

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

SECOND SECTION

# CASE OF GAŠPARINI v. CROATIA

*(Application no. 5605/21)*

JUDGMENT

STRASBOURG

17 June 2025

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



**In the case of Gašparini v. Croatia,**

The European Court of Human Rights (Second Section), sitting 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. 5605/21) 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 8 January 2021 by a Croatian national, Mr Ivan Gašparini ("the applicant"), who was born in 1974, lives in Poreč and was represented by Mr T. Brajković, a lawyer practising in Poreč;

the decision to give notice of the application to the Croatian Government ("the Government"), represented by their Agent, Ms S. Stažnik;

the parties' observations;

Having deliberated in private on 27 May 2025,

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

# SUBJECT MATTER OF THE CASE

1. The applicant is a member of a hunting association, Z., based in Poreč ("the association"). The case concerns his inability to challenge before courts a disciplinary measure in the form of a two-year hunting prohibition imposed on him by the association.

## I. DISCIPLINARY PROCEEDINGS

2. By a decision of 21 April 2015, following disciplinary proceedings against the applicant, the association's disciplinary court imposed on him a disciplinary measure prohibiting him from hunting all kinds of game for two years. It did so after having established that he had damaged its reputation and thus breached the provisions of its statute and rules governing disciplinary liability.

3. The applicant appealed to the association's management board, complaining of the unfairness of the proceedings before the disciplinary court. By a decision of 2 June 2015, the management board upheld the disciplinary court's decision and dismissed his appeal, noting in particular that the impugned proceedings had been conducted in accordance with the association's statute and internal regulations, as well as the relevant domestic law.

## II. CIVIL PROCEEDINGS

4. On 7 August 2015 the applicant brought a civil action against the association in the Pula Municipal Court. He alleged that the association's decisions imposing a disciplinary measure on him had been, *inter alia*, adopted in breach of the procedure provided for in its statute and rules on disciplinary liability. He thus asked the court to (i) declare null and void the association's decisions of 21 April and 2 June 2015 which had unlawfully prevented him from hunting, and to (ii) order the association to pay him compensation for the pecuniary and non-pecuniary damage sustained on account of the unlawful hunting prohibition.

5. By a decision of 13 November 2015, the Pula Municipal Court declared the applicant's action inadmissible in so far as it concerned his claim to declare the association's decisions null and void. The court held that the matter fell outside the jurisdiction of the courts.

6. The applicant appealed. By a decision of 8 November 2018, the Pula County Court dismissed his appeal and upheld the first-instance decision. It agreed that the courts had no jurisdiction in the matter.

7. In his constitutional complaint, the applicant alleged, *inter alia*, that by declaring his civil action partly inadmissible the domestic courts had denied him access to a court. He relied on the Court's findings in the case of *Lovrić v. Croatia*, no. 38458/15, 4 April 2017.

8. By a decision of 24 June 2020, notified to the applicant's representatives on 10 July 2020, the Constitutional Court dismissed his constitutional complaint. It held that the impugned decisions had not led to a disproportionate restriction of the applicant's right of access to a court, noting that he had failed to put forward any argument which could have led the Constitutional Court to question the fairness of the disciplinary proceedings or indicate that the alleged irregularities were of such gravity to necessitate a judicial review. Furthermore, it observed that the present case was to be distinguished from *Lovrić* because the applicant had not been excluded from the association. Rather, the disciplinary measure imposed on him was limited in time and concerned only his right to hunt game, whereas his remaining membership rights had been left intact.

9. Meanwhile, the civil proceedings the applicant instituted have continued in respect of his compensation claim (see paragraph 4 above). By a binding judgment of 28 March 2024, the Split County Court upheld the judgment of the Pazin Municipal Court of 16 March 2023 dismissing the applicant's compensation claim. The courts found no unlawfulness in the association's acts as a necessary element of tort liability. In particular, the domestic courts held that, in view of the final decision concerning their (lack of) jurisdiction to examine the validity of the association's decisions, they could not examine that issue as a preliminary question when examining the applicant's compensation claim. The proceedings are currently pending

before the Supreme Court, following the applicant's petition to appeal on points of law (*prijedlog za dopuštenje revizije*).

## III. THE COMPLAINT

10. Before the Court, the applicant complained, under Articles 6 § 1 and 13 of the Convention, about his inability to challenge before courts the disciplinary measure in question.

# THE COURT'S ASSESSMENT

11. The Court reiterates that the role of Article 6 in relation to Article 13 is that of a *lex specialis*, the requirements of Article 13 being absorbed by the more stringent requirements of Article 6 (see, for example, *Kudła v. Poland* [GC], no. 30210/96, § 146, ECHR 2000-XI, and *Grzęda v. Poland* [GC], no. 43572/18, § 352, 15 March 2022). It will therefore examine the applicant's complaint under Article 6 § 1 alone.

## I. ADMISSIBILITY

12. As to the existence of a "right" for the purposes of Article 6, the Court notes that the right to hunt was recognised in section 17 of the Z. hunting association's statute as a member's right. It further notes that section 42 of the Croatian Associations Act provides that members of an association, after having exhausted the relevant means of redress within the association, may bring a civil action with a view to protecting their rights stipulated in the association's statute. Thus, Croatian law not only mentions but also affords judicial protection to the members' rights stemming from the statute of the association to which they belong (see *Lovrić*, cited above, § 52).

13. The Court further reiterates that the right to hunt is a "civil right" within the meaning of Article 6 of the Convention (see *Könkämä and 38 Other Saami Villages v. Sweden*, no. 27033/95, Commission decision of 25 November 1996, Decisions and Reports (DR) 87, p. 85 *in fine*). It therefore finds that the civil limb of Article 6 § 1 of the Convention is applicable to the civil proceedings in the present case.

14. The Government objected that the application was inadmissible for being premature. In particular, they argued that the main reason for which the applicant had sought to declare null and void the association's decisions imposing on him the hunting prohibition was to obtain compensation for the damage he had suffered on that account. Therefore, the former claim constituted a means to obtain compensation from the association. However, the proceedings concerning his compensation claim were still pending before the domestic courts (see paragraph 9 above).

15. The Court notes that the validity of the association's decisions constituted a preliminary issue in the determination of the applicant's compensation claim, and that the domestic courts already determined that issue by a final decision (see paragraphs 5-6 and 8 above). Under Croatian law, civil courts are bound by a final and binding decision on a preliminary issue (see *Gurdulić and Others v. Croatia* (dec.), no. 5076/09, § 64, 8 April 2014), as evidenced by the domestic courts' findings so far on the applicant's compensation claim (see paragraph 9 above). In these circumstances, the Court finds that the Government did not provide convincing reasons, nor did they rely on any domestic case-law to substantiate their argument that the applicant, by pursuing his action for compensation, could obtain an effective access to a court regarding the disciplinary measure in question. It follows that the Government's objection as to the admissibility must be rejected.

16. The Court notes that the present application 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.

## II. MERITS

17. The general principles concerning the right of access to a court under Article 6 § 1 of the Convention in matters of membership of an association have been summarised in *Lovrić* (cited above, §§ 51, 55, 69 and 71-73). In particular, the right of access to a court is not absolute and may be subject to limitations that do not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim pursued (ibid., § 69).

18. In the present case the Government argued that the interference with the applicant's right of access to a court was proportionate to the legitimate aim pursued, i.e., the respect for the autonomy of associations. This was so because the disciplinary measure imposed on him had been of a mild nature: he had remained a full member of the association and the temporary hunting prohibition had not affected other rights and obligations arising from his membership. The impugned measure therefore had not represented an unreasonable and excessive restriction violating the very essence of the applicant's right of access to a court.

19. The Court finds that the restriction on the applicant's right of access to court by the domestic courts' finding that they had no jurisdiction to examine the validity of the impugned decisions of the association pursued the legitimate aim of respect for the autonomy of associations (see also *Lovrić*, cited above, § 71). It reiterates that, in order to respect the organisational autonomy of associations, the scope of judicial review may be restricted, even

to a significant extent, but that access to a court cannot, as a rule, be completely excluded (see *Lovrić*, cited above, § 73). Yet, in the present case the applicant, who contested a disciplinary measure against him for being in breach of the association's statute, was completely denied access to court.

20. While the Court accepted that judicial review may be entirely excluded for some minor breaches of an association's statute or internal regulations (see, for example, *Bilan v. Croatia* (dec.), no. 57860/14, §§ 29-31, 20 October 2020, where the measure imposed on the applicant was not of a disciplinary nature and did not affect her rights and obligations stemming from her membership in an association), the disciplinary measure imposed on the applicant in the present case deprived him of the right to hunt for a period of two years. This right represents an essential aspect of membership in a hunting association and is arguably the primary reason for joining it. The complete exclusion of the applicant's access to court to contest the impugned decisions of the hunting association therefore cannot be considered as proportionate to the legitimate aim pursued and impaired the very essence of the right of access to court.

21. There has accordingly been a violation of Article 6 § 1 of the Convention.

## APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

23. The Government contested this claim.

24. The Court notes that under domestic law the applicant may request reopening of the civil proceedings in respect of which it has found a violation of the Convention and considers that in the given circumstances the most appropriate form of redress would be to reopen those proceedings in due course (see *Lovrić*, cited above, §§ 76-77). The Court further finds that the applicant must have sustained non-pecuniary damage which cannot be sufficiently compensated for by the reopening of the proceedings. Making its assessment on an equitable basis, the Court awards the applicant EUR 4,000, plus any tax that may be chargeable.

25. The applicant did not submit a claim in respect of costs and expenses incurred before the domestic courts and/or the 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 application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds,*
   (a) that the respondent State is to pay the applicant, within three months, EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 17 June 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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| Dorothee von Arnim<br>Deputy Registrar | Jovan Ilievski<br>President |