



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

FIRST SECTION

DECISION

Applications nos. 31646/17 and 3207/19
Dane PJEVAČ against Croatia
and Đuro PJEVAČ and Others against Croatia

The European Court of Human Rights (First Section), sitting on 22 February 2022 as a Committee composed of:

Péter Paczolay, *President*,

Alena Poláčková,

Davor Derenčinović, *judges*,

and Liv Tigerstedt, *Deputy Section Registrar*,

Having regard to:

the applications against Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by the applicants listed in the appended table (“the applicants”), on the various dates indicated therein;

the decision to give notice of the complaint concerning the ineffectiveness of the investigation under Article 2 of the Convention to the Croatian Government (“the Government”) represented by their Agent, Ms S. Stažnik, and to declare inadmissible the remainder of the applications;

the parties’ observations;

Having deliberated, decides as follows:

SUBJECT-MATTER OF THE CASE

1. The applications concern the alleged lack of an effective investigation into the killing of the applicants’ mother.

2. In September 1993 the Croatian forces conducted a military operation with the aim of regaining control over the Medak Pocket, part of the Croatian territory occupied by Serbian forces. Many civilian Serbs were killed during the operation, including the applicants’ mother, B.P.

3. In November 2006 R.A. and M.N. were indicted for command responsibility for war crimes committed in the Medak Pocket and the indictment listed the applicants’ mother as one of the victims. In 2010 the

criminal courts finally acquitted R.A. and convicted M.N. However, as to the applicants' mother, the courts found that she had been killed in the area under the jurisdiction of the special police forces of the Croatian Ministry of Interior, over which neither R.A. nor M.N. had command. The courts further identified the persons who were in command of those special police forces.

4. In 2015 the applicants lodged a criminal complaint against the persons in command of the special police forces and several other persons. In 2017 that criminal complaint was rejected on the grounds that the evidence had not justified a conclusion that the applicants' mother had been killed by the members of the special police forces.

5. An investigation into the crimes that had occurred during that military operation is still ongoing.

6. In 2014 and 2017 the applicants lodged constitutional complaints in which they complained about the lack of an effective investigation into their mother's killing. In its decisions rendered in 2016 and 2018, respectively, the Constitutional Court held, without providing any analysis, that there had been no violation of Article 21 of the Constitution guaranteeing the right to life.

7. The applicants complained that the domestic authorities had failed to effectively investigate the killing of their mother and to bring the perpetrators to justice, in breach of Article 2 of the Convention.

THE COURT'S ASSESSMENT

8. Having regard to the identical subject matter of the applications, the Court finds it appropriate to examine them jointly in a single decision.

9. The Court does not have to examine all the issues raised by the parties but will focus on the Government's objection as to the non-exhaustion of domestic remedies.

10. In the case of *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.*, §§ 93 and 99). It also held that the exception regarding the rule of exhaustion of the domestic remedies was to be applied in cases of this sort and that the applicants in such cases should be required to file a constitutional complaint, even if they had lodged their application with the Court before such a complaint had proved to be an effective remedy (*ibid.*, §§ 101-05 and the cases cited therein).

11. The Court notes that in their constitutional complaints lodged in 2014 and 2017 the applicants complained, with reference to Article 2 of the Convention, that the investigation into the killing of their mother had been ineffective. However, the Constitutional Court did not effectively examine that complaint (see paragraph 6 above). Moreover, the Constitutional Court's decisions in the applicants' cases were delivered before a constitutional

complaint became an effective remedy for such complaints (see paragraph 10 above and compare, for factual circumstances, *J. and Others v. Croatia* (Committee), nos. 32343/16 and 750/17, 26 May 2020, and *Marić and Others v. Croatia* (dec.), no. 37333/17, 10 November 2020).

12. In that connection, since the investigation into the killing of the applicants' mother is still ongoing, the Court holds, as in *Kušić and Others, J. and Others* and *Marić and Others* (all cited above), that the applicants in the present case are required to lodge a constitutional complaint, it being understood that the period during which the proceedings were pending before the Court should not be held against them.

13. Indeed, in accordance with the principle of subsidiarity, one of the fundamental principles on which the Convention system is based, the respondent State should be afforded the opportunity to put matters right through its own legal system before answering before an international body for its acts or omissions.

14. Having regard to the Constitutional Court's decisions rendered as of 2019, which extensively implement the criteria established by the Court in assessing whether or not an investigation had been effective, the Court has no reason to doubt that the Constitutional Court will diligently examine the effectiveness of the investigation into the killing of the applicants' mother.

15. The Court would stress that it remains open for the applicants, following the termination of the proceedings before the Constitutional Court, or if those proceedings become unreasonably protracted, to bring their complaints before the Court if they still consider themselves to be victims of a violation of the Convention.

16. Against the above background, the Court upholds the Government's objection. The applications must therefore be rejected under Article 35 §§ 1 and 4 for non-exhaustion of domestic remedies.

For these reasons, the Court, unanimously,

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 17 March 2022.

Liv Tigerstedt
Deputy Registrar

Péter Paczolay
President

PJEVAČ v. CROATIA AND PJEVAČ AND OTHERS v. CROATIA DECISION

Appendix

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality	Represented by
1.	31646/17	Pjevač v. Croatia	24/04/2017	Dane PJEVAČ 1954 Crikvenica Croatian	Vladimir VUČKOVIĆ
2.	3207/19	Pjevač and Others v. Croatia	04/01/2019	Đuro PJEVAČ 1952 Beograd Croatian Dragan PJEVAČ 1956 Beograd Croatian Nikola PJEVAČ 1949 Obrenovac Croatian Višnja MIJUŠKOVIĆ 1964 Šabac Croatian	Vladimir VUČKOVIĆ