

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

FIRST SECTION

CASE OF VIDAK v. CROATIA

(Application no. 67141/14)

JUDGMENT

STRASBOURG

23 September 2021

This judgment is final but it may be subject to editorial revision.



In the case of Vidak v. Croatia,

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

Péter Paczolay, *President,*
Alena Poláčková,
Gilberto Felici, *judges,*
and Attila Teplán, *Acting Deputy Section Registrar,*

Having regard to:

the application (no. 67141/14) 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 and Serbian national, Mr Milenko Vidak ("the applicant"), on 6 October 2014;

the decision to give notice to the Croatian Government ("the Government") of the complaint concerning the excessive length of criminal proceedings, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 31 August 2021,

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

INTRODUCTION

1. The case concerns the length of ongoing criminal proceedings in which the applicant was accused of a war crime. The proceedings have so far lasted for more than eleven years, at two levels of jurisdiction.

THE FACTS

2. The applicant was born in 1959 and lives in Greda Sunjska. He was represented by Mr D. Rupčić, a lawyer practising in Sisak.

3. The Croatian Government ("the Government") were represented by their Agent, Ms Š. Stažnik.

4. The Government of Serbia, having been informed of their right to intervene (Article 36 § 1 of the Convention and Rule 44 § 1 (a) of the Rules of Court), did not avail themselves of this right.

5. The facts of the case, as submitted by the parties, may be summarised as follows.

I. CRIMINAL PROCEEDINGS

6. On 19 May 1999 an investigating judge of the Sisak County Court (*Županijski sud u Sisku*) opened an investigation in respect of the applicant on suspicion of murder. On 30 March 2009 the judge opened an

investigation against the applicant on suspicion of a war crime against the civilian population and ordered his detention.

7. On 12 July 2009 the applicant was arrested in Turkey on the basis of an international arrest warrant issued by the Croatian authorities. On 15 July 2009 the Turkish authorities informed their Croatian counterparts of the applicant's arrest, by a diplomatic note indicating that he had been arrested for murder.

8. On 20 July 2009 the Ministry of Justice requested the Turkish authorities to extradite the applicant to Croatia for the offences of murder and a war crime against the civilian population.

9. On 18 February 2010 the applicant was extradited to Croatia where he was immediately placed in detention in connection with both offences. The next day he was brought before the investigating judge where he was informed of the charges against him.

10. As regards the murder charge, the applicant was eventually found guilty of that criminal offence and sentenced to five years' imprisonment by the Sisak County Court's judgment of 12 November 2010 and the Supreme Court's judgment of 7 April 2011. He was conditionally released on 26 June 2015.

11. As regards the charge of a war crime against the civilian population, the Sisak County Court asked the Ministry of Justice on 17 March, 6 May and 7 June 2010 to obtain a copy of the decision by the Turkish authorities concerning the applicant's extradition. Without that decision it could not be established whether he had been extradited for both murder and a war crime, it being understood that he could be tried only for the offence or offences in respect of which he had been extradited (see Article 14 § 1 of the European Convention on Extradition in paragraph 42 below).

12. On 17 May 2010 the Sisak County State Attorney's Office (*Županijsko državno odvjetništvo u Sisku*) indicted the applicant before the Sisak County Court for a war crime. The applicant lodged an objection against the indictment arguing that he had been extradited to Croatia only for murder and not for a war crime.

13. On 1 June 2010 the Sisak County State Attorney's Office requested the Sisak County Court to supplement the investigation with a view to establishing the offence or offences for which the applicant had been extradited. It noted that the Turkish authorities' diplomatic note of 15 July 2009 only indicated that the applicant had been arrested on the basis of the Croatian authorities' international arrest warrant for murder (see paragraph 7 above). The County Court granted the request on the same day whereupon it asked the Ministry of Justice to enquire with the Turkish authorities which offence or offences the applicant had been extradited for.

14. On 31 August 2010 the Ministry of Justice received from the Turkish authorities two decisions concerning the applicant's extradition: (a) a decision of the Trabzon Assize Court of 14 September 2009, which

indicated that the applicant had been extradited to Croatia on suspicion of having committed a murder, and (b) a decision of the Government of Turkey of 19 October 2009 which indicated that his extradition had been granted for "having committed a war crime against the civilian population by murder". The Ministry forwarded the two decisions to the Sisak County Court on 3 September 2010.

15. On 20 September 2010 the Sisak County State Attorney's Office again indicted the applicant before the Sisak County Court for a war crime against the civilian population. That time the Sisak County Court rejected the applicant's argument that he had not been extradited for a war crime and, on 30 September 2010, dismissed his objection against the indictment.

16. By a judgment of 20 December 2010, the same court found the applicant guilty as charged and sentenced him to eight years' imprisonment.

17. The applicant appealed, complaining that he had been extradited from Turkey for murder and not for a war crime.

18. On 12 July 2011 the Supreme Court (*Vrhovni sud Republike Hrvatske*) allowed his appeal, quashed the first-instance judgment of 20 December 2010 (see paragraph 16 above), and remitted the case for a retrial on the grounds that the first-instance court should have established for which offence or offences exactly the applicant had been extradited from Turkey.

19. In particular, the Supreme Court noted that there were two different decisions of the Turkish authorities concerning the applicant's extradition: one decision of the Trabzon Assize Court allowing his extradition for murder, and another of the Turkish Government allowing his extradition for a war crime (see paragraph 14 above). In accordance with the relevant provisions of the Turkish Criminal Code, decisions on extradition were to be given by the relevant court, whereas the execution of such court decisions came within the jurisdiction of the Turkish Government. Thus, it remained unclear whether the relevant authority in Turkey had approved the applicant's extradition for a war crime. The Supreme Court therefore instructed the County Court to clarify whether the applicant had been extradited for a war crime and, if this was not the case, to obtain consent from the Turkish authorities that he be tried for that offence as well (see Article 14 § 1 (a) of the European Convention on Extradition in paragraph 42 below).

20. Because of a change in the relevant legislation, on 7 December 2011 the case was transferred from the Sisak County Court to the Zagreb County Court (*Županijski sud u Zagrebu*) as the first-instance court.

21. By a judgment of 17 April 2012, the Zagreb County Court found the applicant guilty as charged and sentenced him to six years' imprisonment. The court held that it was evident from the decision of the Turkish Government (see paragraph 14 above) that the applicant had been extradited for a war crime as well. Moreover, there was nothing in the decisions of the

Turkish authorities to suggest that the extradition request had been rejected in part. It was therefore evident that the applicant's extradition had been granted for both criminal offences in respect of which it had been requested.

22. The applicant appealed against that judgment, complaining again that he had not been extradited for a war crime.

23. On 12 November 2013 the Supreme Court allowed the appeal, quashed the first-instance judgment of 17 April 2012 (see paragraph 21 above) and remitted the case for a retrial. It held that the first-instance court had failed to comply with the Supreme Court's instruction and had not clarified whether the applicant had been extradited for a war crime (see paragraphs 18-19 above)

24. On 18 February 2014 the president of the trial bench of the Zagreb County Court prepared a request to the Turkish authorities asking them to give consent for the applicant to be tried for the war crime in question (see Article 14 § 1 (a) of the European Convention on Extradition in paragraph 42 below). The request, together with the supporting documents, was translated into Turkish on 25 July 2014 and was forwarded to the Ministry of Justice on 15 September 2014.

25. On 11 July 2017 the Ministry of Justice asked the Ministry of Foreign and European Affairs to enquire with the Turkish authorities why the extradition request from the Ministry of Justice of 20 July 2009 (see paragraph 8 above) had been granted only in part. They referred to the decision of the Trabzon Assize Court of 4 August 2009 which suggested that the applicant had been extradited only for murder (see paragraph 14 above).

26. On 23 August 2017 the Turkish Ministry of Foreign Affairs replied with a diplomatic note, from the text of which it remained unclear whether the Turkish authorities had extradited the applicant for a war crime.

27. In January 2018 the Ministry of Justice contacted the Turkish Embassy in Zagreb directly and provided additional information and clarification as to what was expected from the Turkish authorities.

28. On 12 March 2018 the Zagreb County Court enquired with the Ministry of Justice as to why the court's request of 18 February 2014 (see paragraph 24 above) had not been dealt with.

29. On 26 October 2018 the Turkish authorities, in reply to the Ministry of Justice's request of 11 July 2017 (see paragraph 25 above), submitted a decision of the Trabzon Assize Court of 25 April 2018. In that decision the Trabzon Assize Court clarified that its previous decision of 4 August 2009 and the Turkish Government's decision of 19 October 2009 (see paragraph 14 above) related both to murder and to a war crime against the civilian population, and that the extradition had therefore been granted for both offences. That reply and the decision were forwarded to the Zagreb County Court on 11 April 2019.

30. The court held hearings on 8 May, 10 June, 16 July and 3 September 2019.

31. The hearing scheduled for 27 October 2019 was adjourned because certain witnesses had not been duly summoned. In that connection the trial court asked for legal assistance from the relevant Serbian authorities, with a view to serving a summons on those witnesses. It also asked the relevant authorities in the United States to locate and serve a summons on another witness. The U.S. Department of Justice informed the Croatian authorities that it could not locate that witness. The trial court also determined the address of one witness who resided in Norway.

32. The hearing scheduled for 18 February 2020 was adjourned because two witnesses who resided in Serbia failed to attend, although they had been duly summoned. The trial court therefore accepted a proposal by the applicant that those witnesses be examined via a video link from the relevant court in Serbia. In that regard, the court scheduled hearings for 9, 14 and 21 April 2020. However, those hearings were adjourned owing to the COVID-19 sanitary crisis, and because the court building had been heavily damaged in the earthquake that hit Zagreb on 22 March 2020. Furthermore, the next hearing, scheduled for 17 September 2020, was also adjourned because the two witnesses in question had not been duly summoned in Serbia.

33. On 5 November 2020 the Zagreb County Court examined two witnesses via a video link from the Belgrade Higher Court in Serbia.

34. At a hearing held on 10 November 2020 the State Attorney partly amended the factual basis of the indictment.

35. At a hearing held on 4 December 2020 the County Court adopted a judgment whereby it found the applicant guilty of having committed a war crime against the civilian population and sentenced him to seven years' imprisonment.

36. The applicant appealed and those proceedings are currently pending before the Supreme Court.

II. PROCEEDINGS FOLLOWING THE USE OF REMEDIES FOR THE PROTECTION OF THE RIGHT TO A HEARING WITHIN A REASONABLE TIME

37. Meanwhile, on 31 March 2014, the applicant lodged a request for the protection of the right to a hearing within a reasonable time with the President of the Zagreb County Court – a purely acceleratory remedy under the 2013 Courts Act. His request was dismissed on 2 June 2014.

38. The applicant's appeal against that decision was also dismissed by a decision of the President of the Supreme Court on 6 August 2014.

39. On 23 September 2009 the applicant lodged a constitutional complaint against the decision of the President of the Supreme Court.

40. By a decision of 24 December 2014, the Constitutional Court (*Ustavni sud Republike Hrvatske*) declared the applicant's constitutional complaint inadmissible on the grounds that the contested decision was not amenable to constitutional review.

RELEVANT LEGAL FRAMEWORK

41. The relevant domestic law and practice concerning length-of-proceedings remedies in Croatia is set out in *Mirjana Marić v. Croatia* (no. 9849/15, §§ 29-41, 30 July 2020), and *Vrtar v. Croatia* (no. 39380/13, § 51-56 and 61-64, 7 January 2016).

42. The relevant provision of the European Convention on Extradition, which entered into force in respect of Croatia on 25 April 1995, reads as follows:

Article 14 – Rule of speciality

"(1) A person who has been extradited shall not be proceeded against ... for any offence ... other than that for which he was extradited ... except in the following cases:

(a) when the Party which surrendered him consents. A request for consent shall be submitted, accompanied by the documents mentioned in Article 12 and a legal record of any statement made by the extradited person in respect of the offence concerned. Consent shall be given when the offence for which it is requested is itself subject to extradition in accordance with the provisions of this Convention;

(b) ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

43. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

"In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

44. There was no dispute between the parties that the period to be taken into consideration began on 19 February 2010, when the applicant was brought before the investigating judge and informed of the charges against him, following his extradition from Turkey to Croatia (see paragraph 9 above). The period in question has not yet ended (see paragraph 36 above). It has so far lasted for more than eleven years, at two levels of jurisdiction.

A. Admissibility

1. The parties' arguments

45. The Government disputed the admissibility of the application on two grounds. In particular, they argued that the application was premature because the applicant had lodged it with the Court on 6 October 2014, while the proceedings before the Constitutional Court, in connection with his request for the protection of the right to a hearing within a reasonable time, had still been pending (see paragraphs 39-40 above). In that way the applicant had not afforded the Constitutional Court an opportunity to decide his complaint and remedy the alleged violation. Thus, the Government argued that the applicant had not properly exhausted domestic remedies.

46. The Government further submitted that the applicant's length complaint was of a fourth-instance nature as, by requesting the protection of his right to a hearing within a reasonable time, he had actually requested the Court to rule that he had not been extradited for a war crime and that the criminal proceedings against him for that offence had therefore been unlawful.

47. The applicant disputed the Government's arguments. He contended that pursuant to the Constitutional Court's case-law, the decisions of the president of the court, in the context of proceedings instituted by a request for the protection of the right to a hearing within a reasonable time, were not decisions amenable to review by the Constitutional Court, and that had also been confirmed in his case (see paragraph 41 above).

48. The applicant further argued that his complaint regarding the length of the criminal proceedings could not be considered as being of a fourth-instance nature, given that the Court had, when giving notice to the Government of the complaint concerning the excessive length of criminal proceedings, declared the remainder of his application inadmissible, including the complaint that his detention for a war crime against the civilian population had been unlawful because he had not been extradited for that offence.

2. The Court's assessment

49. As regards the Government's inadmissibility objection based on non-exhaustion of domestic remedies (see paragraph 45 above), the Court first reiterates that the application cannot be declared inadmissible on that ground if the last stage of such remedies is reached before the Court determines the issue of admissibility (see, for example, *Molla Sali v. Greece* [GC], no. 20452/14, § 90, 19 December 2018).

50. It further reiterates that applicants are only required to exhaust domestic remedies which are available in theory and in practice at the relevant time and which are accessible, capable of providing redress in

respect of their complaints and offering reasonable prospects of success (see, among many other authorities, *Glavinić and Marković v. Croatia*, nos. 11388/15 and 25605/15, § 61, 30 July 2020). In this connection it observes that in a similar case the Government expressly submitted that in order to exhaust domestic remedies, applicants had not been required to lodge constitutional complaints against Supreme Court decisions given on length remedies, as such decisions were not amenable to constitutional review (ibid., § 51). It is therefore unclear why the applicant in the present case should, before lodging his application with the Court, have waited for the outcome of a remedy which even in the Government's own admission was not available to him.

51. As regards the Government's remaining inadmissibility objection (see paragraph 46 above), the Court does not see how a finding that the criminal proceedings in question exceeded a reasonable time could in any way be relevant to the issue of whether the applicant was (properly) extradited for a war crime or not, or to the related issue of whether he could have been tried for that offence.

52. In view of the foregoing (see paragraphs 49-51 above), the Court finds that both of the Government's inadmissibility objections must be dismissed.

53. The Court further notes that the present application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' arguments

54. The Government argued that the length of the proceedings in the applicant's case had not been excessive. Those proceedings were complex not only on the facts but involved complex international law issues.

55. In the Government's view, the actions of the domestic courts were timely from the outset and there had been no unnecessary delays. In that connection, they pointed out that the domestic authorities had taken a number of measures and actions in order to obtain from the Turkish authorities the authorisation to try the applicant for a war crime, which had been a formal requirement for the conduct of the proceedings. That had required constant efforts in communication with the Turkish authorities, with a view to obtaining the authorisation in question. However, despite persistent and constant requests by the domestic authorities, the Turkish authorities had failed on many occasions to deliver the requested authorisation, which omission could not be attributed to executive or judicial authorities of the respondent State.

56. Lastly, the Government argued that the domestic authorities had taken adequate steps in corresponding with foreign authorities with a view

to questioning the witnesses who did not reside in Croatia (see paragraphs 31-33 above).

57. The applicant submitted that the length of the proceedings had been excessive. He particularly pointed out that, following his extradition to Croatia, he had objected that he had not been extradited for a war crime (see paragraph 11 above). In that regard, the consent for him to be tried for a war crime which had not been requested from the Turkish authorities until 2014 (see paragraph 24 above), should have been requested immediately after his extradition in 2010 or at the latest after the Supreme Court's decision of 12 July 2011 (see paragraphs 7 and 18-19 above). Considering that the Supreme Court had twice remitted the case to the first-instance court on the same grounds (see paragraphs 18-19 and 24 above), and that it took almost seven months to translate and send the request for the consent in question to the Ministry of Justice (see paragraph 24 above), there had been delays which were solely attributable to the domestic authorities.

2. The Court's assessment

58. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant, and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

59. However, these criteria are inapplicable to proceedings concerning war crimes, which are considered to be of an exceptional character and whose length must therefore be measured in the light of considerations such as the non-applicability of rules of prescription to such crimes and the long time that may have elapsed since their commission (see *Gröning v. Germany* (dec.), no. 71591/17, § 60, 20 October 2020, and *X. v. Germany*, no. 6946/75, Commission decision of 6 July 1976, Decisions and Reports 6, pp. 115-116).

60. Nonetheless, even though the present case concerns criminal proceedings for a war crime against the civilian population, the Court finds it evident that the length of the proceedings in the period before 11 April 2019 (see paragraphs 9 and 11-29 above) cannot be justified by the exceptional character of war crimes proceedings. Rather, the delays in that period were caused by the need to clarify certain legal issues relating to the applicant's extradition from Turkey to Croatia.

61. In that connection, the Court notes that the domestic authorities have taken a number of steps to find out whether the applicant had been extradited for a war crime or only for murder (see paragraphs 13-14, 25-27 and 29 above), and that the delays in the period in question are partly attributable to the Turkish authorities.

62. However, it cannot be overlooked that the Supreme Court twice remitted the case for a retrial because the first-instance court had failed to establish the offence or offences for which the applicant had been extradited (see paragraphs 18-19 and 23 above), which caused a delay of some three years.

63. What is more, after the Supreme Court had on 12 November 2013 remitted the case for the second time, and the trial court had on 18 February 2014 prepared a request to the Turkish authorities to give consent that the applicant be tried for the war crime in question, it took more than seven months to translate and transmit that request and the supporting documents to the Ministry of Justice on 15 September 2014 (see paragraphs 23-24 above).

64. It would appear that this request was never communicated to the Turkish authorities. Instead, after more than three years, on 11 July 2017 the Ministry of Justice made a different type of enquiry which ultimately resulted in the Turkish authorities clarifying the matter (see paragraphs 25 and 29 above).

65. Since the Court has found no delays attributable to the applicant, the foregoing considerations (see paragraphs 60-64 above) are sufficient for it to conclude that in the period before 11 April 2019, the domestic authorities did not proceed with the requisite diligence. Consequently, the Court finds that the length of the proceedings in the present case was excessive and failed to meet the "reasonable time" requirement.

66. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

67. 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

68. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

69. The Government contested the claim.

70. The Court considers that the applicant must have sustained some non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 4,200 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

71. The applicant also claimed EUR 833 for the costs and expenses incurred before the Court.

72. The Government contested the claim.

73. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the claimed sum in full.

C. Default interest

74. The Court considers it appropriate that the default interest rate 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. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into Croatian kunas at the rate applicable at the date of settlement:
      (i) EUR 4,200 (four thousand two hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 833 (eight hundred and thirty-three euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 23 September 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Attila Teplán	Péter Paczolay
Acting Deputy Registrar	President