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

FOURTH SECTION

DECISION

Application no. 19985/13
Hysen SPATA
against Albania

The European Court of Human Rights (Fourth Section), sitting on 1 October 2013 as a Committee composed of:

Päivi Hirvelä, *President,*
Ledi Bianku,
Paul Mahoney, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 9 March 2013,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Hysen Spata, is an Albanian national, who was born in 1942 and lives in Dibër. He is represented before the Court by Mr Kamer Ylli, a lawyer practising in Tirana.

2. The facts of the case, as submitted by the applicant, may be summarised as follows.

A. The criminal investigation into the death of the applicant's sister

3. On 22 November 2001 the applicant's sister was shot dead at her home.

4. It would appear that in December 2001 the applicant lodged a criminal complaint with the prosecutor's office.

5. On 22 December 2001 the district prosecutor's office opened a criminal investigation into the murder of the applicant's sister.

6. On 12 December 2002 the district prosecutor decided to suspend the criminal investigation (*pezullimin e hetimeve*) on the ground that no author

of the crime could be traced. The applicant claims that at that point he was not informed of the conduct of the criminal investigation or of its stay.

7. The applicant later learned of the stay of the investigation. His request to the district prosecutor's office to provide him with copies of documents found in the criminal investigation file no. 161 went unanswered.

8. On 26 February 2004, 25 January 2008 and 4 September 2009 the General Prosecutor's office informed the applicant that the criminal investigation remained stayed, no other actions having been taken.

B. Judicial proceedings against the stay of the criminal investigation

9. On an unspecified date, most likely after September 2009, the applicant instituted legal proceedings against the stay of the criminal investigation. He complained that he had not been informed of the content of the investigation file nor of the stay of the criminal investigation, that the prosecutor had not questioned all witnesses and that he had no effective remedy to complain against the decision to stay the criminal investigation.

10. On 16 November 2009 and 23 June 2010 the Dibër District Court and the Tirana Court of Appeal rejected the applicant's action. The Tirana Court of Appeal held that, since the criminal investigation was still pending and since it was at the discretion of the prosecutor's office to determine the investigative actions to be carried out, the applicant did not have *locus standi*. It re-confirmed that there was no right to appeal against a decision to stay the criminal proceedings under the criminal procedural law.

11. On 22 December 2011 and 18 January 2013 the Supreme Court and the Constitutional Court rejected the applicant's appeals. The latter stated, *inter alia*, that, even though the criminal procedural law did not provide for such a right to appeal, the fact that the applicant had had access to the domestic courts indicated that he had an effective right to appeal to a court.

C. Relevant domestic law

Code of Criminal Procedure ("CCP")

12. Article 24 § 4 states that the decisions and instructions of a higher-ranking prosecutor are binding on a lower-ranking prosecutor.

13. Article 58 of the CCP provides for the right of the victim or his/her heirs (*personi i demtuar ose trashëgimatrët e tij*) to request a criminal investigation of the perpetrator and to seek damages.

14. Article 105 of the CCP provides for the right of any interested party to request copies and extracts of or separate acts of the criminal investigation file, at that party's expense.

15. Article 326 of the CCP, which provides for the prosecutor's right to stay the criminal investigation, reads as follows:

"1. When the author of the offence is unknown (...), the prosecutor may decide to stay the criminal investigation.

2. The stay of the criminal investigation is decided after all possible actions have been carried out.

3. The stayed criminal investigation can re-start by a decision of the prosecutor."

There is no specific provision in the Code of Criminal Procedure providing for a right to appeal against the prosecutor's decision staying a criminal investigation.

COMPLAINTS

16. The applicant invokes Articles 6, 8 and 13 of the Convention to complain that he was not informed of the content of the investigation file, that he was not informed of the decision to stay the criminal investigation and that there exists no effective remedy against the prosecutor's decision to stay the criminal investigation.

THE LAW

17. The applicant's complaints fall to be examined from the standpoint of the respondent State's procedural obligation to conduct an effective investigation under Article 2 of the Convention, which includes a requirement to ensure adequate participation of the next-of-kin. However, this requirement cannot be extended to mean that an applicant should have access to police files, or copies of all documents during an on-going investigation or for the applicant to be consulted or informed about every step (*Green v. the United Kingdom* (dec.), no. 28079/04, 19 May 2005; *Hackett v. the United Kingdom* (dec.), no. 34698/04, 10 May 2005).

18. The Court further observes that it is not required to decide whether the authorities complied with that requirement as the application is inadmissible for the reasons stated below.

19. Article 35 § 1 of the Convention provides that the Court may only deal with a matter where it has been introduced within six months from date of the final decision in the process of exhaustion of domestic remedies. As a rule, the six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies. Where it is clear from the outset however that no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of, or from the date of knowledge of that act or its effect on or prejudice to the applicant (*Dennis and Others v. the United Kingdom* (dec.), no. 76573/01,

2 July 2002). Nor can Article 35 § 1 be interpreted in a manner which would require an applicant to seize the Court of his complaint before his position in connection with the matter has been finally settled at the domestic level. Where, therefore, an applicant avails himself of an apparently existing remedy and only subsequently becomes aware of circumstances which render the remedy ineffective, it may be appropriate for the purposes of Article 35 § 1 to take the start of the six-month period from the date when the applicant first became or ought to have become aware of those circumstances (*see Paul and Aubrey Edwards v. the United Kingdom* (dec.), no. 46477/99, 4 June 2001).

20. 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 *Bulut and Yavuz v. Turkey* (dec.), no. 73065/01, 28 May 2002; also *Bayram and Yıldırım v. Turkey* (dec.), no. 38587/97, ECHR 2002 III).

21. Turning to the facts of the present case, on 22 December 2001 a criminal investigation was opened into the shooting of the applicant's sister. On 12 December 2002 the district prosecutor decided to stay the criminal investigation. The applicant acknowledged that he was informed of that decision but he did not specify a date. However, the authorities' letters show that, between 26 February 2004 and 4 September 2009, the applicant was repeatedly informed of the stay of the criminal investigation. The applicant does not refer to any investigative measure taken since 12 December 2002.

22. The Court therefore considers that the applicant was aware, at the latest on 4 September 2009, that the investigation had been stayed, that no further investigative acts had been taken since the stay and that there was no realistic possibility of any additional investigative steps. The six-month time-limit ran from that date at the latest.

23. Moreover, the Court does not consider that a new investigative obligation arose as a result of the legal proceedings instituted by the applicant in 2009, because those proceedings cannot be considered to constitute "a plausible, or credible, allegation, piece of evidence or item of information relevant to the identification, and eventual prosecution or punishment of the perpetrator" (see *Brecknell v. the United Kingdom*, no. 32457/04, § 71, 27 November 2007). In fact, the proceedings re-confirmed the already existing state of affairs under domestic law that there was no right to appeal against a prosecutor's decision staying the investigation and no relevant new evidence resulted therefrom so as to revive the procedural obligation to investigate (see *McDermott and Others v. Ireland and Keegan v. Ireland* (dec.), nos. 23213/09 and 62652/09, §§ 48-52, 25 September 2012). There was evidently no point in pursuing the said proceedings.

24. Accordingly, by introducing his application in 2013, it must be concluded that the applicant did not display the diligence required to comply with the requisites derived from the Convention and its case-law on Article 35 § 1 of the Convention. The application must therefore be rejected in accordance with Article 35 §§ 1 and 4 of the Convention for having been lodged out of time.

For these reasons, the Court unanimously.

Declares the application inadmissible.

Fatoş Aracı Deputy Registrar	Päivi Hirvelä President