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

FIRST SECTION

DECISION

Applications nos. 7535/21 and 58894/21
Darko ŠPEHAR against Croatia
and Danijel GOJKOVIĆ against Croatia

The European Court of Human Rights (First Section), sitting on 8 July 2025 as a Chamber composed of:

Ivana Jelić*, President*,
Erik Wennerström,
Raffaele Sabato,
Davor Derenčinović,
Alain Chablais,
Artūrs Kučs,
Anna Adamska-Gallant*, judges*,

and Ilse Freiwirth, *Section Registrar,*

Having regard to the above applications lodged on 21 January and 26 November 2021 respectively,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

1. The applicant in the first application, Mr Darko Špehar ("the first applicant"), was a Croatian national who was born in 1984 and lived in Saborsko. The applicant in the second application, Mr Danijel Gojković ("the second applicant"), was also a Croatian national, who was born in 1983 and lived in Viškovo. Both applicants were represented before the Court by Ms L. Horvat, a lawyer practising in Zagreb.

2. The Croatian Government ("the Government") were represented by their Agent, Ms Š. Stažnik.

3. The applicants complained under Article 3 of the Convention about the conditions of their detention and under Article 6 § 1 of the Convention that there had been a lack of effective access to the Constitutional Court.

4. On 19 September 2024 the Court decided to give notice to the Government of those complaints. At the same time, it sent to the parties

friendly settlement declarations, with a deadline for reply set for 17 January 2025.

5. On 14 February 2025 the Government submitted to the Registry their observations on the admissibility and merits of the applications. They invited the Court, *inter alia*, to strike the applications out of its list of cases because the applicants – direct victims of the alleged violations – had died, and their lawyer and heirs had failed to inform the Court about that fact in a timely manner. Alternatively, they invited the Court to declare the applications inadmissible for abuse of the right of application.

A. As regards the first applicant (Mr Špehar)

6. The first applicant died on 23 March 2021.

7. On 16 October 2024 the first applicant's lawyer signed the friendly settlement declaration sent by the Court in the name and on behalf of the deceased first applicant.

8. In their observations dated 14 February 2025, the Government informed the Court of the first applicant's death. They pointed out that the first applicant's lawyer had breached Rules 44C and 47 § 7 of the Rules of Court by failing to inform the Court of his death and by signing the friendly settlement declaration in the name of the deceased person three and a half years after his death. They noted that the declaration sent by the Court explicitly stated that the lawyer, "having consulted the applicant, informs the Court that the proposal is accepted". The Government invited the Court to declare the application inadmissible for abuse of the right of application or, alternatively, to strike the case out of its list of cases either under Article 37 § 1 (c) for the same reasons, or under Article 37 § 1 (a) because neither the first applicant nor his lawyer intended to pursue the application.

9. In reply, the applicant's lawyer stated that she had not been aware of the first applicant's death before the Government's observations. As regards the friendly settlement declaration, she stated that she had forwarded it to the first applicant informing him that the Court's settlement proposal was reasonable and in line with the Court's previous case-law. She had also warned him that, in the absence of any reply from his side, she would accept the proposal on his behalf. She also maintained that it was not unusual for applicants represented by her to temporarily change address or fail to reply to her for extended periods of time, and that she had signed the friendly settlement declaration in order to protect her client's interests and not to abuse anyone's rights. Lastly, after she had contacted the deceased first applicant's family, two of his nephews had come forward wishing to continue the case before the Court in his stead.

B. As regards the second applicant (Mr Gojković)

10. The second applicant died on 28 December 2021.

11. On 9 February 2022 the second applicant's lawyer received a ruling by the Zagreb Municipal Civil Court staying the second applicant's ongoing civil proceedings on account of his death.

12. On 5 April 2024, prior to giving notice of the application to the respondent Government, the Registry asked the second applicant to provide a factual update on those civil proceedings. In reply, on 8 April 2024 the second applicant's lawyer informed the Court that the second applicant had passed away. When invited by the Court to explain why she had not informed it of the second applicant's death and the possible existence of any heirs earlier, the applicant's lawyer stated that it had been an "unintentional clerical error" and that the deceased second applicant's wife and son wished to continue the proceedings.

13. After notice of the application was given to the respondent Government on 19 September 2024 (see paragraph 4 above), on 16 October 2024 the second applicant's lawyer signed the friendly settlement declaration sent by the Court in the name and on behalf of the deceased second applicant.

14. In their observations dated 14 February 2025, the Government insisted that the second applicant's lawyer had breached Rules 44C and 47 § 7 of the Rules of Court by failing to inform the Court of the second applicant's death in a timely manner and that she had done so more than two years after she had found out about it, and only when the Court enquired about the status of the civil proceedings in question. In addition, the applicant's lawyer signed the friendly settlement declaration in the name of a deceased person, despite the Court's declaration explicitly stating that the lawyer "having consulted the applicant, informs the Court that the proposal is accepted". The Government invited the Court to declare the application inadmissible for abuse of the right of application or, alternatively, to strike the application out of its list of cases either under Article 37 § 1 (c) for the same reasons, or under Article 37 § 1 (a) because neither the second applicant nor his lawyer intended to pursue the application.

15. In reply, the second applicant's lawyer admitted that she had informed the Court about the second applicant's death with a certain delay, but she explained that that had not been intentional or with a view to misleading the Court. Since the second applicant's death had occurred before notice of the application had been given to the respondent Government, the lawyer had not immediately realised that an application in his case had already been lodged with the Court. She explained that her office kept such information in a notebook which was consulted manually. However, immediately following the Court's enquiry about the status of the proceedings, the lawyer had checked the relevant file on civil proceedings and informed the Court that the

applicant had died and that his wife and son wished to continue the proceedings.

THE LAW

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

17. In view of the Government's request and of the wish expressed by the late applicants' relatives (see paragraphs 8-9 and 14-15 above), the Court must examine whether to strike the applications out of its list of cases.

18. Article 37 § 1 of the Convention provides:

> "The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that
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> (a) the applicant does not intend to pursue his application; or
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> (b) the matter has been resolved; or
>
> (c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.
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> However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires."

19. Furthermore, Rule 44C § 1 and Rule 47 § 7 of the Rules of Court read as follows:

Rule 44C

> "1. Where a party fails to adduce evidence or provide information requested by the Court or to divulge relevant information of its own motion or otherwise fails to participate effectively in the proceedings, the Court may draw such inferences as it deems appropriate."

Rule 47

> "7. Applicants shall keep the Court informed ... of all circumstances relevant to the application."

20. The Court notes that in a number of cases in which an applicant died in the course of the proceedings it has taken into account the statements of the applicant's heirs or of close family members expressing the wish to pursue the proceedings (see *López Ribalda and Others v. Spain* [GC], nos. 1874/13 and 8567/13, §§ 71-73, 17 October 2019), or the existence of a legitimate interest expressed by a person wishing to pursue the application (see *Malhous v. the Czech Republic* (dec.) [GC], no. 33071/96, ECHR 2000-XII).

21. In the present case, the first applicant died on 23 March 2021 – only two months after the application had been lodged with the Court. Still, his lawyer did not inform the Court of this fact before notice of the application was given to the parties. Instead, the Court was informed of the first applicant's death for the first time by the Government in their observations

dated 14 February 2025, that is to say, almost four years later (see paragraph 8 above).

22. As regards the second applicant, the Court notes that his lawyer did not inform the Court of his death which occurred on 28 December 2021 – only one month after having lodged the application with the Court. Instead, the Court learned about the second applicant's death only two years and four months later, after it requested a factual update in the case (see paragraph 12 above).

23. The Court further notes that the applicants' lawyer sought to explain that she herself had been unaware of the fact that the first applicant had died (see paragraph 9 above). As concerns the second applicant, the lawyer admitted that she had to have been aware of the applicant's death as early as 9 February 2022 (see paragraph 11 above), but that she had not informed the Court of that fact immediately because, essentially, she had not realised that an application with the Court in the second applicant's case had already been lodged. The Court is not persuaded that any of the foregoing explanations can be accepted as a valid excuse for the lawyer's failure to inform the Court in a timely manner of the applicants' deaths – after all, a circumstance of fundamental importance to the application before the Court –, in particular in view of the clear obligations incumbent on the applicants under Rule 44C of the Rules of Court to divulge relevant information to the Court of their own motion and to participate effectively in the proceedings, as well as under Rule 47 § 7 of the Rules of Court to keep the Court informed of all circumstances relevant to the application (see paragraph 19 above). The Court would further underline that it is for the legal representative to set up a manageable system to follow-up on applications he or she has lodged with the Court on behalf of his or her clients. In this respect it notes that, as regards the second applicant, the lawyer found out about his death already two and half months after having lodged the application on his behalf.

24. Moreover, the applicants' lawyer's conduct in both cases indicates that she did not maintain regular contact with the applicants throughout the proceedings, despite the fact that the Court considers such contact essential both in order to learn more about the applicants' particular situations and to confirm their continuing interest in pursuing the examination of their applications (see *V.M. and Others v. Belgium* (striking out) [GC], no. 60125/11, § 35, 17 November 2016).

25. The Court further notes that the applicants' lawyer signed a friendly settlement declaration in the name of the deceased applicants. She explained that she had sent the Court's declaration to the first applicant by post, asking for his agreement. She also informed him that the amount contained in the proposal was in line with the Court's previous case-law and that she would accept it in the absence of a reply from him (see paragraph 9 above). However, without waiting for such a reply until the deadline set by the Court to the parties to accept or decline its friendly settlement proposal, which was

set for 17 January 2025 (see paragraph 4 above), the lawyer signed the declaration on the deceased first applicant's behalf as early as 16 October 2024. Although the Court can accept that the applicants' lawyer, as she claimed, merely sought to act in the best interest of her client, the fact remains that she signed the document in question despite not having contact with her client for some three and a half years and without showing that she had genuinely sought to ascertain the deceased first applicant's true wishes in respect of the Court's proposed settlement.

26. The Court reiterates that whenever an applicant omits, within the meaning of Rule 44C § 1, to divulge relevant information of his or her own motion or to provide information requested by the Court or otherwise fails to participate effectively in the proceedings, depending on the particular circumstances of the case, the Court may draw the necessary inferences, including striking the application out under either of the three sub-paragraphs ((a), (b) or (c)) of Article 37 § 1 of the Convention (see, for instance, *Harabin v. Slovakia* (dec.), no. 18006/14, §§ 14-23, 19 June 2018; *Marković v. Serbia* (dec.), no. 49335/07, 14 January 2014; *Filatov v. Ukraine* (dec.), no. 16061/05, 24 March 2009; and *Fitzmartin and Others v. the United Kingdom* (dec.), no. 34953/97, 21 January 2003[1]).

27. Turning to the specific circumstances of the present case, the Court considers that the established conduct – namely the applicants' lawyer's failure to maintain contact with both of her clients and to inform the Court of their respective deaths in a timely manner – demonstrate a lack of effective participation in the proceedings (see paragraph 26 above). In addition, as regards Mr Gojković's case, it should be noted that the Court's initiative to request a factual update (see paragraph 12 above) – which by definition takes place after a significant lapse of time following the lodging of the application – did not relieve the applicant's lawyer of her duty to inform the Court of the applicant's death in due time. In the Court's view, the appropriate inference to be drawn, within the meaning of Rule 44C § 1 *in fine*, is that it is therefore no longer justified to continue the examination of the late applicants' applications (see *Belošević v. Croatia* (dec.), no. 57242/13, § 53, 3 December 2019, and *Turava and Others v. Georgia* (dec.), nos. 7607/07 and 8710/07, § 39, 27 November 2018 and other cases cited therein).

28. The Court further observes that the general principles relating to the issues raised by the late applicants' cases have already been examined in detail by the Convention bodies on numerous occasions (most notably in *Muršić v. Croatia* [GC], no. 7334/13, §§ 69-73 and 91-173*,* 20 October 2016, and *Hanževački v. Croatia*, no. 49439/21, §§ 34-41, 5 September 2023).

[1] See also, exceptionally and for illustrative purposes, *Global Car Trade GmbH v. Croatia* (dec.) [Committee], no. 42840/12, 17 October 2017; *U.A. and R.S. v. Russia* (dec.) [Committee], nos. 8559/16 and 50232/16, §§ 13-21, 26 September 2017; and *Havelka v. the Czech Republic* (dec.) [Committee], no. 29725/11, 27 November 2012.

29. In accordance with Article 37 § 1 *in fine*, the Court therefore finds no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which would require the continued examination of the late applicants' complaints (compare with *Marković*, cited above).

30. Accordingly, it is appropriate to strike both applications out of the Court's list of cases under Article 37 § 1 (c) of the Convention.

For these reasons, the Court, unanimously,

Decides to join the applications;

Decides to strike the applications out of its list of cases.

Done in English and notified in writing on 31 July 2025.

Ilse Freiwirth Registrar	Ivana Jelić President