



Two rulings on impartiality of Croatian Constitutional Court in high-profile proceedings for corruption

The cases [Mlinarević v. Croatia](#) (application no. 24406/21) and [Sanader v. Croatia](#) (no. 27577/21) concerned criminal proceedings for corruption widely referred to as the “Planinska” affair. The accused in the proceedings, Mladen Mlinarević and Ivo Sanader, former Prime Minister of Croatia, alleged that the judge who had presided over their cases before the Constitutional Court had been biased.

The European Court of Human Rights held, unanimously, in today’s Chamber judgment¹ in **Mr Mlinarević’s case** that there had been a **violation of Article 6 § 1 (right to a fair trial)** of the European Convention on Human Rights.

The Court found that Mr Mlinarević had had legitimate reasons to doubt the impartiality of the presiding judge, R.M., deciding his case. After R.M. had become a judge at the Constitutional Court, the law firm representing Mr Mlinarević’s co-defendant had taken over R.M.’s law office and the representation in the majority of cases in which he had been lead counsel. His son had also at the time been a trainee lawyer in that firm.

Mr Sanader’s allegation of bias, on the other hand, had been based on the presiding judge’s role as defence lawyer in another set of criminal proceedings against him. Those two sets of proceedings had, however, been unrelated and had taken place four years apart. Any fear of prejudice could not be justified from an objective point of view and, in its decision in **Mr Sanader’s case**, the Court, unanimously, **declared the application inadmissible**. The decision is final.

Principal facts

The applicants, Mladen Mlinarević and Ivo Sanader, are Croatian nationals who were born in 1954 and 1953, respectively. They both live in Zagreb.

In 2012 the applicants were indicted on corruption charges linked to the sale of property located on Planinska Street in Zagreb. Mr Mlinarević was charged with aiding and abetting abuse of power and authority. Mr Sanader was charged with abuse of power and authority.

They denied the charges against them, while the other co-defendants pleaded guilty.

In 2019 both applicants were found guilty. Mr Mlinarević was sentenced to community service, and Mr Sanader to six years’ imprisonment.

They lodged constitutional complaints complaining of the unfairness of the proceedings against them, which the Constitutional Court examined jointly and dismissed in 2020.

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.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right to a fair trial), the applicants alleged that the Constitutional Court had not been impartial in the proceedings against them.

Mr Mlinarević had doubts over Judge R.M. who had presided over his case before the Constitutional Court and who, according to the Government, had also been the rapporteur. He believed that Judge R.M. had been biased because he was a former practising attorney and, upon his appointment to the Constitutional Court, his law office (where he had been the lead counsel in the majority of cases) had been taken over by the law firm representing one of the other co-defendants in the proceedings against him.

Mr Sanader also had doubts over Judge R.M., but for a different reason, namely because he had previously been the defence lawyer for a co-defendant in another set of criminal proceedings against him, known as the “Fimi Media” case. He extended his lack-of-impartiality complaint to cover the facts raised by Mr Mlinarević only more than six months after lodging his application with the Court.

Mr Mlinarević’s application was lodged with the European Court of Human Rights on 23 April 2021, while Mr Sanader’s was lodged on 18 May 2021.

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

Ivana Jelić (Montenegro), *President*,
Erik Wennerström (Sweden),
Raffaele Sabato (Italy),
Frédéric Krenc (Belgium),
Mykola Gnatovskyy (Ukraine),
Artūrs Kučš (Latvia),
Anna Adamska-Gallant (Poland),

and also Liv Tigerstedt, *Deputy Section Registrar*.

Decision of the Court

The Court found that the impartiality of the Constitutional Court had been open to genuine doubt on account of Judge R.M.’s son being a trainee lawyer at the law firm that was representing Mr Mlinarević’s co-defendant. As such, Judge R.M.’s son was under the authority of the law firm and dependent on it for employment and good references. Judge R.M. had not, however, informed the President of the Constitutional Court of that situation or attempted to recuse himself from the case.

That conclusion was reinforced by the fact that, after R.M. had become a judge at the Constitutional Court, the law firm representing Mr Mlinarević’s co-defendant had taken over R.M.’s law office and the representation in the majority of cases in which he had been lead counsel.

Mr Mlinarević had therefore had legitimate reasons to doubt the impartiality of Judge R.M. and the Court concluded that the composition of the Constitutional Court in his case had not met Convention standards, in violation of Article 6 § 1.

Mr Sanader’s fears of bias, on the other hand, could not be justified from an objective point of view. While the charges in the “Planinska” and “Fimi Media” cases both concerned corruption, they had been unrelated. Moreover, there had been nothing in the courts’ findings in the “Fimi Media” case to prejudge the question of Mr Sanader’s guilt in the proceedings in the “Planinska” case.

Furthermore, there had been no overlap in R.M.’s roles in the two sets of proceedings. He had worked as a defence lawyer in the “Fimi” Media” case more than four years before his involvement as a judge in the Constitutional Court proceedings in the “Planinska” case.

Lastly, although R.M. had made statements against Mr Sanader in the “Fimi Media” case, they had to be viewed in the context of the role of his defending his client. They could not justify, from an objective standpoint, the fear that R.M. had been prejudiced in the subsequent and unrelated “Planinska” proceedings.

The Court therefore found that Mr Sanader’s complaint was manifestly ill-founded and rejected it as inadmissible.

The Court also found that his other lack-of-impartiality complaints – which had been lodged after the Court had notified the two cases to the Croatian Government in 2022 – had been based on facts which differed significantly from the ones concerning R.M.’s role in the “Fimi Media” case, which the applicant had initially relied on. They therefore changed the substance of Mr Sanader’s complaint concerning the alleged lack of impartiality of the Constitutional Court and amounted, in effect, to a new complaint. In that regard, the Court reiterated that a complaint was always characterised by the facts alleged in it and that, although there was nothing preventing Mr Sanader from raising a new complaint in the course of the proceedings before the Court, such a complaint had to comply with the admissibility requirements. Hence, Mr Sanader’s remaining lack-of-impartiality complaints had to be [rejected for having been submitted out of time](#).

Just satisfaction (Article 41)

The Court held that the finding of a violation in Mr Mlinarević’s case constituted in itself sufficient just satisfaction in respect of any non-pecuniary damage sustained.

The judgment and decision are available only in English.

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