



Supreme Court was impartial in case on conspiracy to influence war-crimes appeal

In today's **Chamber** judgment¹ in the case of [Tadić v. Croatia](#) (application no. 25551/18) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 6 §§ 1 and 2 (right to a fair trial) of the European Convention on Human Rights.

The case concerned criminal proceedings in which Mr Tadić had been found guilty of conspiring – through payments of money – to influence the Supreme Court to give a decision favourable to a well-known politician who was being tried for a war crime.

The Court found in particular that the Supreme Court President's involvement in the trial against Mr Tadić had not harmed the objective impartiality of that court. He had had very little real influence to impose his will on other judges, and in any case there had been no issue as to how the Supreme Court had upheld the first-instance judgment.

The Court found furthermore that the appellate judgment had not been influenced by media publications. It had been given by professional, Supreme Court judges on the basis of the case file and dealing with the first-instance courts' identification of facts and application of law.

Principal facts

The applicant, Drago Tadić, is a Croatian national who was born in 1961 and lives in Osijek (Croatia).

In 2009 B.G., a well-known politician, was convicted along with several other people of a war crime against the civilian population. That conviction was appealed against to the Supreme Court.

Following the Supreme Court's deliberations, the Security Intelligence Agency (*Sigurnosno-obavještajna agencija*) was informed that Mr Tadić and some other individuals were allegedly intending to influence the Supreme Court judges with a view to their changing their decision, and began a surveillance operation. Subsequently, in July 2010 the Office for the Suppression of Corruption and Organised Crime (*Ured za suzbijanje korupcije i organiziranog kriminaliteta*) obtained court authorisation to tap the phones of and covertly monitor Mr Tadić and some others in that connection. During the investigation, B.H., the President of the Supreme Court, confirmed that he had been approached by Mr Tadić, who had suggested to him to assign the case against B.G. to a specific Supreme Court judge working in that court's records service. The investigation led to Mr Tadić's and four alleged accomplices' indictments in 2011.

Supreme Court President B.H. gave evidence at the trial.

Mr Tadić asserted that he had had nothing to do with assigning the case against B.G. in the Supreme Court records service. He wanted the head of the records service to be questioned which the Zagreb County Court refused to allow.

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.

Mr Tadić was found guilty as charged and given a two-year prison sentence. Both parties appealed. Mr Tadić complained in particular that he had been convicted solely on the basis of the witness testimony of the Supreme Court President B.H., who had given untrue statements in order to cover up his own actions in respect of the case against B.G.

While the appeals were pending, the Sunday paper *Nedjeljni jutarnji* published an article entitled "How the [Security Intelligence Agency] discovered the infiltration of the Supreme Court" (*Kako je SOA otkrila upad u Vrhovni sud*). It referred to Security Intelligence Agency recordings which had not formed part of the case against Mr Tadić, highlighting that in the recorded conversations the names of various judges and other public officials had come up, and alleging that witness testimony of the President of the Supreme Court in the case against the applicant had contradicted the content of the impugned recordings.

In February 2017 the appeals were dismissed by the Supreme Court. The reasoning did not refer to the *Nedjeljni jutarnji* article or to the recordings which had not formed part of the first-instance trial. The court stated that Mr Tadić's questioning B.H.'s credibility amounted to speculation about his actions and goals, which were not the subject of this trial. What was relevant, and undisputed by Mr Tadić and B.H., was that it had been the applicant that had initiated contact with B.H.

Mr Tadić lodged two constitutional complaints, including regarding the impartiality of the Supreme Court, which were ruled unfounded by the Constitutional Court.

Complaints, procedure and composition of the Court

Relying on Articles 6 § 1 (right to a fair hearing) and 6 § 2 (presumption of innocence) of the European Convention, Mr Tadić complained that the Supreme Court, the appellate court in his case, had not been impartial as its president had allegedly played a role in criminal offences for which he had been tried, and had testified as a witness for the prosecution. He also complained that the publication in the media two months before the Supreme Court had adopted a decision in his case of Security Intelligence Agency recordings of his telephone conversations had exerted pressure on that court to uphold his conviction and had breached the presumption of innocence.

The application was lodged with the European Court of Human Rights on 24 May 2018.

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

Arnfinn Bårdsen (Norway), *President*,
Jovan Ilievski (North Macedonia),
Pauliine Koskelo (Finland),
Saadet Yüksel (Türkiye),
Lorraine Schembri Orland (Malta),
Frédéric Krenç (Belgium),
Diana Sârcu (the Republic of Moldova),

and also Hasan Bakırcı, *Section Registrar*.

Decision of the Court

Article 6 § 1 as regards the President of the Supreme Court's involvement in Mr Tadić's case

The Court noted that the main issue in this case concerned independence and objective impartiality (that is to say the appearance of impartiality). In the circumstances where the Supreme Court President had allegedly played a role in the criminal offences for which the applicant had been tried, relating to an attempt to influence the Supreme Court itself in a case against a well-known politician, and had testified as a witness for the prosecution, the situation in this case had been delicate and

could at first sight have caused some concerns as to the impartiality and the independence of the Supreme Court.

It noted, however, that the President of the Supreme Court's evidence had not been the sole nor decisive evidence used to convict Mr Tadić. In fact, the national courts had referred in the main to the lawful secret-surveillance recordings, whose authenticity Mr Tadić had never disputed, with corroborating witness testimony.

As to the allegation that B.H. had been involved in the plan to overturn the Supreme Court's decision to the benefit of B.G., and that in such a situation the Supreme Court in Mr Tadić's case had been protecting its president and its own integrity and had failed to properly examine his case, the Court noted that Mr Tadić had been convicted already by the trial court, whose impartiality he had never disputed, and that the Supreme Court had provided detailed reasoning when upholding the trial court's judgment. The trial court, the Supreme Court and the Constitutional Court had all agreed that the only relevant factor regarding the contact between Mr Tadić and President B.H. had been that the two had spoken about the case against B.G. at Mr Tadić's initiative, as undisputed between the two of them. B.H.'s alleged actions in the case against B.G. had not been the subject matter of the proceedings and Article 6 did not confer a right to have a third party prosecuted.

The Court further noted the rules applicable to judicial independence in force in Croatia at the time, and held that there was no evidence that B.H. had chosen the rapporteur or bench in Mr Tadić's case. The powers of the President had been fairly limited *vis-à-vis* the other judges, certainly not enough to influence their careers.

The Court was satisfied that the Supreme Court judges who had examined Mr Tadić's case on appeal had been sufficiently independent of that court's president. Mr Tadić's fears as regards the lack of their impartiality on account of their allegedly subordinate position in respect of their president were not objectively justified. There had therefore been no violation of Article 6 § 1 as regards the requirement for an impartial tribunal.

Article 6 §§ 1 and 2 as regards the publication of Security Intelligence Agency recordings

The Court restated that a virulent media campaign could potentially adversely affect the fairness of a trial and involve the State's responsibility. However, press coverage of current affairs was guaranteed under the right to freedom of expression. Courts therefore had to ensure sufficient safeguards for the parties to a trial in such a situation.

The recordings in question in this case had been made by the Security Intelligence Agency before the investigation in respect of Mr Tadić had been opened and, as he did not contest, they had neither been used as evidence in the criminal proceedings nor formed part of the case file.

However, they had been published in the media merely eight weeks before the session of the appellate panel in Mr Tadić's case. Furthermore, they could not have been published had they not been disclosed by a State agent who had had access to them.

Nevertheless, Mr Tadić had been convicted already by the first-instance court on the basis of other, lawful secret-surveillance and corroborating testimony. The Supreme Court panel had been made of experienced and highly professional judges, trained to ignore noise from outside the trial. The conviction had been upheld strictly on the evidence in the case file, with the Supreme Court stating that the first-instance court had correctly established the facts and applied the law.

The Court therefore concluded that the media article and the published surveillance recordings had not breached Mr Tadić's right to a fair trial or the presumption of innocence.

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.