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

SECOND SECTION

DECISION

Application no. 22190/18
Kadifa KOVAČEVIĆ and Others
against Croatia

The European Court of Human Rights (Second Section), sitting on 26 March 2024 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. 22190/18) 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 7 May 2018 by 5 Croatian nationals, whose relevant details are listed in the appended table ("the applicants"), and who were initially represented by Mr L. Šušak, and then by Ms S. Čanković, both lawyers 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 courts' 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 applicants' complaint under Article 6 § 1 of the Convention about the allegedly arbitrary and manifestly unreasonable domestic courts' decisions rendered in civil proceedings they had instituted against the State.

2. From 4 to 7 August 1995 the Croatian authorities conducted a military campaign codenamed Operation Storm, whereby they regained control of

almost the entire Croatian territory occupied by the Serbian paramilitary forces (see *Bursać and Others v. Croatia*, no. 78836/16, § 5, 28 April 2022).

3. The applicants were a family living in the newly liberated Croatian territory. According to their submissions, on 19 August 1995 two members of the Croatian army came to their house and warned their respective husband and father, H.K., that he should "behave properly". At the time the Croatian army was stationed near their house. The following day (on 20 August 1995) two men came to their house again; the Croatian soldier from the day before, carrying a rifle on his shoulder, and another man whom they had not seen before, who was wearing indistinctive army pants, a black shirt, and bombs around his waist. The soldier with the rifle spent some time with H.K. in the house. Once they came outside, the other man took the rifle from the soldier's shoulder, shot H.K. dead, and left the scene. When the first applicant said that she would report the matter to the police, the Croatian soldier who had brought the rifle said: "I am God and the police, and no one will go anywhere". He helped the applicants bury H.K. Afterwards several other Croatian soldiers also arrived at the scene and then they left altogether.

4. In 1998 the first applicant filed a criminal complaint, stating that her husband had been shot by an unidentified individual wearing an army uniform, who had been accompanied by a Croatian soldier.

5. A police inquiry established that the man with the rifle on his shoulder was I.S., a member of a certain Croatian army unit, who had died in 1997.

On 8 May 2003 the police arrested N.Ž., a member of the same Croatian army unit. N.Ž. confessed coming to the applicants' house on 20 August 1995 together with I.S. He stated that upon their arrival the first applicant and her son-in-law had complained that H.K. had been drinking heavily and molesting the family and that they had been afraid to report him to the authorities. He and I.S. had gone to the house to talk to H.K. They had warned him that he should not drink so much and molest his family. I.S. had stayed in the house with H.K. for a little longer, while he (N.Ž.) had gone outside to have a drink with H.K.'s family. Once I.S. and H.K. had come out of the house, he (N.Ž.) had experienced a certain "blockade", took a rifle from I.S.' shoulder, and shot H.K., probably under the influence of the complaints heard about him. N.Ž. expressed regret for his actions, stating that at the time he and the other soldiers had been under severe stress due to war events and had often consumed alcohol. He then called his lawyer and told the police that he would not sign his statement. On the same day the first applicant and one H.D. recognized N.Ž. as the man who had most probably shot H.K.

6. On 26 January 2004 the competent prosecutor rejected the criminal complaint against N.Ž. He referred to the circumstance that during the identification parade the first applicant and H.D. had not recognized N.Ž. with full certainty but only with high probability. He further noted that the two had described the perpetrator as missing several teeth in his upper jaw, whereas a dental expert had examined N.Ž. and had established that he had

all his teeth in his upper jaw. The prosecutor concluded that it could not therefore be established that N.Ž. had been the perpetrator of the killing. The decision was served on the first applicant with a notice that she could take over the prosecution against N.Ž. within eight days if she so wished. She did not do so but in 2006 the applicants lodged another criminal complaint (to the prosecution body superior to the one which had dismissed the initial criminal complaint), stating that N.Ž. was the perpetrator and that he should be prosecuted. An investigation against an unidentified perpetrator is apparently still ongoing.

7. Meanwhile, in September 2003 the applicants instituted civil proceedings against the State, seeking damages related to the killing of their husband and father by a Croatian soldier.

8. On 29 April 2011 the Zagreb Civil Municipal Court dismissed the applicants' claim as unfounded. It noted that the criminal complaint against N.Ž. had been dismissed and that it had thus not been possible to establish in the civil proceedings that N.Ž. had been the perpetrator, whereas the applicants had otherwise failed to prove that their relative had been killed by a Croatian soldier. Notably, neither the applicants nor the other witnesses heard during the proceedings had submitted that the perpetrator had been wearing a Croatian army uniform. It could not be deduced, from the mere fact that the Croatian army had been stationed near the applicants' house, and from the circumstance that the perpetrator had been accompanied by a Croatian soldier, I.S., that the perpetrator was also a Croatian soldier.

Furthermore, even if he had been a Croatian soldier, in the court's view it had not been proven that the killing had been perpetrated in connection with the performance of his duties, as required by 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 (referred to in *Bursać*, cited above, § 32). In particular, the applicants had confirmed that they had never been subjected to any searches or theft by Croatian soldiers. Furthermore, the witnesses had testified that I.S. had come to the applicants' house upon their neighbours' invitation to socialise, and that he had brought that other unknown man with him. Their arrival to the applicants' house and the killing of H.K. had therefore not been related to the performance of their duties.

The court further held that the applicants had failed to prove that their relative had been killed by a State-owned weapon, which would have rendered the State liable for the damage under section 174 of the Civil Obligations Act which regulated the liability of a dangerous item's owner for the damage caused by it. Even if he had been killed by a State-owned weapon, the court found that the applicants' civil claim had been lodged outside the general objective five-year statutory limitation period set out in section 376 of the Civil Obligations Act.

9. On 20 March 2012 the Zagreb County Court upheld that judgment. On 3 November 2015 the Supreme Court dismissed as unfounded the applicants' subsequent appeal on points of law. On 4 October 2017 the Constitutional Court dismissed as unfounded the applicants' subsequent constitutional complaint by a decision served on the applicants' representative on 8 November 2017.

10. Before the Court the applicants complained, under Article 6 § 1 of the Convention, that the civil courts' conclusions that they had failed to prove that their relative had been killed by a Croatian soldier in the performance of his duties, or by a State-owned weapon, was arbitrary and manifestly unreasonable.

THE COURT'S ASSESSMENT

11. 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).

12. 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 v. Ukraine (no. 2)*, cited above, § 62).

13. In the present case the Court notes that the domestic courts on three levels of jurisdiction examined the applicants' case and gave detailed reasons for their conclusions, which were also reviewed by the Constitutional Court (see paragraphs 8-9 above). The domestic courts held that, even assuming that the applicants' relative had been killed by a Croatian soldier, it had not been proven that the killing had been perpetrated in connection with the performance of the soldier's duties, as required by 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. In particular, the applicants had confirmed that they had never been subjected to any searches or theft by Croatian soldiers, and the witnesses had testified that

I.S. had come to the applicants' house upon their neighbours' invitation to socialise, and that he had brought that other unknown man with him. According to the domestic courts, their arrival to the applicants' house and the killing of H.K. had thus not been related to the performance of their duties.

14. The courts further held that, even if the applicants' relative had been killed by a rifle owned by the State and that the State was thus liable for the damage on the basis of section 174 of the Civil Obligations Act, the general objective five-year statutory limitation for lodging the civil claim period had expired on 20 August 2000, whereas the applicants lodged their civil claim in May 2003. Accordingly, the applicants' civil claim based on that particular provision would have in any event been dismissed as time-barred.

15. Against that background, the Court is not convinced that the domestic courts' 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 12 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).

16. It follows that the complaint under Article 6 § 1 concerning the domestic courts' allegedly arbitrary and manifestly unreasonable conclusions 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.

17. As to the applicants' complaint about the excessive sum of the costs of proceedings they had been ordered to pay to the State, the Court notes that this complaint was brought before the Court for the first time on 30 April 2020, whereas the civil proceedings complained of ended on 8 November 2017 (see paragraph 9 above).

18. It follows that this new complaint is inadmissible under Article 35 § 1 of the Convention for non-compliance with the six-month rule and must therefore 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 25 April 2024.

Dorothee von Arnim Deputy Registrar	Pauliine Koskelo President

Appendix

List of applicants:

No.	Applicant's Name	Year of birth	Nationality	Place of residence
1.	Kadifa KOVAČEVIĆ	1948	Croatian	Vojnić
2.	Senada DOLIĆ	1973	Croatian	Velika Kladuša
3.	Dragan KOVAČEVIĆ	1978	Croatian	Vojnić
4.	Suvad KOVAČEVIĆ	1975	Croatian	Vojnić
5.	Mirsada MEŠINOVIĆ	1980	Croatian	Vojnić