

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

FIRST SECTION

DECISION

Application no. 75504/12
Dragan RADIČANIN and others
against Croatia

The European Court of Human Rights (First Section), sitting on 19 May 2015 as a Chamber composed of:

Isabelle Berro, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*
and Søren Nielsen, *Section Rgistrar,*

Having regard to the above application lodged on 14 November 2012,

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 first applicant, Mr Dragan Radičanin, was born in 1947 and lives in Karlovac. The second applicant, Ms Danica Beneta, was born in 1952 and lives in Zagreb. The third applicant, Ms Nedjeljka Čuturilo, was born in 1949 and lives in Karlovac. The fourth applicant, Dragica Martinović, was born in 1943 and lives in Karlovac. They are all Croatian nationals and were represented by Mr L. Šušak, a lawyer practicing in Zagreb.

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

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. During 1991 and 1992 Serbian para-military forces gained control of about one third of the territory of Croatia and proclaimed the so-called "Serbian Autonomous region of Krajina" (*Srpska autonomna oblast Krajina*, hereinafter the "Krajina"). The applicants' father, D.R., lived in Selakova Poljana, a village situated in the Krajina. At the beginning of August 1995 the Croatian authorities announced a campaign of military action with the aim of regaining control over the Krajina. The action was codenamed "Storm" and lasted from 4 to 7 August 1995. Before that action, the vast majority of the population of the Krajina had fled Croatia, initially for Bosnia and Herzegovina, but later many of them went to live in Serbia. Some returned to Croatia after the war. The number of people who fled is estimated at between 100,000 and 150,000.

2. Investigation into the killing of D.R.

5. On 7 November 2000 the second applicant informed the Vojinić Police about the disappearance of her father in 1995. She alleged that she and her sister, Nedjeljka Čuturilo, had learned that D.Sa., a neighbour of their late father, knew who had killed him.

6. On 29 June 2001 the police interviewed D.Sa., who said that the applicants' father had been killed by a certain B.S. during the military action "Storm". Later on B.S. had moved to Zagreb and had died there.

7. On 8 January 2002 the police interviewed M.P., who said that he had heard that the applicants' father had been found in the courtyard of his house but nobody knew how or by whom he had been killed.

8. On 11 February and 27 March 2002 the police interviewed N.B. and P.G. N.B. had no knowledge about the killing of the applicants' father. P.G. said that he had heard that the applicants' father had been killed and buried in his courtyard and expressed the opinion that he had been killed by Serbian para-military forces because his family was rich.

9. On 29 March 2002 the police interviewed the second applicant, who said that a certain M.M. had been staying with her father in Selakova Poljana during the military action "Storm" and that M.M. had told her that on 15 August 1995 her father had gone to his neighbours' estate to feed their pigs. M.M. had heard him yelling: "You thieves, why are you stealing?", followed by three gunshots. M.M. had run away after that and had no knowledge what had happened to the applicants' father. D.Se. had told the second applicant that the applicants' father had been buried under a beech tree in his courtyard. Her father had had a valuable estate and kept

7,000 German marks in the house. The estate had been burned down after the military action "Storm".

10. On 3 April 2002 the police interviewed D.Se., M.M. and the first applicant. D.Se. said that during the military action "Storm" she had not been in Selakova Poljana. When she had returned there together with a daughter of D.R. after the military action "Storm", they had found that D.R.'s estate had been burned down. M.M. confirmed the facts given in the interview with the second applicant. The first applicant said that he had heard from his sister, the third applicant, that their father had been killed and buried under a beech tree in his courtyard.

11. On 17 March 2003 the ground under the beech tree in the courtyard of late D.R.'s house was excavated but no body was found.

12. On 31 July 2003 the police again interviewed D.Se., D.Sa. and M.M. They repeated their previous statements.

13. On 10 July 2006 the applicants lodged a criminal complaint with the State Attorney's Office against unknown perpetrators for the criminal offence of a war crime against the civilian population in connection with the killing of their father D.R. However, since then no new information has been obtained.

COMPLAINTS

14. The applicants complained under the procedural aspect of Articles 2 and 14 of the Convention that the investigation into the killing of their father had been ineffective.

THE LAW

Alleged violation of the procedural aspect of Articles 2 and 14 of the Convention

15. The applicants complained that the authorities had not taken appropriate and adequate steps to investigate the circumstances of the killing of their father and to bring the perpetrators to justice. They also claimed that their father 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, which read:

Article 2

"1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection."

Article 14

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

1. The parties' submissions

16. The Government argued that the application had been lodged outside the six-month time limit, having been submitted more than nineteen years after the event at issue.

17. The applicants argued that they had complied with all admissibility criteria.

2. The Court's assessment

18. 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 is also meant to protect the authorities and other concerned parties from being left in a state of uncertainty for a prolonged period of time (see *Bayram and Yıldırım v. Turkey* (dec.), no. 38587/97, ECHR 2002-III, and *Bulut and Yavuz v. Turkey* (dec.), no. 73065/01, 28 May 2002).

19. Where no remedies are available, or 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 subsequently 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 or she 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).

20. In a number of cases concerning ongoing investigations into the deaths of applicants' relatives, the Court has examined the period of time from which the applicant could or should have started doubting the effectiveness of a remedy (see *Şükran Aydın and Others v. Turkey* (dec.), no. 46231/99, 26 May 2005; *Bulut and Yavuz*, cited above; *Bayram and Yıldırım*, cited above; *Kıniş v. Turkey* (dec.), no. 13635/04, 28 June 2005; *Elsanova v. Russia* (dec.) no. 57952/00, 15 November 2005; *Frandeş v. Romania* (dec.), no. 35802/05, 17 May 2011; *Finozhenok v. Russia* (dec.), no. 3025/06, 31 May 2011; *Attalah v. France* (dec.), no. 51987/07, 30 August 2011; *Deari and Others v. the Former Yugoslav Republic of Macedonia* (dec.), no. 54415/09, 6 March 2012; and *Gusar v. Moldova and Rumania* (dec.), no. 37204/02, 30 April 2013).

21. Consequently, where a death has occurred, applicant relatives are expected to take steps to keep track of the investigation's progress, or lack thereof, and to lodge their applications with due expedition once they are, or should have become, aware of the lack of any effective criminal investigation (see *Varnava and Others v. Turkey* [GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, § 158, 18 September 2009). On the same basis, where time is of the essence in resolving the issues in a case, there is a burden on the applicant to ensure that his or her claims are raised before the Court with the necessary expedition to ensure that they may be properly, and fairly, resolved (ibid. § 160).

22. Although the Court has refrained from indicating a specific period for establishing when an investigation has become ineffective for the purposes of assessing when the six-month period should start to run, the determination of such a period by the Court has depended on the circumstances of each case and other factors, such as the diligence and interest displayed by the applicants, as well as the adequacy of the investigation in question. In this connection, in the above-cited *Varnava and Others* judgment, the Court noted that where the lack of progress or ineffectiveness of an investigation was readily apparent, the requirements of expedition may require an applicant to bring such a case before the Court within a matter of months, or at most, depending on the circumstances, a very few years after the events. This is particularly pertinent in cases of unlawful death where there is generally a precise point in time at which the death is known to have occurred and some basic facts are in the public domain; thus the lack of progress or ineffectiveness of an investigation will generally be more readily apparent (see *Varnava and Others*, cited above, § 162).

23. The Court reiterates that the procedural aspect of Article 2 of the Convention in circumstances such as those in the present case in principle requires an investigation capable of leading to the identification and punishment of those responsible. The essential purpose of such an

investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 69, ECHR 2002-II).

24. In the present case, the Court notes that the applicants lodged their application with the Court more than seventeen years after the date when their father was killed, and that the investigation was formally pending at the time when the application was submitted (compare to *Utsmiyeva and Others v. Russia* (dec.), no. 31179/11, § 34, 26 August 2014).

25. The Court further observes that the investigation has not attained any tangible results and no suspects have been identified. The investigation has remained at a standstill since July 2003. Since that date no relevant steps have been taken. There was no communication between the authorities and the applicants between that date and July 2006.

26. The Court notes that all military actions in the area at issue ceased in August 1995. The applicants live in Croatia, with direct access to the authorities and could therefore have applied for information or otherwise communicated with the investigators regarding the investigation into the killing of their father. There is no evidence in the documents submitted that the applicants requested information about the progress of the investigation from the authorities. They remained passive in respect of the seemingly dormant domestic investigation (compare to *Utsmiyeva and Others*, cited above, § 36).

27. The Court observes that since the applicants are the children of the victim of the violations claimed, they may be expected to display due diligence and take the requisite initiative in informing themselves about the progress being made in the investigation into the killing of their father. The absence of any news from the investigators of such a serious crime for such a significant period of time should have prompted them to draw appropriate conclusions (see, for example, *Açış v. Turkey*, no. 7050/05, § 42, 1 February 2011).

28. Moreover, the Court notes that the investigation into the killing of the applicants' father has been pending for more than fourteen years, with no meaningful investigative steps being taken by the authorities after July 2003, and no new evidence or information appearing which would provide the applicants with grounds for hope or some realistic prospect that the investigation would become effective and attain tangible results. If the applicants failed to become aware of the ineffectiveness of the investigation given such a significant lull in the course of proceedings, the Court considers that this was attributable to their own negligence (see, for example, *Findik and Omer v. Turkey* (dec.), nos. 33898/11 and 35798/11, § 15).

29. In view of the above, the Court finds that the applicants have not shown convincingly that some kind of definite advances were being made that would justify their inactivity. It finds that, following the standstill in the investigation in July 2003, the applicants ought to have concluded long before – and certainly more than six months before – the introduction of the present application that this investigation was without effect. The Court does not find that their initiative in 2006 can lead to any other conclusion, since it has not led to the discovery of any new elements (see, *mutatis mutandis*, *Finozhenok*, cited above, and *Nasirkayeva v Russia* (dec.), no. 1721/07). Accordingly, the Court finds that the present application lodged in 2012 must be rejected for failure to comply with the six-month time-limit set out in Article 35 §§ 1 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 11 June 2015.

Søren Nielsen
Registrar

Isabelle Berro
President