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

SECOND SECTION

DECISION

Application no. 33322/17
Slobodan IBRIĆ and Milorad PETROVIĆ
against Serbia

The European Court of Human Rights (Second Section), sitting on 30 August 2022 as a Committee composed of:

Jovan Ilievski*, President,*
Branko Lubarda*,*
Diana Sârcu*, judges,*

and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 33322/17) against the Republic of Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 26 April 2017 by two Serbian nationals, Mr Slobodan Ibrić and Mr Milorad Petrović ("the applicants"), who were born in 1961 and 1972, respectively, and live in Merošina, and were represented before the Court by Ms G. Rakočević, a lawyer practising in Niš;

the decision to give notice of the complaint concerning Article 2 of the Convention to the Serbian Government ("the Government"), represented by their Agent, Ms Z. Jadrijević Mladar;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns the alleged lack of an effective investigation into the circumstances of a road traffic accident in which the applicants' sons died.

2. The accident occurred on the evening of 27 February 2014 on a regional road. The moped that the applicants' sons were riding collided with a car which was overtaking a lorry on their side of the road.

3. Immediately after the accident, the public prosecutor conducted an on-site investigation and collected evidence (including measurements, photographs, a diagram of the accident and the result of a breathalyser test which revealed that the car driver had not consumed alcohol).

4. During the course of the investigation in respect of the driver of the car on suspicion of grave offences against traffic safety, the prosecutor's office ordered and obtained autopsy and forensic medical reports, toxicology reports - which concluded that only the applicants' sons had had alcohol in their blood that night - and a traffic expert's technical report. It also took statements from the car driver and two police officers who had carried out a check of the moped about two hours before the accident. Following an objection by the applicants, to which they joined their expert adviser's opinion, the prosecutor's office ordered an additional technical examination and a re-construction of the accident to be carried out in the presence of the applicants' lawyer and their expert adviser.

5. On 17 April 2015 the prosecutor's office decided not to prosecute the car driver, finding that there was no reasonable suspicion that a criminal offence had been committed and that the victims' contribution had been decisive, in particular as the moped had not had a headlight. That decision was upheld by the second-instance prosecutor's office on 4 May 2015. On 18 October 2016 the Constitutional Court rejected an appeal lodged by the applicants based on a complaint under Article 6 of the Convention.

6. The applicants did not bring a civil action for damages.

7. Relying on Article 6 of the Convention, the applicants complained that the investigation had been ineffective because the prosecutor's office had not heard evidence from witnesses they had proposed and had not ordered an examination of the moped by an expert in mechanical engineering.

THE COURT'S ASSESSMENT

8. The Court, as the master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 114, 20 March 2018), considers that this complaint falls to be examined under Article 2 (see *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 138, 25 June 2019).

9. The Government maintained under Article 35 § 1 of the Convention that the application should be rejected for non-exhaustion of domestic remedies because the applicants had failed to properly raise their complaints before the Constitutional Court. Furthermore, according to the Government, the facts of the present case disclosed no violation of Article 2 of the Convention. The applicants disagreed and reaffirmed their complaint.

10. The Court considers that there is no need for it to examine the Government's objection as regards the exhaustion of domestic remedies since

the applicants' complaint is in any event inadmissible as being manifestly ill-founded.

11. In this connection, the Court notes that the applicants' grievances do not include an allegation of intentional acts. Nor were the circumstances in which the accident occurred such as to raise suspicions in that regard. Indeed, the applicants never argued during the domestic investigation or in their application to the Court that the driver of the car had acted intentionally or that the acts in question had specifically targeted their sons. The investigation in question initiated by the authorities concerned an involuntary offence. Neither did the applicants attribute the incident to a failure on the part of the State authorities to adopt sufficient legal rules and measures to regulate motor-vehicle traffic on public roads to ensure the safety of road users.

12. In such circumstances, under the Court's case-law, a criminal-law remedy was not necessarily called for under Article 2, but a civil remedy would have sufficed (see *Nicolae Virgiliu Tănase*, cited above, § 172).

13. Turning to the present case, the Court observes that the applicants' allegations and the Government's submissions in reply were limited to the criminal investigation initiated by the authorities, which did not result in the bringing of criminal charges against the driver of the car. Notwithstanding the absence of any arguments by either party in the proceedings, the Court notes that besides State prosecution, the domestic legislation provides for another avenue of redress in respect of the circumstances of the present case, namely a civil action in tort, which was open to the applicants under the general rules of civil compensation against those they considered responsible for their sons' death (see, *mutatis mutandis*, *Milić v. Serbia* (dec.), no. 62876/15, §§ 59 and 60, 21 May 2019, regarding the adequacy of the civil-law remedy in respect of medical negligence regardless of the outcome of the criminal proceedings). The applicants did not explain why they had not used that remedy and whether it would have been effective. In this connection the Court notes the findings of the public prosecutor to the effect that the applicants' sons were themselves responsible for the accident. However, it observes that those findings were made in the context of the investigation carried out by the prosecuting authorities for the purposes of bringing criminal charges against the car driver in the criminal courts. The Court additionally notes that the domestic courts apply different criteria for establishing liability in criminal and civil proceedings (compare *Šilih v. Slovenia* [GC], no. 71463/01, § 203, 9 April 2009, and *Molga v. Poland* (dec.), no. 78388/12, § 88, 17 January 2017). In particular, a criminal investigation is inherently limited to determining the individual criminal responsibility of the potential perpetrators. The applicants have not relied on any provision in domestic legislation or any example of domestic practice to show that a civil court is formally bound by the findings that the prosecuting authorities make when deciding not to pursue a matter in the criminal courts (see *Anna Todorova v. Bulgaria*, no. 23302/03, § 82, 24 May 2011).

Furthermore, and more importantly, they have not argued that the adjudication of a compensation claim under the rules of civil law in their case would have been based exclusively on the findings of the public prosecutor, which in their submission were tainted by the alleged shortcomings in the gathering of crucial pieces of evidence. Lastly, no argument was submitted that the compensation claim would not have been examined on the basis of all the evidence, including that of the witnesses whom the applicants had sought to be examined by the public prosecutor and the examination of the moped by an expert in mechanical engineering. In such circumstances, the Court cannot speculate as to what the outcome of a compensation claim would have been had the applicants applied to the civil courts at the same time as or subsequently to the criminal investigation.

14. The Court concludes that there is no reason to doubt that the civil-law remedy that was available to the applicants would have been effective and sufficient for the purposes of Article 2 of the Convention.

15. It follows that the application must be rejected under Article 35 §§ 1 and 4 of the Convention on the grounds of a failure to exhaust domestic remedies.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 22 September 2022.

Dorothee von Arnim Deputy Registrar	Jovan Ilievski President