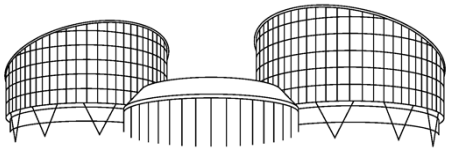

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF TRIVKANOVIĆ v. CROATIA (NO. 2)

(Application no. 54916/16)

JUDGMENT

Art 6 § 1 (civil) • Access to court • Manifestly unreasonable refusal to reopen civil proceedings to seek compensation for death of applicant's sons, despite emergence of new evidence • Legitimate interest of the applicants in pursuing their late grandmother's application concerning the claim for compensation for the death of their father under Art 34 • Art 6 applicable, as proceedings following the request for reopening decisive for the determination of civil rights and obligations • Subsequent conviction of police commander for war crimes against the civilian population, including failure to prevent and punish disappearance of applicant's sons • Manifestly unreasonable finding of no causal link between the deaths and the war crimes, taking into account Court's case-law under Art 2, echoed at the domestic level by the Supreme Court

STRASBOURG

21 January 2021

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Trivkanović v. Croatia (no. 2),

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Krzysztof Wojtyczek, *President,*
Ksenija Turković,
Aleš Pejchal,
Pauliine Koskelo,
Tim Eicke,
Jovan Ilievski,
Raffaele Sabato, *judges,*

and Renata Degener, *Deputy Section Registrar,*

Having regard to:

the application (no. 54916/16) 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") by a Croatian national, Ms Stoja Trivkanović ("the applicant"), on 15 September 2016;

the decision to give notice to the Croatian Government ("the Government") of the complaint concerning access to a court and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 16 December 2020,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns the domestic courts' refusal to reopen civil proceedings that the applicant instituted against the State in order to seek compensation for the death of her two sons, despite the emergence of new evidence.

THE FACTS

2. The applicant was born in 1950 and lived in Sisak. She was represented, by Mr L. Šušak, a lawyer practising in Zagreb.

3. The Government were represented by their Agent, Ms Š. Stažnik.

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

5. On 25 August 1991 a number of members of the "Wolves" (*Vukovi*) unit of the Sisak police entered the house of the applicant's son, Z.T. They took him, together with the applicant's second son, B.T., and her former husband, N.T. Her sons have been missing ever since, whereas her former husband's body was found the next day in the River Sava. An autopsy showed that he had been shot and killed.

6. By a decision of the Sisak Municipal Court (*Općinski sud u Sisku*) of 21 November 2005 in special non-contentious proceedings and on the basis of the relevant domestic legislation (see paragraph 39 below), the applicant's sons were legally declared dead as of 25 August 1991.

I. CIVIL PROCEEDINGS FOR COMPENSATION

7. On 6 September 2006 the applicant brought a civil action against the State in the Sisak Municipal Court, claiming that her sons had been killed by members of the Croatian police and seeking damages. She relied on the relevant legislation providing for State liability for damage caused by members of its armed forces and the police during the war (see paragraph 29 below).

8. By a judgment of 2 May 2007 the Municipal Court dismissed the applicant's action. The judgment was upheld by the Sisak County Court (*Županijski sud u Sisku*) on 5 January 2010 and thereby became final. A subsequent appeal on points of law lodged by the applicant was dismissed by the Supreme Court (*Vrhovni sud Republike Hrvatske*) on 28 February 2012. A constitutional complaint lodged by her was declared inadmissible by the Constitutional Court (*Ustavni sud Republike Hrvatske*) on 13 December 2012.

9. The civil courts held that the applicant's claim had become time-barred because she had brought her action outside of the statutory five-year time-limit which had started to run from the time her sons had gone missing. They rejected her argument that a longer time-limit had to be applied because the damage had been caused by a criminal offence (see paragraph 28 below and *Baničević v. Croatia* (dec.), no. 44252/10, § 13, 2 October 2012). Those courts relied on established case-law, under which such longer time-limits applied only where a criminal court found that a criminal offence had indeed been committed (see paragraphs 28 and 37 below and *Baničević*, cited above, §§ 16-19).

II. CRIMINAL PROCEEDINGS

10. Meanwhile, on an unspecified date broader police inquiries were opened into the killing of individuals of Serb ethnicity in the Sisak area during the war. The inquiries into the killing of the applicant's former husband and the disappearance of her sons were part of those overall inquiries.

11. On 16 December 2011 the Osijek County State Attorney's Office (*Županijsko državno odvjetništvo u Osijeku*) filed an indictment with the Osijek County Court (*Županijski sud u Osijeku*) against a certain Mr V.M. and Mr D.B., alleging that they had been in command of the unit whose unnamed members had committed a number of crimes against the civilian

population between July 1991 and June 1992, including those against the applicant's husband and sons. They were charged with war crimes against the civilian population.

12. By a judgment of the Osijek County Court of 9 December 2013 V.M. was found guilty of war crimes against the civilian population. In his capacity as "commander of police forces in the broader area of Sisak and Banovina" and "deputy head of the Sisak police", he had not only failed to prevent and punish a number of crimes against the civilian population, committed by members of the police units under his command, but had also prevented measures aimed at identifying the direct perpetrators from being carried out, thereby endorsing and encouraging such crimes. He had even ordered or personally participated in the commission of some of those crimes. The relevant part of the judgment concerning the applicant's sons and former husband reads:

> "On the afternoon of 25 August 1991 a number of members of the 'Wolves' unit of the Sisak police forcibly abducted N.T. and his sons Z. and B.T. from their family home ... in Sisak and took them in a white van to the improvised prison at 'ORA', where they were beaten during an unlawful interrogation. Thereafter N.T. was taken to an unknown place on the same day and shot and killed. His body was found on 26 August 1991 on the left bank of the River Sava at a place called Gušće, whereas the fate of Z. and B.T. after they had been taken to 'ORA' remains unknown.
>
> ...
>
> Having analysed ... the witness testimonies ..., the court finds that those responsible for the taking, arrest and killing of N.T. and his sons Z. and B.T. are unknown members of the 'Wolves' reserve unit of the Sisak police.
>
> ... it follows that the accused V.M. as the commander of all police forces and the deputy head of the Sisak police, by violating the rules of international law during an armed conflict, failed to prevent the unlawful detention and killing of the civilian population. He also failed to prevent crimes which he knew were being committed by members of the police units under his command, and was formally and actually in command of those police units."

13. V.M. was sentenced to eight years' imprisonment; D.B. was acquitted of all charges. All the injured parties, including the applicant, who lodged a civil claim for damages in the criminal proceedings, were instructed to institute separate civil proceedings against the accused.

14. On 10 June 2014 the Supreme Court upheld the conviction of V.M. and increased his sentence to ten years' imprisonment.

15. Those judgments were served on the applicant on 27 July 2014.

III. PROCEEDINGS IN RESPECT OF THE APPLICANT'S REQUEST FOR THE REOPENING OF THE CIVIL PROCEEDINGS

16. On 1 August 2014 the applicant, relying on subparagraph 10 of section 421(1) of the Civil Procedure Act (see paragraph 38 below) and the above-mentioned judgment issued by the criminal courts finding V.M.

guilty of war crimes against the civilian population (see paragraph 12 above), applied for the reopening of the civil proceedings (see paragraphs 7-9). The relevant part of her request reads as follows:

> "On 27 July 2014 the plaintiff received the Osijek County Court judgment and the judgment of the Supreme Court.
>
> V.M. was finally convicted to a single ten-year prison sentence.
>
> The conviction judgment refers to the plaintiff's sons Z.T. and B.T. as having been murdered.
>
> ...
>
> We consider that the requirements for reopening of the proceedings set out in section 421(1) subparagraph 10 have been met.
>
> In the light of the foregoing, the plaintiff suggests that the court allow the reopening of the proceedings and set aside [its] first-instance judgment ... of 5 May 2007, the second-instance judgment of the Sisak County Court ... of 5 January 2010 ... and the Supreme Court's decision ... of 28 February 2012."

17. By a decision of 31 March 2015 the Sisak Municipal Court dismissed the applicant's request. It held that by the judgment of the Osijek County Court of 9 December 2013 (see paragraph 12 above), V.M. had been convicted of war crimes against the civilian population not for the death of the applicant's sons, but for their disappearance. The relevant part of that decision reads as follows:

> "From the judgment of the Osijek County Court it does not follow that V.M. was convicted of a war crime for the death of B. and Z.T. Rather, the said judgment establishes his [criminal] liability exclusively (in respect of B. and Z.T.) for their having been taken by force from their house ... [and driven] in a white van to the improvised prison ... where they were beaten up during an unauthorised interrogation, whereupon they disappeared without a trace, but [does] not [establish] the [criminal] liability for their death.
>
> Furthermore, it is to be noted that from the evidence in the case file, it is not possible to conclude on which facts the recording of the deaths of B.T. and Z.T. in the vital statistics register was based, much less on which facts the date of their death was established. The death certificate for Z.T. suggests that that his death was recorded on 24 January 2006 with 25 August 1991 as the date on which he had died, whereas the death certificate for B.T. suggests that his death was recorded on 14 September 1991 with 25 August 1991 as the date on which he had died.
>
> It follows that, as regards B. and Z.T., it cannot be concluded that the said judgment constitutes a new fact or evidence on the basis of which the plaintiff could have obtained a more favourable decision in this case concerning damages."

18. By a decision of 5 January 2016 the Sisak County Court dismissed an appeal lodged by the applicant against the first-instance decision, endorsing the reasons contained therein. It added that the applicant had not proven the causal link between the criminal offence for which V.M. had been convicted and the death of her sons. The relevant part of that decision reads as follows:

"It follows from the criminal judgment of the Osijek County Court and the Supreme Court's judgment that V.M. was convicted for having committed a crime against the civilian population (in that he had failed to take measures to prevent, suppress and punish unlawful acts against and ill-treatment of civilians) ... the judgment refers to the plaintiff's sons as having been taken by force from their house by the 'Wolves' reserve unit of the Sisak Police and taken to [an] improvised prison ... where they were beaten up during an unauthorised interrogation, whereupon they disappeared without a trace.

Already in her statement of claim the plaintiff states that she only knows that her sons were taken to [the improvised prison] and that she knows nothing as to what happened to them afterwards, from which she concludes that they were killed.

From the foregoing it follows that the plaintiff has not proved with requisite certainty the causal link between the acts or omissions of the accused V.M. and the damage sustained, i.e. the death of her sons. It is to be noted that no bodies, evidence or traces were found from which it could be concluded that the plaintiff's sons died and how.

The plaintiff's reliance on section 12(3) of the Civil Procedure Act, which states that in civil proceedings regarding the existence of a criminal offence and the perpetrator's criminal liability, the civil court is bound by the judgment of the criminal court finding the accused guilty, is ill-founded. In particular, there is no direct and immediate link between the criminal offence for which V.M. was convicted and the possible death of Z. and B.T., for which it is uncertain when and whether it occurred.

In her request for the reopening of the proceedings, the plaintiff did not explain the causal link between the judgment convicting V.M. and the defendant's [tort] liability; nor did she state the legal basis for [such] liability ... This court either cannot discern the legal provision on the basis of which the defendant would be liable for the damage [sustained and the compensation] sought by the plaintiff.

The first-instance court thus correctly concluded that there were no grounds to allow the reopening of the proceedings under subparagraph 10 of section 421(1) of the Civil Procedure Act because the evidence proposed by the plaintiff – the final judgments – alone could not lead to a more favourable decision if that evidence or those facts had been taken into account in the earlier proceedings.

It should be added ... that the burden of proof as regards the existence of grounds for reopening of proceedings is on the applicant, and that the plaintiff did not manage to prove the existence of the grounds ... she relied on."

19. The County Court's decision was served on the applicant's representative on 23 February 2016.

20. The applicant then, on 16 March 2016, lodged a constitutional complaint against that decision, alleging, *inter alia*, a violation of her constitutional right to fair proceedings.

21. By a decision of 21 April 2016 the Constitutional Court declared inadmissible the applicant's constitutional complaint and on 5 May 2016 served its decision on her representative. It held that under its longstanding case-law, decisions concerning requests for the reopening of a case were, in principle, not open to constitutional review as such decisions did not concern the determination of parties' rights or obligations, that is, they did not concern the merits of a case.

IV. PROCEEDINGS BEFORE THE COURT

22. On 15 September 2016 the applicant lodged her application with the Court. She alleged, in particular, that the domestic courts' refusal to reopen the civil proceedings had amounted to a denial of access to a court.

23. On 13 July 2017 notice of the complaint concerning access to a court was given to the Government and the remainder of the application was declared inadmissible, pursuant to Rule 54 § 3 of the Rules of Court.

24. In a letter of 11 March 2020 the Government informed the Court that the applicant had died on 15 December 2019. The Government produced her death certificate.

25. In a letter of 23 June 2020 Ms S. Čanković, a lawyer practising in Zagreb, informed the Court:

- that in January 2020, that is to say, before the applicant's death, she had taken over the law office of the applicant's representative Mr L. Šušak (see paragraph 2 above);

- that on 9 June 2020 the applicant's grandsons, Mr Robert Trivkanović and Mr Aleksandar Trivkanović, had contacted her and had informed her of the applicant's death;

- that they had expressed the wish to continue the proceedings in the applicant's stead and had authorised her to represent them before the Court.

26. Together with her letter, Ms Čanković submitted:

- a decision issued by a notary public on 3 March 2020 declaring Mr Robert Trivkanović the applicant's sole heir because Mr Aleksandar Trivkanović had renounced his share in the estate in favour of his brother;

- two authority forms both dated 9 June 2020, whereby the late applicant's grandsons had authorised Ms Čanković (hereinafter: "the applicant's grandsons' representative") to represent them before the Court.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. CRIMINAL LAW

27. Article 120 of the Basic Criminal Code of Croatia (*Osnovni krivični zakon Republike Hrvatske*, Official Gazette nos. 53/91 with further amendments) defining war crime against the civilian population is quoted in the case of *Trivkanović v. Croatia*, no. 12986/13, § 39, 6 July 2017. Article 95 of the Code provided that prosecution for, *inter alia*, war crimes could not become statute-barred.

II. TORT LAW

A. Relevant legislation

28. The Obligations Act (*Zakon o obveznim odnosima*, Official Gazette of the Socialist Federal Republic of Yugoslavia no. 29/78 with further amendments, and Official Gazette of the Republic of Croatia no. 53/91, with further amendments – "the 1978 Obligations Act"), which was in force between and 1 October 1978 and 31 December 2005, governed contracts and torts. Its relevant provisions concerning statutory limitation periods (*zastara*), namely sections 360, 376 to 377, 388 and 392, are quoted in *Baničević v. Croatia* (dec.), no. 44252/10, § 13, 2 October 2012.

29. The Act on the liability of the Republic of Croatia for damage caused by members of the Croatian armed forces and police during the Homeland War (*Zakon o odgovornosti Republike Hrvatske za štetu uzrokovanu od pripadnika hrvatskih oružanih i redarstvenih snaga tijekom Domovinskog rata*, Official Gazette no. 117/03 – "the Liability Act"), which entered into force on 31 July 2003, provides that the State is liable, under general rules of tort liability, for damage caused during the war from 17 August 1990 to 30 June 1996 by members of the Croatian army and police forces in military or police service or in connection with that service, unless the damage in question constituted war damage.

B. Supreme Court's case-law regarding State liability for the damage caused by its armed forces during the war

30. On 9 May 2007 the Supreme Court rendered a judgment in case no. Rev 272/07-2 where the plaintiffs had sought damages from the State for the death of their husband and father who had been killed as a victim of a war crime against civilian population committed by a member of the Croatian Army in 1991. The Supreme Court dismissed an appeal on points of law lodged by the State and endorsed the finding of the lower-instance courts that the State was liable under the Liability Act (see paragraph 29 above) for the non-pecuniary damage sustained by the plaintiffs. In particular, the Supreme Court held that for establishing State liability it was irrelevant that the serviceman in question had been off duty when committing the offence, and that a damage resulting from a war crime could not be considered war damage (for which the State was not liable). The relevant part of the judgment reads:

> "The subject matter of the dispute is the plaintiffs' claim against [the State] to compensate them for the non-pecuniary damage sustained by the killing by the members of the Croatian Army of, *inter alia*, [their] husband and father in 1991.
>
> ...

> ... the lower-instance courts found that the defendant was liable, under sections 1 and 2 of [the Liability Act] to compensate the plaintiffs for the non-pecuniary damage sustained by the death of their father and husband ....
>
> [In the appeal on points of law the defendant argues that] ... from the witnesses' testimonies it follows that the offence was committed at the time when [the serviceman in question] had a day off. [Therefore] ... the fact that the judgment of the criminal court states that he committed the criminal offence as a member of the Croatian Army 'does not in itself mean that the criteria for the defendant's liability were met' ... [because] the criterion that the damage was caused in connection with the service was not met.
>
> [In the appeal on points of law the defendant further argues that] the substantive law was misapplied in that [the lower-instance court] dismissed as unfounded the defendant's argument that [the case concerned] war damage because [the damage sustained] resulted from the act of war or was directly related to the war.
>
> ...
>
> Under section 2 of the [Liability Act] the State is liable, under general rules of tort liability, for damage referred in section 1 of that Act which does not have the characteristics of war damage.
>
> [The Supreme Court] accepts as correct the finding of the lower-instance courts that the defendant is liable to [compensate] the plaintiffs for non-pecuniary damage.
>
> Given that by the aforementioned final judgment [of the criminal court the serviceman in question], who had been a member of the Croatian Army, was found guilty of a war crime for, *inter alia*, having killed the plaintiffs' father and husband, the finding of the lower courts that the defendant is liable to compensate the plaintiffs for non-pecuniary damage is correct.
>
> The defendant's argument that the present case concerns the war damage, for which the State is not liable, is unfounded.
>
> The final judgment by the criminal court established that [the serviceman in question] as a member of the Croatian Army, had committed a war crime against civilian population.
>
> In [the Supreme Court's view] a war crime cannot be [seen as] war damage referred to in section 3 of the [Liability Act]. The war crime in question, as it follows from [the judgment of the criminal court], was committed against civilian population of Serbian ethnicity as a retaliation, which refutes the argument made in the appeal on points of law that [the resultant damage] was war damage."

31. On 25 September 2018 the Supreme Court rendered a judgment in case no. Rev 2319/14-2 where the plaintiff had sought damages from the State for the death of his father who had been killed as a victim of a war crime against civilian population committed by members of the Croatian Army in 1991. The Supreme Court dismissed an appeal on points of law lodged by the State and endorsed the finding of the lower-instance courts that the State was liable under the Liability Act for the non-pecuniary damage sustained by the plaintiff. In particular, the Supreme Court held that the rule set out in section 377 of the 1978 Obligations Act (see paragraph 28 above), which allowed for the extension of the statutory limitation period for compensation claims if the damage resulted from a criminal offence,

applied not only to the perpetrators but also to those vicariously liable for the damage. It thus held that the rule applied to the damage for which the State was vicariously liable under the Liability Act. It also reiterated that a damage resulting from a war crime could not be considered war damage (see paragraph 30 above). The relevant part of the judgment reads:

> "The subject matter of the dispute is the plaintiff's claim for non-pecuniary damage for mental anguish caused by the death of his father who was killed during the Homeland War as a result of a criminal offence committed by the members of the Croatian armed forces and the police.
>
> ...the statutory limitation period set out in section 377(1) of the [1978] Obligations Act does not apply only to the wrongdoer but also to the person vicariously liable to third persons for the damage inflicted by [the wrongdoer], as the defendant is in the present case.
>
> The defendant's argument that it is not liable for the damage in question because the damage sustained by the plaintiff constitutes war damage is also unfounded.
>
> ...
>
> Given that it was established in these proceedings that the damage sustained by the plaintiffs is a result of the war crime committed by the members of the Croatian armed forces, which follows from the final judgment of the criminal court, it cannot be said that the case concerns the damage which could in any way be considered war damage, as defined in section 3 of [the Liability Act]."

32. On 27 March 2019 the Supreme Court rendered a judgment in case no. Rev 2726/2016-2 where the plaintiffs had sought damages from the State for the death of their husband and father who had gone missing as a victim of a war crime against civilian population committed by members of the Croatian Army in 1991. The Supreme Court dismissed an appeal on points of law lodged by the State and endorsed the finding of the lower-instance courts that the State was liable under the Liability Act for the non-pecuniary damage sustained by the plaintiffs. In particular, the Supreme Court held that where a war crime committed by the members of the Croatian Army entailed forced disappearance(s), and the victim gone missing had later on been declared dead, the State was liable for the victim's death and the resultant damage. That was so because in such cases there was evident causal link between the disappearance and the (presumed) death of the victim. The relevant part of the judgment reads:

> "The subject matter of the dispute is the plaintiffs' claim against [the State] to compensate them for the damage sustained by the death of their [family member], [namely] the first plaintiff's husband and the second and the third plaintiffs' father, F.G.
>
> ...
>
> What is in dispute in the proceedings [before the Supreme Court] in the present case is the existence of a causal link between the impugned wrongful act and the compensation claimed, given that the accused members of the Croatian Army were ... not expressly convicted 'for killing the first plaintiff's husband'. [It is also] disputed

whether the statutory limitation periods set out in section 337(1) or [those set out in] section 376(1) of the [1978] Obligations Act apply to the State in the situation where ... a number of Croatian soldiers had been accused [but] where only some of them were [eventually] convicted, and so for a number of offences constituting a war crime, and where none of them was convicted exclusively for the killing or the death of the first plaintiff's husband.

...

[The lower-instance] courts ... allowed the first plaintiff's claim [and awarded her compensation] finding that [her husband] had died precisely because of the acts for which T.P. and Ž.T. had been convicted, that is, due to the war crime against civilian population.

[Those courts] therefore found that the State was liable for the damage sustained pursuant to section 1 of [the Liability Act]. ...

They also found that the crime against civilian population could not become statute-barred and that the defendant's argument based on the [expiry of the] statutory limitation period was unfounded.

...

Those findings are correct.

Pursuant to section 12(3) of the Civil Procedure Act the court is in civil proceedings, as regards the existence of the criminal offence and the perpetrator's criminal liability, bound by the criminal court's final judgment finding the accused guilty.

...

In the present case by the ... judgment of the Osijek County Court ... of 13 June 2011 T.P. and Ž.T. were found guilty of war crimes against civilian population in that they had on 15 November 1991, as members of military police, taken, beside other civilians, F.G. by force from his home [whereupon]

- they had tortured [him] and other detained civilians of Serbian ethnicity and beaten [them] by metal rods, rubber truncheons and wooden sticks,

- they had afterwards loaded [him] and other detained civilians in a lorry and drove them in the direction of the river I. where they had disappeared without trace (the [criminal court's] judgment therefore ... does not state that F.G. was killed after he had been taken by force from his home).

However, where, as in the present case, immediately after the events referred to in the said judgment of the criminal court, which constitute a war crime, F.G. disappeared without a trace ... and that is the last what is known about him (on the basis of which he had been declared dead as a missing person, and 1 January 1992 had been established as the date of his death), and where the defendant did not prove otherwise, ... it is logical to conclude, as the [lower] courts did, that the death of the first plaintiff's husband ... was the consequence of the same criminal offence, namely, that he had died because of the acts for which T.P. and Ž.T. were convicted.

... it is to be noted that each case like this has to be individualised and that the rule set out in section 12(3) of the Civil Procedure Act should not be seen strictly formalistically. Thus, the mere fact that F.G. was not mentioned in the criminal judgment as the one who had died in the commission of the criminal offence (...) does not constitute an evidence contrary to what was established above. Nor does the mere fact that his body was never found mean that [the above conclusion] does not

correspond to reality. Besides, during the proceedings the defendant did not even argue or attempt to prove that F.G. had survived ... the said the criminal offence ... or that he had died in different circumstances.

In view of the foregoing, [the Supreme Court] has no reason to doubt that F.G. was killed ... and that the defendant is liable for the resultant damage, as correctly established by the [lower-instance] courts.

Having regard to the above, the [lower-instance] courts were also correct to dismiss the defendant's argument based on the [the expiry of] statutory limitation period."

C. Supreme Court's case-law regarding calculation of statutory limitation periods in cases of forced disappearances

33. On 27 September 2006 the Supreme Court rendered a judgment in case no. Rev 471/06-2, where the plaintiff had sought damages from the State in relation to the disappearance of her sons who had gone missing after being taken from their home on 7 November 1991 by armed individuals. The relevant part of the judgment reads:

"The plaintiff's claim for damages is based on ... her sons' disappearance (after being taken by force on 7 November 1991), as a result of which they had eventually been [legally] declared dead. The date of their death was finally set at 8 November 1996. It thus follows that only by declaring the plaintiff's sons dead and establishing the date of their death could they be considered dead, and that [only] at that moment did the plaintiff become entitled to seek damages [for] their death. ... Therefore, the statutory limitation period could not have started to run before the date of the plaintiff's sons' death had been established, nor could it have started to run on the date on which they had been taken, as the lower courts erroneously held."

34. On 10 October 2007 the Supreme Court rendered a judgment in case no. Rev 270/06-2, where the plaintiffs had sought damages from the State in relation to the disappearance of their husband and father who had gone missing after being arrested by police officers on 3 November 1991. The relevant part of the judgment reads:

"Namely, the plaintiffs' claim for damages is based on the disappearance of their husband and father (after being taken by police officers on 3 November 1991 ...), as a result of which he had [eventually] been [legally] declared dead. It thus follows that the statutory limitation period could only have started to run on the day when the decision ... of 26 March 1998 whereby [he] had been declared dead became final ... since that was when the plaintiffs became entitled to seek damages related to his disappearance, that is, to his death."

35. On 7 December 2011 the Supreme Court rendered a judgment in case no. Rev-1518/10-2, where the plaintiff had sought damages from the State in relation to the disappearance of her husband who had been taken from their home on 4 July 1992 by unknown individuals dressed in military police uniforms. He had been legally declared dead in 2000, and his body had eventually been identified by his family in 2003. The relevant part of the judgment reads:

"... the statutory limitation period for lodging a civil claim for damages related to unauthorised and unlawful taking by force of a person from his or her home by armed individuals and his or her disappearance cannot start running before the missing person has been [legally] declared dead ...

The plaintiff's husband was [legally] declared dead by a decision ... of 22 May 2000, which became final on 22 June 2000, and only then did the plaintiff become entitled to seek damages ... and not from the date which was established as the date of her husband's death ..."

36. On 14 July 2015 the Supreme Court rendered a judgment in case no. Rev 1668/10-2, where the plaintiff had sought damages from the State related to the disappearance of her father in 1991. The relevant part of the judgment reads:

"Regarding calculation of the statutory limitation period in the same circumstances (where the death of the injured party's predecessor had been established by a final decision declaring him or her dead), the Supreme Court has expressed its view in several of its decisions, for example, Rev-471/06 of 27 September 2006, Rev-270/06-2 of 10 October 2007 and Rev-1518/10-2 of 7 December 2011. [According] to that (already established) view of the Supreme Court, when the missing person has been [legally] declared dead, the statutory limitation period for lodging a civil claim for damages related to the death of that person starts to run on the date the decision declaring that person dead became final (because the injured party was able to seek damages on that ground only from that date), and not from the date established by the decision as the date on which that person had died."

III. CIVIL PROCEDURE ACT

37. The relevant provision of the Civil Procedure Act (*Zakon o parničnom postupku*, Official Gazette of the Socialist Federal Republic of Yugoslavia no. 4/77 with further amendments, and Official Gazette of the Republic of Croatia no. 53/91 with further amendments) concerning preliminary issues, namely section 12 (which also provides for the extent to which the civil courts are bound by the judgments of the criminal courts) as well as the case-law developed in its application, are set out in the *Baničević* case (cited above, §§ 16-19).

38. The relevant provisions of the Civil Procedure Act concerning the reopening of proceedings read as follows:

Section 421(1)

"[Civil] proceedings concluded by a final court decision may be reopened at the request of a party ...

(9) if the competent authority by a final decision subsequently resolves the preliminary issue (section 12(1) and (2)) on which the court decision is based;

(10) if a party learns about new facts or finds or gets an opportunity to use new evidence on the basis of which a more favourable decision could have been adopted for that party if those facts or that evidence had been used in the previous proceedings;

..."

Section 425(3)

"If the reopening of proceedings is sought on the grounds stated in subparagraph 10 of section 421(1) and in section 421(3) of this Act, [the court] may decide to join the examination [of the admissibility] of the request for the reopening [of proceedings] to the examination of the merits of the case."

IV. MISSING PERSONS (DECLARATION OF DEATH) ACT

39. Section 1(1) subparagraph 4 of the Missing Persons (Declaration of Death) Act (*Zakon o proglašenju nestalih osoba umrlima i dokazivanju smrti*, Official Gazette no. 10/74), which has been in force since 22 March 1974, provides that the court will declare dead a person who went missing during the war in connection with war events, and who has not been known to be alive for a year after the end of the hostilities. Section 7(1) provides that the date of death will be considered to be the date on which, as established in the proceedings, the missing person is likely to have died, or the date on which he or she probably did not survive.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

40. The applicant complained that she had been denied access to a court in that the domestic courts had refused to reopen the civil proceedings in which she had sought compensation for the death of her two sons. She relied on Article 6 § 1 of the Convention, which reads as follows:

"In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. Preliminary issue of whether the late applicant's grandsons can pursue the application in her stead

1. Parties' submissions

41. In their letter of 11 March 2020 (see paragraph 24 above) the Government invited the Court to strike the application out of its list of cases under Article 37 § 1 (a) of the Convention since, in their view, the applicant's grandsons were not entitled to pursue the application.

42. The applicant's grandsons argued that the Court should continue the examination of the application and allow them to pursue it in their late grandmother's stead. They submitted that they had been the direct victims of the facts giving rise to the applicant's claim for damages, namely the disappearance of her son Z.T., who had been their father.

43. The Government replied that the proceedings before the Court concerned the applicant's complaint under Article 6 § 1 of the Convention on account of the alleged violation of her right of access to a court. Her grandsons were not parties to those proceedings. Moreover, under the Court's case law (the Government referred to *Georgia Makri and Others v. Greece* (dec.), no. 5977/03, 24 March 2005, and *Biç and Others v. Turkey*, no. 55955/00, 2 February 2006) the relatives of the deceased person could not be considered victims in relation to his or her complaints under Article 6 of the Convention. The applicant's grandsons thus could not claim to be the victims of the violation complained of nor had they a *locus standi* to continue the proceedings before the Court in the applicant's stead. Furthermore, in their view, there were no circumstances related to the respect for human rights that would require the Court to continue with the examination of the application.

2. The Court's assessment

44. The Court reiterates that only in cases where the victim of the alleged violation has died in the course of domestic proceedings, and before the application was lodged with the Court, will it examine whether relatives or heirs may themselves claim to be the victims of the alleged violation (see *Ressegatti v. Switzerland*, no. 17671/02, § 23, 13 July 2006). The situation is different in cases such as the present one, where the applicant had gone through the domestic proceedings and died after having lodged her application with the Court. That is because in such cases the Court's examination is limited to the question whether or not the complaints as originally submitted by the applicant disclose a violation of the Convention (see *Malhous v. the Czech Republic* (dec.) [GC], no. 33071/96, ECHR 2000-XII).

45. Moreover, it is not only material interests which the successor of a deceased applicant may pursue through his or her wish to maintain the application. Human rights cases before the Court generally also have a moral dimension and persons close to an applicant may thus have a legitimate interest in seeing to it that justice is done even after the applicant's death (ibid.). That is why in such cases heirs or close relatives of the applicant are considered to have a legitimate interest in pursuing the application (see *Pais Pires de Lima v. Portugal*, no. 70465/12, § 39, 12 February 2019; *Hristozov and Others v. Bulgaria*, nos. 47039/11 and 358/12, §§ 71-74, 13 November 2012; and, by converse implication, *Léger v. France* (striking out) [GC], no. 19324/02, § 50, 30 March 2009).

46. Given that in the present case Mr R. Trivkanović and Mr A. Trivkanović are the late applicant's grandsons, and that the proceedings complained of concern a claim for compensation for the death of their father, the Court finds that they have a legitimate interest in pursuing their late grandmother's application.

47. In view of the foregoing, the Court concludes that the conditions for striking the case out of its list, as defined in Article 37 § 1 of the Convention, are not met. The Court accordingly dismisses the Government's objection to that effect. It will accordingly continue to examine the application at the request of the applicant's grandsons.

B. Admissibility

48. The Government disputed the admissibility of the application, arguing that it was incompatible *ratione materiae* with the provisions of the Convention. In the alternative, they argued that the applicant had failed to observe the six-month rule. However, in view of the Government's submissions of 29 March 2018 (see paragraph 49 below), the Court finds it appropriate to first examine the issue of whether the applicant's representative abused the right of application.

1. Abuse of the right of application

(a) Parties' submissions

49. In their submissions of 29 March 2018 the Government drew the Court's attention to the fact that in the applicant's submissions of 2 March 2018, her representative had used language which they considered inappropriate in proceedings before an international tribunal. In particular, he had stated that the content of the Government's observations clearly showed that they were unfamiliar with the legal concept of reopening of proceedings and that Government had thus "borne down on" the applicant and her representative, thereby offending the intelligence and expertise of the judges of the Court. The Government further pointed out that it was not the first time the said representative had resorted to offensive and abusive language and that they had brought it to the Court's attention in a number of other cases. The Government thus invited the Court to either apply Rule 44D of the Rules of Court and exclude the applicant's representative from the proceedings, declare the application inadmissible as an abuse of the right of application, or at least warn him to refrain from using inappropriate comments in his submissions.

50. The applicant did not comment on this issue.

(b) The Court's assessment

51. The Court reiterates that, whilst the use of offensive language in proceedings before it is undoubtedly inappropriate, an application may only be rejected as abusive in exceptional circumstances (see *Felbab v. Serbia*, no. 14011/07, 14 April 2009, § 56). Having regard to its case-law (see, *a fortiori*, ibid., and the cases cited therein), the Court considers that although the impugned statement made by the applicant's representative was strongly worded and unwarranted, it does not reach the level that would justify a decision to declare the application inadmissible as an abuse of the right of application. In particular, the Court notes that the applicant's representative resorted to such language only once in his voluminous submissions on her behalf.

52. It follows that the Government's objection concerning the alleged abuse of the right of application must be rejected.

2. Compatibility ratione materiae

(a) The parties' submissions

53. The Government submitted that under the well-established case-law of the Court (they referred to *Bochan v. Ukraine (no. 2)* [GC], no. 22251/08, § 42, ECHR 2015; *Vanyan v. Russia*, no. 53203/99, § 56, 15 December 2005; and *Zasurtsev v. Russia*, no. 67051/01, § 62, 27 April 2006) Article 6 of the Convention did not apply to proceedings concerning a failed request for the reopening of a case, because such proceedings did not normally involve the determination of "civil rights and obligations" or of "any criminal charge". The only exceptions were cases in which deciding such requests actually entailed re-examination of a case on the merits. That was not so in the present case because, when deciding on the applicant's request for reopening, the domestic courts had not examined the questions related to the merits of her action for damages.

54. The applicant replied that under Croatian law, when examining requests for the reopening of a case on the grounds of new facts or evidence, the civil courts had to assess whether a more favourable decision could have been adopted for the requesting party if those facts or that evidence had been presented in the earlier proceedings (see paragraph 38 above). That assessment of whether the new facts or evidence could have had a decisive influence on the outcome of the case necessarily entailed (at least a preliminary) re-examination of the merits of the case. In her case, the domestic courts, when dismissing her request for the reopening of the case, had held that the State was not liable for the death of her sons and had thus effectively decided her claim on the merits.

(b) The Court's assessment

55. The Court reiterates that its case-law concerning the applicability of Article 6 § 1 of the Convention to proceedings initiated by a request for reopening is summarised in the *Bochan* case (cited above, §§ 42-50). In sum, while Article 6 § 1 is not normally applicable to proceedings following a request for reopening, the nature, scope and specific features of such proceedings in a given case and in the particular legal system may bring those proceedings within the ambit of Article 6 § 1 (see *Bochan*, § 50). The Court further emphasised that "the scope and nature of the 'examination' actually carried out" may also lead the Court to conclude that such proceedings were decisive for the determination of civil rights and obligations and thus render Article 6 § 1 applicable (see *Bochan*, cited above, §§ 54 and 56; for the applicability of the criminal limb of Article 6 § 1 in similar situations, see *Moreira Ferreira v. Portugal (no. 2)* [GC], no. 19867/12, §§ 70 and 72, 11 July 2017, and *Yaremenko v. Ukraine (no. 2)*, no. 66338/09, § 56, 30 April 2015).

56. The Court notes that there is a difference between the scope of review exercised by the courts when deciding whether to reopen a case on the grounds of new facts or evidence (*iudicium rescindens*), and the scope of review exercised when deciding anew the case on the merits (*iudicium rescissorium*). Specifically, when examining whether to allow or not a reopening on those grounds the courts are required to assess whether the new facts or evidence could potentially lead to a different outcome. The Court accepts that in doing so the domestic courts often have to touch to a certain degree upon the merits of the case. However, their task is not to decide on the merits, but to eliminate baseless and frivolous requests for reopening lacking any prospects of success which would call into question finality of judgments and thereby upset legal certainty.

57. Therefore, the fact that the domestic courts, when deciding on the applicant's request for reopening, expressed their view on an issue concerning the merits is not in itself sufficient for the Court to conclude that the proceedings following the applicant's request for reopening were decisive for the determination of her civil rights and obligations and that Article 6 § 1 is therefore applicable. Otherwise, the Court would have to find Article 6 applicable whenever the applicants relied on new facts or evidence as the grounds for reopening.

58. The Court further notes that the causal link between the wrongdoer's conduct and the damage occurred is an issue that pertains to the merits of the compensation claim based on tort liability. In the present case the finding of domestic courts that V.M.'s conviction was not new evidence capable of affecting the outcome of the case (see paragraphs 17-18 above) was, as their reasoning strongly suggests, based on a rather detailed examination of the merits of the case which involved complex legal issues related to the causal link between forced disappearances and the (presumed)

death of the persons gone missing (see paragraphs 79-81 below), leading them to a conclusion on the merits that such link was missing.

59. Having therefore regard to "the scope and nature of the 'examination' actually carried out" (see paragraph 55 above) by the domestic courts in the instant case which went beyond mere examination of whether V.M.'s conviction could potentially lead to a different outcome, the Court considers that the proceedings following the applicant's request for reopening were decisive for the determination of her civil rights and obligations.

60. To hold that Article 6 § 1 is not applicable despite such rather detailed examination of issues pertaining to the merits of the case would mean to allow the domestic courts, when examining whether or not to reopen the proceedings, to decide the case on the merits without affording the parties the procedural guarantees of the said Article and to avoid the Court's scrutiny.

61. Accordingly, the Court finds that in the present case Article 6 § 1 is applicable to the proceedings following the applicant's request for reopening.

62. It follows that the Government's objection as regards the applicability of Article 6 of the Convention must be rejected.

3. Compliance with the six-month rule

(a) Parties' submissions

63. The Government submitted that the applicant had failed to comply with the six-month rule because she had erroneously believed that the constitutional complaint she had lodged on 16 March 2016 (see paragraph 20 above) was an effective remedy to be exhausted for the purposes of Article 35 § 1 of the Convention and thus capable of interrupting the running of the six-month time-limit prescribed in that Article. They explained that under the longstanding case-law of the Constitutional Court a constitutional complaint could not be lodged against a decision concerning the reopening of a case. The Constitutional Court had adopted that view already in its decision no. U-III-1165/2000 of 28 October 2002, which had been published in the Official Gazette on 30 October 2002, and had never departed from it (as an example the Government referred to decisions nos. U-III-249/2004 of 26 March 2004, U-III-470/2009 of 28 April 2009, and U-III-853/2013 of 25 April 2013). The applicant's legal representative should have been aware of that. Consequently, the final decision within the meaning of Article 35 § 1 of the Convention, for the purposes of calculating the six-month time-limit in the applicant's case, was not the Constitutional Court's decision of 21 April 2016 (see paragraph 21 above) but the Sisak County Court's decision of 5 January 2016, which had been served on her representative on 23 February 2016 (see paragraph 18

above). However, her application to the Court had been lodged on 15 September 2016, that is, more than six-months later.

64. The applicant pointed out that in decision no. U-III-2166/2016 of 2 November 2016 the Constitutional Court had allowed the constitutional complaint and quashed decisions whereby the civil courts had dismissed a request for the reopening of a case which also concerned war crimes against the civilian population in the Sisak area and V.M.'s conviction for those crimes after the victim's initial civil action had been dismissed as statute-barred. This suggested that in such cases the Constitutional Court had been ready to examine the merits of constitutional complaints lodged against decisions concerning the reopening of a case. Consequently, since her case fell in that category, the applicant considered that she had had good reason to believe that her constitutional complaint would likewise be examined on the merits.

65. In reply to the applicant's submission (see the previous paragraph), the Government argued that the Constitutional Court's decision to which the applicant referred concerned a case which was fundamentally different from hers. Specifically, it related to a case in which the Court had found a violation of the procedural aspect of Article 2 of the Convention (*B. and Others v. Croatia*, no. 71593/11, 18 June 2015). It was precisely because the Court had found a violation in that case that the Constitutional Court had exceptionally departed from its standard practice and examined the constitutional complaint lodged against a decision refusing to reopen civil proceedings, as such a refusal would have been contrary to Article 46 § 1 of the Convention. The grounds for granting such an exception had not existed in the applicant's case because in the first *Trivkanović* case the Court had found no violation of Article 2 of the Convention (see *Trivkanović*, cited above, §§ 70-85). What is more, the applicant had not argued in her constitutional complaint that such an exception should be granted in her case.

(b) The Court's assessment

66. The Court notes that it has already had an opportunity to address a similar inadmissibility objection raised by the Government in a number of cases against Croatia, and each time rejected it (see, for example, *Vrtar v. Croatia*, no. 39380/13, §§ 75-76, 7 January 2016 and the cases cited therein). It sees no reason to hold otherwise in the present case.

67. In particular, in the *Vrtar* case the Court held that it would have been contrary to the principle of subsidiarity to hold that a constitutional complaint should not have been exhausted just because at the time the Constitutional Court's practice suggested that the decision being contested was not open to constitutional review. To do so would have not only ignored the fact that such practice may evolve but would have, more importantly, removed any incentive for such evolution as the applicants

would systematically address their complaints to the Court without giving a chance to the Constitutional Court to change its practice (see *Vrtar*, cited above, § 76). The decision the applicant relied on in the present case, whereby the Constitutional Court departed from its standard practice and examined the constitutional complaint lodged against a decision on reopening (see paragraph 64 above), only reinforces this view and the resultant conclusion that she cannot be blamed for lodging a constitutional complaint against the decision refusing her request for reopening and thus giving an opportunity to the domestic courts to redress her allegations concerning the violation of the Convention.

68. It follows that the Government's objection regarding non-compliance with the six-month rule must therefore be rejected.

4. Conclusion as regards admissibility

69. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

C. Merits

1. Parties' submissions

(a) The applicant

70. The applicant submitted that she had first been denied access to a court in the initial civil proceedings. The domestic courts had dismissed her action, having erroneously found that her claim for compensation for the death of her sons had become time-barred (see paragraphs 7-9 above). They had been wrong in that finding because they had considered that the statutory limitation period had started to run from the moment her sons had gone missing. That was contrary to the well-established case-law of the Supreme Court, pursuant to which in such situations the statutory limitation period started to run from the date on which the missing person was declared dead (see paragraphs 33-36 above).

71. The applicant further averred that she had been denied access to a court for the second time when the domestic courts had refused to reopen the initial civil proceedings (see paragraphs 17-18 above). Those courts had so decided even though V.M.'s criminal conviction for war crimes, including the disappearance of her two sons, had clearly constituted new evidence capable of extending the statutory limitation period and thus leading to a more favourable outcome for her (see subparagraph 10 of section 421(1) of the Civil Procedure Act quoted in paragraph 38 above). What is more, despite the finding of the criminal courts that V.M. had been criminally liable for her sons' disappearance (see paragraph 12 above), in dismissing her request for the reopening of the case, the civil courts had

concluded that there had been no causal link between V.M.'s conduct and her sons' death (see paragraphs 17-18 above). Such reinterpretation of the criminal judgment was contrary to section 12 of the Civil Procedure Act, which provided that, as regards the existence of a criminal offence and the perpetrator's criminal liability, the civil courts were bound by the final judgments of criminal courts finding the accused guilty (see paragraph 37 above).

(b) The Government

72. The Government emphasised that the wrongful act which had been the basis of the applicant's claim for damages had occurred in August 1991 (see paragraph 5 above), whereas she had not brought her civil action until 6 September 2006 (see paragraph 7 above), that is, some fifteen years later. At the time when she had brought her civil action, no criminal proceedings had been instituted with regard to the event giving rise to her claim for damages (see paragraphs 10-11 above). Given that she had been represented by an advocate, she must have been aware that the relevant five-year statutory limitation period had elapsed and, consequently, that her action had been doomed to fail because her claim had become time-barred.

73. In the Government's view, nothing had prevented the applicant from bringing her civil action within the said statutory limitation period. In that way, she would have afforded the domestic courts an opportunity to examine her claim on the merits regardless of whether criminal proceedings would ever be instituted in relation to the same event.

74. As regards the applicant's request for reopening of the civil proceedings, the Government pointed out that she had stated that the judgment whereby V.M. had been convicted referred to her sons as having been murdered (see paragraph 16 above). However, as pointed out by the first-instance court in its decision dismissing her request (see paragraph 17 above), V.M. had not been found guilty of murdering the applicant's sons. Rather, his criminal conviction for war crimes based on his command responsibility concerned his failure to prevent the taking of her sons to an improvised prison where they had been beaten before they had gone missing. For that reason and in the absence of any (other) argument by the applicant that would explain the causal link between her claim for damages and the criminal offence in question, the first-instance court had concluded that V.M.'s conviction was not a new fact and/or evidence capable of leading to a more favourable decision for her (see paragraph 17 above). Such a conclusion could not be considered unreasonable or arbitrary.

75. The Government therefore invited the Court to find no violation of Article 6 § 1 of the Convention.

2. The Court's assessment

76. The Court observes that in the initial civil proceedings the domestic courts dismissed the applicant's action against the State whereby she sought compensation for the death of her two sons who had gone missing after having been taken by the police on 25 August 1991, and who had been legally declared dead on 21 November 2005 (see paragraphs 5-9 above). Those courts held that her compensation claim had become statute-barred, given that she had brought her civil action in September 2006, that is, more than five years after her sons' disappearance and their (presumed) death in August 1991 (see paragraphs 7-9 above). In December 2013 V.M. was found guilty of war crimes against the civilian population for failing to prevent and punish a number of such crimes, including the disappearance of the applicant's sons, committed by members of the police units under his command (see paragraph 12 above). Under Croatian law if the damage resulted from a criminal offence, the regular statutory time-limits for compensation claims are extended so as to correspond to the time-limits prescribed for prosecution of criminal offences. Given that prosecution for war crimes could not become time-barred, the applicant sought the reopening of the initial civil proceedings (see paragraphs 16 and 27-28 above, and *Baničević*, cited above, § 13) relying on V.M.'s conviction for the war crime. Under Croatian law the State is liable under the rules of strict liability for any damage caused by members of its armed forces, unless the damage in question constitutes war damage, it being understood that war crimes are never considered war damage (see paragraphs 29-31 above).

77. However, the domestic courts refused to reopen the case, holding that V.M.'s conviction did not constitute new evidence capable of leading to a different outcome because there was no causal link between the death of the applicant's sons and V.M.'s criminal conduct (see paragraphs 17-18 above).

78. The Court reiterates that it is not its task to take the place of the domestic courts, which are in the best position to assess the evidence before them, establish facts and interpret domestic law (see, for example, *Khamidov v. Russia*, no. 72118/01, § 170, 15 November 2007). The Court should not act as a court of fourth instance and will not therefore question under Article 6 § 1 the judgment of the national courts, unless their findings can be regarded as arbitrary or manifestly unreasonable (see, for example, *Bochan*, cited above, § 61).

79. The Court further reiterates that in a number of cases examined under Article 2 of the Convention it found that persons who had gone missing following their detention by State agents were to be presumed dead and that the State was therefore responsible for their death. Such findings were made in response to arguments made by the respondent Government that such persons were still alive or have not been shown to have died at the hands of State agents (see, among many other authorities, *Timurtaş*

v. Turkey, no. 23531/94, § 86, ECHR 2000-VI, and *Aslakhanova and Others v. Russia*, nos. 2944/06 and 4 others, § 100, 18 December 2012). That case-law is not without importance in the present case in the context of the applicant's complaint under Article 6 of the Convention. That is so because State liability in such cases is not only based on the effective protection of the right to life as afforded by Article 2, which ranks as one of the most fundamental provisions in the Convention. It is also based on the strong presumption of causality between the detention and the death which presumption arises whenever, as in those cases, the events surrounding a death of an individual lie, wholly or in large part, within the exclusive knowledge of the authorities. The Court has held that in such situations the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see, for example, *Varnava and Others v. Turkey* [GC], nos. 16064/90 and 8 others, §§ 173-184, ECHR 2009; and *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

80. The Court also notes that the domestic courts' decisions in the present case were never reviewed by the Supreme Court. In its subsequent case-law developed in the context of the same historic war-related events the Supreme Court took a view that where a war crime committed by the members of the armed forces entailed forced disappearances, and the victim gone missing had later on been declared dead, the State was liable for the victim's death and the resultant damage because of an evident causal link between the disappearance and the (presumed) death of the victim (see paragraph 32 above). That case-law also suggests that in such cases the burden of proof shifts as it is incumbent on the State to prove that the victim had survived or died in different circumstances (see paragraph 32 above).

81. In ascertaining whether the domestic courts' decisions in the present case can be regarded as arbitrary or manifestly unreasonable (see paragraphs 17-18, 74 and 78 above), the Court emphasises that V.M. was convicted for failing to prevent and punish a number of war crimes against the civilian population committed by members of the police units under his command, including the disappearance of the applicant's sons (see paragraph 12 above). To conclude, in those circumstances**,** that there was no causal link between V.M.'s criminal conduct and the death of the applicant's sons, as the domestic courts did when they refused her request for the reopening of the case, is manifestly unreasonable taking into account this Court's case-law under Article 2 of the Convention (see paragraph 79 above) echoed at the domestic level by the Supreme Court which in subsequent similar cases found such conclusion to be ill-founded and overly formalistic (see paragraphs 32 and 80 above). By reaching that conclusion, the domestic courts in fact set an unattainable standard of proof for the applicant, which was particularly unacceptable in view of the seriousness of the acts concerned.

82. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

83. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

84. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

85. The Government contested that claim.

86. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards the applicant's grandsons EUR 12,500 jointly in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

87. The applicant also claimed EUR 20,000 for the costs and expenses incurred before the domestic courts and EUR 2,000 for those incurred before the Court.

88. The Government contested those claims.

89. As regards the claim for costs and expenses incurred in the domestic proceedings, the Court is of the opinion that it must be rejected, given that the applicant's representative did not submit itemised particulars of this claim or any relevant supporting documents. He thus failed to comply with the requirements set out in Rule 60 § 2 of the Rules of Court.

90. As regards the claim for costs and expenses before it, the Court considers it reasonable to award EUR 2,000, that is, the sum sought. This sum is to be paid directly into the bank account of the applicant's grandsons' representative, Ms S. Čanković (see paragraph 26 above).

C. Default interest

91. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Holds* that the applicant's grandsons, Mr Robert Trivkanović and Mr Aleksandar Trivkanović, have standing to pursue the application in her stead, and dismisses the Government's objection in that respect;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

4. *Holds*,
   (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Croatian kunas at the rate applicable at the date of settlement:
      (i) EUR 12,500 (twelve thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, which is to be paid to the applicant's grandsons jointly;
      (ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicant's grandsons, in respect of costs and expenses, which is to be paid into the bank account of the applicant's grandsons' representative;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 January 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener
Deputy Registrar

Krzysztof Wojtyczek
President