

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

SECOND SECTION

CASE OF ŠPLAJT v. CROATIA

(Application no. 963/18)

JUDGMENT

STRASBOURG

9 April 2024

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



In the case of Šplajt 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. 963/18) 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 30 December 2017 by a Croatian national, Mr Vladimir Šplajt ("the applicant"), who was born in 1957 and lives in Osijek and who was granted leave to represent himself in the proceedings before the Court;

the decision to give notice of the complaints concerning freedom of expression, impartiality and length of proceedings 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 12 March 2024,

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

SUBJECT MATTER OF THE CASE

1. The application concerns the applicant's summary dismissal from work on account of his statements to the media, the alleged lack of impartiality in the subsequent civil proceedings for his reinstatement and the length of those proceedings.

2. In particular, the applicant worked as an in-house lawyer for company U. the shareholders of which are the Osijek Township and a number of smaller municipalities, and which primarily provides public utility services. He was in charge, *inter alia*, of receiving employees' complaints.

3. On 6 and 8 November 2007 two daily newspapers published articles suggesting that company U. had been breaching the employment rights of two of its employees, that its director had no time for seeing the employees and behaved arrogantly towards them, and that two of its managers and a trade union representative had been involved in criminal activities to the detriment of the company.

4. Specifically, as regards the last point, one of the articles suggested that one of the company's managers and a trade union representative had come up with a scheme whereby the company would pay premiums for their own life insurance but had eventually been caught by the company's former director whose signature they had forged. The article also suggested that another manager caused damage to the company to the tune of HRK 100,000

(EUR 13,272). The article further suggested that that manager, who was also a football referee, had defrauded the Croatian Football Association by charging excessive travel expenses.

5. The two aggrieved employees were mentioned as the source of the information concerning employment-related issues in the company (see paragraph 3 above) whereas, in one of the articles, the applicant was mentioned as the source of the information concerning alleged criminal activities (see paragraph 4 above). It is undisputed that the two employees in question contacted the newspapers but that the applicant had advised them to do so suggesting that in that way their grievances would be addressed more quickly. It is also beyond dispute that the applicant corroborated their story with his own statements and by providing relevant documents after he was himself contacted by the journalists.

6. On 21 November 2007 the applicant was summarily dismissed (*izvanredni otkaz*) because of his statements to the newspapers and for disclosing to them the above information (see paragraphs 3-4 above), which were regarded as being false and damaging to the company's business reputation.

7. On 27 November 2007 the applicant lodged a criminal complaint with the relevant State Attorney's Office regarding the criminal activities in the company (see paragraph 4 above). On 20 February 2013 the case was closed because the information collected through police inquiries had not given rise to a suspicion that a criminal offence subject to State-assisted prosecution had been committed.

8. On 27 December 2007 the applicant brought a civil action for wrongful dismissal against the company in the Osijek Municipal Court seeking reinstatement. The company lodged a counterclaim asking the court, if it found that the dismissal had been wrongful, to judicially terminate the employment (*sudski raskid ugovora o radu*) because, due to a statement the applicant had made in the period after his dismissal and which was demeaning to other employees, the continuation of his employment was no longer possible.

9. In a judgment of 22 December 2011, the Municipal Court found that the applicant's dismissal was wrongful. In particular, it held that the applicant, in the exercise of his freedom of expression, had disclosed information in the public interest with a view to informing the public of the irregularities in a public company, and that the company had not proved that in his communication with the media he had deliberately given false information. At the same time, the court allowed the company's counterclaim and judicially terminated his employment with the effect from 7 December 2011. As a consequence, the applicant was awarded salary arrears and a compensation corresponding to ten monthly salaries.

10. Following appeals by both parties, by a judgment of 22 November 2012 the Osijek County Court overturned the first-instance judgment. It held

that the applicant's dismissal had not been wrongful and therefore dismissed both his action and the company's counterclaim. It held that employees had a duty of loyalty and that his depiction of the company in the media in a negative light had been a valid reason for his dismissal.

11. On 28 August 2013 the Supreme Court dismissed the applicant's subsequent appeal on points of law explicitly endorsing the reasons given by the County Court.

12. On 18 November 2013 the applicant lodged a constitutional complaint. He submitted that the civil courts' judgment had been in breach of his right to work and his freedom of expression, both guaranteed by the Croatian Constitution. He also complained of a lack of impartiality because, after his dismissal, the daughter of the Osijek County Court's president Z.V. had been employed at his job in the company, and because the president had himself been its employee in the past.

13. On 21 September 2017 the Constitutional Court dismissed the applicant's constitutional complaint, and on 2 October 2017 notified him of its decision.

14. In the period between 29 October 2013 and 3 December 2018 the applicant lodged four requests for reopening of the above civil proceedings on various grounds, three of which were rejected whereas one is still pending.

15. Before the Court, the applicant complained, under Article 10 of the Convention, that his dismissal had violated his freedom of expression. He also complained under Article 6 § 1 of the Convention about the lack of impartiality of the County Court (see paragraph 12 above) and the excessive length of the proceedings before the Constitutional Court.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

16. The general principles concerning whistle-blowers and freedom of expression in the workplace have been set out in *Guja v. Moldova* [GC], no. 14277/04, §§ 73-78, ECHR 2008, and confirmed and consolidated in *Halet v. Luxembourg* [GC], no. 21884/18, §§ 111-154, 14 February 2023.

17. It was not disputed that the applicant's dismissal on account of his communications with the press constituted an interference with his freedom of expression. That interference was based on the relevant provisions of the Labour Act and thus lawful. Furthermore, it has not been argued that the information the applicant disclosed was confidential. The interference therefore pursued the legitimate aim of protecting the reputation or rights of others, namely the business reputation and interests of company U.

18. As to whether the interference was "necessary in a democratic society", the Court reiterates that in cases concerning freedom of expression in the workplace it expects the domestic courts to weigh up the rights or

interests concerned in conformity with the criteria established in its case-law (see *Halet*, cited above, §§ 114 and 171-205), namely:

- whether or not alternative channels for the disclosure were available;
- the public interest in the disclosed information;
- the authenticity of the disclosed information;
- whether the whistle-blower acted in good faith;
- the detrimental effects of the disclosure; and
- the severity of the sanction.

19. In the present case, the domestic courts (see paragraphs 10-11 and 13 above), save for the first-instance court (see paragraph 9 above), categorically held that, because of their duty of loyalty, employees should never disclose to the media information harmful for the employer's reputation. Therefore, implying that the disclosed information had been detrimental for the business reputation of company U., those courts did not examine the case in the light of the remaining criteria.

20. Since the domestic courts therefore failed to carry out the required balancing exercise in conformity with the criteria laid down in the Court's case-law (see paragraph 18 above), the Court finds that it must undertake that balancing exercise itself as it has sufficient elements to do so.

21. In that connection the Court first notes that the applicant, *inter alia*, accused three of the staff members of the company U. of being involved in criminal activities (see paragraph 4 above).

22. The alternative channels for the disclosure of that information were available, notably, lodging of a criminal complaint. However, the applicant lodged his criminal complaint only after he had been dismissed (see paragraphs 6-7 above).

23. The Court further finds that the disclosure of the information in question, if authentic, would have been in public interest.

24. As regards the authenticity of the disclosed information and the detriment to the employer, the Court notes that the applicant's accusations, made in high-circulation daily newspapers, were undoubtedly detrimental for the business reputation and interests of the company and for the reputation of the staff members concerned. They contained specific allegations of fact, which as such were susceptible to proof, and their seriousness required substantial justification. The applicant, however, provided no evidence whatsoever for those allegations and the State Attorney found no suspicion that a criminal offence subject to State-assisted prosecution had been committed (see paragraph 7 above).

25. As regards the applicant's good faith, the Court considers that the content and the tone of his statements, coupled with the lack of any factual basis and the fact that he lodged his criminal complaint only after his dismissal, suggests that those statements were not motivated by his genuine concern to inform the public of the irregularities in the company U., but by his personal grievances.

26. Therefore, even though the applicant's dismissal was a severe sanction for his behaviour, the above considerations are sufficient for the Court to conclude that the interference with his freedom of expression was not disproportionate to the legitimate aim pursued and thus may be regarded as "necessary in a democratic society" within the meaning of paragraph 2 of Article 10 of the Convention (compare *Balenović v. Croatia* (dec.), no. 28369/07, 30 September 2010).

27. The Court therefore finds no need to examine whether the interference in question was "necessary in a democratic society" regarding the other information disclosed (see paragraph 3 above).

28. It follows that this complaint is inadmissible under Article 35 § 3 (a) of the Convention for being manifestly ill-founded and that it must therefore be rejected pursuant to Article 35 § 4 thereof.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF LACK OF IMPARTIALITY

29. The general principles concerning the impartiality of tribunals have been set out in *Micallef v. Malta* [GC], no. 17056/06, §§ 93-99, ECHR 2009, and *Morice v. France* [GC], no. 29369/10, §§ 73-78, ECHR 2015.

30. As regards the applicant's complaint concerning the alleged lack of impartiality of the Osijek County Court (see paragraph 15 above), the Court first notes that the president of that court at the relevant time, Judge Z.V., had last been employed with the company U. in 1983. Moreover, his daughter had started working there some five months after the applicant's dismissal and did not take his job, as he claimed (see paragraph 12 above).

31. More importantly, the Court notes that the judge in question did not sit in the panel which decided the applicant's appeal (see paragraph 10 above), and that there is nothing to suggest that the members of the panel were not sufficiently independent of him as the court president. On the latter point, the Court refers to its findings in *Parlov-Tkalčić v. Croatia*, no. 24810/06, §§ 78-97, 22 December 2009 to the effect that under Croatian law court presidents cannot influence the choice of judge rapporteurs or the composition of panels and that their powers cannot reasonably be viewed as running counter or having "chilling" effects on the internal independence of judges.

32. It follows that this complaint is inadmissible under Article 35 § 3 (a) of the Convention for being manifestly ill-founded and that it must therefore be rejected pursuant to Article 35 § 4 thereof.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF EXCESSIVE LENGTH OF PROCEEDINGS

33. The Court notes that the proceedings complained of lasted three years and ten and a half months, from 18 November 2013 until 2 October 2017 (see paragraphs 12-13 and 15 above).

34. It further notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

35. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicants and the relevant authorities and what was at stake for the applicants in the dispute (see *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII). It further reiterates that special diligence is necessary in employment disputes (see *Ruotolo v. Italy*, 27 February 1992, § 17, Series A no. 230-D).

36. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see, for example, *Šikić v. Croatia,* no. 9143/08, §§ 33-38, 15 July 2010).

37. Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion in the present case. In particular, while the applicant on 24 October 2014 asked the Constitutional Court to suspend the examination of the case until one of his requests for reopening was decided (see paragraph 14 above), there is nothing to suggest that the court did so. Likewise, while it is true that the civil courts referred to those reopening requests as the reason why they could not have provided the Constitutional Court with the case-file, the Court does not consider that reason justified as they could have provided a copy.

38. The Court therefore considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

39. There has accordingly been a breach of Article 6 § 1 on that account.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning the length of the proceedings admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the excessive length of the proceedings.

Done in English, and notified in writing on 9 April 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Dorothee von Arnim Deputy Registrar	Pauliine Koskelo President