



## Dismissal of a teacher for giving classes in Serbian breached the European Convention

In today's **Chamber** judgment<sup>1</sup> in the case of [Mile Novaković v. Croatia](#) (application no. 73544/14) the European Court of Human Rights held, by six votes to one, that there had been:

**a violation of Article 8 (right to respect for private life) of the European Convention on Human Rights.**

The case concerned a teacher's complaint about being dismissed in 1999 for giving his classes in Serbian rather than in Croatian. Of Serb ethnicity, he had lived and worked in Croatia for most of his professional life and at the time of his dismissal was working at a secondary school in Eastern Slavonia, in an area which had been peacefully reintegrated into Croatian territory after the war. The authorities held in particular that he could not be expected to learn Croatian, given that he was 55 years old at the time.

The Court ruled that the authorities had dismissed the teacher, without considering any alternatives such as training. Relying solely on his age and years of service, the authorities had applied the most severe sanction, thereby significantly interfering with his rights.

### Principal facts

The applicant, Mile Novaković, now deceased, was a Croatian national who was born in 1944 and lived in Darda (Croatia).

Mr Novaković, of Serb ethnicity, worked as a teacher in Croatia from 1971. From July 1998 he was employed in a secondary school in the Darda region, an area in Eastern Slavonia which was peacefully reintegrated into Croatian territory after the war.

Following an inspection carried out only on teachers of Serb ethnicity, the applicant was initially prohibited from teaching in administrative proceedings. The Administrative Court ultimately set aside that decision in 2006, on the grounds that the question of which language the classes at the applicant's school were meant to be taught in at the time had not been conclusively established.

In the meantime, the school dismissed the applicant in March 1999 for failing to use the standard Croatian while teaching, as provided for under the relevant domestic law. It concluded that it could not transfer the applicant because there were no posts in the school for teaching in Serbian. Nor could he be provided with training as he could not be expected to learn Croatian given that he was 55 years old at the time.

The applicant challenged his dismissal in the courts, including by lodging a complaint in 2011 with the Constitutional Court, in vain.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

## Complaints, procedure and composition of the Court

Relying on Article 8 (right to private life), Article 14 (prohibition of discrimination) and Article 1 of Protocol No. 12 (general prohibition of discrimination), the applicant complained that his dismissal had been arbitrary and that he had been discriminated against on the basis of his age and his Serb ethnicity. He argued in particular that not knowing a couple of words in Croatian during his inspection should not have led to such a drastic measure as dismissal.

The application was lodged with the European Court of Human Rights on 17 November 2014.

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

Krzysztof **Wojtyczek** (Poland), *President*,  
Ksenija **Turković** (Croatia),  
Linos-Alexandre **Sicilianos** (Greece),  
Alena **Poláčková** (Slovakia),  
Erik **Wennerström** (Sweden),  
Raffaele **Sabato** (Italy),  
Lorraine **Schembri Orland** (Malta),

and also Renata **Degener**, *Deputy Section Registrar*.

## Decision of the Court

### [Article 8 \(right to private life\)](#)

First, the Court was satisfied that the reasons for the applicant's dismissal – using Serbian in his daily work and alleged inability to adapt his language of instruction to the requirements of his post due to his age – had been sufficiently linked to his private life. In particular the language used by an individual necessarily formed part of his or her ethnic identity, while age was part of a person's physical identity. Article 8 was therefore applicable in the case.

The Government argued that the applicant's dismissal had been necessary to protect the right of pupils to an education in the Croat language. While the Court in no way wished to undermine that aim or its importance in the specific context of the Eastern Slavonia region at the time, it noted that no alternatives to dismissal which would have allowed the applicant to align his teaching with the legislation in force had ever been contemplated in his case.

The education inspector had simply decided that the applicant should be prohibited from teaching, without giving him the opportunity to correct the irregularities in his work within a certain period of time, which was a possibility under the relevant domestic law.

The school had rejected the possibility of additional training, purely on the grounds of the applicant's age and years of service. Moreover, neither the school nor any of the domestic courts had ever provided a detailed and convincing explanation as to why the applicant's age would have been an insurmountable impediment to him adjusting his teaching plan so that he could teach in the standard Croatian.

Indeed, given the undeniable proximity of the two languages concerned, as well as the fact that the applicant had lived and worked in Croatia for most of his professional life, it was difficult to understand why the option of providing him with additional training had not been explored.

The Court also pointed out that, in any case, the domestic authorities themselves – administrative and civil courts – had had difficulties in establishing in which language the applicant had been expected to teach at the relevant time.

Lastly, no teachers of Croat ethnicity had been inspected at the applicant's school. In the post-war context of the Eastern Slavonia region at the time, singling out a certain group of persons on the basis of language, which was closely related to their ethnicity, could potentially raise an issue of compatibility with the European Convention and the Croatian Constitution.

The Court concluded that the applicant's dismissal from work had not corresponded to a pressing social need, nor had it been proportionate to the aim sought to be achieved, in violation of Article 8 of the Convention.

### Other articles

The Court held, by six votes to one, that there was no need to examine separately the applicant's complaints under Article 14 in conjunction with Article 8 of the Convention and under Article 1 of Protocol No. 12 to the Convention. It noted that it had already taken into account the domestic authorities' reliance on the applicant's age and their decision to inspect the work of only some teachers, based on their ethnic origin, in its examination of the complaint under Article 8.

### Just satisfaction (Article 41)

The Court held that Croatia was to pay the applicant 5,000 euros (EUR) in respect of non-pecuniary damage and EUR 850 in respect of costs and expenses.

### Separate opinions

Judge Wojtyczek expressed a dissenting opinion, which is annexed to the judgment.

*The judgment is available only in English.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.