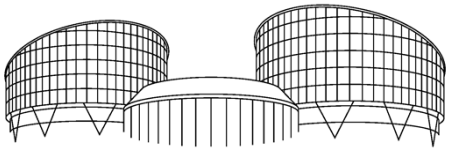

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF CROATIAN GOLF FEDERATION v. CROATIA

(Application no. 66994/14)

JUDGMENT

Art 11 • Freedom of association • Unjustified dissolution by domestic authorities of applicant association due to bankruptcy proceedings against it, despite agreement in those proceedings to restructure, preserve and continue the association's activities
Art 6 § 1 (constitutional) • Impartial tribunal • Lack of objective impartiality of a judge on Constitutional Court three-judge panel deciding association's complaint, whose husband was the president of a golf club, against which the applicant association had initiated enforcement proceedings to collect unpaid membership fees • Both proceedings unrelated, but dissolution of applicant association directly decisive in extinguishing debt of the club • Constitutional Court decision not constitutive of dissolution, but rendering the administrative authorities' decision irreversible and definitely extinguishing the debt of the golf club of the judge's husband

STRASBOURG

17 December 2020

FINAL

17/03/2021

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

In the case of Croatian Golf Federation v. Croatia,

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

Krzysztof Wojtyczek, *President,*
Ksenija Turković,
Linos-Alexandre Sicilianos,
Alena Poláčková,
Péter Paczolay,
Gilberto Felici,
Erik Wennerström, *judges,*

and Abel Campos, *Section Registrar,*

Having regard to:

the application (no. 66994/14) 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 Croatian Golf Federation ("the applicant association"), an association which used to be incorporated and registered as such under Croatian law, on 3 October 2014;

the decision to give notice to the Croatian Government ("the Government") of the complaint concerning freedom of association and the lack of impartiality and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 25 November 2020,

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

INTRODUCTION

1. The present case concerns dissolution of the applicant association by a decision of the administrative authorities on account of the fact that bankruptcy proceedings had been opened against it, even though in those bankruptcy proceedings it had been decided, by a common agreement of all its creditors, to restructure the association with a view to preserving it and continuing its activities. The restructuring plan was approved by the bankruptcy court and the bankruptcy proceedings were eventually closed whereupon the association continued to operate. The case also concerns the alleged lack of impartiality of the Constitutional Court given that one of the three judges of that court who decided on the applicant association's constitutional complaint is the wife of the president of a golf club against which the association had instituted enforcement proceedings.

THE FACTS

2. The applicant association (*Hrvatski golf savez*), an association which used to be incorporated and registered as such under Croatian law, has its seat in Zagreb. It was represented by Ms I. Bojić, a lawyer practising in Zagreb.

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.

5. The applicant association was established on 23 June 1992 and was recorded as a legal entity (a federation of associations – *savez udruga*) in the register of associations in Croatia. It was a national sports association (federation) whose members were various golf clubs in Croatia. Its main activities were organising golf competitions at a national level, managing the national golf teams, representing Croatia in international golfing organisations and promoting golf in Croatia.

I. BANKRUPTCY PROCEEDINGS

6. Following an application by the applicant association's largest creditor, Mr D. K., by a decision of 23 January 2009 the Zagreb Commercial Court (*Trgovački sud u Zagrebu*, hereafter "the bankruptcy court") opened bankruptcy proceedings against the association and appointed a bankruptcy administrator. The decision was based on the report of the temporary bankruptcy administrator, who found:

- that the applicant association's main sources of income were membership and other fees paid by its members, funds from the Croatian Olympic Committee, and funds from sponsors and other donors;

- that the debts of the applicant association on 19 January 2009 had amounted to 1,005,936.20 Croatian kunas (HRK), and that its account had been frozen since 6 November 2008;

- that the main cause of the applicant association's insolvency was the unwillingness of the governing bodies and persons authorised to represent the applicant association to settle valid claims which it had against its own debtors.

7. On the same day the bankruptcy administrator issued a decision stating that all the golf clubs which were members of the applicant association would retain that status after the opening of the bankruptcy proceedings, and she set the annual membership fee. She notified the golf clubs – the members of the applicant association – of her decision.

8. On 30 January 2009 the above-mentioned bankruptcy court's decision (see paragraph 6 above) was forwarded to the relevant local State administration office, namely the General Administration Office of the City

of Zagreb (*Grad Zagreb*, *Gradski ured za opću upravu* – hereafter "the Zagreb City Office"), which is in charge of the register of associations.

9. On 25 February 2009 the bankruptcy administrator informed the golf clubs – the members of the applicant association – of the grounds for opening the bankruptcy proceedings and the extent of the association's debts. She also explained what the legal effects of opening the bankruptcy proceedings were, namely: that all the powers of the applicant association's governing bodies had been transferred to her; that all the association's internal regulations, including its statute, had lost their legal force; and that its account had been closed and a new one would be opened. She also stated that, in her opinion, the applicant association could nevertheless continue with its activities, but the decision as to whether or not the association should continue to operate was one for its creditors.

10. At a hearing held on 26 March 2009 before the bankruptcy court, all the creditors decided that rather than liquidating the applicant association's assets (by selling them) and distributing the proceeds among themselves, the association should continue to operate. They also decided to appoint a board of creditors (*odbor vjerovnika*). Their decision was based on the report of the bankruptcy administrator, who had established that the members of the applicant association owed the association HRK 700,000 in total for 2008 and 2009. The bankruptcy administrator also informed the creditors that while some golf clubs which were members of the applicant association had expressed a negative opinion regarding the association continuing its activities during the bankruptcy proceedings, and others had expressed a positive opinion, none of the members had left the association or cancelled their membership.

11. On 3 April 2009 the bankruptcy administrator informed the golf clubs concerned of the creditors' decision that the association should continue to operate (see paragraph 10 above). She also informed those clubs that the applicant association would retain its membership of international golfing associations and the Croatian Olympic Committee. She further informed the members that the Zagreb City Office, in a decision of 26 February 2009, had wrongfully established that the applicant association had ceased its activities, and that she had appealed against that decision (see paragraphs 19-20 below). Lastly, she informed the clubs which were members that the official competitions organised by the association would begin in May, and that the calendar of competitions would be published within a week.

12. On 9 April 2009 the board of creditors informed the golf clubs concerned that the association would continue to operate, and it scheduled a joint information meeting with the clubs' representatives at which the calendar of competitions would be agreed.

13. In May 2009 seven golf clubs informed the bankruptcy administrator of their intention to retain their status as members of the applicant association, and one golf club applied for membership.

14. By a decision of 26 January 2010 the board of creditors instructed the bankruptcy administrator to prepare a reorganisation plan (a bankruptcy plan, *stečajni plan*) with a view to restructuring the applicant association and enabling it to continue its activities.

15. At a hearing held on 28 June 2010 before the bankruptcy court, all the creditors unanimously approved the reorganisation plan, which was also approved at the same hearing by the bankruptcy court. The court decision approving the plan became final on the same day, because all the creditors waived their right of appeal.

16. The plan provided, *inter alia*, that the association's administrative board consisted of three members, and it specifically listed the names of the three creditors who were the board members, including D.K., who was its president. The plan also envisaged that all the creditors' claims, together with accrued interest, were to be paid off by the end of 2023, whereupon the administrative board would have to organise elections with a view to electing new members of the board.

17. By a decision of 29 June 2010 the bankruptcy court closed the bankruptcy proceedings. The decision specified that the adoption of that decision meant that the powers of the bankruptcy administrator and the board of creditors had been terminated and the association's power to manage its own affairs and assets had been restored. It also stated that the authority in charge of the register of associations was to be notified of the decision, and that the decision should be published in the Official Gazette.

II. ADMINISTRATIVE PROCEEDINGS

A. Administrative proceedings for dissolution

18. In the meantime, after the Zagreb City Office had been given notice of the above-mentioned bankruptcy court's decision of 30 January 2009 (see paragraph 8 above), it had instituted administrative proceedings of its own motion.

19. By a decision of 26 February 2009 the Zagreb City Office established that the applicant association had ceased its activities. In so holding, it relied on section 28(1) sub-paragraph 4 of the Associations Act, which stated that bankruptcy was one of the grounds for dissolving an association (see paragraph 56 below). The relevant part of that decision reads as follows:

> "1. It is hereby established ... that the association under the name the Croatian Golf Federation has ceased its activities.
>
> 2. An appeal against this decision does not suspend its effects.

20. The bankruptcy administrator appealed against that decision on behalf of the applicant association.

21. By a decision of 4 May 2010 the Ministry of Administration (*Ministarstvo uprave*) dismissed the appeal. The relevant part of that decision reads as follows:

> "In the appeal, [the applicant association] submitted that neither on the day of the opening of the bankruptcy proceedings nor [afterwards] ... had [the association] been dissolved, nor had it ceased to operate. Relying on the [relevant] provisions of the Bankruptcy Act and the Associations Act, the appellant argued that a bankruptcy debtor ceased to exist only once it was struck off the relevant register, which was possible only on the basis of a final decision of the Commercial Court on the conclusion of bankruptcy proceedings. The appellant submitted that since the opening of the bankruptcy proceedings [the association] had continued to operate under the name of the Croatian Golf Federation in Bankruptcy, and that the powers of the former governing bodies and authorised representatives had been taken over by the bankruptcy administrator.
>
> ...
>
> The appeal is ill-founded.
>
> The first-instance authority, of its own motion, established that [the association] had ceased to operate, in accordance with sub-paragraph 4 of section 28(1), on the basis of the Zagreb Commercial Court's decision of 23 January 2009 whereby bankruptcy proceedings had been opened against the [association]...
>
> Having consulted the first-instance authority's case file and the document [drafted] by the Croatian Olympic Committee of 6 May 2009, received during the second-instance proceedings, it was established that the opening of the bankruptcy proceedings [had resulted in] ... all [the association's] governing bodies (the Assembly, the persons authorised to represent [the association], the Administrative Board and the Supervisory Board) stopping operating and the appointed bankruptcy administrator being the only authorised representative of [the association]. It was also established that the opening of the bankruptcy proceedings [had resulted in] the statute, as the basic act of [the association], losing its legal force.
>
> Sub-paragraph 4 of section 28(1) of the Associations Act provides that bankruptcy is one of the grounds for dissolving an association.
>
> Section 47 of the Sports Act ... defines a national sports federation, with regard to its status, as a legal entity which endorses and promotes sport, organises national sport championships, takes care of the national team, and represents the sport for which it was established in relevant international sports associations. Paragraph 6 of that section ... provides that a national sports federation, by [its own] regulations, regulates: a system of competition, the registration of athletes, athletes' rights and obligations, the right of foreign athletes to play for Croatian sports clubs, the disciplinary liability of athletes, and other issues within [the federation's] field of activity.
>
> After consulting the statute of the Croatian Golf Federation of 23 April 2008, it was established that the goals of [the association] were: the coordination of special and common interests, the planning and organisation of the development and promotion of golf, the creation of golfing sports programmes and related activities, the representation of Croatia in golf, and the promotion and raising of awareness on the

importance of golf as a healthy way of life, regardless of players' age, sex or social status.

Having regard to section 47 of the Sports Act and [the fact: that] the statute of [the association], which regulated the central issues of a national sports association, had lost its legal force; that all governing bodies of [the association] had stopped operating when the bankruptcy proceedings had been opened; and that because of the opening of the bankruptcy proceedings, the Croatian Golf Federation could not pursue the goals defined in [its] statute for which [the association] had been established, the first-instance authority correctly established that the Croatian Golf Federation had ceased its activities, on the basis of sub-paragraph 4 of section 28(1) of the Associations Act.

At the same time the first-instance authority, by correctly applying the Associations Act, established that the association Croatian Golf Federation had ceased its activities. The dissolution of the association shall consequently occur only once the conditions set out in section 33 of the Associations Act are met.

In the light of the foregoing, and given that the Croatian Golf Federation, as a sports association with the status of a national sports federation, is not acting in accordance with the provisions of the Sports Act and the Associations Act, and that sub-paragraph 4 of section 28(1) of the Associations Act provides for bankruptcy being one of the grounds for dissolving an association, there are no obstacles to establishing another association to perform golf-related sports activities at a national level in accordance with the Sports Act."

22. By a judgment of 30 October 2013 the High Administrative Court (*Visoki upravni sud Republike Hrvatske*) dismissed an action for judicial review brought by the applicant association. The relevant part of that judgment reads as follows:

"The plaintiff association's appeal, lodged against the [first-instance decision] ... of 26 February 2009 establishing the dissolution of the Croatian Golf Federation owing to bankruptcy, was dismissed by the contested decision.

The plaintiff association contests the above-mentioned decision on all legal grounds, pointing out that it did not cease to operate after the opening of the bankruptcy proceedings. In the statement of claim it extensively cites the circumstances which meant that the decision to dissolve the association should not have been made, essentially [the fact that] the association still existed, had the required number of members and was carrying out its activities. [The plaintiff association] objects to the way in which the case was handled, and considers that the administrative authorities were biased because they referred to the decision of the Croatian Olympic Committee, according to which the plaintiff association was no longer a national representative for golf, something which, in the plaintiff association's opinion, has no bearing on the dissolution of the association. It believes that as regards the examination of the lawfulness of the decision to dissolve the association, the only important element is that [the association] continued to: carry out all the tasks entrusted to national sports associations by the Sports Act, organise national golf championships, manage golf teams, and represent that sport before golf associations at a European and international level. Accordingly, [the plaintiff association] concludes by stating that the association had not ceased to operate, and that this decisive fact was not properly established in the proceedings. It proposes that [the court] allow the action and quash the contested decision.

...

The action is ill-founded.

The information in the case file indicates that bankruptcy proceedings were opened against the Croatian Golf Federation by the Zagreb Commercial Court's decision ... of 23 January 2009 ..., and that the bankruptcy proceedings were closed by a decision of the same court ... of 29 June 2010.

Given that section 28(1) sub-paragraph 4 of the Associations Act provides that an association shall be dissolved in the event of bankruptcy, [and that], in the present case, [bankruptcy proceedings were] opened by the Commercial Court's decision of 23 January 2009, the administrative authority was bound to find that the association had been dissolved."

23. On 13 January 2014 the applicant association lodged a constitutional complaint against the lower-instance decisions, relying, *inter alia*, on its freedom of association, guaranteed by Article 43 of the Croatian Constitution.

24. By a decision of 20 March 2014 the Constitutional Court (*Ustavni sud Republike Hrvatske*), sitting as a panel composed of Judges M.A., D.Š. and M.Š., declared the applicant association's constitutional complaint inadmissible, holding that the case did not raise a constitutional issue. The Constitutional Court served its decision on the applicant association on 5 April 2014.

B. Administrative proceedings to record certain changes in the register of association

25. Meanwhile, on 11 March 2009 the applicant association had asked the Zagreb City Office to record the change of its name from the Croatian Golf Federation (*Hrvatski golf savez*) to the Croatian Golf Federation in Bankruptcy (*Hrvatski golf savez u stečaju*), as required by the Bankruptcy Act, and to record the changes as regards its seat and the person authorised to represent it.

26. By a decision of 31 March 2009 the Zagreb City Office declared the request inadmissible. It held that the applicant association had ceased its activities and therefore the conditions for requesting the recording of changes in the register of associations had not been met.

27. The bankruptcy administrator appealed against that decision on behalf of the applicant association.

28. By a decision of 8 July 2010 the Ministry of Administration dismissed the appeal. The relevant part of that decision reads as follows:

"[The Zagreb City Office], in its decision ... of 26 February 2009, ... established of its own motion, in accordance with section 28(1) sub-paragraph 4 of the Associations Act, that the activities of [the applicant association] had ceased on the basis of the Zagreb Commercial Court's decision of 23 January 2009 whereby bankruptcy proceedings had been opened against the [association]. The bankruptcy administrator lodged an appeal against that decision. In the appellate proceedings, this Ministry

found that the Croatian Golf Federation, as a sports association with the legal status of a national sports federation, was not acting in accordance with the Sports Act. It also found: that the opening of the bankruptcy proceedings had resulted in the statute of the association, which regulates central issues of a national sports federation, losing its legal force; that all the governing bodies of the [applicant association] had stopped functioning; and that [the applicant association] could fulfil neither the purpose of a national sports federation nor the goals laid down in its statute, for which the [applicant association] had been established ... In its decision of 4 May 2010, the Ministry therefore dismissed the appeal by the bankruptcy administrator as ill-founded.

It follows from the above that since the Zagreb City Office established in its decision that [the applicant association] had ceased its activities, that office correctly declared [the applicant association's] request to record [certain] changes in the register of associations inadmissible ..."

29. By a judgment of 30 October 2013 the High Administrative Court dismissed an action for judicial review by the applicant association. The relevant part of that decision reads as follows:

"Section 28(1) sub-paragraph 4 of the Associations Act provides that in the event of bankruptcy, an association is dissolved. In the instant case, the bankruptcy proceedings were opened by a decision of the Zagreb Commercial Court of 23 January 2009, a [fact] which was established by the decision of [the Zagreb City Office] of 26 February 2009.

It follows that on the day when the request to record the changes in the register of associations was submitted, the applicant association had been dissolved, and that after the conclusion of the bankruptcy proceedings the conditions for striking [the association] off the register, set out in section 33 of the Associations Act, were met.

Since the party requesting the recording of changes in the register was a legal entity whose activities had ceased owing to bankruptcy, as was established, the first-instance authority correctly concluded that it could not proceed with such a request. That is so because under section 5(4) of the rules on the register of associations and the register of foreign associations, the dissolution of an association is recorded in the register, whereas the [applicant association] was dissolved on 26 February 2009 by a decision whose effects were not suspended by an appeal."

C. Administrative proceedings to strike an association off the register of associations

30. In the meantime, by a decision of 27 January 2014 the Zagreb City Office, referring to the judgments of the High Administrative Court (see paragraphs 22 and 29 above), had struck the applicant association off the register of associations.

31. On 28 January 2016 the Ministry of Administration dismissed an appeal by the applicant association against that decision.

32. In response to the Ministry of Administration's decision, the applicant association then brought an action for judicial review with the Zagreb Administrative Court (*Upravni sud u Zagrebu*).

33. By a judgment of 12 July 2018 the Zagreb Administrative Court dismissed the action. The relevant part of that judgment reads as follows:

> "The case file indicates ... that a decision [of the Zagreb City Office] ... of 26 February 2009 ... established that the [applicant association] had been dissolved owing to bankruptcy. In particular, the Zagreb Commercial Court's decision of 23 January 2009 opened the bankruptcy proceedings against the [association], and a decision of the same court ... of 29 June 2010 concluded the bankruptcy proceedings.
>
> The appeal by the bankruptcy administrator against [that] first-instance decision was dismissed by the Ministry [of Administration]'s decision of 4 May 2010...
>
> In a judgment ... of 30 October 2013 the High Administrative Court dismissed the action [for judicial review lodged in response to those decisions], holding that the [applicant association] had been dissolved by the opening of the bankruptcy proceedings in accordance with the Zagreb Commercial Court's decision of 23 January 2009.
>
> By [another] judgment of [the same date] the High Administrative Court dismissed the action [for judicial review] lodged in response to [the first-instance decision declaring inadmissible the bankruptcy administrator's request to change the name, ... the seat and the person authorised to represent the association in the register of associations, on the grounds that [the association] had been dissolved.
>
> Sub-paragraph 4 of section 28(1) of the Associations Act provides that in the event of bankruptcy, an association is dissolved.
>
> ...
>
> The case file indisputably indicates that in the [second] judgment of the High Administrative Court of 30 October 2013 it was established that the conditions for striking [the applicant association] off the register of associations, set out in section 33 of the Associations Act, had been met upon the bankruptcy proceedings being concluded in accordance with the Zagreb Commercial Court's decision ... of 29 June 2010.
>
> ...
>
> Therefore, the contested decision [of the Ministry of 28 January 2016], whereby the plaintiff association's appeal against the above-mentioned first-instance decision was dismissed, is lawful."

34. The Zagreb Administrative Court's judgment was certified as having become final on 9 August 2018, even though the applicant association learned about it for the first time from the Government's submissions of 20 November 2019 containing a factual update. It turned out that the judgment had never been served on the applicant association, but at the address of an association with a similar name. Therefore, on 2 January 2020 the applicant association simultaneously lodged a request to set aside the certificate of finality in respect of that judgment, a request to reopen the proceedings, and a constitutional complaint.

III. OTHER RELEVANT PROCEEDINGS

A. Proceedings concerning the applicant association's membership of the Croatian Olympic Committee

35. By a decision of 7 September 2010 the Croatian Olympic Committee excluded the applicant association from the committee; as a national sports federation (see paragraph 47 of the Sports Act cited in paragraph 58 below), the association had been a member of that committee since 15 September 1994. The committee held that owing to bankruptcy, the applicant association no longer met the criteria of a national sports federation. Specifically, owing to bankruptcy, it was no longer acting in accordance with the Sports Act and the Associations Act, because its governing bodies had not been elected by the members of the association, but imposed by a decision of the bankruptcy court (see paragraphs 16-17 above).

36. On 8 August 2011 the applicant association contested that decision by lodging a request for extraordinary review with the Sport Arbitration Council of the Croatian Olympic Committee.

37. By a decision of 13 April 2012 the Sports Arbitration Council of the Croatian Olympic Committee rejected the applicant association's request as being out of time.

38. On 17 May 2012 the applicant association lodged an appeal against that decision before the Court of Arbitration for Sport (CAS) in Lausanne.

39. By a decision of 23 January 2013 the CAS dismissed the applicant association's appeal, finding that there was no arbitration clause in favour of the CAS.

40. Meanwhile, on 28 December 2012 the Croatian Olympic Committee had promoted another golfing federation, an association named the Croatian Golf Association (*Hrvatska golf udruga*), from associate committee member to full committee member. That association thereby acquired the status of a national sports federation.

B. Proceedings concerning the applicant association's membership of the European Golf Association

41. By a resolution of 17 October 2010 the applicant association was expelled from the European Golf Association (EGA), an association of national golf federations in Europe, owing to bankruptcy.

42. On 17 November 2010 the applicant association lodged an appeal against that resolution with the CAS in Lausanne.

43. In an arbitral award of 12 June 2011 the CAS held that the applicant association's appeal was well-founded, because the contested resolution had been based on invalid reasons and/or the association's fundamental right to be heard had been violated.

C. Civil proceedings before the commercial courts for collection of a membership fee

44. In 2011 the applicant association applied to a notary public for a payment order to be issued against one of its members (a golf club), with a view to collecting an unpaid membership fee. On 11 August 2011 the notary public issued a payment order.

45. Upon the golf club in question raising an objection, the payment order was set aside, and regular civil proceedings ensued before the Zagreb Commercial Court.

46. By a judgment of 13 June 2013 that court dismissed the applicant association's claim for payment of the unpaid membership fee. Relying on the Zagreb City Office's decision of 26 February 2009 (see paragraph 19 above), it held that the applicant association had ceased its activities.

47. On 13 October 2016 the High Commercial Court (*Visoki trgovački sud Republike Hrvatske*) reversed the first-instance judgment and ruled in favour of the applicant association. The relevant part of its judgment reads as follows.

> "... The plaintiff association did not cease its activities as an association, because it is evident from the documents in the case file that it continued with its activities [both] during the bankruptcy proceedings ... and [afterwards] under the approved reorganisation plan ... Section 2 of the Associations Act provides that an association acquires the status of a legal entity by being registered in the register of associations. However, under section 3 of that Act, the rules governing civil-law partnerships apply, *mutatis mutandis*, to associations without the status of a legal entity, from which it may be concluded that an association exists even if it is not registered in the register of associations. Therefore, for the resolution of this dispute, it is not decisive that the plaintiff association was struck off the register of associations, or that judicial review proceedings are ongoing in that regard."

IV. OTHER RELEVANT FACTS

A. Activities of the applicant association in the period between 2009 and 2014

48. The applicant association submitted and furnished evidence indicating that it had not stopped its activities either during the above bankruptcy proceedings (see paragraphs 6-17 above) or afterwards, before it had been struck off the register of associations.

49. Specifically, it had organised team and individual Croatian golf championships every year in the period between 2009 and 2014. Every year, the golf club which had won the Croatian team championship had duly participated in the relevant European championship, as usual.

50. The national golf team had continued to participate in the leading world championship – the World Team Championship (held in Argentina in 2010 and in Turkey in 2012) – which was held every two years.

51. The representatives of the applicant association (during the bankruptcy proceedings and afterwards) had continuously attended meetings of the umbrella European and international associations, where, until their expulsion in 2014 on the basis of the High Administrative Court's judgment of 30 October 2013 (see paragraph 22 above), they had been recognised as the legitimate national golf federation of Croatia, notwithstanding the bankruptcy proceedings. In particular, they had taken part in annual meetings of the International Golf Federation in 2012 and the European Golf Association in 2009, 2010, 2011 and 2012.

52. Lastly, the applicant association submitted that even though it had had some thirty golf clubs as its members before the opening of the bankruptcy proceedings and some of them had left the association afterwards, the number of its members had never fallen below seven.

B. Enforcement proceedings for collection of membership fees

53. The applicant association also submitted that on 29 April 2011 it had instituted enforcement proceedings to collect unpaid membership fees from one of its members, a golf club whose president was the husband of Judge D.Š., who had sat on the Constitutional Court panel that had decided on the association's constitutional complaint in the administrative proceedings for dissolution of the association (see paragraph 24 above). According to the applicant association, the enforcement proceedings – in which a writ of execution had been issued on 29 April 2011 and had become final on 17 May 2011 – had been ongoing at the time the Constitutional Court had delivered its decision of 20 March 2014 (see paragraph 24 above), and had still been ongoing at the time when the association had lodged its application with the Court on 3 October 2014.

RELEVANT LEGAL FRAMEWORK

I. RELEVANT DOMESTIC LAW

A. The Constitution

54. The relevant Articles of the Croatian Constitution (*Ustav Republike Hrvatske*, Official Gazette no. 56/90 with subsequent amendments) read as follows:

Article 16

"(1) Rights and freedoms may be restricted only by law in order to protect the rights and freedoms of others, the legal order, public morals or health.

(2) Every restriction of rights and freedoms should be proportional to the nature of the necessity for the restriction in each individual case."

Article 43

"Everyone shall be guaranteed the right to associate freely for the protection of their interests or the promotion of social, economic, political, national, cultural and other convictions or goals. For this purpose, anyone may freely form trade unions and other associations, join them or leave them, in accordance with the law.

The right to associate freely is limited by the prohibition of any violent threat to the democratic constitutional order and the independence, unity, and territorial integrity of the Republic of Croatia."

Article 125

"The Constitutional Court of the Republic of Croatia shall consist of thirteen judges elected among eminent lawyers, especially judges, State attorneys, advocates and university professors of law, by the Croatian Parliament for a term of eight years."

B. The Constitutional Court Act

55. The relevant provision of the Constitutional Act on the Constitutional Court of the Republic of Croatia (*Ustavni zakon o Ustavnom sudu Republike Hrvatske*, Official Gazette of the Republic of Croatia no. 99/1999 with subsequent amendments – "the Constitutional Court Act") reads as follows:

Section 68

"(1) A panel composed of six judges shall decide on a constitutional complaint.

(2) A panel composed of three judges shall decide on constitutional complaints which do not meet procedural requirements (belated, lodged by unauthorised persons or [otherwise] inadmissible).

(3) The panel may only decide unanimously and with all its members present.

(4) If the panel does not reach a unanimous decision, or if the panel considers that the issue [raised in] the constitutional complaint is of wider importance, the constitutional complaint shall be decided by the [plenary] session of the Constitutional Court."

C. The Associations Act

56. The relevant provisions of the Associations Act (*Zakon o udrugama*, Official Gazette no. 88/01), which was in force between 1 January 2002 and 30 September 2014, read as follows:

VI. DISSOLUTION OF AN ASSOCIATION
Grounds for dissolving an association
Section 28

"(1) The grounds for dissolving an association are:

1. a decision by the relevant [governing] body of the association to dissolve the association,

2. the association ceasing its activities,

3. a final court decision banning the association,

4. bankruptcy.

(2) It is to be considered that an association has ceased its activities if the number of its members falls below the number provided for establishing an association, or if a period twice as long as the one provided for in the statute of the association for meetings of the assembly has elapsed without a meeting being held.

(3) The facts referred to in sub-paragraphs 1 and 2 of paragraph 1 of this section shall be established in [administrative] proceedings by a decision of the [relevant local] office of State administration, of its own motion, or at the initiative of the relevant [governing] body of the association or other interested natural and legal persons.

(4) The [relevant local] office of State administration shall issue a decision on the dissolution of the association on the grounds provided for in sub-paragraphs 1 and 2 of section 1, and [shall] notify the relevant court of its decision, with a view to instituting bankruptcy proceedings.

(5) ..."

Striking off the register
Section 33

"(1) [The relevant administrative authority] shall strike the association off the register [of associations] on the basis of the final decision on the conclusion of the bankruptcy proceedings.

(2) The association ceases to exist [is dissolved] when it is struck off the register."

D. The Bankruptcy Act

57. The relevant provisions of the Bankruptcy Act (*Stečajni zakon*, Official Gazette, no. 44/96 with subsequent amendments), which was in force between 1 January 1997 and 31 August 2015, provided as follows:

CHAPTER I.
GENERAL PROVISIONS
Objectives of bankruptcy proceedings
Section 2

"(1) Bankruptcy proceedings are carried out with a view to jointly satisfying [the claims of] the bankruptcy debtor's creditors through the liquidation [sale] of its assets and the distribution of the proceeds among the creditors.

(2) During bankruptcy proceedings a reorganisation plan ... may be [adopted and restructuring may be] carried out with a view to regulating the legal status of the [bankruptcy] debtor and its relationship to its creditors, in particular with a view to preserving its business."

CHAPTER III.
LEGAL EFFECTS OF THE OPENING OF BANKRUPTCY PROCEEDINGS
Transfer of powers of the [bankruptcy] debtor's governing bodies ... to the bankruptcy administrator
Section 89(1)

"When bankruptcy proceedings are opened against a legal entity as a [bankruptcy] debtor, the powers of its governing bodies shall be terminated and transferred to the bankruptcy administrator."

CHAPTER IV.
ADMINISTRATION OF THE BANKRUPTCY ESTATE AND ITS LIQUIDATION
2. DECISION ON LIQUIDATION
Report hearing
Section 155(1)

"At the report hearing, the bankruptcy administrator shall submit a report on the economic status of the [bankruptcy] debtor and its causes. In particular, he or she should indicate whether there are chances that the debtor company could preserve its business, fully or in part, and what effects this could have on the satisfaction of the creditors [i.e. their claims]."

Section 155a

"(1) If the decisions referred to in paragraph 2 of this section have not been made so far, the bankruptcy judge shall schedule a special session of the creditors' assembly no later than six months from the day of the first report hearing to discuss the bankruptcy proceedings and decide on their continuation.

(2) At the hearing referred to in paragraph 1 of this section, creditors may, based on the report of the bankruptcy administrator ... adopt a decision:

...,

3. on whether and in what way the business of the bankruptcy debtor will be preserved,

4. ...,

5. on the need and possibilities to start preparing a reorganisation plan,

6. ...,

7. on other issues of importance for the ... the bankruptcy proceedings."

Section 155b(1)

"In any event, if the creditors do not adopt a decision to preserve the bankruptcy debtor's business at the hearing referred to in section 155a(1) of this Act, the business activities shall be suspended and the bankruptcy debtor's assets shall be liquidated without delay."

CHAPTER VI.
REORGANISATION
1. PREPARATION OF THE REORGANISATION PLAN
Principal provision
Section 213

"(1) Following the opening of bankruptcy proceedings, a reorganisation plan may be prepared in which deviation from the statutory provisions on liquidation and distribution of a bankruptcy estate is permitted.

(2) The reorganisation plan may [provide for]:

- the debtor [entity] being left all or some of its assets, with a view to preserving its business,

..."

E. The Sports Act

58. The relevant provisions of the Sports Act (*Zakon o športu*, Official Gazette, no. 71/06 with subsequent amendments), which has been in force since 6 July 2006, provided as follows:

Sports federations
Section 46(1) and (2)

"(1) A sports federation is an association of at least three legal entities engaged in sporting activities in the same sport which, in order to pursue common interests in a given sport, [carries out the following activities], in particular: coordinating the activities of its members; organising and conducting competitions; regulating a system of competition, and issues related to the registration of athletes, their status and disciplinary liability; promoting professional work in sports; and caring for categorised athletes [*skrbi se o kategoriziranim sportašima*].

(2) Only one sports federation for a single sport may be established at a national level and at a local or regional level."

National sports federation
Section 47

"(1) A national sports federation is established if at least three sports clubs or at least two sports federations established in the same sport are active in the territory of Croatia.

(2) ...

(3) ...

(4) A national sports federation regulates a system of competition in sport for which it was established, as well as other issues which it is entitled to regulate under this Act, and adopts individual decisions when entitled to do so.

(5) A national sports federation endorses and promotes sport in accordance with the National Sports Programme, organises national sport championships, takes care of the national team, and represents the sport for which it was established in the relevant international sports association.

(6) In addition to the issues referred to in paragraph 4 of this section, the national sports federation, by [its own] regulations, also regulates: the conditions to be fulfilled by sports clubs in order to obtain professional status, ... the registration of athletes, [athletes'] rights and obligations, the right of foreign athletes to play for Croatian sports clubs, the disciplinary liability of athletes, and the rights and obligations of sports referees and health professionals if these issues are not regulated by [their] professional associations, as well as other issues within [the federation's] field of activity."

Croatian Olympic Committee
Section 49(1) and (3)

"(1) The Croatian Olympic Committee is the highest non-governmental national sports association in which national sports federations, sports unions in the counties and in the City of Zagreb, and other organisations whose activity is important for the promotion of sports, join together in accordance with the rules of the Croatian Olympic Committee.

(2) ...

(3) The Croatian Olympic Committee is independent in its operation."

F. The Administrative Disputes Act

59. Section 76 of the Administrative Disputes Act (*Zakon o upravnim sporovima*, Official Gazette nos. 20/10 with subsequent amendments) allows for the possibility to reopen proceedings on the basis of a judgment of the European Court of Human Rights. The text of that provision is reproduced in the case of *Guberina v. Croatia* (no. 23682/13, § 28, ECHR 2016).

II. RELEVANT COUNCIL OF EUROPE INSTRUMENTS

60. The relevant part of Recommendation CM/Rec(2007) 14 on the legal status of non-governmental organisations in Europe, adopted by the Committee of Ministers on 10 October 2007 at the 1006th meeting of the Ministers' Deputies, reads as follows:

"**IV. Legal personality**

...

D. Termination of legal personality

44. The legal personality of NGOs can only be terminated pursuant to the voluntary act of their members – or in the case of non-membership-based NGOs, its governing body – or in the event of bankruptcy, prolonged inactivity or serious misconduct.

...

VII. Accountability

...

B. Supervision

74. The termination of an NGO ... should only be ordered by a court where there is compelling evidence that the grounds specified in paragraph 44 ... above have been met. Such an order should be subject to prompt appeal."

61. The Explanatory memorandum to the Recommendation, in the part concerning Paragraph 44 of the Recommendation, reads as follows:

"The termination of the legal personality of an NGO against the will of its members or, in the case of a nonmembership-based organisation, its founders, is not something that should be easily done as this would undermine the principle that such bodies ought not to be subject to the direction of public authorities (see Paragraph 6 of the Recommendation). Involuntary termination ought, therefore, only to be possible where there is a compelling public interest in so doing. This will be where the NGO concerned has become bankrupt, has not been active for an extensive period – this is probably not something that can be claimed unless at least several years have elapsed between meetings of the highest governing body and there have been at least two failures to file annual reports on their accounts – or has engaged in serious misconduct in the sense of wilfully engaging in activities that are inconsistent with the objectives for which an NGO can be founded (including becoming an essentially profit-making body)."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

62. The applicant association complained that the decision of the administrative authorities to dissolve it owing to bankruptcy had been in breach of its freedom of association guaranteed by Article 11 of the Convention, the relevant part of which reads as follows:

"1. Everyone has the right ... to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, 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. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

A. Admissibility

1. The parties' submissions

63. The Government disputed the admissibility of this complaint, arguing that it was premature. They argued that only the decision of 27 January 2014 (see paragraph 30 above) to strike the applicant association off the register of associations had constituted an interference with its freedom of association. The applicant association had contested that decision by instituting judicial review proceedings before the Zagreb

Administrative Court and had resorted to further remedies after that court had dismissed the action (see paragraph 32-34 above). The proceedings instituted in connection with those remedies were still ongoing.

64. The applicant association submitted that the proceedings for striking it off the register of associations (see paragraphs 30-34 above) had merely been a consequence of the decisions adopted in the administrative proceedings for its dissolution (see paragraphs 18-24 above). In the proceedings to strike the association off the register of associations, the relevant administrative court had not been entitled to quash the administrative authorities' decisions adopted in the dissolution proceedings. Rather, the domestic authorities' only task in those proceedings had been to determine whether the conditions for striking the applicant association off the register of associations had been met. Since it had exhausted all available domestic remedies in the dissolution proceedings, going up to the level of the Constitutional Court (see paragraphs 23-24 above), the applicant association considered that it had complied with its obligations under Article 35 § 1 of the Convention.

2. The Court's assessment

65. The Court finds that the question of exhaustion of domestic remedies is inextricably linked to the merits of this complaint. Therefore, to avoid prejudging the latter, both questions should be examined together. Accordingly, the Court holds that the question of exhaustion of domestic remedies should be joined to the merits.

66. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It also notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant association

67. The applicant association submitted that the domestic authorities' decisions in the present case had constituted an interference with its freedom of association. That interference had not been prescribed by law and had not pursued any legitimate aim, nor had it been necessary in a democratic society.

68. As regards the lawfulness of the interference, the applicant association pointed out that the domestic authorities had dissolved it on the basis of section 28(1) of the Associations Act, after having established that it had ceased its activities (see paragraphs 18-24 and 56 above). However, the cessation of activities as grounds for dissolving an association had been

defined in section 28(2) of the same Act (see paragraph 56 above), and no such circumstances had been identified in the applicant association's case. The decision to dissolve the applicant association had thus been the result of the domestic authorities' misapplication of the relevant domestic law.

69. Regarding lawfulness, the applicant association further argued that the relevant provisions of the Associations Act had been unclear, confusing, and badly drafted. No authority could have made an intelligible decision on the basis of that legislation.

70. That was evident from the decisions adopted in the present case, which suggested that the relevant administrative and judicial authorities had not had a clear picture of whether the statutory conditions for the cessation of activities and/or the dissolution of the applicant association had been met. The Zagreb City Office, in its decision of 26 February 2009, had established that the applicant association had ceased its activities, but had referred to bankruptcy as grounds for dissolving an association (see paragraph 19 above). The Ministry of Administration, in its decision of 4 May 2010, had held that the Zagreb City Office had correctly established that the applicant association had ceased its activities, but had observed that the association would be dissolved only when it was struck off the register of associations (see paragraph 21 above). On the other hand, in its judgment, the High Administrative Court had referred to the applicant association being dissolved owing to bankruptcy (see paragraph 22 above).

71. The applicant association thus concluded by stating that the relevant provisions of the Associations Act had not been sufficiently clear and precise to be foreseeable.

72. As regards the legitimate aim, the applicant association submitted that the aim of the interference with its freedom of association had not been sufficiently clear.

73. As regards the aim suggested by the Government (see paragraph 81 below), the applicant association emphasised that even during the bankruptcy proceedings it had continued its activities as a national sports federation (see paragraphs 48-52 above). Competitions had been organised in the same way and to the same extent as before the opening of the bankruptcy proceedings.

74. The applicant association therefore wondered why, as it had still been the active golf federation, it had been necessary to establish another such federation to act at a national level in accordance with the Sports Act, as the Government had suggested (see paragraph 81 below), and how that could be seen as protecting the rights of others.

75. The applicant association averred that the actual aim of the interference with its freedom of association had been to eliminate it as an independent and politically neutral association. It was not by chance that the association which had later acquired the status of the national golfing

association (see paragraph 40 above) had been presided over by a well-known Croatian politician.

76. As a final point regarding the legitimate aim, the applicant association pointed out that its dissolution had permanently damaged the rights of its creditors, whose claims had thus become impossible to collect. The Government had not even addressed the issue of the creditors' interests in their observations.

77. Lastly, the applicant association submitted that if the Court were to find that the interference with its freedom of association had been lawful and had pursued a legitimate aim, that interference had not been necessary in a democratic society. The applicant association did not develop this argument further, because it was unable to identify the legitimate aim whose achievement had made the interference necessary, or a pressing social need to which the interference had supposedly corresponded.

(b) The Government

78. The Government submitted that the domestic authorities' decisions in the present case had been based on law, had pursued a legitimate aim and had been necessary to achieve such an aim.

79. They argued that the examination of whether the dissolution of an association with the status of a national sports federation was justified could not be limited to the grounds for dissolution set out in the legislation governing associations in general. The applicant association, which had had the status of the national golf federation and had been a member of the Croatian Olympic Committee (see paragraph 35 above), had also had to meet certain other criteria prescribed by the Olympic Charter, the Statute of the Croatian Olympic Committee, and the Sports Act (see paragraph 58 above), which it had not met.

80. Therefore, as regards the lawfulness requirement, the Government pointed out that while the interference with the freedom of association in the present case had indeed been based on the relevant provisions of the Associations Act (see paragraph 56 above), it had primarily been based on the Sports Act (see paragraph 58 above).

81. As regard the legitimate aim, the Government submitted that the purpose of the interference had been to protect the rights and freedoms of others. With the opening of the bankruptcy proceedings, the applicant association could no longer exercise its role as a national sports federation, since the statute of the association, which regulated the central issues of a national sports federation, had lost its legal force, and all of the governing bodies of the association had been suspended (see section 89(1) of the Bankruptcy Act, quoted in paragraph 57 above). Therefore, the applicant association had no longer been able to fulfil either the purpose of a national sports federation as defined in the Sports Act (see section 47 of the Sports

Act, quoted in paragraph 58 above) or the aims for which it had been established, as laid down in its own statute.

82. The dissolution of the applicant association had been necessary and proportionate in order to achieve the legitimate aim of having a national sports federation which could carry out golf-related sports activities. Only with the dissolution of the applicant association had it been possible to establish another association which would continue to carry out such activities at a national level (see paragraphs 35 and 40 above).

83. Golf clubs which had left the applicant association had wanted to continue to play golf and contribute to its development in Croatia. They had exercised their freedom of association and had joined another golf association which had met the criteria for membership of the Croatian Olympic Committee (see paragraph 35 above) and for obtaining the status of a national golf federation. Maintaining the applicant association's status as a national golf federation would have violated the freedom of those other golf clubs to associate and carry out their activities.

84. Lastly, the Government pointed out that the applicant association could register itself in the register of associations as any other association.

2. The Court's assessment

(a) The existence of an interference and the exhaustion of domestic remedies

85. The Court notes that the effect of the domestic authorities' decisions adopted in the two consecutive sets of administrative proceedings referred to above (see paragraphs 18-24 and 30-34 above) was that the applicant association was dissolved and struck off the register of associations. Having regard to its case-law on the subject (see, for example, *Tebieti Mühafize Cemiyyeti and Israfilov v. Azerbaijan*, no. 37083/03, § 54, ECHR 2009, and *MİHR Foundation v. Turkey*, no. 10814/07, § 36, 7 May 2019), the Court considers that those proceedings resulted in an interference with the applicant association's freedom of association.

86. The Court further notes from the domestic authorities' decisions adopted in those proceedings that it is evident that the underlying grounds for the dissolution were bankruptcy. However, it is difficult to discern from those decisions (see paragraphs 19, 21-22, 30-31 and 33 above) whether the formal grounds for dissolution were the bankruptcy itself, as independent grounds for dissolution referred to in sub-paragraph 4 of section 28(1) of the Associations Act, or the alleged cessation of the association's activities, referred to in paragraph 2 of the same section (see paragraph 56 above), as a consequence of the bankruptcy.

87. What is certain, however, is that by adopting and upholding the decision of 26 February 2009 (see paragraphs 19, 21-22 above), the domestic administrative and judicial authorities considered that the mere fact that the bankruptcy proceedings had been opened constituted

(sufficient) grounds for dissolving the applicant association. In those dissolution proceedings, the applicant association raised its arguments against that view, the most important arguments being that the law was unclear as to the consequences of the opening of the bankruptcy proceedings, that the association had continued to carry out its activities during the bankruptcy proceedings, and that it had eventually come out of bankruptcy (see paragraph 21-22 above). These are the same arguments which the applicant association raised before the Court (see paragraphs 62 and 67-77 above).

88. In these circumstances, the Court considers that the proceedings to strike the association off the register of associations (see paragraphs 30-34 above) were a mere consequence or extension of the dissolution proceedings (see paragraphs 18-24 above). That being so, the domestic authorities in the proceedings to strike the association off the register of associations could not set aside their own decisions adopted in the dissolution proceedings or otherwise call into question their findings in those proceedings. The Court is therefore satisfied that the applicant association was not required to await the final outcome of the proceedings to strike it off the register of associations (see paragraph 34 above) in order to comply with its obligations under Article 35 § 1of the Convention.

89. It follows that the Government's objection as to the exhaustion of domestic remedies must be rejected.

(b) Whether the interference was justified

90. The Court reiterates that any interference with the freedom of association will not be justified under the terms of Article 11 of the Convention unless it is "prescribed by law", pursues one or more of the legitimate aims set out in paragraph 2 of that Article, and is "necessary in a democratic society" for the achievement of that aim or aims (see, for example, *Jafarov and Others v. Azerbaijan*, no. 27309/14, § 62, 25 July 2019).

(i) Whether the interference was prescribed by law

91. As regards the lawfulness of the interference, the Court firstly notes that it had a legal basis in domestic law, in particular in section 28(1) of the Associations Act (see paragraphs 19, 21-22 and 56 above). The domestic authorities, in their decisions to dissolve the applicant association, specifically relied on sub-paragraph 4 of section 28(1), although, as already noted above (see paragraph 86), the reasons given for those decisions suggest that sub-paragraph 2 of section 28(1) of the Associations Act might also have been a legal basis for those decisions.

92. The Court further reiterates that the expression "prescribed by law" does not only require that the impugned measure should have some basis in

domestic law, but also refers to the quality of the law in question. The law should be accessible to the persons concerned and formulated with sufficient precision to be foreseeable as to its effects (see, for example, *Maestri v. Italy* [GC], no. 39748/98, § 30, ECHR 2004-I, and *Jafarov and Others*, cited above, § 63).

93. The applicant association argued that the interference with its freedom of association had not been foreseeable, having regard to both the text of the relevant provisions of the Associations Act which was "unclear, confusing, and badly drafted", and the manner in which it was applied and interpreted in its case which suggested that the domestic authorities had not had a clear picture as to whether the grounds for dissolution had been the cessation of activities or bankruptcy (see paragraphs 69-71). In view of its own findings above (see paragraphs 86-87), the Court considers that those arguments may call into question the foreseeability of the interference in the present case.

94. However, for the reasons set out below (see paragraphs 95-102), it considers that it may leave open the issue of whether this qualitative requirement was satisfied in the present case.

(ii) Whether the interference pursed a legitimate aim, and whether it was necessary in a democratic society

95. As regards a legitimate aim, having regard to its case-law (see, *mutatis mutandis*, *MİHR Foundation*, cited above, § 38) and the relevant Council of Europe instruments (see paragraphs 60-61 above), the Court considers that, in principle, dissolving an association on grounds of bankruptcy or prolonged inactivity may be regarded as pursuing one of the legitimate aims set out in Article 11 § 2 of the Convention, namely those relating to the prevention of disorder and the protection of the rights and freedoms of others.

96. Even if doubts could arise on the legitimate aim of a decision to dissolve an association based on the mere fact that bankruptcy proceedings have been opened, the Court notes that the dissolution in the present case was also based on the alleged inactivity of the applicant association occasioned by its bankruptcy (see paragraphs 19 and 21 above). The Court therefore considers that the domestic authorities' decisions and the resultant interference may be seen as pursuing one of the legitimate aims set out in Article 11 § 2 of the Convention, namely either the prevention of disorder or the protection of the rights and freedoms of others.

97. Accordingly, the Court must further examine whether that interference was "necessary in a democratic society" for the achievement of one of those aims. The notion of necessity implies that any interference with the freedom of association must correspond to a "pressing social need", and that it must be proportionate to the legitimate aim pursued. The relevant general principles emerging from the Court's case-law in this regard are

summarised in *Gorzelik and Others v. Poland* [GC], no. 44158/98, §§ 95-96, ECHR 2004-I).

98. The Court reiterates that the dissolution of an association is a harsh and particularly far-reaching measure entailing significant consequences, which can be justified only in strictly limited circumstances. Thus, such a measure may be taken only in the most serious cases (see, for example, *Association Rhino and Others v. Switzerland*, no. 48848/07, § 62, 11 October 2011, and *The United Macedonian Organisation Ilinden – PIRIN and Others v. Bulgaria (no. 2)*, nos. 41561/07 and 20972/08, § 94, 18 October 2011). In order to satisfy the proportionality principle in cases concerning dissolution, the authorities must show that there are no other means of achieving the same aims that would interfere less seriously with the freedom of association (see *Association Rhino and Others*, cited above, § 65).

99. In the present case, the Government argued that the dissolution of the applicant association had been necessary because, owing to bankruptcy, it could no longer exercise the role or fulfil the purpose of a national sports federation (see paragraphs 79-83 above). The Court is not persuaded that this aim could not have been achieved by depriving the applicant association of its status as a national sports federation, and is therefore not convinced that this aim had not already been accomplished by the applicant association's exclusion from the Croatian Olympic Committee (see paragraph 35 above).

100. The Court further notes that the domestic authorities applied the relevant provisions of the Associations Act mechanically as their conclusion that the applicant association had ceased its activities was based on the mere fact that bankruptcy proceedings had been opened against it. The applicant association's arguments to the contrary were not addressed. Having regard to the decision, first by the bankruptcy administrator and then by its creditors, to continue with the activities of the applicant's association (see paragraphs 9-10 and 57 above), the evidence submitted by the applicant association in support of its argument that it had continued with its activities during the bankruptcy proceedings (see paragraph 48-52 above), and to the findings of the High Commercial Court in unrelated civil proceedings (see paragraph 47 above), the Court considers that the decisions of the domestic authorities in the dissolution proceedings, and in particular their finding that the applicant association had ceased its activities, were not based on an acceptable assessment of the relevant facts, let alone on compelling evidence (see the relevant Council of Europe instrument cited in paragraphs 60-61 above). The present case is therefore to be distinguished from the *MİHR Foundation* case where the Court found no violation of Article 11 of the Convention. In that case the domestic courts' finding that the applicant foundation had to be considered dissolved because, owing to the lack of financial means, it could have no longer carried out its activities,

was based on a careful assessment of relevant evidence (see *MİHR oundation*, cited above, §§ 12-13).

101. Lastly, it must be noted that in the reorganisation plan it was agreed that all the creditors' claims should be satisfied by the end of 2023 (see paragraph 16 above). However, the domestic authorities did not even consider that their decision to dissolve the applicant association left its creditors without such possibility to satisfy their claims (see paragraph 16 above).

102. The foregoing considerations are sufficient to enable the Court to conclude that the interference with the applicant association's freedom of association was not justified.

There has accordingly been a violation of Article 11 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

103. The applicant association also complained that the Constitutional Court had lacked impartiality, having regard to the fact that Judge D.Š. had been included on the panel which had decided on its constitutional complaint (see paragraphs 24 and 53 above). It relied on Article 6 § 1 of the Convention, the relevant part of which reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law."

A. Admissibility

1. The parties' submissions

(a) The Government

104. The Government disputed the admissibility of this complaint, arguing that the applicant association had failed to exhaust domestic remedies in that it had never requested the withdrawal of Judge D.Š.

105. In the Government's view, the applicant association had known or could have known about the composition of the Constitutional Court (comprising only thirteen judges) since that information was publicly available on that court's website. Since the Constitutional Court decided on constitutional complaints in panels of six judges it had been very likely that Judge D.Š. would sit in the applicant association's case. Therefore, if the applicant association had considered that the said judge's impartiality had been called into question, it could have requested her withdrawal from the case already in its constitutional complaint.

106. Had the applicant association done so, the Constitutional Court would have either assigned the case to a panel which the judge D.Š. would

not be a part of or give reasons as to why the request for withdrawal was not justified.

(b) The applicant association

107. The applicant association argued that it could not have anticipated that Judge D.Š. would sit in the case. In reply to the Government's arguments to the contrary (see paragraph 105 above), the applicant association submitted that browsing the web and learning of the court composition was not something usually expected from the parties in judicial proceedings.

108. The applicant association further submitted that drawing attention to the grounds for removal of a judge was not only an obligation of the party but also of the judge in question notwithstanding whether the party had previously requested removal. In the present case Judge D.Š. had failed to notify the President of the Constitutional Court of the fact calling into question her impartiality even though, due to the specific legal position of the applicant association as the national golf federation, she must have realised that she had been in the conflict of interest. This was something expected from a conscientious judge keeping in mind the confidence the courts should inspire in the public in a democratic society.

109. The applicant association further noted the Government had not made the same objection in a similar case of *Mežnarić v. Croatia* (no. 1615/01, 15 July 2005) and that the Court had not taken the view that the applicants should request withdrawal of a Constitutional Court judge already when lodging their constitutional complaints. Admittedly, the Government had raised such objection, though regarding a judge of the appellate court, in the case of *Golubović v. Croatia*, (no. 43947/10, § 35, 27 November 2012). However, the Court held that, because the applicant had not been made aware of the composition of the appeal panel in advance, he could not have asked for the prior removal of the judge in question (ibid., § 39). Against that background, the applicant association saw no reason why the Court should hold otherwise in the present case.

2. The Court's assessment

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

111. The Court further recalls that in the *Juričić* case it declared inadmissible for non-exhaustion of domestic remedies the applicant's complaint concerning the lack of impartiality of two Constitutional Court judges precisely because she had not requested their withdrawal before that court adopted a decision on her constitutional complaint (see *Juričić v. Croatia* no. 58222/09, §§ 61-64, 26 July 2011).

112. The Court considers that in such situation, which also obtains in the present case, namely where no further remedy is available because the applicant alleges a violation of Article 6 § 1 of the Convention on account of lack of impartiality of the last-instance judicial authority of the domestic legal system, the principle of subsidiarity may require special diligence from the applicants in complying with their obligation to exhaust domestic remedies. In such cases preventive remedies are of particular importance.

113. Naturally, these considerations (see paragraphs 110-112 above) apply only if the applicant knew or could have known of the composition of the court in question.

114. What is more, even in situations such as the one which obtains in the present case (see paragraph 112), it should not be forgotten that judges should maintain and enforce high standards of conduct and should personally observe those standards so as to maintain the integrity of the judiciary (see *Škrlj v. Croatia*, no. 32953/13, § 43, 11 July 2019). Any breach of such standards diminishes public confidence which the courts in a democratic society must inspire in the public (ibid. and see also paragraph 128 below). Therefore, any judge in respect of whom there is a legitimate reason to fear a lack of impartiality must withdraw (see, for example, *Morice v. France* [GC], no. 29369/10, § 78, ECHR 2015).

115. Turning to the present case, the Court notes that nothing in the facts of the case or the parties' submissions suggest that before 5 April 2014, when the Constitutional Court's decision of 20 March 2014 was served on the applicant association (see paragraph 24 above), the association had known of the composition of that court's panel which would examine its constitutional complaint.

116. As regards the further issue whether the applicant association could have known that its case would be decided by a panel of the Constitutional Court including Judge D.Š., the Court first notes that the Croatian Constitutional Court has thirteen judges (see paragraph 54 above). Their names are well known to the general public, and even more so to legal professionals (see *Juričić*, cited above, § 61). In the *Juričić* case the Court held that the applicant could have expected that the Constitutional Court would decide her case in a plenary session, *inter alia*, because it had in the same composition previously decided on the interim measure in the same case (see *Juričić*, cited above, §§ 62-63). However, in that respect the circumstances of the present case are different in some important aspects.

117. The Court notes the Constitutional Court decides on constitutional complaints in panels of six judges unless a complaint is inadmissible (see paragraph 55 above) where it decides in panels of three judges, as it did in the applicant association's case (see paragraph 24 above).

118. Therefore, in contrast to the *Juričić* case (cited above, § 63), in the present case it cannot be said that the likelihood of the applicant association's constitutional complaint being decided by a panel of the Constitutional Court including Judge D.Š., was of such a degree that the applicant association should have anticipated that possibility and thus could have been expected to react preemptively.

119. In view of the foregoing the Court finds that the applicant association did not know nor could have known that Judge D.Š. would sit in the Constitutional Court's panel which decided on the association's constitutional complaint.

120. To ask the applicant association in these circumstances to seek withdrawal of Judge D.Š. before the Constitutional Court adopted a decision on the constitutional complaint would have overstretched its duties under Article 35 § 1 of the Convention. While it would have indeed been useful, as a precautionary measure, to draw the Constitutional Court's attention to the circumstances which were, in the view of the applicant association, capable of casting doubt on that judge's impartiality (see paragraphs 24 and 53 above), the Court considers that the fact that the association did not do so has no bearing on its compliance with the obligation incumbent on applicants under Article 35 § 1 of the Convention.

121. It follows that the Government's objection as to the exhaustion of domestic remedies must be rejected.

B. Merits

1. The parties' submissions

(a) The applicant association

122. The applicant association agreed with the Government (see paragraph 125 below) that the enforcement proceedings it had instituted to collect unpaid membership fees from the golf club whose president was the husband of Judge D.Š. (see paragraph 24 and 53 above) had not been directly related to the administrative proceedings for dissolution of the applicant association (see paragraphs 18-24 above). It could however be argued that, as the spouse of that golf club's president, the judge in question might have had an interest in confirming the administrative authorities' decision to dissolve the applicant association, as that decision had had a direct impact on the ability of the applicant association to collect the debt in those enforcement proceedings.

123. Accordingly, the applicant association argued that, notwithstanding the fact the two proceedings were not directly related, the conflict of interest in the present case could not be deemed negligible. It had therefore constituted a fact capable of casting doubt on Judge D.Š.'s impartiality.

124. Lastly, the applicant association submitted that it did not expressly claim that there had been personal bias on the part of the Judge D.Š. but that it could not exclude that possibility.

(b) The Government

125. The Government submitted that the fact that the applicant association had instituted enforcement proceedings against the golf club whose president was the husband of Judge D.Š. (see paragraphs 24 and 53 above) was not a fact capable of calling her impartiality into question. Those proceedings had not had any connection with the subject matter of the administrative proceedings where that judge had sat in the Constitutional Court's panel which had decided on the applicant association's constitutional complaint.

2. The Court's assessment

126. The relevant Convention principles concerning the impartiality of tribunals were summarised in *Morice*, cited above, §§ 73-78, and *Denisov v. Ukraine* [GC], no. 76639/11, §§ 60-65, 25 September 2018.

127. The Court observes at the outset that the applicant association did not claim (see paragraph 124 above) and that there is nothing to indicate any personal bias on the part of Judge D.Š. It therefore considers that her personal impartiality is not at issue in the present case and that, consequently, its task is to assess whether the applicant association's doubts as to her impartiality may be regarded as objectively justified.

128. In this connection even appearances may be of a certain importance or, in other words, "justice must not only be done, it must also be seen to be done". What is at stake is the confidence which the courts in a democratic society must inspire in the public.

129. Judge D.Š. sat on the three-judge Constitutional Court panel deciding on the applicant association's constitutional complaint against the administrative authorities' decision to dissolve the association (see paragraphs 18-24 above). The applicant association's misgivings regarding her impartiality are based on the fact that her husband was the president of the golf club against which the applicant association instituted enforcement proceedings with a view to collecting unpaid membership fees.

130. It is true that the two proceedings were unrelated in terms of their subject matter. However, it cannot be overlooked that the dissolution of the applicant association was directly decisive for the existence of that golf

club's debt owed to the applicant association, it being understood that a debt is extinguished if the creditor no longer exists.

131. It is also true that the Constitutional Court's decision of 20 March 2014 (see paragraph 24 above) was not constitutive of the dissolution but only resulted in the administrative authorities' decision to dissolve the applicant association to stand. Yet, the Court cannot disregard the fact that, once the Constitutional Court declared the applicant association's constitutional complaint inadmissible, the administrative authorities' decision on dissolution became irreversible and the debt of the golf club whose president was Judge D.Š.'s husband was definitely extinguished.

132. The Court considers that, against this background and having regard to the importance of appearances (see paragraph 128 above), the fact that Judge D.Š. was a member of the Constitutional Court's panel which decided the applicant association's constitutional complaint was capable of raising legitimate doubts as to her impartiality. Accordingly, she should have withdrawn from sitting but did not do so. The applicant association's fears as regards her impartiality can thus be held to have been objectively justified.

133. There has accordingly been a violation of Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

134. 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. Pecuniary damage

135. The applicant association claimed 4,753,159.28 Croatian kunas (HRK), 89,667.75 euros (EUR) and 70,817.04 Swiss francs (CHF) in respect of pecuniary damage. The applicant association clarified that those amounts corresponded to actual loss and loss of profits. The applicant association explained that it had experienced enormous financial losses as a result of the domestic authorities' decision to dissolve it. On the basis of that decision, it had been excluded from the Croatian Olympic Committee in 2010 (see paragraph 35 above), and from the European and international golfing associations in 2014 (see paragraph 51 above). Consequently, the applicant association had lost its sponsors, partners and donors, and a number of its members had left the association, which had resulted in a loss of income from lost membership fees.

136. The Government contested these claims by arguing that there was no causal link between the violations complained of and the pecuniary damage alleged. In any event, the applicant association's claims were unsubstantiated and excessive.

137. The Court notes that in the present case the applicant association did not complain about its exclusion from the Croatian Olympic Committee, but about the decisions of the domestic administrative and judicial authorities to dissolve it as well as about the lack of impartiality of the Constitutional Court when deciding its constitutional complaint against those decisions (see paragraphs 62 and 103 above). Moreover, that exclusion was primarily based on the legal effects which the bankruptcy proceedings had on the association (see paragraph 35 above). The Court thus cannot speculate as to whether the exclusion would have occurred in the absence of the domestic authorities' decision to dissolve the applicant association. The Court therefore rejects the applicant association's claim in respect of pecuniary damage, as it does not discern a sufficient causal link between the violations found and the pecuniary damage alleged.

B. Non-pecuniary damage

138. The applicant association also claimed EUR 20,000 in respect of non-pecuniary damage.

139. The Government contested that claim.

140. The Court reiterates that, according to its case-law, a juristic person, even a commercial company, may sustain damage other than pecuniary damage calling for pecuniary compensation (see *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, §§ 31-37, ECHR 2000-IV, and *Grande Oriente d'Italia di Palazzo Giustiniani v. Italy*, no. 35972/97, § 38, ECHR 2001-VIII).

141. The Court notes that in the present case it has found two violations of different rights under the Convention: a violation of Article 11 on account of the breach of the right to freedom of association, and of Article 6 § 1 on account of the breach of the right to an impartial tribunal (see paragraphs 85-102 and 125-133 above). Both violations stem from related facts, namely, from the same set of domestic proceedings (see paragraphs 18-24 above).

142. In this connection the Court considers that the dissolution of the applicant association must have been highly frustrating for the association, its members and members of its governing bodies and that it caused them considerable inconvenience in the conduct of the association's everyday affairs (see, *mutatis mutandis*, *Freedom and Democracy Party (ÖZDEP) v. Turkey* [GC], no. 23885/94, § 57, ECHR 1999-VIII, and, *a fortiori*, *Comingersoll S.A.*, cited above, § 36). The applicant association must have therefore sustained non-pecuniary damage on account of the violation of its

freedom of association. The Court also recalls that it has awarded non-pecuniary damage to juristic persons in cases in which it had found violations of Article 6 § 1 of the Convention on account of the lack of impartiality (see *Editorial Board of* Grivna *Newspaper v. Ukraine*, no. 41214/08, § 138, 16 April 2019, and *Cosmos Maritime Trading and Shipping Agency v. Ukraine*, no. 53427/09, § 104, 27 June 2019).

143. The Court further notes that under the domestic law, the applicant association has a possibility to seek the reopening of the proceedings complained of (see paragraph 59 above). However, since it considers that the non-pecuniary damage sustained by the applicant association cannot be sufficiently compensated for by the reopening of the proceedings, the Court, ruling on an equitable basis, awards the applicant association EUR 10,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount. This sum is to be paid to and held in trust for the applicant association by its representative Ms I. Bojić (see paragraph 2 above) until such time as this sum can be administered by the association itself.

C. Costs and expenses

144. The applicant association also claimed HRK 41,250 for the costs and expenses incurred before the Court.

145. The Government contested that claim.

146. 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 have been 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 2,800 for the proceedings before the Court. This sum is to be paid directly into the bank account of the applicant association's representative (see paragraph 2 above).

A. Default interest

147. 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, UNANIMOUSLY,

1. *Joins to the merits* the Government's objection as to the exhaustion of domestic remedies and rejects it;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 11 of the Convention;

4. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

5. *Holds,*
   (a) that the respondent State is to pay the applicant association, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Croatian kunas at the rate applicable at the date of settlement:
      (i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, which is to be paid to, and held in trust for the applicant association by its representative until such time as this sum can be administered by the association itself;
      (ii) EUR 2,800 (two thousand eight hundred euros), plus any tax that may be chargeable to the applicant association, in respect of costs and expenses, to be paid into the bank account of its representative;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicant association's claim for just satisfaction.

Abel Campos
Registrar

Krzysztof Wojtyczek
President