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

SECOND SECTION

DECISION

Application no. 62916/13
Krešimir IVANČIĆ and Štefica DŽELAJLIJA
against Croatia

The European Court of Human Rights (Second Section), sitting on 15 March 2016 as a Committee composed of:

Jon Fridrik Kjølbro, *President,*
Ksenija Turković,
Georges Ravarani, *judges,*

and Abel Campos, *Deputy Section Registrar,*

Having regard to the above application lodged on 24 September 2013,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

1. The applicants, Mr Krešimir Ivančić and Ms Štefica Dželajlija, are Croatian nationals who were born in 1963 and 1960 respectively and live in Daruvar. They were represented before the Court by Mr J. Doneski, a lawyer practising in Garešnica.

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

A. The circumstances of the case

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

1. Background to the case

4. On 11 May 1994, during the war in Croatia, the applicants' father, Z.I., and four other people were killed in the village of Batinjska Rijeka, near the town of Daruvar, by members of the Serbian paramilitary forces operating in Croatia.

5. Croatia ratified the Convention on 7 November 1997.

2. Investigation carried out by the Croatian authorities

6. Between May 1994 and 7 November 1997 the Croatian authorities carried out an *in situ* inspection and autopsy and the police interviewed several potential witnesses. These steps led to the Bjelovar Military Prosecutor's Office filing an indictment with the Bjelovar Military Court on 14 July 1994 against P.A., V.Dž. and S.O., all of whom had absconded. On an unspecified date, the case was assigned to the Bjelovar County Court.

7. On 29 October 1998 the Bjelovar County Court joined the proceedings at issue with seven other criminal proceedings, all of which concerned the prosecution of people for war crimes committed in the Bjelovar area.

8. In November 2000 the police interviewed four potential witnesses.

9. On 19 March 2004 S.O. was arrested. An identification parade was carried out. However, the witnesses did not recognise him as one of the perpetrators. The State Attorney's Office dropped the charges against him for lack of evidence and on 6 April 2004 the Bjelovar County Court terminated the proceedings against S.O. at the request of the State Attorney's Office.

10. On 28 September 2009 the Bjelovar County State Attorney's Office asked the competent authorities in Serbia and Bosnia and Herzegovina about the citizenship of the two other accused. An answer submitted by the Serbian authorities in December 2009 indicated that both of the accused lived in Serbia and were Serbian citizens.

11. In answer to a request by the Bjelovar County Court of 20 December 2010, the Bjelovar County State Attorney's Office replied that it had no objection to the proceedings in respect of P.A. and V.Dž. being separated, but objected to the men being tried in their absence.

12. Between November 2010 and December 2011 the applicants sought information about the criminal proceedings on several occasions.

13. In November 2011 the case was assigned to the Zagreb County Court.

14. Between March 2012 and June 2014 the applicants asked for information about the criminal proceedings on six occasions.

3. Investigation carried out by the Serbian authorities

15. On 18 May 2011 the applicants lodged a criminal complaint with the Serbian Prosecutor for War Crimes against P.A., V.Dž. and S.O. in connection with the killing of their father.

16. On 26 March 2012 and 10 July 2013 the Bjelovar County State Attorney's Office forwarded all the available documents to the prosecuting authorities in Serbia.

4. The applicants' complaint about the criminal proceedings

17. On 9 December 2010 the applicants, as the victim's relatives, lodged a complaint with the Supreme Court, arguing that the criminal proceedings conducted before the Bjelovar County Court had not been concluded within a reasonable time. They maintained that the County Court had refused to try the accused in their absence and that no relevant steps had been taken in the course of the proceedings.

18. On 14 February 2011 a single judge of the Supreme Court declared the complaint inadmissible on the grounds that the applicants had not brought a claim for compensation in the criminal proceedings. That decision was upheld by a three-judge panel of the Supreme Court on 17 May 2011.

19. The applicants' subsequent constitutional complaint was declared inadmissible on 24 November 2011 on the grounds that the impugned decisions "did not concern a right or obligation of the applicants or a criminal charge against them". That decision was served on the applicants on 19 December 2011.

5. Civil proceedings for damages

20. On 4 December 2006 the applicants brought a civil action against the State in the Daruvar Municipal Court (*Općinski sud u Daruvaru*), seeking compensation for non-pecuniary damage in connection with the killing of their father.

21. On 1 October 2007 the Daruvar Municipal Court granted the applicants' claim. That judgment was upheld by the Bjelovar County Court (*Županijski sud u Bjelovaru*) on 13 March 2008. However, upon an appeal on points of law by the State Attorney's Office, which represented the State in the proceedings, the Supreme Court (*Vrhovni sud Republike Hrvatske*) dismissed the applicants' claim on the grounds that it had been lodged after the statutory limitation period had expired. The applicants were also ordered to pay the State 46,875 Croatian kunas in costs, comprising the fees chargeable by the State Attorney's Office for representing the State.

22. The applicants' subsequent constitutional complaint was dismissed by the Constitutional Court on 14 March 2013, and that decision was served on the applicants on 28 March 2013.

B. Relevant domestic law

23. The relevant parts of the Constitutional Act on the Constitutional Court of the Republic of Croatia (*Ustavni zakon o Ustavnom sudu Republike Hrvatske*, Official Gazette of the Republic of Croatia no. 99/1999 with subsequent amendments – "the Constitutional Court Act") read as follows:

Section 62

"(1) Anyone may lodge a constitutional complaint with the Constitutional Court if he or she deems that a decision of a State authority, local or regional government, or a legal person vested with public authority, on his or her rights or obligations, or as regards a suspicion or accusation of a criminal offence, has violated his or her human rights or fundamental freedoms, or the right to local or regional government, guaranteed by the Constitution ('constitutional rights') ...

(2) If another legal remedy is available in respect of the violation of the constitutional rights [complained of], the constitutional complaint may be lodged only after this remedy has been exhausted.

(3) In matters in which an administrative action or, in civil and non-contentious proceedings, an appeal on points of law [*revizija*] is available, remedies shall be considered exhausted only after a decision on these legal remedies has been given."

Section 63

"(1) The Constitutional Court shall examine a constitutional complaint even before all legal remedies have been exhausted if the relevant court has failed to decide within a reasonable time on the rights or obligations of a party [to the proceedings] or as regards a suspicion or accusation of a criminal offence ...

(2) If it finds the constitutional complaint for failure to decide within a reasonable time referred to in subsection 1 of this section well-founded, the Constitutional Court shall set a time-limit within which the relevant court must decide the case on the merits ...

(3) In a decision issued under subsection 2 of this section, the Constitutional Court shall award appropriate compensation to the complainant for the violation of his or her constitutional right ... to a hearing within a reasonable time. The compensation shall be paid from the State budget within three months of the date on which a request for payment is lodged."

COMPLAINTS

24. The applicants complained under the procedural aspect of Article 2 of the Convention that the investigation into the death of their father had not been effective.

25. They also complained under Article 6 § 1 of the Convention that they had had to pay the costs of the State's legal representation in the civil proceedings for damages.

THE LAW

A. Alleged violation of Article 2 of the Convention

26. The applicants complained that the authorities had not taken appropriate and adequate steps to investigate the death of their father and to bring the perpetrators to justice. They relied on Article 2 of the Convention which, in so far as relevant, reads as follows:

> "1. Everyone's right to life shall be protected by law. ..."

1. The parties' submissions

27. The Government argued that the complaint under the procedural aspect of Article 2 of the Convention was incompatible *ratione temporis* with the Convention. They maintained that the applicants' father had been killed in 1994 and that the main steps in the investigation had been taken prior to 5 November 1997, when Croatia had ratified the Convention.

28. They further maintained that the applicants had not complied with the six-month time-limit. The applicants had complained to the national authorities in December 2010 about the length of the investigation. That claim had been dismissed by the Supreme Court on 17 May 2011. Therefore, the applicants must have already considered in December 2010 that the investigation had been ineffective and should have lodged their application with the Court within six months of the Supreme Court's decision.

29. The applicants argued that they had complied with all the admissibility criteria. With regard to the six-month rule, they submitted that they had lodged their application with the Court within six months of being served with the Constitutional Court's decision adopted in the course of the civil proceedings in which they had sought damages from the State.

2. The Court's assessment

30. The Court does not have to address all the issues raised by the parties, as this part of the application is in any event inadmissible for non-compliance with the six-month time-limit, set out in Article 35 of the Convention, for the following reasons.

31. The Court reiterates that the purpose of the six-month rule is to promote legal certainty and to ensure that cases raising issues under the Convention are dealt with within a reasonable time. Furthermore, it ought also to protect the authorities and other persons concerned from being under any uncertainty for a prolonged period of time (see *Mocanu and Others v. Romania* [GC], nos. 10865/09, 45886/07 and 32431/08, § 258, ECHR 2014 (extracts)).

32. Where no remedies are available or the available remedies are judged to be ineffective, the six-month time-limit in principle runs from the date of the act complained of (see *Hazar and Others v. Turkey* (dec.), no. 62566/00, 10 January 2002). However, special considerations may apply in exceptional cases where an applicant avails himself of or relies on an apparently existing remedy and only later becomes aware of circumstances which render the remedy ineffective. In such a case, it is appropriate to take as the start of the six-month period the date when he first became aware, or ought to have become aware, of those circumstances rendering the remedy ineffective (see *Paul and Audrey Edwards v. the United Kingdom* (dec.), no. 46477/99, 7 June 2001).

33. As regards the applicants' civil action for damages, the Court notes that they sought compensation in connection with the death of their father. However, those proceedings are not, in the circumstances of the present case, relevant to the State's procedural obligation under Article 2 of the Convention, and therefore do not affect the running of the six-month period (compare *Narin v. Turkey*, no. 18907/02, § 48, 15 December 2009).

34. The Court reiterates that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to secure to everyone within its jurisdiction the rights and freedoms defined in the Convention, also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force (see, *mutatis mutandis*, *McCann and Others v. the United Kingdom*, 27 September 1995, § 161, Series A no. 324; *Kaya v. Turkey*, 19 February 1998, § 86, *Reports of Judgments and Decisions* 1998-I; and *Paul and Audrey Edwards*, cited above, § 69).

35. The Court reiterates that an applicant whose father has died may be expected to display a certain amount of diligence and initiative (see, *mutatis mutandis*, *Bulut and Yavuz v. Turkey* (dec.), no. 73065/01, 28 May 2002). In the instant case, the Court notes that on 9 December 2010 the applicants lodged a complaint about the length of the investigation into the killing of their father. In their complaint, the applicants alleged that the proceedings against the alleged perpetrator had not been concluded within a reasonable time. The complaint was declared inadmissible by the national courts on the grounds that the applicants were not entitled to use such a remedy in connection with criminal proceedings in which they had not brought a claim for compensation.

36. The use of this remedy by the applicants shows that by December 2010 they already considered that the investigation had been ineffective. Without intending to question the power of the Constitutional Court to interpret the criteria for admissibility of constitutional complaints, the Court has held that applicants who had lodged constitutional complaints in connection with the excessive length of proceedings, had acted neither

unreasonably nor contrary to the wording of section 62 of the Constitutional Court Act (see *Vrtar v. Croatia*, no. 39380/13, § 75, 7 January 2016). However, once the Constitutional Court's decision in respect of the first set of proceedings had been adopted (see paragraph 19 above), the applicants should have lodged their application with the Court within six months of the decision being served on them.

37. Given the above circumstances, the Court concludes that the applicants had already formed an opinion in December 2010 that the proceedings against the potential perpetrators had become ineffective, since they expressed such an opinion in their complaint about the length of those proceedings (see paragraph 17 above). The final decision on their complaint was adopted by the Constitutional Court on 24 November 2011 and served on the applicants on 19 December 2011. However, they lodged their application with the Court more than a year and nine months later, namely on 24 September 2013.

38. As regards the part of the investigation carried out by the Serbian authorities, the Court notes that it is open to the applicants to lodge an application against Serbia if they consider that they have been victims of a breach of their Convention rights by that State (see *Palić v. Bosnia and Herzegovina*, no. 4704/04, § 65, 15 February 2011, and *Nježić and Štimac v. Croatia*, no. 29823/13, § 68, 9 April 2015).

39. It follows that this part of the application has been lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

B. Alleged violation of Article 6 § 1 of the Convention

40. The applicants complained that they had not had access to court, relying on Article 6 § 1 of the Convention.

41. The applicants complained of a lack of access to court for the first time in their observations of 3 November 2014, in connection with the costs they were ordered to pay for the legal representation of the State in the civil proceedings (see paragraph 21 above).

42. The Court notes that this complaint was raised on 3 November 2014, whereas the final domestic decision in the civil proceedings at issue was adopted by the Constitutional Court on 14 March 2013 and served on the applicants on 28 March 2013. It follows that this complaint has been lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 7 April 2016.

Abel Campos
Deputy Registrar

Jon Fridrik Kjølbro
President