

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

SECOND SECTION

CASE OF HRABAR v. CROATIA

(Application no. 61680/19)

JUDGMENT

STRASBOURG

12 November 2024

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



In the case of Hrabar v. Croatia,

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

Lorraine Schembri Orland*, President*,
Frédéric Krenc,
Davor Derenčinović*, judges*,
and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 61680/19) 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 19 November 2019 by a Croatian national, Ms Ankica Hrabar ("the applicant"), who was born in 1966, lives in Trogir and was represented by Ms S. Marković and Mr T. Biuk, lawyers practising in Zagreb and Split, respectively;

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

the parties' observations;

the decision to reject the Government's objection to the examination of the application by a Committee;

Having deliberated in private on 15 October 2024,

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

SUBJECT MATTER OF THE CASE

1. The application concerns the applicant's claim for compensation for the damage sustained in a road traffic accident caused by a muddy road, claim which was eventually dismissed because she had sued two public road companies instead of the local authorities.

2. In particular, on 28 June 1993 the applicant had a road traffic accident in Trogir in which she sustained a spine injury resulting in 100% disability.

3. On 6 January 1994 she brought a civil action for compensation before the Split Municipal Court against the national roads company Croatian Roads seeking compensation for the damage sustained in that accident. She submitted that the defendant had been responsible for the accident since it had not maintained the road which had been covered with mud, making it slippery and causing the accident. In particular, she relied on section 19 of the Roads Act, in force at the material time, which provided that Croatian Roads were responsible for the maintenance of public roads and were liable for the damage caused by the state of a public road.

4. The defendant argued that cleaning of a public road in towns was not its responsibility but that of the local authorities. It relied on (a) section 23 of the Roads Act which provided that the part of a public road passing through a settlement had to be maintained as an integral part of a public road, save for its cleaning, and (b) section 2 of the Public Utilities Act, in force at the

material time, which provided that the cleaning of roads in settlements was a public utility service for which the relevant local authorities were responsible.

5. During the proceedings the public company Croatian Roads was, due to legislative changes, split into two separate companies, Croatian Roads and Croatian Highways, which automatically became (co-)defendants in the proceedings.

6. After several remittals, by the judgments of the Split Municipal Court of 6 February 2007 and 27 January 2010, modified by the judgments of the Split County Court of 11 September 2009 and 30 January 2012, the defendants were ordered to pay the applicant: (i) 944,000 Croatian kunas (HRK; 125,290 euros (EUR)) as compensation for non-pecuniary damage together with the statutory default interest accrued from the date of the judgment, (ii) HRK 308,015 (EUR 40,881) as compensation for pecuniary damage for the care and assistance of another person in the period between 1 November 1994 and 31 October 2005 together with the accrued interest running from every monthly instalment, (iii) HRK 17,500 (EUR 2,323) as compensation for pecuniary damage for the care and assistance of another person in the period between 1 November 2005 and 31 May 2006, (iv) HRK 3,500 (EUR 465) per month as annuity for the care and assistance of another person from 1 June 2006, (v) HRK 14,796.09 (EUR 1,964) as pecuniary damage for the destroyed car, and (vi) HRK 8,000 for other pecuniary damage (costs of medical treatment and ruined clothes). The defendants were also ordered to pay the applicant HRK 299,737.02 (EUR 39,782) for the costs of the proceedings.

7. Those courts held that the accident had occurred due to a failure in road maintenance and not because of a failure in road cleaning. In particular, they held that at the place where the accident had happened there was a permanent risk of mud being brought on the road because of the undefined and unprotected edge between the road and the roadside consisting of soil where lorries used to stop and park. The defendants were therefore liable for the damage resulting from that technical shortcoming.

8. The judgments in question were final (binding and effective) and enforceable under domestic law. The first defendant therefore paid the judgments debt and started paying the annuity awarded in point (iv) of those judgments (see paragraph 6 above).

9. Following appeals on points of law by the defendants, by two judgments of 14 May 2013 the Supreme Court reversed the Municipal and the County Court's judgments – save for point (iii) which it could not examine for formal reasons (the value of the claim did not exceed the statutory threshold) – and dismissed the applicant's action.

10. In its judgments the Supreme Court stated that the lower courts had established that the damage had occurred by a failure in road cleaning whereas, as mentioned above (see paragraph 7), those courts actually established that the cause of the damage was a failure in road maintenance.

On the basis of this assessment, the Supreme Court held that the lower courts had misapplied the relevant substantive law when finding the defendants liable for the damage caused by a failure in road cleaning. In particular, it held that, since the accident had occurred in the part of a public road passing through the town of Trogir, the exception provided in section 23 of the Roads Act was applicable, which meant that, pursuant to section 2 of the Public Utilities Act, the Trogir Township, and not the defendants, had been liable for the damage (see paragraph 4 above).

11. The defendants were notified of the Supreme Court's judgments only on 25 September 2015. As a result, the applicant had been receiving the annuity awarded in point (iv) of the Municipal and the County Court's judgments until October 2015 (see paragraphs 6 and 8 above). She received in total HRK 98,000 (EUR 13,007) on that account.

12. On 8 May 2019 the Constitutional Court dismissed the applicant's subsequent constitutional complaints, and on 24 May 2019 notified her representative of its decision.

13. Meanwhile, on 26 October 2015 Croatian Roads brought a civil action for unjust enrichment against the applicant asking the court to order her to pay back HRK 446,720, the amount corresponding to the costs of the proceedings she had received on the basis of the lower courts' judgments reversed by the Supreme Court's judgments (see paragraphs 6 and 9 above), and the accrued statutory default interest. Those proceedings have been at a standstill since 10 May 2019 with a view to attempting to reach a friendly settlement.

14. Before the Court the applicant complained that the Supreme Court's judgments dismissing her civil action on the ground that she had directed it against two public road companies rather than against the Trogir Township, had been in breach of her rights under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 thereto.

THE COURT'S ASSESSMENT

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

15. 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.

16. It further notes that the sole reason relied on by the Supreme Court for reversing the lower court's judgments and dismissing the applicant's action was that she had not directed it against the proper defendant. While the lower courts held that the two public road companies had been liable for the damage sustained in the road traffic accident, the Supreme Court held that only the local authorities could have been held liable for the damage in question (see paragraphs 6-10 above).

17. It follows that the applicant's compensation claim ultimately was not subject to a genuine examination as the Supreme Court dismissed it without touching upon the substance of the dispute. The case therefore raises an issue as to whether the applicant was denied access to a court (see, *mutatis mutandis*, *Spasovski v. the former Yugoslav Republic of Macedonia*, no. 45150/05, §§ 29-33, 10 June 2010, and *Kostadin Mihaylov v. Bulgaria*, no. 17868/07, §§ 37-43, 27 March 2008).

18. The Court further reiterates that a "denial of justice" may result from a decision for which no reasons are provided or in which the reasons given are based on a manifest factual or legal error (see *Moreira Ferreira v. Portugal* (no. 2) [GC], no. 19867/12, § 85, 11 July 2017).

19. In the instant case the lower courts found the two public roads companies liable for the damage sustained by the applicant as they established that the accident had occurred due to a failure in road maintenance and not because of a failure in road cleaning (see paragraph 7 above).

20. However, the Supreme Court in its judgments made a mistake and misrepresented those findings by the lower courts by stating that they had established that the damage had occurred by a failure in road cleaning. On that basis it overturned their judgments for wrong application of substantive law (see paragraph 10 above). Because of this manifest factual error, the applicant's civil action was, after almost 20 years, dismissed because she had sued the wrong defendant, which resulted in a "denial of justice" and rendered the proceedings unfair.

21. This also impaired the very essence of the applicant's right of access to a court because at that time she could no longer successfully bring a new civil action against the Trogir Township as the five-year absolute statutory limitation period had elapsed. Nor could she at that stage amended her civil action by joining or substituting the defendant(s).

22. The foregoing considerations are sufficient for the Court to conclude that there has been a violation of Article 6 § 1 of the Convention in the present case.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

23. The applicant raised the same complaint as the one examined above also under Article 1 of Protocol No. 1 to the Convention (see paragraph 14 above).

24. 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 question raised by the case and that there is no need to examine this remaining complaint (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

25. The applicant claimed 180,500 euros (EUR) in respect of pecuniary damage, which consisted of:

- the annuity awarded in point (iv) of the Municipal and the County Court's judgments the applicant would have received from October 2015 onwards (see paragraphs 6 and 11 above) if the Supreme Court had not quashed those judgments, and of the accrued statutory default interest;

- compensation for the care and assistance of another person awarded in point (iii) of those judgments in the period between 1 October 2015 and 15 January 2021.

26. The applicant also claimed EUR 335,000 in respect of non-pecuniary damage. Lastly, she claimed EUR 835 in respect of costs and expenses incurred before the Constitutional Court (see paragraph 12 above) and the same amount for those incurred before the Court.

27. The Government contested these claims.

28. The Court reiterates that under domestic law the applicant may request reopening of the civil proceedings in respect of which the Court has found a violation of the Convention and considers that in the given circumstances this is the most appropriate way for her to obtain compensation for the pecuniary damage alleged. Therefore, there is no call to award the applicant any sum on that account.

29. On the other hand, the Court awards the applicant EUR 11,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

30. As regards the costs and expenses, the Court considers it reasonable to award the applicant the sums sought, namely EUR 835 for the costs incurred before the Constitutional Court and the same amount for those incurred before the Court, plus any tax that may be chargeable to her.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 6 of the Convention admissible;

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

3. *Holds* that it is not necessary to examine the admissibility and merits of the complaint under Article 1 of Protocol No. 1 to the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts:
      (i) EUR 11,000 (eleven thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,670 (one thousand six hundred and seventy euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(a) 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;

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

Done in English, and notified in writing on 12 November 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Dorothee von Arnim Deputy Registrar	Lorraine Schembri Orland President