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

SECOND SECTION

DECISION

Applications nos. 67464/12 and 70462/12
Eva LUKIĆ and others against Croatia
and Eva LUKIĆ against Croatia

The European Court of Human Rights (Second Section), sitting on 17 May 2016 as a Chamber composed of:

Işıl Karakaş, *President,*
Nebojša Vučinić,
Paul Lemmens,
Valeriu Griţco,
Ksenija Turković,
Stéphanie Mourou-Vikström,
Georges Ravarani, *judges,*

and Stanley Naismith, *Section Registrar,*

Having regard to the above applications lodged on 10 October 2012 and 2 October 2012 respectively,

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. A list of the applicants is set out in the appendix. They were all represented by Mr L. Šušak, a lawyer practicing in Zagreb.

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. The applicants' family lived in Vukovar, a Croatian town near the Serbian border which was heavily attacked by the Yugoslav People's Army and paramilitary Serbian armed forces in the period between August and November 1991, during the war in Croatia.

5. According to the applicants, on 17 November 1991 their respective husband and father, K.L., was taken from his home in Borovo Naselje, a district of the town of Vukovar, by Croatian soldiers and killed on 18 November 1991.

6. According to the Government, the town of Vukovar fell on 18 November 1991; after the surrender of the last Croatian forces on 20 November 1991 the Yugoslav Peoples' Army and Serbian paramilitary forces established their control over it.

7. After the fall of Vukovar, the applicants went to live in Serbia.

8. Between 1992 and 1996 Vukovar was a part of the United Nations Protected Area (UNPA). In 1996 the United Nations Security Council established the United Nations Transitional Administration in Eastern Slavonia, Baranja and Western Sirmium (UNTAES), which included Vukovar. On 15 January 1998 the UNTAES mandate ceased and the transfer of power to the Croatian authorities began.

2. Proceedings conducted by the Serbian authorities

9. An investigation was opened on 27 November 1991 by an investigating judge of the Belgrade Military Court. On 26 February 1992 the first applicant gave evidence in those proceedings.

10. On 1 April 1992 an indictment was lodged before that court against M.F., Z.Š., M.D. and D.S., Croatian soldiers imprisoned by the Serbian forces, on charges of war crimes against the civilian population.

11. On 26 June 1992 the Belgrade Military Court found the accused guilty as charged. The conviction of Z.Š. and M.D. covered, *inter alia*, responsibility for the killing of K.L. M.D. was sentenced to twenty years' imprisonment and Z.Š. to death. This judgment was upheld by the Serbian Supreme Military Court on 29 December 1992 and thus became final.

3. Investigation by the Croatian authorities

12. On 14 February 2007 the applicants submitted a claim for damages with the State Attorney's Office in respect of the death of K.L. They requested that V.P. and M.S. be heard as witnesses.

13. The Croatian authorities learned about the death of the applicants' relative for the first time when they made the above request. An investigation ensued. On 15 June 2007 the police interviewed V.P., who had no knowledge whatsoever about the killing of K.L. and said that she had never been to Vukovar. It was also established that M.S. had died.

14. The applicant's request was refused.

15. Between 24 November 2010 and 3 July 2013 the police interviewed the applicants, M.K., P.D., V.M., Z.Š. and M.V. None of them had any relevant knowledge about the circumstances of the killing of K.L.

16. In the meantime, on 3 January 2011 the Vukovar County State Attorney's Office asked the Serbian Prosecution Office for War Crimes for all evidence in respect of the killing of K.L. On 4 May 2011 the latter Office sent to the Croatian authorities completed documentation which did not contain any of the judgments of the Serbian Military Courts.

4. Civil proceedings

17. On 5 March 2008 the applicants brought a civil action against the State before the Vukovar Municipal Court, seeking compensation in connection with the death of their relative. They asked that witness M.K. be heard in respect of the circumstances surrounding the killing of K.L.

18. That claim was dismissed on 13 April 2010. The Municipal Court found that the claim had been submitted after the expiry of the applicable time-limit specified in the statute of limitations. The applicants were also ordered to pay to the State the costs of the proceedings in the amount of 9,750 Croatian kuna (HRK). In an appeal against the first instance-judgment and an appeal on points of law before the Supreme Court the applicants complained about the manner in which the rules on the time-limit specified in the statute of limitations had been applied. The first-instance judgment was upheld by the Vukovar County Court and the Supreme Court on 1 July 2010 and 12 October 2011 respectively.

19. On the latter day the applicants sent to the Supreme Court copies of judgments of the Belgrade Military Court and the Serbian Supreme Military Court (together "the Serbian Military Courts") (see paragraph 11 above).

20. On 16 February 2012 the applicants lodged a constitutional complaint. They enclosed the judgments of the Serbian Military Courts and argued, *inter alia*, that there had been a conviction by a criminal court in respect of the killing of K.L. and that therefore their civil claim could not have become statute-barred. The applicants' constitutional complaint was dismissed on 16 May 2012 as ill-founded. The Constitutional Court did not make any reference to the judgments of the Serbian Military Courts.

5. Enforcement proceedings

21. The State authorities instituted enforcement proceedings in the Vukovar Municipal Court against the first applicant, seeking the payment of the costs of the above-mentioned civil proceedings, together with applicable interest and the costs of the enforcement proceedings.

22. An enforcement order was issued on 19 April 2011; under the order, one-third of the first applicant's pension was to be seized each month.

23. The first applicant lodged an appeal, arguing that her monthly pension amounted to HRK 1,200 and the seizure of one-third of that amount put her in a precarious position since it did not leave her with sufficient resources for subsistence.

24. The appeal was dismissed by the Vukovar County Court on 14 October 2011 and a subsequent constitutional complaint lodged by the first applicant was dismissed by the Constitutional Court on 4 April 2012.

B. Relevant domestic law

25. Section 62 of the Constitutional Act on the Constitutional Court (*Ustavni zakon o Ustavnom sudu Republike Hrvatske*, Official Gazette no. 49/2002 of 3 May 2002 reads:

> "1. Everyone may lodge a constitutional complaint with the Constitutional Court if he or she deems that the individual act of a state body, a body of local and regional self-government, or a legal person with public authority, which decided about his or her rights and obligations, or about suspicion or accusation of a criminal act, has violated his or her human rights or fundamental freedoms, or his or her right to local and regional self-government guaranteed by the Constitution (hereinafter: constitutional right) ...
>
> 2. If another legal remedy exists against the violation of the constitutional right [complained of], the constitutional complaint may be lodged only after that 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 is allowed, remedies are exhausted only after the decision on these legal remedies has been given."

26. The relevant provisions of the Obligations Act (*Zakon o obveznim odnosima*, Official Gazette nos. 53/1991, 73/1991, 3/1994, 7/1996, 112/1999), as then in force, read as follows:

Section 360

> "(1) The right to claim fulfilment of an obligation shall cease when the statutory limitation period has expired.
>
> (2) The statute of limitations [bars a right to claim] when the statute-prescribed period in which a creditor could have claimed fulfilment of an obligation has expired.
>
> ..."

Section 376

> "(1) A claim for damages shall become statute-barred three years after the injured party learned about the damage and the identity of the person who caused it.
>
> (2) In any event that claim shall become statute-barred five years after the damage occurred.
>
> ..."

Section 377

"(1) Where the damage was the result of a criminal offence and the statutory limitation period for criminal prosecution is longer, the claim for damages against the person responsible becomes statute-barred at the same time as the criminal prosecution.

(2) The interruption of the statutory limitation period in respect of criminal prosecution entails the interruption of the statutory limitation period in respect of a claim for damages.

..."

Section 388

"The statutory limitation period is interrupted by the lodging of a civil action or any other action by a creditor against a debtor, before a court or other competent body, which is brought in order to secure or enforce the creditor's claim."

27. The relevant part of the Act on the Nullity of Certain Legal Acts of the Judicial Bodies of the Former Y[ugoslav] P[eoples'] A[rmy], the former S[ocialist] F[ederal] R[epublic of] Y[ugoslavia] and the Republic of Serbia (*Zakon o ništetnosti određenih pravnih akata pravosudih tijela bivše JNA, bivše SFRJ I Republike Srbije*, adopted on 21 October 2011 and published in the Official Gazette no. 124/2011 of 4 November 2011 – hereinafter the "Nullity Act") reads as follows:

Section 1

"It is to be established that by the enactment of this Act all legal acts of the former YPA, its judicial bodies, the judicial bodies of the former SFRY and the judicial bodies of the Republic of Serbia which concern the Homeland War in the Republic of Croatia, under which citizens of Croatia have been [deemed to be] suspects, or accused or convicted for criminal offences recognised by international law ..., committed on the Croatian territory, are null and void and without legal effect, including:

...

- a war crime against the civilian population ...

Legal acts adopted by judicial bodies of the Republic of Serbia for which the Croatian judicial authorities establish that they comply with the standards of the Croatian criminal legislation are exempted from nullity."

COMPLAINTS

28. The applicants complained under the substantive and the procedural aspect of Article 2 of the Convention about the killing of their relative and of the lack of an effective investigation into the circumstances of the killing of their close relative. They further complained under Article 14 of the

Convention that their close relative had been killed only because he was a Serb.

29. They also complained under Article 6 § 1 of the Convention that they had had no access to court and that the decisions of the national courts had not been adequately reasoned.

30. The first applicant complained that her being ordered to pay the costs of the proceedings had been unfair, placed her in a precarious position and left her without sufficient resources for subsistence.

THE LAW

A. Joinder of the applications

31. The Court notes that the applications contain similar grievances and raise similar issues under the Convention. It finds it appropriate, in the interests of the proper administration of justice, that the applications be joined in accordance with Rule 42 § 1 of the Rules of Court.

B. Alleged violation of Article 2 of the Convention

32. The applicants complained that the authorities had not taken appropriate and adequate steps to investigate the death of their close relative K.L. and to bring the perpetrators to justice. They also claimed that their father/brother had been killed because of his Serbian ethnic origin and that the national authorities had failed to investigate that factor. They relied on Articles 2 and 14 of the Convention. The Court, being master of the characterisation to be given in law to the facts of the case, will examine this complaint under 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

33. The Government argued that the complaints under Article 2 of the Convention were inadmissible *ratione personae* because the town of Vukovar had fallen under the control of the Yugoslav Peoples' Army and Serbian paramilitary forces on 18 November 1991 and Croatia had had no jurisdiction over it until 1998. The Croatian authorities had not been aware of the killing of K.L. until 2007, when the applicants had submitted a claim for damages with the State Attorney's Office. The competent authorities had immediately opened an investigation. However, because of the passage of

time the Croatian authorities had had difficulty in collecting any useful information in respect of K.L.'s killing.

34. The applicants argued that their relative, K.L., had been killed by members of Croatian army during the night of 17-18 November 1991 (before the fall of Vukovar). The Croatian authorities had not conducted an effective investigation into his death.

2. The Court's assessment

35. The Court does not have to address all issues raised by the parties since this complaint is in any event inadmissible on the following grounds.

(a) Substantive aspect

36. The Court reiterates that the provisions of the Convention do not bind a Contracting Party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the Convention with respect to that Party; this is an established principle in the Court's case-law and is based on general international law (see, among other authorities, *Šilih v. Slovenia* [GC], no. 71463/01, § 140, 9 April 2009).

37. In this connection the Court firstly notes that the Convention entered into force in respect of Croatia on 5 November 1997. Therefore, any complaints by the applicants asserting the responsibility of the Contracting State for events which took place in 1991 are outside the Court's temporal jurisdiction.

38. The Court notes that the applicants' relative was taken from his home in Borovo Naselje in Croatia, allegedly by Croatian soldiers, and killed in 1991. The alleged substantive violation of Article 2 of the Convention therefore occurred prior to 5 November 1997, when the Convention entered into force in respect of Croatia.

39. It follows that the complaint under the substantive aspect of Article 2 of the Convention is incompatible *ratione temporis* with the provisions of the Convention within the meaning of Article 35 § 3(a) and must be rejected, in accordance with Article 35 § 4.

(b) Procedural aspect

40. 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*, 27 September 1995, § 161, Series A no. 324; *Kaya v. Turkey*, 19 February 1998, § 86, *Reports of Judgments and Decisions* 1998-I; and *B. and Others v. Croatia*, no. 71593/11, § 57, 18 June

2015). The investigation must be effective in the sense that it is capable of leading to the identification and punishment of those responsible (see *Oğur v. Turkey* [GC], no. 21594/93, § 88, ECHR 1999-III). However, the Court has deemed the scope of the above-mentioned obligation to conduct an effective investigation as constituting an obligation as to means, not as to results (see, for example, *Shanaghan v. the United Kingdom*, no. 37715/97, § 90, 4 May 2001, and the judgments referred to therein).

41. The Court notes that the investigation into the killing of K.L. was carried out by the Serbian authorities and that it resulted in an indictment against several Croatian soldiers captured by Serbian military forces. In 1992 two of them, Z.Š. and M.D. were found guilty of the killing of K.L. Z.Š. was sentenced to death and M.D. to twenty years' imprisonment.

42. In 2007 the Croatian authorities learned for the first time about the killing of K.L. and opened an investigation. The Court would note that the Croatian authorities have followed the available leads in the case in issue by interviewing all available witnesses (see paragraphs 14 and 15 above). None of them had any relevant knowledge of the circumstances in which K.L. had been killed. No other leads have been discovered.

43. The Court further notes that the Vukovar County State Attorney's office asked the Serbian authorities for all evidence concerning the killing of K.L. However, the Serbian authorities did not submit any of the judgments the applicants are relying on (see paragraph 16 above).

44. As regards the adequacy of the steps taken by the Croatian authorities in connection with the death of K.L., the Court is not persuaded by the applicants' submission that there have been significant oversights or omissions. The facts of the case show that all traceable witnesses were interviewed and the available evidence collected and reviewed. The Court notes that the police pursued every line of enquiry (contrast to *Charalambous and Others v. Turkey* (dec.), no. 46744/07, § 65, 3 April 2012). However, that investigation did not discover any indication about the identity of persons bearing responsibility for the killing of K.L.

45. The applicants have not pointed to any other concrete avenues of enquiry that the police could have pursued. In the circumstances, the Court cannot impugn the authorities for any culpable disregard, discernible bad faith or lack of will (compare to *Gürtekin and Others v. Cyprus* (dec.), nos. 60441/13 et al., § 27, 11 March 2014).

46. Against the above background, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the procedural aspect of Article 2 of the Convention. It follows that this complaint is manifestly ill-founded and must be rejected, in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

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

47. The applicants further complained that they had had no access to court and that the judgments of the national courts had not been adequately reasoned. They relied on Article 6 § 1 of the Convention. The relevant part of Article 6 § 1 of the Convention reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

1. The parties' submissions

48. The applicants argued that their right of access to court had been impaired because of the manner in which the national court had calculated the statutory limitation period for their civil claim. In the criminal proceedings conducted before the Serbian Military Courts two persons had been found guilty of the killing of K.L. and these acts had been deemed to be war crimes. The applicants argued that section 377 of the Civil Obligations Act stipulated a longer statutory limitation period in respect of claims for compensation for damage caused by a criminal offence. Since the killing of their relative, K.L., amounted to a war crime, there had been no statutory limitation period in respect of that crime, and consequently no statutory limitation period for their civil claim. They also submitted that under the Nullity Act, the judgments of the Serbian Military Courts would not be recognised in Croatia (see paragraph 27 above).

49. They further argued that the Constitutional Court had not given any reply to their arguments concerning the convictions in Serbia.

50. The Government submitted that the applicants had not properly exhausted all domestic remedies. In the first place, they should have sought recognition by the Croatian authorities of the judgments adopted in Serbia, which they had never done. The Nullity Act had been adopted only in 2011, whereas the judgment at issue had been adopted in 1992 and the applicants had brought their civil action for damages in 2007. The Nullity Act also allowed for exception in respect of legal acts adopted by the Serbian authorities which complied with the standards of Croatian criminal legislation. Had the applicants sought the recognition of that judgment in Croatia (as they should have done) or had they presented these judgments before the first-instance court in the civil proceedings, the Croatian court would have been obliged to answer the applicants' arguments in that respect. However, by failing to do so, the applicants had deprived the Croatian courts of the possibility to give their view as to the validity of the judgment adopted in Serbia.

51. Secondly, the Croatian courts in the civil proceedings instituted by the applicants for damages had had no knowledge of the judgments adopted in Serbia, since the applicants had submitted those judgments to the Supreme Court on the day on which that court had already adopted its

decision. The proceedings in Serbia had been concluded in 1992 and the first applicant had given evidence in those proceedings. The applicants had not submitted any justification for not submitting the judgments of the Serbian courts at an earlier stage of the civil proceedings.

52. The Government argued further that the applicants had been able to bring their civil claim at several judicial instances before a regular civil court, where the claim had been decided on the merits.

2. The Court's assessment

(a) Access to court

53. The Court notes that the applicants' civil claim for damages against the State was dismissed on the ground that it had become statute-barred. The national courts applied regular statutory limitation periods in respect of civil claims, and not those that would have been applicable if the damage claimed had been the result of a criminal offence. The Court has already addressed the same issue in several cases against Croatia (see *Baničević v. Croatia* (dec.), no. 44252/10, 2 October 2012; *Bogdanović v. Croatia* (dec.), 18 March 2014; and *Orić v. Croatia* (dec.), no. 50203/12, 13 May 2014), holding that according to the established practice of the domestic courts, the statutory limitation periods in respect of the criminal offences that had caused the damage at issue were applicable only where it had been established by a final judgment of a criminal court that the damage had indeed been caused by such a criminal offence (see *Baničević*, cited above, § 33).

54. As to the present case, the Court notes that it is clear that the applicants' civil claim for damages was not submitted within the regular statutory limitation periods prescribed by the Obligations Act and that there was nothing arbitrary in the national courts' findings in that respect.

55. As to the possibility of applying the statutory limitation period prescribed for a particular criminal offence which allegedly caused the damage for which they sought compensation, the Court notes that a final judgment was indeed given by a criminal court in respect of the killing of K.L. These are judgments issued by the Serbian Military Courts in 1992. However, the applicants presented those judgments to the Supreme Court for the first time on 12 October 2011, when the Supreme Court had already delivered its judgment regarding the applicants' appeal on points of law.

56. The Court notes that in 1992 the applicants lived in Serbia (see paragraph 7 above) and that the first applicant gave evidence in the criminal proceedings in Serbia (see paragraph 9 above) and that therefore the applicants must have been aware of those proceedings. Also, the applicants did not seek the recognition by the Croatian authorities of the judgments adopted in Serbia (see paragraph 27 above). The applicants did not give any explanation for their above-described failures.

57. Given the circumstances, the Court considers that the applicants' complaint concerning their alleged lack of access to court is manifestly ill-founded and must be rejected, in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

(b) Reasoned judgment

58. The Court reiterates that Article 6 § 1 obliges the courts to give reasons for their judgments, but cannot be understood as requiring a detailed answer to every argument (see *Van de Hurk v. the Netherlands*, 19 April 1994, § 61, Series A no. 288). This obligation is an essential procedural safeguard under Article 6 § 1 of the Convention, as it demonstrates to the parties that their arguments have been heard, affords them the possibility of objecting to or appealing against the decision, and also serves to justify the reasons for a judicial decision to the public (see *Suominen v. Finland*, no. 37801/97, §§ 36-37, 1 July 2003, and *Boldea v. Romania*, no. 19997/02, §§ 32-33, 15 February 2007). The principle of fairness enshrined in Article 6 of the Convention would be disturbed where domestic courts ignore a specific, pertinent and important point made by an applicant (see, for example, *Pronina v. Ukraine*, no. 63566/00, § 25, 18 July 2006, and *Mala v. Ukraine*, no. 4436/07, § 48, 3 July 2014). Otherwise, it is in the first place for the national courts to interpret domestic law, and the Court will not substitute its own interpretation for theirs in the absence of arbitrariness (see *Mala*, cited above, § 47).

59. Turning to the facts of the present case, the Court notes that the applicants enclosed the judgments of the Serbian Military Courts with their constitutional complaint and argued, *inter alia*, that there had been a conviction by a criminal court in respect of the killing of K.L. and that therefore their civil claim could not have become statute-barred. The Constitutional Court, in dismissing the applicants' constitutional complaint, did not make any reference to the judgments of the Serbian Military Courts.

60. The Court agrees that, given the provision of section 377 of the Obligations Act (see paragraph 26 above), the issue raised by the applicants in their constitutional complaint was relevant to the manner in which the statutory limitation period was to be calculated in their case. However, the Court also notes that the applicants raised that issue for the first time in the constitutional complaint that they lodged in February 2012 (see paragraph 20 above), even though the criminal proceedings before the Serbian Military Courts had been concluded in 1992. The applicants did not give any explanation for not submitting those judgments at an earlier stage of the civil proceedings, when they could have been taken into consideration by the lower courts. It follows that any arguments concerning those judgments in their constitutional complaint would have in any event been inadmissible because of the non-exhaustion of prior remedies on the basis of section 62 of the Constitutional Court Act (see paragraph 25 above).

61. In these circumstances, the Court considers that the applicants' complaint regarding the lack of reasons given by the Constitutional Court is manifestly ill-founded and must be rejected, in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

D. Alleged violation of Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention

62. In her initial application the first applicant alleged that ordering her to pay the costs of the proceedings had been unfair, placed her in a precarious position and left her without sufficient resources for subsistence, without relying on any provision of the Convention. The Court communicated those complaints under Article 8 of the Convention and Article 1 of Protocol No. 1. In her reply to the Government's observations the first applicant did not make any submissions whatsoever as regards those complaints.

63. In these circumstances the Court considers that those complaints are unsubstantiated. It follows that this part of the application is manifestly ill-founded and must be rejected, in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 9 June 2016.

Stanley Naismith
Registrar

Işıl Karakaş
President

APPENDIX

1. Eva LUKIĆ is a Croatian national who was born in 1948 and lives in Vukovar.
2. Mila KOSANOVIĆ is a Croatian national who was born in 1967 and lives in Šid.
3. Zoran LUKIĆ is a Croatian national who was born in 1971 and lives in Futoga.
4. Dubravka MIŠIĆ is a Croatian national who was born in 1967 and lives in Vukovar.