

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

SECOND SECTION

CASE OF HRVATIN v. CROATIA

(Application no. 15655/19)

JUDGMENT

STRASBOURG

25 June 2024

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



In the case of Hrvatin 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. 15655/19) 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 15 March 2019 by a Croatian national, Ms Milena Hrvatin ("the applicant"), who was born in 1949, lives in Tinjan and was represented by Ms I. Bojić, a lawyer practising in Zagreb;

the decision to give notice of the complaints concerning the lack of access to a court, breach of the principle of equality of arms, lack of an oral hearing and lack of reasoning 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 4 June 2024,

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

SUBJECT MATTER OF THE CASE

1. The application concerns the applicant's inability to effectively challenge the findings of an inspection on which the decision removing her from a post of director was based.

2. The applicant was the director of a social care home for adults with mental disorders. An inspection carried out in December 2010 established several irregularities in the functioning of the institution most of which concerned employment-related issues.

3. On the basis of those findings the Ministry of Health and Social Care, by a decision of 14 January 2011, ordered measures aimed at removing those irregularities.

4. The applicant and the administrative board of the institution considered that the inspection had exceeded its powers by finding irregularities in respect of employment-related issues, which were outside its purview and for which labour inspection was responsible. They also considered that certain factual findings of the inspection had been inaccurate. The applicant and the administrative board therefore decided to comply with the Ministry's decision only partially, by implementing five out of eleven ordered measures. They also decided to ask the Ministry to postpone the implementation of the

remaining measures in respect of which they intended to challenge the Ministry's decision before the Administrative Court (see paragraph 7 below).

5. By a decision of 21 November 2011, the Ministry removed the applicant from her post on account of the irregularities established by the inspection and the failure to fully comply with its earlier decision. It also appointed a new director.

6. The applicant then instituted two sets of judicial-review proceedings against the Ministry's decisions.

I. THE FIRST SET OF PROCEEDINGS

7. On 21 February 2011 the applicant, while she was still director, brought an action for judicial review in the Administrative Court on behalf of her institution against the Ministry's decision of 14 January 2011 (see paragraphs 3-4 above). She challenged certain factual findings of the inspection and argued that it had exceeded its powers by finding irregularities in respect of employment-related issues (see paragraph 4 above).

8. On 8 December 2011 the new director of the institution (see paragraph 5 above) withdrew the action for judicial review brought by the applicant. Consequently, on 12 December 2012 the Administrative Court discontinued the proceedings. The contested decision of the Ministry thereby became final.

9. The applicant then, as an interested party, lodged a constitutional complaint against the decision on discontinuation, and a request for reopening of the proceedings. She submitted that the lawfulness of the Ministry's decision of 14 January 2011 and of the underlying findings of the inspection was a preliminary issue in the second set of judicial-review proceedings she had in the meantime instituted against the Ministry's decision on her removal (see paragraphs 5 and 12-19 below).

10. On 29 May 2013 the Constitutional Court declared inadmissible the applicant's constitutional complaint finding that the case did not raise a constitutional issue, and on 14 June 2013 notified her representative of its decision.

11. On 19 June 2013, the Administrative Court, which in the meantime became the High Administrative Court, declared the applicant's request for reopening inadmissible. It held that she was not an interested person, which the relevant legislation defined as a person to whom the quashing of the contested decision would have been detrimental. The court added that its decision did not in any way prejudge the outcome of the second set of judicial-review proceedings in which the applicant would be able to advance all her arguments.

II. THE SECOND SET OF PROCEEDINGS

12. Meanwhile, on 16 December 2011, the applicant brought an action for judicial review against the Ministry's decision removing her from the post of director (see paragraph 5 above). She again pointed to the same shortcomings in the inspection whose findings were the basis for her removal (see paragraphs 4-5 and 7 above).

13. While the proceedings were pending, the applicant proposed that an oral hearing be held and submitted certain evidence, notably (a) two decisions of the Pazin Minor Offences Court of 24 October 2011 and 1 July 2014 whereby she, the social care home and the members of its administrative board had in minor-offence proceedings against them been found not guilty of the failure to fully implement the measures ordered by the Ministry's decision of 14 January 2011 (see paragraph 3 above), and (b) the minutes of 30 June 2014 of one of those minor-offence proceedings containing testimony of one of the inspectors that there had actually been no irregularities in the functioning of the institution and that the inspection had indeed exceeded its powers.

14. By a judgment of 15 April 2015, the High Administrative Court dismissed the applicant's action finding that the Ministry had been entitled to remove her from the post of director for her partial failure to comply with the measures ordered by the Ministry's earlier decision of 14 January 2011. It further held that the applicant's arguments calling into question the lawfulness of that decision, and the underlying findings of the inspection, could not be examined because that decision had become final (see paragraphs 3 and 8 above). The court also refused to examine any evidence proposed by the applicant because it had been submitted outside of the thirty-day statutory time-limit for bringing an action for judicial review.

15. The applicant then, in July 2015, simultaneously lodged a constitutional complaint against the High Administrative Court's judgment and a request for reopening of the proceedings.

16. In her constitutional complaint the applicant submitted that she had not had access to a court, that the principle of equality of arms had been breached, that no oral hearing had been held, and that the contested judgment lacked reasoning.

17. In her request for reopening, based on new facts and evidence, the applicant relied on the same evidence submitted earlier in the proceedings (see paragraph 13 above) and on another decision of the Pazin Minor Offences Court that had been adopted in the meantime.

18. On 21 October 2015 the High Administrative Court declared the applicant's request for reopening inadmissible. It held that new facts or evidence on the basis of which judicial-review proceedings could be reopened had to concern facts established by the court in such proceedings. However, in the applicant's case the court had not established any facts itself but had

relied on the facts established by the Ministry in the contested decision of 21 November 2011.

19. On 25 October 2018, the Constitutional Court dismissed the applicant's constitutional complaint and on 6 November 2018 notified her representative of its decision.

III. COMPLAINTS

20. Before the Court the applicant complained, relying on Article 6 § 1 of the Convention, that in the second set of judicial-review proceedings she had not had the benefit of an effective review by a judicial body, that the principle of equality of arms with regard to the admission of evidence had not been observed, that there had been no oral hearing, and that the High Administrative Court's judgment had lacked reasoning.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE LACK OF ACCESS TO A COURT

A. Admissibility

21. The Government argued that the applicant had failed to comply with the six-month time-limit under Article 35 § 1 of the Convention as applicable at the relevant time. In particular, they submitted that she had essentially sought to challenge the findings of the inspection on which the decision on her removal was based. However, those findings could have been challenged only in the first set of the judicial-review proceedings which had ended on 14 June 2013 (see paragraphs 7-10 above) whereas the applicant had lodged her application with the Court on 15 March 2019, that is, more than six months later.

22. The Court finds it evident that all complaints by the applicant concern only the second set of proceedings which ended on 6 November 2018 (see paragraphs 12-20 above). The issue whether in the given circumstances the findings of the inspection could or should have been examined in those or only in the first set of judicial-review proceedings is a matter that concerns the merits of the applicant's complaint regarding the lack of effective access to a court. The Government's objection must therefore be rejected.

23. The Court further notes that the applicant, as a director of a social care home, participated in the exercise of powers conferred on her by public law. Given the fact that national law expressly allowed access to a court against the decision on her removal, the Court finds that Article 6 § 1 of the Convention is applicable to the proceedings in question (see *Vilho Eskelinen*

and Others v. Finland [GC], no. 63235/00, §§ 61-62, ECHR 2007-II). This was not contested by the Government.

24. The Court further finds 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.

B. Merits

25. The relevant principles concerning the extent of judicial review required by Article 6 § 1 of the Convention are set out in *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. 55391/13 and 2 others, §§ 176-186, 6 November 2018). In particular, Article 6 § 1 of the Convention requires a court or tribunal to have "full jurisdiction" and to carry out an effective judicial review namely, to examine all questions of fact and law that are relevant to the dispute before it (see *Ramos Nunes de Carvalho e Sá*, cited above, §§ 176-177, and *Obermeier v. Austria*, 28 June 1990, § 70, Series A no. 179).

26. In the present case the applicant by her second action sought to challenge the Ministry's decision of 21 November 2011. By that decision she had been removed from the post of director of the social care home because of her failure to fully comply with the Ministry's earlier decision of 14 January 2011 (see paragraphs 5 and 12 above). By that earlier decision the Ministry ordered several measures aimed at removing the irregularities in the functioning of the social care home established by the inspection carried out in December 2010 (see paragraphs 2-3 above). The applicant considered that there had been certain shortcomings in the inspection and that some of the ordered measures had therefore been unlawful (see paragraphs 4, 7 and 12 above).

27. The lawfulness of those measures, and of the underlying findings of the inspection, was therefore a preliminary issue of decisive importance for the lawfulness of the applicant's removal from the post of director.

28. Yet, when examining the applicant's second action for judicial review, the High Administrative Court considered that it was precluded from examining those decisive issues raised by the applicant because the Ministry's earlier decision of 14 January 2011 had become final (see paragraph 14 above).

29. Such reasoning would have been in compliance with Article 6 § 1 of the Convention had that earlier decision by the Ministry been subject to an effective review by a court. However, that decision was never subject to such review and became final only because the action which the applicant had brought against it on behalf of the social care home was subsequently withdrawn by the home's new director (see paragraph 8 above).

30. It follows from the foregoing (see paragraphs 25-29 above) that the applicant was unable, through no fault of her own, to effectively challenge

before the courts the Ministry's decision removing her from the post of director. That situation was in breach of her right of access to a court.

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

II. OTHER ALLEGED VIOLATIONS OF ARTICLE 6 § 1 OF THE CONVENTION

32. The applicant also raised other complaints under Article 6 § 1 of the Convention (see paragraph 20 above). Having regard to the facts of the case, the submissions of the parties, and its findings above, the Court considers that those complaints are to be considered absorbed by the applicant's access-to-court complaint. The Court therefore considers that it has dealt with the main legal question raised by the case and that there is no need to examine those 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

33. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage and 26,000 Croatian kunas (HRK), the equivalent of EUR 3,450, in respect of costs and expenses incurred before the Court.

34. The Government contested these claims.

35. The Court notes that under domestic law the applicant may request reopening of the judicial-review 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 of repairing the consequences of that violation. Having regard to the possibility of reopening, the Court awards the applicant EUR 6,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

36. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 2,130 for costs and expenses in the proceedings before the Court, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning the lack of access to a court admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the lack of access to a court;

3. *Holds* that there is no need to examine the admissibility and merits of the remaining complaints under Article 6 § 1 of the Convention;

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months, the following amounts:

(i) EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 2,130 (two thousand one hundred and thirty 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;

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

Done in English, and notified in writing on 25 June 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Dorothee von Arnim Deputy Registrar	Lorraine Schembri Orland President