

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

SECOND SECTION

CASE OF ŠATVAR v. CROATIA

(Application no. 20497/19)

JUDGMENT

STRASBOURG

22 October 2024

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



In the case of Šatvar 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. 20497/19) 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 9 April 2019 by a Croatian national, Mr Zlatko Šatvar ("the applicant"), who was born in 1949 and lives in Zagreb, and who was represented by Mr I. Rošić, a lawyer practising in Zagreb;

the decision to give notice of the complaint concerning the lack of a reasoned judgment to the Croatian Government ("the Government"), represented by their Agent, Ms Š. Stažnik, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 1 October 2024,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the fairness of civil proceedings which the applicant instituted against his employer.

2. The applicant, who was a trade union member at the material time, was dismissed from work on 25 April 2008 without the requisite consent of the relevant trade union.

3. The applicant then challenged his dismissal in court, but ultimately withdrew his civil action after his dismissal had been revoked by the employer's decision dated 27 January 2009 ("the 2009 decision"). The latter was issued by D.T., who was at the material time registered as the temporary manager of the employer company. D.T. had been appointed *ex officio* by the competent commercial court, and was entitled to represent the employer company solely and independently until the company named a manager in accordance with its statute.

4. However, after the 2009 decision had been issued, the employer prohibited the applicant from entering the work premises and prevented him from returning to work, so the applicant lodged another civil action against the employer, claiming salary arrears and damages and seeking judicial termination of his employment contract. He argued that he had not received his salary since 26 April 2008, even though his dismissal had been revoked

by the 2009 decision. He did not state that he had challenged his dismissal in court (see paragraph 2 above).

5. The employer maintained that the 2009 decision had been invalid because D.T. had not been entitled to issue it.

6. By a judgment of 18 October 2012, the Zagreb Municipal Labour Court dismissed the applicant's claim. The court found that D.T. had not been entitled to represent the employer at the material time, although he had been registered as its representative. This was so because the company had appointed two other management board members prior to D.T.'s appointment, which had been entered in the court register after the 2009 decision had been issued. Given that the entry in the court register was only declaratory in nature, and that the employer had validly appointed two other board members beforehand, in the court's view the 2009 decision had been invalid and the applicant's dismissal had remained in force. The court also deemed it undisputed that the applicant had never challenged his dismissal in court.

7. In his appeal, the applicant challenged the first-instance court's finding as to the validity of the 2009 decision, maintaining that, at the material time, D.T. had been the only person recorded in the court register entitled to represent the employer, and that he or any third persons had had no knowledge of the appointment of other management board members.

8. On 5 February 2013 the Zagreb County Court dismissed the applicant's appeal and upheld the first-instance judgment, noting that the validity of the 2009 decision was irrelevant. In particular, since the applicant had never challenged his dismissal in court, his employment had been terminated and the employer, regardless of who had represented it at the material time, could not have adopted a decision revoking the dismissal.

9. The applicant then lodged an appeal on points of law, challenging again the first-instance court's finding as to the validity of the 2009 decision and stressing that D.T. had been the only person recorded in the court register entitled to represent the company, and that neither he nor any third persons had had knowledge of the appointment of other management board members. He also deemed unacceptable the courts' finding that he had not challenged his dismissal, noting that in fact he had brought such a civil action, but had withdrawn it (see paragraph 3 above) after having received the 2009 decision. In any event, in the applicant's view, that fact was immaterial for the resolution of the dispute in question.

10. By its judgment of 4 July 2017, the Supreme Court dismissed the applicant's appeal on points of law. Since the entry in the court register concerning the change of a management board member was declaratory in nature, the fact that D.T. had been registered as the employer's sole director at the material time was irrelevant. The company's supervisory board had appointed two other board members beforehand and D.T. had thus not been entitled to issue the 2009 decision, which meant that the applicant's dismissal

had remained in force. The lower courts had therefore not erred in their finding that his employment contract had been terminated. The Supreme Court also noted that, since the applicant had mentioned that he had challenged his dismissal only in his appeal on points of law, the Supreme Court was precluded from examining that fact.

11. In his constitutional complaint, the applicant complained that the domestic courts' decisions had been arbitrary. While it was not disputed that the entry into the court register was declaratory in nature, the domestic courts failed to consider the *bona fide* principle provided for in section 66 of the Commercial Companies Act, according to which any person could refer to the status of an entry in the register regarding legally relevant information, unless aware that the actual status concerning that information differed from the status in the register, and could not suffer adverse consequences for having done so. Had it been otherwise, the applicant would not have relied on the status of the entry concerning D.T.'s entitlement to issue the 2009 decision and would not have withdrawn his civil action challenging the dismissal (see paragraph 3 above).

12. The Constitutional Court declared inadmissible the applicant's constitutional complaint by a decision of 18 December 2018, of which the applicant's representative was notified on 18 January 2019. It held that the Supreme Court had given relevant and sufficient reasons for its decision, which had not been arbitrary.

13. Meanwhile, by a final judgment of 20 March 2012, the manager who had dismissed the applicant was sentenced in criminal proceedings for abuse of the applicant's employment rights in that he had unlawfully dismissed the applicant without seeking consent from the relevant trade union.

14. Before the Court, the applicant complained, under Article 6 § 1 of the Convention, that the domestic courts' decisions were arbitrary and that the courts failed to give a reasoned judgment in his case. In particular, they failed to consider the legal effect of an entry in the court register on a third party acting in good faith.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

A. Admissibility

15. The Government raised several inadmissibility objections. In particular, they argued that before the domestic courts the applicant had failed to mention in time that he had challenged his dismissal but had withdrawn his civil action on account of the 2009 decision. He had thus limited the impugned civil proceedings to the determination of whether his dismissal had become final, in which case it could no longer have been revoked, regardless

by whom. However, had he presented these facts to the domestic courts, they would have had to determine if, in withdrawing his action, he had acted in good faith. Only in that case would they have been able to apply the *bona fide* principle in respect of the information entered in the register. In light of these considerations, the complaint was manifestly ill-founded and/or of a fourth-instance nature. Alternatively, the applicant could not claim to be a victim of the alleged violation, as solely he was responsible for the fact that the domestic courts did not take the *bona fide* principle into account by having failed to inform the courts in a timely manner of his action taken in good faith, namely the bringing and withdrawal of the civil action challenging his dismissal.

16. The Court finds that these objections are inextricably linked to the merits of the applicant's complaint and should therefore be joined to the merits.

17. 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.

B. Merits

18. The general principles concerning the right to a reasoned judgment have been summarized in *Zayidov v. Azerbaijan* (no. 2), no. 5386/10, § 91, 24 March 2022. In particular, without requiring a detailed answer to every argument, the obligation to give reasons presupposes that parties to judicial proceedings can expect to receive a specific and explicit reply to the arguments which are decisive for the outcome of those proceeding (ibid.).

19. In the present case, the first-instance court considered the validity of the 2009 decision decisive for the outcome of the proceedings in question, concluding that the applicant's dismissal had remained in force because the 2009 decision had been invalid (see paragraph 6 above). The second-instance court took a different stance, holding that the validity of the 2009 decision was irrelevant as in any event the applicant's employment contract had been irrevocably terminated by his dismissal which he had failed to challenge in court (see paragraph 8 above), a conclusion in support of which the Government provided domestic case-law (see the Supreme Court's judgment and decision no. Revr 165/2004 of 15 November 2006 and judgment no. Revr 1292/2011 of 23 December 2013).

20. However, the Supreme Court did not follow the appeal court's reasoning and went to examine the validity of the 2009 decision. Having found that D.T. had not been entitled to issue that decision, the Supreme Court confirmed the lower courts' judgments that the applicant's claim should be dismissed (see paragraph 10 above).

21. In these circumstances, the Court is not convinced by the Government's argument that, due to the applicant's failure to mention that he

had challenged his dismissal earlier, the proceedings had been limited to establishing whether the decision on dismissal could have been revoked by the employer, as suggested by the second-instance court (see paragraphs 8 and 15 above). To the contrary, the applicant's failure to mention his earlier civil action seems to have become irrelevant since the civil court of last instance – in this case, the Supreme Court – dismissed the applicant's claim on the basis of the finding that the 2009 decision had been invalid because D.T. had not been entitled to issue it. The Court's task is thus to examine whether in doing so, the Supreme Court had provided sufficient reasons, as required by Article 6 of the Convention (see paragraph 18 above).

22. In the present case, the domestic courts found that the entry in the court register had been only declaratory, meaning that notwithstanding their belated registration the two other management board members had still been validly appointed, which rendered the 2009 decision quashing the applicant's dismissal invalid. At the same time, the courts did not pay any heed to the applicant's specific, pertinent and important point consistently raised before the domestic courts (see paragraphs 7 and 9 above), that D.T. had been the only person entitled to solely and independently represent the company entered into the court register, and that he had had no knowledge of any other person being appointed to that position.

23. In the Court's view, the applicant's argument was different from that concerning the nature of an entry into the court register, and in essence concerned the reliance on the information in the court register, one of the general principles of Croatian company law enshrined in section 66 of the Commercial Companies Act, which provides that anyone acting in good faith must be able to rely on the information entered in that register. The foregoing is also supported by the case-law relied on by the applicant, according to which the declaratory nature of the registration in the court register did not exclude the principles of publicity or of the reliance on the information entered into the court register, except for the persons who knew or must have known that the entry did not correspond to reality (see Supreme Court judgment Rev-579/2007 of 20 June 2007 and the judgment of the Varaždin County Court Gž-765/2019 of 12 June 2019, in which the domestic courts, having found that the relevant persons had known that the entries in the court register had not corresponded to reality, applied the principle of the declaratory nature of the entry in the court register, expressly dismissing their reliance on the *bona fide* principle).

24. The Court reiterates that it is not its task to take the place of the domestic courts. It is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation. The Court is not a court of appeal from the national courts and it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *Ramos Nunes de Carvalho e Sá v. Portugal* [GC],

nos. 55391/13 and 2 others, § 186, 6 November 2018, with further references therein). It is thus not for the Court to determine whether D.T. had been entitled to issue the 2009 decision or whether the applicant knew or ought to have known about the appointment of other management board members, it being for the national courts to determine questions of that nature. However, the Court cannot but note that the applicant's argument that he had acted in good faith relying on the entry into the relevant public register could have been decisive for the outcome of the case (see paragraphs 21 and 23 above, and, *mutatis mutandis*, *Hiro Balani v. Spain*, 9 December 1994, § 28, Series A no. 303-B). In the present case, however, the domestic courts never even entertained the applicant's good faith argument, let alone sought to establish the relevant facts.

25. In conclusion, given the absence of any reply to the decisive legal issue in the case (compare, for instance, *Mont Blanc Trading Ltd and Antares Titanium Trading Ltd v. Ukraine*, no. 11161/08, § 84, 14 January 2021), the civil court judgments issued in the applicant's case had not been properly reasoned.

26. The Court accordingly rejects the Government's inadmissibility objections previously joined to the merits (see paragraphs 15-16 above) and finds that there has been a violation of Article 6 § 1 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. The applicant claimed pecuniary damage in the total amount of 254,853.14 Croatian kunas (HRK; approximately 33,825 euros (EUR)), increased by default interest, corresponding to the value of the salary arrears and lost profits. He did not claim non-pecuniary damage. Lastly, he claimed HRK 6,250 (approximately EUR 830) for the costs and expenses incurred before the Constitutional Court and HRK 12,500 (approximately EUR 1,660) for those incurred before the Court.

28. The Government contested these claims.

29. Since in the present case the Court found a violation of Article 6 § 1 of the Convention on account of the lack of a reasoned judgment (see paragraphs 19-26 above), it cannot speculate as to what would have been the outcome of the proceedings in question had the domestic court judgments been properly reasoned. Having regard to the possibility under section 428a of the Croatian Civil Procedure Act for the applicant to seek the reopening of those proceedings, the Court rejects the applicant's claim in respect of pecuniary damage (see, *mutatis mutandis*, *Project-Trade d.o.o. v. Croatia*, no. 1920/14, §§ 110-111, 19 November 2020).

30. As to the costs and expenses, the Court considers it reasonable to award the applicant EUR 830 for those incurred before the Constitutional Court, plus any tax that may be chargeable to him. As to the costs and

expenses incurred before it, the Court considers it reasonable to award the applicant EUR 1,660, plus any tax that may be chargeable to him.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join to the merits the Government's inadmissibility objections and rejects them;

2. *Declares* the application admissible;

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

4. *Holds,*
   (a) that the respondent State is to pay the applicant, within three months, EUR 2,490 (two thousand four hundred ninety 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 amount 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 22 October 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Dorothee von Arnim Deputy Registrar	Lorraine Schembri Orland President