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

FIRST SECTION

DECISION

Applications nos. 17262/20 and 14975/21
Predrag AMIDŽIĆ
against Croatia

The European Court of Human Rights (First Section), sitting on 12 October 2021 as a Committee composed of:

Krzysztof Wojtyczek, *President,*
Erik Wennerström,
Ioannis Ktistakis, *judges,*
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the applications (nos. 17262/20 and 14975/21) against Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 3 April 2020 and 11 March 2021 respectively by Mr Predrag Amidžić ("the applicant"), a national of Serbia and Croatia who was born in 1969 and lives in Crepaja and who was represented by Mr Z. Novaković, a lawyer practising in Zagreb;

Having deliberated, decides as follows:

SUBJECT-MATTER OF THE CASE

A. Application no. 17262/20

1. In July 1994 the applicant and V.Dž. were charged with war crime against civilian population committed in Croatia in May 1994.

2. On 4 February 2019 a three-judge panel of the Zagreb County Court ordered their detention pending trial on the ground of risk of absconding, in that they had been aware of the charges brought against them, but that all attempts by the Croatian authorities to secure their presence at the trial had been unsuccessful. Noting that in his written submission to the court V.Dž. referred to the Republic of Croatia as a "genocidal state" and called its citizens "stinking Ustashe" (*smrdljivi Ustaše*), the panel deemed that this

circumstance, and the fact that both the applicant and V.Dž., despite being properly summoned, had failed to appear before the trial court, indicated that they were avoiding trial. The Supreme Court upheld this decision.

3. On 4 February 2020 the Constitutional Court declared the applicant's constitutional complaint inadmissible on the grounds that a deprivation of liberty was a precondition for examining complaints concerning pre-trial detention, whereas the applicant had not been detained.

4. The criminal proceedings, in which the applicant is represented by a lawyer of own his choosing, are currently pending before the Zagreb County Court.

5. The applicant complains, under Article 5 of the Convention, about the lack of relevant and sufficient reasons for his detention pending trial. He further complains, under Article 6, that the president of the Zagreb County Court panel lacked impartiality, in that he had fought during the war on the Croatian side, that is against the applicant's army, near the territory where the impugned war crime had allegedly been committed. The partiality was evident in the fact that the panel imputed to the applicant a statement against Croatia and its citizens made by his co-accused. He also complains, under Articles 6 and 13, about the Constitutional Court declining to examine his complaint lodged against the detention order.

B. Application no. 14975/21

6. On 4 June 2020 the Croatian courts decided to conduct the criminal proceedings against the applicant (see paragraph 1 above) in his absence. In so doing they had regard to the severity of the charges, the particularly cruel manner in which the criminal offence had been committed, the circumstances that the indictment had been brought in 1994, that the applicant, although aware of the charges brought against him, had remained unavailable to the Croatian prosecution authorities, that as a Serbian national he could not be extradited to Croatia, that an agreement concluded between the Croatian and Serbian prosecution authorities in 2006 precluded transferring prosecution for war crimes to Serbia, and that the interests of justice and the victims' families warranted conducting the trial.

7. The applicant complains, relying on Article 6 §§ 1 and 3 (c) of the Convention, about the Croatian courts' decision to conduct the criminal proceedings against him in his absence, instead of transferring the prosecution to Serbia, where he resides and is a national.

THE COURT'S ASSESSMENT

8. Having regard to the intertwined subject matter of the applications, the Court finds it appropriate to examine them jointly in a single decision.

9. Having regard that the applicant was not detained following the adoption of the decisions on his pre-trial detention as the relevant authorities could not reach him in order to execute the order, Article 5 of the Convention is not applicable to his complaints (see, for instance, *Guliyev v. Azerbaijan* (dec.), no. 35584/02, 27 May 2004, and *Hodžić v. Croatia*, no. 28932/14, § 36, 4 April 2019). As the proceedings ordering the applicant's pre-trial detention did not concern the determination of a criminal charge against him, the criminal limb of Article 6 is not applicable to them either. It follows that the applicant's complaints in that regard are inadmissible as being incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected pursuant to Article 35 § 4.

10. In any event, the Court agrees with the Supreme Court that the circumstance that the president of the Zagreb County Court panel had fought in the war on the Croatian side is not capable of its own to put in doubt his impartiality, and that there is nothing suggesting that the panel imputed the statements made by V.Dž. to the applicant. The panel merely provided reasons warranting the applicant's detention which were upheld as relevant and sufficient by the Supreme Court. Thus, even assuming compatibility *ratione materiae* with the provisions of the Convention, this complaint is inadmissible under Article 35 § 3 (a) of the Convention for being manifestly ill-founded.

11. The applicant's complaint concerning the Constitutional Court's decision declaring inadmissible his constitutional complaint is likewise manifestly ill-founded. The Court has no intention to question the power of the Constitutional Court to interpret the criteria for assessing the admissibility of constitutional complaints and the resultant practice that certain decisions are not amenable to constitutional review, the latter being a matter in the sole domain of the Constitutional Court (see, *inter alia, Kušić v. Croatia* (dec.), no. 71667/17, § 87, 10 December 2019).

12. Lastly, the Convention does not guarantee the right of a person charged with a criminal offence to choose a country where he or she will be prosecuted (see, *mutatis mutandis, West v. Hungary*, no. 5380/12, §§ 69-70, 25 June 2019). The Court is satisfied that the applicant is aware that the criminal proceedings are pending against him and that he has the opportunity to participate in them (see *Bivolaru v. Romania (no. 2)*, no. 66580/12, § 113, 2 October 2018). It follows that this complaint is likewise inadmissible under Article 35 § 3 (a) of the Convention as manifestly ill-founded and must be rejected pursuant to Article 35 § 4.

For these reasons, the Court, unanimously,

Decides to join the applications*;*

Declares the applications inadmissible.

Done in English and notified in writing on 18 November 2021.

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Liv Tigerstedt Deputy Registrar	Krzysztof Wojtyczek President