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

FIRST SECTION

DECISION

Application no. 56148/15
Zoran DELOVSKI and Others
against North Macedonia

The European Court of Human Rights (First Section), sitting on 7 July 2020 as a Committee composed of:

Pere Pastor Vilanova, *President,*
Jovan Ilievski,
Raffaele Sabato, *judges,*
and Renata Degener, *Deputy Section Registrar*,

Having regard to the above application lodged on 5 November 2015,

Having regard to the observations submitted by the Government of North Macedonia ("the Government") and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

1. A list of the applicants is set out in the Appendix.
2. The Government were represented by their Agent, Ms D. Djonova.

A. The circumstances of the case

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. The applicants are Mr Z. Delovski ("the first applicant"), Ms B. Delovska ("the second applicant") and Ms S. Delovska ("the third applicant"). The first and second applicants are the children, and the third applicant the widow, of the late Mr K. Delovski (K.D.), who died as the result of a car accident on 8 October 2014 at the age of 76. The accident happened at 4.10 p.m. on a weekday on a two-way road in the centre of Skopje at a time when traffic was normally heavy. After the accident, officials from the Ministry of the Interior inspected the scene and

interviewed A.A., the purported driver of the car that had struck K.D. According to the record of the inspection, A.A. stated that at the moment of the accident there had been cars on both sides of the road and K.D. had suddenly appeared straight in front of her car. His head had hit the left wing mirror and he had fallen to the ground. She had got out of the car and helped him.

5. On 27 October 2014 the Ministry of the Interior brought criminal charges against A.A. of "serious crimes against people and property in traffic" (subject to summary proceedings), to which it adjoined an on-site report, sketches and photos of the scene, records of A.A.'s blood tests (showing no trace of alcohol) and other documents.

6. On 30 October 2014 the public prosecutor heard oral evidence from the first and second applicants, who had stated their intention to obtain civil compensation. The first applicant stated that a certain Z.C. (who had contacted the first applicant after the accident) had not witnessed the accident but had approached K.D. following the accident and had provided him with first aid before the ambulance had arrived. The first applicant also referred to a certain B.S. (an elderly disabled man in poor health) who had told him that he had observed the accident from his balcony overlooking the road. B.S. had allegedly confirmed that K.D. had crossed three lanes of the road before being hit by the car. According to B.S., there had been four people in the car at the time of the accident. The car had allegedly been driven by A.A.'s daughter, who was pregnant and, as stated by Z.C., had left the scene. By a letter of 5 November 2014, the first and second applicants requested, through their lawyer, that the public prosecutor examine B.S. (at home, given his health) and Z.C. They provided the witnesses' respective personal and contact details. Subsequently, the public prosecutor ordered and obtained a post-mortem report on K.D.

7. Shortly thereafter, A.A. submitted in evidence a written statement by a certain S.S., who confirmed having seen an elderly man (referring to K.D.) crossing the road (which had a lot of traffic) outside the designated pedestrian crossing point, with his head down. A.A. also produced an expert report by a court-certified expert based on the available material from the scene (see paragraph 5 above) and S.S.'s statement. According to the expert report, K.D. had crossed three lanes of the road outside the designated crossing area; his presence had been hidden from view by other cars before the accident, and the lane in which A.A.'s car was being driven had been outside his sight, so that he was not able to assess the situation; at first he had hit his head on the left-side mirror of A.A.'s car and then the windscreen; the car had not been proceeding at an excessive speed. The expert concluded that K.D. had been responsible for the accident and that it had been impossible for A.A. to avoid hitting him.

8. A separate expert report commissioned by the public prosecutor confirmed, in substance, A.A.'s initial statement and the findings of the expert examination adduced by the defence (see paragraphs 4 and 7 above).

9. The first and second applicants submitted in evidence another expert report drawn up by a court-certified expert. According to that report, A.A. had not exercised due caution and her responsibility for the accident outweighed that of K.D. (on account of the fact that he had not used a pedestrian crossing to cross the road). Thereafter the public prosecutor commissioned a fresh expert examination, which was carried out by three court-certified experts. That examination, which was based on all available material regarding the accident, confirmed the findings that responsibility for the accident lay entirely with K.D. and that A.A.'s reaction had been timely and adequate.

10. On 27 April 2015 the public prosecutor rejected the criminal complaint, finding that the charges did not amount to an offence subject to State prosecution. The public prosecutor held that the expert examination commissioned by the prosecution office and the expert report submitted by the accused were consistent in finding that K.D. was responsible for the accident. Those findings were further supported by other material evidence. The public prosecutor disregarded the expert examination submitted in evidence by the first and second applicants as contradictory to the other expert evidence. The public prosecutor served the decision on the first and second applicants (according to them, after the media had reported on the decision), but did not allow them to inspect the case file.

11. The first and second applicants appealed to the higher public prosecutor, arguing, *inter alia*, that the first-instance public prosecutor had based the above-mentioned decision solely on expert reports and on the statement given by A.A. after the accident, which, according to them, had been self-serving. The public prosecutor had not examined the witnesses proposed by them, who had stated that there had been no cars on the road at the time and that K.D. had not been hidden by other cars and had not crossed the road between the cars. In that connection they stated that B.S. had witnessed the accident and had direct, first-hand information. Z.C. had been the first person on the scene and had given first aid to K.D. after the accident. It was also alleged that the prosecutor had failed to take evidence from three other people who had been in A.A.'s car at the time.

12. On 8 June 2015 the first and second applicants submitted a statement (of 5 June 2015) certified by a notary public in which B.S. confirmed that he had observed the accident from his balcony overlooking the road. He denied that there had been any cars nearby when K.D. had crossed the road outside the designated area. K.D. had crossed three lanes and had then been hit by A.A.'s car. The driver of the car had not displayed due care. The car had not been braking at the time of the collision. B.S. confirmed that there

had been four people in the car at the time of the accident and stated as follows:

> "[A] man got out of the car from the co-passenger's side ... A woman got out from the back seat behind the co-passenger's seat. The woman driving the car, and another woman behind the driver's seat, also got out. I recognised that it was ... A.A., I know her, they are neighbours, they live nearby ..."

13. By a decision of 1 July 2015, the higher public prosecutor dismissed the appeal and upheld the findings of the lower prosecutor. He held that "there is no other oral or material evidence which could lead to different conclusions about the facts ...".

B. Relevant domestic law

14. Section 189(1) of the Obligations Act 2001 provides for the right to claim compensation for the violation of personal rights (*лични права*). Under section 190(1) of the Act, in the event of a death the court can award family members (spouse, children and parents) compensation in respect of non-pecuniary damage.

15. Under section 11(3) of the Civil Proceedings Act, civil courts are bound by judgments given by criminal courts finding an accused guilty, in respect of the commission of the offence and the convicted person's criminal liability.

COMPLAINTS

16. The applicants complained under Article 2 of the Convention that the investigation into K.D.'s death had been ineffective because the public prosecutor had not heard evidence from the witnesses they had proposed and had not allowed them access to the case file.

THE LAW

17. The applicants complained about the conduct of the criminal investigation in the road-traffic accident which resulted in K.D.'s death. Their complaints concerned their procedural rights and/or the procedural obligations incumbent on the State authorities under Article 2 of the Convention. The Court is of the opinion that it should examine these complaints in the context of the State's positive obligation to protect the right to life (see *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, §§ 86, 87 and 91, 25 June 2019, and *Koceski v. the former Yugoslav Republic of Macedonia* (dec.), no. 41107/07, § 19, 22 October 2013). The relevant part of Article 2 of the Convention reads as follows:

> "1. Everyone's right to life shall be protected by law ..."

A. The parties' submissions

1. The Government

18. The Government submitted that there was no doubt that K.D.'s death had been accidental. According to them, the investigation into his death had been thorough and prompt given that the authorities had taken all necessary measures to establish the facts of the case. A.A.'s daughter had not been summoned by the prosecuting authorities since she had not been obliged to testify and any evidence that she might have produced should have been examined with particular caution given her close relationship with A.A., the suspect in the case. That there had been insufficient evidence to bring criminal proceedings against the suspect could not have been regarded as a sign of the ineffectiveness of the investigation.

19. Furthermore, the applicants had been actively involved in the investigation. In this connection, statements had been taken from the first and second applicants and the expert report adduced by them had been admitted as evidence. On the other hand, the examination of witnesses Z.C. and B.S., as explained by the prosecuting authorities, had been irrelevant and had not led to differing facts being established. These witnesses had not identified themselves as eyewitnesses either during the on-site inspection or subsequently directly before the public prosecutor. Furthermore, Z.C. had not witnessed the accident and could not shed any light in that respect. B.S., who was aged 74 at the time of the accident, had produced a written statement (see paragraph 12 above) after the proceedings had been concluded before the first-instance public prosecutor. That statement, taken in conjunction with the initial statement that he had given to the first applicant (see paragraph 6 above), and which contradicted other material (expert) evidence, would not have been of any importance for the outcome of the investigation. In that statement B.S. had not mentioned that there had been a pregnant woman in the car, namely A.A.'s daughter. In any event, Article 2 did not impose a duty on the investigating authorities to satisfy every request for a particular investigative measure made by a relative in the course of the investigation. Lastly, the applicants had been duly notified about the decision of the public prosecutor. Their request for access to the case file, which had been made after the decision of the first-instance public prosecutor had been given, could not have been granted since no such possibility had been available under the legislation regulating summary proceedings.

2. The applicants

20. The applicants contended that the prosecuting authorities had not discharged their duty to carry out an effective investigation as required under the procedural limb of Article 2. They had not examined witnesses Z.C. and B.S. notwithstanding the applicants' numerous requests to that

effect. Furthermore, both levels of public prosecution had not explained why they had not examined those witnesses. According to the applicants, the witnesses' statements, particularly that of B.S., would have led to a completely different set of facts from those established in the investigation regarding both the circumstances in which the accident had occurred and, particularly, the driver of the car. That witness stated that A.A.'s daughter had been driving the car. B.S. had not known either the suspect's family or the applicants and therefore had had no reason to give false evidence. Similarly, the applicants had had no motive to incite him to lie since it had been irrelevant to them who had been driving the car at the relevant time. B.S. had further stated that there had been no traffic in the lane in which the car was being driven at the time. Lastly, according to the applicants, the relevant statutory rules provided victims with the right to inspect the case file.

3. The Court's assessment

21. The general principles relevant to the present case were elucidated in *Nicolae Virgiliu Tănase* (cited above, §§ 157-60 and 163). In particular, the Court notes that where death has been caused intentionally or when life has intentionally been put at risk, a criminal investigation is generally necessary. In cases concerning unintentional infliction of death and/or lives being put at risk unintentionally, the requirement to have in place an effective judicial system will be satisfied if the legal system affords victims (or their next of kin) a remedy in the civil courts, either alone or in conjunction with a remedy in the criminal courts, enabling any responsibility to be established and any appropriate civil redress to be obtained. However, even in cases of non-intentional interferences with the right to life or physical integrity, there may be exceptional circumstances where an effective criminal investigation is necessary to satisfy the procedural obligation imposed by Article 2. Such circumstances can be present, for example, where a life was lost or put at risk because of the conduct of a public authority which goes beyond an error of judgment or carelessness, or where a life was lost in suspicious circumstances or because of the alleged voluntary and reckless disregard by a private individual of his or her legal duties under the relevant legislation. Once it has been established by the initial investigation that death or a life-threatening injury has not been inflicted intentionally, the civil remedy is to be regarded as sufficient regardless of whether the person presumed responsible for the incident is a private party or a State agent.

22. Turning to the present case, the Court observes that the applicants' allegations and the Government's submissions in reply were limited to the criminal investigation initiated by the authorities, which did not result in bringing criminal charges against the driver of the car. Notwithstanding the absence of any arguments by either party in the proceedings, the Court notes that besides State prosecution, the domestic legislation provides for another

avenue of redress regarding the circumstances of the present case, namely a civil action in tort, which was open to the applicants under the general rules of civil compensation (see paragraph 14 above) against those they considered responsible for K.D.'s death (see, *mutatis mutandis*, *Kocevski*, cited above, §§ 26 and 27, where the parents of a child were awarded a sum of money in respect of non-pecuniary damage for the death of their child in a public playground, and *V.V.G. v. the former Yugoslav Republic of Macedonia* (dec.), no. 55569/08, § 30, 20 January 2015, regarding an award for non-pecuniary damage in respect of medical negligence regardless of the outcome of the criminal proceedings). The Court has not been informed by either party that the applicants used that avenue.

23. The Court must take a comprehensive look at the available procedures and examine whether, in the specific circumstances of the case and notwithstanding the outcome of the criminal investigation, the civil avenue of redress would have been appropriate to achieve the purposes of securing the effective implementation of the domestic laws which protect the right to life (see *Nicolae Virgiliu Tănase*, cited above, § 164).

24. In this connection the Court notes that, as argued by the Government (see paragraph 18 above), the applicants' grievances do not include an allegation of intentional acts. Nor were the circumstances in which the accident occurred such as to raise suspicions in that regard. Indeed, the applicants never argued during the domestic investigation or in their application to the Court that the driver of the car had acted intentionally or that the acts in question had specifically targeted K.D. Furthermore, the investigation in question initiated by the authorities concerned an involuntary offence. The applicants further did not attribute the incident to a failure on the part of the State authorities to adopt sufficient legal rules and measures to regulate motor-vehicle traffic on public roads to ensure the safety of road users.

25. In such circumstances, under the Court's case-law, a criminal-law remedy was not necessarily called for under Article 2, but the civil remedy would suffice (see *Nicolae Virgiliu Tănase*, cited above § 172). The applicants did not explain why they had not used that remedy and whether it would have been effective. In this connection the Court notes the findings of the public prosecutor that K.D. was himself responsible for the accident. However, it observes that those findings were made in the context of the investigation carried out by the prosecuting authorities for the purposes of bringing criminal charges against the suspected driver before the criminal courts. Under the applicable legislation, civil courts are bound by decisions given by criminal courts finding an accused guilty, in respect of the commission of the offence and the convicted person's criminal responsibility (see paragraph 15 above). The domestic practice (see paragraph 22 above) shows that civil courts can award damages irrespective of the outcome of the criminal proceedings against purported perpetrators

(an award made in respect of non-pecuniary damage when the accused was acquitted or convicted or when the criminal investigation became time-barred). The applicants have not relied on any provision in domestic legislation or any example of domestic practice to show that a civil court is formally bound by the findings that the prosecuting authorities make when deciding not to pursue the matter before the criminal courts (see *Anna Todorova v. Bulgaria*, no. 23302/03, § 82, 24 May 2011). Furthermore, and more importantly, they have not argued that the adjudication of the compensation claim under the rules of civil law in their case would have been exclusively based on the findings of the public prosecutor, which in their submission were tainted by the alleged shortcomings in the gathering of crucial pieces of evidence. Lastly, no argument was submitted that the compensation claim would not have been examined on the basis of all the evidence, including that of the witnesses Z.C. and B.S., whom the applicants sought to be examined by the public prosecutor. In such circumstances, the Court cannot speculate as to what the outcome of a compensation claim would have been had the applicants applied to the civil courts simultaneously or subsequent to the criminal investigation. The Court cannot therefore but conclude that there is no reason to doubt that the civil-law remedy that was available to the applicants would have been effective and, accordingly, sufficient for the purposes of Article 2 of the Convention.

26. In the light of the above considerations, it cannot be held that the State failed to provide an effective judicial system in relation to the death of K.D.

27. The Court therefore considers that the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 3 September 2020.

Renata Degener
Deputy Registrar

Pere Pastor Vilanova
President

APPENDIX

No.	Name of applicant	Year of birth	Nationality	Place of residence
1.	Zoran DELOVSKI	1965	Macedonian/citizen of the Republic of North Macedonia	Skopje
2.	Biljana DELOVSKA	1970	Macedonian/citizen of the Republic of North Macedonia	Skopje
3.	Slobodanka DELOVSKA	1944	Macedonian/citizen of the Republic of North Macedonia	Skopje