



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

## FIRST SECTION

### **CASE OF BUDIMIR v. CROATIA**

*(Application no. 44691/14)*

## JUDGMENT

Art 8 • Private life • Positive obligations • Protracted withdrawal of applicant's professional licence and consequent inability to work as certified motor vehicle inspector entailing serious repercussions on his private life • Art 8 applicable following consequence-based approach • Failure to provide applicant with any solution pending establishment of his actual liability and an effective legal framework to claim equitable relief for damage sustained • Absence of comprehensive assessment of the applicant's right to respect for his private life inconsistent with any acceptable margin of appreciation

STRASBOURG

16 December 2021

**FINAL**

**09/05/2022**

*This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.*

**In the case of Budimir v. Croatia,**

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

Péter Paczolay, *President*,

Ksenija Turković,

Krzysztof Wojtyczek,

Alena Poláčková,

Gilberto Felici,

Lorraine Schembri Orland,

Ioannis Ktistakis, *judges*,

and Renata Degener, *Section Registrar*,

Having regard to:

the application (no. 44691/14) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Croatian national, Mr Jovan Budimir (“the applicant”), on 10 June 2014;

the decision to give notice of the complaint concerning respect for the applicant’s private life to the Croatian Government (“the Government”) and to declare inadmissible the remainder of the application;

the parties’ observations;

Having deliberated in private on 15 June 2021 and 16 November 2021,

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

## INTRODUCTION

1. The case concerns the revocation of the applicant’s professional licence, and his consequent inability to work as a certified motor vehicle inspector for a period of some five years.

## THE FACTS

2. The applicant was born in 1951 and lives in Beli Manastir. The applicant was represented by Mr K. Vukšić, a lawyer practising in Osijek.

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

4. The facts of the case, as submitted by the parties, may be summarised as follows.

### A. Background to the case

5. The applicant, an ethnic Serb who is a car mechanic by profession, worked as a certified motor vehicle inspector for a private company in Beli Manastir, a town in Eastern Slavonia that had been peacefully reintegrated into Croatian territory in January 1998. In order that he could perform the

duties of a certified motor vehicle inspector, on 29 May 1997 the applicant was issued with a special licence.

6. On 5 October 1998 the applicant carried out a standard vehicle inspection on a tractor and confirmed its roadworthiness.

7. On 15 October 1998 the same tractor was in collision with a police car. An extraordinary inspection to ascertain the roadworthiness of the tractor was carried out a day later by a colleague of the applicant; that inspection established that the tractor's braking system had been defective.

### **B. Criminal proceedings**

8. In March 1999 the Ministry lodged a criminal complaint against the applicant for having allegedly falsified the vehicle inspection record in respect of the tractor at issue.

9. On 8 July 1999 the applicant was charged in the Beli Manastir Municipal Court (*Općinski sud u Belom Manastiru*) with falsifying the tractor's vehicle inspection record.

10. On 23 May 2001 the Beli Manastir Municipal Court acquitted the applicant in criminal proceedings, since it could not establish that he had committed the criminal offence with which he had been charged. The court based its findings mainly on expert witness testimony stating that the tractor's braking system could have become defective in the ten days that had elapsed between the standard vehicle inspection and the road accident.

### **C. Administrative proceedings**

11. Meanwhile, on 16 March 1999 the Ministry of the Interior (*Ministarstvo unutrašnjih poslova* – hereinafter “the Ministry”) issued a decision revoking the applicant's licence to carry out vehicle inspections. The decision was deemed final and his employer immediately dismissed him from his post (see paragraph 17 below).

12. On 22 April 1999 the applicant lodged an administrative action with the Administrative Court of the Republic of Croatia (*Upravni sud Republike Hrvatske* – “the Administrative Court”) challenging the decision to revoke his licence.

13. By a judgment of 23 May 2001, the Administrative Court quashed the decision of 16 March 1999 for failure to establish all the facts of the case and remitted it. It ordered the Ministry to conduct an expert evaluation and, if possible, to obtain other evidence.

14. On 29 August 2001, in the course of the resumed administrative proceedings, the Ministry adopted a fresh decision revoking the applicant's licence to carry out vehicle inspections. It based its decision on an expert opinion issued by the Ministry's Centre for Forensics (*Centar za kriminalistička vještačenja Ministarstva unutarnjih poslova*), which stated

that the tractor's brakes could not have become defective in the period between the standard vehicle inspection and the road accident.

15. On 4 December 2003, following a second administrative action brought by the applicant, the Administrative Court again quashed the Ministry's decision of 29 August 2001 and remitted the case to the Ministry. The Administrative Court held that the Ministry had failed to provide the applicant with the opportunity to comment on the expert's findings or to resolve the contradictions between the expert witness testimony given, respectively, in the criminal and in the administrative proceedings.

16. On 10 May 2004, in a fresh set of proceedings, the Ministry returned the applicant's licence to him, having taken into consideration, *inter alia*, the fact that he had been acquitted during the criminal proceedings of any criminal offence.

#### **D. Labour dispute**

17. Following revocation of his licence to carry out vehicle inspections, on 30 March 1999 the applicant was dismissed from work because the loss of his licence had been a particularly important fact without which the continuation of his employment had not been possible.

18. On 4 July 2005 the Zagreb Municipal Court (*Općinski sud u Zagrebu*) dismissed the applicant's challenge of the dismissal, finding that the applicant's dismissal had been lawful and that his employer had not been under the obligation to offer him another post until the criminal and administrative proceedings against him had been completed, because the applicant's dismissal had been summary (*izvanredni otkaz*).

19. This judgment was upheld by the Zagreb County Court (*Županijski sud u Zagrebu*) on 2 May 2006.

#### **E. Civil proceedings for damages**

20. On 21 September 2006 the applicant brought a civil action in the Osijek Municipal Court (*Općinski sud u Osijeku*) seeking damages from the State under section 13 of the State Administration Act (*Zakon o sustavu državne uprave*) for unlawful or wrongful conduct of the administrative authorities (*nezakonit ili nepravilan rad tijela državne uprave*; see paragraph 29 below). He stressed that the allegedly unlawful acts of the authorities had caused him pecuniary damage in that, due to the withdrawal of his license, he had been dismissed from work and had remained unemployed.

21. Following a remittal, on 26 February 2009 the Osijek Municipal Court dismissed the applicant's action. It held that the Ministry's decisions had not amounted to unlawful acts undertaken by a State authority.

22. Following an appeal by the applicant, on 5 May 2011, the Osijek County Court (*Županijski sud u Osijeku*) upheld the first-instance judgment.

23. The applicant lodged an appeal on points of law (*revizija*), but on 4 September 2013 the Supreme Court dismissed it as ill-founded. The relevant part of that judgment reads as follows:

“The primary pre-requisite for the Republic of Croatia to be held liable for damages under section 13 of the State Administration Act is the [occurrence] of unlawful or wrongful conduct. Unlawful conduct is defined as any act contrary to the law, another legal provision or regulation, or a failure to act in line with the law, another legal provision or regulation. This court accepts the conclusion of the lower courts that the [relevant authority] had not acted unlawfully when it adopted the decision to revoke the [applicant’s] licence ... to undertake vehicle inspection duties, because the Ministry of the Interior of the Republic of Croatia had acted in line with section 277(2) of the Road Safety Act; in other words there was a reasonable doubt that the [applicant] had certified the technical roadworthiness of a tractor that [in fact] had had a defective braking system, and [accordingly,] on the basis of section 277(2) of the Road Safety Act, his licence to undertake vehicle inspection duties was revoked. [This court cannot accept the applicant’s] assertion that every case in which a State administrative body wrongly applies substantive law or takes the wrong decision, or wrongly establishes the relevant facts (as in the present case) should be treated as unlawful conduct [on the part of that authority].

Accordingly, this court accepts that the case does not involve any unlawful conduct, given that the primary condition – the liability of the defendant on the basis of section 13 of the State Administration Act – has not been met. The [applicant] is correct in claiming that the defendant’s actions caused him damage and that there is a causal link between the conduct on the part of the State authority and the damage incurred, but he is not correct in claiming that the quashing of an administrative decision [taken] by the Administrative Court of the Republic of Croatia for reasons provided for in the Administrative Disputes Act ... would imply that there has been unlawful conduct on the part of the State administrative authorities. The ... [applicant’s] claim is therefore ill-founded.”

24. The applicant then lodged a constitutional complaint alleging, *inter alia*, that his right to a fair hearing, as guaranteed by Article 29 of the Constitution, had been violated because the Supreme Court had not explained why the administrative authorities’ actions in respect of his case had not amounted to wrongful conduct within the meaning of the relevant domestic legislation. He also alleged a violation of his constitutionally guaranteed right to work under Article 55 of the Constitution, stating as follows:

“As a result of the unlawful... decision on withdrawal of [his] license..., [the applicant] was summarily dismissed from work... With no fault or will of his own, all due to the unlawful acts and harassment by the [authorities] (due to the applicant’s national origin), [the applicant] was put in a situation whereby he was unable to enjoy his constitutional right to work, because he lost his job due to the withdrawal of his license, he is not working or receiving a salary for his work, and he has sustained damage in the form of loss of employment, livelihood and other employment-related benefits...

... As a result of the unlawful withdrawal of [his] licence... the applicant was dismissed from post in which he had been for over 20 years, and he was thereafter unable to find new employment, which has violated his constitutionally guaranteed right to work...”

25. By a decision of 6 March 2014, the Constitutional Court declared the applicant’s constitutional complaint inadmissible on the grounds that the case raised no constitutional issue. That decision was served on the applicant’s representative on 17 March 2014.

## RELEVANT LEGAL FRAMEWORK

26. The relevant provisions of the Constitution of the Republic of Croatia (*Ustav Republike Hrvatske*, Official Gazette no. 56/90, with subsequent amendments) read as follows:

### Article 35

“Respect for and the legal protection of each person’s private and family life, dignity, and reputation shall be guaranteed.”

### Article 55

“1. Everyone shall have the right to work and freedom of work.

2. Everyone shall be free to choose his or her vocation and occupation, and shall have access to every workplace and post under equal conditions.”

27. The relevant provision of the Labour Act (*Zakon o radu*, Official Gazette no. 38/1995 with subsequent amendments), as in force at the material time, provided as follows:

### Section 107

“(1) The employer and the employee have justified grounds for terminating the employment contract concluded for a definite or indefinite duration, without observing the prescribed or stipulated notice period (summary dismissal), if, due to a particularly grave breach of the employee’s duties or some other particularly serious incident, with due regard to all the circumstances and the interests of the contracting parties, the continuation of the employment is no longer possible....”

28. The relevant provision of the Road Traffic Safety Act (*Zakon o sigurnosti prometa na cestama*, Official Gazette no. 59/96), as in force at the material time, read as follows:

### Section 277

“2. If a supervisor ... certifies the roadworthiness of a vehicle [even though its] braking, steering or liquid-gas fuel system [is defective] the Ministry of the Interior shall withdraw [his or her] authorisation (licence) to carry out vehicle inspections.”

29. Section 13 of the State Administration Act (*Zakon o ustrojstvu državne uprave*, Official Gazette no. 75/1993 with subsequent amendments), as in force at the material time, read as follows:

“The Republic of Croatia shall afford compensation for damage caused to a citizen, legal entity or other party through the unlawful or wrongful conduct on the part of a State administration body, or a body of local self-government or administration ...”

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

30. The applicant complained that he had not been able to obtain compensation for damage sustained as a consequence of the Ministry of the Interior’s unlawful decision to revoke his licence, which had resulted in his instant dismissal from work, leaving him for a prolonged period of time unemployed and with no income.

31. The Court considers that the applicant’s complaint falls to be examined under Article 8 of the Convention, which, in so far as relevant, reads as follows:

“1. Everyone has the right to respect for his private ... life....

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

#### A. Admissibility

##### 1. *The parties’ arguments*

###### (a) **The Government**

32. The Government claimed that the applicant had failed to exhaust domestic remedies, in that he had never complained – either expressly or in substance – of a violation of the right to respect for his private life before lodging his application with the Court. In particular, the applicant’s constitutional complaint had been formulated as a typical fourth-instance complaint, simply replicating the arguments that he had submitted during the proceedings before the lower-instance courts; as a result, the constitutional complaint had been ruled inadmissible. The Government emphasised that in his constitutional complaint the applicant had not referred to Article 35 of the Constitution, which was equivalent to Article 8 of the Convention. Instead, he had referred to Articles 19, 29 and 55 of the Constitution, alleging that the lower-instance courts had, when rendering their respective decisions, violated the principle of lawfulness (Article 19), his rights to a fair trial (Article 29) and his right to work (Article 55). Moreover, the applicant had also not complained in substance of a violation of his right to respect for his private life, since he had limited himself to an analysis of the proceedings for damages and had simply reiterated

arguments he had already submitted before the lower-instance courts. For those reasons, the Government concluded that the mere fact that the applicant had lodged a constitutional complaint had not been sufficient to meet the requirement under Article 35 § 1 of the Convention that the available domestic remedies be exhausted.

33. The Government furthermore argued that Article 8 of the Convention was not applicable to the present case, since the applicant's complaints, as set out in the application form, did not fall within the scope of the right to respect for private life referred to in Article 8 of the Convention – specifically, the consequences of not awarding the applicant compensation for the damage caused to him by the withdrawal of his authorisation to pursue his profession were not, by their nature or quality, covered by Article 8 of the Convention. Moreover, the right to exercise a profession was not relevant to the proceedings for damages complained of; it could only have been covered had the applicant brought an action seeking reinstatement and salary arrears in the labour dispute, which he had failed to pursue.

34. The Government maintained that the applicant had not argued (or delivered any evidence to prove) that his personal life had been affected in any way by the fact that he had not been awarded compensation for damage. The applicant had also failed to prove that losing his licence had adversely affected his reputation or that it had resulted in an inability on his part to develop professional relationships (specifically, to an extent that would significantly hinder him from securing appropriate employment that reflected his professional qualifications and work experience).

**(b) The applicant**

35. The applicant argued that, although he had not explicitly relied on Article 8 of the Convention or the corresponding provision of the Croatian Constitution in his constitutional complaint, he had clearly raised those complaints in substance by stating that his employment had been arbitrarily and unlawfully terminated as a result of the unlawful revocation of his professional licence. Furthermore, he had relied on Article 55 of the Constitution, which protected the right to work and also encompassed aspects of the right to respect for private life in respect of which he had complained.

36. Moreover, the applicant pointed out that the revocation of his licence had resulted in his losing his job, had negatively affected his reputation and had resulted in his being unable to develop relationships of a professional nature. The applicant also emphasised the fact that, after his licence had been returned to him, he had asked his former employer for his job back and he had regularly reported to the local branch of the Croatian Employment Bureau in an effort to find employment, but without any success. In addition, he submitted that his financial situation had worsened, resulting in



him becoming dependent on close family members. Furthermore, the applicant submitted that his physical and mental health condition had deteriorated.

## 2. *The Court's assessment*

### (a) **General principles**

#### (i) *Exhaustion of domestic remedies*

37. The Court reiterates that under Article 35 § 1 of the Convention, it may only deal with an application after all domestic remedies have been exhausted. The purpose of Article 35 is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court (see, for example, *Mifsud v. France* (dec.) [GC], no. 57220/00, § 15, ECHR 2002-VIII). The obligation to exhaust domestic remedies requires an applicant to make normal use of remedies that are effective, sufficient and accessible in respect of his Convention grievances. To be effective, a remedy must be capable of resolving directly the impugned state of affairs (see *Balogh v. Hungary*, no. 47940/99, § 30, 20 July 2004).

38. The rule of exhaustion of domestic remedies must be applied with some degree of flexibility and without excessive formalism. At the same time it requires in principle that the complaints intended to be made subsequently at international level should have been aired before the domestic authorities – at least in substance, and in compliance with the formal requirements laid down in domestic law (see *Pajić v. Croatia*, no. 68453/13, § 42, 23 February 2016, and cases referred to therein).

#### (ii) *Applicability of Article 8*

39. The concept of “private life” is a broad term not susceptible to exhaustive definition. It covers the physical and psychological integrity of a person. It can therefore embrace multiple aspects of the person’s physical and social identity. In addition, Article 8 protects the right to personal development and the right to establish and develop relationships with other human beings and the outside world (see *S. and Marper v. the United Kingdom* [GC], nos. 30562/04 and 30566/04, § 66, ECHR 2008; *Gillberg v. Sweden* [GC], no. 41723/06, § 66, 3 April 2012; and *Bărbulescu v. Romania* [GC], no. 61496/08, § 70, ECHR 2017 (extracts), with further references therein).

40. In its case-law concerning the scope of Article 8 of the Convention in employment-related disputes between an individual and a State (see *Denisov v. Ukraine* [GC], no. 76639/11, §§ 100-117, 25 September 2018) the Court has confirmed that employment-related disputes are not *per se* excluded from the scope of “private life” within the meaning of Article 8 of the Convention. It has also clarified that there are two ways in which a

private-life issue usually arises in such a dispute: either because of the underlying reasons for the impugned measure (in that event the Court employs the reason-based approach) or – in certain cases – because of the consequences for private life (in that event the Court employs the consequence-based approach – *ibid.*, § 115). When a consequence-based approach is at stake, a certain threshold of severity must be attained. An applicant has to present evidence substantiating consequences of the impugned measure. The Court will only accept that Article 8 is applicable where such consequences are very serious and affect the applicant’s private life to a very significant degree (*ibid.*, § 116).

41. In *Denisov* (cited above, § 115) the Court confirmed that there were some typical aspects of private life that may be affected in such disputes by dismissal, demotion, non-admission to a profession or other similarly unfavourable measures. These aspects include (i) the applicant’s “inner circle”, (ii) the applicant’s opportunities to establish and develop relationships with others, and (iii) the applicant’s social and professional reputation.

42. Moreover, if the consequence-based approach were to be followed, the threshold of severity with respect to all the above-mentioned aspects would assume crucial importance. The Court has established criteria for assessing the severity or seriousness of alleged violations in different regulatory contexts; in particular, an applicant’s suffering is to be assessed by comparing his or her life before and after the measure in question.

43. Lastly, the Court reiterates that in employment-related disputes, questions of applicability of Article 8 and the existence of “interference” are inextricably linked (*ibid.*, § 92). As the question of applicability is an issue that falls under the Court’s jurisdiction *ratione materiae*, the general rule of dealing with applications should be respected, and the relevant analysis should be carried out at the admissibility stage, unless there is a particular reason to join this question to the merits. No such particular reason exists in the present case; therefore, the issue of the applicability of Article 8 of the Convention falls to be examined at the admissibility stage.

**(b) Application to the present case**

44. The Court considers that the two preliminary objections raised by the Government in the present case are interconnected, since they both revolve around the issue of whether (i) the revocation of the applicant’s licence, which prevented him from pursuing his professional activities, and (ii) the authorities’ failure to compensate him for the pecuniary loss suffered as a consequence, fell within the scope of the right to respect for the applicant’s private life, as protected under Article 8 of the Convention. It therefore considers it opportune, given the circumstances, to examine first the applicability of Article 8 of the Convention, and thereafter the objection

relating to the exhaustion of domestic remedies (see *Mile Novaković v. Croatia*, no. 73544/14, § 46, 17 December 2020).

45. As regards the applicability of Article 8 of the Convention, the Court observes at the outset that the direct reason for the revocation of the applicant's licence to carry out vehicle inspections was his alleged falsification of the tractor's vehicle inspection record, a consideration that was not related to any aspect of his private life (see paragraph 11 above). The Court thus considers it appropriate to follow a consequence-based approach in the instant case (*ibid.*, § 115).

46. In doing so, the Court has to examine whether the impugned measure had sufficiently serious negative consequences for the applicant's private life – in particular as regards his “inner circle”, opportunities for him to establish and develop relationships with others, and his reputation (see paragraph 41 above). In this regard, it notes that the revocation of the applicant's professional licence resulted in his dismissal from his employment and his inability to pursue his profession for a period of five years. According to the applicant, the foregoing caused him pecuniary damage and health problems and adversely affected his relations with other persons, including those of a professional nature.

47. The Court considers that the combination of those factors must have had very serious consequences for the applicant's “inner circle” and his capacity to establish and develop relationships with others, as well as his social and professional reputation, affecting him to a very significant degree. He was not merely suspended, demoted or transferred to a position of lesser responsibility, but dismissed from work after 20 years of employment and excluded from performing the duties of a certified motor vehicle inspector altogether, consequently losing his entire source of remuneration with immediate effect (compare *Polyakh and Others v. Ukraine*, nos. 58812/15 and 4 others, § 209, 17 October 2019; and *Milojević and Others v. Serbia*, nos. 43519/07 and 2 others, § 60, 12 January 2016; also contrast *J.B. and Others v. Hungary* (dec.), no. 45434/12 and 2 others, §§ 132-33, 27 November 2018). He was excluded from any employment as a certified vehicle inspector, a profession for which he had obtained special certification and which he had pursued for about two years previously (see paragraph 5 above). Taking all this into account, the Court can accept that the revocation of his licence for the alleged falsification of the vehicle inspection record had encroached upon his reputation in such a way that it seriously affected his esteem among others, with the result that it has had a serious impact on his interaction with society. Consequently, the Court is satisfied that Article 8 is applicable to the facts of the present case.

48. As for the exhaustion of domestic remedies, the Court needs to examine whether the applicant has raised – at least in substance – issues relating to his private life as interpreted by the Court (see paragraph 47

above). The Court observes that in his constitutional complaint the applicant alleged that he had been dismissed from work since his licence had been unlawfully revoked after 20 years of employment. He also maintained that he remained without a salary and other employment-related benefits, that his livelihood was jeopardised and that he had been unable to find a new job. All of the foregoing, in the applicant's view, violated his constitutional right to work and consequently prevented him from pursuing his professional activities (see paragraph 24 above). The Court is therefore satisfied that the applicant, at least before the Constitutional Court, in substance raised a number of arguments which are related to his private life as protected by Article 8 of the Convention in the employment-related context (see *Platini v. Switzerland* (dec.), no. 526/18, 11 February 2020; and *Mile Novaković*, cited above, § 50). He thereby provided the national authorities with the opportunity that is in principle intended to be afforded to Contracting States by Article 35 § 1 of the Convention – to put right any violations alleged against them (see, for instance, *Arps v. Croatia*, no. 23444/12, § 20, 25 October 2016).

49. Finally, in so far as the Government maintained that the applicant could have and should have sought damages and salary arrears in the labour dispute against his former employer, the Court notes that once the applicant's professional licence had been revoked, he was no longer authorised to perform inspections of motor vehicles. This has been found by the domestic courts to present a particularly important fact without which the continuation of his employment had not been possible and thus justifying the applicant's summary dismissal from work (see paragraph 17 in connection with paragraph 27 above). In the Court's view, any claim against his employer would thus have had limited prospects of success and in any event could not have compensated him for the fact that it subsequently took the relevant authorities five years to decide his case.

### (c) Conclusion

50. It follows from the above that the Government's preliminary objections must be dismissed.

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

## B. Merits

### 1. The parties' arguments

52. The applicant maintained that the revocation of his licence had been a consequence of unlawful conduct on the part of the Ministry of the Interior aimed at harassing him on account of his Serbian origin. The

Ministry's decisions (revoking the applicant's licence to carry out vehicle inspections) had been quashed twice by the Administrative Court, which had expressly stated that those decisions had been unlawful. Furthermore, had the authorities really considered it imperative to revoke his licence owing to his allegedly unlawful conduct, they should have done so immediately and not only after five months.

53. The applicant furthermore contested the Government's assertion that he could have raised his Article 8 complaint in the course of the employment dispute, emphasising the fact that he had not been employed by the Ministry of the Interior but by a private legal entity, which had had no other choice but to dismiss him from work once his professional licence had been revoked. The applicant submitted that the revocation of his licence had been the crucial reason for the summary termination of his employment and that he had thus had no valid legal basis on which to continue the proceedings concerning his dismissal.

54. The Government maintained that the revocation of the applicant's licence had not constituted an error on the part of the domestic bodies. His licence had been revoked on the basis of the Road Traffic Safety Act (see paragraph 28 above), and it had been necessary and justified in the situation in question and for the protection of the rights of others. The respondent State had thus not been under a positive obligation to take steps to protect the applicant's private life. Furthermore, the Ministry of the Interior had not been able to wait until the applicant had exhausted all the possible remedies before revoking his licence, since there had been reasonable suspicion that he had performed his job in an unprofessional manner.

55. The Government furthermore submitted that, contrary to the applicant's allegations, the lawfulness of the decisions to revoke his licence had not been brought into question by the 2004 decision of the Ministry of the Interior to return his licence to him or by his acquittal in the criminal proceedings. Namely, the criminal court had applied the basic principle of criminal proceedings (*in dubio pro reo*) and acquitted the applicant, but without finding that he had acted in accordance with the law. Furthermore, the Administrative Court had not found that the applicant's licence should not have been revoked in the first place; rather, it had quashed the impugned decisions owing to procedural shortcomings. Lastly, the Government pointed out that the applicant's licence had been returned to him not because the Ministry of the Interior had realised that it had made an error, but because it had been found, on the basis of subsequently gathered information, that there had been insufficient evidence to prove that the applicant had acted in contravention of the relevant regulations.

## 2. The Court's assessment

56. The Court reiterates that, although the object of Article 8 is essentially to protect the individual against arbitrary interference by the

public authorities, it does not merely compel the State to abstain from such interference. In addition to this primarily negative undertaking, there may be positive obligations inherent in an effective respect for private life (see *López Ribalda and Others v. Spain* [GC], nos. 1874/13 and 8567/13, § 110, 17 October 2019). These obligations may involve the adoption of measures designed to secure respect for private and family life and may include the requirement that the State set up a system for the effective protection of an individual's rights under Article 8 of the Convention, to be implemented in cases of unlawful interferences falling within its scope, including both the provision of a regulatory framework of adjudicatory and enforcement machinery protecting individuals' rights and the implementation, where appropriate, of specific measures (see *Kyriakides v. Cyprus*, no. 39058/05, §§ 45 and 51, 16 October 2008). Such an established framework must enable a proportionality assessment of instances in which an individual's corresponding rights are restricted (see *ibid.*, §§ 51 and 54).

57. While the boundaries between the State's positive and negative obligations under the Convention do not lend themselves to precise definition, the applicable principles are nonetheless similar. In both contexts regard must be had in particular to the fair balance that has to be struck between competing private and public interests, subject in any event to the margin of appreciation enjoyed by the State (see *Palomo Sánchez and Others v. Spain* [GC], nos. 28955/06 and 3 others, § 62, ECHR 2011, and *Bărbulescu*, cited above, § 112). That margin of appreciation goes hand in hand with European supervision, embracing both the legislation and the decisions applying it – even those given by independent courts. In exercising its supervisory function, the Court does not have to take the place of the national courts but to review, in the light of the case as a whole, whether their decisions were compatible with the provisions of the Convention relied upon (see *López Ribalda and Others*, cited above, § 111).

58. The Court notes at the outset that the present case does not concern a classical labour dispute (see paragraph 49 above). The applicant had been dismissed from work in a private company due to the fact that the State authorities had revoked his professional licence. Bearing in mind the particular set of circumstances of the present case as well as the specific complaint raised by the applicant (see paragraph 30 above), the Court considers it more appropriate to examine whether the respondent State has fulfilled its positive obligations under Article 8 of the Convention (compare *Platini*, cited above, § 59). In any event, whether a case is analysed in terms of a positive duty on the State to take reasonable and appropriate measures to secure the applicant's rights under paragraph 1 of Article 8 or an "interference by a public authority" to be justified in accordance with paragraph 2, the applicable principles are broadly similar (see paragraph 57 above). The State's obligation under Article 8 in the present case required the national authorities to strike a fair balance between two competing

interests – namely, on the one hand, the applicant's right to respect for his private life and, on the other, the public interest in ensuring road traffic safety and the protection of the rights of others.

59. The Court observes in this connection that the applicant's professional licence was revoked by the Ministry of the Interior some five months after a vehicle whose roadworthiness he had confirmed had caused a traffic accident only ten days after his inspection (see paragraph 11 above). At this juncture, the Court notes that the domestic law did not provide any particular legal framework for situations such as that of the applicant. Unlike some other professions the operation of which is closely related to the State (e.g. the police), once there was a reasonable suspicion that a vehicle inspector confirmed roadworthiness of a defective vehicle, the law only provided that the inspector's professional licence was to be withdrawn (see paragraph 28 above). It did not provide for any sort of individual assessment of the particular circumstances, nor did it contain any provisions concerning the inspector's employment pending the establishment of whether or not any breach of professional duties had in fact taken place.

60. Two sets of parallel proceeding then ensued. Firstly, the applicant was charged in criminal proceedings for falsifying the vehicle's inspection record. In 2001 he was acquitted of all charges, owing to insufficient evidence (see paragraph 10 above). At the same time, the applicant challenged the Ministry's decision on withdrawal of his licence in administrative proceedings. That decision was subsequently quashed twice by the Administrative Court for procedural shortcomings (see paragraphs 13 and 15 above). After those administrative proceedings had lasted for some five years, the applicant's licence was ultimately returned to him because there had been insufficient evidence that he had committed any breach of his professional duties. In this connection, the Court cannot but note that the administrative action, as the only effective remedy the applicant had had at his disposal, did not have suspensive effect, nor were there any provisions regulating the consequences of such an action being successful (see, *mutatis mutandis*, *Milojević and Others*, cited above, § 65).

61. The Court further notes that, following the withdrawal of his licence, the applicant was immediately dismissed from work because he could no longer perform the duties of a certified motor vehicle inspector without the requisite licence (see paragraph 17 above). Here too, the domestic legal framework did not provide for any sort of solution, pending the establishment of his actual liability for the offence he had been suspected of; there appears to have been no possibility of temporary suspension from work or any provisions offering even partial remuneration for a person in the applicant's situation.

62. After his licence had been returned, the applicant lodged a claim against the State under section 13 of the State Administration Act for compensation of damage caused by unlawful or wrongful conduct of the

State authorities. His claim was dismissed at final instance by the Supreme Court, which acknowledged that the applicant had incurred damage which had had a causal link with the authorities' actions, but concluded that the mere fact that the Ministry's decisions had twice been quashed (see paragraph 23 above) did not mean in and of itself that the authorities had acted unlawfully.

63. While it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 150, 20 March 2018), it cannot but observe that the civil courts failed to acknowledge altogether that the applicant's right to respect for private life had been at stake in the proceedings, or to seek to balance in any way that right against the public interest, which had led the authorities to interfere with his rights in the first place (see paragraphs 23 and 62 above; see also, *a contrario*, *López Ribalda and Others*, cited above, § 122).

64. In sum, the Court considers that, by failing to provide the applicant with any sort of solution pending the establishment of his actual liability for the offence he had been suspected of, as well as with an effective legal framework to claim equitable relief in respect of the damage caused to him by the protracted withdrawal of his professional licence, the authorities failed to fulfil their positive obligations imposed on them by Article 8 of the Convention. The absence of a comprehensive assessment as regards a matter affecting the applicant's right to respect for his private life was not consistent with any acceptable margin of appreciation.

65. There has therefore been a violation of Article 8 of the Convention.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

66. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

### A. Damage

67. The applicant claimed 550,000 euros (EUR) in respect of pecuniary damage. He explained that his claim covered the salary that he would have been paid had he not been dismissed (including interest).

68. The Government contested that claim.

69. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.



**A. Costs and expenses**

70. The applicant also claimed EUR 25,000 for the costs and expenses incurred before the domestic courts and the Court.

71. The Government contested that claim.

72. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,000 covering costs under all heads, plus any tax that may be chargeable to the applicant.

**B. Default interest**

73. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

**FOR THESE REASONS, THE COURT**

1. *Declares*, by a majority, the application admissible;
2. *Holds*, by four votes to three, that there has been a violation of Article 8 of the Convention;
3. *Holds*, by four votes to three,
  - (a) that the respondent State is to pay the applicant EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, to be converted into Croatian kunas at the rate applicable at the date of settlement;
  - (b) that from the expiry of the above-mentioned three months until settlement, simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;
4. *Dismisses*, unanimously, the remainder of the applicant's claim for just satisfaction.

BUDIMIR v. CROATIA JUDGMENT

Done in English, and notified in writing on 16 December 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener  
Registrar

Péter Paczolay  
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Wojtyczek, Poláčeková and Ktistakis is annexed to this judgment.

P.P.C.  
R.D.

JOINT DISSENTING OPINION OF JUDGES WOJTYCZEK,  
POLAČKOVA AND KTISTAKIS

1. We respectfully disagree with the majority's views that the application is admissible and that Article 8 has been violated in the instant case.

2. The majority presents the gist of the case in the following way:

“45. As regards the applicability of Article 8 of the Convention, the Court observes at the outset that the direct reason for the revocation of the applicant's licence to carry out vehicle inspections was his alleged falsification of the tractor's vehicle inspection record, a consideration that was not related to any aspect of his private life (see paragraph 11 above). The Court thus considers it appropriate to follow a consequence-based approach in the instant case (*ibid.*, § 115).

46. In doing so, the Court has to examine whether the impugned measure had sufficiently serious negative consequences for the applicant's private life – in particular as regards his “inner circle”, opportunities for him to establish and develop relationships with others, and his reputation (see paragraph 41 above). In this regard, it notes that the revocation of the applicant's professional licence resulted in his dismissal from his employment and his inability to pursue his profession for a period of five years. According to the applicant, the foregoing caused him pecuniary damage and health problems and adversely affected his relations with other persons, including those of a professional nature.”

3. We note in this context that in his constitutional complaint, the applicant never, in fact, expressly relied on the right to respect for his private life protected both under Article 8 of the Convention and under Article 35 of the Croatian Constitution. He did, however, complain under Article 55 of the Constitution, guaranteeing the right to work, that he had been dismissed from work after 20 years of employment, left without a salary and other employment-related benefits and unable to find a new job (see paragraph 24). Although losing a job may have caused the situation that had threatened the applicant's material well-being, the applicant has not provided any specific information or detail, let alone any evidence, about his financial difficulties. Nor did he show that he was unable to find another type of employment suitable to his profession as a car mechanic (see paragraph 5).

The applicant further argued before the Court that the impugned actions by the authorities had caused him health problems and had adversely affected his reputation and his relationships with other persons, including those of a professional nature. However, the applicant raised no such arguments before the Constitutional Court, nor did he provide either the Court or the Constitutional Court with any evidence in support of such complaints, such as medical documentation, for instance.

Finally, the applicant did not argue before the Constitutional Court that the impugned measure had encroached upon his reputation in such a way that it seriously affected his esteem among others, with the result that it had

a serious impact on his interaction with society (see *Denisov v. Ukraine* [GC], no. 76639/11, § 124 and § 127, 25 September 2018).

In such circumstances, it cannot be said that the applicant raised the relevant arguments before the domestic courts, thus providing them with the opportunity that is, in principle, intended to be afforded to Contracting States by Article 35 § 1 of the Convention – to redress any violations alleged against them (compare and contrast *Arps v. Croatia*, no. 23444/12, § 20, 25 October 2016, and *Mile Novaković v. Croatia*, no. 73544/14, § 50, 17 December 2020).

Accordingly, the application should have been rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

4. Even assuming that the applicant did indeed exhaust the domestic remedies, we are not persuaded that the threshold for the applicability of Article 8 has been reached in the instant case. Measuring the applicant's subjective perceptions against the objective background and assessing the material and non-material impact of the sanction imposed **on the basis of the evidence presented before the Court**, it has to be concluded that it has not exceeded the severity threshold for an issue to be raised under Article 8 of the Convention.

5. We would like to underline that any dismissal from work has negative consequences for the persons concerned. Under the approach adopted by the majority, which considerably lowers the threshold of applicability of Article 8, almost any situation of dismissal from work will trigger the applicability of Article 8, transforming a large number of labour law disputes into litigation for the protection of private life.