A Critique of Practice of the European Court of Justice for Human Rights in Strasbourg

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CONTENT

“

I find it contradictory that the officials sent to Strasbourg by the Croatian state arbitrarily evaluate the claims of the citizens of the Republic of Croatia whose rights have been violated by the Croatian state. Through these regulations, and by simple logic, clerks will represent the interests of whoever gave them good employment in Strasbourg, not the citizens they should protect *proforma*.

If we are already planning to take some civil action, I think solving this contradiction is one task into which one might even hope for some success. Perhaps it can be solved in a way to limit the role of these officials to serve the judges, but that the decision is not up to them, only exclusively on judges. From today's discussion we see, unfortunately, that the opposite is true.

ČEDO PRODANOVIĆ, LAWYER

Based on what is freely said here today we can conclude that all the while in Article 35. of the Convention are such vague provisions as contained in Paragraph 3, point A and point B,

which allow dismissal of the case, that is, declaring the case inadmissible on the basis of substantive, instead of procedural, legal-formal assumptions - will represent and remain permanent source of possible abuse in the right of access to a trial at Human Rights Court in Strasbourg.

VELJKO MILJEVIĆ, LAWYER

It is anecdotal that Protocol No. 13 was proposed back in 2004 and could not be implemented until

2010. The application was opposed by a country

that could not boast of democracy, namely the Russian Federation, which complained and warned that the introduction of the institution of individual and rapporteur judges would lead to abuse of rights and denial of equal access to the Court.

Unfortunately, this is exactly what has happened since the practice that we are criticizing today dates back from that moment.

ICO ŠKARPA, LAWYER

I do not not trust the Croatian judiciary; I believes that the judiciary should not be trusted

and that it should be published. Unfortunately, the European Court of Human Rights can no longer be trusted either, since in this Court of Justice, the decisions of are removed without decisions and reasoning by the representatives of the nonconstituted Croatian judiciary, the same ones against whose judgments naive citizens are suing the Court of Human Rights.

IVICA GRČAR, A FREELANCE JOURNALIST

”

INTRODUCTION

A Roundtable: *A Critique of the Practice of the European Court of Human Rights in Strasbourg* was held on 29 May 2013 at Novinarski Dom (The Journalists' House) in Zagreb. This Roundtable was organized by independent journalists Ivica Grčar and Darko Petricic to inform the public about the denial of access to the very same court, the European Court of Human Rights in Strasbourg.

Due to too many received requests (lawsuits) from the so-called transition countries with disordered national judicial systems and lack of money to operate the European Court of Human Rights in Strasbourg, they resorted to the introduction of a (pre)procedure in which, contrary to the Convention on Human Rights, the majority of applications (claims) received were declared inadmissible without written and reasoned court decisions (ATTACHMENT 1: facsimile of characteristic notice provided in lieu of written and reasoned court decision).

Although by number of proceedings declared inadmissible, without written justification and court rulings, Cyprus and Croatia are record holders (97-98 percent), it should be emphasized that the number of proceedings declared similarly inadmissible by other so-called transition countries are around 90 percent.

In parallel, however, practically all small claims received from developed countries with well-established judicial systems, for example, from Switzerland 1 up to a maximum of 5 annually, are handled at the European Court of Justice.

The real effect of the introduction of a pre-trial procedure at the European Court of Human Rights in Strasbourg is that there are two categories of citizens in Europe, including within the European Union itself. People from the more developed jurisdictional countries have the right to full (and international) independent judicial protection, while others from the so-called transition countries with pending judiciary have no right to independent judicial protection in either domestic or international courts.

Both in countries with compromised judicial systems and in the European Court of Human Rights, they seek to obscure the fact that the right of impartial judicial protection is restricted for some people. Officials in the European Union are being declared incompetent, thus the fundamental human right to judicial protection of a considerable number of Europeans inside and outside the European Union is being unduly violated.

Already after the first announcement of the Roundtable “Critique of the case law of the European Court of Human Rights in Strasbourg”, attempts were made to disparage and cover up issues that were yet to be discussed.

However, the roundtable's well-argued and moderate criticism proved to point to some practical errors of the European Court of Human Rights in Strasbourg and removed the fear of the part of the public that a critique would harm "the only remaining address left to realize the right to judicial protection for citizens of unsettled domestic judiciaries in transition countries."

ATTACHMENT 1. Facsimile of Letter of Proclamation from that law suits from Croatia, Bosnia and Herzegovina and Serbia are unauthorized written in identical manner -only the file number, the judge's name and signatory on behalf of the European Court of Human Rights are changed

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

11-04-20

HRASTE & PARTNERI
Janjko Grlić, odvjetnik
Ribnjak 40
HR - 10000 Zagreb
CROATIE

ECHR-LCro11.00R
ELG/JST/enu

28. ožujka 2013.

Broj zahtjeva: 74986/12
Ljekarne Šernhorst protiv Hrvatske

Poštovani,

pozivam se na Vaš zahtjev podnesen 24. listopada 2012. i zaveden pod gore navedenim brojem.

Želim Vas izvijestiti da je između 7. ožujka 2013. i 21. ožujka 2013. godine Europski sud za ljudska prava po sucu pojedincu (E. Steiner uz pomoć izvjestitelja u skladu s člankom 24. stavkom 2. Konvencije) odlučio proglasiti Vaš zahtjev nedopuštenim. Ova odluka je donijeta 21. ožujka 2013.

Imajući u vidu svu dostavljenu dokumentaciju, i u mjeri u kojoj su navedeni zahtjevi u nadležnosti ovoga Suda, Sud je utvrdio da nisu zadovoljene pretpostavke dopuštenosti sukladno člancima 34. i 35. Konvencije.

Ova je odluka konačna i protiv nje ne postoji mogućnost žalbe Velikom vijeću, kao niti bilo kojem drugom organu. Tajništvo nije u mogućnosti dati Vam bilo kakve daljnje podatke o odluci suca pojedinca. Od Suda stoga više nećete primiti nikakve podneske koji se tiču ovog predmeta, a Vaš će spis, u skladu s uputama Suda, biti uništen godinu dana od datuma odluke suca pojedinca.

Ovo je priopćenje u skladu s pravilom 52.A Poslovnika Suda.

S poštovanjem,

za Sud,

E. Grdinić
voditeljica odsjeka

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10. jul 2014.

Broj predmeta: 17290/12
Ejupović protiv Bosne i Hercegovine

Poštovani,

Obraćam vam se u vezi sa Vašom predstavkom podnesenom 13. januara 2012. godine i registrovanom pod gorenavedenim brojem.

Želim vas obavijestiti da je na zasjedanju održanom između 19. juna 2014. godine i 3. jula 2014. godine, sutkinja Evropskog suda za ljudska prava (H. Jäderblom uz pomoć izvjestioca shodno članu 24. stav (2) Konvencije), odlučila da gorenavedenu predstavku proglasi neprihvatljivom. Ova odluka je usvojena 3. jula 2014. godine.

Imajući u vidu svu dostavljenu dokumentaciju, i u mjeri u kojoj su žalbeni razlozi u nadležnosti Suda, Sud je utvrdio da kriterijumi prihvatljivosti, postavljeni u članovima 34. i 35. Konvencije, nisu ispunjeni.

Ova je odluka konačna i protiv nje ne postoji mogućnost žalbe Sudu niti bilo kojem drugom tijelu. Sekretarijat Suda, stoga, nije u mogućnosti dati Vam bilo kakve detalje o razlozima odluke sudije pojedinca vezano za ovaj predmet, niti voditi dalju prepisku s Vama u vezi s ovom odlukom. Od Suda više nećete primiti nikakve dokumente koji se tiču ovog predmeta, a Vaši spisi će biti uništeni godinu dana nakon datuma donošenja odluke.

Ovo pismo Vam šaljem u skladu sa pravilom 52A Pravila Suda.

S poštovanjem,

za Sud,

Č. Radnić
Pravni savjetnik

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11. септембар 2014.

Број предмета: 38401/14
[illegible]ević and Others v. Serbia

Поштовани господине,

Обраћам вам се у вези са вашом представком поднетом 19. маја 2014. године и регистрованом под горенаведеним бројем.

Желим да вас обавестим да је на заседању одржаном између 21. августа 2014. године и 4. септембра 2014. године, Европски суд за људска права, односно H. Jäderblom као судија појединац, а на предлог известиоца именованог у складу са чланом 24 став 2 Конвенције, одлучио да горенаведену представку прогласи неприхватљивом. Ова одлука је усвојена 4. септембра 2014. године.

Имајући у виду сву расположиву документацију, и у мери у којој су жалбени разлози у надлежности Суда, Суд је утврдио да услови прихватљивости, предвиђени у члановима 34 и 35 Конвенције, нису испуњени.

Ова одлука је коначна и против ње не постоји могућност жалбе Великом већу нити било којем другом телу. Секретаријат Суда вам, стога, не може омогућити увид у детаљне разлоге одлуке судије појединца везано за овај предмет, нити може водити даљу преписку са вама тим поводом. Од Суда више нећете добијати било какве документе који се тичу овог предмета, а ваши списи ће, у складу с упутством Суда, бити уништени годину дана након датума доношења одлуке.

Ово обавештење се шаље у складу са правилом 52А Пословника Суда.

С поштовањем,

за Суд,

Ч. Раднић
правни саветник

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COUR EUROPÉENNE DES DROITS DE L'HOMME
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I| ON THE HUMAN RIGHTS TRIBUNAL

In preparation for the Roundtable, Attorney Ico Škarpa also prepared a written contribution to a debate on the criticism of the practice of the European Court of Human Rights. The attachment is transmitted as a whole.

- ANNEXES TO THE DISCUSSION -

Ico Škarpa, Attorney from Split

I. INTRODUCTION, (LEGAL AND SOCIAL CONTEXT OF THE DISPUTED METHOD OF "FILTERING" THE CLAIMS)

The European Court of Human Rights (The Court in the further text) was established by the Council of Europe in 1959 as part of oversight mechanisms in the implementation of the Council of Europe's most important document - the European Convention on Human Rights.[1] The decisions of the Court are, for the most part, not only an example of professional excellence and deep conscientious application of law and essentially and ethically responsible interpretation, but also these court decisions have become the most solid social foundation for human rights defense in Europe. However, the case-law of the Court, unfortunately, also has its reverse side in the form of a legally unfounded way of so-called the "filtering of files" that has been ongoing since 2010, to which this Roundtable is dedicated. For the purpose of understanding the legal and social background of the subject matter, the work and development of the Court may be divided into the following periods:

1. **The period from its establishment in 1959 until 1998, when Protocol No. 11 established the Permanent Court**, (colloquially "new Court"). Protocol 11 was adopted at a time when the number of Council of Europe members from the initial ten Western European countries had increased to 47[2], joining the Eastern and Southeastern European countries, expanding the Court's jurisdiction to 800 million people. It is interesting and very important for the subject of the debate to point out that, on the date of entry into force of Protocol 11, the Court had **88 cases in the proceedings**.[3]

[1] Rome, 4. November, 1950.

[2] Croatia signed the Accession Agreement to the Council of Europe on 6 November 1996.

[3] Survey of activities 1998, ECHR Registry, Strasbourg, 1998.

2. The period from 1998 to 2010, that is, until the entry into force of Protocol No. 14. The same Protocol was adopted with the aim of "ensuring the long-term effectiveness of the Court" because by 2010 the Court had already received **57,000 new cases**, and in September 2008 the Court delivered its 10,000th judgment. Following these facts, the CoE Parliamentary Assembly concluded that "the convention system in Strasbourg (hence the Court) is in danger of congestion."[4] Therefore, it was precisely because of the said "congestion risk" that Protocol 14 was adopted, which, among other things, introduced new institutes relevant to the subject of this Roundtable: an individual judge who is empowered to declare an application inadmissible on his own and whose decision is final (Article 27 of the Convention) and a non-judicial rapporteur preparing the case for an individual judge (Article 24 item 2 of the Convention) with a view to "enhancing the ECHR's ability to filter the mass of illicit claims".[5]

3. The period after 2010, that is, the period after the entry into force of Protocol No. 14. Interestingly, the Council of Europe adopted the Protocol 14 on 13 May 2004, but the ratification process was only completed in 2010 because the Russian Federation refused to ratify the Protocol for six years, inter alia because "final decisions on the (in)admissibility of an individual request made by an individual judge could undermine the principle of equal access to the European Court of Justice. "[6] Unfortunately, this is exactly what happened, not because of the provisions of Protocol 14, but because of the way in which "filtering" is implemented in practice, which even includes a violation of the provisions of the Convention itself (Article 45 Item 1) and indeed the incredible secrecy of the court decision. We are aware of the absurd situation that the Court, as the most important part of the oversight mechanisms in the implementation of the Convention on Human Rights, with this practice daily commits a violation of rights under the very same Convention. However, the problem of congestion has still not been resolved because the number of case files is at 31 December 2013 amounted to 99,900![7]

II. THE CONTENTIOUS PRACTICE OF "FILTERING" CLAIMS

1. The legal basis for "filtering" claims

The legal basis for the contentious practice of "filtering" claims submitted to the Court is as follows: Art. 27 of the Convention[8]: "1. An individual judge may declare inadmissible or

[4] Parliamentary Assembly, Strasbourg, 2010

[5] Protocol No. 14 to the Convention ...., Explanatory Report, (IV. Comments on the Provisions of the Protocol

[6] Harvard Human Rights Journal, Vol. 22, 2009, "Protocol No. 14 ECHR and Russian Nonratification

[7] The ECHR in Facts & Figures ", The Court's statistics for 2013, ECHR, Public Relations unit, January

[8] Amended by Protocol No. 14, and thus entered into force on 1 June 2010.

strike out court records of cases a claim filed under Art. 34, when they can make such a decision without further consideration. 2. The decision is **final**. ”

Article 35 of the Convention[9]: “1. The court may only consider the case only after all available domestic legal remedies have been exhausted, in accordance with generally accepted rules of international law and within a period of six months from the date of the final decision. 2. The Court shall not consider any single request made under Article 34 which is: a) anonymous; or b) substantially the same as a case which has already been examined by the Court, or which has already undergone another international investigation or settlement procedure, and if it does not contain any new relevant facts. 3. The Court shall declare inadmissible any individual claim made under Article 34 if: a) it considers the request incompatible with the provisions of the Convention or the additional protocols, **manifestly ill-founded** or if it abuses of the right to submit a claim, or b) it considers that the applicant has not suffered substantial harm, unless the interests of respect for human rights guaranteed by the Convention and the additional protocols require examination of the merits of the request, provided that no case not duly considered before a domestic court is dismissed on that basis. 4. The Court shall reject any application which it considers inadmissible under this Article. Such a decision may be made at any stage of the proceedings. ”[10]

Art. 57.A. Rules of Procedure of the Court:[11] “1. In accordance with Art. 27 of the Convention, an individual judge may declare inadmissible or strike out from the court list of cases a claim made under Art. 34, when it can make such a decision without further consideration. The decision is final. **The applicant shall be informed of the decision by letter.**”

Art. 24. Item 2. of the Convention:[12] “When judging as an individual judge, the Court is assisted by rapporteurs acting under the authority of the President of the Court. They are part of the Registry of the Court. ”Therefore, it is undisputed that there is a valid legal basis to request in the “filtering ”process:

- an individual judge may declare a request inadmissible when the procedural requirements of Art. 34 and 35 are not met
- an individual judge may declare a request inadmissible and if it considers the request manifestly ill-founded, (Article 35. Item 3.)
- an individual judge is assisted by rapporteurs
- the individual judge's decision is final.

It is debatable, however, whether there is a valid legal basis for what is happening in practice.

[9] Amended by Protocol No. 14.

[10] With regard to the subject of the Roundtable, it should be noted that in accordance with Art. 35 of the Convention, it is not sufficient that the applicant's claim satisfies all the procedural requirements of admissibility!

[11] Added on November 13, 2006, after the adoption of Protocol 14, (2004), but before its adoption Entry into Force, (2010).

[12] Amended by Protocol No. 14

2. Facts established in relation to the "filtering" mode of claims

2.1. In practice, the "filtering" process is performed by non-Judge Rapporteurs who, as a result of "an increase in filtering capacity"[13] are included in the Convention as an institute (Article 24. Item 2. of the Convention and Rule 18A of the Rules of Procedure). The importance and role of the individual judge in filtering is non-transparent and very likely reduced to a form without content. In any case, after such "filtering", the applicant, whose application was declared inadmissible, receives a "letter" of the following content:

> *I wish to inform you that the European Court of Human Rights is an individual judge, (..... (surname of the judge), assisted by the rapporteur in accordance with Article 24. Item 2. of the Convention), decided to declare your application inadmissible. This decision was made on ..... (date). Having regard to all the documents submitted, and to the extent that the requests are within the jurisdiction of this Court, the Court has found that the admissibility requirements under Articles 34. and 35. of the Convention have not been satisfied.*
>
> *This decision is final and there is no possibility of appeal to the Grand Chamber, nor to any other body. The Registry is unable to provide you with any information regarding the individual judge's decision. Therefore, you will no longer receive any submissions concerning the case, and your file will be destroyed, in accordance with the Court's instructions, one year from the date of the individual judge's decision.*
>
> *This announcement is in accordance with Rule 52.A of the Rules of Court. For the Court, Judicial Adviser*

2.2. Thus:

- The "letter" refers to the decision of the judge, but no decision of the judge is attached to the letter
- The "letter" states that in reaching a decision based on the provision of Article 24. Item 2. participated by an unnamed rapporteur
- The "letter" states that the admissibility requirements under Articles 34. and 35. of the Convention have not been met, but does not state which admissibility requirements have not been met
- The "letter" is not signed by a judge but by a judicial advisor.

2.3. On the occasion of such a letter received in Marin Vs. Croatia, No.: 5631/11, ECHR-Lcro11.00R (CD10), ELG/kac,[14] On June 18, 2012, a complaint was proposed, that is, a request for delivery of the Decision which the letter refers to and/or for the submission of the explanation.

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[13] Protocol No.14. To the Convention ...., Explanatory Report, (IV. Comments on the Provisions of the Protocol)

[14] The original claim was filed because of violations committed by the courts of the Republic of Croatia, at the proceedings for damages resulting from the death of the applicant's husband and father, which was being led against a trading association of direct interest to the Republic of Croatia before the courts of the Republic of Croatia, co-owned by local self-governed units of the Republic of Croatia.

The above complaint /request was submitted to the President of the Court in person, as well as to the Commissioner for Human Rights, in English, on 16 pages of the text, with the following reasons:

a) An unjustified decision of the Court constitutes an arbitrary decision, and such a decision constitutes a violation of human rights guaranteed by the Convention, namely Art. 6.1. and 45. Item 1. of the Convention, and in order to protect the rights because of which the Court itself was founded, so such a decision of the Court is contrary to the purposes for which the Court was founded.

b) The specific decision of the individual judge is completely unfounded and contrary to the provisions of Art. 34. and 35. of the Convention and it has been analyzed and re-proved that in the presented case all the conditions of admissibility of the application of Art. 34. and 35. (incl. Item 3) have been met.

c) The Referral was made by the same proxy and in the same manner as 32 (thirty two) applications which had previously been filed, and which the Court had accepted and found that there had been a violation of Convention law.

Almost two years after the complaint / request was filed no statement was received.

2.4. Regarding the same type of letter received on December 12, 2013, in the case of Bačoka Vs. Croatia, No.: 68449/13[15], seeing that the Court would not respond to a written request, a request was made to allow access to the file, so that, in that way, namely by reviewing the decision of the judge referred to in the "letter", the reasons for the alleged inadmissibility could be established.

Access was granted by letter of the Court on 20 February 2014 and scheduled for 3 April 2014.

However, when the applicant and his lawyer joined the Court within the scheduled time, the clerk of the Court gave them only the file containing the applicant's request with all attachments to the request and a "letter". Nothing more!

After clarification and access to the rest of the file was requested, it was stated and confirmed in writing that access to the alleged other part of the file was not allowed because it was confidential.

Responding to a request for at least an oral explanation in this particular case, the rapporteur in the same case, a Croatian citizen actually, refused to provide an explanation, saying: "It is not her job to provide legal assistance."

[15] The original claim was filed because of violations committed by the courts of the Republic of Croatia, at the proceedings for damages resulting from the death of the applicant's husband and father, which was being led against a trading association of direct interest to the Republic of Croatia before the courts of the Republic of Croatia, co-owned by local self-governed units of the Republic of Croatia.

On 25 April 2014, the President of the Court was requested to make known and explain the alleged secrecy of a part of the file, and in particular the secrecy of the court decision, within 30 days, but he also disregarded such a request.

3. Violations of the rights guaranteed by the Convention by the Court

3.1. Violation of Art. 45. Item 1. of the Conventions, (*"Judgments and decisions declaring a claim admissible or inadmissible should be reasoned.")*

3.1.1. The European Court of Justice, as stated above, was established with the aim of enabling, in practice, the protection of the rights and freedoms guaranteed by the Convention and the restoring of the rule of law, as indicated in the preamble to the Convention.[16]

Furthermore, since it is the meaning of the rule of law or "rule of law state" (Etat de droit, Rechtsstaat) that every government must act in accordance with legal procedures, principles and restrictions, which is the essence of the rule of law, while respecting the protection of the individual against arbitrary actions by the authorities, including the judiciary, is a fundamental right of the individual.

It is precisely for the sake of preventing arbitrary action by the Court itself that the provision of Art. 45 Item 1. of the Convention, ("Judgments and decisions declaring a claim admissible or inadmissible should be reasoned."), obliges the Court that decisions declaring the application inadmissible must be reasoned. In addition, the standards of international law and any domestic law of the signatory countries require that court decisions be reasoned. In addition, the standards of international law and any domestic law of the signatory countries require that judicial decisions be reasoned.[17]

Moreover, in accordance with the indisputable practice of the Court itself, Article 6.1. Of the Convention, obliges the courts of the signatory countries to reach a reasoned decision; German - *Entscheidungsbegründung*; French - *motifis d'une decision*;[18] (H. v. Belgium (1997)) - "*The lower courts or other decisionmaking bodies must duly justify their decisions in order to enable the parties to make effective use of existing remedies*."

Likewise, according to the Court's case-law, the client must be informed of all circumstances relevant to the use of legal protection before the court, including, for example, the manner in which the time-limits in the proceedings are calculated (Vacher v. France (1996); KDB v. The Netherlands (1998); Frette v. France (2002)), and in this way the participants of the proceedings before the Court must also be informed, since the Court, whose task is to control respecting of

[16] In the Republic of Croatia it is also established as a constitutional principle that "the rule of law is one of the highest values of the constitutional order of the Republic of Croatia."

[17] In the Republic of Croatia, such an obligation on the part of the courts is established by a series of relevant regulations in the area of administrative and criminal law, and in relation to the subject matter, the Law on Civil Procedure (Articles 129, 338, 345).

[18] H. v. Belgium (1997) - "The lower courts or other decision-making bodies must duly substantiate their decisions in order to enable the parties to make effective use of existing remedies."

human rights in the signatory countries of the Convention, cannot afford lower legal standards than those in force in all signatory states.

It is especially necessary to point out the fact that, in accordance with the provisions of Art. 35. of the Convention, it is not sufficient that the applicant's claim satisfies all the procedural requirements of admissibility. Namely, despite the fulfillment of all procedural requirements, the request may be declared inadmissible for some reason relating to its merits, ie. on the merits of the matter itself.[19]

So, unlike the legal system of the Republic of Croatia, as well as unlike most European countries, which provide for the possibility of dismissing a claim (declaring a claim inadmissible), solely because of a lack of procedural preconditions that are relatively easily and objectively established (omission of preclusive time limits, existence of other proceedings, etc.), the possibility of rejection (declaring the application inadmissible) was taken from the French law in the Convention, if the request is clearly unsubstantial (*manifestement irrecevable*), and which is incomparably more pervious to subjective judgment because it involves interpretation of rights and evaluation of facts.

Moreover, according to the information published by E. Grdinić[20], in most decisions on admissibility, the Court declares the applications inadmissible because it finds them manifestly ill-founded.

In such a situation, when the majority of the applications are declared inadmissible by the Court because it finds them manifestly materially unfounded, the cogency of the provision on the justification for such a decision becomes indisputable imperative.

Thus, the express provision of Art. 45. Item 1. of the Convention, international and legal standards of the Member States, the Court's case-law itself, and in particular the Court's ability to declare the application inadmissible because it is manifestly ill-founded, **oblige the same Court that, even when deciding on the inadmissibility of the request, such a decision must be reasoned for the necessity of a clear and the Court's transparent practices, which must be accessible and known to all potential applicants to the Court, in order to adapt their practice to the Court's practices.**

3.1.2. The question arises whether the sentence in the quoted "letter" ("Having regard to all the documents submitted, and to the extent that the requests are within the jurisdiction of this Court, the Court has found that the admissibility requirements under Articles 34. and 35. of the Convention have not been satisfied."), indeed constitutes a justification in terms of Art. 45. Item 1. of the Convention?

As the Convention itself does not regulate in detail what the reasoning must contain, it should be pointed out that according to legal theory and generally accepted legal standards, the reasoning of a

[19] dr. Ph.D. Jasna Omejec: "Convention for the Protection of Human Rights and Fundamental Freedoms in the Practice of the European Court of Human Rights", Novi informator, Zagreb, 2013, p. 585.

[20] Assumptions on the admissibility of claims

court decision means the minimum citation of the legal norm that was applied, **but also of the specific reason, that is, the established fact because of which exactly this legal norm has been applied** (although by common standards and legal doctrine the explanation should be even broader) .[21]

In the "letter" in question, the alleged reasoning consists of a single, already quoted sentence, which lists the legal norms (Art. 34. and 35. of the Convention), but no specific reason or fact was established as to why the norm was applied and the applicants cannot know why their claim was declared inadmissible.

In conclusion, the quoted sentence; and even the "letter" as a whole, do not contain a justification within the meaning of Art. 45. Item 1. Of the Convention or generally accepted legal standards.

3.1.3. The next question that arises is whether the judge's decision, referred to in the "letter", may contain a justification, and if it does - whether the imperative under Art. 45. Item 1. of the Convention is met.

As in the case already mentioned, Bačoka Vs. Croatia found that in the Court's case-law the decision of the judge was inaccessible to the applicant, it was evident that the conclusion of the content of that decision, and even its very existence, was beyond the reach of not only the public but the parties to the proceedings.

Thus, if such a decision exists and if it has a justification, the secrecy of that decision renders such a possible justification inaccessible, which equates it to a non-existent by consistent application of the principle of legality.

Namely, an act that is inaccessible to the person to whom it relates cannot have any legal effect on that person, which was even clear to Hamurabi when he tried to make his code accessible to all.

Further evidence of such a claim is the decision of the Court itself in the Lelas Vs. Croatia,[22] in which it was concluded that by applying the principle of legality even a general legal norms that

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[21] LEGAL LEXICON, Miroslav Krleža's Lexicographic Institute, Zagreb, p. 877: "**The reasoning** is part of the decision setting out the reasons for its decision. In civil proceedings in the reasoning of the judgment, the court is, as a rule, required to set out the parties' claims, the facts they presented and the evidence they adduced, which of those facts he established, why and how he established them; and if he established them by the evidence, which evidence he presented and why, and how he rated them. It should also state what substantive law provisions he has applied and, if necessary, state the parties' views on the legal basis of the dispute and their motions and objections, for which he has not given reasons in the decisions he has already made during the proceedings. "

[22] The Court first reiterates that **the principle of legality also presupposes that the applicable provisions of domestic law are sufficiently a c c e s s i b l e**, precise and foreseeable in their application. The individual must be able - with appropriate advice if necessary - to anticipate, to the extent reasonable under the circumstances, the consequences that a particular action may entail (see, for example, the case, Sun, cited bellow, paragraph 27 and Adzhigovich v. Russia, no. 23202/05, paragraph 29, 8 October 2009). ¶ **The principle of legality also requires the Court to confirm whether the domestic courts' interpretation and application of domestic law produces consequences consistent with the principles of the Convention** (see, for example, Apostolides et al. V. Turkey, No. 45628/99, § 70, 27 March 2007. and Nacaryan and Deryan v. Turkey, Nos. 19558/02 and 27904/02, paragraph 58, 8 January 2008).

are not available to everyone; they cannot be applied to an individual it they are not available to them.

3.1.4. Consequently, since the "letter" does not contain a statement of reasons in terms of generally accepted legal standards and legal doctrine, and since the judge's decision is inaccessible to the parties in the proceeding, such Court practice constitutes a direct violation of Art. 45. Item 1. of the Convention.

Since the meaning of the existence and operation of the Court is the protection of human rights through the implementation of the rule of law, that is, the conduct of the authorities according to legal procedures, making a formal decision on inadmissibility without substantive reasoning is a violation of Art. 45. c. 1. of the Convention, but also disrespect for the rule of law and re-infringement of civil law, with the violation by the highest court this time, whose main purpose of is the protection of human rights.

Furthermore, beside the fact that the decision has no reasoning constitutes a violation of an individual's rights, such a decision does not fulfill the very essential function of a judicial decision and is not in accordance with the principle of legality as interpreted by the Court itself.

Namely, each court decision, apart from deciding on a particular dispute, is also a separate source of legal rules in the sense of precedent, so a court decision, in addition to acting on parties to the proceedings, has effect on other citizens who can adapt their behavior in accordance with such decision (in this particular case; the conditions and time limits for the application to the Court).

Finally, according to the case-law of the Court itself, for any State action (including the judiciary) to be considered "in accordance with the law" under the Convention must **be accessible and foreseeable** (Malone v. The United Kingdom).

In the light of all of the above, a decision that has no substantive reasoning is **an arbitrary decision**.

If the EHCR, as a court to protect human rights, makes decisions that are not substantiated, therefore arbitrary, in such a situation **the court acts against the purpose for which it was founded**.

3.2. Violation of Art. 6. Par. 1. in connection with Art. 26th Par. 3. of the Convention (*"... everyone has the right to have his or her independent and impartial tribunal established by law, fairly, publicly and within a reasonable time." / "When adjudicating as an individual judge, the judge shall not examine any claim against the High Contracting Party on whose behalf they have been elected").*

First of all, it should be pointed out, that this violation does not constitute a direct violation of the cited provisions of the Convention, but it can certainly be said that the Court's case-law does not correspond to the legitimate aim pursued by those standards.

Namely, the provision of Art. 6.1. of the Convention on the Right of the Individual to an Independent and Impartial Tribunal refers to the right of the individual in their home country, but it is in itself understandable that such an individual also has a right of action before the Court of Justice.

The proof of this claim is precisely the provision of Art. 26. Par. 3. of the Convention which prevents a judge as an individual judge from examining a claim against a domicile state; the same provision should guarantee precisely the independence and impartiality of the judge.

However, the same provision of the Convention also proves the existence of (justifiable) fears and doubts about the independence and impartiality of the judge with respect to the State in whose name he was elected.

In the "filtering" process, such independence and impartiality are not ensured. Specifically, the protective provision of Art. 26. Par. 3. formally does not refer to non-judge rapporteurs, and precisely all rapporteurs are from the country against which the request is being examined or "filtered".

As already stated, "filtering" is actually done by non-judge rapporteurs (Article 24. Par. 2. of the Convention and Rule 18.A of the Rules of Procedure), while the importance and role of an individual judge in filtering is highly questionable.

All of the above is more than obvious from the provision of Rule 27.A of the Rules of Procedure, according to which a judge appointed as an individual judge shall continue to perform all his other duties prior to his appointment as an individual judge, that is, regardless of his appointment as an individual judge; that same judge continues to judge as a division judge.

This provision shows very clearly that an individual judge does not spend too much time "filtering", since after appointment as an individual judge; he most normally goes on with his job as a judge in the divisions as if nothing had happened.

In such a situation, it is obvious that in practice "filtering" is left literally at the mercy of non-judge reporters.

This further means that, on the one hand, the Convention expresses and formalizes a justifiable concern about the independence and impartiality of the judge in the State in whose name he was elected (Article 26. Par. 3. of the Convention) and does not allow judges to examine claims against their country. On the other hand, the case-law of the European Court of Justice leaves the "filtering" against which there is no remedy, to persons who are not judges, and to persons who may be biased and dependent on the country of origin.

For all this, the practice of non-judge rapporteurs examining the admissibility of cases involving a State of which they are nationals does not fit the legitimate aim (independent and impartial Court), to which the provisions of Art. 6. Par. 1. and Art. 26. Par. 3. of the Convention strive for. This is unfortunately a very possible explanation for the dreaded official statistics, according to which as many as 90% of claims are declared inadmissible, while statistics for claims from Croatia are at a record 97%.

3.3. Injury the provisions of Art. 6. Par. 1. in connection with Art. 40. of the Convention (*"... everyone has the right to have his or her independent and impartial tribunal established by law, fairly, PUBLICLY and within a reasonable time." / "Hearings shall be PUBLIC, unless the Court decides otherwise. Documents deposited with the Registrar are AVAILABLE TO THE PUBLIC, unless the President of the Court decides otherwise. ")* in the alternative, a violation of Art. 17. of the Convention (*"Prohibition of Abuse of Rights").*

The secrecy or confidentiality of a court decision in relation to the applicant is a case law of the Court not only does it not meet the legitimate aim pursued by the cited provisions of Art. 6. Par. 1. in connection with the provision of Art. 40. of the Convention, it does not fit the purpose of the Convention itself and the Court.

Namely, the right to publicly examine a case under Art. 6. 1. which is binding on the courts of the Member States, is also binding on the European Court of Justice. The proof of this claim is precisely the provisions of Art. 40. of the Convention which provide for the highest possible degree of publicity of proceedings at all stages, that is, foresee the publicity of the proceedings and files. It is a guarantee of publicity for hearings and files that applies not only to participants in the proceedings, but to the publicity in the broadest sense of the word, and it is precisely such guarantees of publicity that are appropriate to the Court of Justice which exists to protect the Law of Human Rights.

Thus, the formulation of Art. 40. guarantees the publicity, and that means the availability of *"documents deposited with the secretary".* In view of the provision of Rule 17. Para. 2. The Rules of Court, according to which the

"Registrar is the keeper of the archives…", the availability of *"documents deposited with the Registrar"* includes all files filed with the Registrar, that is, all court files.

Exceptions are limited by the provision of Art. 40. Par. 1. to *"exceptional cases"*, and in Par. 2. to a *"different decision of the President of the Court"*, but 90% of the requests are certainly not exceptional cases, nor are they decided by the President of the Court.

In any case, the exceptions provided for in the Convention apply to the public in the broadest sense, but never to the party to the proceedings.

Also, *"confidentiality"* is mentioned in the Convention in one place only, in Art. 39. Par. 2. which regulates the procedure for reaching a friendly settlement, but again, that confidentiality obliges the parties to the proceedings not to disclose anything regarding the procedure to third parties. However, confidentiality with respect to parties cannot and should not exist because the court is not a public body which in some legal cases may have discretion.

Thus, declaring a court decision confidential with respect to the applicant does not constitute a direct violation of a provision of the Convention, as in the case of a violation of Article 6. 45. Par. 1.; but it is a material violation of the very substance of the Convention.

Namely, it is obvious that the Court's practice does not meet the legitimate aim pursued by the provisions of Art. 6.1. and 40. of the Convention, and this very legal construction is often used by the Court itself when the interpretation of a norm is linked to the legitimate aim of that norm (*Klauz vs. Croatia* ...), thus formally constituting a violation of the Convention.

However, the secrecy or confidentiality of the Court's decision in respect of the applicant who initiated the proceedings and to whom the decision refers to does not constitute a direct violation of a provision of the Convention solely because it is a capital and unimaginable violation, and it is very difficult to imagine that to those who drafted and passed the Convention; it may at all occur to them that the Convention should contain a provision guaranteeing that whoever is party to the proceedings must have the right to review the decision.

Namely, in a European legal culture, such a right is an implied one in itself.

Alleged confidentiality or secrecy of a court decision, and in relation to a party to the same court proceedings, is *"contradictio in adjecto"* (a contradiction in terms), that is, giving the notion of a court decision qualities that a court decision cannot have, because the court decision cannot be confidential to the person to whom it relates and because such a decision would make the entire court proceedings meaningless.

Moreover, the confidentiality of a court decision with respect to a party to the proceedings is a mockery of legal science and legal history from the aforementioned Hamurabi and the Roman Leges duodecim tabularum onwards. It is mockery to the Council of Europe, mockery of the Convention on Human Rights, mockery of the Court itself. It is a mockery for us lawyers too, but most of all it is a mockery of the individual for whom the Council of Europe, the Convention, and the Court itself are supposed to exist.

According to the statistics of the Court itself, at least 90% of the claims of 99,900 received (until 31 December 2013) will be declared inadmissible, so at least 90,000 individuals will not have the right to see or read a decision directly deciding on their right which they considered to be protected by the Convention and by the fact of its existence.

Most of these people have put all of their trust and faith in justice, in the European Court of Justice itself.

Most of these people come from Eastern and Southeastern Europe,[23] and are people from areas that historically, and especially in the 20th century, felt a very specific interpretation of the concept of the rule of law. They were clearly hoping that by joining the Council of Europe and by coming under the jurisdiction of the European Court of Justice would bring warmth of human rights and freedoms.

In response to all their hopes, they will receive a "letter", and if they are persistent as the aforementioned Antun Bačoka, they will receive confirmation that the Court's decision is confidential!

It is a harassment that cannot justify any *"stifling of the Strasbourg institutions"*, because even if these people were wrong about the merits of their dispute, even if their request was not really allowed, they have a right to know why because this is the only way can they preserve their dignity. Thus, not only is the declaration of confidentiality of a court decision in respect of a party a violation of the provisions of the Convention, it is also a violation of the dignity of each applicant who was rejected in such a way.

In conclusion, this means that the European Court of Justice, in contrast to the dazzling reach and rightfully acquired name of the *"jewel in the crown of the Council of Europe"*, as former Court President Prof. Luzius Wildhaber called it, a controversial part of its practice is that by terminating proceedings

[23] More requests come from Russia, Ukraine, Serbia, Turkey and Romania than from the other 42 countries together, "The ECHR in facts & figures 2013"

without proper reasoning and declaring a court decision confidential that the Court itself restricts the rights recognized in the Convention to a greater extent than envisaged in the Convention. And this is contrary to the prohibition of abuse of rights under Art. 17. of the Convention, according to which: *"... nothing in this Convention shall be construed to include for any State, group or individual any right to engage in any activity or to perform any act aimed at the destruction of rights or the freedoms recognized in this Convention or to a greater extent than envisaged therein."*

4. Proposed Conclusions

There is no doubt that the Parliamentary Assembly correctly concluded that *"the Strasbourg Convention System* (therefore the Court) *is in danger of congestion."* There is also no doubt that efforts have been being made for decades to *"ensure the long-term effectiveness of the Court."*

There is no doubt that all the efforts made so far (a series of protocols amending the Convention, restrictive case law in the form of a *"fourth-degree doctrine"*, the establishment of the so-called *Wise People* Group in 2006, the Conference on the Future of the European Court of Justice in Interlaken, Izmir, Brighton, and Declarations of 2010, 2011 and 2012, etc.) - have not achieved the desired objective, which is to reduce the inflow of requests to the Court to enable it to function effectively.

Unfortunately, even the latest Protocols No. 15 and No. 16, which have not yet entered into force, for example reducing the application deadline from six to four months, will not and cannot relieve the Court.

In conclusion, and in the words of prof. dr. Ph.D. Jasna Omejec: QUO VADIS CURIA EUROPAEA? [24]

Despite all the above, we believe that a large number of requests should not be seen as a threat to the Court's congestion, but that this fact only confirms the necessity of the Court's existence, especially in relation to those Member States from which the vast majority of requests is coming from (from Russia, Ukraine, Serbia, Turkey, Italy and Romania come more requests than from all other countries combined).

Despite the likelihood that the vast majority of claims are truly unfounded, we are of the opinion that the European legal culture must not allow the basic civilizational acquis adopted in the Convention to be defeated in the name of the practical objectives thus set out, even if it is merely a right to reasoning. Otherwise, by failing to comply with at least one provision of the Convention, the Court loses its reason for existence (raison d'être).

In this context, it is noteworthy that the Committee on Legal Affairs and Human Rights of the Council of Europe Parliamentary Assembly states in the document *"The future of the Strasbourg Court and the implementation of ECHR standards"* that: *"The Court cannot guarantee justice for*

[24] Prof. dr. dr. Ph.D. Jasna Omejec, *Convention for the Protection of Human Rights and Freedoms in the Practice of the European Court of Human Rights*, Novi informator, Zagreb, 2013. In her capital work, which brought the subject matter closer to the expert public, she named Chapter VIII of her book.

all individuals which was recognized through the existence of a procedure led by individual judges (fig-leaf) which maintains *THE LEGAL FICTION OF JUDICIAL DECISION-MAKING ON ALL CLAIMS*."

Thus, the Council of Europe, as founder of the Court, recognized that the Court in the criticized part of the case law turns from *"jewel in the crown of the Council of Europe"* into *"legal fiction"*.

Consequently, the following is apt to propose the following C O N C L U S I O N S:

1. No practical or any other reason should prejudice the implementation of the ECHR standard, since in this case it is a violation of Art. 17. of the Convention.

2. The provision of Art. 45. Par. 1. of the Convention on the reasoning as necessary content of a decision declaring an application inadmissible must be enforced and complied with.

3. In order to ensure the long-term effectiveness of the Court, it is necessary to review and, if needed, amend the provisions of:

Art. 50. of the Convention (*"The costs of the Court shall be borne by the Council of Europe"*), which is clearly unsustainable.

Art. 20. of the Convention (*"The Court is composed of a number of judges equal to the number of high Contracting Parties."*), which is clearly insufficient.

4. Review alternative financing options for the work and relief of the Court (for example, the introduction of court fees for the costs of the Court paid by the losing party, which would certainly have some financial impact and reduce the number of unfounded claims).

→ APPENDIX 2. Some characteristic published journalistic articles

ARTICLE 1 (Lider, Zagreb, 22.2.2013., page 98)

The International Court of Justice in Strasbourg Exists in Vain

The Tribunal ignores the argument on which Croatian prosecutors base their claims and avoids commenting on the substantive allegations in those lawsuits

It say: **IVICA GRČAR**

A dozen readers were dissatisfied with the rejection of the Strasbourg International Court of Human Rights. Due to legal violence and the crisis in the Croatian judiciary, over the past 15 years, a significant number of Croatian citizens have appealed to the Tribunal. Under pressure from more and more cases from Croatia, however, the Strasbourg court has resorted to dismissing pre-litigated cases for procedural reasons without assessing the merits of the lawsuits.

The International Court of Strasbourg ignores the arguments on which the Croatian prosecutors base their claims on them and refuses to comment on the substantive allegations in those lawsuits by dismissing the accusations in the prelitigation procedure without assessing the merits of the claims. And the judgments of the Tribunal in the Croatian cases (when they were rendered) are practically the only corrective of the poor practice of the domestic judiciary. Therefore, it would not be a good idea for Croatian citizens to lose their trust in the International Court of Justice in Strasbourg and to stop suing that court.

Nonsense: We have learned that due to the (too) large influx of lawsuits from Croatia, a special department has been formed in the International Court of Justice in Strasbourg, which employs some 30 administrators from Croatia. Judging by the refusals, in which the court avoids commenting on the substantive allegations in the claims it rejects, instead of the Tribunal changing the poor state of the Croatian judiciary, to the contrary, the local judicial staff began to change the case law of the Strasbourg Tribunal. The head of the department for Croatia in the Strasbourg court is Elica Grdinic, a typical career justice official in Croatia, assisted by Stefica Staznik, until recently a lawyer of the Croatian state in proceedings before the Tribunal (isn't that a conflict of interest ?!), then Zvonimir Matagan, Tomislav Bilobrk and other recent career 'rejuvenated' local justice. Is the sense of protection before the Tribunal lost against decisions of the local judiciary if such proposals (lawsuits) in Strasbourg are first decided by local (Croatian) administrative staff?
We asked that question to Judge Dean Spielmann, President of the International Court of Human Rights in Strasbourg.

In view of the recent decision of that court on the inadmissibility of a journalistic lawsuit against the judgments of the Constitutional and Administrative Courts of the Republic of Croatia, which entitles the Ministry of Finance to withhold information on state budget revenues from concession and mining fees (received under No. 7169/11), we asked the President Spielmann also, has there been a general change in the court's previous practice on the right of the public to be informed, or has the practice changed only in proceedings in Croatia, in which procedural rights are placed above the public's right to be informed?

Who are the Judges From the press service of the International Court of Justice in Strasbourg on 8 February 2013, they promised to answer these questions, but to this date nothing has been answered, much like in the Croatian judiciary. Ksenija Turkovic, a professor at the Faculty of Law in Zagreb, was recently elected to the International Court of Justice in Strasbourg. The former judge of that court from Croatia, prof. Nina Vajic applied for the International Court of Justice of the EU in Luxembourg, but Sinisa Rodin was proposed instead.

The International Court of Justice in Luxembourg is an EU court acting as two first instance courts, general and special for civil disputes, and as a second instance court (Sinisa Rodin was proposed for the second instance court). In the General Court, 80% of the cases concern protection of trading competition.

Ignoring arguments in lawsuits from the Croatian Court of Appeal Defendants of the Tribunal in Strasbourg without considering the merits of the lawsuits submitted to us by readers are indicated by court numbers: 24458/10, 38572/12, 38392/12, 66060/10, 49046/12, 19517/02, etc.

According to the assessment of the administrative staff of the representatives of the local judiciary, the refusals of the Tribunal ignore the arguments on which Croatian prosecutors base their claims and avoid commenting on the substantive allegations in these claims.

ARTICLE 2 (Lider, Zagreb, 01.03.2013., page 74.)

A Drop in the Standard of Trial of the Tribunal in Strasbourg

By rejecting the lawsuits without justification, the Constitutional Court prevents access to The European Court of Human Rights, and the Strasbourg Court by its own unjustified rejection confirms such abuse

It say: **IVICA GRČAR**

The Strasbourg International Court of Human Rights has lowered the standards of trial in Croatian cases. Notices of dismissal were sent to several addresses in Croatia from the Strasbourg court informing that the 'individual judge E. Steiner, assisted by a rapporteur', had found that the conditions for admissibility of the claims in Croatia had not been met.

And further, that there is no possibility of appeal against this decision of the 'individual judge', as if it were a decision of Pharaoh, not of 'Judge E. Steiner and the rapporteur'. The assumption is that 'individual judge E. Steiner' does not speak Croatian to the extent that he can personally assess lawsuits written in Croatian, so he probably must rely entirely on the help of a 'rapporteur'.

No reasoning We received from the Law Office of Ico Skarpa from Split a request for review of the rejection decision of the Court in Strasbourg in the Marin v. Croatia case (received at Strasbourg Court under number 5631/11).

Considering that in the past issue we have written about 'reporters' with the help of which 'individual judge E. Steiner' violates the human rights of citizens in Croatia, it is worth mentioning the arguments of the Marin family and the lawyer Skarpa cited in the request for review of the dismissal decision of 'individual judge E. Steiner' ', so that readers can judge what this is about.

Lawyer Skarpa's request states that the refusal notice did not reach a verdict, but the decision was made by 'individual judge E. Steiner', and the refusal notice received states that the same decision ended the court proceedings. It is selfexplanatory and a minimum of legal and civilizational standards for such an act to be submitted and reasoned.

In the presented case, the formal reasoning consists of a single sentence, ('Having regard to all the documents submitted, and to the extent that the claims within the jurisdiction of this Court are stated, the Court found that the admissibility requirements under Articles 34. and 35. of the Convention were not satisfied.').

Therefore, the legal norm was stated (Articles 34. and 35. of the Convention), but no specific reason or fact was given for applying that norm, so the applicants do not know or cannot know why their claim was rejected. Apart from the fact that a court decision which has no reasoning is a violation of an individual's rights, such a decision does not fulfill the very important function of the court decision and is not in accordance with the principle of legality as interpreted by the Strasbourg Court itself.

Namely, each court decision, apart from deciding on a particular dispute, is also a separate source of legal rules in terms of precedent, so a court decision, in addition to acting on the parties to the proceedings, has an effect on other citizens. A decision that has no substantive reasoning is an arbitrary decision.

Confirmation of Abuse For the 'state', the Constitutional Court avoids solving unpleasant (especially property) cases by dismissing them already in prelitigation for procedural reasons. Similarly, in the Constitutional Court, 'accumulated' cases are also 'dealt with' by the unjustified statement that the applicant has not proved that the Constitution has been violated and that the submitted application is rejected without considering its essence.

The conclusion of the request of the Marin family and the lawyer Skarpa warns that the Constitutional Court of the Republic of Croatia by rejecting constitutional lawsuits without justification is, in fact, preventing access to the European Court of Human Rights, and the Strasbourg Court confirms such abuse by its unjustified decisions.

Injustices must be corrected Obviously, the Strasbourg Court is overburdened with demands. However, if such practical reasons call for a simplification of the procedure, which is understandable, it should still not be allowed to cross the border in such a way that the practical reasons destroy the meaning of the existence of the Court.

Unfortunately, this is exactly what happened, and this is why the meaning of the existence of the Tribunal in Strasbourg is called into question.

II | THE ROUNDTABLE

A CRITIQUE OF THE CASE

LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS

Zagreb, Journalist House, 29 May, 2014.

The following are the texts of the debate, recorded according to the tone record on the Roundtable. Discussion texts are published with necessary editorial cuts, are not authorized, and the audio recording can be heard on YouTube.

The moderator of the discussion at the Roundtable is DARKO PETRIČIĆ.

IVICA GRČAR

The debate at this Roundtable was preceded by the publication of several newspaper articles in the weekly newspaper "Lider" in "Pravda za sve" (Justice for All) section based on letters from readers who were dissatisfied with the denial of access to the European Court of Human Rights . The newspaper headlines in the "Lider" were also published on the portal and were also transmitted in other media in Croatia (Appendix 2: facsimiles of several characteristic published journalistic articles).

On the basis of a proposal from 15 readers, a letter was compiled with critical remarks on the case law of the European Court of Human Rights and sent to various addresses in the European Union (Appendix 3: copy of the letter).

However, this letter was only answered by the European Commission's Directorate-General for Legal Affairs. This only reply highlights the European Commission's lack of juristiction for the work of the European Court of Human Rights in Strasbourg and refers to a direct appeal to the European Court of Human Rights (Appendix 4: facsimile of reply).

Following a recommendation from the European Commission's DirectorateGeneral for Legal Affairs, a letter was sent directly to Dean Spielmann, President of the European Court of Human Rights in Strasbourg. There is no response to this letter to date (Appendix 5: facsimile of the letter).

By a press inquiry on 14 November 2013, the President and Spokesperson of the European Court of Human Rights were asked to enable a newspaper article on the European Court of Justice Section for Croatia, run by Elica Grdinić, a former

judge at the Zagreb Municipal Court and later a judicial advisor at the Constitutional Court of Croatia.

However, in the European Court of Human Rights, they clearly do not think that they need to inform (and Croatian?) the public about the work of this Court, so they have never answered these journalistic questions.

After that, it was decided to organize a Roundtable and inform the expert public about possible abuses at the European Court of Human Rights. The discussion at the Roundtable highlighted the obvious abuses of the newly introduced pre-trial procedure and the practice of circumventing the right of access to the Strasbourg Court.

In particular, it should be noted that in the notices instead of the written and reasoned decisions delivered by the European Court of Human Rights to applicants (for example, Croatia), it states that Judge Elizabeth Steiner from Austria, as an individual judge of the European Court of Human Rights in Strasbourg, with the assistance of Elica Grdinic, Head of the Department for

Croatia and Zvonimir Matage, a court advisor and other Croatian officials, in a preliminary ruling declares the applications inadmissible.

Given that the applicants were not served with written and reasoned inadmissibility decisions, signed by Judge Steiner, but merely notices signed by

Elice Grdinić or possibly Zvonimir Mataga, it was reasonable to assume that Judge Elizabeth Steiner did not actually address everything, or at least not most of the requests received from Croatia. A dozen thousand requests annually received from Croatia alone, with her regular work, Judge E. Steiner is realistically unable to review and explain the reasons for inadmissibility.

And Elica Grdinić, Zvonimir Mataga and other officials in the triage department for Croatia were nominated by the Croatian authorities to the European Court. Therefore, the question arises whether the lawsuit against the decisions of the Croatian judiciary loses its meaning if these lawsuits are decided on a pre-trial basis instead of an international court by court advisers and other administrative staff, loyal to the Croatian judicial authorities, or more simply, by the staff of the Croatian judiciary on "temporary work" in Strasbourg.

Finally, through a journalistic survey, we also found two judges of the Croatian judiciary who were forced to seek protection of their rights from the violence of the judicial administration and political pressure on judges - at the European Court of Human Rights in Strasbourg. For one of these two judges the application (suit) is declared inadmissible without a written and reasoned decision. This judge seeks access to her file at the Strasbourg European Court of Justice and provides material evidence that written and reasoned decisions on the

inadmissibility of her request are not in the file at all, as advocate Čedo Prodanović will address below.

Officials at the Registry of the European Court of Human Rights are trying to remove the second judge from the proceedings before the European Court by administrative pranks with delivery deadlines, which lawyer Veljko Miljevic will speak about.

Subsequently, as journalists, we suggested to another applicant (the plaintiff) that he also seek access to his file at the Strasbourg Court. To this applicant at the Strasbourg Court, the officers present at the inspection signed a statement that the file consists of two parts, one public which can be seen as a party to the proceedings and another secret part of the file which cannot be seen as a party, which the lawyer Ico Skarpa will speak about.

→ APPENDIX 3. Facsimile of a letter with critical remarks on the case law of the European Court of Human Rights addressed to various addresses in the European Union

APPLICANTS OF THE REQUEST TO THE EUROPEAN COURT AGAINST THE REPUBLIC OF CROATIA:

- Nada Glad, No. 7698/03
- Nada Landeka, No. 24458/10
- Darko Petričić, No. 66060/10
- Veso Čosić, No. 38572/12
- Renato Majnarić, No. 49046/12
- Pharmacies Šernhorst, No. 74986/12
- Family Marin 5631/11.
- Ivica Grčar, No. 7169/11
- 38392/12, and
- 19517/02

EUROPEAN COURT FOR HUMAN RIGHTS
Mrs. VIVIANE REDING, European Commission Vice-President
Be 1049 Brussels - Belgium

Petition (complaint) regarding the work of the European Court for Human Rights

Dear Sirs,

This document (complaint) expresses amazement with the manner of work of the Court of Human Rights, or judge E. Steiner as an individual judge of the Court. Surprising is the manner of refusing the request that citizens and one legal entity from the Republic of Croatia filed against the Republic of Croatia concerning the violation of rights and freedoms guaranteed by the Convention for the Protection of Human Rights.

Enclosed please find a copy of the Notifications provided by the European Court to the above listed applicants, and that the same were notified that their claims were declared inadmissible because *"the Court found that the conditions did not met the preconditions of admissibility under Article 34 and 35 of the Convention."*

In all of the stated cases, the applicants have requested legal assistance and legitimately expected protection of their rights and freedoms guaranteed by the Convention, and which are, as stated in the arguments and demands, not respected in the Republic of Croatia, even though the Republic of Croatia is a signatory of the Convention and is obliged by Article 1 of the Convention to secure them to everyone within their jurisdiction.

The notifications the applicants received from the Court instead of reasoned decisions regarding their demands are only an amplified form of rejection from where the exact reasons of rejection cannot be understood, and because of this the purpose of the Convention is not being realized along with the basic task of the Court from Article 19 of the Convention.

It is evident that in the disputed Notifications there are no substantiated positions (findings) of the Court (individual judge) that the applications are inadmissible, nor is it specifically stated that those conditions or assumptions of admissibility of the requests from Article 34 and 35 of the Convention have not been met in each of these individual cases.

Specifically, according to the content and requests of Article 34 of the Convention, the applications of the relevant requests are natural persons and one legal entity, which in their requests to the Court explicitly stated and reasoned to prove that they are victims of violated rights that are recognized by the Convention and the Protocols through the Convention. Therefore, it regards authorized applicants against the Republic of Croatia as a High Contracting party, and whose courts with their decisions violated the applicants' Convention rights and freedoms.

In relation to the conditions of admissibility of the requests of Article 35 of the Convention, the applicants point out the following:
- In all cases all available domestic remedies were exhausted,
- The requests are submitted in a timely manner, or within the time prescribed by the Convention,
- The requests were not anonymous,
- The requests were not already tested or decided on by the subjected Court, nor were these requests submitted to another international procedure to be resolved,
- The requests were not incompatible with the regulations of the Convention and additional Protocols nor could they be considered an abuse of the right of submit a request,
- The Court did not review the requirements in a way that it could evaluate that the same are *obviously unfounded*,
- Claims that the applicants suffered in no way be characterized as insignificant.

Therefore, there is no doubt that the stated cases met all of the procedural requirements necessary for the application of Articles 34 and 35 of the Convention.

However, the Court, through its administration (Secretariat) informed all of the stated applicants regarding the rejection of their requests in a typical and general manner. The findings of the Court in the stated Notifications, which the Court even referred to as a *decision*, were expressed in a completely inappropriate tone because the Notification undoubtedly contains a specific prohibition of any further recourse to the Court and almost disapproval that the applicants even dared to turn to the Court. All of this is intolerable, unacceptable and inappropriate regarding the task of the subjected Court to protect human rights and fundamental freedoms.

Furthermore, for the applicants it is questionable and inexplicable that all of the contentious Notifications are without a seal and signed by the staff of the Court who come from the Republic of Croatia (except in case No. 7598/03), and that applicants received mail sent from Paris, and not in Strasbourg where the seat of the Court is located. These are also circumstances that diminish the credibility of the judicial process and the dignity of the Court itself.

The media has written about the stated and other irregularities in the work of the Court in the Republic of Croatia and to illustrate this we are enclosing two articles: *Corruption and Conflicts of Interest: We reveal who the judges are in Strasbourg that decide on complaints of Croats against domestic courts* (author D. Grund) and *The fall of standards in Trials of the International court in Strasbourg* (I. Grčar author, columnist LEADER, the Croatian business magazine).

The applicants believe that they were, in an unjust way and contrary to the Convention, denied one of the fundamental right guaranteed by the Convention, and this is the right of access to the Court (in Strasbourg) in order to protect their rights and freedoms even though they are undoubtedly victims of violations of these rights and freedoms. In all this, the applicants have in mind that the view of the Court that all those that consider themselves to be victims of violations of the Convention need to know why they were, through the decisions of national courts, denied legal protection and the right to trial and the court's ruling on the merits, which are components of the right to a fair trial in each democratic society based on the rule of law.

Should this position not apply also to the International Court, especially as it is the last court instance in the vertical protection of human rights and freedoms, and therefore the last hope that all who consider themselves victims of violations of human rights be protected?

We ask for your opinion regarding our allegations in this petition (complaint) as well as guidance on how we can achieve the right of reconsideration of our requests since the disputed method is not suitable for the highest judicial instance in Europe as is your Court.

Please reply for all applicants to Mr. IVICA GRČAR at the address 10000 Zagreb, Nova Ves 48, Republic of Croatia

Sincerely,

For the applicants

IVICA GRČAR

In Zagreb, 01.07. 2013

Attachments: 3

Inform the following:
1. Mr. Jose Manuel Barroso, President of the European Commission
2. Mrs. Doris Pack, President of the Board of the European Parliament for South-eastern Europe
3. Mr. Paul Vandoren, Chief of the delegation of the European Union in the Republic of Croatia
4. Mrs. Angele Merkel, Chancellor of Germany

In Zagreb, 10.09.2013.

- Mrs. Ksenija Turkovic, Judge of the European Court for Human Rights
- Mr. Branko Baricevic, Chief of the Office of the EU in Zagreb

→ APPENDIX 4. Facsimile of a single response from General European Legal Affairs Directorate Commission on "lack of juristiction" for the European Commission of Human Rights

EUROPEAN COMMISSION
DIRECTORATE-GENERAL JUSTICE

Directorate C : Fundamental Rights and Union Citizenship
Unit C1 : Fundamental Rights and Rights of the Child
Head of Unit

Ares (2013)3221398

Brussels
JUST/C1/VD/ga/3435143s

Mr Ivica GRČAR
10000 Zagreb
Nova Yes 48
Croatia

Dear Mr Grcar,

Thank you for your letter of 16 September 2013 addressed to Vice-President Reding in which you complain about the functioning of the European Court of Human Rights.

The European Court of Human Rights, whose seat is in Strasbourg, is not an institution of the European Union. It is a court established by the Council of Europe in order to ensure the observance of the Convention for the Protection of Human Rights and Fundamental Freedoms (more commonly known as the European Convention on Human Rights)[1]. The European Commission, as an institution of the European Union, does not have any power in respect of the procedures of the European Court of Human Rights.

In order to follow up on your complaint, you should address yourself directly to the European Court of Human Rights or to the Council of Europe.

Yours sincerely,

pp Salla Saastamoinen

[1] http://www.echr.coe.int/ECHR

Commission européenne, B-1049 Bruxelles / Europese Commissie, B-1049 Brussel - Belgium. Telephone: (32-2) 299 11 11.
Office: MO59 5/066. Telephone: direct line (32-2)2996960. Fax: (32-2) 2967623.

ČEDO PRODANOVIĆ

I am not a specialist in international law and therefore will not give general assessments on the work of international courts. My experience comes down to representing two clients in two processes at the European Court of Human Rights, and I will talk about one of these two proceedings.

However, I must say that the European Court of Human Rights in Strasbourg has long been a dream for us. We could not wait for Croatia to sign the Convention on Human Rights and that all injustices before the domestic courts, especially in individual cases against the state, would finally be resolved and remedied at the European Court of Human Rights in Strasbourg. We thought we in Croatia would also be protected from human rights abuses. Let us only remember all those disputes over compensation for damages due to dismissal, seizure of apartments, etc., when most often it was the state that violated human rights.

I participated as a member of the Croatian Helsinki Committee and at presentations at the European Court of Human Rights in Strasbourg, at a time when Croatia did not yet have access to that Court. I saw then that a fellow Slovenian lawyer was a representative in a dozen proceedings before the European Court of Human Rights. The Slovenes also had the right of access to this Court, they entered into the merits of each case in these proceedings, and discussed all other legal issues of the individual case, not just the formal problems of whether something was within the prescribed deadlines, whether the procedure was unacceptably lengthy and the like.

Later, my path took me to The Hague. Why am I also mentioning the Hague Tribunal, it is because I see a great similarity in the bureaucratization of the Hague Tribunal and the Strasbourg Tribunal. Over time, these courts have become their own purpose, and the people who work there primarily take care of themselves, their salaries, benefits, and only then "share justice" with the people.

I will prove through a specific case, of which I will refer below, that I have not spoken of all this by heart. It seems to me that the Strasbourg Court is littered with proceedings, so that "no trees are visible from the forest". It's like a "lottery" in which you have to be very lucky to have your case come into focus of the interest of someone who will be interested in it and who will give you real legal protection.

And legal protection is questionable even before the Strasbourg Court proceedings, since before Strasbourg, the entire legal course in Croatia must be exhausted, which takes approximately five to seven years with the promptness of domestic courts, and the standard of the European Court is six years, so it is already because of these 12 years of domestic and international court proceedings that legal protection is questionable.

At the European Human Rights Center in Strasbourg, I represented a judge from a court in Zagreb, which was absolutely at disgrace of the court administration. In the meantime, people from the court administration of the Zagreb court, who have repeatedly harassed my client through numerous disciplinary proceedings, have become powerful in the Croatian judiciary. We ended some of these disciplinary proceedings favorably for my client, but we are in the European Court of Justice because of one of those.

We filed a request with the European Court on 3 September 2012. As early as 15 November 2012, only two months after the request was lodged, the Court informed us that the request was inadmissible. The notice states that the decision on inadmissibility was made on 8 November 2012, but there is no written and reasoned decision on this.

We have also filed submissions, but the reply states, I quote: "... you will no longer receive any answers from this Court on this case, and your file will be destroyed in a year's time in accordance with the Court's instructions."

My client did not want to "give up". She also consulted with Siniša Rodin, a judge at the Court of Justice in Luxembourg, who told her that she was right and gave her a written opinion on the matter. Afterwards, we sought access to the file to see the decision on inadmissibility.

But we got the letter that asked why we would need a decision when an appeal is not allowed. However, we insisted on the right of access to the file and we were finally granted that. In Strasbourg, my client, along with a fellow lawyer, inspected the file. But there was no decision in the file.

On the spot, the client and a fellow lawyer handwritten the record that there was no decision in the case file that had been certified by the Court's attendants, and a letter to the President of the European Court of Human Rights to enable them to see the decision referred to in the notice of inadmissibility. But the President of the Court ignored the request as well. (Annex 6: facsimile handwritten notes and letters certified by attending officials of the European Court of Human Rights)

Our last memo to the Court was that, if there is no decision to consider that the decision does not exist and to request a review of the proceedings.

And this memo, paradoxically, was also ignored in the European Court of Human Rights. It has already been pointed out here that under Article 45. of the Convention the decision on inadmissibility must be made in writing and reasoned.

All this correspondence was conducted through the so-called The HR Department of the European Court of Human Rights and the signatory to all the replies from that Court were by Ms Grdinić already mentioned here. Therefore, we also had a reasonable doubt that the judges did not even see our request. So far, we have not received an answer to why our initial request is not allowed. I'm afraid we won't even get that answer.

And of course, that story, under Article 6. of the Convention on the Right to Access to Court and the Right to an Independent Court, remains only one empty slogan, on the basis I once dreamed of about the right of access to the European Court of Human Rights, and now I see that none of that exists.

→APPENDIX 5. Facsimile of the record, written by hand “on the spot”, that there is no decision on inadmissibility on the file, stamped and signed by the officials of the European Court of Human Rights

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European Court of Human Rights
Mr. Dean Spielman, President

Re: request to consult decision dated November 8, 2012

On september 12, 2013 we came (me and my lawyers) to consult the file No. 61525/12.
The whole file was given to us to inspect and study.

There is NO decision dated November 8, 2012 on the file

We only came from Zagreb to see at least ONE REASON why my application is declared inadmissible

In compliance with article of 45 of the Convention the an admissible decisions must have explanation.

Kindly inform me why there is no the above mentioned decision and use your authority to be able to see decision.

Sincerely,

Jasna Lopičić

Strasbourg, 12. IX 2013

VELJKO MILJEVIĆ

In my law firm I have given an order to examine all that we as a law firm have submitted to the Strasbourg Court in the last 3 years. During this period, we filed about 20 requests, of which 75% were known to Croatian media.

And as stated, we also received about 20 notices without a written and reasoned decision of the Court of Inadmissibility. These notices reflected on 20 requests on behalf of the parties I represented that sought protection of their rights protected by the Convention on Human Rights. These rights have been violated within the Croatian court system, and previously all legal remedies in the so-called regular legal path have been exhausted. Extraordinary remedies and proceedings before the Constitutional Court have also been covered.

Beginning with the first, well-known case in the public, we are informed on 22 September, 2011 that an individual judge of the European Court of Human Rights on 15 September, 2011 "resolved" the request filed on 23 June, 2010. So it took them more than a year to do rough triage, and in Article 6. of the Convention, as well as in Article 29, Para. 1. of our Constitution, it says from word to word: "The right to a fair trial has the party to which the impartial tribunal is tried and which does so within a reasonable time." If this is a reasonable time for the initial stage, examining the assumptions for access to court, then everything is immediately clear.

Thus, the individual judge assesses the case as inadmissible and invokes Rule 52.A of the Rules of Court (you will hardly find in the Convention what you might be interested in regarding this part of the work of the Court in Strasbourg). And if you also look at the Rules of Court, even then nothing will be clear, or it will not be completely clear. It is only if you look at the "Presidential Instruction" that, I believe, 90 percent of people do not even know that it may become clearer to you. I emphasize that most applicants do not know that such normative act exists at all.

On each notice, not the decision, was signed by E. Grdinić, Head of Section. All notices are completely unified and contain the following elements: Judge

Individual Elizabeth Steiner; Department Manager Elica Grdinić; Rule 52.A of the Rules of Court. Thus, it can be concluded that in this way the right of access to a court is being tricked upon by this court itself, which in Europe should be the highest court for the protection of human rights proclaimed and guaranteed by the Convention on Human Rights.

In the second part of my presentation, I will draw your attention to Rule 52.A (Rules of Court), which governs the proceedings before an individual judge.

According to that 52.A rule; and in accordance Article 27. of the Convention (which states that there is an individual judge and that there is a council) an individual judge may declare the application inadmissible or strike out from the list of cases the application made under Article 34, when such a decision can be rendered without further consideration. In the Croatian judiciary, this would be interpreted as to whether the request had been properly submitted and whether it fulfilled the procedural requirements to be considered.

Despite the fact that the individual judge does this, in the notice provided instead of the decision, it is stated on behalf of the Court which was supposed to protect human rights, I quote: "The decision is final and the applicant is informed by letter".

The applicant shall be informed of the decision by a letter in which the decision is not served. The practice, although in only a few cases in the past 10-15 years, has been noted that the request was first declared inadmissible and subsequently, on the initiative of the applicant for renewal of the decision, the Council declared that the request, in spite of the preliminary inadmissibility assessment, was however permissible. Today, the wording on finality definitely prevents most applicants from doing anything, because the decision of an individual judge is, by that rule, final. However, there is no such final decision, the applicant is only informed. Already, the predecessors in the discussion have pointed out that all those who have examined the particular file have not found any decision.

We conclude that decisions are no longer being written at all and it is no longer a secret! There are no such decisions, not only in my cases, but they are nowhere to be found. Only notices are written in the form of “individual judge has decided”. And that is Rule 52.A of the Rules of Procedure - proceedings before an individual judge.

I would like to draw your attention to three or four other provisions of the Convention that are relevant to the analysis of this topic. Article 29. speaks of Council decisions on admissibility, unlike Article 27. where we have decisions by an individual judge on admissibility.

Article 34. defines what individual requirements are, and there is no need to elaborate them here. These are all the demands made by the individual and the human rights associations and other similar collectives that protect fundamental human rights.

Article 35. is the most important and discusses the conditions of admissibility of the request. It all comes down to one of two basic conditions. One is relevant to my subject: a court can only consider a case when all available domestic remedies have been exhausted. So the legal path must be exhausted in domestic law.

In accordance with generally accepted rules in international law, however, it can be a phrase that means nothing. Para. 2. regulates situations, within a period of 6 months from the date of the final decision, where the court will not consider an individual request, if it is anonymous; if it has been filed by the same person in the same case already decided by the court; if at first sight the request seems incompatible with the content of the Convention. And Para. 4. states that any claim deemed inadmissible will be rejected by the court and such a decision may be rendered at any stage of the proceedings.

Again I emphasize that all relevant provisions cite “a decision”, and there is no such decision!

There are a number of reasons in Article 35. for a court to declare a claim inadmissible. Some of these reasons are not at all similar, and the announcements I spoke about in the first part of the presentation are the same regardless of the different reasons in the requests. There are the same contents of the notice of declaring the application inadmissible, and there is no way to understand why the request was declared inadmissible. As soon as you cannot consider it, and you cannot do it because there is a solution but no explanation, the key question and conclusion inevitably arise: "did the Court see the contents of the application at all"?

I will only mention Article 40. of the Convention, which addresses the publicity of the debate and access to court documents. It is stated there that the documents deposited with the

Registrar are made available to the public, unless otherwise directed by the President of the court. This is where the phrase “unless otherwise directed” strikes the reader, and the availability to the public is relativized by what we have already heard, which is that no one can access the file of a particular case because they cannot receive a notice about the number. As a party representative in a case of which number I do have I cannot inspect the file, and upon notification, you are informed that after one year all documents will be destroyed.

Let us now discuss the specific case.

An integral part of any claim that goes to Strasbourg is the statement of facts. The case I am addressing has dealt with one important topic that has been widely discussed and talked about in the media in 2008 and 2009, starting on 26 February 2008, when the Constitutional Committee launched a competition for the election of a judge of the Constitutional Court of the Republic of Croatia.

On 9 May 2008, the Croatian Parliament made that election and elected a judge to the Constitutional Court. The party that felt aggrieved sent a normal request for the protection of the constitutionally guaranteed right to the

Administrative Court against the decision of the Parliament of 9 May 2008, noting in particular the violations of the provisions of Article 14. - Equality before the Constitution and law; Article 26. - Equality before the court; Article 29. Para. 1. - The right to a fair trial, which incorporates the trial within a reasonable time.

My client fought for all of this for themselves on 15 October 2008. The Administrative Court upheld her request and issued a judgment overturning the decision of the Parliament in so far as it concerns the election of one of the elected candidates for a Constitutional Court judge.

On 4 February 2009, this candidate filed a constitutional complaint, after which the procedure went incredibly fast. A provisional measure was also adopted, despite comments from six university professors-experts on the subject who commented on the course of the procedure so far and the decision of the Administrative Court since October 2008.

A Constitutional Court decision was delivered shortly on 30 April 2009, which was delivered on 4 May 2009, on June 4 of the same year the decision of the Constitutional Court would be published and everyone knew what it was about.

Unlike what we have talked about so far, the very beginning of the Strasbourg court process was promising. So the case was slightly different from other cases: our request was not declared inadmissible! In the present case, which received number 58222/09, that request was taken into the consideration by receiving the notice of 19 November 2010, and the applicant was informed thereof. The applicant is informed that the court in the preliminary proceedings decided on 10 November 2010 that the case be considered.

Afterwards, we went to the Government for a statement. The Government had the opportunity to make a statement until 11 March 2011, after which the case could be settled peacefully.

All these key events contained in the statement about the facts in the claim are supported by absolute evidence that this was exactly as stated.

On 29 July 2011 the applicant received a decision rejecting her claim. The decision - the judgment was dated 26 July 2011 - and at the same time a cover letter was sent from the Court informing the applicant, this time, with the other head of the department - Mr Nilsen - that the decision was negative; but also that within 3 months of receipt of this judgment, she is entitled to appeal to the Grand Chamber of the same court. Then, we appeal, not within the time when I received the judgment as the applicant's representative, but within the period of 3 months from the delivery of their judgment on 24 October 2011.

So, two days before the expiry of the objective deadline, an appeal was filed and sent to the court, of which there are several affidavits and receipts (perhaps one could speak about the expiry of the subjective deadline, but there is no debate on the objective deadline). Thereafter, on 2 November 2011, from the same Head of Division, Mr Nilsen, the applicant was informed that the judgment in the case had become final on 26 October 2011, so, three months after the judgment of 26 July 2011 had expired. These are the objective 3 months that have nothing to do with the delivery, handing in and the beginning of the deadlines, which in the entire cultural and legal world always counts with the date of delivery, since one cannot know when a party has received a decision, nor does the party know anything about a decision or solution until the day of delivery. In this case, the Court notifies with notices of 2 and 7 November 2011 that the judgment of 26 July 2011 has become final.

In the meantime, we are trying to find a solution to why this practice is in the Court, which is contrary to the calculation of time limits and in our judiciary, but in accordance with the instruction they gave in the first letter. Therefore, we write on 25 October 2012 one new submission and we ask for an explanation from the

European Court, which we do not receive, so we are forced to send a letter to the Council of Europe by the end of October of the same year 27 November 2012. We sent the letter to the Committee of Ministers, because it is the body responsible for controlling the Court's work in these situations. This request was repeated on 15 May 2013, however, so far we have not received a response from the Court or the Committee of Ministers of the Council of Europe.

With this, I wanted to point out that in certain sensitive cases, and this case was sensitive at least for us in Croatia, there are still opportunities to prevent a person from exercising their rights, regardless of the fact that the person consistently respected deadlines and all other prerequisites for protection of their rights. In doing so, the European Court committed greater legal violence than the domestic judiciary against whose decision the request was made to the International Court of Human Rights.

ICO ŠKARPA

I would also like to point out the good side of the European Court of Human Rights in Strasbourg that all of the above is not limited solely to criticism of that Court's practice. This Court has judgments, once the proceedings have reached the stage of judgments, or at least for most of the judgments can be freely said that they represent excellence in the interpretation of rights.

Unfortunately, there is also this reversed side that we are talking about now. I would just like to briefly state that the European Court of Justice was established in 1959 and until the adoption of Protocol No. 11, sometime in 1998, at a time when the countries of Eastern and Southeastern Europe were just entering the Convention, and therefore under the jurisdiction of that Court; that year, in 1998, 88 cases were brought before the Court. So the backlog from 1959 to 1999 was only 88 cases.

But, colloquially put, with the entry of the Eastern Bloc into the Council of Europe, the jurisdiction expands to an additional 800 million people. However, most of the legal norms and techniques of the Court itself remain practically the same. And from 1998 to 2010, meaning only in 12 years, the number of backlogs increased from 88 to 57,000 cases.

That is why, by Protocol No. 13, two legal institutes were introduced in the Council of Europe, namely the individual judge, whose decision is the final and non-judicial rapporteur participating and assisting the individual judge in their work. This is the core of issues that we are discussing here today.

It is anecdotal that Protocol No. 13 was proposed back in 2004 and could not be implemented until 2010. The application was opposed by a country that could not boast of democracy, namely the Russian Federation, which complained and warned that the introduction of the institution of individual and rapporteur judges would lead to abuse of rights and denial of equal access to the Court.

Unfortunately, this is exactly what has happened since the practice that we are criticizing today dates back from that moment.

The practice of “filtering” a case, as proposed in the Convention, has its basis in the ability of an individual judge to make such a decision as they make, and that decision is final; the rapporteur also participates in this decision.

As the forerunners have said, and I have such experiences myself, the fact is that today we can say that these decisions of the individual judge and the reporter do not exist at all, nor do these individual judges see the file at all.

And here's why I say it with full responsibility. There are Rules of Procedure of the Court which, in one of its provisions, states: "A judge who has been appointed as an individual judge shall continue to do all the work that he has had on the Committee," namely, judges judge in committees. This means that this appointment as an individual judge does not require any extra working time at all.

If an individual judge's job requires no working time, that means that their work is done by someone else. Obviously, those who do the job of individual judge are these famous reporters. But here we come to another problem. The Convention states that a judge cannot examine or evaluate cases coming from the country which has elected him to the Court. But this applies only to judges; the Convention says nothing about it for the rapporteurs.

And then we have the absurd situation that the Convention does not give credence to a judge and exclude him from his work, if it is a case from a country that has elected him to the Court. In the case of law of the Courte, this filtering we are discussing about are doing precisely those rapporteurs who come from countries from which the case is being examined and evaluated.

That is to say, the Convention forbids such a questioning from a judge, and the Court's practice is precisely what enables the rapporteurs to do so. However, they are not elected in such a way as judges, and in the process of election and appointment, rapporteurs are always given less confidence than judges. In such a situation, no one should be surprised at all that this, which the forerunners were talking about, is happening.

Knowing all this in advance, with my client Mr. Bačoka, we decided to try to inspect the Court's file, just as in the case of colleague Prodanović, all to see this famous decision.

We asked for the right of insight. We were granted this, and when we arrived at the Court in Strasbourg, two clerks appeared. These clerks kindly brought us the file and in the file we find only what was filed on our part and the notice that the case was declared inadmissible. There is no other document on file; just what the applicant has submitted and this inappropriate letter, which is not an actual decision and is being delivered to everyone with the exact the same content.

Of course, we sought explanations and demanded insight and the rest of the files. In the end, a person from the court administration appeared, who answered and signed, honestly speaking, it was handwritten but sealed by the Court, that the rest of the file and the decision were secret or confidential.

This really shocked us - I don't know if there is any court in the world whose decision is secret. Beware, not for the public, but for the party in the process! You know, as there is no dry water, so the court decision for the person to whom it applies cannot be confidential. Here, in Strasbourg, they were able to find such a construction. And it is clear that this construction was made only to obscure the fact that there are no court decisions at all. For neither did the judge ever make such a decision, nor did they ever see the file, nor could they sign that decision.

Think about it, is there a reason why you, as a party, are not served with that decision? Why send letters of identical content to parties, if decisions exist?

I want to point to another important fact. Unlike the Croatian system and the European system as a whole, which foresees a claim inadmissible only if some formal requirements are not met, for example, a deadline. The Convention provides for, and this is taken from French law, an institution that says - if the request is manifestly ill-founded.

This is something that gives an extremely great amount of responsibility to someone who decides. Here, the decision-maker not only looks at whether a formal presumption has been fulfilled, whether legal remedies have been exhausted, or whether the time-limit has been observed, but must engage in the interpretation of legal norms and established facts. It is already a very demanding job and much more subjective than when it comes to ruling on procedural and legal assumptions.

Considering that the largest number of dismissals at the Court of Strasbourg is based precisely on this article on the apparent merits of the claim, which includes assessment and substantive merits, not just procedural law, then it is clear that in principle we are facing serious situation. This means that the European Court of Human Rights in Strasbourg has become completely arbitrary, that it has become completely irresponsible because no one controls it, and that one simply can no longer trust that Court. As a lawyer I will hardly advise my client to apply to Strasbourg. Only luck, the lottery, is the proper name for what is happening now with request filtering. By 2010, all requests I had sent to Strasbourg had been accepted. After 2010, no requests were allowed. It is the same Convention and as far as substantive law is concerned; there are no major changes. Today, the Court and the Council of Europe officials themselves call it "fig leaf and legal fiction".

What we are discussing today is obviously not unknown to the people in the Council of Europe, nor can it be unknown to them. They are unsuccessfully trying to revive the work of this Court by some kind of administrative adjustment, however, as of 31 December 2013; the backlog has reached 99,000 cases.

Given that the number of judges is limited by the number of Council of Europe member states, which are 47, meaning that 47 judges have to complete the backlog of almost 100,000 cases! This is simply not possible. It is therefore necessary to enlarge the Court if we want the Convention to be a truly effective document, not just a vain declaration of "false hope".

→APPENDIX 6. Facsimile of a written record signed and authenticated by the seal of the Court of Human Rights that the remainder of the inaccessible file (and inadmissibility decisions) are allegedly confidential

ECHR – STRASBORG, Apr 3rd 2014.

NOTICE

/ZAPISNIK/

THIS IS TO CONFIRM THAT IN COURT FILE No 68449/13 IS NONE OF COURT DOCUMENTS EXCEPT INFORMATION DATED 12. December 2013. REFERRING TO ART. 34 and 35 of THE CONVENTION.

ALSO APPLICANT IS FOR VERY FIRST TIME INFORMED THAT THE COURT DECISION-JUDGMENT IS CONFIDENTIAL AND AS SUCH NOT ON DISPOSAL TO Mr. BAČOKA

FOR ECHR

François Elens-Passos

FOR APPLICANT:

A. BAČOKA

VESNA BALENOVIĆ

As a "whistleblower" at INA, I have been exposed to various forms of pressure for 13 years, including abuse of rights, that is, the judiciary as a whole. I believe that “whistleblowers” should have some kind of protection in the fight against corruption. The “whistleblower” did not steal anything, but pointed to corruption, theft and crime. Personally, I pointed out the theft of about 100 million EUR at INA, where I worked until that moment, to the public.

When a “whistleblower” indicates corruption in the Republic of Croatia - his life after that no longer happens at work but in court, in my case for 13 years.

As is nicely said here at this Roundtable: "... I have passed all judicial instances, from the Municipal, County, Supreme and Constitutional Courts, as well as at the European Court of Human Rights in Strasbourg." And finally, the people whose proven corruption I pointed to, mockingly asked me where, after 13 years, was my acquittal (?) from, their counterclaims - what a paradox.

I am not a lawyer, but listening to the lawyers Cedo Prodanović, Veljko Miljević and Ico Škarpa here, I realized exactly today what the aforementioned Elica Grdinić - the court advisor; and Štefica Stažnik – the lawyer of the Republic of Croatia at the Strasbourg Court, have done to me. I am convinced here today that the Strasbourg Court has simply become a kind of extended arm of the compromised Croatian judiciary and the judicial system as a whole.

After 10 years of trial, I still managed to get my claim (lawsuit) heard at the European Court of Human Rights in Strasbourg. And then Štefica Stažnik appeared as a lawyer for the Republic of Croatia. In accordance with its rules, the Strasbourg court, after evaluating my lawsuit, proposed a conciliation procedure between INA, represented by the Government of the Republic of Croatia, and me, Vesna Balenović, a "whistleblower" from INA. The conciliation procedure was proposed, of course, and as part of that process I received a letter on 6 July 2009 apologizing to the Government for violating my human rights. I was offered a symbolic amount of compensation (for nine years of unemployment and just as much trial) of € 20,000.
Immediately after receiving this letter, journalists from Večernji List,

Jutarnji List and Slobodna Dalmacija called me and said that they had learned that I had received an apology letter from the Government of the Republic of Croatia. I just told the press that I should not comment; I affirmed that I was thinking of going back to work at INA and that my unpaid salaries for the past nine years amounted to much more than the symbolic € 20,000 awarded by the Strasbourg Court.

Štefica Stažnik uses this newspaper information and reports to the Strasbourg Court that I made a public appearance during the conciliation procedure. At that time, the Strasbourg Court informed me that I had breached the secrecy rule during the conciliation procedure and that my claim was therefore dismissed without consideration. There, these are the legal pranks that

Štefica Stažnik - a Represent of the Government of the Republic of Croatia at the European Court of Human Rights in Strasbourg - uses.

But what struck me even more was the moment when, in 2011, after the Attorney General Mladen Bajić was stalling for full 11 years, stated that the claim of Vesna Balenovic was well founded. Instead of starting the investigation on my criminal complaint in 2001, Bajić unethically states that my criminal complaint was well founded ten years later.

I conclude that all these various Štefica Stažniks, Elica Grdinićes and others from Croatia on their temporary work in Strasbourg are just the extended arms of the Croatian criminal justice octopus. The Former Attorney General Mladen Bajić, who has hesitated to pursue unpleasant actions for years, is no better.

I do not think that this Croatian criminal octopus will be willing to depart on its own, and in order for court proceedings to be dealt with in the Republic of Croatia and not in Strasbourg, these troubled people should be expelled from the judiciary.

DAMIR KLASIĆEK

I am a retired professor at the Faculty of Law in Osijek and I am still teaching at the postgraduate level. I have not dealt with the issues of the European Court of Human Rights for a long time; however, lately I have been forced to deal with it after all. I can say I have learned a lot. First, that from its inception until 31 December 2012, the European Court of Justice rejected 96.42 percent of the cases in an illiterate manner. However, even in the course of the initially accepted proceedings, the Court rejected the cases, so that in the end only 3.52 percent of the cases received were considered and decided upon, either positive or negative.

These data clearly indicate that the Strasbourg Court of Justice no longer addresses claims made for various human rights abuses, but dismisses most cases without reviewing them because of the overflow with the received claims. The return of these, let's call them colloquially excessive, requests is made in a completely legally illiterate manner, inappropriate even for the local courts, let alone to the international court.

I attended a scene where a lawyer tried to warn the judge that he would refer the case to the European Court of Human Rights, to which the judge merely shook his hand because he obviously knew that the European Court would return the case without evaluation. In my view, this indicates that the European Court of Human Rights by such actions encourages corruption in the problematic judicial systems of some countries, such as Croatia.

This is why I was quite happy to see the invitation to this Roundtable. I too have collected about 20 completely identical letters declaring the various applications inadmissible, with reference to Articles 34. and 35. of the Convention. And these articles list 6 or 7 reasons, so that the parties cannot know why they were rejected and do not know which they should complain about, even if they were allowed to do so. This is unacceptable for the International Court of Human Rights.

I propose that we form an association or some other kind of body here. This association, or body, should advocate that human rights violations by the European Court of Justice in Strasbourg be corrected a few years back.

NEVENKA ŠERNHORST

I am a retired Judge of the Constitutional Court. Although the prepared text for this gathering states that more than 90 percent of the requests received are rejected at the European Court of Human Rights, the triage proceeding does not need to be bad in itself. Some rationalization of the cases is necessary. Unfortunately, a large number of cases which end up in all courts do not meet the various criteria, people are confused by jurisdiction and there are many cases that really need to be dismissed. Certainly, such filtering is permissible only if there are sound criteria for assessing permissibility. Rationalization is needed, but only with solid and objective benchmarks.

The standards of the European Court of Human Rights say that the decision should be reasoned in such a way that citizens must not be victims of a disorderly system and, most importantly, the right cannot be declaratory, it must be achievable as well.

All we have heard so far indicates that the European Court itself does not adhere to what it instructs us when evaluating the decisions of Croatian courts.

Lawyer colleagues who spoke well before me, said that they were looking forward to 4 November 1997, when the Republic of Croatia also committed itself to the implementation of the Convention on Human Rights. Our legislature envisioned that the Constitutional Court would uphold the Constitution. And that's all right. But listening to all of this today, the question from Roman law still cams up: "And who will keep an eye for the guards?" And so we thought, here is the European Court of Human Rights - this Court will guard our guardian of the Constitution - the Constitutional Court. And so, since 1997 up to today, we have come to the question: who will guard our guardian of the Constitution; or who will guard the European Court of Human Rights?

ALEMKO GLUHAK

To introduce myself, I am a collateral victim of the Croatian judiciary and administrative procedures, and partly a great witness to the proceedings in Strasbourg. My family submitted 17 requests to Strasbourg and, of course, all were duly rejected.

I would like to warn you in two ways, under the quotation marks for "solving" cases in Strasbourg. After sending one request, nothing happened for a long time, although usually, a notification that the item has been taken in the consideration, is received relatively quickly. We finally sent a letter asking what the matter was. And we got a reply in the same memo that that case, which was not given a number along with another request submitted two years ago, are considered inadmissible. This, then, is one way the Strasbourg Court of Human Rights operates.

And now here's another way. As you know, the Croatian judiciary simply does not respect its own laws. And then because of that, one sues judiciary at The Court of Strasbourg. These are

simple things, here is this and that body of the Croatian judiciary which does not respect this and that law - all the evidence is attached. Namely, we filed the lawsuit because the Croatian court ordered one family to live for one hundred months in an apartment owned by us without any legal basis, without having to pay any compensation. And, a miracle happens, we get a ruling from the Court of Human Rights that the proceedings have been unreasonably delayed. However, we did not initiate proceedings because of reasonable time, but rather the Croatian team in Strasbourg turned our lawsuit into a lawsuit because of reasonable time.

In all the documents, the Convention for the Protection of Human Rights, in the Constitution of the Republic of Croatia, in the Law on Courts, and even the latest one from 2013, it is repeated the same: "the court must be impartial".

MATO SILIĆ

If there were no Croatian Court heresy, there would be not even five percent of cases from Croatia at the European Court of Human Rights in Strasbourg. I think this is about the "Holy Trinity": a compromised domestic judiciary, a Constitutional Court full of failed politicians, and the Strasbourg Court.

Notice of a court decision, without a decision, has no legal effect. But in these cases, the Strasbourg announcements have another very important effect, preventing citizens from exercising their right to judicial protection.

RENATO MAJNARIĆ

My case is specific in that, after exhausting all domestic remedies, including the lump sum judgment of the Constitutional Court, I hired a lawyer from abroad, specifically from France, for the proceedings before the Strasbourg Court. And then I got a notice of inadmissibility like everyone else who has lawyers from Croatia.

Dissatisfied, I turned to my lawyer from France and he asked the European Court of Justice in Strasbourg what was happening with (my) case which he had delivered to them. And he got the answer that my case was put to consideration. In contradiction, for the same case I was informed of its inadmissibility, like everyone else, the French lawyer was told that it was under consideration.

This is a case seeking the return of confiscated property used by the state, that is, Croatian Forests. It is apparent that Ms. Grdinić was given the task from her Croatian commissioners to remove the case without trial. I believe that such thing is unacceptable and I support the suggestion that we organize ourselves in some way and demand that the cases be resolved backwards, that is, the revision of these unjustified notices of alleged inadmissibility decisions. Well, I guess we deserve that much for someone to explain to us what we did wrong so we can correct this mistake and to have the right to access to a court, including the Court of Human Rights.

IVAN PILAŠ

I am a person who was robbed at the Crikvenica Municipal Court, and when I asked for my property, which I have been unable to obtain for 29 years, I was threatened with death at the Municipal Court. They also wanted to jail me for six months so I would stop looking for my property. I have also received psychiatric evaluation orders twice.

And after all, my message is to work together in order to try and protect and defend ourselves against legal violence and judicial abuse and crime, just as much in the domestic judiciary, as we see in international courts. As individuals we will certainly achieve nothing.

ANTON BAČOKA

I would have been happy if we did not have to criticize the Court of Human Rights, but when I recently received confirmation from that Court that my request was declared secret, that is, a file or specifically a court decision that was non-existent was a secret, I do not know what more should be said. Much has been said here, but not that the Court of Human Rights allows cases of minor financial or any other meaning, that is, it accepts cases that are, so to speak, painless for the Republic of Croatia.

I'm an economist, not a lawyer, but I did my best to study the rules of the Human Rights Tribunal. Believe me; I argue that this is about deceiving the applicants. I even wrote about it to the President and Registrar of the Court in Strasbourg. I also wrote to the Secretary of the Council of Europe in charge of the Court of Human Rights, but a Council spokesman replied that they should not comment on individual cases.

This gathering indicates that these are not individual cases. The sum of all of us is no longer an individual case, but rather a systematic, non-transparent practice inappropriate for a court that should be a human rights court.

I urge the representatives of the Croatian Helsinki Committee and Transparency International here to support all of us in order to resist the violation of our human rights, which is absurd - the violation of human rights in the human rights court.

At the same time, I have to say that Protocol No. 14, introduced in June 2010, allows both the individual judge and the rapporteur, when evaluating admissibility, to use new measures for people who are victims of significant harm in domicile judging. Again, the legal illiteracy of that court has no clue about where begins and where ends something that is being referred to in Protocol No. 14 as meaningful harm.

The reasoning behind the introduction of Protocol No. 14 states that a group of wise heads, if I translate it well, submitted a record of their recommendations to the Council of Europe, and that Protocol No. 14 was adopted, based on those recommendations, allowing individual and rapporteur judges to make these arbitrary decisions we are talking about today. I think we can also bring together a group of wise people and also suggest to the Council of Europe that the Court of

Human Rights should start judging again in order to protect human rights, not to lead by a violation of those rights.

KRUNOSLAV ISAKOVIĆ

The problem of unscrupulous judiciary is that even illegal court decisions can be given legitimacy when needed by powerful, especially political people. And the last line of defense against such illegal and yet legitimate court decisions - sometimes with virtually fatal consequences, was supposed to be the Human Rights Tribunal.

At the Strasbourg Court, individuals are fighting against the much more powerful bodies of the state whose decisions they seek to challenge, and must also convince the judges who, in this dispute, should be independent of the powerful bodies of the states. However, these judges have very restrictive options; they are limited to accepting only three percent of the lawsuits filed. I have personally been in a process where even less was adopted, just one percent. I must not speak about this procedure because it is a secret procedure. But I can only say that even this secret process is being abused.

Otherwise, I think the European Court of Human Rights is suffering from the same diseases as the Croatian judiciary. Cases are resolved within deadlines that are not reasonable. And how can you force judicial officials to resolve matters within a reasonable time when even those who should force Croatian judicial officials to respect the principles of reasonable time are not adhering to it. Even at the European Court of Human Rights, matters are resolved on an average of three years where the standard is six months.

EMILIJA KALOPER CESAR

My property was expropriated, a Solaris apartment complex near Šibenik was built on land owned by my family. The settlement was illegally built on this land and Vlado Čović successfully leases it. I also have another part of the property I had inherited from my grandfather where Jadrija settlement is built. Even today, the people in that settlement have cottages, but not ownership of the land on which the cottages were built.

Not to widen the story now, I will say that both administrative officers and judges would always, after being put against the wall, tell me "your case can only be resolved by Sanader, Polančec" and who knows what other politicians. I have concluded that our cases are not resolved by courts and judges, but by politicians and politics. Behind anyone who had built something on my grandfather’s land, stood a powerful politician - administrative and judicial officials assured me.

You know, I once asked a colleague, Tomislav Dragičević, at INA, about how it is possible for ten strategically most important positions to be held by foreigners who do not have contracts of employment. My colleague Dragičević told me that only Zoki could solve this, thinking of Prime Minister Zoran

Milanović. I was told the same thing in the Labor Inspectorate, the only competent institution who could resolve my case was the Prime Minister. Well, I just wanted to say that nothing changes, and that still, everything is decided by the powerful one instead of formally competent. We cannot change those abroad, but we must change the ones in Croatia.

MARIJAN KATALINIĆ

After receiving the information about which was discussed a lot, I made two submissions to the President of the Human Rights Tribunal. Of course, I didn't get an answer from him. However, Article 52.A of the Rules of Court states that every submission must be submitted by the President of the Court to the competent department. If the president of the Court has submitted a request to the department, which is an imperative according to the Rules of Procedure, how is it possible for the individual judge to decide?

These notices, which are provided to us instead of decisions, are sent by regular mail. I wonder how many of these notices the applicants did not even receive because they could have gotten lost in the mail.

Some of the cases, which were removed without a court decision, also involved the rights of the child, and therefore I claim that this elimination also violates the rights of children guaranteed by the Convention on the Rights of the Child.

MIRJANA JURIČIĆ

One of the cases is also mine. I feel the need to thank attorney Miljević publicly. Perhaps our expectations of the Strasbourg Court are exaggerated, it is not a court that can afford us anything, it is a Human Rights Court. It is about very specific disputes, and if we get a positive decision it is more about moral satisfaction and much less about awarding some compensation. Only in rare cases can the right of retrial before domestic courts be exercised.

Even though I myself am on the side that lost something or did not get what she expected, I am very disappointed because I felt that they abroad were better than us.

Again, I think we also got a little better thanks to the Strasbourg Court. I dare say we may have gotten better than them. In my work as a judge, I have been greatly helped by the decisions of the Strasbourg Court. I learned a lot from their decisions and I learn every day. I believe it is the same for so are many of my colleagues.

Sometimes I feel ashamed when talking about the situation in the judiciary. Sometimes I'm not comfortable telling that I'm a judge in some social circles.

But I have to say that I feel proud in my workplace because I think I do my job honestly. And despite everything that I have gone through in this Croatian judiciary, I have faith in this judiciary, I have faith in the justice that we should achieve in Strasbourg. Such a Court as it is now certainly does not give much hope, and that is why we need to change the practice of the

Court in Strasbourg. And how will change the practice of that Court? Again, by political will. We will not do it here as citizens, not even we as judges, but as citizens' associations, journalists and the public, we can put pressure on those who founded this Human Rights Court, on those who control the work of this Court, and on those who could change the practice of that Court.

VELJKO MILJEVIĆ

Professor Siniša Triva taught us the difference between formal legal procedural and substantive assumptions of access to court. Here, my colleague, Škarpa, pointed to the great danger of introducing a provision such as Article 35., which is in fact the central issue of this Roundtable. Para. 3. Point A of that Article 35. provides that an individual judge may reject the application if it is manifestly illfounded.

A client of colleague Mr Škarpa, Mr Bačoka, warned of another danger referred to in Article 35. Para. 3. mentioned above, but from Point B. It is about the use of something called law of unspecified legal value, or of unspecified legal standard, here, it means that the case of the applicant who had not suffered significant damage may be dismissed, without prescribing what significant damage is.

I think that based on what has been said here today, we can freely conclude that, while Article 35. of the Convention contains such vague provisions as contained in Para. 3 Points A and B which make it possible to dismiss a case or to declare a case inadmissible based on substantive legal rather than procedural formal assumptions - this will continue to be a lasting source of possible abuse in the right of access to trial at the Human Rights Tribunal in Strasbourg.

ČEDO PRODANOVIĆ

I find it contradictory that the officials sent to Strasbourg by the Croatian state arbitrarily evaluate the claims of the citizens of the Republic of Croatia, which were hurt by the Croatian state. Through these regulations, and by simple logic, the clerks will represent the interests of whoever gave them good employment in Strasbourg, instead of the citizens who should be *proforma* protected.

If one is already planning to take some civil action, I think that resolving this contradiction is one task in which one might even hope for some success. Perhaps in a way to limit the role of these clerks only to serving the judges, that the decision is not up to them but solely to the judges. Unfortunately, from today's discussion, we see that the opposite is true.

ICO ŠKARPA

It is definitely clear that either the Human Rights Tribunal in Strasbourg will respect the Convention for which it exists or should no longer be. If they will respect the Convention, then the

reasons for not respecting the Convention should not exist. So Europe must say whether or not it can or will fund it.

Any citizen who has been informed that their request has been declared inadmissible, without a written and reasoned decision, would be prepared to pay perhaps five thousand euros to reach the justice they are seeking. We now have formally free requests, which obviously are not even being evaluated by anyone. We have, therefore, the illusion or fiction of the trial. And it's time to say, "The Emperor is naked!" What exists now is truly below the level of intelligence of all of us.

DARKO PETRIČIĆ

This is a mirage that gives the illusion that some citizens have the right of access to an impartial Human Rights Tribunal. I propose that we publish a kind of booklet or brochure from this Roundtable and inform the general public about it, thus encouraging activities to change this caricature of the Human Rights Court in Strasbourg.

On behalf of my fellow colleague Grčar and my own, I would like to thank everyone who participated in the discussion at this Round Table.

III | JOURNALISM INVESTIGATION

Ivica Grčar

From the discussion at the Roundtable entitled “A Critique of the Case Law of the European Court of Human Rights”, the tendency to eliminate claims (human rights violations) without trial was pulled into light. Interestingly, the objectives of the Human Rights Court and the unsettled judiciary in countries where human rights violations are most closely aligned in this. The Court of Human Rights seeks to get rid of too many cases received and pending cases without trial, and domicile nonjudicial justice systems also seek to exclude and cover as many claims (lawsuits) as possible.

Following a journalistic inquiry, the opinion that political-intelligence groups from countries where the most human rights are violated have separated a part of "their people" for working in the Human Rights Court, with the task of excluding inconvenient cases from court proceedings and hiding everything has its basis. Unfortunately, the judges of the Human Rights Court, consciously or not, participate in this, only to get rid of too many cases that they cannot resolve.

On 14 November 2013, a press request was e-mailed asking the President and Spokesperson of the European Court of Human Rights in Strasbourg to allow a newspaper article about the Department of Croatia in that Court, as well as about a court reporter Elica Grdinić, who signed most of the notices sent to applicants from Croatia which are sent instead of written and reasoned decisions declaring the application inadmissible.

At the European Court of Human Rights, however, they did not consider it necessary to respond to these press inquiries from Croatia.

After the journalist's request to be allowed to present to the public the
Department of Croatia was ignored in the Human Rights Court, and given that the Roundtable provided documented facts on the restriction of access to that Court, an independent journalistic inquiry was conducted.

We were curious about the overwhelmingly "recruited" staff from Croatia who, in the Strasbourg Court, dismissed thousands of their fellow citizens' claims (violations) without justification, as well as who influences the selection and appointment of such persons to work in the Court in Strasbourg.

The most prominent in eliminating claims from Croatia turned out to be Elica Grdinić, signatory to most of legally questionable rejections of Croatian citizens' lawsuits, received in the Court of Human Rights; and to a lesser extent Štefica Stažnik, Representative of the Republic of Croatia in the Strasbourg Court.

From: Ivica Grcar Piks [mailto:grcar@yahoo.com]
Sent: 14 novembre 2013 12:32
To: ECHRpress
Subject: journalist question

Dear Mr. Spielmann,

We would like to draw your attention to the fact that we have in our possession documents stating that ECHR refused the application from Croatia without any written form and reasons for such a decision that is contrary to Article 45 of the Convention.

Therefore we would ask you kindly to answer our following questions.
1. Is the procedure in treating applications coming from, for example, Germany, France or U.K. and coming from transitional countries (such as Croatia) equal?
2. How big is the influence of ECHR Croatia Department (Ms. Elica Gudinič, Head of the Dept.) on practice to refuse applications without written form and reasons for the decision?
3. We kindly ask you to give us some basic information about ECHR Croatia Department as we would like to present its work to Croatian public.

With the best
regards,

Ivica Grčar,
freelancer

†APPENDIX 7. Facsimile of the journalist's inquiry which was e-mailed on 14 November, 2013; the one that was not answered to by the Human Rights Court.

For both of these officials, it is characteristic that they were not originally career officials in the judiciary, but came to the judiciary from police intelligence, and diplomatic (political-intelligence) activities.

Elica Grdinić, then as Elica Mihletić, from the Ministry of Internal Affairs (Constitutional Order Protection Service - a synonym for counter-intelligence police) moved to work in the Zagreb Municipal Court as a court advisor. We tried to check, unfortunately unsuccessfully, if Elica Grdinić ex. Mihletić from the Department for the Protection of the Constitutional Order of the Ministry of Interior Affairs sent to work at the Zagreb Municipal Court on assignment, or on her own initiative. We have no evidence that she was sent on assignment, nor that she had moved to work on her own initiative, since we were prevented from talking to Elica Grdinić ex. Mihletić.

At a session held on 12 September 1996, the State Judicial Council, chaired by Ante Potrebica, appointed Elica Mihletić (later Grdinić) a judge at the Zagreb Municipal Court. Since that year, the president of the Zagreb Municipal Court has been Đuro Sessa, who has since become very influential in the procedures for the election and appointment of judges in Croatia.

Đuro Sessa as President of the Municipal Court assigns Elica Mihletić (later Grdinić) a Judge in the Criminal Division of the Zagreb Municipal Court, where she is working together with a Judge whose case lawyer Cedo Prodanović spoke about at the Roundtable. Let us recall that Elica Grdinić ex. Mihletić signed a questionable notice without a reasoned decision on the inadmissibility of the lawsuit against her colleague from the Criminal Division of the Zagreb Municipal Court, with whom she had been working together since 1996, although it would have been fair to leave that to her other colleagues in (excepted from this process).

According to sources from the judiciary who wish to remain anonymous, Elica Grdinić ex. Mihletić is one of the candidates for the Cabinet of Representatives before the European Court of Human Rights in Strasbourg, but on 29 May 1999, the Government under the Prime Minister Mateša instead of Elica Grdinić ex. Mihletić appoints Lidia Lukina Karajković as a representative, who has been doing the job until 2004 when the Government under the Prime Minister Sanader appoints Štefica Stažnik to that post.

After that failed candidacy, Elica Grdinić ex. Mihletić has been working briefly (only about a year) as a judicial advisor in the Constitutional Court of Croatia. Finally, she goes to work at the Human Rights Tribunal in Strasbourg, from where she has so far callously sent notices instead of reasoned decisions on the alleged inadmissibility of claims (lawsuits) to thousands of her fellow citizens.

From 1996 to 2000,Štefica Stažnik has worked at the Embassy of the Republic of Croatia in Canberra, Australia (where she met Đuro Sessa before his return to Croatia from the Croatian Consulate in Perth at the time). Let us recall that, later on according to many, Đuro Sessa becomes colloquially called "the HDZ Judicial Commissioner".

From 2000 to 2003, Štefica Stažnik has worked at the Ministry of Foreign Affairs and in 2004 at the Permanent Mission of the Republic of Croatia to the

United Nations in New York. Since 2004, following the appointment of Ivo Sanader as Prime Minister, she has been appointed instead of Lidija Lukina Karajković as a representative of the Republic of Croatia to European Court of Human Rights (2008 Stažnik was confirmed in re-election process).

However, in order to understand who is who in the Croatian court, the socalled "staffing" in the Croatian judiciary since 1991 should be analyzed. The activities of the State Judicial Council at the time, under the chairmanship of Ante Potrebica, were significantly aimed at clearing the Croatian judiciary, especially the court, of judges from the past system, but also bringing loyalists to the current authorities instead of new independent and impartial people.

At the order of Supreme Court President at the time Milan Vuković and Vladimir Seks of the HDZ (political party in power), the Potrebica's SJC consistently conducted a purge in the judiciary (about 400 judges had to leave the judiciary in the first half of 1994, given that the negative echoes of such a large outflow were neutralized by securing the employment of ex-judges in a fast-paced notary public service).

The crisis in the judiciary peaked when Ivica Crnić, a former Minister of Justice, resigned in 1995 because of appointment as judges to the Supreme Court, on the notions of Seks, Vuković, Potrebica and like-minded; and not according to the results of a lengthy plea from all judges (at the time).

Even after the resignation of Justice Minister Ivica Crnić, the new Justice Minister, Miroslav Separović, continues and completes the "purge" of judges in 1995, unlike the previous year without disposing of the “excess judges” with sinecures. In the same year, after the “purge” was completed, Miroslav Separović reports that "Croatia lacks 555 judges".

And the Law on Areas and Seats of Courts (OG 3/94) stipulates that the Republic of Croatia has 21 county, 90 municipal, 8 commercial and 2 military courts, and this reorganized system of courts network in the Republic of Croatia subsequently served as cover for "purge" and the appointment judges loyal to the new government instead of the ones who are predominantly impartial.

Judicial staff which was verifiably loyal to the authorities at the time was recruited mainly from various ministries, notably the Ministry of the Internal Affairs, from the Croatian Office of the EU Monitoring Mission and the later established Ministry of European Integration, which was finally annexed to the Ministry of Foreign Affairs. In Croatia, the opinion is that the justice system is "cross-linked" to people close to many intelligence services.

Within this judiciary, loyal to the authorities, there are influential interest groups that sometimes act “for their own gain” and impose “their people” on good judicial settings (good pay and little work). It is evident that relations in the Croatian judiciary do not change, or more precisely do not change for the better, especially in the manipulations in the election of members of the State Judicial Council which should elect and appoint judges. "HDZ Commissioner", how many in the judiciary perceive Đuro Sessa who was the judge of the Supreme Court in the meantime, he also imposed himself as the president of the Association of Croatian Judges.

With all manipulations in the Croatian judiciary, Transparency International Croatia made a public announcement requesting the Election Committee of the State Judicial Council to annul the conducted elections “because of gender and regional discrimination”.

And how it is being conducted towards the "non-networked" judges who, while trying to preserve their independence, dare to pass judgments against the Republic of Croatia and resent influencers, the best is evident from the article "Psycho-torture of the SJC" published on the **Autograf.hr** portal (enclosed in the attachment).

The undersigned journalist does not trust the Croatian judiciary; he believes that the judiciary should not be trusted and that it should be published. Unfortunately, the European Court of Human Rights can no longer be trusted either, since in this Court of Justice, the decisions of are removed without decisions and reasoning by the representatives of the non-constituted Croatian judiciary, the same ones against whose judgments naive citizens are suing the Court of Human Rights.

→APPENDIX 8. Journalistic report “Psycho-torture of SJC”, published on the portal Autograf.hr
http://www.autograf.hr/psihotortura-dsv-a/

PSYCHO-TORTURE OF SJC

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8 July 2014

At the 102th sitting of the State Judicial Council (SJC) on 14 April 2014 was decided to implement the so-called "assessment of the physical and mental characteristics for performing a judge's duty" to the judge who had the courage to deal with Helena Puljiz's case cover-up for five years over the attempt by Croatian espionage agencies to recruit her as an informant who would act as a journalist.

Through this process of "assessment of physical and mental characteristics", the SJC is putting indirect pressure on judges who in the second instance have yet to settle Helena Puljiz's case against Croatian espionage services. Because what kind of message does the SJC send to other judges who in the second instance have yet to address the case by "psycho-torturing" the judge who ruled in favor of a journalist against the state in the first instance?

Obviously, the purpose of this SJC process "assessment of physical and mental characteristics" is not only to punish the disciplinary judge, but also make clear to all judges what can happen to them if they make judgments in favor of journalists against the Republic of Croatia.

As many as four judges have been involved in the trial of journalist Helena Puljiz in the first instance. After postponing that inconvenient court case for five years by two judges, it was assigned to a judge who has now been exposed to "assessment of physical and mental properties."

This judge's "sin" in this case is that she immediately scheduled the first hearings immediately after taking over this previously concealed case. And in the moment after the hearing, when the verdict had only to be announced, the case was seized from that judge and assigned to her colleague Ana Merlin Božičković.

However, young judge Ana Merlin Bozičković is just as brave as her predecessor, and she announces the judgment against the Republic of Croatia in favor of journalist Helena Puljiz.

We were asked not to disclose the name of the judge who was subjected to the so-called "assessment of physical and mental properties" by the SJC. Under the rules of the SJC, too prone to secrecy, any public appearance during the proceedings would permanently "disqualify" that judge. We decided to respect the request not to divulge the name, though it was clear to everyone who followed that process what the judge's name was.

Contrary to Article 11. of the Rules of Procedure of the SJC, the decision to conduct the so-called "assessment of physical and mental properties" have not been published. According to Article 62. of the Law of SJC, "failure to submit assessment of physical and mental characteristics for the purpose of assessing the capacity to perform judicial office is a disciplinary offense".

Undoubtedly, this is a secret and coercive procedure of SJC, that is, psychotorture.

Otherwise, when it comes to illness and disability, judges, like all other people, have to go through a regular work capacity assessment process on so-called disability commissions at the

Pension Institute. SJC's so-called “assessment of physical and mental characteristics for the performance of judicial duties” is a procedure parallel to that of the regular pension system.

Based on the decision of the SJC, an expert group was appointed at the Zagreb University School of Medicine (Rebro Clinic) to “judge the physical and mental characteristics” of a judge who dared to prepare a judgment against the Republic of Croatia in favor of journalist Helena Puljiz.

Considering that the SJC's decision on the "assessment of physical and mental characteristics" was not published; it is not known whether the decision and settlement of the Faculty of Medicine to establish an expert group at the Rebro Clinic in Zagreb state the facts on which the decision and settlement are based; or if the evidence is proposed based on which the presented decision and settlement are ascertained.

To the best of our knowledge, the process of this "assessment" is not medically indicated, but according to the legal and administrative decision of the SJC. Given that there is a certain compulsion to undergo this procedure, the question to the School of Medicine is whether their role in this procedure is consistent with professional medical ethics? Why are regular commissions from the pension and disability system not participating in the work capacity assessment?

Đuro Sessa, a judge of the Supreme Court and president of the Association of Croatian Judges raised the question of constitutionality and ethics of “assessment of physical and mental capacity to perform judicial duties" to the Constitutional Court. This means that this is not just about "extrajudicial" and subjective journalistic doubts.

A request by the Association of Croatian Judges to review the constitutionality of Article 62. of the SJC Act states: "It is completely unclear what the word assessment means and how it is at all possible to judge physical and mental properties, so the question arises as to whether these are the introduction of some medical experiments and turning judges into experimental rabbits, which is expressly forbidden by the Constitution”.

In the continuation of the request for constitutional review, Judge Sessa, on behalf of the Association of Judges, argued that the said provision of the SJC Act was "degrading and discrediting, not only for judges but also for persons with disabilities".

It is obvious from all of this that one should doubt the competence, above all of the SJC, when determining the so-called “assessment of physical and mental characteristics for the performance of judicial duties", but also the ethics of the Zagreb School of Medicine, which uncritically accepts the assigned role of the executor in the so-called "assessment of physical and mental qualities" of the disobedient judge.

The decision of the SJC to compulsorily carry out the procedure of "assessment of physical and mental characteristics" was made on the proposal of Mirela Mijoč, President of the Zagreb Municipal Civil Court. President Mijoc seized the case from her colleague Puljiz, who, after five years of concealment, dared to deal with it at the moment when she was due to announce the verdict.

Undoubtedly, Mirela Mijoč, Ranko Marijan and other SJC members are formally competent to initiate essentially a non-collegial case against their colleague. The term competence in law in a formal sense denotes competences and powers, but in a broader sense, the same term denotes familiarity and knowledge.

There is much reason to doubt the real (unfortunately not formal) competence of Mirela Mijoč, Ranko Marijan, SJC and a considerable part of the judiciary. It is enough to remind ourselves of, for example, ignoring a percentage account in showing performance according to the Framework for Judge Performance.

In a written answer by the Minister of Justice to the question of a Member of Parliament, if it is possible for (precisely the same) Mirela Mijoč to achieve more than one hundred percent (?) of work performance, the Minister explains that this is possible.

Seventh-grade students, however, learn from the percentage calculus that the number of units of a percentage is determined from the number 100 as a whole (percentage from the Latin word *pro* = for and *centum* = one hundred) and for the expression of several hundred percent seventh-graders receive a negative rating.

Nevertheless, the Minister of Justice's written response to a question by a Member of Parliament misrepresents that a "627.3 percent norm in a statistical report for Judge Mirela Mijoč is possible ".

However, all judges should not be returned to the seventh grade of primary school. This is not about ignorance (about percentage calculus), but about conscious and deliberate manipulation, yes, mathematically incorrect, but still conscious and deliberate, as well as about the process of "assessment of physical and mental properties".

And because of such pressure from the SJC on judges who are in the second instance in a court case of journalist Helena Puljiz against Croatian spy services, the decision of these judges cannot be surprising. The surprise would be the suspension of SJC.