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

SECOND SECTION

DECISION

Application no. 22714/19
Stojanka ABRAMOV
against Croatia

The European Court of Human Rights (Second Section), sitting on 21 May 2024 as a Committee composed of:

Lorraine Schembri Orland*, President*,
Frédéric Krenc,
Davor Derenčinović*, judges*,
and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 22714/19) 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") on 19 April 2019 by a Croatian national, Ms Stojanka Abramov ("the applicant"), who was born in 1963, lives in Cres and was represented by Ms I. Dedić, a lawyer practising in Rijeka;

the decision to give notice of the application to the Croatian Government ("the Government"), represented by their Agent, Ms Š. Stažnik;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns the length of criminal proceedings against the persons who had been involved in the applicant's son's murder and their prosecution becoming statute-barred.

2. On 4 December 2009 at around 3.30 a.m. in the street in Rijeka, the applicant's son A.A. had an argument with Du.C., D.S. and Da.C., following which he received multiple punches and kicks to the head and body. A.A. died shortly afterwards due to haematoma on his head and a fracture of the nasal bone.

3. In 2010 the prosecutor indicted Du.C. for murder and D.S. and Da.C. for failing to provide assistance to A.A. whose life had been in danger.

4. On 10 February 2014 the Rijeka County Court found the accused guilty as charged, and sentenced Du.C. *in absentia* to twelve years' imprisonment, and D.S. and Da.C. to three months' and five months' imprisonment, respectively.

5. On 5 December 2016 the Supreme Court quashed the first-instance judgment in the part concerning D.S. and Da.C. and remitted the case.

6. On 8 December 2017 the Rijeka Municipal Court terminated the proceedings against D.S. and Da.C. on the grounds that the prosecution against them had become time-barred.

7. The applicant lodged a constitutional complaint which was declared inadmissible by the Constitutional Court on 18 September 2018 on the grounds that the case did not concern the determination of her civil rights or a criminal charge against her. The said decision was served on the applicant's lawyer on 22 October 2018.

8. The applicant complained, relying on Article 6 of the Convention, about the excessive length of the criminal proceedings against the accused, in particular before the Supreme Court, resulting in the fact that the prosecution of D.S. and Da.C. had become statute-barred.

9. The case was communicated to the respondent Government under the procedural limb of Article 2 of the Convention.

THE COURT'S ASSESSMENT

10. The Government pointed out that the applicant had never raised a complaint under Article 2 of the Convention either before the domestic authorities or before the Court.

11. The Court has held in *Radomilja and Others v. Croatia* ([GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018) that the scope of a case "referred to" the Court is determined by the applicant's complaint, consisting of two elements: factual allegations and legal arguments. By virtue of the *jura novit curia* principle the Court is not bound by the legal grounds adduced by the applicant under the Convention and the Protocols thereto and has the power to decide on the characterisation to be given in law to the facts of a complaint by examining it under Articles or provisions of the Convention that are different from those relied upon by the applicant. It cannot, however, base its decision on facts that are not covered by the complaint. To do so would be tantamount to deciding beyond the scope of a case; in other words, to deciding on matters that have not been "referred to" it, within the meaning of Article 32 of the Convention.

12. At the same time, an applicant is not prevented from clarifying or elaborating upon his or her initial submissions during the Convention proceedings. The Court has to take account not only of the original application but also of the additional documents intended to complete the latter by eliminating any initial omissions or obscurities (ibid., § 122).

13. In the present case, in her application form the applicant complained that the inordinate length of the criminal proceedings against D.S. and Da.C. in particular before the Supreme Court had resulted in the prosecution against them becoming statute-barred. In doing so, she relied solely on Article 6 § 1 of the Convention stating that she as the injured party in the criminal proceedings had been denied the right to a trial within a reasonable time.

14. The Court further notes that in her observations in reply to those of the Government, the applicant reiterated the complaint concerning the unreasonable length of the proceedings. Moreover, she argued that the Government's statement of facts which had included information concerning the entire criminal investigation and proceedings following A.A.'s death had been misleading. She reiterated that her application only referred to the "statute of limitations for criminal prosecution due to the lack of timeliness of the [domestic] courts", and referred to the parts of the facts in the Government's observations which concern the proceedings before the Supreme Court and the subsequent period after the remittal of the case to the first-instance court.

15. Accordingly, having regard to the applicant's statements in her application form, as clarified in her subsequent observations, and its case-law on the matter (see paragraph 11 above), the Court concludes that it cannot recharacterise her complaint and examine it under the procedural limb of Article 2 of the Convention. Doing so would have entailed taking into account the entire criminal investigation and proceedings following her son's death, that is, facts which she excluded from the factual basis of her complaint (see the previous paragraph; see also, *mutatis mutandis*, *Radomilja and Others*, cited above, §§ 128-133, and compare, for factual similarities, *Crnković v. Croatia* (dec.), no. 69697/11, §§ 30-32, 26 November 2019). The Court will instead only examine her complaint under Article 6 § 1 of the Convention, as originally submitted.

16. In that connection, the Court reiterates that the Convention does not guarantee a right to have criminal proceedings instituted against third persons or to have such persons convicted (see *Perez v. France* [GC], no. 47287/99, § 70, ECHR 2004-I; *M. and M. v. Croatia*, no. 10161/13, § 191, ECHR 2015 (extracts)). Since the applicant was not the accused but the injured party in the criminal proceedings complained of, the criminal limb of Article 6 does not apply. As to its civil limb, it does not transpire that the applicant ever filed a civil-party claim in the context of the criminal proceedings against the accused. Since under domestic law, a criminal conviction is not a formal precondition for obtaining damages in civil proceedings, the outcome of the

criminal proceedings at issue was not decisive for the applicant's "civil rights". The civil limb of Article 6 is thus equally inapplicable to the present case.

17. Accordingly, the present application is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 13 June 2024.

Dorothee von Arnim Deputy Registrar	Lorraine Schembri Orland President