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

SECOND SECTION

DECISION

Application no. 25906/20
Neđeljko BLAGOJEVIĆ
against Croatia

The European Court of Human Rights (Second Section), sitting on 11 March 2025 as a Committee composed of:

Gediminas Sagatys*, President*,
Davor Derenčinović,
Juha Lavapuro*, judges*,

and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 25906/20) 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 June 2020 by a Croatian national, Mr Neđeljko Blagojević ("the applicant"), who was born in 1940, lives in Debeljaci, Banja Luka and was represented by Mr V. Vučković, a lawyer practising in Zagreb;

the decision to give notice of the complaint under Article 6 § 1 of the Convention concerning allegedly arbitrary and manifestly unreasonable domestic court decisions 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;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the applicant's complaint under Article 6 § 1 of the Convention about the allegedly arbitrary and manifestly unreasonable domestic court decisions rendered in civil proceedings he had instituted against the State.

A. Background to the case

2. The applicant's son was killed on 28 April 1995 by V.G. at a parking lot near a hotel in Nova Gradiška.

3. Questioned by the police on the same day, V.G., 19 years old at the time, stated that some 10-13 days earlier, he had decided to kill a person of Serbian ethnicity. He had decided to perpetrate such an act because he was a displaced person, and because during the war he had lost his uncle and many other persons whom he had known. He stated that he had been coming to the hotel parking lot for the past 7-8 days and had been observing how Serbs from the occupied territory of Croatia had been excessively purchasing petrol and reselling it, while he himself had not been able to return to his house in the occupied territory. He stated that what motivated him the most to commit murder had been the behaviour of Serbs, that is, how they had behaved freely, while until yesterday they had been shooting at Croats.

4. V.G. further stated that on 28 April 1995 he had arrived at the parking lot with the intention of killing a Serb. He had been walking around, listening to the conversations of the persons present, because he had wanted to make sure that the victim was of Serbian ethnicity. Around 7 p.m., he had noticed a 25-year-old man sitting in front of a store, drinking beer, and talking to the persons around him. He had overheard that man saying: "this is the Serbian Republic of Krajina, but they do not understand it yet, and we already do here as we like". Having heard that, V.G. had taken a knife from his sleeve and had killed the man. He had then gone to a bar and had told its owner what had happened. Afterwards, he had gone to another bar and had told a friend what had happened, and then the police had arrested him. He lastly submitted that he had not felt remorse for what had happened because it had been bound to happen sometime.

5. On 29 April 1995 the police lodged a criminal complaint against V.G. on suspicion of murder.

6. On 10 July 1995 the public prosecutor indicted V.G. for murder.

7. The indictment stated that, in his defence, V.G. had submitted that he had arrived in Nova Gradiška as a displaced person from the occupied territory, together with his father and younger brothers and sisters. Being a displaced person had been difficult for him, especially because several years earlier he had lost his mother and had had to take care of his siblings. He had been going to the hotel parking lot, where Serbs from the occupied territory had been coming to purchase petrol. Observing people, he had overheard a young man saying: "this is *Republika Srpska*", which had revolted him, and he had started stabbing that man, whom he had not known before.

8. According to the indictment, a witness, J.S., had submitted that he had known V.G. since their childhood and that they had both been displaced from the occupied territory. They had both been bitter because they could not return to their homes, and V.G. had also been unable to visit his mother's grave,

while Serbs from the occupied territory had freely been coming to Nova Gradiška to resell petrol and make money.

9. The indictment also stated that a psychiatric expert report had been obtained, which concluded that V.G had an insufficiently differentiated personality structure with an impaired development of intellectual and emotional functions and further suffered from an endogenous mental illness. At the time of the offence his criminal liability had been significantly diminished.

10. The public prosecutor concluded in the indictment that V.G. had perpetrated the murder because of being upset with the fact that the victim had proclaimed the area as being "*Republika Srpska*". The prosecutor proposed that, in setting V.G.'s sanction, regard be had to his mental condition, the fact that he was of young age, that he was a displaced person whose mother had died, that he was unable to return to his home, that at the time of the offence his capacity to understand his actions had been severely diminished and the fact that he had unjustifiably taken the life of a young man.

11. In 1998 V.G. was pardoned by the President and the criminal proceedings against him were discontinued.

B. The civil proceedings at issue

12. In 2006 the applicant instituted civil proceedings for damages against the State, arguing that his son had been killed by a member of the Croatian army, and alternatively that his son's killing had amounted to a terrorist act, for which the State was liable.

13. On 22 March 2017 the Zagreb Municipal Civil Court dismissed the applicant's claim. It found that the murder of the applicant's son had not been perpetrated by a member of the Croatian army, and that therefore the State could not be held liable for it under the Act on the liability of the Republic of Croatia for damage caused by members of the Croatian army and police in the performance of their duties during the Homeland War (the relevant provisions thereof are outlined in *Bursać and Others v. Croatia*, no. 78836/16, § 32, 28 April 2022).

14. The court further found that the son's murder did not amount to a terrorist act, as required for obtaining damages under the Act on Liability for Damage Resulting from Terrorist Acts and Public Demonstrations (hereinafter: the Liability Act; section 1 § 2 of that Act defines a "terrorist act" as an act of violence committed for political reasons with a view to stirring up fear, terror or feelings of personal insecurity in citizens; the relevant provisions of the Liability Act and related domestic case-law are outlined in *Cindrić and Bešlić v. Croatia*, no. 72152/13, §§ 48-49, 6 September 2016).

15. In particular, the first-instance court analysed V.G.'s statements and the criminal case-file (see paragraphs 3-11 above) and concluded that V.G. had murdered the applicant's son for personal reasons, and not with the aim of provoking fear and stirring up feelings of insecurity in citizens, as required by the Liability Act. The court emphasised that, in assessing whether an act of violence constituted a terrorist act within the meaning of the Liability Act, it was not only the objective elements of the act which were important, but it was necessary that the act was committed with the aim to disturb public order by intimidating and creating a feeling of insecurity in citizens, especially if carried out for political reasons. In that court's view, the isolated murder perpetrated by a person with a significantly diminished capacity to understand his actions had lacked a specific message characteristic of a terrorist act. The fact alone that the murder had occurred near the occupied territory was insufficient on its own to consider the murder as a terrorist act. It was necessary to have regard to the broader context of the circumstances and the events during which the act was committed, the means used, the motives, and the time and place of the events. Even though the murder had occurred in Nova Gradiška, where war actions had taken place, the circumstances of the murder (perpetrator stabbing the victim as a result of hearing something which had revolted him) showed that the murder had been the result of a mental disturbance of the murderer, and not that the murder was a terrorist act undertaken with the aim of demonstrating that no person was safe.

16. On 30 May 2017 the Zagreb County Court dismissed the applicant's subsequent appeal. It agreed with the first-instance court that the murder had been motivated by personal reasons, V.G.'s frustration and feeling that persons of Serbian ethnicity from the occupied territory had been those to blame for his life situation caused by the war and occupation, and that it had not been perpetrated in order to provoke a feeling of insecurity in citizens.

17. On 20 March 2018 the Supreme Court dismissed the applicant's appeal on points of law, holding that the lower courts had correctly concluded that the murder of the applicant's son had not constituted a terrorist act.

18. On 10 March 2020 the Constitutional Court dismissed the applicant's constitutional complaint, by ten votes to three. The majority found that the lower courts' judgments had given sufficient reasons for their findings, which could not be deemed arbitrary.

19. In their separate opinion, three dissenting judges held that the victim had been murdered for speaking like a person of Serbian ethnicity, which could not be considered as a revenge, but as a message to "other Serbs" that they were not safe in Nova Gradiška. In those judges' view, by perpetrating such an act, the murderer had wished to accomplish that Serbs no longer came to the petrol station "to purchase and resell gas and make money", which he had certainly partly accomplished. In the three judges' view, the lower courts' judgments had left it unclear whether a murder based on Serbian ethnicity

could only constitute revenge for war or could also serve to send a political message.

20. Before the Court the applicant complained, under Article 6 § 1 of the Convention, that the civil courts' conclusion that his son's murder did not amount to a terrorist act for which the State was liable was arbitrary and manifestly unreasonable.

THE COURT'S ASSESSMENT

21. The Court reiterates that it is sensitive to the subsidiary nature of its role, and that it must be cautious in taking on the role of a first-instance tribunal of fact where this is not rendered unavoidable by the circumstances of a particular case. It is not the Court's task to substitute its own assessment of the facts for that of the domestic courts, and as a general rule it is for those courts to assess the evidence before them (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 150, 20 March 2018).

22. The Court should not act as a court of fourth instance and will not therefore question under Article 6 § 1 the judgment of the national courts, unless their findings can be regarded as arbitrary or manifestly unreasonable (see *Bochan v. Ukraine (no. 2)* [GC], no. 22251/08, § 61, ECHR 2015). In that connection the Court reiterates that a domestic judicial decision cannot be qualified as arbitrary to the point of prejudicing the fairness of proceedings unless no reasons are provided for it or if the reasons given are based on a manifest factual or legal error committed by the domestic court, resulting in a "denial of justice" (see *Moreira Ferreira v. Portugal (no. 2)* [GC], no. 19867/12, § 85, 11 July 2017), that is, an error so "evident" that no reasonable court could ever have made it (see *Bochan*, cited above, § 62).

23. In the present case the Court notes that the domestic civil courts at three levels of jurisdiction examined the applicant's case and gave detailed reasons for their conclusions, which were then also reviewed by the Constitutional Court (see paragraphs 13-19 above). The domestic courts analysed V.G.'s statements and the criminal case-file and concluded that V.G. had murdered the applicant's son for personal reasons, and not with the aim of provoking fear and stirring up feelings of insecurity in citizens, as required by the Liability Act and the relevant domestic case-law for an act of violence to be classified as a terrorist act. They held that, even though the murder had occurred in Nova Gradiška, where war actions had taken place, the circumstances of the murder (perpetrator stabbing the victim as a result of hearing something which had revolted him) showed that the murder had been a result of the mental disturbance of the murderer, and not that the murder was a terrorist act undertaken with the aim of demonstrating that no person was safe.

24. A careful reading of the case-file does not allow the Court to conclude that the domestic court decisions were arbitrary or manifestly unreasonable,

that is, that their findings were the result of a manifest factual or legal error leading to a "denial of justice" (see paragraph 22 above and contrast *Trivkanović v. Croatia* (no. 2), no. 54916/16, § 81, 21 January 2021, and *Baljak and Others v. Croatia*, no. 41295/19, §§ 40-41, 25 November 2021).

25. The domestic courts' finding that the isolated murder perpetrated by a person with a significantly diminished capacity to understand his actions had lacked a specific message characteristic of a terrorist act does not seem arbitrary in the light of section 3 of the Act (which provides the State's liability for damage caused by terrorist acts irrespective of whether the perpetrator has been identified, criminally prosecuted or found guilty). Indeed, that finding was not used as a basis for non-applicability of the Act, but rather only in the context of assessing the subjective element in examining whether the murder could be classified as a terrorist act. In that connection the Court also takes note of the fact that the domestic courts' case-law does not disclose an ethnically biased approach in assessing whether an act of violence could be classified as a terrorist act (see the Supreme Court's judgments referred to in *Cindrić and Bešlić*, cited above, § 49).

26. It follows that the application is inadmissible under Article 35 § 3 (a) of the Convention for being manifestly ill-founded and must be rejected pursuant to Article 35 § 4 thereof.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 3 April 2025.

Dorothee von Arnim Deputy Registrar	Gediminas Sagatys President