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 the applicant's conviction for a minor offence which had become time-barred.

2. On 28 August 2011, after an incident involving a physical altercation with another individual, the applicant, who was under the influence of alcohol, was brought to the local police station at 4 a.m. to sober up. He was kept there until at 9 a.m. when he was released.

3. By a judgment of 12 October 2011, the Delnice Minor Offences Court found the applicant guilty of a minor offence of breach of public peace and imposed a fine of 728 Croatian kunas (HRK), that is, some 97 euros (EUR) at the time. However, the five hours the applicant spent in police custody were calculated as one day of imprisonment, which corresponded to HRK 300 and had to be deducted from the total amount of the fine. The applicant was therefore eventually ordered to pay a fine in the amount of HRK 428, that is, some EUR 57. He was also ordered to pay HRK 150 for the costs of the proceedings, that is, some EUR 20. The applicant paid that fine and the costs on 11 January 2017, together with HRK 75 as a fee charged by the domestic payment agency FINA for compulsory execution, that is, a total of HRK 645.63.

4. Meanwhile, on 31 October 2011 the applicant lodged an appeal against that judgment. His appeal was examined and dismissed by the judgment of the High Minor Offences Court on 27 May 2015, that is, more than three and a half years later. Furthermore, that judgment was served on him on 8 March 2016, that is, more than nine months from its adoption and more than four and a half years after the commission of the offence.

5. The applicant then lodged a constitutional complaint in which he argued that the Minor Offences Act applicable at the relevant time provided for a two-year relative prescription period and a four-year absolute prescription period, both running from the moment of the commission of the offence. The relative prescription period could have been interrupted only by an action of the relevant authority in relation to the minor offence at issue. In case of such an interruption, the relative prescription period started to run anew. The applicant contended that the failure of the High Minor Offences Court to take any action within a period of three and a half years had resulted in the minor offence against him becoming time-barred pursuant to the cited relative prescription rule. In this regard he also relied on the relevant case-law of the Supreme Court and a decision of the Constitutional Court (see paragraphs 11-12 below). The applicant also argued that the inordinate delay in the service of the High Minor Offences Court's judgment suggested that the judgment had been backdated to comply with the four-year absolute prescription period.

6. By a decision of 13 July 2016, the Constitutional Court, without addressing any of the applicant's arguments, declared his constitutional complaint inadmissible holding that the case did not raise a constitutional issue. The decision was served on the applicant's representative on 18 July 2016.

7. For the reasons stated in paragraph 5 above, the applicant complained, under Articles 6 and 7 of the Convention and Article 1 of Protocol No. 1 thereto, that he had been convicted of a minor offence and ordered to pay a fine although the offence at issue had become time-barred.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 7 OF THE CONVENTION

8. The Government submitted that, in view of the modest amount of the fine, the applicant had not suffered a significant disadvantage for the purposes of Article 35 § 3 (b) of the Convention.

9. The Court finds that the question whether the case could be declared inadmissible for lack of a significant disadvantage is inextricably linked to the merits of this complaint and therefore joins it to the merits.

10. The Court further 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.

11. The Court notes that in the cases no. Kzz 19/13-3 of 14 January 2014, Kzz 17/15-3 of 8 April 2015, Kzz 32/15-3 of 2 September 2015 and Kzz 42/15-3 of 3 November 2015 the Supreme Court established that the relative prescription period had expired because it had taken more than two or three years for the High Minor Offences Court to decide on appeals or objections lodged against first-instance decisions. It therefore allowed requests for the protection of legality lodged by the Principal State Attorney and overturned the judgments of the High Minor Offences Court and the decisions of the lower judicial or administrative authorities whereby the accused had been found guilty.

12. Similarly, in its decision U-III-4318/2013 of 17 February 2016 the Constitutional Court established that the relative statutory prescription period had expired because it had taken more than two years for the High Minor Offences Court to decide on the complainant's appeal lodged against the first-instance decision. It therefore found a violation of the complainant's right to a fair trial and quashed the High Minor Offences Court's judgment whereby that court had dismissed the appeal and upheld the decision of the first-instance court finding the complainant guilty.

13. Having regard to this case-law of the domestic courts, the Court finds it established that the relative statutory prescription period expired in the applicant's case because it took more than three and a half years for the High Minor Offences Court to decide on his appeal (see paragraph 4 above). The Court therefore cannot accept the Government's contention that the applicant's arguments constituted one possible interpretation of the relative prescription rule and were thus of a fourth-instance nature.

14. The Court further reiterates that reviving criminal responsibility after the expiry of a limitation period is deemed incompatible with the overarching principles of legality (*nullum crimen, nulla poena sine lege*) and foreseeability enshrined in Article 7 (see *Advisory opinion on the applicability of statutes of limitation to prosecution, conviction and punishment in respect of an offence constituting, in substance, an act of torture* [GC], request no. P16-2021-001, Armenian Court of Cassation, § 77, 26 April 2022; and *Antia and Khupenia v. Georgia*, no. 7523/10, §§ 38-43, 18 June 2020). In other words, where a criminal offence under domestic law is subject to a statute of limitation, and becomes time-barred so as to exclude criminal responsibility, Article 7 precludes the revival of a prosecution in respect of such an offence on account of the absence of a valid legal basis. To hold otherwise would be tantamount to accepting the retrospective application of the criminal law to an accused's disadvantage (ibid.).

15. In view of the foregoing (see paragraphs 11-14 above), the Court finds that there was no valid legal basis for the applicant's conviction and punishment in the present case.

16. As for the Government's objection based on the lack of a significant disadvantage (see paragraph 8 above), the Court notes that, in addition to the High Minor Offences Court's failure to observe the relative statutory prescription period, the Constitutional Court did not reply to the applicant's argument pointing to that error (see paragraphs 5-6 above). What is particularly striking is that the Constitutional Court did not do so even though the applicant in his constitutional complaint explicitly relied on the relevant case-law of the Supreme Court and on the Constitutional Court's decision adopted only five months before that court's decision in his case (see paragraphs 5-6 and 12 above).

17. The Court finds this element important for the examination of the criteria for finding a lack of a significant disadvantage (see for the applicable principles *Korolev v. Russia* (dec.), no. 25551/05, ECHR 2010, and *Bartolo v. Malta* (dec.), no. 40761/19, § 22, 7 September 2021). Despite the fact that the guarantee enshrined in Article 7, which is an essential element of the rule of law, occupies a prominent place in the Convention system, the Court has already declared inadmissible for lack of a significant disadvantage a case in which a violation of that Article had been alleged (see *Bartolo*, cited above, §§ 22-29). The Court held that, bearing in mind, *inter alia*, the subject matter of the offence (the electronic identification of dogs), in the specific circumstances of that case the complaint under Article 7 of the Convention did not concern an important question of principle.

18. However, in the present case, taking into account that the object and purpose of Article 7 is to provide effective safeguards against arbitrary prosecution, conviction or punishment (see *Vasiliauskas v. Lithuania* [GC], no. 35343/05, § 153, ECHR 2015), the Court considers that the Constitutional Court's failure to address the applicant's argument (see paragraph 16 above) further exacerbated the existing breach of the principle of legality committed by the High Minor Offences Court, giving it an even more serious character.

19. The Court therefore finds that the respect for human rights, as defined in the Convention and the Protocols thereto, requires an examination of this complaint on the merits. The Government's inadmissibility objection based on the lack of a significant disadvantage must therefore be rejected.

20. Having regard to its findings above (see paragraphs 11-15), the Court holds that there has been a violation of Article 7 of the Convention in the present case.

II. OTHER COMPLAINTS

21. The applicant also complained under Article 6 of the Convention and Article 1 of Protocol No. 1 thereto (see paragraph 7 above). Having regard to

the facts of the case, the submissions of the parties, and its findings above, the Court considers that it has dealt with the main legal questions raised by the case and that there is no need to examine these remaining complaints (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. The applicant claimed HRK 645.63 Croatian kunas in respect of pecuniary damage, which corresponded to the amount of fine, the costs of proceedings and the fee he had to pay (see paragraph 3 above). He also claimed EUR 10,000 in respect of non-pecuniary damage, and HRK 15,937.50 in respect of costs and expenses incurred before the domestic courts and before the Court.

23. The Government contested these claims.

24. The Court has found that convicting the applicant for the minor offence in question and imposing a fine had been in breach of Article 7 of the Convention. It therefore accepts the applicant's claim in respect of pecuniary damage and awards him EUR 86 under this head, plus any tax that may be chargeable on that amount.

25. As regards non-pecuniary damage, the Court awards the applicant EUR 1,500, plus any tax that may be chargeable.

26. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 2,115 covering costs and expenses under all heads, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins* to the merits the Government's objection as to the lack of a significant disadvantage and *rejects* it;

2. *Declares* the complaint under Article 7 of the Convention admissible;

3. *Holds* that there has been a violation of Article 7 of the Convention;

4. *Holds* that there is no need to examine the admissibility and merits of the complaints under Article 6 of the Convention and Article 1 of Protocol No. 1 thereto;

5. *Holds,*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts:
      (i) EUR 86 (eighty-six euros), plus any tax that may be chargeable, in respect of pecuniary damage;

(ii) EUR 1,500 (one thousand and five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(iii) EUR 2,115 (two thousand one hundred and fifteen 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;

6. *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