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

FIRST SECTION

DECISION

Application no. 56988/21
Željko GAŠPAROVIĆ
against Croatia

The European Court of Human Rights (First Section), sitting on 5 March 2026 as a Committee composed of:

Frédéric Krenc*, President*,
Davor Derenčinović,
Alain Chablais*, judges*,

and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 56988/21) 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 17 November 2021 by a Croatian national, Mr Željko Gašparović ("the applicant"), who was born in 1976 and lives in Novska, and was represented by Mr B. Posavčić, a lawyer practising in Kutina;

the decision to give notice of the complaints under Article 6 §§ 1 and 3 (c) of the Convention and Article 4 of Protocol No. 7 thereto, concerning the way in which a supervisory review was used in the applicant's case, 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 case concerns the quashing of a final criminal court judgment, delivered against the applicant, by means of the legality review procedure.

2. In 2019 the Sisak Municipal Court found the applicant guilty of causing a road traffic accident, in which one person had lost her life, and sentenced him to one year's imprisonment, replaced with community service. Once the judgment had become final and binding, the applicant served his sentence.

3. On 3 July 2020 the General State Attorney lodged a request for the protection of legality and asked the Supreme Court to quash the lower courts' judgments on the ground that, on account of a change of law which had occurred some 20 days before the Municipal Court had adopted the first-instance judgment, that court no longer had jurisdiction to conduct the proceedings.

4. On 20 April 2021 the Supreme Court granted the State Attorney's request, quashed the lower courts' judgment, as it had been delivered by a court lacking jurisdiction, and remitted the case to the county court as the competent court. It drew the attention of the competent first-instance court to the fact that, if the applicant was found guilty in the reopened proceedings, the judgment could not be amended to his detriment.

5. On 22 February 2022 the Sisak County Court conducted the proceedings afresh, holding a hearing and taking all the proposed evidence. It found the applicant guilty as charged and sentenced him to one year's imprisonment, replaced with community service. It also took note of the 730 hours of the community service which the applicant had already performed. An appeal by the applicant against the first-instance judgment was dismissed by the High Criminal Court on 25 October 2022.

6. On 7 October 2025 the Constitutional Court dismissed a subsequent constitutional complaint lodged by the applicant. As regards the principle of equality of arms and the right to adversarial proceedings, the Constitutional Court explained that a request for the protection of legality was an extraordinary legal remedy which was neither a submission or evidence on which the accused would need to give his or her views, all the more taking into account that in the present case the remedy (namely the request for the protection of legality) had been used to his benefit. It also noted that a request for the protection of legality did not need to be served on the accused even if it was used to his or her detriment, since in such cases the competent court could only adopt a declaratory judgment establishing a breach of the law, without calling into question the final judgment. As regards the applicant's *ne bis in idem* complaint, the Constitutional Court noted that the applicant had not been convicted of another criminal or minor offence, but that the two sets of proceedings against him had concerned one set of criminal proceedings which had had to be reopened to the applicant's benefit, and he had been sentenced to the same sanction, which was not amended to his detriment.

7. The applicant complained, under Article 6 of the Convention, that he had never been served with the General State Attorney's request for the protection of legality and had therefore been unable to submit his views, which had violated the principle of equality of arms and the right to adversarial proceedings. He also complained that the quashing of the final judgment against him had violated the principle of legal certainty. Lastly, the applicant complained, without relying on any Article of the Convention, that

as a result of the granting of the request for the protection of legality, he had gone through the ordeal of being tried and convicted twice for the same offence.

THE COURT'S ASSESSMENT

8. The Court considers that the applicant's complaints fall to be examined under Article 6 §§ 1 and 3 (c) of the Convention and under Article 4 of Protocol No. 7 thereto.

A. Alleged violation of Article 6 §§ 1 and 3 (c) of the Convention

1. Legal certainty

9. The general principles concerning legal certainty in the context of quashing of a final judgment have been summarised in *Xheraj v. Albania* (no. 37959/02, §§ 51-54, 29 July 2008). In particular, the mere possibility of reopening a criminal case is *prima facie* compatible with the Convention, including the guarantees of Article 6 (ibid., § 53). The Court has to assess whether, in a given case, the power to launch and conduct a review was exercised by the authorities so as to strike, to the maximum extent possible, a fair balance between the interests of the individual and the need to ensure the effectiveness of the system of criminal justice (see *Bujniţa v. Moldova*, no. 36492/02, § 21, 16 January 2007).

10. In the present case, the final court judgment convicting the applicant was quashed at the request of the General State Attorney, who submitted the request for the protection of legality in the applicant's favour on purely procedural grounds, namely the fact that the court which had convicted him had lacked jurisdiction to do so *ratione materiae* under the relevant domestic provisions (see paragraph 4 above). The final decision in the remitted proceedings did not contain any opinion on the applicant's guilt or innocence, and its only aim was to ensure that the court judgment convicting the applicant was delivered by a tribunal established by law (contrast, for example, *Radchikov v. Russia*, no. 65582/01, § 48, 24 May 2007).

11. The Court, moreover, notes that the procedure in issue fully complied with the requirements of domestic law. It attaches particular weight to the fact that, when quashing the judgment against the applicant, the Supreme Court warned the competent county court of the prohibition of *reformatio in peius* (see paragraph 4 above), which in the Court's view constituted an important safeguard capable of preventing abuses of that procedure by the domestic authorities.

12. Moreover, it is apparent that the Supreme Court and the courts acting in the remitted case did not pursue any avenue which could be regarded as detrimental to the applicant (compare *Bratyakin v. Russia* (dec.), no. 72776/01, 9 March 2006). Therefore, the Court does not consider that the

Supreme Court's decision to remit the case, or the ensuing retrial, undermined the overall fairness of the proceedings against the applicant.

2. Equality of arms and the right to adversarial proceedings

13. The general principles concerning the principle of equality of arms and the right to adversarial proceedings have been summarised in *Zahirović v. Croatia* (no. 58590/11, § 42-43, 25 April 2013).

14. In the present case, it is true that the request for the protection of legality lodged by the General State Attorney was never served on the applicant.

15. However, the Court notes that the request for the protection of legality in the present case concerned only possible violations of law and the domestic court was not in any way called upon to determine the charge against the applicant (compare *Moreira Ferreira v. Portugal (no. 2)* [GC], no. 19867/12, § 65, 11 July 2017).

16. Given the nature of that remedy, which is an extraordinary legal remedy dependent on the discretion of the General State Attorney, there is no obligation under domestic law to inform the accused of the use of that remedy. Moreover, in the circumstances the remedy was not used to the applicant's detriment, nor did it contain any opinion on the applicant's guilt or innocence. It can therefore not be said that the principle of equality of arms and the right to adversarial proceedings were not respected in the proceedings in question (compare, *mutatis mutandis*, *Šimundić v. Croatia* (dec.), no. 22388/16, § 22, 26 March 2019).

3. Conclusion

17. The Court considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, the complaints under Article 6 of the Convention do not disclose any appearance of a violation of the rights and freedoms enshrined in the Convention or the Protocols thereto.

18. It follows that this part of the application must be rejected in accordance with Article 35 § 4 of the Convention.

B. Alleged violation of Article 4 of Protocol No. 7 to the Convention

19. The general principles concerning legal certainty in the context of the quashing of a final judgment have been summarised in *Mihalache v. Romania* ([GC], no. 54012/10, §§ 127-33, 8 July 2019).

20. The Court observes that in the present case a final court judgment was quashed on the grounds of serious procedural defects, the case was reconsidered at two levels of jurisdiction and a final judgment was delivered (see paragraphs 4 and 5 above). The subject matter of the new proceedings

consisted of the same criminal charge and the validity of its previous determination (compare *Nikitin*, § 48, and *Bratyakin*, both cited above).

21. Having regard to the findings above, the Court concludes that the judgment of the Supreme Court in the instant case constituted a reopening of the case owing to a fundamental defect in the previous proceedings, within the meaning of Article 4 § 2 of Protocol No. 7.

22. Accordingly, the complaint raises no issues under Article 4 § 1 of Protocol No. 7 to the Convention. It follows that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 26 March 2026.

Liv Tigerstedt Deputy Registrar	Frédéric Krenc President