



## CEO of Hungarian national oil company failed to use all domestic remedies in complaint against Croatia

In its decision in the case of [Hernádi v. Croatia](#) (application no. 29998/15) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned the Croatian authorities' efforts to question Zsolt Tamás Hernádi, who is the Chairman and Chief Executive Officer of the Hungarian national oil and gas company MOL, in connection with criminal proceedings against him and the former Croatian Prime Minister for bribery. Neither a detention order nor European arrest warrants have resulted in the CEO's surrender to the Croatian authorities.

In his application to the European Court, Mr Hernádi complained that such measures had prevented him from travelling abroad, in breach of Article 2 Protocol No. 4 (freedom of movement).

The Court found, however, that the applicant had not complied with the Court's admissibility requirements as he had not properly raised this complaint before the Croatian courts. In particular, he had essentially directed his arguments at the decision to order his pre-trial detention, and had not submitted any specific arguments about the violation of his freedom of movement or indeed expressly relied on Article 2 Protocol No. 4.

### Principal facts

The applicant, Zsolt Tamás Hernádi, is a Hungarian national who was born in 1960 and lives in Kisoroszi (Hungary).

In 2009 MOL assumed control over the Croatian national oil company, INA-Industrija Nafta d.d., in the context of a privatisation agreement. Two years later the Croatian authorities opened an investigation against the applicant and the former Croatian Prime Minister, I.S., on suspicion of bribery in relation to the 2009 INA-MOL agreement. The former PM was convicted of the offence in 2012, but the Constitutional Court then quashed his conviction and ordered a retrial. The proceedings are still ongoing, as are those against the applicant who was indicted in 2014.

In the meantime, a dispute arose between the Croatian authorities and the Hungarian authorities: Croatia wished to question the applicant as a suspect but Hungary has refused to help, essentially on national security grounds and because an investigation has already been conducted in Hungary, the applicant questioned as a witness and no criminal offence established.

This situation led to the Croatian courts ordering the applicant's pre-trial detention in 2013, and the authorities then issuing several European arrest warrants ("EAW") for him as well as an international alert, known as a Red Notice, indicating that he was wanted for prosecution. Neither the EAWs nor the Red Notice have resulted in the applicant's surrender to the Croatian authorities.

Mr Hernádi lodged two constitutional complaints with the Croatian Constitutional Court in January and September 2014, essentially challenging the decision ordering his pre-trial detention. After lodging the first constitutional complaint, he also asked the Constitutional Court to suspend the pre-trial detention order, making reference to the consequences of the EAW on his business activities because he was prevented from travelling abroad. The first constitutional complaint was declared inadmissible, while the second was dismissed as unfounded, the Constitutional Court finding nothing arbitrary in the pre-trial decision.

## Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 15 June 2015.

Relying on Article 2 of Protocol No. 4 (freedom of movement), Mr Hernádi complained about the detention order and EAWs issued by the Croatian authorities which had effectively prohibited him from leaving Hungary.

The decision was given by a Chamber of seven judges, composed as follows:

Krzysztof **Wojtyczek** (Poland), *President*,  
Ksenija **Turković** (Croatia),  
Aleš **Pejchal** (the Czech Republic),  
Pauliine **Koskelo** (Finland),  
Tim **Eicke** (the United Kingdom),  
Jovan **Ilievski** (North Macedonia),  
Raffaale **Sabato** (Italy),

and also Abel **Campos**, *Section Registrar*.

## Decision of the Court

The Court reiterated that individuals complaining of violations of their rights must first have taken their case through the national courts, up to the highest possible level of jurisdiction. Specifically, the individual must have complained about an alleged violation in a manner which left no doubt that the complaint then submitted to the European Court had indeed been raised at domestic level.

However, Mr Hernádi's constitutional complaints had neither expressly relied on Article 2 of Protocol No. 4 nor included any specific arguments about a violation of his freedom of movement.

Only vaguely referring to the fact that the EAW had been issued, Mr Hernádi had limited himself to challenging the criminal courts' interpretation of the relevant domestic law on the question of when a detention order could be made to prevent a defendant from evading justice.

The Court did not consider that his request to suspend the pre-trial detention order, although mentioning the EAW and its consequences for his freedom of movement outside Hungary, had amounted to properly raising his complaint before the Constitutional Court

The Court concluded that Mr Hernádi had not exhausted domestic remedies, meaning that he had not given the Croatian authorities the opportunity to address and put right the Convention violation alleged against them. It therefore rejected the application as inadmissible.

*The decision is available only in English.*

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