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

FIRST SECTION

DECISION

Application no. 21714/22
Zoran MAMIĆ against Croatia
and two other applications
(see list appended)

The European Court of Human Rights (First Section), sitting on 9 July 2024 as a Chamber composed of:

Marko Bošnjak, *President*,
Alena Poláčková,
Krzysztof Wojtyczek,
Ivana Jelić,
Gilberto Felici,
Raffaele Sabato, *judges*,
Erik Wennerström, ad hoc *judge*,
and Liv Tigerstedt, *Deputy Section Registrar*,

Having regard to:

the above applications lodged on the various dates indicated in the appended table by Mr Zoran Mamić ("the first applicant"), Mr Zdravko Mamić ("the second applicant"), both nationals of Croatia and of Bosnia and Herzegovina, and by Mr Milan Pernar ("the third applicant"), a Croatian national;

the observations submitted by the respondent Government and the observations in reply submitted by the applicants;

the decision of the Government of Bosnia and Herzegovina not to make use of their right to intervene in the proceedings (Article 36 § 1 of the Convention);

the withdrawal of Mr Davor Derenčinović, the judge elected in respect of Croatia, from sitting in the case (Rule 28 of the Rules of Court) and the decision of the President of the Chamber to appoint Mr Erik Wennerström, the judge elected in respect of Sweden, to sit as an *ad hoc* judge (Rule 29 § 2 (b) of the Rules of Court) once it was established that less than three persons indicated in the list of *ad hoc* judges submitted by the Government in

accordance with Article 26 § 4 of the Convention and Rule 29 § 1 (a) of the Rules of Court satisfied the conditions set out in paragraph 1 (c) of that Rule;

Having deliberated, decides as follows:

INTRODUCTION

1. The case principally concerns the three applicants' complaint that they were not tried by an impartial tribunal because the president of the trial panel had had an inappropriate relationship with the second applicant, received money and presents from him, and frequently attended the matches of Dinamo Zagreb Football Club (the injured party in the criminal proceedings) as a VIP guest. The first and second applicants further complained that the criminal proceedings had been instituted by an unauthorised prosecutor, and the second applicant also complained about his participation in the trial and the session of the appeal panel and his right to the presumption of innocence.

THE FACTS

2. The applicants, whose details are set out in the appended table, were represented by Mr Š. Matak (the first applicant's representative), Ms L. Horvat and Ms S. Marković (the second applicant's representatives), and Mr M. Golub (the third applicant's representative), all lawyers practising in Zagreb.

3. The Government were represented by their Agent, Ms Š. Stažnik.

4. The facts of the case may be summarised as follows.

A. Criminal investigation

5. The first and second applicants are brothers who occupied key management positions in Dinamo Zagreb Football Club. The third applicant is a tax inspector.

6. On 30 June 2015 the Ministry of Finance's department in charge of tax fraud investigations filed a criminal complaint against the applicants and an individual called D.V.

7. On 3 July 2015 the Office for the Suppression of Corruption and Organised Crime (*Ured za suzbijanje korupcije i organiziranog kriminaliteta*, hereinafter "the OSCOC") opened an investigation against the applicants and D.V., on suspicion that they had committed several criminal offences against official duty and the economy.

8. On 19 April 2016 the President of the Supreme Court granted a request by the State Attorney General for the criminal proceedings against the applicants and D.V. to be instituted before the Osijek County Court (*Županijski sud u Osijeku*) instead of the Zagreb County Court (*Županijski sud u Zagrebu*), which otherwise had territorial jurisdiction in the case. The

decision was made on the grounds that the first and second applicants and D.V. were acquaintances of several judges of the latter court, and that the transfer was thus necessary to avoid any doubt about the trial judges' impartiality.

9. On 26 April 2016, in the Osijek County Court, the OSCOC charged the applicants and D.V. with the criminal offences of (instigating) abuse of office and authority, (aiding) the abuse of trust in business dealings and giving and receiving a bribe. Part of the charges concerned transfer compensation paid to Dinamo Zagreb Football Club for two prominent Croatian football players. The indictment was signed by S.M., as a deputy head of the OSCOC.

10. On 29 November 2016 a three-judge panel of the Osijek County Court confirmed the indictment and sent the case for trial. During the trial the prosecution was represented by S.M. and T.P., as deputy heads of the OSCOC.

B. Proceedings before the Osijek County Court

11. On 30 November 2016 the case was assigned to Judge D.K., as the president of the trial panel.

12. At a preparatory hearing held on 30 January 2017 the applicants pleaded not guilty. The president of the trial panel warned them that, given that they had pleaded not guilty in the presence of their attorneys, a hearing could be held in their absence if they failed to attend.

13. On 27 April 2017 the president of the trial panel presented to the parties the subject of the trial and the composition of the three-judge trial panel. The applicants did not make any objections to the composition of the panel.

14. In May 2017 three hearings were held, during which witnesses were heard in respect of the criminal offences with which the second applicant had been charged. The second applicant and his attorney questioned the witnesses. At one of those hearings (held on 9 May 2017), the second applicant interrupted a witness several times without the permission of the president of the trial panel, and the latter warned him that if he continued to disturb the hearing, he would be fined under Article 397(1) of the Code of Criminal Procedure (see paragraph 74 below).

15. At a hearing held on 13 June 2017 a witness was heard. The second applicant and his attorney were present and questioned him.

16. At a hearing held on 14 June 2017 the second applicant interrupted the deputy head of the OSCOC without permission. The president of the panel warned him that he would be removed from the courtroom if he continued to disrupt the work of the court in such a manner. The second applicant then began shouting at his attorney and cancelled her power of attorney. The president of the trial panel had the second applicant removed to the corridor

and ordered him to inform the court of his new chosen attorney within eight days. The hearing was adjourned.

17. On 21 June 2017 the first and second applicants appointed new attorneys (N.M. and I.S. respectively) to represent them in the case.

18. At a hearing held on 3 July 2017, during the questioning of a witness, the second applicant took the floor without the permission of the president of the trial panel and then left the courtroom on his own initiative. The president of the trial panel issued a ruling removing the second applicant from the courtroom until evidence was examined at the hearing on that day. Afterwards, when the president of the trial panel invited the second applicant back into the courtroom in order to present him with the actions taken in his absence, the second applicant refused to enter.

19. At a hearing held on 4 July 2017 the president of the trial panel warned the parties about proper conduct in the courtroom, stating the following:

> "Given the second applicant's unacceptable behaviour yesterday, which repeatedly interfered with the work of the court, [and] for which he received several warnings and was twice removed from the courtroom, the second applicant and all the other defendants and parties are warned that they are obliged to observe order [and] behave in accordance with the court's rules, and that if they fail to do so then they may first be warned, fined and, as the most severe measure, removed [from the courtroom] until the end of the hearing or until the end of the presentation of evidence."

The second applicant stated that he understood the warning. A witness was then heard in his presence.

20. At a hearing held on 1 September 2017 the president of the trial panel reminded the parties of his warning (see paragraph 19 above) and warned the second applicant in particular that he would be removed from the courtroom until the end of the presentation of evidence if he failed to observe the order. The second applicant stated that he understood the warning. However, during the examination of a witness, he took the floor without permission and started commenting on a witness's testimony. The president of the trial panel had him removed to the corridor.

21. Before the start of the hearing on 11 September 2017, the president of the trial panel specified that the second applicant would be removed from the courtroom until the end of the presentation of evidence. The second applicant's attorney then stated that his client had arrived at the courthouse but had been denied entry. The court held the hearing in the second applicant's absence and examined a witness, whom the second applicant's attorney questioned.

22. Sixteen hearings were then held in the second applicant's absence and in the presence of his attorney. At those hearings the trial court continued to examine witnesses and experts, read and review material evidence, and order further expert evaluations. On one occasion the court granted a request by the first and second applicants' attorneys for additional time to study the findings

of an expert, and on another it granted their request for additional documents to be adduced as evidence.

23. The second applicant was summoned to the hearing of 16 April 2018. The president of the trial panel presented him with the evidence taken in his absence, to which the second applicant had no objections. He requested that four additional persons be heard as witnesses, but that request was refused.

24. At the hearing held on 17 April 2018, the applicants and D.V. presented their defence and stated that they did not wish to answer the prosecution's questions. The second applicant submitted additional documents to the case file.

25. Before the start of the hearing on 14 May 2018, the second applicant left the courtroom on his own initiative. Proposals for additional evidence lodged by the prosecution and the defence were granted in part. On the same day the OSCOC amended the factual description of the indictment.

26. On 17 May 2018 an attorney called V.M. joined I.S. in representing the second applicant. Over the following days, V.M. submitted replies to the prosecution's submissions to the case file.

27. On 28 May 2018 the applicants pleaded not guilty to the amended indictment and maintained their previously presented defence. They gave their closing statements, and the hearing was concluded.

28. On 6 June 2018 the trial panel acquitted the first and third applicants of one count of giving and receiving a bribe, and found the first, second and third applicants and D.V. guilty of the remaining criminal offences with which they had been charged (see paragraph 9 above). All the defendants were given prison sentences and proceeds of crime were confiscated from them. Mandatory detention was ordered in respect of the second applicant.

C. The second applicant's departure from Croatia

29. One day before the trial court's judgment was pronounced (see paragraph 28 above), the second applicant left Croatia. Arrest warrants were issued, and the Croatian police were informed that the second applicant was in Bosnia and Herzegovina.

30. On 15 June 2018 the Croatian Ministry of Justice asked the Ministry of Justice of Bosnia and Herzegovina to extradite the second applicant, but the latter refused on the grounds that he was also a national of Bosnia and Herzegovina and the criminal offences with which he had been charged had been committed prior to the signing of the extradition agreement between the two countries.

D. Proceedings before the Supreme Court

31. The defendants and the prosecution appealed against the trial court's judgment (see paragraph 28 above). The Supreme Court, as the appellate court, received the case file on 21 February 2019.

32. On 31 December 2020 the second applicant sent a letter to the Supreme Court stating that he had received an invitation to attend the session of the appeal panel scheduled for 27 and 28 January 2021, but he was unable to attend. He admitted that his absence did not prevent the session from being held. He asked to participate remotely, by way of video link.

33. On 27 January 2021 the Supreme Court held the session in the presence of the Deputy State Attorney General, the applicants' and D.V.'s attorneys, and the legal representatives of third parties.

34. The Supreme Court noted that the applicants and D.V. had not attended the session, despite being duly invited, and established that under Article 475 § 4 of the Code of Criminal Procedure (see paragraph 74 below), there were no obstacles to the session being held in their absence. The parties orally presented the most important parts of their appeals and the replies to the appeals. The second applicant's attorney asked to read out the transcript of the deliberations of the trial court, but that request was refused. The session continued 3 March 2021.

35. On 3 March 2021 the Supreme Court quashed part of the trial court's judgment in respect of the first and third applicants and remitted that part of the case to the trial court, amending the first and third applicants' prison sentences accordingly. It granted in part the appeal by the second applicant and a person called M.M. concerning the confiscation of proceeds of crime and upheld the remaining part of the trial court's judgment.

36. In its decision, the Supreme Court noted that the second applicant had been duly invited to the session of the appeal panel and that there was nothing to suggest that he had been absent for reasons beyond his control. It noted that the second applicant had fled Croatia one day before the trial court's judgment had been pronounced and had since remained unavailable to the Croatian authorities. It deemed that it was not justified to grant his request to participate in the appeal panel session remotely from a country to which he had fled in order to avoid the implementation of the Croatian courts' lawful decisions. Allowing that would go against the rule of law and the credibility of the judiciary and would encourage behaviour which rendered the implementation of Croatian laws impossible. The Supreme Court deemed that the second applicant's deliberate choice to make himself unavailable to the Croatian authorities had amounted to a waiver of his right to personally participate in the session of the appeal panel. It noted that the courts resorted to cross-border video links when they were necessary for conducting proceedings. However, the second applicant had been entitled but not obliged

to be present at the session of the appeal panel, and during the session he had been represented by his attorney.

37. As to the request by the second applicant's attorney to read out the transcript of the deliberations of the trial court, the Supreme Court noted that information regarding judges' deliberations and voting was confidential unless a member of the panel decided to attach his or her separate opinion to the decision, which was not the case in the applicants' case.

38. The Supreme Court further dismissed a complaint by the second applicant that the indictment in his case had been lodged by S.M., who had not been authorised to act as a deputy head of the OSCOC. The Supreme Court referred to its established case-law on the matter, and in particular to the reasoning given in its decision no. Kž-Us-8/2018-6 of 10 April 2018.

39. The Supreme Court also dismissed a complaint by the second applicant about being removed from the courtroom, deeming that he had brought about the situation complained of by repeatedly disrupting order and not complying with the president of the trial panel's warnings.

40. Following part of his conviction becoming final, the first applicant, who had left Croatia in the meantime, was detained in Bosnia and Herzegovina for one day and then released after a travel ban was imposed and his travel documents were confiscated. He and the second applicant remain in Bosnia and Herzegovina until the present day.

E. Allegations against the Osijek County Court judges

41. Meanwhile, on 8 October 2020 the second applicant had sent to the OSCOC a USB stick containing an audio statement that he had made, in which he described how he had socialised with and given bribes to three Osijek County Court judges, in exchange for favourable decisions in two sets of criminal proceedings: D.K. (the president of the trial panel in the proceedings in dispute), and Z.V. and A.K. (members of the indictment panel in another set of proceedings).

He submitted, *inter alia*, that part of the arrangement with Judge Z.V. had been to ensure that the judge's close friend, Judge D.K., dismissed the charges against him and the other defendants on the basis that they had been brought by an unauthorised prosecutor. He also described how his brother, the first applicant, had participated in some of those actions, for example by taking Judge Z.V., his girlfriend and her daughter for dinner in a restaurant while they had all been in the United Arab Emirates in December 2017 and January 2018.

42. Upon receiving the USB stick, the OSCOC started an inquiry. It took statements from numerous persons and collected information on the assets of the judges concerned and persons connected to them.

43. On 16 March 2021 the second applicant held a press conference in Bosnia and Herzegovina and publicly stated that he had bribed the Osijek

County Court judges (Judges D.K., Z.V. and A.K.), and had bought gifts and paid for trips for Judge Z.V., and that his brother, the first applicant, had participated in some of those actions.

F. Proceedings before the Constitutional Court

44. In April 2021 the applicants and the fourth defendant, D.V., lodged constitutional complaints against the Supreme Court's decision (see paragraph 35 above). The first and second applicants and D.V. complained that they had not been tried by an impartial tribunal, on account of the relationship between the president of the trial panel and the second applicant. The third applicant did not make such a complaint.

45. On 28 October 2021 the Constitutional Court declared the third applicant's constitutional complaint inadmissible. The decision was served on the third applicant's representative on 19 November 2021.

46. On 16 November 2021 the Constitutional Court rejected the first and second applicants' complaint that there had been no impartial tribunal, for non-exhaustion of domestic remedies.

Notably, it established that from the outset the first and second applicants had been aware of the circumstances which they had later claimed had caused the president of the trial panel's lack of impartiality, but they had failed to ask for that judge to be removed from the trial and had failed to complain of his lack of impartiality in the appeal against the trial court's judgment. The Constitutional Court concluded that the first and second applicants had thereby deprived the ordinary courts, and especially the Supreme Court, of the opportunity to take a stand on the matter, bearing in mind also that all subsequent proceedings against the judge in question had been initiated on the basis of the second applicant's allegations.

In support of its conclusion that the first applicant had been aware of the circumstances surrounding the president of the trial panel, Judge D.K., the Constitutional Court noted that the second applicant had on several occasions publicly stated that his brother, the first applicant, had known about the second applicant giving money and gifts to Judge D.K., and that the first applicant had personally participated in some of those actions.

47. As to the complaint that the prosecutor had not been authorised, the Constitutional Court held that the matter concerned the interpretation of the OSCOC Act, and the interpretation of laws was within the competence of courts, especially the Supreme Court. It noted that the Supreme Court, in the applicants' case, had given an extensive explanation of its position on the matter, which was in accordance with its established case-law and was not in any way arbitrary. As to written opinions by legal experts which the second applicant had obtained for the purpose of proving that S.M. could not be considered an authorised prosecutor in the case, the Constitutional Court reiterated that the interpretation of laws was primarily the task of the courts.

The courts might consult the opinions of legal experts, including those ordered by a party in the case, but were not bound by their point of view.

48. As to the complaint regarding the second applicant being removed from the courtroom during a number of hearings, the Constitutional Court held that the situation which the second applicant had brought about by repeatedly disrupting order in the courtroom, despite several warnings, had not impaired his defence rights. Namely, his attorney had remained in the courtroom the entire time and had actively participated in the hearings, and the second applicant had had sufficient opportunity to develop his defence and discuss all relevant issues with his attorney.

49. The Constitutional Court further held that not allowing the second applicant to participate remotely in the appeal panel session had not breached his right to defend himself in person. It noted that the second applicant had fled to Bosnia and Herzegovina knowing that he would be convicted, and that Bosnia and Herzegovina would not extradite him to Croatia. Allowing him to participate remotely in the session of the appeal panel in such circumstances would have amounted to giving legitimacy to his actions, contrary to the rule of law.

50. The Constitutional Court also held that the fact that the trial had received significant media publicity had not affected the impartiality of the judges who had decided the case. Media interest in the case was understandable, as it had concerned prominent Croatian football players and one of the best-known football clubs in Croatia. The second applicant's negative depiction in some articles had had no bearing on the fairness of the proceedings, which had been conducted by professional judges who were trained to resist such pressures. Information and comments published in the media had not been provided by the authorities. The State could not censor or control the media, and the second applicant had had civil remedies to protect his personality rights at his disposal.

51. The Constitutional Court's decisions were served on the first and second applicants' representatives on 17 November 2021.

52. On 29 March 2022 the Constitutional Court found that there had been a breach of the right to an impartial tribunal in respect of the fourth defendant, D.V. The Constitutional Court noted that there were no known circumstances indicating that D.V. had been aware of the contact between the second applicant and the president of the trial panel, D.K., before the second applicant's press conference held in March 2021, meaning that D.V. could have presented his complaint concerning the lack of an impartial tribunal for the first time in his constitutional complaint, which he had done.

It further noted that even though Judge D.K. had denied having any corrupt agreement with the second applicant, he had not denied that in November 2016, while the proceedings against the applicants and D.V. had been pending before the indictment panel, he had visited the Dinamo Zagreb stadium lounge, knowing that the second applicant would be there, and had received

an expensive watch from him. The Constitutional Court deemed that this alone objectively called into question the impartiality of Judge D.K. It quashed the lower courts' judgments in respect of D.V. and remitted the case for a retrial.

G. "The SMS affair"

53. Meanwhile, on 4 June 2018, two days prior to the delivery of the trial court's judgment (see paragraph 28 above), the second applicant had held a press conference in Croatia, presenting text messages allegedly sent by high-ranking persons in the justice system as evidence that the impugned criminal proceedings had been instituted without any basis, with the sole aim of harming him personally.

54. Following the second applicant's statements, an investigation was conducted and on 18 February 2019 two persons were indicted, V. and C., for, *inter alia*, interfering with evidence in the applicants' case. The proceedings, which the media called "the SMS affair", ended with V. and C. being convicted with final effect.

55. The courts established that V. had fabricated and handed over to the second applicant correspondence between two successive State Attorneys General, one of the members of the trial panel in the applicants' case, the then Head of the OSCOC, and two police officers, with the aim of proving that the criminal proceedings against the applicants had been instituted without any basis and solely in order to harm the second applicant. The courts established that the second applicant had presented that correspondence at the press conference of 4 June 2018 (see paragraph 53 above) and had used it to ask for the pronouncement of the trial court's judgment to be adjourned and for the hearing to be reopened, which the trial court had refused.

In addition, the courts established that after the trial court's judgment in the applicants' case had been pronounced, V. had fabricated electronic correspondence demonstrating the influence of the former State Attorney General on the Supreme Court judges who were to decide the applicants' case on appeal. The courts found that the correspondence had been fabricated to be used by the applicants to prove that they had been the victims of an unfounded criminal prosecution and an unfair trial, but the correspondence had not been handed over to the second applicant as planned owing to V. being arrested.

56. In "the SMS affair", the second applicant participated as a witness. According to the second applicant, he had not verified the authenticity of the correspondence given to him by V. because it had seemed credible. The second applicant also stated that V. had never explicitly asked for money from him, but had complained of financial difficulties, so the second applicant had given him 50,000 euros (EUR) and bought him IT equipment, gym equipment, a jacuzzi and a car.

57. V.'s conviction was based on, *inter alia*, text messages found on V.'s mobile phone, including one in which he had informed the second applicant that he should just follow his instructions and he would be able to walk free, and that there was plenty of material to cast a shadow over the proceedings against him.

H. Investigation into bribery

58. On 12 May 2021 the second applicant was questioned as a defendant in the inquiry conducted on the basis of his allegations against the Osijek County Court judges (see paragraphs 41-43 above). The second applicant stated, *inter alia*, that while the indictment against him had been pending before the indictment panel of the Osijek County Court, he had been introduced to Judges D.K. and Z.V. in the Dinamo Zagreb stadium lounge after a football match. There, he had socialised with them and given D.K. an expensive watch, knowing that he was a judge and that he would participate in his case before the Osijek County Court.

He further described the numerous occasions when he had had contact with Judge Z.V., who had promised to influence his close friend, Judge D.K., to acquit the second applicant of the charges. Z.V. had also been supposed to help the second applicant in another set of criminal proceedings against him, proceedings in which he had been the president of the indictment panel, and to ensure that money paid to secure the second applicant's bail would be returned. In exchange, the second applicant had given large sums of money to Z.V., which had been destined for him and Judges D.K. and A.K. and had paid for Judge Z.V. to have trips in Croatia and abroad.

The second applicant submitted, *inter alia*, that he and his brother (the first applicant) had financed a stay in Dubai, the United Arab Emirates, for Judge Z.V., his girlfriend and her daughter in December 2017 and January 2018, and that they had all socialised extensively there and discussed the cases pending against them before the Osijek County Court.

He further described how Judges D.K. and Z.V. had socialised with him and his wife at his attorney's wedding anniversary in December 2017.

He also submitted that two days before the delivery of the trial court's judgment, he had learned that the judges had written a judgment convicting him, and had confronted Judge Z.V. about this at a petrol station, together with his brother, the first applicant. He had then decided to leave for Bosnia and Herzegovina to wait for the pronouncement of the judgment.

59. In his statement given during the inquiry, Judge D.K. confirmed that he had received the watch from the second applicant in the stadium lounge after a football match, but denied having any corrupt agreement with him, as evidenced by the fact that he had eventually convicted him. He also denied having any knowledge of the contact between the second applicant and Judge Z.V., and receiving gifts or money from either of them. He admitted that he

and Judge Z.V. had attended the wedding anniversary of the second applicant's attorney in December 2017, and that there he had had social contact with the second applicant and his wife.

60. Judge Z.V. denied receiving any money from the second applicant and intervening in the criminal proceedings in his favour.

61. Following the inquiry, on 9 June 2021 the National Police Office for the Suppression of Corruption and Organised Crime (*Policijski nacionalni ured za suzbijanje korupcije i organiziranog kriminaliteta*, hereinafter "the PNOSCOC") filed a criminal complaint against the first and second applicants, three judges of the Osijek County Court (D.K., Z.V. and A.K.), and D.T. (a businessman).

62. On 10 June 2021 the OSCOC opened an investigation on suspicion that the above-mentioned persons had committed the criminal offences of giving and receiving a bribe and peddling influence. During the investigation, all the defendants were questioned. Numerous witnesses were heard and a large amount of material evidence was collected.

63. When questioned during the investigation, the second applicant stated, *inter alia*, that he was sorry about getting his brother, the first applicant, into trouble with his reckless statements given during the inquiry (see paragraph 58 above). He submitted that his brother had known nothing about his arrangement with the judges, and that he had paid for hotel rooms in Dubai and provided a large sum of money on another occasion without knowing what the real purpose of those actions had been.

64. The first applicant, in a statement given during the investigation, confirmed that he had paid for hotel rooms for Judge Z.V., his girlfriend and her daughter in Dubai in December 2017 and January 2018, but stated that afterwards the second applicant had refunded him the money. The first applicant further confirmed that he had socialised with Judge Z.V. in Dubai, hosting him at a football match in Abu Dhabi, where he had been a coach at the time, and taking Z.V., his girlfriend, her daughter, the second applicant and several other persons to a restaurant in Abu Dhabi for dinner. He further stated that while they had been socialising in Dubai, Judge Z.V. would assure the applicants that they should not worry about the criminal proceedings against them. The first applicant also confirmed that he had been present when the second applicant and Judge Z.V. had met at a petrol station two days prior to the delivery of the trial court's judgment, on which occasion Judge Z.V. had assured the second applicant that he had seen the judgment written by Judge D.K. and that it was favourable to the applicants.

65. The first applicant's girlfriend at the time, D.C, and the president of the board of directors of Dinamo Zagreb Football Club at the time, V.P., testified (separately) about the first applicant telling them that Judge Z.V. had been invited to Dubai in exchange for a favourable decision in the trial. D.C. further stated that the first applicant had been surprised to learn about his

conviction, since he had earlier "learned from the judges" that he would be acquitted.

66. During the investigation, the transcript of the trial panel's deliberations in the case against the applicants was obtained. It showed that Judge D.K. had voted to dismiss the charges against the applicants on the basis that they had been brought by an unauthorised prosecutor, but that two other panel members had outvoted him and had convicted the applicants. According to V.P.'s witness testimony, dismissing the charges against the applicants on the basis that they had been brought by an unauthorised prosecutor had been part of the arrangement which the second applicant had made with the judges.

67. According to Viber correspondence between Judges D.K. and Z.V. while Z.V. was in Dubai, which was obtained by a search of D.K.'s mobile phone, Judge D.K. asked Judge Z.V. how "the honeymoon" was going and instructed him to "obtain sufficient funds", bearing in mind that the "campaign would last for a while".

I. Indictment for bribery and peddling influence

68. Upon the completion of the investigation, on 7 June 2023 an indictment was brought against the first and second applicants, Judges D.K., Z.V. and A.K., and two other persons for giving and receiving a bribe, peddling influence and money-laundering.

69. In particular, Judge D.K. was charged for socialising with the second applicant on 22 November 2016 in the stadium lounge while the indictment against the applicants had been pending before the indictment panel, and for accepting an expensive watch from the second applicant while being aware that he would likely be appointed as the president of the trial panel in the case. The second applicant was charged for giving Judge D.K. an expensive watch in order to win his favour at trial.

70. The second applicant was also charged for contacting Judge Z.V. on multiple occasions after Judge Z.V., in exchange for money, had promised the second applicant that he would use his close relationship with Judges D.K. and A.K. to obtain decisions favourable to the first and second applicants and other defendants in two sets of criminal proceedings and in proceedings concerning the return of money paid to secure the second applicant's bail. In that connection, the second applicant was charged for, *inter alia*, giving Judge Z.V. EUR 370,000 to be distributed between him and Judges D.K. and A.K.; arranging for Judge Z.V. to attend a football match in Liverpool in which the Croatian national team was playing, two days before the pronouncement of the trial court's judgment; and, together with the first applicant, financing a stay in the United Arab Emirates for Judge Z.V., his girlfriend and her daughter from 27 December 2017 to 5 January 2018.

71. The first applicant was charged for, *inter alia*, financing a stay in the United Arab Emirates for Judge Z.V., his girlfriend and her daughter from 27 December 2017 to 5 January 2018 in exchange for a favourable decision in the trial.

J. Disciplinary proceedings against the judges

72. On 22 March 2021 disciplinary proceedings were instituted against Judges D.K. and Z.V. in relation to their alleged contact with the second applicant while the proceedings had been pending against him before the Osijek County Court. On 31 March 2021 the National Judicial Council (*Državno sudbeno vijeće*) temporarily suspended Judges D.K. and Z.V. from judicial duty.

73. On 28 April 2022 Judge Z.V. was removed from judicial duty at his own request. On 7 July 2022 the National Judicial Council found Judge D.K. guilty of damaging the reputation of the courts and judicial duty, and removed him from judicial duty. The decision became final on 25 November 2022.

RELEVANT LEGAL FRAMEWORK

74. The relevant Articles of the Code of Criminal Procedure (*Zakon o kaznenom postupku*, Official Gazette nos. 152/2008, 76/2009, 80/2011, 91/2012, 143/2012, 56/2013, 145/2013, 152/2014, 70/2017 and 126/2019), as in force at the material time, read as follows:

Article 32

"1. A judge or lay judge shall be excluded from sitting in a case

(1) if he or she has been injured by the offence;

(2) if he or she is related to the defendant, his or her counsel, the prosecutor, the victim, the injured person, or the legal guardian or legal representative [of one of these persons through being a] spouse, a relative by blood (either lineal, descending or ascending, or collateral to the fourth degree), or related by affinity to the second degree;

...

2. A judge or lay judge may be recused in a particular case if it has been argued and proved that there are circumstances other than those listed in the previous paragraph which call his or her impartiality into doubt."

Article 33

"1. A judge or lay judge, as soon as he or she discovers a ground for exclusion referred to in Article 32 § 1 of this Code, shall discontinue all activity in the case and inform the president of the court, who shall appoint a substitute judge. ...

2. If a judge or lay judge considers that other circumstances exist which justify his or her recusal (Article 32 § 2), he or she shall inform the president of the court."

Article 34

"(1) Disqualification [of a judge] may also be requested by the parties.

(2) [A party] may lodge [an] application for disqualification immediately after learning of the reason for the disqualification.

...

(5) In the application, the party shall state the evidence and circumstances in support of his or her belief that there are legal grounds for disqualification. ..."

Article 395

"(1) The president of the panel has a duty to maintain order in the courtroom and the dignity of the court. Immediately after opening a session, he or she may warn persons attending the hearing to behave politely and not disrupt the work of the court. The president of the panel may order that persons attending the hearing be searched.

..."

Article 396

"(1) If [a] defendant, defence counsel, injured person, legal representative, attorney, witness, expert witness, interpreter or any other person disrupts order or disobeys the orders of the president of the panel to maintain order, the president of the panel shall warn or fine that person up to 50,000 Croatian kunas. If the person continues to disrupt order and disobey the orders of the president of the panel, the panel president may order his or her removal from the courtroom.

(2) The defendant may be removed from the courtroom for a specified period of time and, for repeated disruptions, for the duration of the presentation of evidence. Before the end of the presentation of evidence, the president of the panel will summon the defendant and inform him or her of the course of the trial. If the defendant continues to disrupt order and offend the dignity of the court, the president of the panel may remove him or her from the hearing again. In that case, the trial will be completed in the absence of the defendant and he or she will be informed of the judgment by the president of the panel or a panel member, in the presence of a court clerk.

..."

Article 397

"(1) In the course of the proceedings, the court may fine defence counsel, an attorney or legal representative, [or] the injured party acting as a prosecutor or a private prosecutor up to 50,000 Croatian kunas if his or her actions are clearly aimed at delaying the criminal proceedings ..."

Article 475

"(1) The second-instance court shall render its decision at the session of the panel.

...

(4) The session may be held in the absence of parties who have been duly notified ...

...

(8) The parties' presence at the panel session may also be ensured by using a ... technical device for remote communication (an audio-video device) operated by an expert. The fact that the parties attend the panel session by way of an audio-video device, the type of device [used] and the name of the expert operating the device shall be recorded in the transcript of the panel session."

Article 501

"(1) Criminal proceedings concluded by a final judgment may be reopened in favour of the convicted person, regardless of his or her presence, if

...

2. it is proven that the judgment was rendered because the State Attorney, judge, lay judge, investigator or another person carrying out actions relating to evidence committed a criminal offence;

3. new facts or new evidence [are] presented which, alone or in connection with previously gathered evidence, [are] sufficient to lead to the acquittal of the person who was convicted, or to his or her conviction under a less severe criminal code;

...

(2) In the cases referred to in points 1 and 2 of paragraph 1 of this Article, it must be proven by a final judgment that the persons in question were found guilty of those criminal offences. ..."

COMPLAINTS

75. The applicants complained that they had not been tried by an impartial tribunal, in that the president of the trial panel had had an inappropriate relationship with the second applicant, received money and presents from him, and frequently attended the matches of Dinamo Zagreb Football Club (the injured party in the proceedings) as a VIP guest. They relied on Article 6 § 1 of the Convention, which reads:

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

76. The first and second applicants further complained that the criminal proceedings against them had not been instituted at the request of an authorised prosecutor, and that the domestic courts had adopted a manifestly unreasonable point of view on the matter, in breach of Article 6 § 1 of the Convention.

77. The second applicant further complained that the president of the trial panel had removed him from the courtroom during seventeen hearings, and that at one point he had not even been allowed to enter the courthouse. He also complained that he had not been allowed to participate in the session of the appeal panel by way of a video-link from Bosnia and Herzegovina. He relied on Article 6 § 1 of the Convention (cited above), and Article 6 § 3 (c) of the Convention, which reads:

"3. Everyone charged with a criminal offence has the following minimum rights:

...

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

..."

78. The second applicant lastly complained that a virulent media campaign and statements made by various public officials in connection with the criminal charges against him had exerted pressure on the judges to convict him and had breached his right to be presumed innocent. He relied on Article 6 § 1 of the Convention (cited above), and Article 6 § 2 of the Convention, which reads:

"Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

THE LAW

A. Joinder of the applications

79. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single decision.

B. Alleged violation of Article 6 § 1 of the Convention on account of the lack of impartiality of the president of the trial panel

1. The parties' arguments

(a) The Government

80. The Government invited the Court to dismiss the first and second applicants' impartial tribunal complaint on the grounds that their actions had been contrary to the prohibition of the abuse of rights under Article 17 and/or Article 35 § 3 (a) of the Convention. In particular, the Government argued that by suspectedly bribing the president of the trial panel and other judges of the Osijek County Court over a protracted period of time while the criminal proceedings against them had been pending before that court, the first and second applicants had themselves distorted and waived their right to be tried by an impartial tribunal. They had only invoked the Convention when their corrupt plan had failed, and they had been convicted. In the Government's view, the first and second applicants had not acted in good faith and should not be allowed to rely on the Convention to remedy an otherwise unlawful situation which they had caused. Otherwise, they would be able to benefit from their activities directed against the judiciary and the rule of law.

81. In this connection, the Government invited the Court to also take into account the fact that the second applicant had admitted in "the SMS affair" (see paragraphs 53-57 above) that he had given money and had bought

expensive gifts for a person who had forged correspondence between high-ranking persons within the justice system – correspondence which the second applicant had used in his press conference to substantiate his allegations that the criminal proceedings against him had been politically staged. In the Government's view, that showed the extent of the second applicant's activities aimed at undermining the credibility of the justice system and crudely subverting its functioning.

82. As to the first applicant in particular, the Government contended that he had deliberately focused his arguments before the Court solely on the contact between the second applicant and the president of the trial panel, D.K., completely ignoring his own role in the social events and meetings with Judge Z.V., who had promised to influence Judge D.K. so that he would render a decision favourable to the applicants, as confirmed by the second applicant and corroborated by numerous pieces of evidence collected during the investigation into the bribery (see paragraphs 58-67 above).

83. As for the third applicant, the Government argued that he had abused his right of application by misleading the Court and giving the impression that he had raised the complaint of the trial court's lack of impartiality before the Constitutional Court, although he had failed to do so.

84. Alternatively, the Government contended that the applicants had failed to exhaust the domestic remedies. The first and second applicants had been aware of the circumstances calling into question the president of the trial panel's impartiality from the outset, but had failed to ask for his disqualification during the trial, and had failed to complain of his lack of impartiality to the Supreme Court. This was why the Constitutional Court had declared their complaint inadmissible (see paragraph 46 above). In the Government's view, the first and second applicants had deliberately not raised their complaint at any point until their conviction had become final, because they had believed that their illegal activities would result in the criminal proceedings ending in their favour.

85. As regards the third applicant, he had failed to bring his complaint of the lack of an impartial tribunal before the Constitutional Court, even though objectively he could have done so, having regard to the fact that on 16 March 2021 the second applicant had publicly disclosed that he had given bribes to the judges, and the third applicant had lodged his constitutional complaint on 9 April 2021.

86. Thirdly, the applicants had failed to seek the reopening of the criminal proceedings under Article 501 § 1 (3) of the Code of Criminal Procedure (see paragraph 74 above), either on the basis of the investigation and indictment against the Osijek County Court judges, or the principle of *beneficium cohaesionis*, in view of the Constitutional Court's decision rendered in respect of D.V., the fourth defendant in the applicants' case (see paragraph 52 above).

87. Lastly, the Government deemed the applicants' complaint premature, contending that if the Osijek County Court judges were convicted for receiving bribes and peddling influence in the applicants' case, the applicants could seek the reopening of the proceedings under Article 501 § 1 (2) of the Code of Criminal Procedure (see paragraph 74 above).

(b) The applicants

(i) The first applicant

88. The first applicant argued that the only relevant circumstance in assessing whether the trial court in his case had been impartial was the contact between the second applicant and the president of the trial panel, D.K. His own contact with Judge Z.V. was of no relevance, since Judge Z.V. had not participated in the set of criminal proceedings complained of.

89. In that connection, the first applicant submitted that the Constitutional Court had already established (in the case of the fourth defendant, D.V., see paragraph 52 above) that D.K.'s impartiality had objectively been called into question by the fact that he had received a watch from the second applicant on 22 November 2016.

90. It was therefore clear that, for the purposes of assessing whether the first applicant had been aware of the circumstances calling into question the impartiality of the domestic court, it should only be determined whether he had been aware of the circumstances regarding Judge D.K., and in particular the circumstances of the watch being handed over on 22 November 2016. There was not a single piece of evidence indicating that the first applicant had been aware of that circumstance before the press conference held on 16 March 2021. Thus, he could raise the complaint of the lack of an impartial tribunal for the first time in his constitutional complaint, which he had done.

91. In any event, the first applicant submitted that an application for Judge D.K.'s disqualification would not have been successful, in that the President of the Osijek County Court would not have accepted it solely on the basis of the defendant's allegations, particularly having regard to the fact that the judge in question had failed to recuse himself although he had been well aware of the circumstances which had warranted his removal from the case.

92. The first applicant also submitted that the reopening of the proceedings – an extraordinary remedy relied on by the Government as a reason why the complaint was inadmissible – could not be regarded as available and effective, either in theory or in practice.

93. Furthermore, the Government's claim that the complaint was premature (see paragraph 87 above) was completely inappropriate, because the question of whether the tribunal had been impartial was separate from the question of whether Judge D.K. had also committed a criminal offence.

94. The first applicant further argued that Article 17 of the Convention could not be applied in the present case. So far, the Court had never resorted to Article 17 when dealing with issues under Article 6 of the Convention.

95. The first applicant further argued that even if the second applicant's action had shown disrespect towards a domestic court, that did not relieve the State of its duty to ensure a fair trial for such a defendant. Respect for the rights referred to in Article 6 of the Convention, which also included the right to an independent and impartial tribunal, was an obligation imposed on States in any proceedings and in respect of any person, irrespective of the conduct of that person in a particular case.

96. In the first applicant's view, it was the duty of the State to ensure that no one, not even a defendant, undermined trust in criminal proceedings. Ensuring trust in criminal proceedings was, without exception, a duty of the State, and if that trust was undermined, the State bore sole responsibility for that.

97. Accordingly, if it were proven that the second applicant had bribed the judges of the Osijek County Court, then he would certainly be penalised for such acts in lawfully conducted criminal proceedings. However, the State had to ensure that a defendant was tried by an independent and impartial tribunal in every set of proceedings, which would certainly not be the case if he or she were tried by a judge whom he or she had allegedly bribed. Thus, the State had to provide a mechanism whereby such judges would, without exception, be removed from a particular case, irrespective of whether doubt as to their impartiality had been raised by the conduct of the accused person or for other reasons.

(ii) The second applicant

98. The second applicant submitted that the Osijek County Court judges had extorted bribes from him, and that the large-scale corruption present in the Croatian judiciary was being dealt with primarily because he had made disclosures about it. He specified that Judge D.K. had taken an expensive watch from him and had then continued to ask for bribes in the form of money and gifts. He further submitted that the role of Judge Z.V. should be "added to all of the above", because he had promised the second applicant that, in exchange for money, he would use his connections with the judges at the Osijek County Court, including Judge D.K., to ensure his acquittal in the case.

99. The second applicant submitted that it was understandable that anyone charged with a criminal offence would try to find a way to ensure that he or she had a better position at trial. If a judge approached the defendant asking for something, it was in accordance with the principle of self-preservation that the defendant would comply with the judge's request. The defendant could not be expected to report that judge to the authorities, who would not believe him or her anyway, which meant that the same judge would continue to try the defendant.

100. The second applicant contended that a defendant could not waive his or her right to be tried by an impartial tribunal, a right of essential importance, the exercise of which did not depend on the parties alone. Public interest required independent and impartial judges acting in accordance with the highest moral standards and the law. Judge D.K. had crudely breached those requirements by initiating contact with the second applicant and asking for money and presents from him in exchange for a favourable decision in the trial.

101. Accordingly, it was Judge D.K. who had distorted the applicants' right to an impartial tribunal. His lack of impartiality had already been confirmed by the Constitutional Court in its decision issued in respect of the fourth defendant, D.V. (see paragraph 52 above).

102. The second applicant argued that Article 17 of the Convention could not be applied in the present case. In its case-law, the Court had confirmed that Article 17 of the Convention could not be interpreted in such a way as to deprive an individual of the rights guaranteed by Article 6 of the Convention. Furthermore, if the Court were to dismiss the second applicant's complaint on account of abuse, that would lead to an absurd situation where a corrupt judge would be absolved of responsibility for his illegal actions and a judgment given by a biased tribunal would remain in force.

103. As to the Government's reference to "the SMS affair" (see paragraph 81 above), the second applicant contended that he had had nothing to do with fabricating the correspondence between the high-ranking persons within the justice system. He had had no reason to doubt the authenticity of the correspondence which had been given to him by the person convicted in that case, and furthermore had had no reason not to present it at the press conference as yet more proof of the fact that the criminal proceedings against him had been politically staged.

104. The second applicant further argued that the Constitutional Court should not have dismissed his complaint of the lack of an impartial tribunal for non-exhaustion of remedies. In particular, he could not have been expected to ask for Judge D.K.'s disqualification, because that would have meant disclosing his own criminal actions, contrary to the privilege against self-incrimination. In any event, an application for disqualification was not effective in practice. Furthermore, it had primarily been for Judge D.K. to recuse himself, in accordance with the requirements set out in the Court's case-law.

105. The second applicant further argued that he had in any event promptly raised the issue of the lack of an impartial tribunal. In particular, while the criminal proceedings had been pending before the Supreme Court (sitting as an appellate court), he had reported to the OSCOC that he had bribed the Osijek County Court judges (see paragraph 41 above). It had therefore been for the OSCOC to inform the Supreme Court of those

allegations, and for the Supreme Court to take them into account when deciding on the appeals against the trial court's judgment.

106. In support of his argument that the Constitutional Court should not have dismissed his complaint for non-exhaustion of remedies, the second applicant also contended that in a decision rendered in 2010 in another case, the Constitutional Court had examined a complaint of the lack of an impartial tribunal, even though the complaint that the judge in question had lacked impartiality had not been raised before the first-instance and second-instance courts dealing with the case.

107. In the second applicant's view, the remaining domestic remedies relied on by the Government could not be considered appropriate and effective in the situation.

(iii) The third applicant

108. The third applicant admitted that the text of his constitutional complaint submitted to the Constitutional Court differed from the copy of the constitutional complaint he had submitted to the Court in support of his application. In particular, the latter contained a complaint that he had not been tried by an impartial tribunal because the second applicant had bribed the Osijek County Court judges, whereas the former did not.

109. The third applicant offered an apology, stating that the situation had been the result of a clerical error. He contended that several versions of his constitutional complaint had been prepared, and a copy which had not actually been submitted to the Constitutional Court had erroneously been sent to the Court.

110. The third applicant expressly acknowledged that he had not raised the complaint of the lack of an impartial tribunal before the Constitutional Court. However, he submitted that the Constitutional Court should have examined that matter on its own initiative, having regard to the fact that his co-defendants and third parties had raised such complaints and the Constitutional Court had examined their complaints.

111. As to the Government's argument that the third applicant could have sought the reopening of the proceedings on the basis of the investigation against the judges in relation to bribery, the third applicant contended that he would be able to use that remedy only in the event of the judges' conviction, which could take a decade.

112. The applicant lastly submitted that on 8 June 2022 he had proposed that the State Attorney General lodge a request for the protection of legality in respect of the domestic courts' judgments, on account of the breach of the right to an impartial tribunal, but he had not yet received a reply.

2. The Court's assessment

113. The Court considers that it is not necessary to examine the various admissibility objections raised by the Government, as the applicants' applications are in any event inadmissible for the reasons set out below.

(a) General principles

114. The Court reiterates that an application may be rejected as an abuse of the right of application under Article 35 § 3 (a) of the Convention, which provides, as far as relevant:

> "The Court shall declare inadmissible any individual application submitted under Article 34 which it considers ... an abuse of the right of application."

115. The Court reiterates in this connection that the implementation of this provision is an "exceptional procedural measure" and that the concept of "abuse" must be understood in its ordinary sense according to general legal theory – namely, the harmful exercise of a right by its holder for purposes other than those for which it is designed (see *Miroļubovs and Others v. Latvia*, no. 798/05, § 62, 15 September 2009; *De Luca v. Italy*, no. 43870/04, § 35, 24 September 2013; and *Petrović v. Serbia* (dec.), nos. 56551/11 and 10 others, 18 October 2011).

116. The Court has applied this provision in four types of situations (see *Miroļubovs and Others*, cited above, §§ 62-66). Firstly, in cases where applications were knowingly based on untrue facts (see *Varbanov v. Bulgaria*, no. 31365/96, § 36, ECHR 2000-X). Secondly, in cases where an applicant used particularly vexatious, contemptuous, threatening, or provocative language in his communication with the Court (see, for example, *Řehák v. the Czech Republic* (dec.), no. 67208/01, 18 May 2004). Thirdly, in cases where an applicant deliberately breached the confidentiality of friendly-settlement negotiations (see, for example, *Deceuninck v. France* (dec.), no. 47447/08, 13 December 2011). Fourthly, in cases where applicants repeatedly sent quibbling and manifestly ill-founded applications resembling those they had previously lodged that had been declared inadmissible (see *Anibal Vieira & Filhos LDA and Maria Rosa Ferreira da Costa LDA v. Portugal* (dec.), nos. 980/12 and 28385/12, 13 November 2012).

117. However, the Court has held that the notion of abuse of the right of application under Article 35 § 3 (a) of the Convention is not limited to those four situations, and that other situations can also be considered an abuse of that right. In principle, any conduct on the part of an applicant that is manifestly contrary to the purpose of the right of individual application as provided for in the Convention and which impedes the proper functioning of the Court or the proper conduct of the proceedings before it can be considered an abuse of the right of application (see *Miroļubovs and Others*, cited above, § 65; *S.A.S. v. France* [GC], no. 43835/11, § 67, ECHR 2014 (extracts); and *Koch v. Poland* (dec.), no. 15005/11, 7 March 2017). In this regard, the Court

reiterates that such abuse may consist in the object sought by the application (see *Petrović*, cited above).

118. Furthermore, the Court has found that the misuse of domestic remedies and an applicant's conduct before the national authorities are relevant factors in assessing whether an application should be considered an abuse of the right of application (see *Bock v. Germany* (dec.), no. 22051/07, 19 January 2010; *Dudek (VIII) v. Germany* (dec.), no. 12977/09 and 4 others, 23 November 2010; and *Ferrara and Others v. Italy* (dec.) nos. 2394/22 and 18 others, § 43, 16 May 2023).

119. With regard to the subjective element, the Court has emphasised that for behaviour to qualify as abuse of the right of application, it must be intentional, and this intention must be established with sufficient certainty (see *Gross v. Switzerland* [GC], no. 67810/10, § 28, ECHR 2014; *Miroļubovs and Others*, cited above, § 66; and *Ferrara and Others*, cited above, §§ 63 and 66).

(b) Application of these principles to the present case

(i) The third applicant

120. The Court observes that the copy of the constitutional complaint which the third applicant submitted in support of his application to the Court contained a complaint that the trial court had lacked impartiality because the second applicant had bribed the judges.

121. Believing in the authenticity of that constitutional complaint, the Court gave the Government notice of the third applicant's application, referring to *Remli v. France* (23 April 1996, §§ 43-48, *Reports of Judgments and Decisions* 1996-II), and *Danilov v. Russia* (no. 88/05, §§ 100-01, 1 December 2020), and asking them whether the Constitutional Court had examined the third applicant's complaint of the trial court's lack of impartiality.

122. When preparing their observations on the admissibility and merits of the application, the Government enquired with the Constitutional Court and learned that the third applicant's constitutional complaint submitted to that court did not in fact contain a complaint of the trial court's lack of impartiality; in particular, no express complaint or one that had been raised in substance.

123. The Court has taken note of the explanation submitted by the third applicant (see paragraphs 108 and 109 above). However, it considers it obvious that the third applicant presented a modified copy of the constitutional complaint to the Court in order to pretend that he had raised the issue of an impartial tribunal before the Constitutional Court, which had failed to examine it. The third applicant thereby tried to deceive the Court, by presenting a distorted image of the most serious part of his application, which would have prevented the Court from ruling on the admissibility and merits

of that application in full knowledge of the facts (compare *Jian v. Romania* (dec.), no. 46640/99, 30 March 2004, and contrast *Miszczyński v. Poland* (dec.), no. 23672/07, 8 February 2011).

124. Having regard to the Court's case-law in respect of abuse of the right of application (see *Miroļubovs and Others*, cited above, § 63; *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 97, ECHR 2012; and *Gross*, cited above, § 28), the Court considers that the third applicant's conduct was contrary to the purpose of the right of individual application, and amounted to abuse of that right within the meaning of Article 35 § 3 (a) of the Convention.

125. Accordingly, the Government's objection (see paragraph 83 above) must be upheld and the application by the third applicant rejected as inadmissible, pursuant to Article 35 § 4 of the Convention.

(ii) The first and second applicants

126. The Court notes that the Constitutional Court declared the first and second applicants' lack of impartial tribunal complaint inadmissible for non-exhaustion of remedies on the grounds that from the outset they had been aware of the circumstances calling into question the president of the trial panel's lack of impartiality, but that they had only raised the issue for the first time in their constitutional complaint (see paragraph 46 above). The Constitutional Court concluded that the first and second applicants had thereby deprived the ordinary courts, and especially the Supreme Court, of the opportunity to take a stand on the matter, bearing in mind also that all subsequent proceedings against the judge in question had been initiated on the basis of the second applicant's allegations.

127. The Court takes note of that decision by the Constitutional Court. However, in the specific circumstances of the case, it deems that it is important to have regard to the fact that the first and second applicants essentially based their complaint that there had been a breach of their right to an impartial tribunal on their own acts, which were, at their core, aimed at destroying that very right.

128. At this juncture, the Court finds it important to reiterate that the right to be tried by an impartial tribunal is of essential importance, and that the exercise of that right cannot depend on the parties alone (see *Pfeifer and Plankl v. Austria*, no. 10802/84, § 38, 25 January 1992). Judges should maintain and enforce high standards of conduct and should personally observe those standards so as to maintain the integrity of the judiciary. Any breach of such standards diminishes the public confidence which the courts in a democratic society must inspire in the public (see *Morice v. France* [GC], no. 29369/10, § 78, ECHR 2015, and *Škrlj v. Croatia*, no. 32953/13, § 43, 11 July 2019).

129. In this connection, the Court notes that an obligation on the part of a judge sitting in a case to inform the president of the relevant court of

circumstances justifying his or her removal is expressly set out in Croatian law (see Articles 32 and 33 of the Code of Criminal Procedure cited in paragraph 74 above). It would seem obvious that Judge D.K. should have informed the President of the Osijek County Court that he had received a watch from the second applicant while the indictment had been pending before the indictment panel, and that he should have asked to be removed from the case on that basis (see also the Constitutional Court's decisions on this matter, paragraphs 52 and 72-73 above).

130. Clearly, it was entirely inappropriate for a trial judge to accept a watch from the second applicant and socialise with him and his family members during the trial (actions which Judge D.K. admitted, see paragraph 59 above). If proven, it was similarly entirely unacceptable for a trial judge to receive any money from the second applicant (the second applicant claims to have given money to Judge D.K. in exchange for a favourable decision in the trial).

131. However, for the purposes of resolving the case before it, the Court cannot ignore the fact that the first and second applicants willingly made an arrangement with the judges and, according to their own submissions, gave them money and gifts (the second applicant, as regards Judges D.K. and Z.V.) and paid for trips and dinners for them (the first and second applicants, as regards Judge Z.V.). They only made disclosures about the situation after the conviction against them had become final and all other attempts to manipulate the proceedings in their favour had failed.

132. In this connection, the Court also takes note of the domestic courts' findings in "the SMS affair" (see paragraphs 53-57 above) about the correspondence between high-ranking persons in the justice system being fabricated so that the applicants could try to prove that they had been the victims of an unfair trial. Not only did the second applicant use that correspondence to try and reopen the trial hearing, but after the trial court's judgment was pronounced, further correspondence was fabricated which gave the impression that the State Attorney General had influence over the Supreme Court judges who were to decide the applicants' case on appeal.

133. The Court finds that these circumstances also show to what extent attempts were made to obstruct the justice system in favour of the applicants, and must take them into account for the purposes of Article 35 § 3 (a) of the Convention.

134. The first applicant argued that the only relevant circumstance in assessing whether the trial court in his case had been impartial was the contact between the second applicant and the president of the trial panel, D.K., and that his own contact with Judge Z.V. was of no relevance, since that judge had not participated in the trial (see paragraphs 88-90 above). In that connection, the Court notes the second applicant's repeated statements that Judge Z.V., who had presented himself as a close friend of Judge D.K., had promised to influence Judge D.K. and have him dismiss the charges against

the applicants on the basis that they had been brought by an unauthorised prosecutor (see paragraphs 41, 43, 58 and 98 above). The Court notes that Judge D.K. did apparently vote to dismiss the charges against the applicants on the basis that they had been brought by an unauthorised prosecutor, but that he was outvoted by two other panel members (see paragraph 66 above).

135. The Court further notes that the first applicant himself confirmed that he had paid for hotel rooms for Judge Z.V., his girlfriend and her daughter in Dubai in December 2017 and January 2018, and had taken them, the second applicant and several other persons to a football match and dinner in Abu Dhabi. The first applicant also confirmed that while in their company, Judge Z.V. would assure the applicants that they should not worry about the criminal proceedings against them. He also confirmed that he had been present when, two days prior to the delivery of the trial court's judgment, Judge Z.V. had assured the second applicant that he had seen the judgment written by Judge D.K. and that it was favourable to the applicants (see paragraph 64 above).

136. Accordingly, the Court cannot but agree with the Constitutional Court that the first applicant must have been aware of the second applicant's alleged arrangement with Judge Z.V., even before the second applicant's press conference held in March 2021 (see paragraphs 46 and 90 above). Indeed, from his own submissions, it would follow that the first applicant knew about that arrangement from December 2017 at least, whereas the trial court's judgment was pronounced in June 2018 (see paragraph 28 above).

137. This conclusion should naturally not in any way be seen as constituting a finding that the first applicant is guilty of giving bribes to Judge Z.V. (a criminal offence with which he has been charged by the domestic authorities (see paragraph 71 above)). Firstly, it is not for the Court to rule on any points regarding individual criminal liability (see *Tanlı v. Turkey*, no. 26129/95, § 111 *in fine*, ECHR 2001-III (extracts); *M.C. v. Bulgaria*, no. 39272/98, § 168 *in fine*, ECHR 2003-XII; and *Y v. Bulgaria*, no. 41990/18, § 94, 20 February 2020). Secondly, although the required standard of proof before the Court is that of "beyond reasonable doubt", that standard is not necessarily equivalent to that required under the national legal systems which use it (see *Merabishvili v. Georgia* [GC], no. 72508/13, § 314, 28 November 2017, with further references).

138. Returning to the application of Article 35 § 3 (a) of the Convention, the Court attaches fundamental importance to the fact that the first and second applicants essentially tried to create a "win-win" situation for themselves – either giving bribes to the judges would work in their favour and the charges against them would be dismissed, or they would complain of the lack of an impartial tribunal and have a violation of the Convention established, and consequently the reopening of the criminal proceedings would be a likely outcome.

139. The Court cannot condone such behaviour by the parties, as this would allow manipulations and serious obstructions of the justice system. Indeed, without going into the question of the guilt or innocence of the first and second applicants and the judges concerned in relation to the criminal offences of bribery and peddling influence with which they have been charged, the very circumstances that the first and second applicants confirmed to the Court lead to the conclusion that after all their efforts to manipulate the domestic proceedings in their favour have failed, they are now aiming to take advantage of the system of protection of human rights under the Convention and benefit from their own abusive conduct at domestic level (compare *Ferrara and Others*, cited above, § 64 *in fine*).

140. In that connection, the Court reiterates that dealing with manifestly abusive conduct by applicants or their authorised representatives is incompatible with its proper functions under the Convention (see *Petrović*, cited above; *Bekauri v. Georgia* (preliminary objection), no. 14102/02, § 21, 10 April 2012; and *De Cristofaro v. Italy* (dec.), nos. 30464/07 and 7 others, § 45, 10 July 2012).

141. The second applicant contended that not finding a violation of the Convention in the present case would lead to a situation in which a corrupt judge would be absolved of responsibility for his illegal actions and a judgment given by a partial tribunal would remain in force (see paragraph 102 above). In that connection, the Court notes firstly that the first and second applicants themselves caused the situation complained of (see, in this regard, *Paşa and Erkan Erol v. Turkey*, no. 51358/99, §§ 19-22, 12 December 2006; *Vujica v. Croatia*, no. 56163/12, §§ 67-68, 8 October 2015; and *Testa and Others v. Malta* (dec.), no. 58910/19, § 32, 7 September 2021, where the Court confirmed that an applicant could not claim to be a victim in a case where he or she was partly responsible for the alleged violation), and secondly that it cannot be said that the judges concerned would not bear any consequences. Indeed, the judges concerned have been permanently removed from judicial office and an indictment has been brought against them for receiving bribes and peddling influence (see paragraphs 68-71 and 73 above). Without prejudging the outcome of those criminal proceedings, the fact remains that the situation has put an end to those judges' careers after many years of service.

142. In sum, having regard to the rationale of Article 17 of the Convention, in the exceptional circumstances of the present case, the Court finds that the applicants' conduct regarding their right to be tried by an impartial tribunal was manifestly contrary to the purpose of the right of individual application as provided for in the Convention, and impeded the proper functioning of the safeguard mechanisms established by the Convention.

143. It follows that the first and second applicants' complaint concerning the lack of an impartial tribunal must be rejected as an abuse of the right of

individual application, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

C. Other alleged violations of the Convention

144. Although the first and second applicants' conduct which constituted abuse directly concerned only one of several complaints under Article 6 of the Convention communicated to the respondent Government (see paragraphs 75-78 above), the Court considers that their behaviour which was aimed at manipulating and seriously obstructing the justice system and taking advantage of the system of protection of human rights under the Convention in order to benefit from their own abusive conduct at domestic level (see paragraphs 138-139 above) should have implications for the admissibility of their entire applications (compare *Safaryan v. Armenia* (dec.), no. 16346/10, §§ 20-21 and 30, 14 January 2020).

145. Accordingly, the first and second applicants' applications as a whole must be rejected as an abuse of the right of individual application, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court,

1. *Decides*, unanimously, to join the applications;

2. *Declares*, unanimously, the third applicant's application inadmissible;

3. *Declares*, unanimously, inadmissible the first and second applicants' complaint under Article 6 § 1 of the Convention concerning the lack of an impartial tribunal;

4. *Declares*, by a majority, inadmissible the remainder of the first and second applicants' complaints.

Done in English and notified in writing on 29 August 2024.

Liv Tigerstedt Deputy Registrar	Marko Bošnjak President

APPENDIX

List of cases:

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality	Represented by
1.	21714/22	Mamić v. Croatia	29/04/2022	**Zoran MAMIĆ** 1971 Tomislavgrad (Bosnia and Herzegovina) Croatian and of Bosnia and Herzegovina	Šime MATAK
2.	25102/22	Mamić v. Croatia	10/05/2022	**Zdravko MAMIĆ** 1959 Međugorje (Bosnia and Herzegovina) Croatian and of Bosnia and Herzegovina	Lidija HORVAT and Sandra MARKOVIĆ
3.	25367/22	Pernar v. Croatia	14/05/2022	**Milan PERNAR** 1970 Turopolje (Croatia) Croatian	Mijo GOLUB