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

SECOND SECTION

DECISION

Application no. 46881/21
Darinka GOSPOČIĆ
against Croatia

The European Court of Human Rights (Second Section), sitting on 27 May 2025 as a Committee composed of:

Jovan Ilievski*, President*,
Péter Paczolay,
Davor Derenčinović*, judges*,
and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 46881/21) 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 16 September 2021 by a Croatian national, Ms Darinka Gospočić ("the applicant"), who was born in 1965, lives in Stubičke Toplice and was represented by Mr M. Križanović, a lawyer practising in Zagreb;

the decision to give notice of the complaint concerning freedom of expression 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, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the applicant's right to freedom of expression in connection with civil proceedings for damages initiated against her.

2. The applicant's neighbours built a farm on which they raise wild game (fallow deer). The applicant maintained that the farm had been built illegally and that she has been exposed to excessive noise from the animals and unpleasant smells. She had lodged several complaints against the neighbours

and local officials, alleging various unlawful actions on their part, but her complaints were dismissed.

3. In 2017 the applicant was invited to a land surveyor's office concerning a survey conducted of the neighbours' farm. Expressing her disagreement with the survey, she uttered, in front of three people, that her neighbours were "criminals, who were in mafia with the town chairman, and who had conspired to commit criminal offences for their personal gain".

4. Her neighbours then concurrently instituted criminal and civil proceedings against her for the statement in question. By a final judgment of 27 August 2019, the applicant was found guilty of the criminal offence of defamation (*teško sramoćenje*) and convicted to a suspended fine in the amount of 3,000 Croatian kunas (HRK; approximately 400 euros (EUR)).

5. Moreover, by the Zlatar Municipal Court's judgment of 18 January 2019, upheld on 3 March 2020 by the Slavonski Brod County Court, the domestic courts found that the applicant had violated her neighbours' rights to honour and reputation and ordered her to pay them damages in the total amount of HRK 6,000 (approximately EUR 800).

6. The applicant lodged a constitutional complaint against the judgments adopted in the civil proceedings, in which she alleged breaches of her right to a fair trial and equality before the law, claiming that the domestic courts had erroneously established the facts of the case and misapplied the relevant law. By a decision of 24 February 2021, notified to the applicant's representative on 18 March 2021, the Constitutional Court declared her complaint inadmissible.

7. Before the Court, the applicant complained about the unfairness and the outcome of the civil proceedings in question. Her complaint was communicated to the Government under Article 10 of the Convention.

THE COURT'S ASSESSMENT

8. The Government argued, *inter alia*, that the applicant had failed to exhaust domestic remedies, in that in her constitutional complaint she had not invoked a violation of her right to freedom of expression.

9. The applicant did not address this objection.

10. The Court reiterates that in order to properly exhaust domestic remedies it is not sufficient that a violation of the Convention is "evident" from the facts of the case or the applicant's submissions. Rather, he or she must actually complain (expressly or in substance) of such a violation in a manner which leaves no doubt that the same complaint that was subsequently submitted to the Court had indeed been raised at the domestic level (see, for example, *Fu Quan, s.r.o. v. the Czech Republic* [GC], no. 24827/14, § 172, 1 June 2023).

11. In the present case the applicant, who was represented by a lawyer, indeed did not rely in her constitutional complaint on Article 10 of the

Convention, nor on the relevant provision of the Constitution which guarantees the right to freedom of expression. Instead, she referred to Articles 14 § 2 and 29 § 1 of the Constitution, which are provisions corresponding to Articles 6 and 14 of the Convention. More importantly, she did not complain even in substance about a violation of her right to freedom of expression (see paragraph 6 above).

12. Instead, the applicant complained about the unfairness of the civil proceedings for damages, arguing that the domestic courts had erred in their assessment of the evidence and application of the law. The Constitutional Court thus did not address her right to freedom of expression of its own motion – which in any event it is not required to do under Croatian law (see *Merot d.o.o. and Storitve Tir d.o.o. v. Croatia* (dec.), nos. 29426/08 and 29737/08, § 36, 10 December 2013). What is more, in reply to the Government's non-exhaustion objection, the applicant did not even attempt to argue that in her constitutional complaint she had in fact complained about a breach of her right to freedom of expression.

13. In these circumstances, and having regard to its case-law on the matter (see *Merot d.o.o. and Storitve Tir d.o.o.*, cited above, §§ 34-38), the Court finds that the Government's objection must be upheld.

14. It follows that the present application is inadmissible under Article 35 § 1 of the Convention for non-exhaustion of domestic remedies and must therefore be rejected pursuant to Article 35 § 4.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 19 June 2025.

Dorothee von Arnim Deputy Registrar	Jovan Ilievski President