



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

FIRST SECTION

CASE OF JULARIĆ v. CROATIA

(Application no. 20106/06)

JUDGMENT

STRASBOURG

20 January 2011

FINAL

20/04/2011

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

In the case of Jularić v. Croatia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Registrar*,

Having deliberated in private on 13 January 2011,

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

PROCEDURE

1. The case originated in an application (no. 20106/06) 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, Ms Marta Jularić (“the applicant”), on 24 April 2006.

2. The applicant, who had been granted legal aid, was represented by Mr D. Bučanac, a lawyer practising in Velika Gorica. The Croatian Government (“the Government”) were represented by their Agent, Ms Š. Stažnik.

3. The applicant alleged, in particular, that the relevant authorities had not carried out a thorough and effective investigation into the death of her husband, as required under Article 2 of the Convention.

4. By a decision of 2 September 2010 the Court declared the application partly admissible.

5. The Government but not the applicant filed additional observations on the merits (Rule 59 § 1).

THE FACTS

6. The applicant was born in 1936 and lives in Osijek.

1. Background to the case

7. The events at issue took place in Vukovar, a Croatian town near the Serbian border which was heavily attacked by the Yugoslav People's Army

and paramilitary Serbian armed forces during the Homeland War from August to November 1991 and finally occupied at the end of November 1991. Between 1992 and 1996 Vukovar was a part of the United Nations Protected Area (the “UNPA”).

8. In 1996 the United Nations Security Council established the United Nations Transitional Administration in Eastern Slavonia, Baranja and Western Sirmium (the “UNTAES”), which included Vukovar. On 15 January 1998 the UNTAES mandate ceased and the transfer of power to the Croatian authorities began.

2. Facts concerning the death of the applicant's husband

9. According to the applicant, on 17 September 1991 several members of the Serbian paramilitary forces came to her home, took some money and ransacked the house looking for money and gold. The applicant recognised three of them as P.Z., S.Z. and V.Z.

10. On 3 October 1991 three men, dressed in Yugoslav People's Army uniforms, one of whom was M.S. and personally known to the applicant, came to the applicant's family house in Vukovar. They hit her husband, A.J., before taking him away. A few minutes later the applicant heard shots from an automatic weapon. The uniformed men then also took the applicant and her grandson, M.J., together with some other persons, including S.M., to the military headquarters. On the way there the applicant saw the dead body of her husband, his head battered, lying on a path in front of a house; the persons who had brought him out of the house were standing next to the body.

3. Investigation into the death of the applicant's husband

11. In autumn 1991 the applicant reported the above-mentioned event to the Vukovar police station, which was located in Zagreb at that time.

12. On 18 March 1992 the Vinkovci Police Department lodged a criminal complaint with the Osijek Military Prosecution against ten alleged offenders (G.J., M.S., S.S., M.N., B.G., M.K., Z.R., P.N., S.Z. and V.Z.), alleging that on 3 October 1991 they had arrested several individuals and then killed two of them, one of whom was the applicant's husband, and had thus committed a war crime against the civilian population. Following a request of the Osijek Military Prosecution, dated 14 May 1992, the Osijek Military Court opened an investigation in respect of the ten suspects on 31 August 1992 on the criminal charge of armed rebellion. The Military Court also ordered the suspects' detention and issued a warrant to find and arrest them, as they had absconded.

13. On 9 February 1993 the Military Court heard evidence from the applicant and her son. The applicant said that in September and October 1991, after the Serbian forces had entered Vukovar, but before the city

finally fell, several persons, including her former neighbours M.S., S.S. and three brothers Z., all dressed in Yugoslav People's Army uniforms and equipped with shotguns and Kalashnikovs, had been coming to the yard in front of her house daily, threatening her and asking for her sons. She further stated that one of the persons who had come to her house on 3 October 1991 and taken her husband away was M.S., but she did not know the names of the others. A few minutes later, while she was being taken to the military headquarters, the applicant had passed the dead body of her husband. Her neighbour, S.M., who had been with her at the time, knew the names of the men who had taken the applicant's husband away.

14. On 17 December 1996 the Osijek County State Attorney's Office requested that the investigation be extended to two further suspects, Đ. P. and A.G. The charge was changed to one of war crimes against the civilian population. It was also requested that two witnesses be called once the police had found out their addresses. On 29 December 1996 the Osijek County Court requested the police to inform them of the addresses of the two witnesses. On 9 January 1997 the Osijek County Court extended the investigation to Đ.P. and A.G. and issued arrest warrants against them. On 23 January 1997 the police gave the County Court the requested addresses.

15. On 30 January 1997 the applicant and another witness gave evidence before the Osijek County Court. The applicant specifically named one of the perpetrators, and the witness S.M. said that she had seen all twelve suspects at the scene.

16. On 16 May 1997 the Osijek County Court stayed the investigation on the ground that the suspects and some of the witnesses resided in the occupied territory of Croatia, where the Croatian authorities were not able to exercise their power.

17. The Convention was ratified by Croatia on 5 November 1997.

18. The territories of Eastern Slavonija, Baranja and Western Slavonija were re-integrated into Croatia in January 1998.

19. On 27 November 2000 jurisdiction in the matter was transferred to the Vukovar County Court (*Županijski sud u Vukovaru*) and the investigation was resumed.

20. On 2 October 2001 one of the suspects, Đ.B., was arrested and gave evidence before an investigating judge of the Vukovar County Court. On 10 October 2001 the investigating judge heard evidence from three further suspects, B.G., Z.R. and S.Z. On 11 October 2001 Đ.B. again gave evidence before the investigating judge. All the suspects denied their involvement in the murder of the applicant's husband. On 5 December 2001 the applicant again gave evidence.

21. On 14 May 2002 the Vukovar County State Attorney's Office requested a further investigation. On 13 and 23 September 2002 the investigating judge again heard evidence from the witness S.M. and two other witnesses. Witness D.K., who had been ordered to bury the body of

the applicant's husband, stated that he had been arrested by members of the Serbian paramilitary forces and taken to the place where the dead body of the applicant's husband had been lying. The head had been battered and the body was riddled with bullets. The witness could not name any of the uniformed men who had been standing next to the body and had ordered him to bury it. The other witness, M.K., had no knowledge of the relevant facts.

22. The applicant enquired about the investigation on several occasions and on 17 December 2002 she was informed that an investigation had been opened against S.Z., V.Z. and others in the Vukovar County Court on charges of war crimes against the civilian population, and was still pending.

23. On 21 May 2003 the investigating judge terminated the investigation following a general amnesty granted in respect of the criminal offence of armed rebellion. On 27 May 2003 a three-judge panel of the Vukovar County Court quashed that decision on the ground that, prior to the amnesty, the offence had already been reclassified as a war crime against the civilian population. On 17 September 2003 the case file was forwarded to the State Attorney's Office. On 31 October 2003 that Office requested a further investigation.

24. A psychiatric report in respect of witness Z.F. was commissioned. The report was submitted to the Vukovar County Court on 6 February 2004. On 17 February 2004 Z.F. gave evidence before the investigating judge. He had no specific knowledge of the facts in issue. Further hearings were held before the investigating judge on 28 April, 29 October and 15 November 2004. In the meantime, on 20 September 2004, the investigation in respect of G.J. was terminated owing to his death.

25. On 13 January 2005 the applicant complained to the State Attorney of inactivity and delays in the investigation into the death of her husband and of failure to commit the suspect for trial.

26. At a hearing held before the investigating judge on 17 March 2005 witness S.M. gave her evidence.

27. On 6 April 2005 the applicant again gave evidence. She stated that another witness, A.M., had been present when her husband had been taken away on 3 October 1991. A.M. was not called as a witness.

28. Further hearings were held before the investigating judge on 6 and 21 April, 15 June, 13 July, 8 August and 11 November 2005.

29. On 25 March 2006 the applicant lodged a constitutional complaint of inactivity on the part of the investigating authorities. The Constitutional Court answered in a letter of 31 March 2006 that the applicant's complaint was not suitable for proceedings before that court.

30. At hearings held before the investigating judge on 11 May 2006 and 14 November 2007, further witnesses gave evidence.

31. Identification parades were held on 17 November and 9 December 2008 in order to verify the identity of the suspect M.S. None of the three

witnesses called, including S.M., recognised him as one of the people who had taken the applicant's husband away. On 5 March 2009 the investigation in respect of M.S. was terminated for lack of evidence.

32. On 1 July 2009 the investigating judge requested international legal assistance in order to have the suspect A.G. interviewed in Sweden. On 3 April 2009, in reply to a request from the Swedish authorities, the investigating judge supplied a list of questions to be put to A.G. The latter was heard by the Swedish authorities on 9 February 2010.

33. On 31 March 2010 the investigating judge heard evidence from witness M.J.

34. On 22 April 2010 the Vukovar County Court terminated the proceedings in respect of the suspect M.N. because he had died.

35. On 27 April 2010 the offence with which the suspects had been charged was reclassified as armed rebellion. On the basis of that reclassification and pursuant to the Amnesty Act, the Vukovar County Court terminated the proceedings on 30 July 2010.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

36. The applicant complained that the relevant authorities had not taken all relevant and adequate steps to investigate the death of her husband, identify the perpetrators and bring them to justice. She relied on Article 2 of the Convention, which reads:

“1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

1. The parties' arguments

37. The applicant argued that in the eighteen years that had passed since the killing of her husband the national authorities had failed to comply with their duty to conduct an effective and thorough investigation capable of identifying the perpetrators and bringing them to justice.

38. The Government argued that the killing of the applicant's husband had occurred in 1991, during the Homeland War in Croatia, probably at the hands of members of the occupying forces and on territory outside the control of the Croatian authorities. Croatia had regained control over that territory in January 1998 and until that time it had been very difficult to conduct an effective investigation.

39. Since 1998 numerous steps had been taken. However, some of the suspects were still untraceable. The difficulties in the investigation were also due to the unwillingness of witnesses to recall traumatic experiences related to the war.

2. The Court's assessment

40. The Court firstly notes that the alleged perpetrators were not State officials but members of either the Yugoslav People's Army or the Serbian paramilitary forces, both acting on Croatian territory without the authorisation or consent of the Croatian authorities. They shall therefore, as regards the responsibility of the respondent State under Article 2 of the Convention, be regarded as private individuals.

41. The Court has already held that the obligation to protect life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", requires that there should be some form of effective official investigation when individuals have been killed as a result of the use of force, either by State officials or by private individuals (see, for example *Branko Tomašić and Others v. Croatia*, no. 46598/06, § 62, ECHR 2009-... (extracts)).

42. The investigation must be effective in the sense that it is capable of leading to the identification and punishment of those responsible (see *Oğur v. Turkey* [GC], no. 21594/93, § 88, ECHR 1999-III). In particular, the authorities must take the reasonable steps available to them to secure evidence concerning the incident, including, *inter alia*, eyewitness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death (see, for an example concerning autopsies, *Salman v. Turkey* [GC], no. 21986/93, § 106, ECHR 2000-VII; for an example concerning witnesses, *Tanrikulu v. Turkey* [GC], no. 23763/94, ECHR 1999-IV, § 109; and for an example concerning forensic evidence, *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000).

Any deficiency in the investigation which undermines its ability to establish the cause of death or the person responsible may risk falling foul of this standard.

43. There must also be an implicit requirement of promptness and reasonable expedition (see *Yaşa v. Turkey*, 2 September 1998, *Reports of Judgments and Decisions* 1998-VI, §§ 102-04, and *Mahmut Kaya v. Turkey*, no. 22535/93, §§ 106-07, ECHR 2000-III). It must be accepted that there may be obstacles or difficulties which prevent progress in an investigation in a particular situation. However, a prompt response by the authorities in investigating the use of lethal force may generally be regarded as essential in preserving public confidence in the maintenance of the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts.

44. For the same reasons, there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory. The degree of public scrutiny required may well vary from case to case. In all cases, however, the next of kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests (see *Shanaghan v. the United Kingdom*, no. 37715/97, §§ 91-92, 4 May 2001).

45. As regards the present case, the Court notes that in 1991 the applicant reported to the Croatian authorities that her husband had been taken away and killed on 3 October 1991 by members of the Serbian paramilitary forces or the Yugoslav People's Army.

46. In the present case an official investigation was indeed opened in connection with the killing of the applicant's husband. However, there were substantial shortcomings in the conduct of the investigation. In this connection the Court will examine only the part of the inquiry that took place after January 1998 since before then the Croatian authorities had had no real authority in the town of Vukovar.

47. The Court notes firstly that although the investigation started soon after the killing of the applicant's husband no steps whatsoever were taken in the period between January 1998 and 2 October 2001 during which one of the suspects, Đ.B., was arrested and gave evidence before an investigating judge of the Vukovar County Court. While the Court accepts that the respondent State needed some time to organise its judicial system in the newly regained territories, it nevertheless finds that a period of complete inactivity as regards the progress of the investigation in the present case of about three years and nine months appears unreasonable even in these circumstances.

48. Further investigative measures were plagued by inexplicable delays. Thus, no relevant activity was carried out during the following periods: between 5 December 2001 and 14 May 2002; between 14 May and 13 September 2002; between 13 September 2002 and 21 May 2003;

between 17 February 2004 and 6 April 2005; between 11 November 2005 and 11 May 2006 and between 14 November 2007 and 17 November 2008.

49. These delays together with the overall length of the inquiry compromised the effectiveness of the investigation and could not but have had a negative impact on the prospects of establishing the truth.

50. Other elements of the investigation are also relevant. For example, in his evidence given on 23 September 2002 witness D.K. said that he had been ordered by several uniformed men to bury the body of the applicant's husband. While it is true that he was not able to name any of those men, the investigating authorities made no effort to find out whether D.K. could recognise any of the suspects as those men, for example by organising an identification parade to that end. Furthermore, in her evidence given on 6 April 2005 the applicant stated that witness A.M. had been present when her husband had been taken away on 3 October 1991. However, the investigating authorities made no effort to call witness A.M.

51. The Court considers that the deficiencies described above are sufficient to conclude that the national authorities failed to carry out an adequate and effective investigation into the circumstances surrounding the killing of the applicant's husband. There has accordingly been a violation of the procedural obligation of Article 2 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

52. 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

53. The applicants claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

54. The Government deemed the amount claimed excessive and unsubstantiated.

55. Having regard to all the circumstances of the present case, the Court accepts that the applicant suffered non-pecuniary damage which cannot be compensated solely by the finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 30,000 in respect of non-pecuniary damage, plus any tax that may be chargeable to her on that amount.

B. Costs and expenses

56. The applicant did not claim any costs and expenses incurred. Accordingly, the Court considers that there is no call to award her any sum on that account.

C. Default interest

57. The Court considers it appropriate that the default interest 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. *Holds* that there has been a violation of the procedural obligation of Article 2 of the Convention;
2. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 30,000 (thirty thousand euros), plus any tax that may be chargeable to the applicant, in respect of non-pecuniary damage, to be converted into Croatian kuna 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;
3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 January 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President