

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

SECOND SECTION

CASE OF ŠTENGL v. CROATIA

(Application no. 1742/21)

JUDGMENT

STRASBOURG

27 May 2025

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



In the case of Štengl v. Croatia,

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

Gediminas Sagatys*, President*,
Davor Derenčinović,
Juha Lavapuro*, judges*,

and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 1742/21) 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 15 December 2020 by a Croatian national, Ms Suzana Štengl ("the applicant"), who was born in 1970, lives in Samobor and was represented by Mr P. Škare, a lawyer practising in Zagreb;

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

the parties' observations;

Having deliberated in private on 6 May 2025,

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

SUBJECT MATTER OF THE CASE

1. The application concerns medical negligence proceedings unsuccessfully instituted by the applicant against a hospital following her gallbladder surgery.

2. On 9 January 2003 the applicant underwent a gallbladder surgery. Between January and April 2003, the applicant underwent four more surgeries and hospitalisations.

3. On 16 June 2004 the applicant instituted civil proceedings for damages against the hospital for alleged medical negligence. The court held a number of hearings and obtained a first expert witness report which stated that an error had been committed by the doctor, without being able to specify or explain the exact mistake.

4. After four remittals, all due to insufficient establishment of facts, the court obtained a second expert report, which found that the problems following the applicant's surgery had been complications and not the consequence of any error committed by the doctors. Consequently, the applicant's claim was dismissed on 23 March 2017 by a judgment of the Novi Zagreb Municipal Court. That judgment was upheld on 21 September 2017 by the Zagreb County Court which also noted that the parties did not object to the second expert report or propose further evidence.

5. On 23 November 2017 the applicant lodged a constitutional complaint, which was dismissed by the Constitutional Court on 19 May 2020. That decision was served on the applicant's lawyer on 18 June 2020.

6. The applicant complained, under Articles 6 and 8 of the Convention, that the domestic courts had set an unattainably high standard of proof in her case, that they had failed to properly reason their decisions and that the proceedings had lasted too long.

THE COURT'S ASSESSMENT

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

7. The Court notes that in so far as the applicant's length complaint concerns the period before 13 March 2013, it is inadmissible for non-exhaustion of domestic remedies because in that period she had at her disposal effective remedies to complain of the length of the proceedings but did not use them (see *Mesić v. Croatia*, no. 19362/18, §§ 122-124, 5 May 2022, and *Mirjana Marić v. Croatia*, no. 9849/15, §§ 33-38, 30 July 2020). The Government's objection based on non-exhaustion of domestic remedies in this regard must therefore be upheld.

8. The Court further notes that after that date the proceedings complained of lasted until 18 June 2020, that is another seven years and three months before three court instances (see paragraphs 4 and 5 above).

9. It further notes that the applicant's complaint concerning this subsequent period (see paragraph 8 above) is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

10. 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).

11. 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, *Videmšek v. Slovenia*, no. 75701/01, §§ 17-19, 30 March 2006).

12. 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, the Court notes that the length of the proceedings may in part be explained by the successive remittals (see paragraph 4 above). While it is not the Court's function to analyse the manner in which the national courts interpreted and applied the domestic law, it nonetheless considers that judgments quashing previous findings and remitting the case are usually due to errors committed by the lower courts and that the repetition of such judgments may point to a shortcoming in the justice system (see *Lupeni Greek Catholic Parish and Others v. Romania* [GC],

no. 76943/11, § 147, 29 November 2016). Moreover, the Court cannot but note that after four remittals the applicant's case was pending before the Constitutional Court alone for another two years and seven months approximately, which in the circumstances cannot be deemed reasonable.

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

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

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION ON ACCOUNT OF THE CONDUCT AND OUTCOME OF THE MEDICAL NEGLIGENCE PROCEEDINGS

15. The general principles concerning the States' positive obligations under Article 8 in medical negligence cases have been summarised in *Jurica v. Croatia*, no. 30376/13, §§ 84-88, 2 May 2017). These obligations include, firstly, the need to have in place regulations compelling both public and private hospitals to adopt appropriate measures for the protection of their patients' physical integrity and, secondly, the obligation to provide victims of medical negligence with access to proceedings in which they could, where appropriate, obtain compensation for damage (ibid., § 84 and the cases cited therein).

16. The Court has already found that in Croatia there existed a proper and functioning legal framework for allegations of medical negligence both in theory and in practice (see *Jurica*, cited above, §§ 89-92).

17. In the present case the applicant's principal grievance relates to the interpretation and application of the domestic law to her case, in particular the standard of proof which the domestic courts applied in her case. In that connection, the Court recalls that it is not its role to question the interpretation of domestic law by the national courts, unless their findings can be regarded as arbitrary or manifestly unreasonable (compare, for example, *Bochan v. Ukraine (no. 2)* [GC], no. 22251/08, § 61, ECHR 2015).

18. The Court further observes that two expert witness opinions were obtained in the applicant's case (see paragraphs 3 and 4 above). The first expert opinion having contained ambiguities and contradictions, the court obtained a second expert opinion which concluded that the applicant's problems after the surgery had been possible complications and not the result of any errors committed by the doctors (see paragraph 4 above). What is more, the domestic court did not merely admit the written reports drawn up by the experts, but also allowed the parties to object to their findings, obtained additional written submissions from the first experts and heard them in open court in the presence of the parties, who were able to put questions. As noted by the County Court, the applicant neither objected to the second expert opinion, nor did she propose further evidence (see paragraph 4 above).

19. Moreover, the domestic courts duly scrutinised the expert evidence and, on the basis of all the evidence presented, dismissed the applicant's claim in well-reasoned judgments. The Court does not discern any unreasonableness on the domestic courts' part in respect of the manner in which they assessed the expert reports. The mere fact that the outcome of the proceedings in the applicant's case was unfavourable to her does not mean that the State has failed in its positive obligations under Article 8 of the Convention (see *Jurica*, cited above, § 88).

20. In view of the foregoing, the Court is satisfied that the applicant was afforded sufficient procedural opportunities to prove that her health problems were entirely or in part the result of medical malpractice. To the extent that it could be considered that the effectiveness of the proceedings was undermined by their excessive length (see paragraphs 12 and 13 above), the Court considers that in the circumstances of the present case that aspect was sufficiently addressed in its finding under Article 6 § 1 of the Convention (see paragraph 14 above, and *Jurica*, cited above, § 97).

21. Accordingly, this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. The applicant claimed around 3,000 euros (EUR) in respect of pecuniary damage on account of lost salaries. She also restated her claim for non-pecuniary damage which she had set out before the domestic courts in the amount of 77,430 Croatian kunas (i.e. EUR 10,276.72), plus statutory default interest. In addition, the applicant claimed EUR 8,000 in respect of non-pecuniary damage for excessive length of proceedings. Finally, she claimed HRK 39,062.50 (i.e. EUR 5,184.48) in respect of costs and expenses incurred before the domestic courts and EUR 4,000 for those incurred before the Court.

23. The Government contested those claims.

24. The Court does not discern any causal link between the violation found and the pecuniary damage alleged, nor is it within its province to decide on the applicant's claim for non-pecuniary damage which she had lodged before the national courts; it therefore rejects these claims. However, it awards the applicant EUR 1,950 in respect of non-pecuniary damage for unreasonable length of proceedings, plus any tax that may be chargeable.

25. Furthermore, having regard to the documents in its possession, the Court considers it reasonable to award EUR 1,500 covering costs before it, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning the length of the proceedings in the period after 13 March 2013 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 length of the proceedings;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts:
      (i) EUR 1,950 (one thousand nine hundred and fifty euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,500 (one thousand five hundred 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;

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

Done in English, and notified in writing on 27 May 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Dorothee von Arnim Deputy Registrar	Gediminas Sagatys President