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

FIRST SECTION

DECISION

Application no. 18869/22
Vladimir ŠTITIĆ
against Croatia

The European Court of Human Rights (First Section), sitting on 14 June 2022 as a Committee composed of:

Péter Paczolay, *President,*
Raffaele Sabato,
Davor Derenčinović, *judges,*
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 18869/22) 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 5 April 2022 by a Croatian national, Mr Vladimir Štitić, who was born in 1967 and lives in Karlovac ("the applicant") and was represented by Mr D. Plavec, a lawyer practising in Zagreb;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns the alleged ineffectiveness of the fresh investigation conducted into the applicant's allegations of ill-treatment by the police after the Court's judgment in *Štitić v. Croatia* ([Committee], no. 16883/15, 6 September 2018).

2. In the *Štitić* judgment, the Court found that an investigation into the applicant's arguable claim of ill-treatment by the police during his arrest on 2 November 2012 had not been effective, contrary to the requirements of the procedural aspect of Article 3 of the Convention (ibid., §§ 66-74).

3. In order to execute the Court's judgment, the relevant State Attorney's Office conducted a fresh investigation which led to the collection of further evidence and the establishment of new facts concerning the incident. On 31 December 2019 the State Attorney's Office rejected the applicant's

criminal complaint against the police officers involved. The applicant then took over the prosecution and, on 14 September 2021, the investigating judge dismissed his request to conduct an investigation. On 21 October 2021 the three-judge panel of the Z. County Court upheld that decision.

4. The applicant complained under Articles 6 and 13 of the Convention that the fresh investigation conducted into his allegations of ill-treatment had not been effective.

THE COURT'S ASSESSMENT

5. The Court considers from the outset that the applicant's complaints fall to be examined under the procedural aspect of Article 3 of the Convention (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018).

6. The Court next notes that a supervision procedure in respect of the execution of the initial judgment is still pending before the Committee of Ministers. However, this does not prevent the Court from considering a new application in so far as it includes new aspects which were not determined in the initial judgment (compare *V.D. v. Croatia (no. 2)*, no. 19421/15, §§ 46-54, 15 November 2018).

7. The Court further observes that the applicant did not bring his complaint concerning the ineffectiveness of the fresh investigation before the Constitutional Court, even though in *Kušić and Others v. Croatia* ((dec.), no. 71667/17, 10 December 2019) the Court found that in 2019 a constitutional complaint had become an effective domestic remedy for complaints concerning ineffective investigations under Articles 2 and 3 of the Convention (ibid., § 99).

8. The applicant explained that he had not used that domestic remedy because, according to the information provided by the Constitutional Court, it would have been declared inadmissible. In that connection, the Court notes that a document published on the Constitutional Court's website in the part dedicated to instructions for lodging a constitutional complaint still lists decisions such as rejecting the criminal complaint and dismissing the victim's request to conduct an investigation as not being amenable to constitutional review, without specifying any exception when such decisions concern allegations of suspicious deaths, ill-treatment or other instances of attack against a person's physical or psychological integrity triggering the State's procedural obligation under the relevant Articles of the Convention.

9. Although in such constitutional complaints the complainants challenge the effectiveness of the investigation and not the individual decisions adopted during the investigation, the Court has no reason to doubt that the Constitutional Court would have examined the substance of the applicant's complaint had he lodged it against the decisions rendered in his case (see paragraph 3 above). At the same time, the Court finds it understandable that

the information contained in the document in question created confusion for the applicant and could potentially create confusion in other similar cases.

10. In these circumstances, the Court is of the view that the most appropriate solution would be that the applicant lodges a constitutional complaint concerning the alleged ineffectiveness of the fresh investigation under Article 3 of the Convention, it being understood that the period during which the proceedings were pending before the Court should not be held against him (see, *mutatis mutandis*, *Kušić and Others,* cited above, § 106).

11. The Court would stress that, following the termination of the proceedings before the Constitutional Court, or if those proceedings become unreasonably protracted, it remains open for the applicant to bring his complaints before the Court should he still consider himself a victim of the alleged violation of the Convention.

12. Against the above background, the Court rejects the application under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 7 July 2022.

Liv Tigerstedt Deputy Registrar	Péter Paczolay President