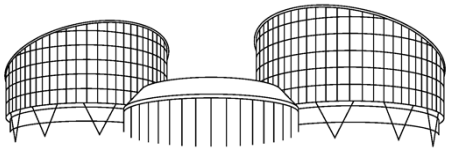

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF VUJNOVIĆ v. CROATIA

(Application no. 32349/16)

JUDGMENT

Art 6 § 1 (civil) • Issue concerning the principle of legal certainty • Calculation of statutory limitation period for civil claim for damages against State for killing of relatives by soldiers in 1993 whose fate had only become known at a later date • Calculation of statutory limitation period for lodging civil claim, not from date on which decisions declaring deaths had become final, but from earlier date, not inconsistent with Supreme Court's case-law • Access to Court • Manner in which Supreme Court calculated objective five-year statutory limitation period for lodging civil claim for damages not disproportionate restriction

STRASBOURG

11 June 2020

FINAL

11/09/2020

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Vujnović v. Croatia,

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

Krzysztof Wojtyczek, *President,*
Ksenija Turković,
Aleš Pejchal,
Pere Pastor Vilanova,
Pauliine Koskelo,
Tim Eicke,
Jovan Ilievski, *judges,*

and Abel Campos, *Section Registrar,*

Having deliberated in private on 5 May 2020,

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

PROCEDURE

1. The case originated in an application (no. 32349/16) 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, Mr Dušan Vujnović ("the applicant"), on 2 June 2016.

2. The applicant was represented by Ms S. Čanković, a lawyer practising in Zagreb. The Croatian Government ("the Government") were represented by their Agent, Ms Š. Stažnik.

3. The applicant alleged that the procedural obligation under Article 2 of the Convention had not been complied with; he further alleged that contrary to Article 6 § 1 of the Convention, the practice of the Supreme Court as to the manner of calculating the statutory limitation period for lodging a civil claim for damages had been inconsistent, and that the manner in which it had been applied in his case had deprived him of his right of access to a court.

4. On 15 September 2016 notice of the complaints under Articles 2 and 6 § 1 of the Convention were given to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court. On 11 February 2020 the parties were invited to submit additional observations pursuant to Rule 54 § 2 (c) of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1963 and lives in Zagreb.

A. Background to the case

6. In June 1991 Croatia declared its independence from the former Socialist Federal Republic of Yugoslavia (*Socijalistička Federativna Republika Jugoslavija* – hereinafter "the SFRY") and severed its ties with that entity in October 1991. In the same year war began in Croatia.

7. During 1991 and 1992 Serbian paramilitary forces gained control of about a third of the territory of Croatia and proclaimed the "Serbian Autonomous Region of Krajina" (*Srpska autonomna oblast Krajina*) and, later on, the "Republic of Serbian Krajina" (*Republika Srpska Krajina*, hereinafter: Krajina). Territory south of the city of Gospić referred to as the "Medak Pocket" (*Medački džep*) became part of Krajina.

8. In September 1993 the Croatian Army conducted a military operation with the aim of regaining control over the Medak Pocket. The operation, codenamed "Pocket-93" (*Džep-93*), commenced in the early morning of 9 September 1993 and lasted for two days. As a result the Medak Pocket was fully brought under the control of the Croatian Army.

9. After the military operation, fifty-one bodies of persons killed during the operation were recovered and handed over to the forensic department of the Rijeka Faculty of Medicine (*Zavod za sudsku medicinu Medicinskog fakulteta Rijeka)*. On 15 and 16 September 1993 three medics externally examined the bodies, photographed them and established the probable causes of death. The written record of examination referred to the bodies by numbers and did not contain any identification information.

10. On 15 September 1993 a ceasefire agreement was signed between the parties to the conflict, and the Medak Pocket became a demilitarised zone supervised by the United Nations forces (UNPROFOR).

11. The Croatian Army withdrew from the Medak Pocket at 6 p.m. on 17 September 1993. On the same date the Croatian authorities handed over the fifty-one dead bodies recovered from the Medak Pocket to the Serbian authorities, together with accompanying documentation.

B. Investigation of crimes committed in the course of Operation Pocket-93

12. On 11 October 2002 a working group consisted of police officers from different police departments was formed for the purpose of enquiring

into the events which had occurred in the Medak Pocket during and after Operation Pocket-93. Thereafter, in late 2002 and beginning of 2003, numerous persons were interviewed, including former and current members of the Croatian Army and the police, former members of the Serb units, the medics who had examined the bodies recovered from the Medak Pocket, as well as civilians who had been present in the Medak Pocket during the operation. Military, medical and intelligence documentation regarding the operation was collected, including the report on the external examination of the bodies recovered from the Medak Pocket (see paragraph 9 above). An indictment by the Prosecutor of the International Criminal Tribunal for the former Yugoslavia (hereinafter "the ICTY Prosecutor") of 23 August 2002 against a general of the Croatian Army, J.B., was obtained, together with a list of twenty-nine civilians killed during Operation Pocket-93. The list, marked as "Top Secret", included A.V. (the applicant's mother) under no. 17 and M.V. (the applicant's father) under no. 21.

13. During the investigation of late 2002 and beginning of 2003 a case file of the Knin District Court (*Okružni sud u Kninu*) – a court of the Republic of Serbian Krajina (see paragraph 7 above) – was also obtained. The case file contained, *inter alia*, records on the external examination and identification of the bodies of those killed during Operation Pocket-93, as well as photographic studies. The record of 27 September 1993 stated that corpse no. 4 had been identified by family members as a woman named S.R. (later on it was established that corpse no. 4 was in fact the applicant's mother, A.V., see paragraph 23 below). The record further stated that corpse no. 11 had been identified by family members as M.V. (the applicant's father).

14. In addition, a document issued by the government of Krajina (*Vlada Republike Srpska Krajina*) on 29 December 1993, headed "List of identified soldiers and civilians killed in the area of Divoselo, Čitluk, Počitelj, Gračac, Donji Lapac, Otočac and Medak – September 1993", was obtained. That list contained, under no. 26, the name of the applicant's father (M.V.), with a note that he had been a soldier.

C. Criminal proceedings against generals R.A. and M.N. for war crimes committed in the course of Operation Pocket-93

15. On 21 May 2001 the ICTY Prosecutor filed an indictment with that international court against a general of the Croatian Army, R.A., charging him with crimes against humanity and violations of the laws and customs of war perpetrated in the course of Operation Pocket-93. The indictment stated, *inter alia*, that R.A. had known or had had reason to know that his subordinates were engaged in the unlawful killing of Serb civilians living in the Medak Pocket and Serb soldiers who had been captured and/or wounded, and that he had failed to take measures to prevent such acts or

punish the perpetrators. A table indicating the victims of Operation Pocket-93 was enclosed with the indictment, listing A.V. (the applicant's mother) under no. 17. On 26 November 2001 the indictment was amended and the table indicating the victims also listed M.V. (the applicant's father), under no. 21.

16. On 20 May 2004 the ICTY Prosecutor filed an indictment before that international court against another general of the Croatian Army, M.N., also for crimes perpetrated in the course of Operation Pocket-93.

17. On 1 November 2005 the ICTY transferred the case against generals R.A. and M.N. to the Republic of Croatia for the purpose of conducting criminal proceedings against them, and forwarded the accompanying material and relevant evidence collected in the course of the investigation by the ICTY Prosecutor.

18. On the basis of those documents, as well as the results of the investigation performed by the Croatian authorities, on 22 November 2006 the Zagreb County State Attorney's Office (*Županijsko državno odvjetništvo u Zagrebu*) filed an indictment against generals R.A. and M.N. with the Zagreb County Court (*Županijski sud u Zagrebu*) for the criminal offence of war crimes against a civilian population and prisoners of war committed in the Medak Pocket in September 1993.

19. R.A. was charged with, *inter alia*, failing to take appropriate action as a responsible commanding officer of the Croatian Army to prevent, curb and punish killing, cruel abuse and massacring of civilians of Serbian ethnicity. The factual description in the indictment specified that unknown members of the military units subordinated to R.A. on 9 September 1993 in the area of Rajčević killed A.V. (the applicant's mother), and on the same day, in Divoselo, M.V. (the applicant's father).

20. In the course of the proceedings the trial court heard a large number of witnesses and examined statements by the so-called "endangered witnesses" collected by the ICTY's investigators. It also inspected documentation collected in the course of the investigation and obtained a forensic expert report to establish the cause of death of the persons specified in the indictment as war-crime victims.

21. On 29 May 2008 the Zagreb County Court adopted, and on 30 May 2008 proclaimed, a judgment whereby R.A. was entirely acquitted of the charges. M.N. was acquitted of the charges regarding the killing of civilians and non-civilians on 9 September 1993, but found guilty of war crimes concerning the period between 10 and 17 September 1993.

22. In the judgment the Zagreb County Court analysed the presented evidence and established the fate of each person whose death was included in the indictment. As regards the applicant's father (M.V.), the court found as follows:

> "As regards the killing of N.V., M.V. [the applicant's father], Lj.J. and M.M., the court has established that they were killed while trying to escape by car

> on 9 September 1993. It arises from the statement of endangered witness no. 3 that only the person who stepped out of the car, specifically D.V., was armed, and that M.V., N.V. and M.M. were civilians who had been provided with rifles by the local community to protect their homes. On the basis of the statement of endangered witness no. 3 it arises that D.V. stepped out of the vehicle because he had forgotten something in his house. Then the Croatian soldiers arrived and N.V., Lj.J., M.V. and D.V. tried to escape but were killed by the Croatian soldiers who had arrived. ... the court has established, on the basis of the presented documentation and the findings and opinions of forensic experts, that the cause of M.V.'s death was explosives wounds to the left thigh and the right shin ..."

23. As regards the applicant's mother (A.V.), the Zagreb County Court found as follows:

> "For A.V., the court accepted the statements of endangered witnesses nos. 1, 11, 19 and 24, who know that A.V. was killed in the operation in question. From the statement of endangered witness no. 1 and witness Ž.M. it follows that A.V. was first wrongly identified as S.R., which mistake was corrected once the body of S.R. had been found. On the basis of the statements of witnesses N., B. and M. it is established that A.V. had been tied by a rope around her chest. ... it arises from the finding and opinion of the forensic experts and the inspected photograph ... that the injury to her left fist was inflicted by an explosive device and not by a mechanical device (by cutting). However, those circumstances are irrelevant since the circumstance that A.V. was a civilian and that she was killed on 9 September 1993 in the area of Rajčević was not contested. The evidence obtained raises no doubts regarding the place and time of A.V.'s killing."

24. On 18 November 2009 the Supreme Court (*Vrhovni sud Republike Hrvatske*) upheld the Zagreb County Court's judgment, except in the part concerning M.N.'s prison sentence, which it amended.

D. Criminal proceedings regarding crimes committed in the course of Operation Pocket-93 after the judgment against R.A. and M.N. had been rendered

25. After the judgment against R.A. and M.N. had been rendered, and on the basis of evidence obtained in the course of the trial against them, criminal proceedings were instituted against different persons for war crimes committed in the course of Operation Pocket-93. None of those criminal proceedings concerned the killing of the applicant's parents (M.V. and A.V.).

E. Criminal complaint submitted by D.P., Đ.P. and V.M. on 29 September 2015

26. On 29 September 2015 D.P., Đ.P. and V.M. lodged a criminal complaint with the State Attorney's Office of the Republic of Croatia (*Državno odvjetništvo Republike Hrvatske* – hereinafter "the State Attorney's Office") against former and current officers of the Croatian

Army, D.D.-L., M.M., Ž.S., Z.B. and G.B., in relation to their command responsibility for crimes which had occurred in September 1993 in the course of Operation Pocket-93.

27. The criminal complaint listed all the persons who were known to have been killed during that operation, according to the Zagreb County Court's judgment rendered in the criminal case against R.A. and M.N., including the applicant's parents (M.V. and A.V.).

28. The State Attorney's Office is currently conducting an investigation in relation to that criminal complaint.

F. Civil proceedings for damages

29. On 6 December 2007 the applicant contacted the State Attorney's Office with a request for friendly settlement of the dispute. After receiving a negative reply, on 6 March 2008 he brought a civil action against the State before the Zagreb Municipal Civil Court (*Općinski građanski sud u Zagrebu*), alleging that during Operation Pocket-93, members of the Croatian Army had killed his parents. He stated that during that operation, Croatian soldiers had killed civilians, including his parents, as a result of which the ICTY had indicted generals of the Croatian Army, including R.A., and that the Zagreb County Court had been conducting criminal proceedings against those commanding officers. He claimed damages in the amount of 520,000 Croatian kunas (HRK).

30. On 7 April 2009 the Zagreb Municipal Civil Court suspended the civil proceedings until the criminal proceedings against R.A. and M.N. before the Zagreb County Court became final. The civil proceedings were resumed on 12 May 2010.

31. On 29 September 2011 the applicant was invited to submit his arguments regarding an objection lodged by the State that the death of his parents amounted to war damage and that his claim was statute-barred.

32. On 3 November 2011 the applicant submitted that the killing of his parents amounted to a war crime against a civilian population, and not war damage. He further submitted that he had learned about his parents' killing when the criminal proceedings against general R.A. had been instituted before the Zagreb County Court in 2006. This had been the first time he had learned that his parents had been listed as war-crime victims in the indictment before the ICTY. During the war he had served in the Croatian Army and could not have contacted the surviving civilians from the Medak Pocket. He had not received any information concerning his parents' killing from the soldiers participating in Operation Pocket-93 either. His parents' death had not even been recorded in the civil register. After their fate had been clarified in the criminal proceedings against generals R.A. and M.N., in January 2011 he had instituted proceedings with a view to declaring them dead. He had lodged a request for friendly settlement of the dispute one year

after learning that his parents had been unlawfully killed and that general R.A. had been charged with that crime.

33. At a hearing held on 6 February 2012 the applicant reiterated that he had learned about his parents' killing and the way they had been killed in 2006, via the media, after the criminal proceedings for crimes perpetrated in the Medak Pocket had been instituted. Prior to that, he had made certain assumptions about their death, but had not felt free to ask any questions and had not had any concrete information. He had not instituted proceedings with a view to declaring his parents dead earlier because he had been waiting for official information in that regard. Prior to the institution of the criminal proceedings against general R.A., he had informed the Red Cross about his parents' disappearance, but had not received any answer. After the war he had been unable to ask anyone about the fate of his parents, since those who might have known something had either been killed or had gone to Serbia, where he had not had any relatives.

34. On 21 February 2012 the Zagreb Municipal Civil Court rendered a judgment granting the applicant's claim for damages regarding the killing of his mother, and dismissing it regarding the killing of his father. It found that the criminal judgment against generals R.A. and M.N. (see paragraphs 21-23 above) had established that the applicant's mother had been an unarmed civilian killed by members of the Croatian Army. It concluded that her killing had amounted to a war crime and not to war damage. It accordingly found that since prosecuting a war crime could not become time-barred, lodging a related civil claim for damages could not become time-barred either. It dismissed the applicant's claim for damages regarding the killing of his father, finding that the criminal judgment had established that he had died as an armed civilian. It could not therefore have been established beyond doubt that his killing had been unlawful.

35. The applicant appealed against the first-instance judgment in the part dismissing his claim, arguing that the criminal judgment had established that his father had been a civilian, had not participated in combat, and had been killed on his doorstep trying to escape from the Croatian soldiers.

36. The State appealed against the first-instance judgment in the part awarding the applicant damages, arguing that generals R.A. and M.N. had been acquitted of the criminal offence against the applicant's parents and that therefore the statutory limitation period under section 376 of the Civil Obligations Act for lodging the civil claim had been applicable in the case. As the damaging event had occurred in 1993, the applicant's claim had been statute-barred. Alternatively, the State argued that the applicant's parents' death had amounted to war damage.

37. The applicant replied to the appeal by the State, arguing that his parents' killing had amounted to a war crime and that until the criminal proceedings against generals R.A. and M.N. had been instituted in 2006, he had not known how his parents had died.

38. On 3 July 2012 the Zagreb County Court reversed the first-instance judgment and dismissed the applicant's claim in its entirety. It held that his civil claim had been lodged outside the statutory limitation period under section 376 of the Civil Obligations Act (*Zakon o obveznim odnosima,* see paragraph 46 below). In particular, it found that the damage had occurred in 1993 when the applicant's parents had been killed. Thus, the objective five-year statutory limitation period for lodging a civil claim for damages – which started to run when the damage occurred – had expired in 1998, whereas the applicant had lodged his civil claim in 2008. The longer statutory limitation period set out under section 377 of the Civil Obligations Act could not apply, as the perpetrators of the criminal offence against the applicant's parents had remained unknown.

39. In an appeal on points of law, the applicant argued that the statutory limitation period for lodging a civil claim for damages in his case should have been calculated from the time he had learned of the damage in 2006. He reiterated that there had been objective reasons why he could not have learned, before 2006, whether and how his parents had been killed.

40. On 24 March 2015 the Supreme Court dismissed the applicant's appeal on points of law as unfounded. The relevant part of the judgment reads as follows:

> "Considering the results of the conducted proceedings and the factual findings of the lower courts, from which it follows:
>
> - that the plaintiff's parents were killed on 9 September 1993 ... by unknown members of the Croatian Army during Operation 'Pocket-93' ...,
>
> - that there were criminal proceedings against R.A. (as well against M.N.) before the Zagreb County Court for the criminal offence of war crime against a civilian population, in which R.A. was finally acquitted of the charges, including the charge that 'even though he knew that parts of units subordinated to him were killing and cruelly abusing ethnic Serb civilians in the territory captured in the military action, he did nothing to prevent, curb and punish such prohibited conduct ... thus unknown members of the units subordinated to him killed, among others, on 9 September 1993, A.V. ... and M.V. ...',
>
> - that the plaintiff brought the civil action for damages regarding the death of his parents on 6 March 2008,
>
> and having regard to the provisions of the Act on the liability of the Republic of Croatia for damage caused by members of the Croatian Army and police in the performance of their duties 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. 117/2003, hereinafter 'the Liability Act' [see paragraph 48 below], and in particular sections 1, 2 and 6 of that Act, as well as the provisions of section 376 of the Civil Obligations Act, the second-instance court correctly dismissed the civil claim on the grounds that it was statute-barred.
>
> Namely, considering the circumstances in which the plaintiff's parents were killed, the damage referred to in the civil action does not amount to war damage and therefore the State is liable for it under section 2 of the Liability Act. The general

rules on liability for damage apply, that is the Civil Obligations Act, including the provisions of that Act regulating the running of the statutory limitation period for lodging a civil claim for damages.

In a situation such as this one, where the plaintiff's parents were killed by a perpetrator who remained unknown until the present day and therefore no criminal proceedings were conducted against such unknown person, there is no possibility to apply the longer statutory limitation period referred to in section 377(1) of the Civil Obligations Act. Namely, when the perpetrator of a criminal offence is unknown, the civil court is not authorised to examine, as a preliminary question, whether damage was caused by a criminal offence.

Therefore, the issue of the statutory limitation period in the case in question must be examined under section 376 of the Civil Obligations Act, under which the subjective three-year period runs from the time the injured party learned of the damage and the person who caused it, and the objective five-year statutory limitation period runs from the time when the damage occurred.

The damaging event in relation to which the plaintiff claims damages occurred on 9 September 1993, and in relation to that event on 26 November 2001 an indictment was filed against R.A. before the ICTY. An integral part of that indictment was an enclosure which contained a list of persons who had been unlawfully killed, including the plaintiff's parents. Therefore it is clear that already at that time the plaintiff had an objective possibility to learn about the fate of his parents, that is, the plaintiff had already incurred damage at that time, and the objective five-year statutory limitation period had started to run.

The plaintiff contacted the State Attorney's Office with a request for friendly settlement of the dispute on 6 December 2007 and lodged his civil action against the State on 6 March 2008, that is, outside the five-year statutory limitation period.

In such circumstances, where the claim for damages was lodged outside the objective statutory limitation period, the subjective statutory limitation period whose commencement is related to the damage and the perpetrator (which, according to the plaintiff, would only be in 2006!) does not apply, since this statutory limitation period would extend beyond the objective five-year statutory limitation period."

41. On 20 August 2015 the applicant lodged a constitutional complaint with the Constitutional Court (*Ustavni sud Republike Hrvatske*). He alleged a violation of Article 2 of the Convention and the corresponding Article 21 of the Croatian Constitution (*Ustav Republike Hrvatske*), arguing that there had not been an effective investigation into his parents' killing. He also alleged a violation of Article 6 of the Convention and the corresponding Article 29 of the Croatian Constitution as regards the manner in which the civil courts had applied the rules on calculating the statutory limitation period for lodging a civil claim for damages.

42. On 18 November 2015 the Constitutional Court dismissed the applicant's constitutional complaint. It held that the applicant in his constitutional complaint "[had] not demonstrate[d] that the Supreme Court had failed to respect the provisions of the Constitution and the Convention, namely that it had applied the relevant law in an arbitrary manner" and that therefore "the present case did not raise a constitutional issue." The decision was served on the applicant's representative on 7 December 2015.

G. Proceedings for declaring the applicant's parents dead

43. In January 2011 the applicant applied to the Zagreb Municipal Civil Court with a view to declaring his parents dead, submitting that they had been killed in Operation Pocket-93 in September 1993.

44. After examining the documents submitted by the applicant, on 16 December 2011 the Zagreb Municipal Civil Court established that the applicant's father had died on 10 September 1993. That decision became final on 17 July 2012.

45. On 18 December 2012 the Zagreb Municipal Civil Court established that the applicant's mother had died on 9 September 1993. That decision became final on 5 March 2013.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Relevant domestic law

46. The relevant provisions of the Civil Obligations Act (*Zakon o obveznim odnosima*, Official Gazette of the Socialist Federal Republic of Yugoslavia nos. 29/1978, 39/1985, 46/1985 and 57/1989, and Official Gazette of the Republic of Croatia nos. 53/1991, 73/1991, 3/1994, 107/1995, 7/1996, 91/1996, 112/1999 and 88/2001), read as follows:

Section 376

"(1) A claim for damages shall become statute-barred three years after the injured party learned of the damage and the person who caused it.

(2) In any event that claim shall become statute-barred five years after the damage occurred.

..."

Section 377

"(1) Where the damage was the result of a criminal offence and the statutory limitation period for criminal prosecution is longer, the claim for damages against the person responsible becomes statute-barred at the same time as the criminal prosecution.

(2) The interruption of the statutory limitation period in respect of criminal prosecution entails the interruption of the statutory limitation period in respect of a claim for damages.

..."

47. Section 184(a) of the Act introducing changes to the Civil Obligations Act (*Zakon o dopunama Zakona o obveznim odnosima*, Official Gazette no. 112/1999 – hereinafter "the Civil Obligations (Amendment) Act") provided that all proceedings instituted against the State in respect of damage caused by members of the Croatian Army and police in the performance of their duties during the Homeland War in Croatia from 17 August 1990 to 30 June 1996 were to be stayed. The Act also imposed

an obligation on the Government to submit to parliament special legislation regulating liability for such damage within six months of the Act's entry into force.

48. The Liability Act (see paragraph 40 above), in force as from 31 July 2003, regulates the circumstances in which the State is liable for damage caused by members of the Croatian Army and police during the Homeland War from 17 August 1990 to 30 June 1996.

B. Relevant domestic practice

1. Relationship between the subjective and the objective statutory limitation period set out in section 376 of the Civil Obligations Act

49. The Supreme Court held that after the expiry of the objective five-year statutory limitation period for lodging a civil claim for damages, the injured party could no longer seek damages, even if the subjective three-year period had not yet expired or had not even started to run.

The relevant part of the Supreme Court's judgment no. Rev 84/07-2 of 12 March 2008 rendered in a case in which the plaintiffs had sought damages in connection with the murder of their husband and father in 1991 by a member of the Croatian Army, reads as follows:

> "Under section 376(1) of the Civil Obligations Act, a claim for damages shall become statute-barred three years after the injured party learned of the damage and the person who caused it, and under section 376(2) that claim shall in any event become statute-barred five years after the damage occurred.
>
> The start of the subjective statutory limitation period depends on when the injured party's learned of the damage and its perpetrator; those facts are relevant for the injured party to be able to claim damages.
>
> This period is combined with the objective period after the expiry of which the injured party can no longer seek fulfilment of the obligation, even if the subjective period has not yet expired or has not even started to run."

The same approach was reiterated in the Supreme Court's judgment no. Rev 1794/12-2 of 11 October 2016, the relevant part of which reads:

> "... the objective statutory limitation period for lodging a civil claim for damages [which expires] five years after the damage occurred, applies in a situation where the subjective three-year period from [the date on which the injured party] learned of the damage and its perpetrator expires after the [objective] five-year period."

2. Running of the statutory limitation period in cases in which injured parties learned about the death of their family members only subsequently

50. Judgment no. Rev 287/08-2 of 6 May 2009 was rendered in a case in which the plaintiffs had sought damages from the State in connection with the death of their husband, father and son in 1992. The Supreme Court held

that the plaintiffs had learned about the killing of their relative on 15 September 1993, when his body had been exchanged between the Serbian and Croatian authorities, and that on that day the objective five-year statutory limitation period under section 376(2) of the Civil Obligations Act for lodging the civil claim for damages had started to run.

Judgment no. Rev 812/09-2 of 16 February 2011 was rendered in a case in which the plaintiff had sought damages from the State in connection with the death of her husband in 1991. The Supreme Court held that the damage under section 376(2) of the Civil Obligations Act had occurred to the plaintiff on the date on which she had learned about her husband's death, which had undoubtedly been when an autopsy of his body had been performed.

Judgment no. Rev 1449/11-3 of 25 February 2014 was rendered in a case in which the plaintiffs had sought damages against the State in connection with the death of their mother and sister in 1995. The Supreme Court held that the damage under section 376(2) of the Civil Obligations Act had occurred to the plaintiffs on the date on which they had learned about the death of their mother and sister, which had been when the authorities had conducted an on-site inspection at the end of August 1995.

Judgment no. Rev 2617/11-3 of 11 March 2014 was rendered in a case in which the plaintiffs had sought damages in connection with the death of their husband and father in 1995. The relevant part of the judgment reads:

> "The first and second-instance courts concluded that in the particular case the objective five-year statutory limitation period under section 376(2) of the Civil Obligations Act had started to run on 10 September 1995 (when D.P.'s body was found), but ... they did not provide any reasons for such a conclusion. ...
>
> Owing to the nature of the matter, the obligation to compensate for damage cannot occur before the damage occurs. The non-pecuniary damage on account of the emotional pain related to the death of a close person cannot occur before the injured party actually learns about the death of the close person, because owing to the nature of the matter it is only after learning about that circumstance that the injured party can suffer emotional pain.
>
> In the particular case the lower courts did not give reasons as to when the plaintiffs had learned about the death of D.P. ... Neither the results of the proceedings thus far nor the lower courts' judgments indicate that it was the plaintiffs who had found D.P.'s body on 10 September 1995, that is, that on that day they had learned about his death."

Judgment no. Rev-x 398/14-2 of 9 September 2014 was rendered in a case in which the plaintiffs had sought damages from the State in connection with the death of their husband and father in 1995. The Supreme Court held that the objective five-year statutory limitation period had started to run on the date on which the damage had been incurred, and not on the date of the damaging event. It reiterated its principle that where plaintiffs have learned about the death of their relatives only subsequently, then the

damage is considered to have been incurred by them on the date on which they learned about their relatives' death.

Judgment no. Rev 1917/13-3 of 12 January 2016 was rendered in a case in which the plaintiffs had sought damages from the State in connection with the death of their son and brother in 1991. The Supreme Court held that the objective five-year statutory limitation period had started to run on the date on which the damage had been incurred, which was when the plaintiffs had learned about the death of their relative.

3. Running of the statutory limitation period in cases concerning missing persons who have been declared dead by decision of a domestic authority

51. Judgment no. Rev 471/06-2 of 27 September 2006 was rendered in a case in which the plaintiff had sought damages from the State in relation to the disappearance of her sons, who had been taken from their home by armed persons on 7 November 1991. They had never been seen again, nor had there ever been any information regarding their fate. The relevant part of the judgment reads:

> "The plaintiff's claim for damages is based on the fact of her sons' disappearance (after they had been violently taken away on 7 November 1991), which resulted in their being declared dead. The date of their death was finally set at 8 November 1996. It thus follows that only once the plaintiff's sons had been declared dead and the date of their death established were they considered to be dead, and at that point the plaintiff became entitled to seek damages related to their death. ... Therefore, before establishing the date of the plaintiff's sons' death, the statutory limitation period could not have started to run. Nor could it have started to run on the date on which they had been taken away, as incorrectly held by the lower courts."

Judgment no. Rev 270/06-2 of 10 October 2007 was rendered in a case in which the plaintiffs had sought damages from the State in relation to the disappearance of their husband and father. Having been arrested by police officers on 3 November 1991, there had never been any trace of him. The relevant part of the judgment reads:

> "Namely, the plaintiffs' claim for damages is based on the disappearance of their husband and father (after he had been taken away on 3 November 1991 by police officers ...), which finally resulted in his being declared dead. It thus follows that the statutory limitation period could only have started to run on the date on which the decision ... of 26 March 1998 by which M.S. had been declared dead became final ... since at that point the plaintiffs became entitled to seek damages related to his disappearance, that is, his death."

Judgment no. Rev-1518/10-2 of 7 December 2011 was rendered in a case in which the plaintiff had sought damages from the State in relation to the disappearance of her husband, who had been taken away from their home on 4 July 1992 by unidentified persons dressed in military police uniforms. He had been 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 the violent, unauthorised and unlawful taking away of a person from his or her home by armed persons and his or her disappearance cannot start running before the missing person has been declared dead ...
>
> The plaintiff's husband was 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 ..."

Judgment no. Rev 1668/10-2 of 14 July 2015 was rendered in a case in which the plaintiff had sought damages from the State related to the disappearance of her father in 1991, after which there had been no information regarding his fate. The relevant part reads as follows:

> "On the subject of calculating the statutory limitation period in the same circumstances (when 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 point of 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) point of view of the Supreme Court, when a missing person has been 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 on which the decision on declaring that person dead became final (because the injured party was able to seek damages on that ground only on that date), and not from the date established by the decision as the date on which that person had died."

III. OTHER RELEVANT MATERIAL

52. The Government submitted an excerpt from the 27th edition of *Bilten* – a bulletin issued in Serbia in September 2001 by the Centre for Documentation and Information "Veritas". On pages 6-9 of the bulletin the indictment filed against general R.A. before the ICTY on 21 May 2001 was cited, as was the list of victims of Operation Pocket-93 attached to the indictment, mentioning the applicant's mother, A.V., as one of the victims. In the excerpt it is stated that the indictment was taken from the ICTY website. There is no information as to whether that bulletin was accessible in Croatia.

53. The Government further submitted a statement published on the Internet on 25 September 2002, in which the former president of Croatia had spoken about the meaning of the ICTY indictment filed against general J.B. They also submitted two articles published on 13 November 2002 and 2 July 2003 respectively in *Nacional* – a political magazine published weekly in Croatia. The articles discussed the ICTY indictments for crimes committed in the Medak Pocket. Neither the statement nor the two articles mentioned the names of victims of Operation Pocket-93.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

54. The applicant complained that there had been no effective investigation into the death of his parents in order to identify the direct perpetrators, as provided for in Article 2 of the Convention, which reads:

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

A. The parties' arguments

55. The Government submitted that by its decision no. U-III-2166/2016 of 2 November 2016, the Constitutional Court had established new case-law for complaints concerning the procedural aspect of Article 2 of the Convention. In particular, they contended that by that decision the Constitutional Court had introduced the constitutional complaint as the new available domestic remedy for complaints concerning lack of an effective investigation into deaths.

56. The Government further submitted that the applicant's complaint had been submitted outside the six-month time-limit. His parents had been killed in 1993, thus more than twenty years before he had lodged his application with the Court. During that entire period he had never enquired as to whether there had been any investigation. He had not contacted the police or the State Attorney's Office in relation to the disappearance of his parents, except in the context of the civil proceedings for damages. Nor had he applied to the Missing Persons Office of the Ministry of the Homeland War Veterans (*Ured za nestale osobe Ministarstva branitelja*) to initiate a procedure to find his parents. Even after he had allegedly learned about his parents' killing in 2006, he had not enquired about the investigation.

57. The Government contended that as of 29 May 2008, when the first-instance criminal judgment was issued against R.A., the State Attorney's Office did not consider the applicant's parents as victims of a criminal offence, since in the trial it had been established that both of them had been killed during combat on the first day of Operation Pocket-93. Thus, as of 29 May 2008, neither the police nor the State Attorney's Office had conducted a separate investigation into the death of the applicant's parents. Had the applicant contacted the State Attorney's Office, he could have learned about their conclusion and submitted his application to the Court much earlier.

58. The Government added that the State Attorney's Office continued to investigate crimes perpetrated in the Medak Pocket. However, after the trial against R.A. and M.N., it had obtained no information which would indicate that the applicant's parents had been victims of a criminal offence. There

was no information of any kind which would cast a new light on the circumstances of their death and which would thus generate a new obligation to investigate. The six-month period could therefore not be linked either to the ongoing criminal investigation into the crimes committed in the Medak Pocket, or to the applicant's civil proceedings for damages.

59. The applicant contended that there had never been any investigation regarding direct perpetrators and that his complaint could not be considered as having been lodged out of time.

B. The Court's assessment

60. The Court does not have to address all the objections raised by the Government because the complaint is in any event inadmissible for the following reasons.

61. The relevant general principles concerning the six-month time-limit are set out in the case of *Mocanu and Others v. Romania* ([GC], nos. 10865/09 and 2 others, §§ 258-269, ECHR 2014 (extracts); see also *Dudayeva v. Russia*, no. 67437/09, §§ 65-68, 8 December 2015, and *Milić v. Croatia*, no. 38766/15, §§ 25-30, 25 January 2018). This case-law also shows that an action for damages to provide redress for the death was not capable, without the benefit of the conclusions of a criminal investigation, of establishing the identity of the perpetrators and less still of establishing their responsibility. Therefore, the relevant domestic remedy for the applicant's complaint, which would have had the potential to offer adequate redress, was a criminal investigation (compare to *Narin v. Turkey*, no. 18907/02, § 49, 15 December 2009; see also *Bogdanović v. Croatia* (dec.), no. 72254/11, § 39, 18 March 2014, and *Jelić v. Croatia*, no. 57856/11, § 64, 12 June 2014).

62. The Court notes that the applicants' parents were killed in September 1993 during Operation Pocket-93. The first investigative steps by the Croatian authorities into crimes committed in the course of that operation were taken in late 2002 (see paragraph 12 above). In November 2006 general R.A. was indicted for command responsibility for war crimes and the indictment listed the applicant's parents as victims of that criminal offence (see paragraph 19 above). On 29 May 2008 general R.A. was acquitted of the charges and on 18 November 2009 his acquittal became final (see paragraphs 21 and 24 above).

63. The Court further notes that on the basis of evidence obtained in the course of the trial against R.A., criminal proceedings were instituted against different persons for war crimes committed during Operation Pocket-93. However, none of those criminal proceedings concerned the killing of the applicant's parents (see paragraph 25 above). In fact, the Government submitted that although the State Attorney's Office had continued to investigate crimes which had occurred in the course of Operation Pocket-93,

as of May 2008 the applicant's parents were not considered to be victims of a criminal offence and that to date no information had been obtained which would undermine such a conclusion (see paragraph 58 above).

64. The Court notes that there is no evidence in the case file that the applicant ever attempted to request information about the investigation during the entire period before lodging his application with the Court on 2 June 2016. Since the applicant is the son of the victims of the violation claimed, he may be expected to have displayed due diligence and to have taken the requisite initiative to inform himself about the progress being made in the investigation into his parents' death. The absence of any news from the investigators, in particular after the criminal proceedings against R.A. and M.N. had finally ended in November 2009, should have prompted him to draw appropriate conclusions (see, for example, *Açış v. Turkey*, no. 7050/05, § 42, 1 February 2011). Accordingly, the applicant ought to have turned to the Court with his complaint that the investigation had been ineffective long before introducing the present application on 2 June 2016, and certainly more than six months before.

65. The Court notes that in September 2015 three persons, but not the applicant, lodged a criminal complaint against former and current officers of the Croatian Army in relation to their command responsibility for crimes which had occurred in the course of Operation Pocket-93. The criminal complaint listed all those who were known to have been killed during that operation, including the applicant's parents (see paragraphs 26-27 above).

66. In this connection, the Court reiterates that where information purportedly casting new light on the circumstances of a death comes into the public domain, a new obligation to investigate the death may arise (see *Hackett v. the United Kingdom* (dec.), no. 34698/04, 10 May 2005; *Brecknell v. the United Kingdom*, no. 32457/04, §§ 66-67, 27 November 2007; *Williams v. the United Kingdom* (dec.), no. 32567/06, 17 February 2009; and *Gasyak and Others v. Turkey*, no. 27872/03, § 60, 13 October 2009). It cannot be the case, however, that any assertion or allegation can trigger a fresh investigative obligation under Article 2 of the Convention. Nonetheless, given the fundamental importance of this provision, the State authorities must be sensitive to any information or material which has the potential either to undermine the conclusions of an earlier investigation or to allow an earlier inconclusive investigation to be pursued further (see *Brecknell*, cited above, § 70).

67. In the present case the Court notes that in the course of the investigation in relation to the criminal complaint lodged in September 2015, the State Attorney's Office has thus far not obtained any information which would cast a new light on the circumstances of the death of the applicant's parents and their conclusion that the death of the applicants' parents had not been a consequence of a criminal offence (see paragraph 58 above, and compare to *Nasirkayeva v Russia* (dec.), no. 1721/07, 31 May

2011, and *Opačić and Godić v. Croatia* (dec.), 38882/13, § 31, 26 January 2016).

68. Accordingly, the Court finds that this part of the application must be rejected for failure to comply with the six-month time-limit set out in Article 35 §§ 1 of the Convention.

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

69. The applicant complained, in respect of the civil proceedings for damages, that the practice of the Supreme Court as to the manner of calculating the statutory limitation period had been inconsistent, and that the manner in which it had been applied in his case had deprived him of his right of access to a court. He relied on Article 6 § 1 of the Convention, the relevant part of which reads as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. Admissibility

70. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' arguments

(a) The applicant

71. The applicant submitted that he had received the first reliable information about his parents' killing in December 2006, when generals R.A. and M.N. had been indicted before the Zagreb County Court for war crimes. Before then, information about the victims of Operation Pocket-93 had not been available to the Croatian public. From 1991 to 1995 he had participated in the war as a member of the Croatian Army and had spent most of his time in various places of combat. He had never been informed about the investigation or the indictment against the Croatian Army generals before the ICTY. The State had not instituted any criminal proceedings regarding his parents' killing until 2006. He could therefore not have obtained any official information regarding the fate of his parents.

72. The applicant contended that the statutory limitation period for lodging a civil claim for damages in his case ought to have been calculated from the date on which he had learned of the damage. The Supreme Court

had never addressed his arguments in that respect, but had simply endorsed the lower courts' point of view that the statutory limitation period had started to run in 1993, when his parents had been killed. In the circumstances, requiring him to lodge a civil claim before the date on which he had actually lodged it had been entirely unrealistic.

73. The applicant submitted that in its judgments nos. Rev-471/06 of 27 September 2006, Rev-270/06-2 of 10 October 2007, Rev-1518/10-2 of 7 December 2011 and Rev 1668/10-2 of 14 July 2015 (see paragraph 51 above), the Supreme Court had held that the statutory limitation period for lodging a civil claim for damages in cases where a missing person had been declared dead by a court decision, started to run on the date on which such a decision became final, and not from the date of the actual death. This approach had not been applied in his case, where the death of his parents had been established by decisions which had become final in 2012 and 2013. There had therefore been case-law inconsistency.

(b) The Government

74. The Government submitted that in cases in which plaintiffs sought compensation for non-pecuniary damage in relation to the death of their family members, the Supreme Court's practice was to calculate the statutory limitation period for lodging the civil claim from the moment the plaintiffs had learned about the death of their family members. That point in time then became a legal fact which was established by the courts in each particular case.

75. Under the Supreme Court's practice, the moment the plaintiffs actually learned about the death of their family members was the same as the moment they had had an objective possibility to learn about it. To hold otherwise would lead to arbitrariness in calculating the starting point for the running of the statutory limitation period and legal uncertainty. The Government contended that the Supreme Court's decision in the applicant's case had been in line with that practice.

76. The Government submitted that the applicant had misinterpreted the Supreme Court's judgment in his case. That court had calculated the statutory limitation period not from 1993, as incorrectly claimed by him, but from 2001. It had considered that in 2001 the applicant could objectively have become aware of the fact that his parents had been killed in Operation Pocket-93, since the indictment against general R.A. filed on 26 November 2001 before the ICTY had listed his parents as victims of the operation. Thus it was at that point in time that he could be considered to have suffered damage, and the objective five-year statutory limitation period under section 376(2) of the Civil Obligations Act had started to run.

77. The applicant's argument that he had never been informed of the proceedings before the ICTY had no bearing on his rights under Article 6 of the Convention. What was important was that he had had a real possibility

of learning about the fate of his parents in 2001, and of instituting civil proceedings for damages.

78. The Government contended that the indictment filed against general R.A. before the ICTY on 21 May 2001 and the amended indictment against that general of 26 November 2001 had been published on the ICTY website as early as May and November 2001, together with the list of victims of Operation Pocket-93. Following its publication, the indictment had caused great social and political upheaval in Croatia and its neighbouring countries. Both the proceedings before the ICTY and the subsequent criminal proceedings in Croatia had been extensively covered by the media. The Government relied on one article published in Serbia in September 2001, and several articles published in Croatia in 2002 and 2003 (see paragraphs 52 and 53 above). In their view, that fact corroborated the Supreme Court's view that the applicant had already had a real possibility to obtain information about the death of his parents in 2001.

79. The Government submitted that the Supreme Court's judgments nos. Rev-471/06 of 27 September 2006, Rev-270/06-2 of 10 October 2007, Rev-1518/10-2 of 7 December 2011 and Rev 1668/10-2 of 14 July 2015 relied on by the applicant (see paragraph 51 above) had concerned cases in which plaintiffs had sought damages in relation to the disappearance of their family members, whose fate after a certain date had remained entirely unknown, including whether they had died. The fate of the applicant's parents had become known in 2001, therefore before the applicant had lodged his civil claim for damages in 2008, and certainly before the decisions establishing their death had become final (2012 and 2013). It was true that the domestic authorities had still considered the applicants' parents as "missing persons". However, that was because the place of their burial remained unknown, whereas their fate had become known in 2001.

2. The Court's assessment

(a) Legal certainty

80. The Court will first address the question whether, having regard to the Supreme Court's judgments nos. Rev-471/06 of 27 September 2006, Rev- 270/06-2 of 10 October 2007, Rev-1518/10-2 of 7 December 2011 and Rev-1668/10-2 of 14 July 2015 (see paragraph 51 above), the fact that in the applicant's case the statutory limitation period for lodging a civil claim for damages was calculated not from the date on which the decisions declaring his parents dead had become final, but rather from an earlier date, violated the principle of legal certainty.

81. The Court reiterates that it has been accepted that giving two disputes different treatment cannot be considered to give rise to conflicting case-law when this is justified by a difference in the factual situations at issue (see, *mutatis mutandis*, *Hayati Çelebi and Others v. Turkey*,

no. 582/05, § 52, 9 February 2016, and *Ferreira Santos Pardal v. Portugal*, no. 30123/10, § 42, 30 July 2015).

82. The Court notes that in the present case the statutory limitation period for lodging the civil claim for damages was calculated as starting to run on 26 November 2001, when general R.A. was indicted before the ICTY. In particular, the Supreme Court held that on that day the applicant had had an objective possibility to learn about the death of his parents, and the objective five-year statutory limitation period under section 376(2) of the Civil Obligations Act had thus started to run.

83. In arguing that the Supreme Court's case-law on the matter was inconsistent, the applicant relied on judgments in which that court had calculated the statutory limitation period for lodging a civil claim for damages from the date on which the decisions declaring the plaintiffs' family members dead had become final (see paragraph 51 above). The decisions declaring the applicant's parents dead became final in 2012 and 2013 (see paragraphs 44 and 45 above).

84. The Court notes that the Supreme Court's judgments relied on by the applicant concerned disappearances of the plaintiffs' family members whose fate after they had been apprehended by State agents had remained unknown – that is, there was never any information as to how and when they had died (see paragraph 51 above). The Court observes that information on the fate of the applicant's parents – that they had been killed in September 1993 in the course of Operation Pocket-93 – became known before he instituted civil proceedings for damages against the State in 2008, and certainly before he instituted proceedings seeking to have them declared dead in 2011. Indeed, the applicant admitted that he had learned about his parents' fate in 2006, when the indictment against generals R.A. and M.N. had been brought before the Croatian criminal courts (see paragraphs 33, 37 and 39 above). The Court notes that the fate of the applicant's parents was undoubtedly established by the criminal court's judgment, which became final in 2009 (see paragraphs 21 and 24 above).

85. Accordingly, the Court is of the view that there are sufficient elements to hold that the applicant's case concerned different factual circumstances than the cases in which the Supreme Court had rendered the judgments relied on by the applicant, and that the fact that the domestic courts in the applicant's case did not calculate the statutory limitation period for lodging the civil claim for damages from the date on which the decisions declaring his parents dead had become final cannot be considered to give rise to conflicting case-law.

86. There has accordingly been no violation of Article 6 § 1 on that account.

(b) Access to a court

(i) General principles

87. The Court reiterates that Article 6 § 1 of the Convention secures to everyone the right to have a claim relating to his civil rights and obligations brought before a court (see *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, § 84, 29 November 2016 and *Zubac v. Croatia* [GC], no. 40160/12, § 76, 5 April 2018).

88. The right of access to a court is not absolute, but may be subject to limitations; these are permitted by implication since the right of access by its very nature calls for regulation by the State, regulation which may vary in time and in place according to the needs and resources of the community and of individuals (see *Lupeni Greek Catholic Parish and Others*, cited above, § 89, *Zubac*, cited above, § 78, and *Stanev v. Bulgaria* [GC], no. 36760/06, § 230, ECHR 2012). In laying down such regulation, the Contracting States enjoy a certain margin of appreciation. Whilst the final decision as to observance of the Convention's requirements rests with the Court, it is no part of the Court's function to substitute for the assessment of the national authorities any other assessment of what might be the best policy in this field (see *Zubac,* cited above, § 78).

89. Nonetheless, the limitations applied must not restrict the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see *Lupeni Greek Catholic Parish and Others*, cited above, § 89, and *Zubac*, cited above, § 78).

(ii) Application of those principles to the present case

(α) As to whether there was a restriction of the applicant's right to a court

90. In the present case the applicant brought a civil claim against the State seeking damages for the killing of his parents in September 1993 by Croatian soldiers (see paragraph 29 above). The first-instance court granted the applicant's claim regarding the killing of his mother and dismissed it regarding the killing of his father (see paragraph 34 above). The second-instance court reversed the first-instance judgment and dismissed the applicant's claim in its entirety holding that the objective five-year statutory limitation period for lodging the civil claim for damages had started to run in 1993 (see paragraph 38 above). The Supreme Court held that the objective five-year statutory limitation period should have been calculated from 26 November 2001 when the applicant had had an objective possibility to learn about the fate of his parents (see paragraph 40 above).

91. Consequently, the objective statutory limitation period for lodging the civil claim for damages, as calculated by the Supreme Court in the present case, may be regarded as imposing a restriction on the applicant's right of access to a court. The Court must therefore examine whether that right was unduly restricted.

(β) As to whether the restriction pursued a legitimate aim

92. The Court has already held that statutory limitation periods serve several important purposes, namely to ensure legal certainty and finality, protect potential respondents from stale claims which might be difficult to counter and prevent the injustice which might arise if courts were required to decide upon events which had taken place in the distant past on the basis of evidence which might have become unreliable and incomplete because of the passage of time (see *Stubbings and Others v. the United Kingdom*, 22 October 1996, § 51, *Reports of Judgments and Decisions 1996‑IV*, and *Nijemčević v. Croatia* (dec.), no. 51519/12, § 40, 11 September 2018). Therefore, litigants should expect those rules to be applied.

(γ) As to whether the restriction was proportionate to the legitimate aim pursued

93. As the above considerations show, the existence of a limitation period *per se* is not incompatible with the Convention. What the Court needs to ascertain in a given case is whether the manner in which it was applied is compatible with the Convention (see *Vrbica v. Croatia*, no. 32540/05, § 66, 1 April 2010). Accordingly, in order to satisfy itself that the very essence of the applicant's right of access to a court was not impaired, the Court must examine whether the manner in which the Supreme Court calculated the running of the objective statutory limitation period for lodging his civil claim for damages infringed the proportionality principle (see *Vrbica*, cited above, § 71, and *Osu v. Italy*, no. 36534/97, § 35, 11 July 2002).

94. The Court notes that under section 376 of the Civil Obligations Act, a claim for damages becomes statute-barred three years after the injured party learned of the damage and the person who caused it (subjective statutory limitation period), and that in any event it becomes statute-barred five years after the damage occurred (objective statutory limitation period, see paragraph 46 above). Thus, as confirmed by the Supreme Court's case-law, after the expiry of the objective five-year statutory limitation period, the injured party can no longer claim damages, even if the subjective three-year period has not yet expired or has not even started to run (see paragraph 49 above).

95. The Court observes that in cases in which the plaintiffs had sought damages from the State in connection with the death of their family members of which they had learned only subsequently, the Supreme Court's

practice is to calculate the objective five-year statutory limitation period for lodging the civil claim from the date on which the plaintiffs had learned about the death of their family members (see paragraph 50 above).

96. However, the Court does not find it unreasonable that in circumstances where the exact day on which the plaintiffs had learned about the death of their family members could not be established, the domestic courts would rely on the time at which they had had an objective opportunity to learn about it.

97. The central issue that remains to be examined in is whether the Supreme Court's conclusion that the applicant had had an objective possibility to learn about the death of his parents already in November 2001 constituted a disproportionate limitation of his right of access to a court.

98. The Court reiterates that it is not its function to deal with errors of fact or law allegedly made by a national court, unless and in so far as they may have infringed rights and freedoms protected by the Convention. Normally, issues such as the weight attached by the national courts to given items of evidence or to findings or assessments in issue before them for consideration are not for the Court to review. The Court should not act as a 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 *Bochan v. Ukraine* (no. 2) [GC], no. 22251/08, § 61, ECHR 2015, and *Zubac*, cited above, § 79).

99. In the present case, the Supreme Court deemed that the applicant had had an objective possibility to learn about the death of his parents already on 26 November 2001 because that was when the indictment against general R.A. before the ICTY had listed both of his parents among the unlawfully killed persons (see paragraph 40 above).

100. The Court has already held, in the context of examining the timelines of complaints under the procedural aspect of Article 2 of the Convention alleging that the investigation into the death of the applicants' family members had not been effective, that applicants whose close relatives had been killed could be expected to display due diligence and take the requisite initiative in informing themselves about the progress made in the investigation (see *Varnava and Others v. Turkey* [GC], nos. 16064/90 and 8 others, § 158, ECHR 2009, *Narin*, cited above, § 45, and *Bogdanović*, cited above, § 42). This applies irrespective of whether the offence is legally classified as a murder or a war crime.

101. The Court notes in this connection that the indictment of 21 May 2001 against general R.A., mentioning the applicant's mother as one of the victims, was published on the ICTY website at some point between 21 May and September 2001. Indeed, the list of victims attached to that indictment, including the applicant's mother, was cited in a bulletin published in Serbia in September 2001. The bulletin stated that the list had been taken from the ICTY website (see paragraph 52 above).

102. The Court also accepts that the indictments filed against Croatian army generals before the ICTY for crimes committed in the Medak Pocket in September 1993 aroused great media attention in Croatia. The Government submitted articles published in Croatia in that respect, dating from 2002 and 2003 (see paragraph 53 above). The applicant, knowing that his parents had disappeared in the course of the military operation in the Medak Pocket in September 1993, could not have remained unaware of those publications. In fact, as the son of persons who had gone missing during the military operation, he could have been expected to show due diligence and to turn to the Croatian authorities for information regarding their fate (see paragraph 100 above). Had he done so at any point after November 2001 when the ICTY indictment was filed against general R.A., and especially after late 2002 and/or beginning of 2003 when the Croatian authorities started investigating the crimes committed in the Medak Pocket (see paragraphs 12-14 above), he could have learned about the damage (the death of his parents), as well as about the perpetrators (the Croatian army soldiers). In other words, he could have obtained all the information necessary in order to seek damages from the State, and therefore even the subjective three-year statutory limitation period for lodging the civil claim for damages would have started to run (see *Nijemčević*, cited above, § 46). Indeed, the applicant need not have waited for the outcome of the criminal proceedings against the Croatian army generals for the crimes committed in the Medak Pocket because the State was *ex lege* liable for the damage perpetrated by its soldiers to third persons (ibid., §§ 24 and 47).

103. However, as noted above, the applicant did not contact the police or the State Attorney's Office in relation to the disappearance of his parents, except in the context of the civil proceedings for damages in 2007. Nor did he institute proceedings with a view to having them declared dead until 2011, which was some eighteen years after their disappearance (see paragraph 43 above).

104. Having regard to the above observations, the Court is of the view that the manner in which the Supreme Court calculated the objective five-year statutory limitation period for lodging the civil claim for damages in the applicant's case did not constitute a disproportionate restriction on his right of access to a court.

105. There has accordingly been no violation of Article 6 § 1 of the Convention on that account either.

FOR THESE REASONS, THE COURT,

1. *Declares*, unanimously, the complaints under Article 6 § 1 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds*, by four votes to three, that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 11 June 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos
Registrar

Krzysztof Wojtyczek
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Turković, Pejchal and Ilievski is annexed to this judgment.

K.W.O.
A.C.

JOINT DISSENTING OPINION OF JUDGES TURKOVIĆ, PEJCHAL AND ILIEVSKI

1. To our regret we cannot agree with the majority that in the present case the very essence of the applicant's right of access to a court was not impaired.

2. The dispute in the present case concerned a complex issue, namely the fixing of the starting-point of the objective five-year limitation period under Croatian law in relation to claims for damages lodged by individuals whose relatives had been killed during the war but of whose death they had learned only subsequently. As noted in the judgment, in such situations the Supreme Court's well-established practice is to calculate the objective five-year statutory limitation period for lodging a civil claim from the date on which the plaintiffs learned about the death of their family members, because it is only after learning about that circumstance that the injured party can suffer emotional pain (see paragraphs 40 and 50 of the judgment).

3. We agree with the majority that in circumstances where the exact date on which the plaintiffs learned about the death of their family members cannot be established, it would not be unreasonable to rely on the point in time at which they had an objective opportunity to learn about it. However, we believe that the majority were wrong in uncritically accepting the Supreme Court's application of such an exception in the present case, for the following reasons.

4. Contrary to the Supreme Court's practice in the matter, in the present case the first and second-instance courts failed to establish when the applicant had learned about the death of his parents. Instead, the first-instance court wrongly held that the applicant's civil claim could not become statute-barred (see paragraph 34 of the judgment), whereas the second-instance court wrongly calculated the objective five-year statutory limitation period for lodging the civil claim from the time at which the damaging event had occurred (see paragraph 38 of the judgment). The Supreme Court therefore had to rectify the lower courts' decisions as to the running of the statutory limitation period for the applicant's civil claim for damages. Once it had decided not to refer the case back to the lower courts, the Supreme Court found itself in a situation in which it was the first court called upon to fix the starting-point of the objective five-year limitation period. Not being able itself to take evidence and determine the relevant facts, the Supreme Court decided to calculate the objective statutory limitation period from the time at which an objective opportunity had arisen for the applicant to learn about the death of his parents and not, as required by the well-established practice of the domestic courts, from the date on which the applicant had actually learned about their death.

5. Contrary to the Government's suggestion (see paragraph 75 of the judgment), it does not follow from the Supreme Court's case-law that learning about the death of a family member is the same as having an objective possibility to learn about it. Indeed, none of the Supreme Court's judgments on the subject, save for that in the applicant's case, mentions an objective possibility to learn about the death of a family member (see paragraph 50 of the judgment). For example, in its judgment no. Rev 2617/11-3 of 11 March 2014, the Supreme Court explained that "[t]he non-pecuniary damage on account of the emotional pain related to the death of a close person cannot occur before the injured party actually learns about the death of the close person, because owing to the nature of the matter it is only after learning about that circumstance that the injured party can suffer emotional pain" (ibid.). By that judgment the Supreme Court quashed the lower courts' judgments calculating the statutory limitation period as running from 10 September 1995, when the corpse of the plaintiffs' family member had been found, deeming that it had not been established in the proceedings "that it was the plaintiffs who had found [his] body on 10 September 1995, that is, that on that day they had learned about his death" (ibid.).

6. By calculating the objective statutory limitation period, exceptionally, from the time at which the applicant had an objective opportunity to learn about the death of his parents, the Supreme Court has put the applicant in a less favourable position compared with claimants for whom the objective statutory limitation period is calculated from the date on which they actually learned about the death of their relatives. This is especially problematic in the present case, since the Supreme Court drew its conclusion without ever giving the applicant a real opportunity to submit arguments as to when he had actually learned about the death of his parents. Furthermore, neither the lower courts nor the Supreme Court ever addressed the fairly detailed arguments which the applicant raised in that regard before the lower courts, and in fact no reasoned finding was ever made to the effect that it was impossible in the present case to establish when the applicant had actually learned about the death of his parents.

7. Furthermore, the Supreme Court concluded uncritically that the applicant had had an objective possibility to learn about his parents' killing as early as 26 November 2001, because on that day General R.A. had been indicted before the ICTY and the applicant's parents had been listed among the unlawfully killed persons (see paragraph 40 of the judgment). At no point did the court give the applicant an opportunity to rebut that conclusion.

8. In this regard we find it important to point out the following. The fact that the applicants' parents had been listed as victims of Operation Pocket-93 in the ICTY indictment of 26 November 2001 did not mean that their fate had already been established beyond doubt at that point, enabling

the applicant to successfully claim damages for their deaths. Indeed, their bodies have not been found to date (see paragraph 80 of the judgment), and it was only in the proceedings conducted before the Croatian criminal courts, which finally ended in 2009, that it was established by means of witness testimony when and how they had actually died (see paragraphs 21-24 of the judgment).

9. Even disregarding the latter argument, in the present case the Supreme Court did not provide any reasons for its conclusion. It did not clarify whether the applicant had or could reasonably have had access to the information contained in the list of victims attached to the indictment on the same day that it was filed before the ICTY, or by what other means he could have learned about the death of his parents by the time the indictment was filed before the ICTY. As we have already pointed out, since the Supreme Court was the first court in the proceedings to adopt such a conclusion, the applicant had no opportunity to rebut it.

10. It was only in the proceedings before this Court that the Government attempted to clarify whether the indictment filed against R.A. before the ICTY, together with the attached list of victims, had been published in May and November 2001, and whether it had become available to the Croatian public at that time.

11. In fact, the Government did not submit any material evidence regarding the publication of the amended indictment of 26 November 2001, relied on by the Supreme Court and listing both of the applicant's parents as victims. Nor did the Government submit evidence of any media coverage in Croatia dating from 2001 and mentioning the indictment against General R.A. or the victims of Operation Pocket-93. They submitted a statement by the former President of Croatia published on the Internet in 2002 and two articles published in a political weekly magazine, one in 2002 and the other in 2003, but neither the statement nor the two articles mentioned the names of victims (see paragraph 53 of the judgment). There is no indication that the applicant himself was ever informed of the ICTY investigation or indictments.

12. Moreover, the identification information concerning the victims of Operation Pocket-93 does not appear to have become available to the Croatian authorities until late 2002 or early 2003 (see paragraphs 12 and 13 of the judgment). The State did not undertake any investigative steps regarding crimes committed in the course of Operation Pocket-93 before October 2002 (see paragraph 12 of the judgment). Accordingly, had the applicant contacted the national authorities for information regarding his parents' fate, he would not have been able to obtain it before the end of 2002 or the beginning of 2003 at the earliest. The objective five-year statutory limitation period for lodging a civil claim for damages would thus have expired in late 2007 at the earliest. We note that the applicant contacted the State Attorney's Office with a request for a friendly settlement

of the dispute, thereby interrupting the running of the statutory limitation period for lodging his civil claim for damages (see *Momčilović v. Croatia*, no. 11239/11, § 24, 26 March 2015) on 6 December 2007 (see paragraph 29 of the judgment).

13. Furthermore, the solution proposed by the majority revolves around the Court examining on its own initiative whether the applicant could have actually acquired knowledge of the death of his parents and the perpetrators within the subjective three-year statutory limitation period – something which the domestic courts never did in this case. Even if this would not have been problematic on its own, in our view the majority placed an excessive burden on the applicant by requiring him to have contacted the domestic authorities even before they had obtained any data on the victims of Operation Pocket-93 (this was at the end of 2002 or the beginning of 2003 at the earliest).

14. Finally, we disagree with the majority that the case-law on calculating the timeliness of complaints submitted to the Court under the procedural aspect of Article 2 of the Convention should be applied when assessing the timeliness of a civil claim for damages submitted to the domestic courts (see paragraphs 100 and 102-03 of the judgment).

15. Accordingly, in our view, the fact that in the present case the Supreme Court calculated the objective statutory limitation period for lodging the civil claim for damages from 26 November 2001 imposed a disproportionate limitation on the applicant's right of access to a court. In our view, there has therefore been a violation of Article 6 § 1 of the Convention in the present case.