

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

SECOND SECTION

DECISION

Application no. 16981/20
Andrijana ĆELAP
against Croatia

The European Court of Human Rights (Second Section), sitting on 3 September 2024 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. 16981/20) 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 6 April 2020 by a Croatian national, Ms Andrijana Ćelap ("the applicant"), who was born in 1977, lives in Bilje and was represented by Mr M. Kordić, a lawyer practising in Osijek;

the decision to give notice of the complaint concerning the right of access to court 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, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns the civil proceedings which the applicant, who was at the time the head of a regional State administration office ("the Office"), instituted against the Croatian Radio-Television claiming damages for harm caused to her honour and reputation by the publication of allegedly false and inaccurate information about her work. Her claim was eventually dismissed because she had not complied with the procedural requirements for bringing the civil action for compensation.

2. Under section 22 of the Media Act, prior to bringing a civil action for compensation, the injured party had to request a rectification from the media outlet which had published the impugned information. By the Office's letter of 5 April 2017, printed on its letterhead, co-signed by its information officer and the applicant in her capacity as its head, a request for rectification was submitted to the Croatian Radio-Television. Shortly thereafter, the latter published an apology to the Office and to the applicant, accompanied by a full retraction.

3. Following a civil action lodged by the applicant, the Osijek Municipal Court, by a judgment of 12 January 2018, granted her compensation claim. In particular, it held that she had complied with the procedural requirements for bringing the action, rejecting the defendant's argument that she had failed to request a rectification on her own behalf beforehand. It noted that the opposite was evident from the fact that the defendant had published an apology not only to the Office, but to the applicant as its head as well, thus conceding that she had in fact requested a rectification (see paragraph 2 above).

4. On 15 March 2018 the Varaždin County Court reversed the first-instance judgment and dismissed the applicant's claim, holding that she was not entitled to compensation because she had failed to request the rectification in her individual capacity. Instead, the rectification had been requested in an official letter of the Office and co-signed by the applicant in her capacity of head of that office.

5. The applicant then lodged an extraordinary appeal on points of law, arguing that the decision in her case depended on a resolution of several points of law which were important for ensuring the uniform application of law and equality of all in its application, on which the Supreme Court had not yet ruled and in respect of which the case-law of the second-instance courts diverged. By its decision of 11 September 2018, the Supreme Court found that she had failed to comply with the procedural requirements of domestic law for lodging that remedy, thus declaring it inadmissible. In particular, she had not referred to any specific domestic court decisions which would be based on divergent interpretations of the points of law in question, nor had she put forward reasons as to why she had considered those points to be important for ensuring the uniform application of law and equality of all in its application.

6. Simultaneously with lodging the extraordinary appeal on points of law, the applicant lodged a constitutional complaint against the second-instance judgment, complaining that it was arbitrary. After the Supreme Court gave its decision, she did not extend her constitutional complaint to contest that decision (see paragraphs 4 and 5 above).

7. By a decision of 26 September 2019, of which the applicant was notified on 14 October 2019, the Constitutional Court dismissed her

constitutional complaint on the merits, finding that the second-instance court's decision was well-reasoned and not arbitrary.

8. It appears that the information complained of was published not only by the Croatian Radio-Television, but by several other media outlets as well. The applicant requested a rectification from three of them in the same manner as in the present case, and subsequently brought civil actions for compensation. In all three cases, her claims were granted by final domestic court judgments.

9. Before the Court, the applicant complained, relying on Article 6 § 1 of the Convention, that the second-instance court's finding that she had not requested a rectification and thereby failed to comply with the procedural requirements for bringing an action for compensation had been arbitrary. To that end, she argued that that court's interpretation of the law with regard to the manner in which a rectification had to be requested had diverged from that of the other domestic courts which had granted her claims in cases with comparable factual backgrounds (see paragraph 8 above).

THE COURT'S ASSESSMENT

10. The Government argued that the application was inadmissible because the applicant had failed to exhaust domestic remedies. In particular, they argued that she had failed to comply with the formal requirements for lodging the extraordinary appeal on points of law, thus preventing the Supreme Court from examining the merits of the complaints she had raised before the Court.

11. In that regard, the Court notes that the applicant, had she considered that the Varaždin County Court's judgment diverged from the domestic case-law on the matter (see paragraphs 5 and 9 above), indeed had at her disposal an effective domestic remedy, namely an extraordinary appeal on points of law, aimed precisely at addressing case-law inconsistencies (compare *Mirenić-Huzjak and Jerković v. Croatia* (dec.), no. 72996/16, § 54, 24 September 2019).

12. Under section 382 of the Civil Procedure Act as it stood at the material time, an extraordinary appeal on points of law could be lodged if a decision in the dispute depended on the resolution of a point of substantive or procedural law important for ensuring the uniform application of the law and equality of all in its application, for example if the Supreme Court had not yet ruled on that point in respect of which there was divergent case-law of the second-instance courts, or if the Supreme Court had already ruled on that point but the decision of the second-instance court was not in conformity with that ruling. In the extraordinary appeal on points of law, the appellants had to specify the point of law which was the ground for their appeal together with specific reference to legislation and other sources of law related thereto, and had to give reasons as to why they found that point important for ensuring the

uniform application of the law and equality of all in its application (see for the domestic law provisions *Mirenić-Huzjak and Jerković*, cited above, § 26).

13. In the present case, the applicant lodged an extraordinary appeal on points of law arguing that the Varaždin County Court's judgment dismissing her compensation claim on the ground that she had not complied with the procedural requirement set out in section 22 of the Media Act raised points of law which were important for the uniform application of the law, which had not yet been ruled on by the Supreme Court and in respect of which there existed divergent case-law of the second-instance courts (see paragraphs 2, 4, and 5 above). However, the Court notes that the mere raising of a certain point of law and claiming that it was important for the uniform application of the law was not sufficient to comply with the procedural requirements for lodging the remedy in question. On the contrary, the applicant had to refer to specific second-instance court decisions and furthermore give reasons as to why she considered that the points she had raised were important for ensuring the uniform application of law and equality of all in its application, which she failed to do (see paragraphs 5 and 12 above).

14. Thus, in failing to comply with the formal requirements for lodging an extraordinary appeal on points of law, the applicant failed to properly exhaust domestic remedies (compare also *Krpić v. Croatia* (dec.), no. 75012/12, §§ 41 and 44, 31 May 2016).

15. It follows that this complaint is inadmissible under Article 35 § 1 of the Convention for non-exhaustion of domestic remedies and must be rejected pursuant to Article 35 § 4 thereof.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 26 September 2024.

Dorothee von Arnim Deputy Registrar	Lorraine Schembri Orland President