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

SECOND SECTION

DECISION

Application no. 74808/17
Zoran BAUKOVIĆ
against Croatia

The European Court of Human Rights (Second Section), sitting on 23 May 2023 as a Committee composed of:

Pauliine Koskelo*, President*,
Lorraine Schembri Orland,
Davor Derenčinović*, judges*,

and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 74808/17) 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 17 October 2017 by a Croatian and Serbian national, Mr Zoran Bauković, who was born in 1975 and is currently serving his prison sentence in Lepoglava ("the applicant") and who was represented by Mr G. Preglej, a lawyer practising in Zagreb;

the decision to give notice of the complaint concerning the presumption of innocence to the Croatian Government ("the Government"), represented by their Agent, Ms Š. Stažnik, and to declare inadmissible the remainder of the application;

the parties' observations;

the notice given to the Government of Serbia of their right to intervene in the proceedings (Article 36 § 1 of the Convention) and the fact that they did not express a wish to exercise that right;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the applicant's complaint that a statement by the spokesperson of a police department, given before the opening of criminal investigations against him, violated his right to be presumed innocent.

2. On 14 January 1997, after the war in Croatia had ended, a Croatian civilian was killed by an unknown perpetrator, allegedly a member of the Serbian paramilitary forces. The killing occurred in Ilok, a town in Eastern Slavonia which was thereafter, by 15 January 1998, peacefully reintegrated into Croatian territory.

3. Following the peaceful reintegration, the Croatian authorities commenced an investigation into the killing. Upon the completion of investigative actions, on 25 July 2011 the Vukovar-Srijem Police Department submitted a special report to the Vukovar County State Attorney, identifying the applicant as the potential perpetrator.

4. Three days later, on 28 July 2011, the spokesperson of the Police Department informed the public about the completion of the criminal inquiries, naming the applicant as a suspect. He continued:

> "On that date, the suspect killed the 46-year-old woman without any reason using an automatic weapon, and afterwards left Croatia without returning. Namely, he went to Serbia where he has been living ever since ... A criminal complaint for murder ... has been lodged against the suspect and a warrant for his arrest has been issued."

5. The applicant was subsequently charged with murder and convicted for the first time in 2014, but the Supreme Court quashed that judgment for lack of evidence and remitted the case.

6. On 4 February 2015 the Vukovar County Court sentenced the applicant to twelve years' imprisonment for murder, and that judgment was upheld on appeal.

7. On 30 March 2017 the Constitutional Court dismissed the applicant's subsequent constitutional complaint, finding no breach of the presumption of innocence. That decision was served on the applicant on 18 April 2017.

THE COURT'S ASSESSMENT

8. The Court considers it unnecessary to decide on the inadmissibility argument raised by the Government, since the present application is in any event inadmissible for the following reasons.

9. The general principles concerning the right to be presumed innocent enshrined in Article 6 § 2 of the Convention were summarised in *Peša v. Croatia* (no. 40523/08, §§ 138-141, 8 April 2010). Article 6 § 2 prohibits, *inter alia*, statements made by public officials about pending criminal investigations which encourage the public to believe the suspect guilty and prejudge the assessment of the facts by the competent judicial authority (*ibid.*, §§ 138 and 141). A fundamental distinction must be made in this regard between a statement that someone is merely suspected of having committed a crime and a clear declaration, in the absence of a final conviction, that an individual has committed the crime in question (*ibid.*, § 141).

10. The Court notes that in the present case the impugned statement, referring to the applicant by name, was made by the spokesperson of the

relevant police department, after it had finished the criminal inquiries and lodged a criminal complaint against the applicant with the competent State Attorney (see paragraph 4 above). The Court agrees that, taken in isolation, the impugned statement may have legitimately raised concerns with the applicant about his right to be presumed innocent.

11. However, the parties agreed that there had been a justified interest of the public to be informed about the advancement of the criminal investigation into the murder at issue, given the political sensitivities surrounding the offence and the specific context of the post-reintegration period in the area.

12. While the use of the categorical terms that the applicant had "killed the 46-year-old woman" is unfortunate, the Court considers that, having regard to the context in which the terms were used, the police officer was referring not to the question whether the applicant's guilt had been established by the evidence – which was clearly not one for the determination of the police – but to the question whether the case file disclosed sufficient evidence of the applicant's guilt to justify the police filing a criminal complaint against him (compare also *Daktaras v. Lithuania*, no. 42095/98, § 44, ECHR 2000-X, and *Czajkowski v. Poland* (dec.), no. 6809/03, 16 October 2007). This further transpires from the fact that in his statement the police officer consistently referred to the applicant as a "suspect" – a term understandable even to a lay person – as well as the fact that he clarified that a criminal complaint and an arrest warrant had been issued against him (see paragraph 4 above). In these circumstances the Court concludes that there is no appearance that the statement used by the police spokesperson, read in its entirety, constituted a breach of the principle of the presumption of innocence.

13. The Court further notes that, following his first instance conviction, in 2014 the Supreme Court quashed that judgment and remitted the case due to insufficient evidence (see paragraph 5 above), which indicates that the domestic courts had clearly not presumed the applicant's guilt on the basis of the impugned statement.

14. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 15 June 2023.

Dorothee von Arnim
Deputy Registrar

Pauliine Koskelo
President