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

SECOND SECTION

DECISION

Application no. 5584/24
Nazmi JAŠARI
against Croatia

The European Court of Human Rights (Second Section), sitting on 8 October 2024 as a Chamber composed of:

Arnfinn Bårdsen*, President*,
Jovan Ilievski,
Saadet Yüksel,
Lorraine Schembri Orland,
Frédéric Krenc,
Diana Sârcu,
Davor Derenčinović*, judges*,

and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to the above application lodged on 8 February 2024,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Nazmi Jašari, is a Croatian national who was born in 1984 and is currently detained in Lepoglava. He was represented before the Court by Mr A. Marijanović, a lawyer practising in Zagreb.

2. The facts of the case, as submitted by the applicant, may be summarised as follows.

3. On 7 September 2022 the Zagreb County Court (*Županijski sud u Zagrebu*) found the applicant guilty of two criminal offences against sexual freedom and sentenced him to six and a half years' imprisonment.

4. Following appeals lodged by the applicant and the prosecution, on 18 July 2023 the High Criminal Court (*Visoki kazneni sud Republike Hrvatske*) upheld the applicant's conviction and increased his sentence to seven and a half years' imprisonment.

5. On 5 September 2023 the applicant lodged a constitutional complaint alleging a violation of his right to a fair trial under Article 29 of the Croatian

Constitution and Article 6 of the Convention. In particular, he argued that the criminal courts had incorrectly established the facts and had acted arbitrarily and in breach of Article 342 § 1 (2), Article 449 § 1, Article 450 and Article 468 § 1 (11) of the Code of Criminal Procedure (see paragraph 10 below).

6. By a decision of 27 October 2023, the Constitutional Court (*Ustavni sud Republike Hrvatske*), referring to section 62(2) of the Constitutional Court Act (see paragraph 9 below), declared the applicant's constitutional complaint inadmissible for non-exhaustion of the available remedies. The court, applying its most recent practice and referring specifically to its decisions nos. U-III-338/2021 of 21 December 2021 and U-III-3536/2020 of 29 March 2022 (see paragraphs 13-16 below), found that the applicant had failed to lodge a request for extraordinary review of a final judgment with the Supreme Court (*zahtjev za izvanredno preispitivanje pravomoćne presude*) before lodging his constitutional complaint.

7. The relevant part of the Constitutional Court's decision reads as follows:

> "In decision no. U-III-338/2021 of 21 December 2021 (Official Gazette no. 8/22), the Constitutional Court established the criteria for lodging constitutional complaints in situations where such constitutional complaints are based on grounds on which complainants could lodge a request for extraordinary review of a final judgment with the Supreme Court.
>
> In the above-mentioned decision, the Constitutional Court established an obligation for complainants, in order to properly exhaust the available legal remedies before turning to the Constitutional Court, to lodge a request for extraordinary review of a final judgment (where the statutory criteria for using that remedy are met) in situations where the constitutional complaint is based on grounds on which the request for extraordinary review of a final judgment could be lodged.
>
> Since the Constitutional Court thereby changed its practice regarding the criteria for lodging constitutional complaints, in decision no. U-III-3536/2020 of 29 March 2022 (Official Gazette no. 51/22) the court clarified that, following a transitional six-month period counted from the date decision no. U-III-338/2021 was published (which expired on 19 July 2022), complainants will be obliged to use the legal remedies in the manner specified in the Constitutional Court's decision no. U-III-338/2021, and then, in the event of an unfavourable outcome, lodge a constitutional complaint.
>
> In the present case, the complainant was sentenced to (unconditional) prison sentence by the contested judgment. Accordingly, the criteria for lodging a request for extraordinary review of a final judgment with the Supreme Court on the grounds of alleged violations of the fundamental rights and freedoms guaranteed by the Constitution and the Convention invoked in the constitutional complaint were met (Article 515 § 1 of the Code of Criminal Procedure).
>
> Since the complainant failed to lodge a request for extraordinary review of a final judgment ... he failed to exhaust the available legal remedies prior to lodging his constitutional complaint."

8. On 6 November 2023 the Constitutional Court notified the applicant's representative of its decision.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

A. Relevant legislation

1. Constitutional Court Act

9. The relevant provisions of the Constitutional Court Act (*Ustavni zakon o Ustavnom sudu Republike Hrvatske*, Official Gazette nos. 99/1999 and 29/2002), read as follows:

Section 62

"(1) Anyone may lodge a constitutional complaint with the Constitutional Court if he or she considers that a decision of a State authority, local or regional government, or a legal person invested with public authority, on his or her rights or obligations, or as regards suspicion or accusation of a criminal offence, has violated his or her human rights or fundamental freedoms ... guaranteed by the Constitution ('constitutional right[s]') ...

(2) If another legal remedy is available for the violation of the constitutional right(s) [complained of], the constitutional complaint may be lodged only after that remedy has been used.

..."

2. Code of Criminal Procedure and developments in the legal regulation of requests for extraordinary review of a final judgment

10. The relevant provisions of the Code of Criminal Procedure (*Zakon o kaznenom postupku*, Official Gazette nos. 152/2008, 76/2009, 80/2011 and 91/2012), as in force at the time, provided as follows:

Article 10

"(1) Court decisions may not be based on illegally obtained evidence (illegal evidence).

(2) Illegal evidence is that which is obtained:

1. in violation of the prohibition of torture, cruel or inhuman treatment prohibited by the Constitution, law or international law;

2. in violation of the rights of defence guaranteed by the Constitution, law or international law ...;

3. in violation of the provisions of criminal procedure expressly provided for in this Code;

..."

Article 13

"Unless otherwise provided ... on the occasion of a legal remedy used solely in favour of the defendant, the judgment may not be changed to his or her detriment."

Article 342

"(1) The indictment shall contain:

...

2. a description of the act from which the legal characteristics of the criminal offence derive, the time and place of the criminal offence, the object and the means by which the criminal offence was committed, and other circumstances necessary to determine the criminal offence as accurately as possible;

..."

Article 449

"(1) The judgment may refer only to the person who was indicted and only to the act that is the subject of the accusation contained in the indictment lodged or amended at the trial.

..."

Article 450

"(1) The court shall base its judgment only on the facts and evidence presented at the trial.

(2) The court shall be obliged to conscientiously assess each piece of evidence, both individually and in connection with other pieces of evidence, and on the basis of that assessment shall draw a conclusion as to whether a fact has been proven."

Article 468

"(1) A significant breach of the provisions of criminal procedure exists if:

1. the court was improperly constituted or if a judge or lay judge who did not participate in the trial or who was excluded from the trial by a final decision took part in the pronouncement of the judgment;

...

5. the court violated the provisions of criminal procedure on the question of whether there is an accusation by an authorised prosecutor ...;

...

9. the accusation was exceeded (Article 449 § 1);

10. the judgment violated Article 13 of this Code;

11. the judgment may not be examined because the operative part of the judgment is incomprehensible, contradictory or inconsistent with the reasons for the judgment, or if the judgment does not contain any reasons or does not contain reasons for decisive facts, or if these reasons are entirely unclear or to a considerable extent contradictory, or if there is a significant contradiction between what is stated in the reasons for the judgment about the content of those documents or records of statements given in the proceedings and those documents or records themselves.

(2) A significant breach of the provisions of criminal procedure exists if the judgment is based on illegal evidence (Article 10).

..."

Article 469

"A breach of the criminal law exists if the criminal law is violated as regards the question of:

1. whether the act for which the defendant is being prosecuted is a criminal offence;

2. whether there any circumstances that exclude guilt;

3. whether there are circumstances that exclude criminal prosecution, in particular whether the statute of limitations for criminal prosecution has expired, whether prosecution is excluded owing to an amnesty or pardon, or whether the matter has already been decided by a final judgment;

4. whether a law that may not be applied was applied to the criminal offence that is the subject of the accusation;

5. whether the decision on punishment ... exceeded the authority conferred on the court by law;

..."

Request for extraordinary review of a final judgment
Article 515

"(1) A [convicted person] who has been sentenced to imprisonment or juvenile detention, or whose psychiatric internment has been ordered ... may lodge a request for extraordinary review of a final judgment on the grounds of a breach of law in the cases provided for in this Code.

(2) A [convicted person] who has not used the ordinary legal remedy against the judgment may not file a request for extraordinary review of a final judgment, unless the second-instance judgment imposes a prison sentence or juvenile detention instead of an exemption from punishment, a conditional sentence, a court warning or a fine ...;

(3) A request for extraordinary review of a final judgment may not be lodged against a judgment of the Supreme Court."

Article 516

"The Supreme Court shall decide requests for extraordinary review of a final judgment."

Article 517

"(1) A request for extraordinary review of a final judgment may be lodged [with respect to]:

1. breaches of the Criminal Code to the detriment of the convicted person provided for in Article 469 § 1 to 4 of this Code, or ... a breach under Article 469 § 5 if the excess of authority relates to a decision on a penalty, security measure or confiscation of property benefit;

2. breaches of the provisions of criminal procedure provided for in Article 468 § 1 (1), (5), (9) and (10) of this Code, or due to participation in decision-making at second or third instance of a judge or lay judge who had to be exempted ... or due to the fact that the defendant, contrary to his or her request, was denied the right to use his or her own language at the hearing (Article 8);

3. breaches of the defendant's right to defence at the trial or breaches of the provisions of the criminal procedure in the appellate proceedings if these breaches could have affected the judgment.

(2) Breaches outlined in paragraph 1 (2) and (3) of this Article may be raised only if they were raised in the appeal against the first-instance judgment or occurred in the second-instance proceedings."

Article 518

"A request for extraordinary review of a final judgment may be lodged by the convicted person and his or her defence lawyer within a month of receiving the final judgment ..."

11. Amendments to the Code of Criminal Procedure were introduced on 1 January 2013 (Official Gazette no. 143/2012). Article 515, in so far as relevant for the purposes of the present case, was amended to allow a convicted person to submit a request for extraordinary review of a final judgment also on the grounds that he or she was convicted in violation of the fundamental human rights and freedoms guaranteed by the Constitution, international law or law. The amended provision read as follows:

Article 515 § 1

"A convicted person who has been sentenced to imprisonment or juvenile detention, or whose psychiatric internment has been ordered ... may lodge a request for extraordinary review of a final judgment on the grounds of breaches of law in the cases provided for in this Code, or where he or she has been convicted in proceedings in a manner amounting to a violation of the fundamental human rights and freedoms guaranteed by the Constitution, by international law or by law."

12. Further amendments to the Code of Criminal Procedure were introduced on 15 December 2013 (Official Gazette no. 145/2013). Article 468 § 2, in so far as relevant for the purposes of the present case, was amended to include a serious violation of the right to a fair trial guaranteed by the Croatian Constitution and the Convention among the significant breaches of the provisions of criminal procedure. Furthermore, Article 517 § 1 (2) was amended to include breaches of the provisions of criminal procedure provided for in Article 468 § 2 as grounds for lodging a request for extraordinary review of a final judgment. In particular, the amended provisions read as follows:

Article 468 § 2

"A significant breach of the provisions of criminal procedure exists if the judgment is based on illegal evidence (Article 10), and if the right to a fair trial guaranteed by the Constitution and the Convention was seriously violated."

Article 517

"(1) A request for extraordinary review of a final judgment may be lodged [with respect to]:

...

2. breaches of the provisions of criminal procedure provided for in Article 468 § 1 (1), (5), (9) and (10) or Article 468 § 2 of this Code, or due to the participation in decision-making at second or third instance of a judge or lay judge who had to be exempted ... or due to the fact that the defendant, contrary to his or her request, was denied the right to use his or her own language at the hearing (Article 8).

..."

B. Relevant practice

1. Two leading decisions concerning the change in the Constitutional Court's practice regarding the admissibility of constitutional complaints in criminal proceedings

13. In decision no. U-III-338/2021 of 21 December 2021, the Constitutional Court held, referring to section 62(2) of the Constitutional Court Act (see paragraph 9 above), that defendants in criminal proceedings wishing to lodge a constitutional complaint based on the grounds on which a request for extraordinary review of a final judgment could be lodged with the Supreme Court, and where the statutory criteria for lodging that request with the Supreme Court were met, should first use that remedy.

14. In that case, the complainant was sentenced to imprisonment. He lodged a constitutional complaint and, simultaneously, a request for extraordinary review of a final judgment. The Supreme Court examined his request and dismissed it as unfounded. The Constitutional Court found that the complainant had failed to properly exhaust the available remedies since he had failed to lodge a constitutional complaint against the Supreme Court's judgment. That decision was published in Official Gazette no. 8/22 of 19 January 2022. The relevant part reads as follows:

"(a) Principles regarding the need to exhaust the available remedies

4. The Constitutional Court emphasises that the purpose of the requirement to exhaust the available legal remedies before lodging a constitutional complaint is to enable the ordinary courts to prevent or remedy a violation of the complainant's constitutional rights ...

4.1. Not requiring complainants to do so would be contrary to the will of the legislator and would force the Constitutional Court to render its decision before the ordinary courts. This requirement also follows from the rule contained in section 62 of the Constitutional Court Act ... the purpose [of which] is to ensure the subsidiarity of specific constitutional review and thus prevent the Constitutional Court from assuming the jurisdiction of the ordinary courts in the capacity of a 'court of fourth instance'. That is, under Article 115(3) of the Constitution, the courts decide not only on the basis of the law, but also on the basis of the Constitution and international treaties. Therefore, individuals who in their constitutional complaints complain that in a particular set of proceedings there has been a breach of one of their constitutional rights must raise their complaint at the stage of the proceedings at which it is still possible to eliminate that violation ...

4.2. Legal remedies that should be exhausted before lodging a constitutional complaint should be effective and not have a discretionary character; in other words, complainants should be able to use a legal remedy without the intervention of a State body (compare *Knapić v. Croatia* (dec.), no. 2839/08, 4 June 2009, and *Lepojić v. Serbia*, no. 13909/95, § 53, 6 November 2007).

4.3. Those legal remedies must offer a real possibility for the complainant to influence the rights and freedoms guaranteed by the Constitution which he or she considers to have been violated (compare *Vučković v. Serbia* [GC], no. 17153/11 [and 29 others], §§ 71 and 74, 25 March 2014). A constitutional complaint lodged by a complainant who has not first tried such a legal remedy or has tried [it] but has then failed to lodge a constitutional complaint against the decision deciding on that legal remedy, should, in principle, be declared inadmissible for non-exhaustion of the available legal remedies.

(b) Application of the above principles to a request for extraordinary review of a final judgment

5. Article 515 § 1 of the Code of Criminal Procedure ... provides that a request for extraordinary review of a final judgment may be lodged by a person sentenced to an unconditional prison sentence. It follows that the complainant was able to lodge the request alone, with the assistance of his lawyer, and without the intervention of any State body, which he did.

5.1. As to the nature of this remedy, [such a request] may be lodged in favour of the defendant within one month of the delivery of the judgment to the defendant. The reasons for lodging a request for extraordinary review of a final judgment ... are limited and listed in Article 517 of the Code of Criminal Procedure. The Supreme Court may, if it finds that the request for extraordinary review of a final judgment is well-founded, quash the contested judgments and remit the proceedings to an earlier stage (compare *Maresti v. Croatia*, no. 55759/07, § 25, 25 June 2009). A request for extraordinary review of a final judgment has an equivalent in civil proceedings in an appeal on points of law ... The Constitutional Court has already decided that before lodging a constitutional complaint, it is necessary to lodge an appeal on points of law with the Supreme Court, when it is allowed (see the Constitutional Court's decision no. U-III-4150/2019 of 3 February 2021).

5.2. In several of its judgments and decisions, the [European Court of Human Rights] has accepted that applicants who have used the request for extraordinary review of a final judgment for the reasons for which that legal remedy may be used have properly exhausted the legal remedies (see *Kovač v. Croatia* (dec.), no. 503/05, 12 July 2007; *Maresti v. Croatia*, cited above, §§ 25-28; *Dolenec v. of Croatia*, no. 25282/06, § 199, 26 November 2009; *Šebalj v. Croatia*, no. 4429/09, § 245, 28 June 2011; *Gregačević v. Croatia*, no. 58331/09, § 40, 10 July 2012; and *Lambaša v. Croatia* (dec.), no. 37738/12, § 16, 12 June 2018) ...

In this connection and as regards the complainant's complaints, the Constitutional Court notes that Article 517 § 1 (1) of the Code of Criminal Procedure provides that the request for extraordinary review of a final judgment may be submitted, *inter alia*, for a breach of the criminal law to the detriment of the convicted person under Article 469 § 1, which is whether the act for which the defendant is being prosecuted is a criminal offence. That is to say, the complainant disputes the essential features of the criminal offence of which he was found guilty ... and, for that reason, he lodged a request for extraordinary review of a final judgment, which the Supreme Court examined on the merits.

...

5.4. Most importantly, if the Constitutional Court were to allow the lodging of a constitutional complaint without the complainant having the obligation to first lodge a request for extraordinary review of a final judgment in situations where the complaints from the constitutional complaint are based on the grounds on which the request before the Supreme Court may be lodged, then it would bypass the will of the legislator, who provided that legal remedy for defendants who were given unconditional prison sentences, and the will of the legislator for those complaints to be first examined by the Supreme Court. Without first giving the Supreme Court an opportunity to examine the complaints for which a request for extraordinary review of a final judgment may be lodged, the Constitutional Court would deprive the Supreme Court of the role assigned to it by the legislator when providing for the possibility of submitting a request for extraordinary review of a final judgment, and the role assigned to [it] by the Constitution in Article 116, because it is precisely in such cases that the question of ... the uniform application of the law will arise ...

In the specific case, the complainant lodged a request for extraordinary review of a final judgment, which the Supreme Court examined on the merits, so the Supreme Court ruled on the complainant's decisive complaint raised in his constitutional complaint, and the complainant should therefore have lodged a constitutional complaint against the judgment of the Supreme Court."

15. In decision no. U-III-3536/2020 of 29 March 2022, the Constitutional Court held that, since in decision no. U-III-338/2021 it changed its practice regarding the criteria for the admissibility of constitutional complaints, complainants would be obliged to use the legal remedies in the manner specified in decision no. U-III-338/2021 only after the expiry of a transitional six-month period counted from the date decision no. U-III-338/2021 was published (which expired on 19 July 2022).

16. In that case, the complainant, who had been sentenced to imprisonment, lodged a constitutional complaint alleging a violation of his right to a fair trial without first lodging a request for extraordinary review of a final judgment with the Supreme Court. The Constitutional Court did not declare his constitutional complaint inadmissible since it found that the constitutional complaint had been lodged prior to the change in practice regarding the obligation to use the remedy before the Supreme Court. That decision was published in Official Gazette no. 51/2022 on 29 April 2022. The relevant part of it reads as follows:

"4.1. [In decision no. U-III-338/2021 of 21 December 2021, the Constitutional Court] established an obligation for complainants, in order to properly exhaust the available legal remedies, to lodge a request for extraordinary review of a final judgment (where the statutory criteria for using that legal remedy are met) in situations where the constitutional complaint, or individual complaints of that constitutional complaint, is based on the grounds on which the request for extraordinary review of a final judgment may be lodged.

4.2. By doing so, the Constitutional Court has changed its previous practice regarding the criteria for the admissibility of constitutional complaints.

5. In cases such as the present one, where the criteria for the admissibility of legal remedies are the result of an interpretation by the courts, it is considered that it usually

takes six months for ... a sufficient degree of legal certainty [to be achieved] before the public may be considered to be effectively aware of the decision that established the requirements for the use of a certain legal remedy, that is, that the individuals concerned are able and obliged to use it (see *Janković and Others v. Croatia* (dec.), no. 23244/16, § 60, 21 September 2021; *Kirinčić and Others v. Croatia*, no. 31386/17, § 115, 30 July 2020...).

5.1. Given the fact that decision no. U-III-338/2021 of the Constitutional Court was published on 19 January 2022, with regard to those complainants who will be able to use the request for extraordinary review of a final judgment after 19 July 2022, those complainants, in order to meet the requirements for the admissibility of their constitutional complaints, will have to use the relevant remedies in the manner specified in decision no. U-III-338/2021, and then, in the event of an unfavourable outcome, lodge a constitutional complaint with the Constitutional Court.

5.2. On the other hand, those complainants who have not lodged a request for extraordinary review of a final judgment (and are no longer able to do so due to the deadlines for lodging [such a request] having expired), because they relied on the earlier practice of the Constitutional Court on the basis of which they could expect the Constitutional Court to examine their constitutional complaints regardless of the fact that they had not previously used the request for extraordinary review of a final judgment, they cannot be required to use that remedy ... without a specific transitional period ... Therefore, in order to avoid retroactive application of the criteria established in decision no. U-III-338/2021, and to avoid the question of foreseeability and effectiveness of constitutional complaints for complainants who have not lodged, and will not lodge a request for extraordinary review of a final judgment by 19 July 2022, the Constitutional Court will examine their constitutional complaints regardless of the fact that they have not previously used the legal remedy in question.

6. Accordingly, and given that [in the present case] the constitutional complaint was lodged on 27 July 2020 against the judgment of the County Court of 5 June 2020, the Constitutional Court declares the constitutional complaint admissible ..."

2. Constitutional Court's decisions in subsequent cases

17. Research on the Constitutional Court's online database of jurisprudence shows that the Constitutional Court followed the two above-mentioned leading decisions in subsequent cases before it:

- In decision no. U-III-5000/2022 of 16 February 2023 the Constitutional Court declared a complainant's constitutional complaint inadmissible for non-exhaustion of remedies. It held that in decisions nos. U-III-338/2021 of 21 December 2021 and U-III-3536/2020 of 29 March 2022 it had established an obligation for complainants to, as of 19 July 2022, first lodge a request for extraordinary review of a final judgment with the Supreme Court, if the statutory criteria for using that remedy were met, and then, in the event of an unfavourable outcome, lodge a constitutional complaint. Given that in the case in question the contested judgment of the second-instance court was served on the complainant on 25 July 2022 and that the statutory criteria for lodging a request for extraordinary review of a final judgment on the grounds of alleged violations of the fundamental rights and freedoms complained of in his constitutional complaint were met, since the complainant had received

an unconditional prison sentence, he should have first used the remedy before the Supreme Court.

- In cases nos. U-III-5856/2022 of 16 February 2023; U-III-663/2023 of 5 March 2024; U-III-3084/2023 of 5 March 2024; U-III-6465/2022 of 5 March 2024; U-III-7256/2022 of 5 March 2024; and U-III-5716/2023 of 16 April 2024; the Constitutional Court declared inadmissible constitutional complaints alleging violations of the right to a fair trial lodged by complainants who had been served, after 19 July 2022, with final judgments imposing on them unconditional prison sentences, juvenile detention or psychiatric internment, on the grounds that they had failed to first lodge a request for an extraordinary review of a final judgment, even though the statutory criteria for using that remedy had been met, or that they had lodged such a request but the proceedings were still pending before the Supreme Court; or that they had lodged such a request but then failed to lodge a constitutional complaint against the Supreme Court's judgment deciding on it.

18. The Constitutional Court integrated decisions nos. U-III-338/2021 and U-III-3536/2020 into its document entitled "Instructions for completing the constitutional complaint form (30 March 2023)" (*Upute za ispunjavanje obrasca ustavne tužbe od 30. ožujka 2023.*) available on its website. The instructions, in the part concerning criminal and minor-offence proceedings, read as follows:

> "A constitutional complaint must be lodged within 30 days from the date of receipt of the final judgment which decided on your guilt and punishment. In a situation where a request for extraordinary review of a final judgment is allowed, the legal remedy will be exhausted after the Supreme Court decides on that legal remedy (see decisions nos. U-III-338/2021 of 21 December 2021 and U-III-3536/2020 of 29 March 2022). By doing this, the Constitutional Court changed its previous practice regarding the requirements for the admissibility of constitutional complaints."

COMPLAINT

19. The applicant complained, under Article 6 § 1 of the Convention, that the Constitutional Court's decision declaring his constitutional complaint inadmissible had violated his right of access to a court.

THE LAW

20. The applicant complained that his right of access to a court had been violated because the Constitutional Court, applying its new case-law (see paragraphs 13 and 14 above), had declared his constitutional complaint inadmissible. He relied on Article 6 § 1 of the Convention, the relevant part of which reads as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an ... impartial tribunal ..."

A. The applicant's submissions

21. The applicant argued that the statutory criteria for lodging a request for extraordinary review of a final judgment with the Supreme Court had not been met in his case and that the Constitutional Court should not have declared his constitutional complaint inadmissible for not having used that remedy before lodging his complaint.

22. In particular, in his constitutional complaint he had complained that the criminal courts had acted in breach of Article 342 § 1 (2), Article 449 § 1, Article 450 and Article 468 § 1 (11) of the Code of Criminal Procedure (see paragraph 5 above). These were not breaches of criminal procedure for which a request for extraordinary review of a final judgment could be lodged.

23. In its decision declaring his constitutional complaint inadmissible, the Constitutional Court had not even identified the grounds on which he had based his constitutional complaint, let alone verified whether those grounds would have enabled him to lodge a request for extraordinary review of the final judgment.

24. In any event, under section 62 of the Constitutional Court Act, anyone could lodge a constitutional complaint with the Constitutional Court if he or she considered that a decision regarding suspicion or accusation of a criminal offence had violated his or her constitutional rights (see paragraph 9 above). The applicant had lodged his constitutional complaint precisely because he had considered that the judgment of the criminal courts finding him guilty of criminal offences had violated his constitutional right to a fair trial.

B. The Court's assessment

25. The relevant principles emerging from the Court's case-law concerning the right of access to a court and, in particular, access to superior courts, are summarised in *Zubac v. Croatia* ([GC], no. 40160/12, §§ 76-86, 5 April 2018). Specifically, the right of access to a court is not absolute but may be subject to limitations, which must not restrict the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (ibid., § 78).

26. The Court notes that in Croatia access to the Constitutional Court is secured, *inter alia*, through the possibility of lodging a constitutional complaint. That access is, however, restricted by certain admissibility conditions for such a complaint.

27. In the present case, the Constitutional Court declared the applicant's constitutional complaint inadmissible, referring to section 62 of the Constitutional Court Act (see paragraphs 6 and 7 above). Paragraph 2 of that

provision requires complainants to exhaust other available remedies before lodging a constitutional complaint (see paragraph 9 above).

28. That rule, which restricts access to the Constitutional Court, is not *per se* incompatible with the Convention. Its aim is to ensure the proper administration of justice by preventing the Constitutional Court from becoming overburdened with a large number of criminal cases raising human rights issues which could have been resolved by the Supreme Court (compare *Zelenika v. Croatia* (dec.), no. 39801/23, § 45, 21 May 2024). The only issue in the present case is whether the way the Constitutional Court applied that rule was proportionate to that aim and, more specifically, whether it was foreseeable (see paragraph 25 above and paragraph 30 below). The answer to this question extends beyond the sole interests of the applicant in the instant case.

29. In that regard, the Court first reiterates that it is not its task to question the interpretation by the Constitutional Court of the admissibility criteria for lodging constitutional complaints, which is a matter in the sole domain of that court (see, *inter alia*, *Kušić and Others v. Croatia* (dec.), no. 71667/17, § 87, 10 December 2019). Its task is rather to ascertain whether the effects of that interpretation are compatible with the Convention, it being understood that the conditions for the admissibility of constitutional complaints may be stricter than for ordinary appeals (see, for example, *Croatian Radio-Television v. Croatia*, nos. 52132/19 and 19 others, § 164, 2 March 2023, and the cases cited therein).

30. The Court further reiterates that one of the steps in assessing the proportionality of a restriction of access to a court is examining whether it was foreseeable (see, for example, *Zubac*, cited above, § 87; *Arrozpide Sarasola and Others v. Spain*, nos. 65101/16 and 2 others, § 106, 23 October 2018; and *Hanževački v. Croatia*, no. 49439/21, §§ 35-41, 5 September 2023). A coherent domestic judicial practice and a consistent application of that practice will normally satisfy the foreseeability criterion (see *Zubac*, cited above, § 88).

31. In the present case, the Constitutional Court declared the applicant's constitutional complaint inadmissible by applying the new practice established in its decision no. U-III-338/2021 of 21 December 2021 (see paragraphs 6, 7, 13 and 14 above).

32. In that decision, the Constitutional Court changed the criteria for the admissibility of constitutional complaints in criminal proceedings. In particular, it established an obligation for complainants, in order to properly exhaust legal remedies before turning to the Constitutional Court with complaints of violations of the right to a fair trial, to first lodge a request for extraordinary review of a final judgment with the Supreme Court, where the statutory criteria for lodging such a request were met, and then, in the event of an unfavourable outcome, lodge a constitutional complaint with the Constitutional Court.

33. This contrasts with the Constitutional Court's earlier position, according to which, for the purposes of the exhaustion requirement, complainants were not required to use the request for extraordinary review of a final judgment before lodging a constitutional complaint.

34. At this juncture, the Court notes that in cases in respect of Croatia, it has already held that where a request for extraordinary review of a final judgment was made on one of the statutory grounds under the Code of Criminal Procedure, the proceedings following the request were decisive for the determination of a criminal charge against the applicant and thus fell within the scope of Article 6 § 1 of the Convention (see *Maresti v. Croatia*, no. 55759/07, § 28, 25 June 2009; *Dolenec v. Croatia*, no. 25282/06, § 199, 26 November 2009; and *Gregačević v. Croatia*, no. 58331/09, § 39, 10 July 2012).

35. Returning to the analysis in the present case, the Court notes that the evolution of the Constitutional Court's case-law in decision no. U-III-338/2021 is in line with the developments in the legal regulation of requests for extraordinary review of a final judgment. In particular, since 1 January 2013, Article 515 § 1 of the Code of Criminal Procedure has provided that a defendant may use the remedy in question if he or she has been convicted in violation of the fundamental human rights and freedoms guaranteed by the Croatian Constitution and the Convention (see paragraph 11 above). Since 15 December 2013, Article 517 § 1 (2) has provided that a serious violation of the right to a fair trial under Article 468 § 2 is a ground for using that remedy (see paragraph 12 above). Those grounds correspond entirely to the grounds for lodging a constitutional complaint provided for in section 62(1) of the Constitutional Court Act (see paragraph 9 above). In these circumstances, it was not unreasonable to expect that the Constitutional Court's practice would change.

36. The Court reiterates that case-law development is not, in itself, contrary to the proper administration of justice. It further reiterates that, in cases such as the present one, where the remedy in question was the result of an interpretation by the courts, it normally takes six months for such a development of the case-law to acquire a sufficient degree of legal certainty before the public may be considered to be effectively aware of the domestic decision which had established the remedy and the persons concerned be enabled and obliged to use it (see *Kirinčić and Others v. Croatia*, no. 31386/17, § 115, 30 July 2020, with further references).

37. In that connection, the Court notes that the change in the criteria for the admissibility of constitutional complaints in criminal proceedings established by the Constitutional Court's decision no. U-III-338/2021 only took effect on 19 July 2022, that is, after a period of six months following its publication in the Official Gazette, which enabled all interested persons to become acquainted with the new rule (see paragraphs 15 and 16 above).

38. Having regard to the fact that decision no. U-III-338/2021 was published on 19 January 2022, and to the above finding as regards the substance of that decision (see paragraph 35 above), it follows that no issue arises as regards the foreseeability of the requirement to lodge a request for extraordinary review of a final judgment before turning to the Constitutional Court for those applicants who were and would have been in a position to use that remedy after 19 July 2022.

39. In other words, as of 19 July 2022, all persons sentenced to unconditional imprisonment, juvenile detention or psychiatric internment must, in order to comply with the relevant domestic requirements of exhaustion of domestic remedies, before lodging their constitutional complaint alleging violations of the right to a fair trial, first lodge a request for extraordinary review of a final judgment with the Supreme Court, and then, in the event of an unfavourable outcome, lodge a constitutional complaint with the Constitutional Court.

40. Since the applicant in the present case lodged his constitutional complaint on 5 September 2023 (see paragraph 5 above), the application of the Constitutional Court's new practice to his case was foreseeable in the given circumstances (contrast *Janković and Others*, § 63, and *Hanževački*, § 36, both cited above, where there was an issue with retroactive application of the new admissibility requirement).

41. The Court also notes that more than a year passed between the entry into force of the new practice regarding the exhaustion of remedies in criminal proceedings and the lodging of the applicant's constitutional complaint. The Constitutional Court meanwhile published on its website two decisions issued on 16 February 2023 implementing the new practice in subsequent cases before it (see paragraph 17 above) and amended instructions for completing the constitutional complaint form (on 30 March 2023, see paragraph 18 above).

42. As to the applicant's argument that the Constitutional Court wrongly held that the statutory criteria for lodging a request for extraordinary review of a final judgment had been met in his case (see paragraphs 21-23 above), the Court notes that: (a) the criminal courts imposed an unconditional prison sentence on him (see paragraph 4 above), which is one of the criteria laid down in Article 515 § 1 of the Code of Criminal Procedure for lodging the request in question, and that (b) in his constitutional complaint he had complained of a violation of his right to a fair trial guaranteed by Article 29 of the Croatian Constitution and Article 6 of the Convention (see paragraph 5 above), which is a ground on which a request for extraordinary review of a final judgment may be lodged under Article 517 § 1 (2) in connection with Article 468 § 2 of the Code of Criminal Procedure (see paragraphs 12 and 34 above).

43. It follows that the application is inadmissible under Article 35 § 3 (a) of the Convention as manifestly ill-founded and that it 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 7 November 2024.

Dorothee von Arnim Deputy Registrar	Arnfinn Bårdsen President