SECOND SECTION

CASE OF TADIĆ v. CROATIA

(Application no. 25551/18)

JUDGMENT

Art 6 § 1 (criminal) • Independent and impartial tribunal • Objective impartiality of the Supreme Court whose president had allegedly played a role in criminal offences for which the applicant was tried, relating to an attempt to influence the Supreme Court itself in a case against a well-known politician, and gave testimony as a prosecution witness in the applicant's trial • President's testimony neither the "sole" evidence to ground his conviction nor "decisive" for the outcome of his case • Applicant given the opportunity to cross-examine the President before the trial court and made his allegations against the President for the first time in his appeals against the trial court's judgment • Supreme Court judges who examined the applicant's appeals were sufficiently independent from the President and free from any undue influence from him • Applicant's fears as regards lack of impartiality not objectively justified

Art 6 § 1 (criminal) and § 2 • Right to a fair hearing and to be presumed innocent not breached by publication in the media during appeal proceedings of recordings of the applicant's telephone conversations tapped by the Security Intelligence Agency • Supreme Court (appellate) judges highly experienced professional judges trained to disregard any suggestion from outside the trial • Conviction upheld strictly on the basis of the evidence in the case file which did not contain the impugned recordings • No evidence suggesting that the Supreme Court judges were influenced by the recordings

STRASBOURG

28 November 2023

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Tadić v. Croatia,

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

Arnfinn Bårdsen,
Jovan Ilievski,
Pauliine Koskelo,
Saadet Yüksel, *judges*,
Lorraine Schembri Orland, *ad hoc judge*,
Frédéric Krenc,
Diana Sârcu, *judges*,

and Hasan Bakırcı, *Section Registrar,*

Having regard to:

the application (no. 25551/18) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Croatian national, Mr Drago Tadić ("the applicant"), on 24 May 2018;

the decision to give notice to the Croatian Government ("the Government") of the complaints concerning the lack of impartiality of the Supreme Court and the breach of presumption of innocence and to declare inadmissible the remainder of the application;

the parties' observations;

the withdrawal (under Rule 28 of the Rules of Court) from the case of Mr Davor Derenčinović, the judge elected in respect of the Republic of Croatia, and the appointment by the President of Ms Lorraine Schembri Orland to sit as *ad hoc* judge (Rule 29 § 2);

Having deliberated in private on 7 November 2023,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns criminal proceedings in which the applicant was found guilty of conspiring with several persons with a view to influencing the Supreme Court, by means of paying a sum of money, to render a decision favourable to a well-known politician who was being tried for a war crime.

2. The applicant complained that the Supreme Court, as the appellate court in his case, had not been impartial because of the circumstances surrounding its president, who 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 recordings of his telephone conversations made by the Security Intelligence Agency had exerted pressure on the Supreme Court judges to uphold his conviction and had breached his right to be presumed innocent.

THE FACTS

3. The applicant was born in 1961 and lives in Osijek. He was represented by Ms V. Drenški Lasan, a lawyer practising in Zagreb.

4. The Government were represented by their Agent, Ms Š. Stažnik.

5. The facts of the case may be summarised as follows.

I. BACKGROUND INFORMATION

6. In May 2009 B.G. (a well-known politician) and several other persons, were found guilty by the first-instance court of a war crime against the civilian population. B.G. was sentenced to ten years' imprisonment. The defendants and the prosecution lodged appeals with the Supreme Court (*Vrhovni sud Republike Hrvatske*), which examined them in a session held from 31 May until 2 June 2010. On the latter date, the Supreme Court upheld B.G.'s conviction but reduced his sentence to eight years' imprisonment.

II. INVESTIGATION AND CRIMINAL PROCEEDINGS AGAINST THE APPLICANT

7. The Security Intelligence Agency (*Sigurnosno-obavještajna agencija*) learned that the applicant (who was a businessman) and several other persons had allegedly become aware that the Supreme Court had adopted a decision that had been unfavourable to B.G. and were suspectedly taking steps with a view to influencing the judges to change that decision before the parties concerned were notified of it. The Security Intelligence Agency tapped their telephone conversations in the period between 4 and 20 July 2010. The recordings of those conversations were not part of the ensuing criminal proceedings against the applicant.

8. On 20 July 2010 the Office for the Suppression of Corruption and Organised Crime (*Ured za suzbijanje korupcije i organiziranog kriminaliteta* – hereinafter "the OSCOC") asked an investigating judge of the Zagreb County Court (*Županijski sud u Zagrebu*) to authorise the use of special investigative measures (namely, phone tapping and covert monitoring) against the applicant and several other persons on the grounds that they were suspected of conspiring for the purpose of committing criminal offences. The investigating judge granted the request and ordered the use of secret-surveillance measures from 20 July until 20 September 2010.

9. On 7 October 2010, relying on the results of the special investigative measures (see paragraph 8 above) and searches of the suspects, their vehicles, homes and other premises, the OSCOC opened an investigation in respect of the applicant and four other persons. During the investigation, multiple witnesses were heard. Some of them mentioned the alleged involvement of several high-profile persons within the judiciary and the sphere of politics in

the attempt to influence the Supreme Court to change its decision to one that was favourable to B.G.

10. On 11 March 2011, at the proposal of two of the applicant's co-suspects, the investigators questioned B.H., the President of the Supreme Court at the time. B.H. told the investigators that on 14 July 2010 he had had lunch with the applicant and several other persons. After lunch the applicant had asked him in private about the case against B.G. Notably, the applicant had told him that "they" knew about the Supreme Court's decision and about the possibility of the Supreme Court's service for recording, monitoring and studying judicial practice (*Služba evidencije, praćenja i proučavanja sudske prakse* – hereinafter "the Records Service") remitting the case to the court's panel, which could then alter its decision. The applicant had further suggested that instead of assigning the case to a court advisor who was supposed to examine the panel's decision once it arrived in the Records Service, the case should be assigned specifically to a certain Supreme Court judge, A.P., who also worked in the Records Service. Having understood that the applicant was in possession of confidential information, the following morning B.H. had informed the State Attorney General of his conversation with the applicant.

11. On 4 July 2011 the OSCOC indicted the applicant and four other persons in the Zagreb County Court with the criminal offences of conspiring for the purpose of committing criminal offences and instigating an illegal intercession.

12. The OSCOC reached an agreement on guilt and sentencing with the applicant's co-accused, and the proceedings ensued solely against the applicant, who denied the charges against him.

13. During the trial, the Zagreb County Court played the recorded telephone conversations between the applicant, his former co-accused and other persons (see paragraph 8 above), inspected the video footage and photographs taken during their covert monitoring, examined other material evidence contained in the file, and heard thirty witnesses, including the applicant's former co-accused, and the President of the Supreme Court, B.H. The witnesses were cross-examined by the prosecution and the defence.

14. In his witness testimony of 6 September 2012, the President of the Supreme Court, B.H., was questioned about the fact that on 15 July 2010, he had asked the head of the Supreme Court's Records Service, Judge S.B.K., to entrust Judge A.P. with examining the panel's decision in the case against B.G., instead of the court advisor who had initially been entrusted with that task. B.H. submitted that he had done so in order to avoid any objections to the effect that a court advisor and not a judge had examined the decision rendered in that sensitive case. However, Judge A.P. had eventually declined to accept the task, and the decision had ultimately been examined by the court advisor.

15. In the oral statement that he gave at the end of the trial, the applicant denied that he was guilty of the charges against him. He explained that he had

merely been collecting information about the case against B.G. at the request of S.M., a journalist and a friend of B.G.'s (and afterwards his co-accused).

He also submitted that at the lunch held on 14 July 2010, he had only asked B.H., the President of the Supreme Court, to explain to him what normally happened when a panel decision arrived at the Records Service. B.H. had replied that the panel's decision in the case against B.G. would most probably be examined by Judge A.P.

The applicant asked the court to hear Judge S.B.K. as a witness, so that she could explain when, how and why the President of the Supreme Court had asked her to change the person in the Records Service who would be in charge of examining the panel's decision against B.G., and whether the Records Service could indeed remit the case to the panel. He argued that her testimony would prove that he had had nothing to do with deciding which member of the Records Service staff would be assigned to the case against B.G. The Zagreb County Court dismissed the applicant's request that Judge S.B.K. be heard, reasoning that it was aimed at establishing facts that were irrelevant for the charges against the applicant.

16. On 27 February 2013 the Zagreb County Court adopted a judgment finding the applicant guilty of the criminal offences with which he had been charged and sentencing him to two years' imprisonment.

In its judgment, the Zagreb County Court noted that during June and July 2010 – knowing that the appellate proceedings in the case against B.G. and others concerning war crime were pending before the Supreme Court, and with a view to obtaining a decision favourable for B.G. – the applicant had associated S.J., B.Ć.T., S.M. and I.D. in a common enterprise: he and S.J. had been in charge of finding persons who would (in return for payment) influence the Supreme Court judges and persons working in that court's Records Service; S.M. and I.D. had been in charge of gathering money with which to finance those criminal offences; and B.Ć.T. had been in charge of coordinating everyone's actions.

The Zagreb County Court established that, in order to achieve their plan, the applicant and S.J. had contacted numerous persons regarding the case against B.G., and that upon learning that the Supreme Court panel had rendered its decision, which was to be reviewed by the Records Service, which could remit the case to the panel in the event that the decision was contrary to the Supreme Court's case-law, the applicant and S.J. had enquired who in the Records Service would be in charge of examining the panel's decision, expecting to succeed in remitting the case to the panel.

Moreover, the Zagreb County Court established that S.M. and I.D. had failed to gather the agreed amount of money, so the applicant had borrowed 50,000 euros from a certain P.P. for the purpose of achieving their plan. It further established that S.J. had made contact with the former State Secretary in the Justice Ministry, M.D.V., and that, in accordance with the applicant's instructions, S.J. was about to give M.D.V. a sum of money in exchange for

influencing the Supreme Court judges in B.G.'s case; in the end, however, that did not happen, as S.M. and I.D. – having started to suspect that they were being monitored by the authorities – ended all further action.

17. The Zagreb County Court established those facts largely on the basis of the secret-surveillance recordings (see paragraph 8 above), whose authenticity the applicant never disputed. As to the testimony given by the witnesses, including that of the applicant's former co-accused, who had confessed to the charges – see paragraph 12 above, the Zagreb County Court accepted it as credible in those parts where it corresponded to other evidence – primarily the secret-surveillance recordings.

18. As to the fact that the applicant had been contacting different persons in order to gather information regarding the appellate proceedings against B.G., the Zagreb County Court established, *inter alia,* that the applicant had asked the President of the Supreme Court, B.H., about those proceedings on 14 July 2010. It noted that B.H.'s and the applicant's versions differed as to what exactly had been said during their private conversation but concluded that those differences were irrelevant for the subject matter of the case since it was undisputed that the two had spoken about the proceedings against B.G. on the applicant's initiative.

The Zagreb County Court also established that the applicant had had contact with several other persons regarding the appellate proceedings against B.G., such as a former President of Croatia, a certain well-known politician and a person who had connections at the Supreme Court.

19. The Zagreb County Court further established that the applicant had undoubtedly been aware of the illegality of his actions, not least because in their tapped telephone conversations and text messages he and his interlocutors had spoken in code in order to obfuscate the meaning of their statements, and because at one point the applicant had asked his wife to throw their mobile telephones into the sea in order to cover up evidence. In sentencing the applicant to two years' imprisonment, the Zagreb County Court held it against him that the ultimate goal of his actions had been to influence the Supreme Court judges to undertake unauthorised actions; conversely, the court noted in his favour that he had no other criminal convictions.

20. The applicant and the prosecution both lodged appeals against the judgment with the Supreme Court.

The prosecution asked that a harsher sentence be imposed on the applicant.

The applicant argued, *inter alia*, that he had only played a minor role – that of collecting information about the appellate proceedings against B.G. Ascribing to him the key role in the affair had served to justify the failure to prosecute certain other persons whose involvement had been discovered during the investigation.

He argued that the only incriminating evidence against him had been the testimony of the President of the Supreme Court, B.H., whose allegations had

been contradictory and not credible. He pointed out that B.H. had reported him to the State Attorney General for allegedly suggesting that the Supreme Court panel's decision in the case against B.G. be assigned to Judge A.P. in the Records Service, whereas after his conversation with the applicant, B.H. had assigned the case precisely to judge A.P., instead of the court advisor who was normally supposed to examine it. Furthermore, the investigation had shown that B.H. had been in contact with certain other persons; whose requests to him in respect of the case against B.G. he had probably granted, and B.H. had used his conversation with the applicant on 14 July 2010 to cover up his own actions. In that connection he complained of the fact that the trial court had refused to hear Judge S.B.K., who could have clarified the circumstances surrounding the fact that B.H. had asked her to assign the case against B.G. to Judge A.P. Judge S.B.K. could also have clarified whether it had ever happened that the Records Service had remitted a case to the panel, and the panel had then altered its decision in respect of that case. For his part, the applicant doubted that such a scenario was even possible in practice, contending that the applicable legislation did not sufficiently regulate the matter.

The applicant also challenged in detail the trial court's conclusions regarding the other relevant facts, and the application of the relevant law. He lastly argued that the non-suspended prison sentence imposed on him had been too strict compared with the suspended prison sentences imposed on his former co-accused. Moreover, in the circumstances where some of the perpetrators of the impugned criminal offences concerning manipulating the appellate proceedings against B.G. had never even been prosecuted, the trial court's explanation that his sentence served the purpose of the general prevention of crime was entirely cynical.

III. ARTICLE PUBLISHED IN THE MEDIA

21. While the appeals were pending before the Supreme Court, on 11 December 2016 the newspaper *Nedjeljni jutarnji* (the Sunday edition of the daily national newspaper *Jutarnji list*) published an article entitled "How the [Security Intelligence Agency] discovered the infiltration of the Supreme Court" (*Kako je SOA otkrila upad u Vrhovni sud*).

The article referred to the recordings of telephone conversations between the applicant, his former co-accused and certain other persons tapped by the Security Intelligence Agency in the period between 4 and 20 July 2010 (see paragraph 7 above). It stated that those recordings did not form part of the criminal case against the applicant, which at that time had been pending before the Supreme Court for more than three years, but that in general information gathered by the secret services served as an indicator to the authorities of what was going on in the "underground", so that they could focus the conduct of their investigation.

The article outlined the charges against the applicant, including that – in order to help B.G. in his case – he had allegedly been trying to make contact with Supreme Court judges, the President of the Supreme Court B.H. and certain influential politicians.

It stated that the witness testimony of the President of the Supreme Court in the case against the applicant had contradicted the content of the impugned Security Intelligence Agency recordings.

The article further stated that the recordings were important because they showed that a group of people had managed to "break into" one of the most important institutions in Croatia. Since the names of various judges and other public officials had come up in the recorded telephone conversations, some of whom were still in their posts, it was important to inform the public of them.

The article then enumerated the judges, politicians and other publicly known persons who had been mentioned in the recorded conversations, pointing out that the most interesting part of those conversations was that concerning the meeting between the applicant and the President of the Supreme Court, B.H., on 14 July 2010.

The article explained that in the proceedings against the applicant B.H. had testified that he had met the applicant on 14 July 2010 by chance, after the applicant had walked in on a lunch date that B.H. had had arranged with certain other persons. It then cited transcripts of telephone conversations suggesting that the lunch between the applicant and B.H. had purposefully been arranged beforehand in order for them to discuss the case against B.G.

The article also cited transcripts of the applicant's telephone conversations recorded immediately after his lunch with B.H., according to which the applicant had told his wife and other interlocutors that he had spoken to B.H. for some twenty minutes in private and that things should work out satisfactorily; B.H. had promised to try to convince a certain M. and to determine whether a remittal of the case would work. B.H. had reportedly also referred to the possibility of lodging a complaint at "a higher instance", but the applicant had told him that such a scenario had already been "nixed". B.H. had then reportedly admitted that he was afraid of a certain B.; otherwise, he would have "taken care of things" immediately.

The article also cited transcripts of telephone conversations in which the applicant had arranged borrowing money from P.P., and telephone conversations in which the applicant and his interlocutors had commended the efforts exerted by the former President of Croatia in respect of the matter, the useful information given to them by M.D.V., and the fact that a certain B. had reportedly confirmed that he would be "in favour" [of the plan to have the case remitted].

The article was also published on the news portal Jutarnji.hr, where it is still possible to hear the impugned recordings.

IV. DECISIONS OF THE SUPREME COURT AND THE CONSTITUTIONAL COURT

22. On 7 February 2017 the Supreme Court dismissed the appeals lodged by the applicant and the prosecution and upheld the applicant's conviction. In its decision it did not refer to the *Nedjeljni jutarnji* article (see paragraph 21 above) or the Security Intelligence Agency's recordings in any way.

It found that the trial court had properly established the relevant facts and correctly applied the law, addressing all the applicant's arguments to the contrary. *Inter alia*, it found it clear that the Supreme Court's Records Service could in practice remit the case to the panel for re-examination. It also agreed with the trial court that Judge S.B.K.'s witness testimony had been irrelevant, since the applicant's allegations regarding B.H., which S.B.K. had been expected to clarify, had had in any event nothing to do with establishing the facts relevant for the accusation against the applicant. Specifically, the Supreme Court agreed with the trial court that it was only relevant that the applicant and B.H. had spoken about the appellate proceedings against B.G. and the Records Service at the applicant's initiative, a fact which the applicant and B.H. did not dispute. In particular, the Supreme Court held:

> "... the question of the credibility of B.H.'s statements – which [the applicant] seeks to dispute – goes beyond the factual description of the charges [against the applicant] and constitutes speculation on the part of [the applicant] about the actions of the witness B.H. and the goal thereof, which are not the subject of these proceedings; nor does it affect the establishment of the facts against [the applicant], because it is undisputed between [the applicant] and the witness B.H. that their conversation regarding the second-instance criminal proceedings against B.G. was initiated precisely by [the applicant], and that they spoke about the Supreme Court's Records Service."

The Supreme Court considered that the applicant's sanction had been properly imposed by the trial court, since the ultimate goal of his actions had been to influence the Supreme Court judges in a case concerning a war crime, which demonstrated disrespect towards the highest court in Croatia and the country's value system. It added that it could not have re-examined the sanctions imposed on the applicant's former co-accused and compared them with the sentence imposed on the applicant since they had been convicted on the basis of an agreement with the prosecution, and the judgments against them had immediately become final.

23. In two subsequent constitutional complaints, the applicant complained, *inter alia*, that the Supreme Court had not been impartial – as required by Article 29(1) of the Croatian Constitution (*Ustav Republike Hrvatske*) and Article 6 § 1 of the Convention – because the president of that court had been placed in a position in which he had had "to defend himself from the publicly expressed suspicions of his being involved in the criminal offence, and the Supreme Court, as the appellate court – building around itself an 'institutional self-protecting shield' against the criminal offence –breached the constitutional requirement of objective impartiality to the applicant's

detriment, in the sense that it did not respect the constitutional requirement of remaining neutral". He argued that the Supreme Court's lack of neutrality in respect of his case had been evident from the fact that it had refused to properly scrutinise the witness testimony of its president and the practical work of the Records Service. That lack of neutrality had further been reflected in the reasons that that court had given in support of his sentence. Lastly, the applicant argued that it was the Supreme Court that had shown disrespect towards the country's value system when it had dismissed the applicant's requests to clarify the actions of its president in the case against B.G.

The applicant also complained that the publication of the Security Intelligence Agency's recordings of his telephone conversations, while the proceedings had been pending before the Supreme Court, had influenced the Supreme Court's decision in respect of his case, including the sentence it had imposed on him. He submitted that publishing those recordings, which had not been used as evidence in the criminal proceedings against him, merely eight weeks before the session of the Supreme Court, had demonstrated that "there [had been] a media campaign sponsored by the State that [had] allowed the information contained in the unlawful evidence to become known to the appellate court judges". He referred to *Natsvlishvili and Togonidze v. Georgia* (no. 9043/05, § 105, ECHR 2014 (extracts)), where the Court had confirmed that a virulent media campaign could adversely affect the fairness of a trial and involve the State's responsibility – both in terms of the impartiality of the court under Article 6 § 1, and with regard to the presumption of innocence embodied in Article 6 § 2.

In his constitutional complaints the applicant did not dispute the authenticity of the published Security Intelligence Agency's recordings of his telephone conversations or the transcripts thereof.

24. On 13 March 2018 the Constitutional Court (*Ustavni sud Republike Hrvatske*) dismissed the applicant's constitutional complaints as unfounded.

The Constitutional Court reiterated that B.H.'s alleged actions had not been the subject matter of the proceedings and had not affected the facts established against the applicant. Accordingly, there had been no need to hear Judge S.B.K. with respect to B.H.'s actions. It also found it clear that the Records Service could remit the case to the panel, and that there was therefore no need to hear Judge S.B.K. in that regard either.

It further addressed the applicant's complaint that "the courts had cocooned themselves" in respect of his arguments regarding the actions of B.H. and the inconsistency of his witness testimony in order to preserve their integrity. In that connection the Constitutional Court disagreed with the applicant that B.H.' witness testimony had played a crucial role in the proceedings, noting instead that the applicant had been convicted on the basis of a large body of evidence – primarily lawful recordings of tapped telephone conversations. It reiterated that B.H.'s alleged actions were of no relevance to the facts established against the applicant.

The Constitutional Court lastly noted that there was no connection between the media article complained of and the Supreme Court's decision against the applicant, and that there was no indication that the Supreme Court in the applicant's case had been partial because of it. The fact that its judgment had been rendered eight weeks after the article's publication could have merely been a consequence of, for instance, the court's case-processing dynamics. It concluded that the courts had convicted the applicant on the basis of numerous items of lawful evidence and had given extensive reasons for their findings. The fact that the applicant had not agreed with them had been insufficient to hold that the judges had been "contaminated" by the disputed publications in the media.

25. The Constitutional Court's decision was served on the applicant's representative on 20 March 2018.

V. OTHER RELEVANT INFORMATION

26. On 14 March 2017 the applicant lodged a civil claim against the publisher of the newspapers *Jutarnji list* and *Nedjeljni jutarnji* and the news portal Jutarnji.hr. He argued that the unlawful publication of the recordings made by the Security Intelligence Agency had influenced the Supreme Court in the criminal proceedings against him, aggravated his position in the trial and violated his personality rights. The civil proceedings are still pending before the first-instance court.

27. On 3 December 2019 the applicant filed a criminal complaint against the editor-in-chief of *Jutarnji list* and the author of the article published in *Nedjeljni jutarnji*, and against the unidentified employees of the Security Intelligence Agency and the State Attorney's Office (*Državno odvjetništvo Republike Hrvatske*) who had allegedly provided the Security Intelligence Agency's recordings to outside parties. An investigation into this matter is still being conducted by the domestic authorities.

28. In the meantime, in 2015 the Constitutional Court quashed the Supreme Court's judgment against B.G. and others concerning war crime (see paragraph 6 above). The proceedings were remitted to the first-instance court which on 27 October 2023 sentenced B.G. to seven years' imprisonment.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

29. The relevant Articles of the Croatian Constitution (*Ustav Republike Hrvatske*, Official Gazette of the Republic of Croatia no. 56/1990 with subsequent amendments) read:

Article 116

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

The President of the Supreme Court is elected and dismissed by the Croatian Parliament according to a proposal made by the President of the Republic, with the prior opinion of the general session of the Supreme Court and of the relevant committee of the Croatian Parliament. The President of the Supreme Court is elected for a period of four years.

The establishment, scope, composition and organisation of courts, and proceedings before courts, are regulated by law."

Article 120

"Judicial duty is permanent.

A judge will be dismissed from judicial duty if:

- he or she so requests,

- he or she permanently loses the ability to perform his or her duties,

- he or she is convicted of a criminal offence that renders him or her unworthy to perform [his or her] judicial duty,

- in accordance with the law, owing to [the fact that] a serious disciplinary offence [has been] committed, the National Judicial Council so decides,

- when he or she turns 70 years old.

...

A judge cannot be transferred against his or her will, except in the event of the dissolution of the court [in question] or the reorganisation of that court in accordance with the law ..."

Article 121

"The National Judicial Council (*Državno sudbeno vijeće*) is an autonomous and independent body that ensures the autonomy and independence of the judiciary in the Republic of Croatia.

The National Judicial Council, in accordance with the Constitution and the law, independently decides on the appointment, promotion, transfer, dismissal and disciplinary responsibility of judges and presidents of courts, except for the President of the Supreme Court.

..."

30. The National Judicial Council Act (*Zakon o Državnom sudbenom vijeću*, Official Gazette of the Republic of Croatia no. 116/2010, with subsequent amendments) regulates the composition, powers and operation of the authority that has the power to decide on the appointment and dismissal of judges – namely, the National Judicial Council. It regulates, in particular, the process of appointment of judges, disciplinary offences in the course of the exercise of judicial office, and disciplinary proceedings against judges. The relevant provisions of the Act, as in force at the time, read:

Article 42(1)

“The National Judicial Council [decides on]:

- the appointment of judges,

– the appointment and dismissal of court presidents,

- the immunity of judges,

- the transfer of judges,

- conducting disciplinary proceedings and deciding on the disciplinary responsibility of judges,

- the dismissal of judges,

- participation in the training and development of judges and court officials,

- the adoption of the methodology [to be employed in] evaluating judges,

- keeping the personal records of judges,

- the management and control of judges’ property cards [documents that list all assets owned by judges].”

Article 51(4)

“A person can be appointed as a judge of the Supreme Court if he or she has worked as a judicial official for at least fifteen years [or] has for the same number of years been an attorney or a notary public, a university professor of legal sciences who has passed the bar exam and at has least fifteen years of work experience after passing the bar exam, and a reputable a lawyer [who has passed the] bar exam and [has] at least twenty years of work experience, [and] who has proved him or herself through professional work in a certain legal field and through professional and scientific work.”

Article 73

“(1) A judge shall be suspended from duty:

- if criminal proceedings have been initiated against him or her in respect of a criminal offence punishable by a prison sentence of five years or more, or while he or she is in custody,

– because of a conviction for a criminal offence that renders him or her unworthy to perform the duties of a judge, or

- owing to the commission of a serious disciplinary offence.

(2) A judge may be suspended from office:

- if criminal proceedings have been initiated against him or her in respect of a criminal offence punishable by up to five years’ imprisonment,

- if he or she undertakes a service, job or activity that is incompatible with the performance of [his or her] judicial duty,

- if in [lodging a] request for the initiation of disciplinary proceedings the authorised initiator [of that request] proposed dismissal as a disciplinary penalty.

(3) A request for suspension shall be submitted to the National Judicial Council by the president of the court in which the judge holds judicial office, the president of the

immediately higher court, the relevant judicial council, or the President of the Supreme Court.

(4) A decision on suspension in the [scenarios] referred to in paragraph 1 of this Article shall be made by the president of the court [where the judge in question is employed]; ... in the [scenarios] referred to in paragraph 2 of this Article, the decision shall be made by the National Judicial Council without delay."

31. The relevant provisions of the Code of Criminal Procedure (*Zakon o kaznenom postupku*, Official Gazette of the Republic of Croatia, nos. 152/2008, 76/2009, 80/2011, 91/2012, 143/2012, 56/2013, 145/2013, 152/2014), as in force at the material time, read:

Article 19.f

"(1) The Supreme Court has jurisdiction to:

1. decide at second instance appeals against decisions [delivered by] county courts, unless otherwise provided by law,

...

(2) The Supreme Court [reaches decisions] in panels composed of three judges ..."

32. The Act on the Security and Intelligence System of the Republic of Croatia (*Zakon o sigurnosno-obavještajnom sustavu Republike Hrvatske*, Official Gazette of the Republic of Croatia nos. 79/2006 and 105/2006) established the Security Intelligence Agency for the purpose of the collection, analysis, processing and evaluation of data important for national security. Its relevant provisions read:

Article 33

"(1) The Security Intelligence Agency may apply, in respect of citizens, secret data-collection measures that temporarily limit certain constitutional human rights and fundamental freedoms. ...

...

(3) Secret data-collection measures are:

1. the secret surveillance of telecommunications services, activities and traffic:

a) the secret surveillance of the content of communications,

..."

Article 36

"(1) Secret data-collection measures under Article 33 (3) (1.a) ... of this Act may be undertaken only on the basis of a written, reasoned order for their implementation issued by a judge of the Supreme Court. Judges authorised to issue a written order for the implementation of secret data-collection measures are [appointed] by the President of the Supreme Court. ...

...

(4) ... Officials and other persons who participate in the decision-making process and in the undertaking of [secret data collection] measures are obliged to keep secret all the information that they learn."

Section 39

"(1) Security intelligence agencies establish and maintain collections and registers of personal data, and other records of collected data, and documents about data related to the work of the security intelligence agencies, and other records of their work and activities.

(2) Persons who are familiar with data [contained in] the records of security intelligence agencies and documents are obliged to keep them secret."

Section 91

"Serious violations of official duty ... are:

...

- the [sharing] of data of security intelligence agencies, regardless of the level of secrecy [of the data in question], with unauthorised persons;

- taking official documents that are marked secret outside the working premises of the agencies, except with the approval of the immediate manager."

33. The Court Rules (*Sudski poslovnik*, Official Gazette of the Republic of Croatia nos. 37/2014, 49/2014, 8/2015, 35/2015 and 123/2015) was a subordinate legislation that regulated the internal working of the courts at the material time. Article 26 regulated the automatic (random) assignment of cases (the allocation of new cases to judges was done automatically – that is, randomly – through the case allocation algorithm, after the basic data about the case had been entered); Article 27 regulated their manual assignment. Articles 27 and 28 read, in so far as relevant:

Article 27

"(1) Cases are assigned to judges by the president of the court department, or – if no court department has been established – by the president of the court.

(2) Cases are classified by date of receipt. If several cases are received at the same time, the cases are classified according to the alphabetical order of the surnames of the parties against whom the proceedings [in question] are initiated.

(3) Cases classified in this manner are assigned to individual judges according to the alphabetical order of their surnames, and to judicial panels according to the alphabetical order of the surname of the president of the panel. Panel presidents assign cases to panel members according to the alphabetical order of their last names. When assigning cases, attention will be paid to the even distribution of cases and to their type and complexity.

...

(5) In courts in which court departments have been established, cases are distributed according to the alphabetical order of the surnames of the judges in the department [in question].

...

(8) The president of a court is obliged to assess the evenness of the workload [of that court's] judges every three months.

...

(10) In order to establish an even workload, the president of a court will change the annual work schedule (that is, change the assignment of newly received cases) or issue a written, reasoned order by which he or she will assign certain cases to another judge if the uneven workload of individual judges is not a consequence of their not achieving the expected average work results.

(11) In the event of recusal or another justified [form of] indisposition on the part of the judge to whom [a certain] case has been assigned, the president of the court will reassign that case to another judge by means of a written reasoned order.

..."

34. The relevant provisions of the Rules of Procedure of the Supreme Court (*Poslovnik o radu Vrhovnog suda Republike Hrvatske*, Su-235-IV/1999), as in force at the material time, which regulated the internal working of the Supreme Court, read:

Article 4

"The President of the court:

- administers the Supreme Court,

- represents the Supreme Court,

- coordinates the work of the court departments and other organisational units within the Supreme Court,

- convenes and presides over general sessions of the Supreme Court,

- manages the judicial administration and issues – in the course of [undertaking his or her] judicial administration duties – administrative decisions, orders and instructions,

- signs the decisions that he or she issues,

- supervises the material and financial operations of the court,

- performs other duties determined by the Constitution, the Courts Act, the Act on Civil Servants and Employees, the Court Rules of Procedure and other [legal] instruments,

- through the Ministry of Justice and the Ministry of Foreign Affairs of the Republic of Croatia, establishes cooperation with the supreme courts of other countries and participates in the work of international gatherings in the field of court-related work, and cooperates with international institutions for the [purpose of] protecting law and order.

In matters relating to court administration, the president entrusts certain tasks to the presidents of court departments and to the court's registry."

Article 47

"The distribution of judges and secretaries to departments, and the assignments of judges and judges' assistants and panels in the departments, are established by the annual working schedule of the Supreme Court.

The annual schedule establishes the deputy president of the Supreme Court, presidents of departments, their deputies, presidents and members of panels, secretaries in the departments and the appointment [of persons] to the Records Service.”

Article 48

“The annual schedule is established by the President of the Supreme Court on the basis of the proposal of presidents of departments and the opinion [expressed by] the general session of the Supreme Court.

The president of [each] department is appointed by the President of the Supreme Court with the prior opinion of the judges of that department.

The annual schedule shall be established, in principle, by the end of the calendar year for the following year.”

Article 49(1)

“The annual working schedule also sets the manner of the allocation of cases in court departments, on the basis of the opinion of the sessions of those departments.”

35. The publicly available annual Supreme Court working schedules for 2016 and 2017, issued by the President of the Supreme Court B.H., in their chapter IV stated:

“1. Assigning cases

Cases of all kinds are assigned to judges and court advisors pursuant to the Supreme Court’s codebook of court cases.

Court cases within the jurisdiction of the Supreme Court are assigned to judges and court advisors by the presidents of the Civil and Criminal Departments pursuant to Articles 27 and 28 of the Court Rules, on the basis of which a special table with organised numbers was set.

Cases received by the Supreme Court that are in the e-File (*e-Spis*) system are assigned to judges, court advisors and other court clerks, pursuant to Article 26 of the Court Rules.”

36. The Government referred to the Constitutional Court’s decisions nos. U-III-4571/2012 of 14 January 2015, U-III-1339/2013 of 14 January 2015 and U-III-8034/2014 of 20 May 2015, in which the Constitutional Court examined complaints that there had been a breach of the presumption of innocence on account of a virulent media campaign.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE INVOLVEMENT OF THE SUPREME COURT’S PRESIDENT IN THE APPLICANT’S CASE

37. The applicant complained that the Supreme Court, which had acted as the appellate court in the criminal proceedings against him, had not been impartial because its president (who had not sat in the appellate panel) had

suspectedly played a role in the criminal offences, and had testified as a witness for the prosecution. He relied on Article 6 § 1 of the Convention, which reads:

> "In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an ... impartial tribunal ..."

A. Admissibility

1. The parties' arguments

38. The Government contended that the applicant had not exhausted the available domestic remedies, given that in his appeals to the Supreme Court he had failed to raise his concerns that that court would not be neutral owing to the involvement of its president in the case. Furthermore, in his constitutional complaints he had only made certain vague allegations, which had not allowed the Constitutional Court to properly examine the matter.

39. The applicant replied that he had brought his complaint before the Constitutional Court. He further submitted that there had been no point in him requesting the recusal of the Supreme Court judges because that would have led to a situation in which there would have been no one to decide his case on appeal. In any event, given the circumstances, the Supreme Court judges should have examined the issue of their impartiality on their own initiative.

2. The Court' assessment

40. The Court has held that when the domestic law offered a possibility of eliminating concerns regarding the impartiality of a court or a judge, it would be expected that an applicant who truly believed that there were arguable concerns on that account would raise them at the first opportunity. This would above all allow the domestic authorities to examine the applicant's complaints at the relevant time in question and ensure that his or her rights were respected (see, for example, *Miljević v. Croatia*, no. 68317/13, § 88, 25 June 2020 and the cases cited therein).

41. The Court notes that in the present case – where the applicant challenged the impartiality of the entire Supreme Court on account of the involvement of that court's president in the case, and where the Supreme Court was the only court that could have decided the appeals in the applicant's case (see paragraph 31 above) – seeking the withdrawal of all the Supreme Court judges or a transfer of jurisdiction was not possible (contrast *Kolesnikova v. Russia*, no. 45202/14, § 55, 2 March 2021).

42. The Court further notes that in his appeals to the Supreme Court the applicant made allegations against that court's president – namely, that his witness testimony had not been credible and that he had used his conversation with the applicant to cover up his own actions (see paragraph 20 above). After the Supreme Court had dismissed those allegations (see paragraph 22 above),

the applicant complained to the Constitutional Court that the Supreme Court had not been objectively impartial and neutral because the president of that court, who had testified as a witness for the prosecution, had been placed in a position in which he had had to defend himself from publicly expressed suspicions that he was involved in a criminal offence; consequently, the Supreme Court had built around itself an "institutional self-protecting shield" and had refused to properly scrutinise its president's witness testimony and the practical work of its Records Service (see paragraph 23 above).

43. It follows that the applicant raised his complaint before the Constitutional Court. The Court notes that the Constitutional Court actually addressed it, albeit not under the issue of impartial tribunal (see paragraph 24 above).

44. The Court concludes that the applicant provided the national authorities with the opportunity that is in principle intended to be afforded to Contracting States by Article 35 § 1 of the Convention – namely, of putting right the violations alleged against them (compare *Gäfgen v. Germany* [GC], no. 22978/05, §§ 144-46, ECHR 2010; *Bjedov v. Croatia*, no. 42150/09, § 48, 29 May 2012; and *Tarbuk v. Croatia*, no. 31360/10, § 32, 11 December 2012).

45. The Government's objection of non-exhaustion of domestic remedies must therefore be dismissed.

46. The Court notes that the complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. *The parties' arguments*

(a) The applicant

47. The applicant submitted that in the criminal proceedings against him the President of the Supreme Court, B.H., who had testified as a witness for the prosecution, had been placed in a situation where he had had to defend himself from the publicly expressed suspicions that he had participated in perpetrating the criminal offences. He argued that in those circumstances, the Supreme Court – which had acted as the appellate court in his case – had been protecting its president and its own integrity and had not acted objectively. The applicant put forward the following arguments in support of his conclusion.

48. B.H. had been the President of the Supreme Court during the entire time that he had given his witness testimony against the applicant and the moment the Supreme Court had decided the appeals in the applicant's case. The Supreme Court judges who had decided the appeals had known B.H. for years. B.H. had been their superior and had therefore been the person tasked

with determining their yearly case-processing schedule, their recusals, their annual leave, and instituting disciplinary proceedings against them.

49. Secondly, B.H.'s testimony had amounted to decisive evidence which had secured the applicant's conviction. Yet his statements had been inconsistent and not credible. Instead of carefully scrutinising B.H.'s statements and comparing them with what B.H. had actually done regarding assigning the case against B.G. in the Supreme Court's Records Service, the Supreme Court had merely concluded that in any event B.H.'s actions and their goal had not been the subject matter of the proceedings.

50. The refusal of the Supreme Court to remedy the failures of the trial court – namely, to hear Judge S.B.K. in respect of the instructions that she had received from B.H. regarding the assigning of the case against B.G. within the Records Service and to examine in the presence of the parties the legal provisions applicable to the procedure to be followed by the Records Service in remitting the case to the panel– had amounted to further evidence that the Supreme Court had been trying to protect its own integrity and that of its president.

51. The Supreme Court's reasoning in respect of the sentence imposed on the applicant had constituted further proof of its bias against him, since it had failed to compare his sentence with the sentences imposed on his co-accused – some of whom had been found guilty of an additional criminal offence with which he had not been charged.

(b) The Government

52. The Government argued that the involvement of the President of the Supreme Court in the case had not affected that court's impartiality in respect of the applicant.

53. They firstly pointed out that B.H. had been heard as a witness on the basis of a proposal made by two of the applicant's co-accused. They secondly pointed out that B.H.'s witness testimony had formed only part of the large body of evidence against the applicant.

54. They further contended that the Supreme Court judges deciding the applicant's case had thoroughly examined all the arguments contained in the appeals. They had examined the applicant's allegations regarding the President of the Supreme Court, B.H., and had concluded that they had had nothing to do with the accusation against the applicant, which had been sufficiently proved.

55. Furthermore, the Supreme Court had not rendered an entirely different decision than that delivered by the trial court, on whose impartiality the applicant had never cast doubt. Rather, the Supreme Court had upheld the trial court's conviction of the applicant, finding that it had been based on the correct establishment of facts and application of law.

56. Lastly, the Government contended that, should the Court find that the Supreme Court had not been impartial merely owing to the fact that its

president had been a witness in the trial, then that meant that a person of such standing would never be able to give witness testimony in respect of any case whatsoever.

2. The Court's assessment

57. The relevant Convention principles concerning the impartiality of tribunals were summarised in *Morice v. France* ([GC], no. 29369/10, §§ 73-78, ECHR 2015), and *Denisov v. Ukraine* ([GC], no. 76639/11, §§ 60-65, 25 September 2018).

58. In the present case the Court does not consider there to be any issue regarding subjective impartiality. It will therefore address the question of the impartiality of the Supreme Court judges in the light of the objective test (see *Denisov*, cited above, §§ 61-63).

59. Furthermore, noting that the concepts of independence and objective impartiality are closely linked (see *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. 55391/13 and 2 others, § 150, 6 November 2018), the Court shall examine these two issues together as they relate to the present case (compare *Kleyn and Others v. the Netherlands* [GC], nos. 39343/98 and 3 others, § 192, ECHR 2003-VI; *Salov v. Ukraine*, no. 65518/01, § 82, ECHR 2005-VIII (extracts); and *Agrokompleks v. Ukraine*, no. 23465/03, § 128, 6 October 2011).

60. The Court reiterates that in cases of this kind, even appearances may be of a certain importance – or, in other words, "justice must not only be done, it must also be seen to be done" (see *De Cubber v. Belgium*, 26 October 1984, § 26, Series A no. 86). What is at stake is the confidence that the courts in a democratic society must inspire in the public (see *Castillo Algar v. Spain*, 28 October 1998, § 45, Reports 1998-VIII, and *Parlov-Tkalčić v. Croatia*, no. 24810/06, § 82, 22 December 2009).

61. However, while appearances have a certain importance, they are not decisive in themselves. One must frequently look beyond appearances and concentrate on the realities of the situation (see *Parlov-Tkalčić*, cited above, § 83). Therefore, in order to establish whether the applicant's alleged fears as to partiality were objectively justified, appearances have to be tested against the objective reality behind them; that is, it must be determined whether, irrespective of the judges' personal conduct, there are any ascertainable facts which may raise doubts as to their impartiality (see *Castillo Algar*, cited above, § 45).

62. The Court notes at the outset that the applicant's case before the Supreme Court concerned an alleged criminal attempt of influencing the decision-making process of the Supreme Court itself in a high-profile case, an attempt where, according to the applicant's allegations, the President of the Supreme Court himself had had a role, and where the President of the Supreme Court had given evidence in form of a witness statement. The situation was delicate and could *prima facie*, in the Court's view, reasonably

cause some concerns as to the impartiality and the independence of the Supreme Court as such. Thus, a close scrutiny is called for by the Court, also considering the manner by which the Constitutional Court engaged with the matter when assessing the applicant's constitutional complaint.

63. Starting with the applicant's specific argument regarding the weight given to the President of the Supreme Court's witness testimony (see paragraph 49 above), the Court notes that his statements were not the "sole" evidence used to ground the applicant's conviction; nor were they "decisive" in the sense that they were likely to be decisive for the outcome of the case (compare *Breijer v. the Netherlands* (dec.), 41596/13, § 34, 3 July 2018; and contrast *Craxi v. Italy* (no. 1), no. 34896/97, § 88, 5 December 2002).

64. The fact that the applicant contacted the President of the Supreme Court regarding the case against B.G. was only one among a number of facts established against the applicant, which altogether amounted to a plan by a group of persons and multiple actions they undertook with a view to influencing the Supreme Court to replace its original decision with one that was favourable to B.G.

65. The facts against the applicant were established largely on the basis of the secret-surveillance recordings, whose authenticity the applicant never disputed, and on the basis of witness testimony, including that of the applicant's former co-accused, who confessed to the charges, which was accepted by the trial court and the Supreme Court as credible in those parts where it corresponded to other evidence (see paragraph 17 above).

66. Furthermore, the Court notes that the applicant and his attorney cross-examined B.H. at the main hearing (see paragraph 13 above) and that the applicant made his allegations against B.H. for the first time in his appeals against the trial court's judgment (see paragraphs 15 and 20 above).

67. As to the allegation that B.H. was 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 the applicant's case was protecting its president and its own integrity and failed to properly examine his case (see paragraph 47 above), the Court notes that the applicant was convicted already by the trial court, whose impartiality he never disputed (see paragraph 16 above). The Supreme Court, as the appellate court, scrutinised in detail the applicant's arguments and provided detailed reasoning when upholding the trial court's judgment (see paragraph 22 above). The trial court, the Supreme Court and the Constitutional Court all agreed that the only relevant factor in respect of the contact between the applicant and the President of the Supreme Court was that the two had spoken about the appellate proceedings against B.G. and the Supreme Court's Records Service at the applicant's initiative, which was undisputed between the applicant and B.H. (see paragraphs 16, 22 and 24 above).

68. As to the complaint about the failure to verify the procedure to be followed by the Records Service when remitting a case to the panel, and to hear Judge S.B.K. as a witness (see paragraph 50 above), the Court notes that the Supreme Court and the Constitutional Court agreed that the Records Service was clearly able to remit the case to the panel, and that S.B.K.'s potential testimony was actually directed towards establishing B.H.'s actions in the case against B.G., which was not the subject matter of the proceedings and did not affect the facts established against the applicant (see paragraphs 22 and 24 above). In this connection the Court reiterates that Article 6 § 1 of the Convention does not confer any right to have a third party prosecuted or sentenced for a criminal offence (see *Perez v. France* [GC], no. 47287/99, § 70, ECHR 2004 I).

69. The Court does not, moreover, find any issue with the manner in which the Supreme Court upheld the sentence imposed on the applicant by the trial court (see paragraphs 22 and 51 above).

70. Moving to the part of the applicant's complaint concerning the allegedly hierarchical relationship between the Supreme Court judges and their president (see paragraph 48 above), and reiterating that the concepts of independence and objective impartiality are closely linked (see paragraph 59 above; see also *Bochan v. Ukraine*, no. 7577/02, § 68, 3 May 2007), the remaining question for the Court to examine is whether the Supreme Court judges who decided the appeals in the applicant's case were sufficiently independent of that court's president and free from any undue influence from him (see *Parlov-Tkalčić*, cited above, § 87).

71. In that connection the Court reiterates that judicial independence demands that individual judges be free not only from undue influences outside the judiciary, but also from influence exerted within. This internal judicial independence requires that they be free from directives or pressure exerted by fellow judges or those who have administrative responsibilities within a court, such as the president of that court or the president of a division in that court (see *Daktaras v. Lithuania*, no. 42095/98, § 36, ECHR 2000-X; *Moiseyev v. Russia*, no. 62936/00, § 182, 9 October 2008; and *Khrykin v. Russia*, no. 33186/08, § 29, 19 April 2011). The absence of sufficient safeguards securing the independence of judges within the judiciary and, in particular, *vis-à-vis* their judicial superiors, may lead the Court to conclude that an applicant's doubts as to the independence and impartiality of a court may be said to have been objectively justified (see the above-cited cases of *Parlov-Tkalčić*, § 86, and *Agrokompleks*, § 137).

72. The Court notes that at the material time there were particular rules in place governing the distribution of cases among judges within the Supreme Court (see paragraphs 33 and 35 above). This means that cases were not distributed by the President of the Supreme Court at his own discretion (compare *Parlov-Tkalčić*, cited above, § 89), and there is nothing to indicate that B.H. chose the rapporteur or members of the appellate panel in the

applicant's case (contrast *Daktaras*, cited above, where the president of the criminal division of the Supreme Court chose the judge rapporteur and the members of the panel). There is also no evidence that the President of the Supreme Court reassigned the applicant's case (contrast *Moiseyev*, cited above).

73. The Court also notes that the President of the Supreme Court was not authorised to give rapporteurs or members of a panel instructions regarding how to decide a case, and there is no indication that B.H. did so in the applicant's case (contrast *Agrokompleks*, cited above, § 138).

74. The Court shall further examine whether there were any other elements in the relationship between the Supreme Court judges who decided the applicant's case on appeal and the President of the Supreme Court that were capable of curbing those judges' internal independence. On a more general level the question is whether the powers conferred on the President of the Supreme Court under Croatian law were capable of generating latent pressures resulting in Supreme Court judges' subservience to their president or, at least, making individual judges reluctant to contradict their president's wishes, that is to say, of having "chilling" effects on the internal independence of judges (see *Parlov-Tkalčić*, cited above, § 91).

75. In this respect the Court notes that under Croatian law, Supreme Court judges are appointed and dismissed by the National Judicial Council, an autonomous and independent body that ensures the autonomy and independence of the judiciary in Croatia (see paragraphs 29 and 30 above). The authority to conduct disciplinary proceedings against Supreme Court judges and to acquit or impose a penalty also lies exclusively with the National Judicial Council. While the President of the Supreme Court had the authority to temporarily suspend a Supreme Court judge, he could have done so only in three situations provided by law (ibid.).

76. The Court also notes that Supreme Court judges in Croatia are not subject to performance appraisals (compare, *mutatis mutandis, Ramos Nunes de Carvalho e Sá*, cited above, § 163).

77. It is true that, as the President of the Supreme Court, Judge B.H. was charged with establishing the annual working schedule that determined the Deputy President of the Supreme Court, presidents of departments and their deputies, and presidents and members of panels. However, he did not have the authority to set the annual working schedule at his own discretion but rather acted on the basis of the proposal of the presidents of departments and the opinion of the general session of the Supreme Court and, in case of appointing the department president, on the basis of the prior opinion of the judges of that department (see paragraph 34 above).

78. It follows that, as regards career advancement and discipline, that is, areas that could potentially have the most significant impact on the internal independence of judges (see *Parlov-Tkalčić*, cited above, § 93), the powers of the President of the Supreme Court were rather limited.

79. Accordingly, having regard to all the specific circumstances of the case and to the guarantees aimed at shielding the Supreme Court judges from improper internal interferences, the Court is satisfied that the Supreme Court judges who examined the applicant's case on appeal were sufficiently independent of that court's president. The applicant's fears as regards the lack of their impartiality on account of their allegedly subordinate position in respect of their president cannot be regarded as objectively justified.

80. There has accordingly been no violation of Article 6 § 1 of the Convention as regards the requirement for an impartial tribunal on account of the involvement of the President of the Supreme Court in the applicant's case.

II. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 2 ON ACCOUNT OF THE PUBLICATION IN THE MEDIA OF THE SECURITY INTELLIGENCE AGENCY'S RECORDINGS

81. The applicant complained that the publication in the media, two months before the Supreme Court had decided his case, of the recordings of his telephone conversations tapped by the Security Intelligence Agency had exerted pressure on the Supreme Court judges to uphold his conviction and had breached his right to be presumed innocent. He relied on Article 6 § 1 of the Convention (cited above), and Article 6 § 2 of the Convention, which reads:

> "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

1. *Admissibility*

(a) The parties' arguments

(i) The Government

82. The Government contended that the complaints were incompatible *ratione personae* with the Convention, since the alleged violations had been caused by private parties – that is, by the publisher and editor-in-chief of the news portal Jutarnji.hr and the newspapers *Jutarnji list* and *Nedjeljni jutarnji* and by the journalist who had authored the article, as evidenced by the civil claim and the criminal complaint lodged by the applicant against those persons.

83. Alternatively, the Government argued that the applicant could not claim to be the victim of the alleged violations, since the recordings obtained by the Security Intelligence Agency had undisputedly not been used in the criminal proceedings against him, and the article that had referred to them had not in any way been referred to in the Supreme Court's judgment.

84. The Government lastly argued that the applicant had failed to complain about the alleged breach of his right to be presumed innocent to the Constitutional Court, either expressly or in substance, even though a

constitutional complaint constituted an effective domestic remedy for that complaint, as evidenced by the relevant Constitutional Court's case-law (see paragraph 36 above).

(ii) The applicant

85. The applicant replied that the media would have had nothing to publish had the recordings not been unlawfully leaked by someone from the Security Intelligence Agency. That was precisely why he had filed a criminal complaint against unidentified employees of the Security intelligence Agency and of the State Attorney's Office.

86. As to the Government's objection regarding his lack of victim status, the applicant submitted that the manner in which the Supreme Court judges had assessed the evidence in his case and the reasoning that they had given for the sentence imposed on him had demonstrated that they had been influenced by the published Security Intelligence Agency recordings. In this connection, the applicant invited the Court to have regard to the following elements: the content of the recordings; the fact that they had been made by the Security Intelligence Agency; the facts that the Security Intelligence Agency could only tap telephone conversations on the basis of an approval given by a Supreme Court judge; that the recordings and the transcripts thereof had been published in one of the most-read national newspapers and news portals; the Supreme Court judges certainly read the news; the Supreme Court had never distanced itself from the published article or commented on it in any way; legal theory held that it was impossible to cure a mind tainted with unlawful evidence; and the applicant's case had already been pending for more than three years and had been dealt with shortly after the impugned article had been published.

87. The applicant lastly submitted that he had in substance raised the complaint concerning the breach of his right to be presumed innocent in his constitutional complaint. Furthermore, in 2017 he had lodged a civil claim for damages and a criminal complaint regarding the publication of the impugned recordings and had thereby given an opportunity to the domestic authorities to remedy the matter.

(b) The Court's assessment

88. The Court notes that in cases concerning adverse press publicity its assessment is focused on the impact of a media campaign on the fairness of a trial; the question of whether the impugned publications were attributable to, or informed by, the authorities, being just one of the factors taken into consideration (see *Abdulla Ali v. the United Kingdom*, no. 30971/12, § 90, 30 June 2015, and *Paulikas v. Lithuania*, no. 57435/09, § 59, 24 January 2017).

89. The Court therefore rejects the Government's *ratione personae* and victim status objections (see paragraphs 82 and 83 above).

90. As to the Government's argument that the applicant had not raised before the Constitutional Court his complaint concerning the breach of the presumption of innocence (see paragraph 84 above), the Court reiterates that the presumption of innocence enshrined in Article 6 § 2 of the Convention is one of the elements of a fair criminal trial required by Article 6 § 1 (see *Allenet de Ribemont v. France*, 10 February 1995, § 35, Series A no. 308; *Daktaras*, cited above, § 41; and *Paulikas*, cited above, § 48).

91. The Court observes that in his constitutional complaint the applicant complained that the publication in the media of the Security Intelligence Agency's recordings had breached his right to a fair trial (see paragraph 23 above). In so doing he referred to *Natsvlishvili and Togonidze v. Georgia* (no. 9043/05, § 105, ECHR 2014 (extracts)), where the Court confirmed that a virulent media campaign could adversely affect the fairness of a trial and involve the State's responsibility – both in terms of the impartiality of the court under Article 6 § 1, and with regard to the presumption of innocence embodied in Article 6 § 2. The Court notes that the Constitutional Court examined the applicant's complaint on the merits, holding that the publication in the media of the recordings had not breached his right to a fair trial (see paragraph 24 above; and compare *Paulikas*, cited above, § 40).

92. Accordingly, the applicant provided the national authorities with the opportunity that is in principle intended to be afforded to Contracting States by Article 35 § 1 of the Convention – namely, of putting right the violations alleged against them (compare *Lelas v. Croatia*, no. 55555/08, §§ 45 and 47-52, 20 May 2010, and *Žaja v. Croatia*, no. 37462/09, § 71, 4 October 2016).

93. The Court therefore rejects the Government's objection of non-exhaustion of domestic remedies.

94. The Court notes that the complaints are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

2. *Merits*

(a) The parties' arguments

(i) The applicant

95. The applicant contended that the Supreme Court judges who had acted as the appellate judges in his case had certainly read the article containing transcripts of the Security Intelligence Agency's recordings. The case against the applicant had received extensive media coverage and the article had concerned the very President of the Supreme Court. The source of the recordings had been the national intelligence agency and not some anonymous person.

96. The applicant further contended that even though the Security Intelligence Agency's recordings had not been part of the case file, they had remained available to the public and the Supreme Court judges for the whole of the period from their publication until the session of the Supreme Court; therefore, the judges could have consulted them on a daily basis. The content of the recordings had been such as to give the impression of the applicant being guilty of the crimes that he had been charged with. In the applicant's view, no judge could really have avoided being influenced by such circumstances.

97. According to the applicant, the recordings had not been published in order to inform the public about an important topic. They had been published six years after they had been obtained, and only eight weeks before the appeal panel had been scheduled to hear his case. In the applicant's view, they had been published in order to put pressure on the Supreme Court judges to uphold his conviction pronounced in the trial court's judgment, which had otherwise been so flawed that without the publication of the recordings it would have been quashed. That was precisely why the State Attorney's Office had never truly investigated who from the Security Intelligence Agency had leaked the recordings to the media.

(ii) The Government

98. The Government argued that the fact that the recordings made by the Security Intelligence Agency had been published in the media while the applicant's case had been pending before the Supreme Court had not in any way affected the impartiality of that court.

99. Those recordings had never formed part of the criminal case against the applicant. The Supreme Court judges who had decided the applicant's case had all been professional judges with extensive experience in hearing complex cases subject to extensive media coverage, and they had made their decision solely on the basis of evidence examined during the trial.

100. Furthermore, the applicant had not submitted any evidence to suggest that the Supreme Court judges who had decided the appeals in his case had even been aware that the Security Intelligence Agency's recordings had been published, or that they had listened to them or read the transcripts thereof.

101. In any event, the article could not have placed undue pressure on the judges to uphold the applicant's conviction, because the prosecution had already had strong evidence against the applicant, which was why he had been convicted by the trial court.

(b) The Court's assessment

(i) General principles

102. The Court reiterates that, in certain situations, a virulent media campaign can adversely affect the fairness of a trial and involve the State's responsibility. This is so with regard to both the impartiality of courts under Article 6 § 1, and the presumption of innocence embodied in Article 6 § 2 (see *Paulikas*, cited above, § 57). At the same time, the Court notes that press coverage of current events is an exercise of freedom of expression, guaranteed by Article 10 of the Convention. If there is a virulent press campaign surrounding a trial, what is decisive is not the subjective apprehensions of the suspect concerning the absence of prejudice required of the trial courts, however understandable, but whether, given the particular circumstances of the case, his or her fears can be held to be objectively justified (see *Butkevičius v. Lithuania* (dec.), no. 48297/99, 28 November 2000, and *G.C.P. v. Romania*, no. 20899/03, § 46, 20 December 2011).

103. The Court also reiterates that a fair trial can still be held after intensive adverse publicity. In a democracy, high-profile criminal cases will inevitably attract comment by the media; however, that cannot mean that any media comment whatsoever will inevitably prejudice a defendant's right to a fair trial – otherwise the greater the notoriety of a crime, the less likely that its perpetrators will be tried and convicted. The Court's approach has been to examine whether there are sufficient safeguards to ensure that the proceedings as a whole are fair. It will require cogent evidence that concerns about the impartiality of judges are objectively justified before any breach of Article 6 § 1 can be found (see *Craxi*, cited above, §§ 99 and 103, and *Mustafa (Abu Hamza) v. the United Kingdom* (dec.), no. 31411/07, § 39, 18 January 2011, and the cases cited therein).

104. The Court has previously identified some of the factors relevant to its assessment of the impact of a media campaign on the fairness of a trial. Such factors include the time that has elapsed between the press campaign and the commencement of the trial (and notably the determination of the trial court's composition); whether the impugned publications were attributable to, or informed by, the authorities; and whether the publications influenced the judges and thus prejudiced the outcome of the proceedings (see *Sutyagin v. Russia* (dec.), no. 30024/02, and *Beggs v. the United Kingdom* (dec.), no. 15499/10, § 124, 16 October 2012). Furthermore, national courts – which are entirely composed of professional judges – generally possess, unlike members of a jury, appropriate experience and training, which enables them to resist any outside influence (see *Craxi*, cited above, § 104, and *Mircea v. Romania*, no. 41250/02, § 75, 29 March 2007).

(ii) Application of the above principles in the present case

105. The Court notes that the impugned recordings of the applicant's telephone conversations were made by the Security Intelligence Agency before the investigation in respect of the applicant was opened and that, as uncontested by the applicant, they were not used as evidence in the criminal proceedings, nor did they ever form part of the case file against the applicant (see paragraph 7 above).

106. The Court further notes that those recordings and the transcripts thereof were published in the media in December 2016, and that the session of the appeal panel in the applicant's case was held in February 2017 – merely eight weeks later (see paragraphs 21 and 22 above).

107. The Court further observes that the published recordings and the transcripts thereof concerned the applicant's telephone conversations with his former co-accused and other persons regarding the plan to overturn the Supreme Court's decision to the benefit of B.G. Accordingly, even though the above-mentioned newspaper article merely outlined the accusation against the applicant – emphasising the fact that his conviction at first instance was not yet final – it could nonetheless have influenced the public's perception of the applicant's guilt (compare *Paulikas*, cited above, § 61).

108. Furthermore, having regard to the fact that the recordings made by the Security Intelligence Agency were supposed to remain a secret and not be communicated to unauthorised persons (see paragraph 32 above), the Court agrees with the applicant that they could not have been published in the media had they not been disclosed by a State agent who had access to them.

109. In that connection the Court notes that the criminal complaint that the applicant filed in December 2019 against unidentified employees of the Security Intelligence Agency and the State Attorney's Office is still pending before the domestic authorities (see paragraph 27 above).

110. However, it is important to emphasise that the fact that the authorities were the source of the prejudicial information is relevant to the question of the impartiality of the tribunal only in so far as the material might be viewed by readers as more authoritative in the light of its source (see *Abdulla Ali*, cited above, § 90). While the authoritative nature of the published material may require, for example, a greater lapse of time, it is unlikely in itself to lead to the conclusion that a fair trial by an impartial tribunal is no longer possible. In particular, allegations that any disclosure of prejudicial material by the authorities was deliberate and was intended to undermine the fairness of the trial are irrelevant to the assessment of the impact of the disclosure on the impartiality of the trial court (ibid.).

111. In that connection the Court notes that the applicant was convicted already by the trial court, in 2013, on the basis of the secret-surveillance recordings made at the OSCOC's request, whose lawfulness and authenticity the applicant never disputed, and also on the basis of witness testimony – including that of the applicant's former co-accused, who confessed to the

charges – which was accepted as credible in those parts where it corresponded to other evidence (see paragraphs 16-19 above).

112. Furthermore, the Court notes that the media article in question focused on persons from the judiciary and politics whose names came up in the Security Intelligence Agency's recordings, and notably on the President of the Supreme Court, B.H. (see paragraph 21 above). The Court has already found that the circumstances concerning B.H.'s alleged involvement in the case against B.G. did not affect the impartiality of the Supreme Court judges in the applicant's case (see paragraph 80 above).

113. The Court further notes that the applicant never challenged the authenticity of the published Security Intelligence Agency recordings or the transcripts thereof, and nor did he ever argue that they had in any way been edited or modified before being published in the media (contrast *Batiashvili v. Georgia*, no. 8284/07, §§ 87-97, 10 October 2019).

114. In addition, the Court observes that the Supreme Court decided the applicant's case in a panel composed of highly experienced professional judges trained to disregard any suggestion from outside the trial (see paragraphs 30 and 31 above; and compare *Craxi*, § 104, and *Paulikas,* § 62, both cited above). Those judges did not in any way refer to the impugned media article or to the Security Intelligence Agency's recordings, and nothing in the file suggests that their assessment of the applicant's case was influenced by them. They upheld the applicant's conviction strictly on the basis of the evidence contained in the case file, finding that the trial court had correctly established all the relevant facts and had correctly applied the law.

115. It follows that, irrespective of the short period of time that elapsed between the publication by the media of the Security Intelligence Agency's recordings and the session of the appeal panel in the applicant's case, there is no evidence to suggest that the Supreme Court judges who decided the appeals in the applicant's case were influenced by them.

116. The foregoing considerations are sufficient to enable the Court to conclude that the media article and the published Security Intelligence Agency's recordings did not breach the applicant's right to a fair trial or the presumption of innocence under Article 6 §§ 1 and 2 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 6 §§ 1 and 2 of the Convention.

Done in English, and notified in writing on 28 November 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı	Arnfinn Bårdsen
Registrar	President