

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

SECOND SECTION

CASE OF ZOBEC v. CROATIA

(Application no. 25930/20)

JUDGMENT

STRASBOURG

17 December 2024

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



In the case of Zobec v. Croatia,

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

Pauliine Koskelo*, President*,
Jovan Ilievski,
Davor Derenčinović*, judges*,
and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 25930/20) 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 June 2020 by a Croatian national, Mr Ivan Zobec ("the applicant"), who was born in 1995, lives in Zagreb and was represented by Ms J. Matić, a lawyer practising in Velika Gorica;

the decision to give notice of the complaints concerning the right to defend oneself and to cross-examine witnesses 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 26 November 2024,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the fairness of the summary minor offence proceedings against the applicant, in which he was found guilty of causing a road traffic accident and leaving the scene.

2. On 2 July 2017, while driving his car backwards, the applicant hit and damaged a stone wall. He then left the scene and stopped in a nearby street, where a certain Z.B. approached him and called the police. Two police officers inspected the site, noting Z.B.'s statement according to which he was the one who had stopped the applicant. On 9 March 2018 the applicant was issued with a penalty notice finding him guilty of the minor offences of (i) reckless driving and (ii) leaving the scene without providing the owner of the damaged property his personal information and information about the vehicle he had been driving, under sections 43 and 176 of the Road Traffic Safety Act, respectively.

3. The applicant challenged the penalty notice. He submitted that, after having hit the wall, he had asked the neighbours about the whereabouts of its owner but had been informed that she lived abroad. As the road was narrow, he had moved his car to a nearby street so as not to disturb the traffic. He had firstly been approached by a certain D.B., while Z.B. came some five to ten minutes after he had moved his car. He thus objected to Z.B.'s statement as

he had not been stopped by him, and also stressed he had no intention of running away.

4. Following the applicant's challenge to the penalty notice, summary minor-offence proceedings were opened in the Zagreb Minor Offences Court and a hearing for the applicant to present his defence was scheduled. However, by submissions of 4 July 2018, the applicant asked for postponement. He also maintained the arguments raised in his objection to the penalty notice and asked to be invited to the hearings at which witnesses would be examined.

5. The applicant did not appear at the next hearing scheduled for 19 September 2018; instead, he submitted a written defence, in which he denied the charges against him, maintaining his earlier arguments (see paragraph 3 above). In particular, he noted that he could not leave the required information to the wall's owner, as she had not been present at the scene. He also expressly denied having run away from the scene and having been stopped by Z.B. On that circumstance, he proposed that D.B. be examined as a witness and that his statement enclosed with his written defence be read. The trial judge decided to examine D.B., whereas the decision on the examination of any other witnesses would be rendered later.

6. On 16 October 2018, in the absence of the applicant, the trial judge questioned Z.B., who stated that he had seen the entire incident. The applicant had crashed the left side of his car into the wall, dispersing the stones from the wall on the road and leaving there several parts of his car. However, despite the significant damage to his car, he had continued driving backwards wanting to escape, and had stopped only after his tyre had deflated completely, at which point he had been stopped by Z.B. who had called the police.

7. Having examined the minutes of the on-site inspection, the photographs of the damaged wall and of the dispersed stones, the applicant's vehicle, and of the place where he had been stopped, as well as the sketch of the site, the trial judge established that the statements from the penalty notice corresponded to Z.B.'s testimony and to the remaining evidence above. As the facts had thus been fully established, there was no need to schedule further hearings nor to examine further evidence or witnesses.

8. Neither the applicant nor his lawyer were informed of or invited to the hearing of 16 October 2018.

9. On 24 October 2018 the Zagreb Minor Offences Court found the applicant guilty of reckless driving and of leaving the scene without providing the owner of the thus damaged property the required information; he was fined with 3,500 Croatian kunas (HRK) (i.e. 465 euros (EUR)), imposed a three-month driving ban, and ordered to pay the costs and expenses of the proceedings in the amount of HRK 500 (i.e. EUR 66). The court held that his defence had been unsupported by evidence. Based on the evidence gathered by the police, the court had established a completely different factual

background, which had been fully supported by Z.B.'s testimony and the photographs. In particular, the dynamics of the accident, as described in the penalty notice, followed from the recorded damage to the wall and to the applicant's car and were supported in Z.B.'s testimony, from which it moreover followed that the applicant had continued driving backwards after having hit the wall and that he had only stopped after his tyre got deflated, which was when Z.B. had approached him. Considering that all the evidence in the file had been consistent, there was no need to examine D.B., who in any event had not even been noted in the minutes of the on-site inspection as a potential witness; his written statement (see paragraph 5 above) had not been examined as in the minor-offence proceedings a written statement by a witness could not be admitted into evidence.

10. As there was no possibility for the applicant to appeal to a higher court, on 12 November 2018 he lodged a constitutional complaint. On 6 May 2020 the Constitutional Court dismissed his complaint on the merits by a decision which was served on his lawyer on 12 May 2020.

11. Before the Court, the applicant complained, under Article 6 §§ 1 and 3 (c) and (d) of the Convention about the overall unfairness of the trial, in particular about his inability to cross-examine Z.B. and the trial court's refusal to examine D.B.

THE COURT'S ASSESSMENT

12. The applicant principally complained about the unfairness of the trial resulting in his conviction for the minor offence of leaving the scene without providing the owner of the damaged property the required information arguing, *inter alia*, that he could not cross-examine Z.B. on whose statement his conviction was based.

13. 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.

14. The general principles under Article 6 §§ 1 and 3 (d) of the Convention concerning the admission of untested incriminating witness evidence in criminal proceedings have been summarized in *Al-Khawaja and Tahery v. the United Kingdom* [GC], nos. 26766/05 and 22228/06, §§ 118-147, ECHR 2011, and *Schatschaschwili v. Germany*, [GC], no. 9154/10, §§ 100-131, ECHR 2015. They also apply, albeit with less stringency, in summary minor-offence proceedings in which the decision as to the need to hold an oral hearing or to take particular procedural actions with the possible participation of the parties is left to the judge's discretion. In such cases, it is necessary to examine whether, in the particular circumstances of each case, the domestic courts' discretion as to the conduct of those proceedings was exercised in a way which is compatible with the

requirements of Article 6 (see *Marčan v. Croatia*, no. 40820/12, §§ 33-42, 10 July 2014).

15. In the present case, the Court notes that on the basis of the material evidence obtained by the police, the trial court established the facts concerning the offence of reckless driving, which were supported by Z.B.'s testimony. However, it followed only from Z.B.'s account that the applicant, wanting to escape, had continued driving backwards without stopping after having hit the wall and had stopped in a nearby street only after his tyre had deflated. No further evidence concerning, in particular, the applicant's intention to escape, had been obtained (see paragraphs 7 and 9 above). The Court thus concludes that Z.B.'s testimony constituted at least decisive evidence on which the domestic courts convicted the applicant for the minor offence of leaving the scene without providing the owner of the damaged property the required information.

16. Notwithstanding that the applicant did not expressly request that Z.B. be heard as a witness, as pointed out by the Government, he did object to the credibility of his version of the events both in his challenge to the penalty notice and later in his written defence. He also expressly asked the trial court to be present at the examination of the witnesses (see paragraphs 3-5 above, and contrast with *Marčan*, cited above, §§ 44 and 46, and also *Bojić v. Croatia* [Committee] (dec.), no. 48134/15, §§ 27-29, 12 June 2018, where the applicants never requested that witnesses be examined and whose arguments during the proceedings before the domestic courts were of a general nature). However, the trial court never provided any reasoning for not inviting the applicant or his lawyer to attend the examination of Z.B., despite the applicant's express request to that effect (compare with *Mesesnel v. Slovenia*, no. 22163/08, §§ 36-40, 28 February 2013, and, for factual similarities, *Mavrič v. Slovenia* [Committee], no. 63655/11, § 24, 15 May 2014).

17. Moreover, although neither the applicant nor his lawyer had the opportunity to examine Z.B. at any stage of the proceedings, there is no indication that the trial court approached his statement with any specific caution, or that that fact prompted the court to attach less weight to it. On the contrary, the court accepted his testimony as credible, concluding that the facts of the case had been sufficiently established on the basis of the evidence taken, and consequently refusing to examine D.B. who, according to the applicant, could have refuted the version of the events presented by Z.B. (see paragraphs 3, 5 and 9 above). While it is true that the applicant had the opportunity to give his own version of the events during the trial and that he availed himself of that possibility, that fact alone could not in any event be regarded as a sufficient counterbalancing factor to compensate for the lack of opportunity to directly cross-examine Z.B. at the trial.

18. In light of the foregoing, and examining the fairness of the proceedings as a whole, the Court concludes that the applicant was convicted

on the basis of evidence in respect of which his defence rights had been unduly restricted, which rendered the trial as a whole unfair (compare also *Paić v. Croatia*, no. 47082/12, §§ 49-54, 29 March 2016).

19. There has accordingly been a violation of Article 6 §§ 1 and 3 (d) of the Convention. The Court does not find it necessary to consider the case separately in the light of Article 6 § 3 (c), nor to examine separately whether the rights of the defence under Article 6 §§ 1 and 3 (d) were also violated by reason of the trial court's refusal to hear witness D.B. (see, *mutatis mutandis*, *Kallio v. Finland*, no. 40199/02, § 52, 22 July 2008, and *Hannu Lehtinen v. Finland*, no. 32993/02, § 50, 22 July 2008).

APPLICATION OF ARTICLE 41 OF THE CONVENTION

20. The applicant claimed 531 euros (EUR) in respect of pecuniary damage, relating to the fine and the costs of the proceedings which he had been ordered to pay. He also claimed EUR 7,930 in total in respect of non-pecuniary damage. Lastly, he claimed EUR 2,457 for the costs and expenses incurred before the national courts and EUR 3,800 for those incurred before the Court.

21. The Government contested those claims.

22. The Court cannot speculate on the outcome of the proceedings concerned had there been no violation of the Convention (see *Dvorski v. Croatia* [GC], no. 25703/11, § 117, ECHR 2015); it therefore rejects the claim in respect of pecuniary damage.

23. In respect of non-pecuniary damage, the Court, having regard to the material before it and making its assessment on an equitable basis, as required by Article 41 of the Convention, awards the applicant EUR 1,500, plus any tax that may be chargeable.

24. As to the costs and expenses incurred before the domestic courts, having regard to the documents in its possession, the Court considers it reasonable to award the applicant EUR 664 for the costs incurred before the Constitutional Court, plus any tax that may be chargeable to him.

25. As to the costs incurred before the Court, the applicant submitted an itemised bill in support of only a part of his claim amounting to EUR 1,044.60 in total. The Court considers it reasonable to award the applicant EUR 1,044.60, plus any tax that may be chargeable to him. The remainder of his claim, in support of which no itemised particulars have been submitted, must be rejected for failure to comply with the requirements set out in Rule 60 § 2 of the Rules of Court (Rule 60 § 3).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 6 §§ 1 and 3 (d) concerning the lack of opportunity to examine Z.B. admissible;

2. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (d) of the Convention on account of the lack of opportunity to examine Z.B.;

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

4. *Holds,*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts:
      (i) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,708.60 (one thousand seven hundred eight euros and sixty cents), 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 17 December 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Dorothee von Arnim Deputy Registrar	Pauliine Koskelo President