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

SECOND SECTION

DECISION

Application no. 39801/23
Mladen ZELENIKA
against Croatia

The European Court of Human Rights (Second Section), sitting on 21 May 2024 as a Chamber composed of:

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

and Hasan Bakırcı, *Section Registrar,*

Having regard to the above application lodged on 27 October 2023,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Mladen Zelenika, is a Croatian national who was born in 1962 and lives in Zagreb. He was represented before the Court by Ms K. Abramović, a lawyer practising in Zagreb.

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

3. On 28 December 2015 the applicant brought a civil action against the State in the Novi Zagreb Municipal Court (*Općinski sud u Novom Zagrebu*) seeking compensation for (i) inadequate conditions of detention during his stay in the Zagreb Prison in the period between 30 April 2012 and 14 June 2013, and (ii) breaches of his right to respect for his private and family life resulting from inadequate organisation of prison visits, which had taken place with other prisoners in a noisy room and under supervision. He sought 35,000 Croatian kunas (HRK – 4,645 euros (EUR)) as compensation for

non-pecuniary damage, together with the statutory default interest accrued from 1 May 2015.

4. By a judgment of 14 April 2022, the Municipal Court ruled in favour of the applicant in part. It awarded him HRK 10,000 (EUR 1,327) as compensation for inadequate conditions of detention, together with the accrued interest, and dismissed the remainder of his claim. Both parties appealed against that ruling.

5. By a judgment of 5 January 2023 the Pula County Court (*Županijski sud u Puli*) dismissed both appeals and upheld the first-instance judgment.

6. The applicant then lodged a constitutional complaint on 10 March 2023. He relied on the relevant provisions of the Croatian Constitution guaranteeing equality before the law, the right to fair proceedings, freedom from ill-treatment, the right to respect for private life and dignity, and, more specifically, the right of those deprived of liberty to be treated humanely and with respect for their dignity.

7. By a decision of 6 June 2023, the Constitutional Court (*Ustavni sud Republike Hrvatske*), relying on section 62(2) and (3) of the Constitutional Court Act (see paragraph 10 below), declared the constitutional complaint inadmissible for non-exhaustion of other available remedies. The court, applying its most recent practice and referring specifically to its decision no. U-III-7150/2022 of 7 March 2023 (see paragraphs 30-33 below), held that the applicant had, before lodging his constitutional complaint, failed to lodge a petition for leave to appeal on points of law (*prijedlog za dopuštenje revizije*) with the Supreme Court based on the grounds provided in section 385a(2) of the Civil Procedure Act (see paragraph 22 below).

8. On 28 June 2023 the Constitutional Court notified the applicant's representative of its decision.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

A. The Constitution

9. The relevant Article of the Croatian Constitution (*Ustav Republike Hrvatske*, Official Gazette no. 56/90 with subsequent amendments) reads as follows:

Article 116 § 1

"The Supreme Court of the Republic of Croatia, as the highest court, ensures the uniform application of the law and the equality of all in its application."

B. Relevant legislation

1. Constitutional Court Act

10. The relevant provisions of the Constitutional Court Act (*Ustavni zakon o Ustavnom sudu Republike Hrvatske*, Official Gazette no. 13/91), which has been in force since 21 March 1991, as amended by the 2002 Amendments, which entered into force on 15 March 2002, read as follows:

Section 62

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

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

(3) In matters in which an action for judicial review [*upravni spor*] or, in civil and non-contentious proceedings, an appeal on points of law [*revizija*] is available, remedies shall be considered exhausted only after a decision on those legal remedies has been given."

Section 64

"The constitutional complaint may be lodged within thirty days from the date of notification of the [contested] decision."

2. Civil Procedure Act and developments in legal regulation of appeals on points of law

11. Under the Civil Procedure Act (*Zakon o parničnom postupku*, Official Gazette of Yugoslavia no. 4/77 with subsequent amendments, and Official Gazette of Croatia no. 53/91 with subsequent amendments), parties to civil proceedings could lodge an appeal on points of law (*revizija*) to the Supreme Court (*Vrhovni sud Republike Hrvatske*) against second-instance judgments and against certain second-instance decisions.

12. Until 1 December 2003, when the 2003 Amendments to the Civil Procedure Act (*Zakon o izmjenama i dopunama zakona o parničnom postupku*, Official Gazette no. 117/03) entered into force, an appeal on points of law could be lodged only in certain specific type of disputes (for example, employment disputes) or, in other cases, only if the value of the subject matter of the dispute (value of the claim) exceeded a prescribed statutory threshold.

(a) The 2003 Amendments introducing extraordinary appeal on points of law

13. The 2003 Amendments retained the above-mentioned conditions concerning the admissibility of appeals on points of law (see the previous paragraph), which reflected the private function of the Supreme Court, namely, to secure the correct application of substantive and procedural law in the most important cases.

14. However, the 2003 Amendments introduced for the first time a possibility for appellate courts to grant leave to appeal on points of law against their own judgments even in cases which did not meet the above-mentioned conditions. Those courts could do so by indicating this in the operative provisions of their judgments, if they considered that a decision in the case depended on the resolution of a point of substantive or procedural law that was important for ensuring the uniform application of the law. Such appeals on points of law thereby became a means for the Supreme Court to perform its public function, namely, to safeguard and promote the public interest by ensuring the uniformity of the case-law, which is its role as defined by the Constitution (see paragraph 9 above). In Croatian legal literature this type of appeal on points of law became known as an extraordinary appeal on points of law (*izvanredna revizija*), in contrast to ordinary appeals on points of law (*redovna revizija*, see paragraphs 12-13 above).

(b) The 2008 Amendments introducing the possibility for parties to lodge extraordinary appeals on points of law themselves

15. On 1 October 2008 the 2008 Amendments to the Civil Procedure Act (*Zakon o izmjenama i dopunama zakona o parničnom postupku*, Official Gazette no. 84/08) entered into force. The conditions for the admissibility of ordinary appeals on points of law, which reflected the private function of the Supreme Court, were retained (see paragraphs 12-13 above). In contrast, the conditions for the admissibility of extraordinary appeals on points of law were completely changed: the parties themselves could lodge such an appeal on points of law with the Supreme Court if they considered that a decision in their case depended on the resolution of a point of substantive or procedural law that was important for ensuring the uniform application of the law.

16. In particular, the relevant provision of the Civil Procedure Act, as amended by the 2008 Amendments, read as follows:

1. Appeal on points of law
Section 382

"(1) Parties may lodge an appeal on points of law [*revizija*] against a second-instance judgment:

– if the value of the subject matter of the dispute in the contested part of the judgment exceeds HRK 200,000;

– [in certain employment disputes]; or

– if the second-instance judgment was given in accordance with section 373a or 373b of this Act [that is, if the second-instance court assessed the evidence and/or established the facts differently from the first-instance court or held a hearing].

(2) In cases where the parties are not entitled to lodge an appeal on points of law in accordance with paragraph 1 of this section, they may [nevertheless] do so if a decision in the dispute depends on the resolution of a point of substantive or procedural law [that is] important for ensuring the uniform application of the law and the equality of all in its application, for example:

– if the Supreme Court has not yet ruled on that point ... in respect of which there is divergent case-law of the second-instance courts;

– if the Supreme Court has already ruled on that point but the decision of the second-instance court is not in conformity with that ruling; or

– if the Supreme Court has already ruled on that point and the decision of the second-instance court is in conformity with that ruling but ... the case-law should be revisited in view of changes in the legal system occasioned by new legislation, international treaties or decisions of the Constitutional Court, the European Court of Human Rights or the Court of Justice of the European Union.

(3) In the [extraordinary] appeal on points of law referred to in paragraph 2 of this section, the appellants must specify the point of law which is the ground for their appeal [together] with a specific reference to legislation and other sources of law related thereto, and [must] give reasons as to why they find that point important for ensuring the uniform application of the law and the equality of all in its application.

(4) An appeal on points of law must be lodged within thirty days of notification of the second-instance judgment."

17. The Supreme Court had to declare an extraordinary appeal on points of law inadmissible if the formal procedural requirements set out in paragraph 3 of section 382 (see the previous paragraph) had not been met. However, even if those requirements had been met, the Supreme Court still had to declare such an appeal inadmissible if it considered that the points of law raised within it were not important for ensuring the uniform application of the law.

18. In its decision in the case of *Mirenić-Huzjak and Jerković v. Croatia* ((dec.), no. 72996/16, § 54, 24 September 2019), the Court held that an extraordinary appeal on points of law could not be considered an effective remedy in respect of those Convention complaints which did not concern divergent domestic case-law as it was not capable of addressing such complaints.

(c) The 2013 Amendments replacing extraordinary appeal on points of law with petition for leave

19. With the entry into force of the 2013 Amendments to the Civil Procedure Act (*Zakon o izmjenama i dopunama zakona o parničnom postupku*, Official Gazette no. 70/19) on 1 September 2019, extraordinary appeals on points of law were replaced by petitions whereby the parties to civil proceedings sought leave from the Supreme Court to appeal on points

of law. The conditions under which the Supreme Court could grant such leave were nearly identical to the conditions of admissibility relating to extraordinary appeals on points of law (see paragraphs 16-17 above). Therefore, references in the present decision to "extraordinary appeal on points of law" hereafter also concern petitions for leave to appeal on points of law introduced by the 2013 Amendments.

20. Ordinary appeals on points of law (see paragraphs 12 and 14 above) – securing direct access to the Supreme Court as a matter of right – were retained but became exceptions. That procedure was available in maternity and paternity disputes, in certain employment and media disputes, and in cases concerning the prohibition of discrimination. The value of the subject matter of dispute was no longer a condition for the admissibility (see paragraph 12 above) of that type of appeal on points of law.

(d) The 2022 Amendments introducing additional grounds for appeal on points of law based on breaches of human rights

21. The 2022 Amendments to the Civil Procedure Act (*Zakon o izmjenama i dopunama zakona o parničnom postupku*, Official Gazette no. 80/22), which entered into force on 19 July 2022, completely abolished the private function of the Supreme Court in civil cases: from then on an appeal on points of law could no longer be lodged on the grounds specified for the ordinary appeal on points of law (see paragraphs 12-14 above). However, besides ensuring the uniform application of the law, the Supreme Court's public function was extended by the introduction of additional grounds for appeals on points of law based on breaches of human rights. Lastly, in civil cases there was no longer direct access to the Supreme Court as a matter of right, as all appeals on points of law, regardless of their grounds, became subject to leave to appeal (*revizija po dopuštenju*).

22. In particular, the relevant provision of the Civil Procedure Act, as amended by the 2022 Amendments, reads as follows:

Section 385a

"(1) The Supreme Court shall grant leave to lodge an appeal on points of law if ... a decision in the case depends on the resolution of a point of law examined by the lower courts which is important for ensuring the uniform application of the law and the equality of all in its application, or for case-law development, in particular:

– if the decision of the second-instance court on that point of law deviates from the Supreme Court's practice; or

– if there is no practice of the Supreme Court on that point of law, especially if the practice of higher courts is not uniform, or

– if the Supreme Court's practice on that point of law is not uniform, or

– if the Supreme Court has already ruled on that point and the decision of the second instance court is based on that ruling but ... the case-law should be revisited in view of changes in the legal system occasioned by new legislation, international agreements or

decisions of the Constitutional Court, the European Court of Human Rights or the Court [of Justice] of the European Union.

(2) The Supreme Court shall also grant leave to lodge an appeal on points of law if a party argues plausibly that in the first- or second-instance proceedings, owing to particularly serious breaches of the rules of civil procedure or an incorrect application of substantive law, there has been a breach of a fundamental human right guaranteed by the Croatian Constitution or the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the party, if possible, already referred to those breaches in the proceedings before the lower courts."

23. Under section 107(5) of the 2022 Amendments, the above-mentioned new rules on appeals on points of law applied to all ongoing civil proceedings in which a second-instance decision was not given before the entry into force of those amendments.

C. Relevant practice

24. The practice of the Constitutional Court regarding the admissibility of constitutional complaints in the light of section 62(2) and (3) of the Constitutional Court Act (see paragraph 10 above) evolved over time, in line with the developments in the legal regulation of appeals on points of law described above (see paragraphs 12-23).

1. Practice before the entry into force of the 2022 Amendments to the Civil Procedure Act

(a) Practice regarding ordinary appeals on points of law

25. In the period in which ordinary appeals on points of law existed (see paragraph 12-15 and 20 above), the Constitutional Court always required parties to civil proceedings wishing to lodge a constitutional complaint to first lodge that type of appeal on points of law with the Supreme Court whenever possible. If the parties failed to do so, the Constitutional Court would declare their constitutional complaint inadmissible.

(b) Practice regarding extraordinary appeals on points of law

(i) The practice after the entry into force of the 2008 Amendments to the Civil Procedure Act

26. After the entry into force of the 2008 Amendments to the Civil Procedure Act on 1 October 2008 (see paragraphs 15-17 above) the Constitutional Court noted that it was not always clear whether the Supreme Court would consider an extraordinary appeal on points of law admissible (see the relevant part of the instructions for completing the constitutional complaint form of 11 April 2016, reproduced in *Mirenić-Huzjak and Jerković*, cited above, § 24). It therefore developed the following practice depending on whether the parties had lodged (i) only a constitutional

complaint, (ii) an extraordinary appeal on points of law before a constitutional complaint, or (iii) both of those remedies simultaneously.

(α) Practice in cases where only a constitutional complaint was lodged

27. In such cases the Constitutional Court examined the constitutional complaint on the merits and never required the complainants to have lodged an extraordinary appeal on points of law beforehand (see *Mirenić-Huzjak and Jerković*, cited above, § 25).

(β) Practice in cases where an extraordinary appeal on points of law was lodged before a constitutional complaint

28. In cases where the Supreme Court decided to declare the extraordinary appeal on points of law inadmissible, a constitutional complaint could be lodged only against that decision of the Supreme Court. If in such a situation the complainants in their constitutional complaint (also) challenged the second-instance judgment or decision, the Constitutional Court declared that part of their constitutional complaints inadmissible as lodged outside the thirty-day statutory time-limit (see section 64 of the Constitutional Court Act in paragraph 10 above).

(γ) Practice in cases where an extraordinary appeal on points of law and a constitutional complaint were lodged simultaneously

29. In such cases the Constitutional Court informed the complainants by letter (the so-called appeal-on-points-of-law letter, *revizijsko pismo*) that it would wait for the Supreme Court's decision on the extraordinary appeal on points of law before examining the constitutional complaint (see the relevant part of the instructions for completing the constitutional complaint form of 11 April 2016, reproduced in *Mirenić-Huzjak and Jerković*, cited above, § 24). If the Supreme Court subsequently decided to declare the extraordinary appeal on points of law inadmissible, the Constitutional Court would examine the merits of the constitutional complaint lodged against the second-instance decision. In such situations the complainants had a possibility to extend their constitutional complaint and also challenge the decision of the Supreme Court declaring their extraordinary appeal on points of law inadmissible.

(ii) Practice after the entry into force of the 2022 Amendments to the Civil Procedure Act

30. Having regard to the changes in the legal regulation of appeals on points of law brought about by the 2022 Amendments to the Civil Procedure Act (see paragraphs 21-22 above), the Constitutional Court decided to abandon its earlier practice (see paragraphs 26-29).

31. In decisions no. U-III-207/2023 and U-III-7150/2022 of 7 March 2023, the Constitutional Court held, relying on section 62(2) and (3) of the

Constitutional Court Act (see paragraph 10 above), that after the entry into force of the 2022 Amendments, parties to civil proceedings wishing to lodge a constitutional complaint first had to petition the Supreme Court to grant them leave to appeal on points of law based on the grounds provided in section 385a(2) of the Civil Procedure Act (see paragraph 22 above).

32. In the first of those cases, no. U-III-207/2023, the complainant lodged a constitutional complaint and, simultaneously, a petition for leave to appeal on points of law. In contrast with its earlier practice (see paragraph 29 above), by a decision of 7 March 2023 the Constitutional Court declared that constitutional complaint inadmissible as premature because at that time the Supreme Court had not yet decided on the complainant's petition for leave to appeal on points of law. That decision was published in the Official Gazette no. 30/23 of 15 March 2023.

33. In the second case, no. U-III-7150/2022, the complainant lodged a constitutional complaint without first petitioning the Supreme Court to grant her leave to appeal on points of law. In contrast with its earlier practice (see paragraph 27 above), by a decision of 7 March 2023 the Constitutional Court declared her constitutional complaint inadmissible for non-exhaustion of other available remedies. That decision was published in the Official Gazette no. 32/03 on 22 March 2023. The relevant part of that decision reads as follows:

> **(a) Principles regarding the need to exhaust other available remedies**
>
> "3.1. The Constitutional Court reiterates that under ... section 62 of the Constitutional Court Act, before lodging a constitutional complaint it is necessary to exhaust other remedies available in the ordinary courts. The purpose of such a requirement is to enable the ordinary courts to prevent or remedy the violation of the complainant's constitutional rights ... Not requiring this from the complainant would mean acting against the will of the legislator and putting the Constitutional Court in a position to decide before ordinary courts.
>
> ...
>
> 3.4. The legal remedies to be exhausted before lodging a constitutional complaint must give the complainant a real opportunity [to defend] the rights and freedoms guaranteed by the Constitution that he or she considers to have been violated (see ... and compare with the case of the European Court of Human Rights *Vučković and Others v. Serbia* [GC], nos. 17153/11 and others, §§ 71 and 74, judgment of 25 March 2014).
>
> 3.5. As a result of the foregoing, a constitutional complaint by a complainant who did not first use such a legal remedy before lodging his or her constitutional complaint or who did use it but did not lodge a constitutional complaint against the decision on [that remedy], should, as a rule, be dismissed for non-exhaustion of other available remedies ...
>
> **(b) Application of the above principles to the present case**
>
> ...

4.1. ... the 2022 Amendments ... which entered into force on 19 July 2022 ... introduced a new legal ground for lodging a petition with the Supreme Court ... for leave to appeal on points of law: a breach of fundamental human rights that are guaranteed by the Constitution or the Convention ...

4.2. From the final draft of the 2022 Amendments ... it follows that the legitimate aim of the provision is that the Supreme Court, as the highest court in the country and as that which deals with matters of special importance, should decide on breaches of fundamental human rights entailed by the contested second-instance decision or in the proceedings leading to it (see the Supreme Court's decision no.: Revd-4909/22 of 3 January 2023).

4.3. In the light of such legislative changes and the above-mentioned principles ... the Constitutional Court considers that, after the entry into force of the 2022 Amendments, ... complainants must ... before lodging a constitutional complaint, raise their arguments about a breach of fundamental constitutional or Convention rights with the Supreme Court ...

4.4. Otherwise, if the Constitutional Court were to allow the lodging of constitutional complaints without requiring the parties to first ask the Supreme Court for leave to appeal on points of law based on a breach of fundamental human rights guaranteed by the Constitution or the Convention, the will of the legislator, which prescribed that legal remedy so that such arguments would first be examined by the Supreme Court, would be circumvented. [Were the Constitutional Court not to afford] the Supreme Court the opportunity to answer the arguments in respect of which a petition for leave to appeal on points of law can be lodged, the Constitutional Court would deprive the Supreme Court of the role the legislator intended for it.

4.5. In the present case, the second-instance judgment which the complainants are contesting with their constitutional complaint was given on 5 October 2022, which is to say after the entry into force of the 2022 Amendments. The (amended) provisions on appeal on points of law [therefore] apply to the contested judgment ...

4.6. Given that the complainants did not address the Supreme Court before addressing the Constitutional Court (they did not lodge a petition for leave to appeal on points of law against the second-instance judgment contested in the constitutional complaint), the Constitutional Court finds that the constitutional complaint is inadmissible."

34. The Constitutional Court integrated paragraphs 4.1. to 4.3. of the above-quoted decision into its Instructions for completing the constitutional complaint form of 30 March 2023 (*Upute za ispunjavanje obrasca ustavne tužbe*) published on its website. The remainder of those instructions in the part concerning appeals on points of law reads as follows:

CIVIL-LAW DISPUTES – APPEAL ON POINTS OF LAW (NEW PRACTICE!)

"... the Constitutional Court held that, after the entry into force of the 2022 Amendments, ... complainants had to ... raise their arguments about a breach of fundamental constitutional or Convention rights with the Supreme Court before lodging a constitutional complaint ...

The Constitutional Court shall therefore declare inadmissible constitutional complaints against second-instance judgments or decisions that were lodged after the entry into force of the 2022 Amendments (see decision no.: U-III-7150/2022 of 7 March 2023).

> If, after the entry into force of the 2022 Amendments, complainants lodged a constitutional complaint to the Constitutional Court against a second-instance judgment or decision simultaneously with a petition to the Supreme Court [for leave] to appeal on points of law (see decision no. U-III-207/2023 of 7 March 2023), [they] may, upon completion of the proceedings in the Supreme Court ... apply to the Constitutional Court if they still consider themselves victims of a breach of a constitutional right. The Constitutional Court [has] thereby changed its previous practice of sending complainants the so-called appeal-on-points-of-law letter in such situations.
>
> The thirty-day time-limit for lodging a constitutional complaint starts running following the receipt of the Supreme Court's judgment or decision.
>
> In accordance with the principle of subsidiarity, the Constitutional Court will exercise constitutional review of all decisions of the Supreme Court [given] pursuant to the new procedure for appeals on points of law, which is to say that it will not only review judgments of the Supreme Court dismissing appeals on points of law, but will also review Supreme Court decisions declaring petitions for leave to appeal on points of law inadmissible ... In other words, the Constitutional Court will examine the Supreme Court's decisions (in particular whether the Supreme Court addressed the parties' arguments regarding breaches of human rights protected by the Constitution or the Convention, and how it assessed such arguments ...), and will also examine the decisions of the lower courts that preceded the Supreme Court's decision if the complainants challenged them."

COMPLAINTS

35. The applicant complained, under Article 6 § 1 of the Convention, that the Constitutional Court's decision to declare his constitutional complaint inadmissible (see paragraph 7 above) had been in breach of his right of access to a court. Furthermore, he complained, under Article 13 of the Convention, that the Constitutional Court's decision had also breached his right to an effective remedy.

36. The applicant further complained, under Article 3 of the Convention, that the compensation he had been awarded for the inadequate conditions of his detention was too low (see paragraphs 3-4 above). He further complained, under Article 8 of the Convention, that the domestic courts' decisions dismissing his claim for compensation for the allegedly inadequate organisation of prison visits had been in breach of his right to respect for his private and family life (see paragraphs 3-4 above).

THE LAW

A. Alleged violation of Article 6 § 1 of the Convention

37. The applicant complained that his right of access to a court had been violated because the Constitutional Court, applying its new case-law (see paragraphs 30-33 above), had declared his constitutional complaint inadmissible (see paragraph 7 above). He relied on Article 6 § 1 of the Convention, the relevant part of which reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

38. In addition, the applicant complained that the Constitutional Court's decision to declare his constitutional complaint inadmissible had also been in breach of his right to an effective remedy. He relied on Article 13 of the Convention, which reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

39. The Court reiterates that the safeguards of Article 6 § 1 are stricter than those of Article 13 (see *Kudła v. Poland* [GC], no. 30210/96, § 146, ECHR 2000-XI) and finds that the applicant's complaint under Article 13 should be considered to be absorbed into his complaint under Article 6 § 1.

1. The applicant's submissions

40. The applicant submitted that he had lodged his constitutional complaint on 10 March 2023, that is, before the Constitutional Court's decisions signalling the change in its practice had been published (see paragraphs 6 and 32-33 above). Therefore, he could not have complied with the new requirement to first petition the Supreme Court for leave to appeal on points of law before lodging his constitutional complaint.

41. The applicant further submitted, relying on the Court's case-law (he cited *Janković and Others v. Croatia* (dec.), no. 23244/16 and 4 others, 21 September 2021), that it normally took six months for a development of the case-law to acquire a sufficient degree of certainty before the public might be considered to be effectively aware of it. Therefore, the retroactive application by the Constitutional Court of its new practice in his case had been unforeseeable.

2. The Court's assessment

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

43. The Court notes that in Croatia access to the Constitutional Court is secured, *inter alia*, through the possibility of lodging a constitutional

complaint. That access is, however, restricted by certain admissibility conditions for such a complaint.

44. In the present case, the Constitutional Court declared the applicant's constitutional complaint inadmissible relying on section 62 of the Constitutional Court Act (see paragraph 7 above). Paragraph 2 of that provision requires complainants to exhaust other available remedies before lodging a constitutional complaint and paragraph 3 specifies that in civil proceedings that means lodging an appeal on points of law when possible (see paragraph 10 above).

45. That rule, which restricts access to the Constitutional Court, is not *per se* incompatible with the Convention. Its aim is to ensure the proper administration of justice by preventing the Constitutional Court from becoming overburdened with a large number of civil (and commercial) cases raising human rights issues which could have been resolved by the Supreme Court. The only issue in the present case is whether the way the Constitutional Court applied that rule was proportionate to that aim and, more specifically, whether it was foreseeable (see paragraph 42 above and paragraph 47 below).

46. In that regard, the Court first reiterates that it is not its task to question the interpretation by the Constitutional Court of the admissibility criteria for lodging constitutional complaints, which is a matter in the sole domain of that court, but rather to ascertain whether the effects of that interpretation are compatible with the Convention, it being understood that the conditions for the admissibility of constitutional complaints may be stricter than for ordinary appeals (see, for example, *Croatian Radio-Television v. Croatia*, nos. 52132/19 and 19 others, § 164, 2 March 2023, and the cases cited therein).

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

48. In the present case, the Constitutional Court declared the applicant's constitutional complaint inadmissible by applying its new practice as established in the two decisions of 7 March 2023 (see paragraphs 30-33 above). However, the applicant lodged his constitutional complaint on 10 March 2023 (see paragraphs 6 and 40 above). That was before the Constitutional Court's two decisions signalling the change in its practice had been published, but after the entry into force of the 2022 Amendments to the Civil Procedure Act which had prompted that change (see paragraphs 21 and 30-33 above).

49. Therefore, the central issue in the present case is whether the application of the Constitutional Court's new practice to the applicant's case was foreseeable in the given circumstances.

50. In the cases of *Janković and Others* and *Hanževački* the Court held that the retroactive application by the Constitutional Court of a new admissibility requirement raised an issue of foreseeability under the Convention (see *Janković and Others*, cited above, § 63, and *Hanževački*, cited above, § 36).

51. However, the Court also stressed that case-law development was not, in itself, contrary to the proper administration of justice and that in cases where changes in domestic case-law had affected pending civil proceedings it had found no issue under Article 6 if the way in which the law had developed had been well known to the parties, or had at least been reasonably foreseeable (see *Hanževački*, cited above, § 35, and the cases cited therein).

52. In this regard the Court first notes that section 62(3) of the Constitutional Court Act, which has been in force since 1991 (see paragraph 10 above), unequivocally requires parties to civil proceedings who intend to lodge a constitutional complaint to first lodge an appeal on points of law whenever that appeal is available (see paragraphs 10 and 44 above). The Constitutional Court's practice making the application of that admissibility condition more flexible in the period between the entry into force of the 2008 and 2022 Amendments to the Civil Procedure Act was prompted by the changes in the legal regulation of appeals on points of law and the resultant practice of the Supreme Court from which it was not always clear whether that remedy was admissible in any given case (see paragraph 26-29 above). Having regard to the Court's findings in the case of *Zvolský and Zvolská v. the Czech Republic* (no. 46129/99, §§ 46-55, ECHR 2002-IX), any other, less flexible, approach would have in the given circumstances risked hindering access to the Constitutional Court in a manner incompatible with Article 6 § 1 of the Convention.

53. It was therefore to be expected that, once the conditions for the admissibility of appeals on points of law became clearer, the Constitutional Court would adjust its practice. That is precisely what happened after the entry into force of the 2022 Amendments to the Civil Procedure Act which introduced new grounds for appeals on points of law as provided in section 385a(2) of that Act (see paragraphs 21-22 above). What is more, those grounds largely correspond to those for lodging a constitutional complaint provided in section 62(1) of the Constitutional Court Act (see paragraph 10 above). In those circumstances it would have been unreasonable to expect that the Constitutional Court's practice would not change.

54. As regards the applicant's argument that it normally takes six months for a development of the case-law to acquire a sufficient degree of certainty (see paragraph 41 above), the Court notes that this is only one of the elements which may be of importance in assessing foreseeability but which is not

necessarily decisive (compare *Majski v. Croatia (no. 2)*, no. 16924/08, § 70, 19 July 2011 where the Court attached a significant importance to that element; *Hanževački*, cited above, §§ 37-38 where that period had passed but the Court nevertheless held that the change in the case-law was unforeseeable; *Gil Sanjuan v. Spain*, no. 48297/15, §§ 38-44, 26 May 2020, and *Petko Petkov v. Bulgaria*, no. 2834/06, §§ 26-35, 19 February 2013 where that element was not even mentioned). In the present case all the other elements considered above (see paragraphs 52-53) suggest that the shift in the Constitutional Court's practice was reasonably foreseeable (see paragraph 51 above). Moreover, that shift was prompted by legislative amendments which take effect after a certain period of time, in the manner of a *vacatio legis*, thus allowing all interested persons to become acquainted with the new rules (see *Çela v. Albania*, no. 73274/17, § 35, 29 November 2022). By way of observation, the Court also notes in this regard that more than seven months passed between the entry into force of the 2022 Amendments and the lodging of the applicant's constitutional complaint (see paragraphs 6 and 21 above).

55. In view of the foregoing, the Court finds that, while it seems evident that the applicant's constitutional complaint would not have been declared inadmissible had the Constitutional Court not changed its practice (see paragraph 27 above), that change was reasonably foreseeable. The Court further notes that applicant's case was examined on the merits at two levels of court with full jurisdiction (see *Croatian Radio-Television*, cited above, § 165, and contrast with *Gil Sanjuan*, cited above, § 45), and finds no other elements to suggest that in declaring the applicant's constitutional complaint inadmissible the Constitutional Court disproportionately restricted his right of access to court.

56. It follows that this complaint is inadmissible under Article 35 § 3 (a) of the Convention for being manifestly ill-founded and that it must therefore be rejected pursuant to Article 35 § 4 thereof.

B. Other alleged violations of the Convention

57. The applicant complained that the compensation the domestic courts had awarded him for the inadequate conditions of his detention had been too low and that by dismissing his claim for compensation for the allegedly inadequate organisation of prison visits those courts had failed to remedy the breach of his right to respect for his private and family life (see paragraphs 3-4 above). He relied on Articles 3 and 8 of the Convention, which read as follows:

Article 3 (prohibition of torture)

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 8 (right to respect for private and family life)

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

58. The Court first reiterates that Article 35 § 1 of the Convention requires that the complaints intended to be made subsequently in Strasbourg should have been made to the appropriate domestic body, and in compliance with, *inter alia*, the formal requirements laid down in domestic law. Where an applicant has failed to comply with these requirements, his or her application should in principle be declared inadmissible for failure to exhaust domestic remedies (see, for example, *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 72, 25 March 2014).

59. The Court further reiterates that before lodging applications with the Court against Croatia, applicants are in principle required, in order to exhaust domestic remedies and comply with the principle of subsidiarity, to lodge a constitutional complaint and thereby afford the Croatian Constitutional Court a possibility of remedying their situation (see, for example, *Vrtar v. Croatia*, no. 39380/13, § 72, 7 January 2016).

60. The applicant in the present case did lodge a constitutional complaint (see paragraph 6 above), but the Constitutional Court declared it inadmissible because he had failed to comply with one of the formal requirements for the admissibility of that remedy, which requirement, as established above (see paragraphs 42-56), was not unforeseeable.

61. It follows that these complaints are also inadmissible under Article 35 § 1 of the Convention for non-exhaustion of domestic remedies and that they must be rejected pursuant to Article 35 § 4 thereof.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 13 June 2024.

Hasan Bakırcı Registrar	Arnfinn Bårdsen President