



Criminal investigation into disappearance of Roma following boat accident was ineffective due to length of proceedings

The case of [Randelović and Others v. Montenegro](#) (application no. 66641/10) concerned the complaint that the Montenegrin authorities had failed to conduct a prompt and effective investigation into the deaths or disappearance of the applicants' family members. The latter, a group of Roma, had boarded a boat on the Montenegrin coast with the intention of reaching Italy, which sank in August 1999.

In today's **Chamber** judgment¹ in the case, the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 2 (right to life - investigation) of the European Convention on Human Rights in respect of one of the applicants.

The Court concluded that the Government had failed to justify the duration of the criminal proceedings, which had lasted more than ten years and seven months after a new indictment had been issued in 2006. Referring to its case-law, the Court underlined in particular that the passage of time inevitably eroded the amount and quality of evidence available and that the appearance of a lack of diligence cast doubt on the good faith of the investigative efforts. Lengthy proceedings also prolonged the ordeal for members of the family. The Court therefore considered that the delays in question could not be regarded as compatible with the State's obligation under Article 2.

Principal facts

The case was originally lodged by 13 applicants who are Serbian nationals, one of whom is also a national of the "Former Yugoslav Republic of Macedonia".

The applicants' relatives were among a group of around 70 Roma who boarded a boat on the Montenegrin coast on the night of 15 August 1999 with the intention of reaching Italy. A few hours later, the boat sank, owing to the large number of passengers. One passenger survived the accident. Subsequently, 35 bodies were found in the sea, on which autopsies were performed. The forensic specialists considered that, while the cause of death could not be established with certainty, the passengers were likely to have died from drowning.

In September 1999 a judicial investigation was opened against seven individuals on suspicion of illegally crossing the State border in connection with reckless endangerment. In October 1999 the State prosecutor in Bar issued an indictment with the Court of First Instance in Bar against the seven suspects. After a number of hearings had been held, the case was eventually transferred to the High Court in Podgorica in April 2004. A new formal investigation was opened in November 2004 and a new indictment was issued in October 2006, against eight defendants, who were charged with reckless endangerment. In 2008 the court rejected the indictment in respect of one of the defendants. It subsequently decided that two defendants who lived outside of Montenegro would be tried in absence. After a number of further delays, notably caused by a number of hearings being

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

adjourned, the High Court acquitted all defendants in July 2014 for lack of evidence. The prosecutor filed an appeal against that judgment.

The applicant Begija Gaši, whose brother and sister-in-law have been missing following the boat accident, was questioned as a witness in the proceedings. She stated in particular that she had not recognised them amongst the bodies found but that she had recognised her brother's arm in one of the photos shown to her during the questioning.

Following a complaint by the Roma Centre to the Ombudsman, asking for the criminal proceedings to be expedited, the Ombudsman issued a report in December 2009 finding that the duration of the proceedings of more than ten years was unjustified.

In June 2011 the president of the High Court requested the Ministry of Justice to appoint a permanent court interpreter for Romani, stressing that one of the reasons for the criminal proceedings having "lasted too long" had been the absence of such an interpreter.

Complaints, procedure and composition of the Court

Relying in particular on Article 2 (right to life) the applicants complained that the Montenegrin authorities had failed to conduct a prompt and effective investigation into the deaths or disappearance of their family members and to prosecute those responsible.

The application was lodged with the European Court of Human Rights on 23 March 2011. The Serbian Government made use of their right to intervene as a third party (under Article 36 of the Convention).

The Court decided to continue its examination of the case in respect of one applicant, Begija Gaši, who had submitted her observations within the required time-limit. It struck the application out of its list of cases as far as the remaining applicants were concerned, who had not responded to the Court's requests for their submissions and who could therefore be regarded as no longer wishing to pursue the application within the meaning of Article 37 of the Convention (striking out applications).

Judgment was given by a Chamber of seven judges, composed as follows:

Robert Spano (Iceland), *President*,
Julia Laffranque (Estonia),
Işıl Karakaş (Turkey),
Nebojša Vučinić (Montenegro),
Paul Lemmens (Belgium),
Valeriu Griţco (the Republic of Moldova),
Stéphanie Mourou-Vikström (Monaco),

and also Stanley Naismith, *Section Registrar*.

Decision of the Court

The Court rejected a number of objections by the Montenegrin Government as regards the admissibility of the complaint. Notably, the Court confirmed that Ms Gaši had been in a position to lodge the application in respect of her brother and sister-in-law even though their bodies had not been identified, noting in particular: that she had been consistent throughout the proceedings in stating that her two relatives had been on the boat; that not all bodies of the boat's passengers had been found; and that no DNA analysis had been performed by the authorities.

Furthermore, while the complaint concerned the investigation of an event which had taken place before the entry into force of the Convention in respect of Montenegro on 3 March 2004, the Court

underlined that it had temporal jurisdiction to examine the complaint in so far as it related to the part of the investigation conducted after that date.

As regards the merits of the complaint, the Court considered that the Government had failed to justify the lengthy proceedings in the period following the entry into force of the Convention in respect of Montenegro. More than ten years and seven months after the new indictment had been issued, the criminal proceedings were still pending at second instance.

Between the time that the new formal investigation had been opened in November 2004 and the new indictment issued in October 2006, only one piece of evidence had been obtained, namely an expert opinion on the capacity of the boat. The Court did not see why that had taken the national authorities more than one year and four months. During the three years following the new indictment, the authorities had not been successful in serving it on all the defendants. Furthermore, between 2009 and 2014, 15 hearings had been held while a total of 22 hearings had been adjourned for various reasons. While perhaps not all the adjournments had been attributable to the Montenegrin authorities, certainly none could be attributed to the applicant Ms Gaši.

Moreover, even though the Ombudsman and the president of the High Court had considered the length of the proceedings unjustified, in 2009 and 2011 respectively, the proceedings were still pending.

Referring to its case-law, the Court underlined that the passage of time inevitably eroded the amount and quality of evidence available and that the appearance of a lack of diligence cast doubt on the good faith of the investigative efforts. Lengthy proceedings also prolonged the ordeal for members of the family.

The Court therefore considered that the delays in question could not be regarded as compatible with the State's obligation under Article 2.

Just satisfaction (Article 41)

The Court held that Montenegro was to pay Ms Gaši 12,000 euros (EUR) in respect of non-pecuniary damage and EUR 500 in respect of costs and expenses.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.