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Contact: Zoe Bryanston-Cross
Tel: 03.90.21.59.62

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Communication from Croatia concerning the case of STARCEVIC v. Croatia (Application No. 80909/12)

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Communication de la Croatie concernant l'affaire STARCEVIC c. Croatie (requête n° 80909/12) (**anglais uniquement**)



GOVERNMENT OF THE REPUBLIC OF CROATIA
OFFICE OF THE REPRESENTATIVE OF
THE REPUBLIC OF CROATIA BEFORE
THE EUROPEAN COURT OF HUMAN RIGHTS

DGI

28 OCT. 2020

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

Class: 004-02/15-02/02
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Zagreb, 28 October 2020

ACTION REPORT

Starčević v. Croatia

(app. no. 80909/12), judgment of 13 November 2014, final on 13 February 2015

DGI

28 OCT. 2020

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

I. CASE DESCRIPTION

1. This case concerns a violation of the applicant's right to life on account of the lack of an effective investigation between 2004 and 2012 in the death of his father in a traffic accident (violation of Article 2 in procedural limb) (*Starčević*, §§58, 59).
2. The applicant's father was hit by a car in 2004 while attempting to cross a motorway and died at the scene. In 2005 the investigating judge of the Split County Court declined to open a criminal investigation, finding that there was no reasonable suspicion of a criminal offence. The State Attorney's Office decided not to appeal that decision. In 2006, following the applicant's appeal, the Supreme Court ordered an investigation to be carried out. Following the investigation conducted the applicant took over the prosecution as a subsidiary prosecutor. The criminal proceedings were conducted between 2006 and 2011, when the Split Municipal Court discontinued the proceedings on the grounds that the applicant's request for prosecution had not been drafted properly. This decision was upheld by the second instance court in 2012. The applicant's subsequent constitutional complaint was declared inadmissible in 2012.
3. The European Court found the failure of the domestic authorities in conducting an effective criminal investigation into the death of the applicant's father which stemmed from:
 - (i) the omission of the State Attorney's Office and the investigating judge to notify the applicant of the court's decision not to open a further investigation into the matter despite being under an obligation to do so pursuant to domestic legislation (*Starčević*, §60),
 - (ii) the lack of diligence and promptness of the trial court in conducting criminal proceedings (*Starčević*, §§62, 63)
 - (iii) the omission of the trial court to verify the formal compatibility of the applicant's request to prosecute and to observe the jurisdiction of its composition at the very moment when the proceedings were instituted and its subsequent overly rigid formalistic approach when examining the formal requirements of this request (*Starčević*, §§64, 65, 67)

II. INDIVIDUAL MEASURES

4. The authorities took measures aimed at bringing the violation to an end and providing redress to the applicant.
 - A. Bringing the violation to an end**
5. The applicant was entitled to seek reopening of the impugned criminal proceedings within 30 days of the finality of the European Court's judgment, that is until 16 March 2015 at the latest. However, the applicant did not submit such a request.
6. In line with the above, the Government deems that the applicant had at his disposal effective avenue to obtain the retrial, however, he decided not to avail himself of this possibility. No further individual measure is therefore necessary in this respect (see *mutatis mutandis* Final Resolution [CM/ResDH\(2018\)235](#) in *D.J. v. Croatia*).
- B. The applicant's redress**
7. The applicant claimed pecuniary and non-pecuniary damage. The European Court awarded the applicant EUR 10,000 in respect of non-pecuniary damage (*Starčević*, §73). On the other hand, it did not discern any causal link between the violation found and the pecuniary damage alleged and therefore it rejected this claim.

III. GENERAL MEASURES

8. The authorities took legislative measures, measures ensuring change of the domestic case law and the publication and dissemination measures aimed at rectifying shortcomings identified by the European Court in the present case.

A. Measures aimed at ensuring an overall effectiveness of criminal investigations

9. It is recalled that the European Court found that the criminal proceedings into the death of the applicant's father that were conducted between 2004 and 2012 and lasted for more than eight years were concluded without a final determination of the case on the merits (*Starčević*, §68). In order to rectify these shortcomings, the authorities took the measures set out below.
10. In 2014 the Constitutional Court introduced the judicial review of the efficiency of criminal investigations. Pursuant to this change of practice, the Constitutional Court is now vested with powers to examine allegations on ineffective investigations and render a decision on merits in this respect. The parties to the proceedings are therefore capable of obtaining a Convention compliant examination of their allegations of ineffectiveness of investigations at domestic level followed by a decision on merits. If the Constitutional Court finds that an investigation is not being conducted effectively or promptly, it has the authority to order the prosecuting authorities to carry out specific steps aimed at identifying the perpetrators and bringing them to justice.
11. The Government would like to highlight that the European Court examined the effectiveness of the Constitutional Court's review of ineffective investigations in the case of *Kušić v. Croatia* (71667/17, inadmissibility decision of 10 December 2019). The European Court found that this particular change of the Constitutional Court's practice indicates that the constitutional complaint has become an effective domestic remedy for complaints concerning ineffective investigations. The European Court highlighted:

"99. In the light of the above observations the Court considers that, after a period of adaptation which followed after the Constitutional Court's first decision on the matter (see paragraph 45 above), a constitutional complaint, as examined by the Constitutional Court's decisions of April, July and November 2019, now provides the parties with the possibility to have the effectiveness of investigations under Articles 2 and 3 of the Convention examined in the light of the principles developed by the Court. The Government have, accordingly, met the burden incumbent on them to prove the effectiveness of the remedy in theory and practice." (*Kušić*, §99)

12. In view of the above, in July 2019 the Constitutional Court examined the case in which the competent second instance court dismissed the complainant's request for an investigation into the events related to explosion in his workplace that caused him major bodily injuries (similarly as in the present case where the domestic court decided not to open an investigation into the matter, see §60, *Starčević*). In its decision of 9 July 2019, No. [U-III-Bi-863/2019](#) the Constitutional Court referred to its case-law, notably decisions No. [U-III-Bi-7367/2014](#) of 15 December 2015, No. [U-III-Bi-2698/2016](#) of 14 December 2016, No. [U-III-Bi-4690/2015](#) of 11 January 2017, No. [U-III-Bi-3699/2015](#) of 30 March 2017, by which it previously examined similar cases. In particular, it examined whether the criminal proceedings into the death of the complainants' relatives satisfied the criteria of effectiveness required by Article 2 of the Convention. In the case at issue, the Constitutional Court concluded that the complainant had at his disposal an effective judicial system capable of determining all the relevant facts of the case and the individuals responsible for the incident in his workplace. However, as the complainant failed to take any actions for 10 years after the event, the prosecution of the persons responsible for the explosion became time-barred.

B. Measures aimed at ensuring injured parties are informed on the course of the investigations

13. It is recalled that between 2004 and 2006 the State Attorney's Office and the judge conducting investigation into the death of the applicant's father, failed to notify the applicant of the court's decision refusing to open a further investigation into the matter (*Starčević*, §60). To address the shortcomings identified by the European Court, the domestic authorities took the following measures.

1. Prosecutorial investigation

14. In December 2008, following the facts of this case the new Criminal Procedure Code was adopted changing the concept of criminal investigation, notably by introducing prosecutorial investigation and ensuring the injured parties are kept abreast on the course of the investigation. In November 2013 amendments to the Criminal Procedure Code were adopted and entered into force in December 2013, additionally strengthening the prosecutorial role of the State Attorney's Office.

15. Pursuant to the Criminal Procedure Code now in force, the competent State Attorney is under an obligation to deliver the decision on the opening of the investigation to the injured party thus notifying the party of the investigation.

16. Furthermore, if the State Attorney's Office decides to discontinue the investigation it is under an obligation to notify the injured party by delivering its decision within eight days. In its decision, the State Attorney instructs the injured party on his/her right to take over the prosecution as the subsidiary prosecutor. As a subsidiary prosecutor, the injured party is entitled to lodge a request for the investigation to the investigation judge of the competent court. If the investigation judge decides to discontinue the investigation, he is under an obligation to notify the competent State Attorney, subsidiary prosecutor and the defendant by delivering its decision to them.

2. Enhancing the transparency of the criminal investigations

17. The 2013 amendments to the Criminal Procedure Code furthermore enhanced the transparency of the investigation through a higher level of participation of victims. In particular, it introduced legal remedies that enable victims to scrutinise the course of the investigation, obtain information thereof and seek rectification of any shortcomings in the investigation.

18. To that effect, within two months of filing a criminal complaint, the victim/injured party may request information on the actions taken by the State Attorney. If they do not receive any information within 30 days or are dissatisfied with the actions taken or with the information received, they can file a complaint to the senior State Attorney who may order the subordinate to take necessary actions and to inform the victim/injured party thereof. Additionally, if the senior State Attorney finds that the actions of the subordinate violated the complainant's rights, the senior State Attorney shall also inform the complainant thereof. The subordinate State Attorney's failure to carry out the senior's order may constitute a disciplinary offence. The victim may bring a fresh request on the same issue after six months following the senior State Attorney's response.

C. Measures aimed at governing instigation of criminal proceedings

19. It is recalled that between 2006 and November 2011, applying the relevant 1997 Criminal Procedure Code (*Starčević*, §42), the trial court accepted the applicant's request to prosecute as a subsidiary prosecutor although those particular types of criminal proceedings could have been instituted only by an indictment, due to the prescribed penalty for the offence at issue. Hence, the trial court failed to verify the formal compatibility of the applicant's request to prosecute and to observe the jurisdiction of its composition when the proceedings were instituted. However, in the later stages of the

proceedings, the trial court's overly rigid formalistic approach when examining formal requirements of the applicant's request to prosecute, led to its dismissal (*Starčević*, §§64, 65, 67). To address the shortcomings identified by the European Court, the domestic authorities took the following measures.

20. The relevant provisions of the new Criminal Procedure Code (see §14 above) regarding indictment proceedings entered into force in September 2011. They were not applicable in the present case. The Criminal Procedure Code prescribed that, irrespective of the penalty prescribed for the particular offence, in cases subjected to *ex officio* prosecution, as it was in the applicant's case, the criminal proceedings are only to be instituted by an indictment. In accordance with these provisions, the new Criminal Procedure Code also prescribed that when the victim takes over the prosecution from the State Attorney's Office as a subsidiary prosecutor, the proceedings are further conducted also on the basis of an indictment. The new legislative solution eliminated the possibility of any confusion that could occur due to the existence of different types of prosecuting acts for the same category of offences. It thus prevents the shortcomings identified by the European Court from reoccurring. In addition, the authorities would like to note that necessary publication and awareness raising measures were taken for the attention of domestic courts (see below) which will be conducive to avoiding their overly formalistic approach when dealing with similar cases.

D. Measures aimed at preventing excessive length of criminal proceedings

21. It is recalled that the European Court found the lack of diligence and promptness on the part of the trial court when conducting criminal proceedings between 2004 and 2012 (*Starčević*, §62, 63). The authorities took measures as set out below.

1. Judicial inspection supervising the length of the proceedings

22. In February 2013 the new Courts Act was adopted. It entered into force in March 2013. The Act broadened the competencies of the Judicial Inspection set up within the Ministry of Justice. In particular, pursuant to the amendments the Judicial Inspection became vested with powers to supervise compliance with the right to a trial within a reasonable time. To this end, its supervision expanded to issues of lawfulness and efficiency of the court administration in dealing with cases concerning the protection of the right to a trial within a reasonable time.
23. Notably, the competencies of the Judicial Inspection will come into play in excessively long judicial proceedings in respect of which the competent court found that there had been a breach of the right to a trial within a reasonable time and had set a time-limit for their completion. In those cases, the Judicial Inspection will monitor whether the lengthy proceedings are brought to an end within the time-limits set by the president of the court. If the Judicial Inspection detects irregularities, it will call upon the court president to undertake necessary measures with a view to eliminating them. The Government also notes that pursuant to provisions of the Law on State Judicial Council currently in force, a judge's failure to bring the proceedings to an end within the time-limit set by the president of the court constitutes a disciplinary offence.

2. IT solutions ensuring speedy proceedings

24. In 2013, the Ministry of Justice introduced the Integrated Court Case Management System (ICMS) in municipal and county courts as an electronic tracking system aimed at, *inter alia*, ensuring that the proceedings are conducted effectively. By September 2018, it became fully operational in all regular courts including the Supreme Court.
25. The ICMS, *inter alia*, provides daily statistical reports generated according to different parameters helping to ensure that proceedings are conducted within reasonable time and that time-limits set for deciding a case are complied with (e.g.: reports on the number of cases that have not been dealt by the judge for more than 6 months, reports on the time-span in which the judge schedules hearings).

26. The ICMS furthermore provides daily reports on cases in which remedies for the protection of the right to a trial within a reasonable time were used. Specifically, it provides an overview of the decision-making process in a case raising the issue of a trial within a reasonable time and data on cases in which time-limits were exceeded. This enables the court president and the Ministry of Justice to monitor those cases, detect any inefficiency rapidly and to take action to resolve it where necessary. For non-compliance with a decision rendered in the proceedings for the protection of the right to a trial within a reasonable time a judge may be sanctioned. By introducing the ICMS, the detection of cases in which set time-limits were exceeded has been facilitated. The ICMS has established itself as an efficient and useful tool for improving procedural discipline among judges.
27. The Government deems that the combined effects of introducing the ICMS and the Judicial Inspection made it possible to monitor better the workload of judges and court administrators and the frequency of steps taken in cases, including within the category "Pending cases" and "Backlog cases". Following the Inspection's findings on the backlog, the court president has an obligation to submit their response within eight days after receiving the Inspection's report. The court president is furthermore under an obligation to eliminate the irregularities detected in the Inspection's report within the deadlines set therein.

3. *Enhancing the power of the courts*

28. Pursuant to the 2013 Courts Act (see § 22 above) the presidents of the courts are required to monitor the uniform distribution of cases. They are vested with powers to order a new automatic distribution of a case if there is a risk of a delay in proceedings because a given case is assigned to a judge with a major workload. Regular meetings are held between the president of the Supreme Court and presidents of county courts with a view, *inter alia*, to ensuring the uniform distribution of cases and decreasing the number of remitted cases.

4. *Judicial reform*

29. In 2015, the Croatian legal system abandoned the principle of territorial jurisdiction of second instance courts. County courts now have the competence to deal with appeals against first instance decisions of the municipal courts throughout Croatia.

5. *Specific measure for the acceleration of the preliminary criminal proceedings*

30. The 2013 amendments to the Criminal Procedure Code (see §14 above) introduced the possibility for the parties to the proceedings and the victim to lodge a complaint to the president of the competent court in case of any delays causing procrastination of the preliminary proceedings. Namely, pursuant to Article 347, if the competent court does not comply with the statutory limits when conducting preliminary proceedings, or the investigation judge fails to take appropriate actions causing the delays, the president of the court sets a fixed time-frame for the judges to take action or render the decision. The president of the court is to inform the complainant about his decisions within fifteen days from the day the complaint was lodged. If the president of the court fails to do so, the complainant has the possibility to lodge a complaint to the president of the immediately higher court.

6. *Assessment of the general measures taken*

31. The domestic authorities would like to outline impact of the measures taken so far in the context of acceleration of criminal proceedings.
32. The Government points out that the measures aimed at enhancing promptness of the domestic courts when conducting criminal proceedings were already examined by the Committee of Ministers in the case of *Remetin v Croatia* (app. no. 29525/10). These proceedings were conducted between 2003 and 2009. On 11 December 2019 the Committee of Ministers found that the measures taken in this respect were capable of preventing similar violations and decided to close its supervision

([CM/ResDH\(2019\)339](#)). The Government also notes that the abovementioned measures regarding excessive length of criminal proceedings were also examined in the context of *Jeans* group. Notably, on 4 July 2018 the Committee of Ministers found that the measures taken in respect of delays in criminal proceedings were capable of preventing similar violations and decided to close its supervision ([CM/ResDH\(2018\)236](#)).

E. Awareness raising measures

33. The Government notes that in the period between 2016 and 2019, the Judicial Academy carried out 12 workshops for 222 judges and prosecutors on how to efficiently implement principles of effective investigation in criminal proceedings laid down in Article 2 of the Convention. Special emphasis was placed on familiarising judges and prosecutors with particular judgments delivered against Croatia in which the European Court found violations of Article 2 of the Convention on the grounds of ineffective investigations caused by omissions of competent authorities during criminal proceedings. The goal of these workshops was to prevent future violations of Article 2 of the Convention like the one occurred in *Starčević*.

F. Publication and dissemination

34. The authorities ensured publication of the judgment with a view to raise awareness of domestic judges on the European Court's findings in this case. The judgment was translated into Croatian and published on the [webpage](#) of the Office of the Representative of the Republic of Croatia before the European Court of Human Rights. The translation was furthermore published on the Constitutional Court's official [webpage](#).
35. With a view to facilitating dissemination of the judgment the Office of the Representative prepared an analysis of the judgment highlighting the European Court's standards. The Government furthermore ensured that the above-mentioned analysis and the translation of the judgment are disseminated to the national Council of Experts for the Execution of the Judgments and the Decisions of the European Court of Human Rights, which includes the Supreme Court and the Constitutional Court.
36. The Supreme Court further disseminated the analysis and the judgment to all county and municipal courts in Croatia, including the Split County Court which was involved in the impugned criminal proceedings.
37. Therefore, the Government ensured that all domestic authorities, including the authorities who acted in breach of the Convention in this particular case are made aware of the European Court's findings.

IV. JUST SATISFACTION

38. The Government disbursed the sum of the just satisfaction awarded to the applicant on 22 April 2015. The payment was therefore made within the deadline imparted by the European Court.

V. CONCLUSION

39. As regards the individual measures, the Government considers that the applicant had at his disposal practical and effective legal avenue capable of bringing the violation to an end and was redressed for the negative consequences sustained.
40. As regards the general measures, the Government furthermore considers that the general measures taken are capable of preventing similar violations. In this respect, it is highlighted that no similar application has been communicated to the Government.

41. The Government therefore deems that all the measures required by Article 46, paragraph 1 have been adopted.

Štefica Stažnik

Representative