

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

FOURTH SECTION

CASE OF ĐURIĆ v. SERBIA

(Application no. 24989/17)

JUDGMENT

Art 6 § 1 (civil) • Fair hearing • Refusal to grant the applicant the status of a civilian person disabled as a consequence of war and, thus, the related benefits • Legal and factual inability of applicant to have claim properly examined • Applicant not afforded a reasonable opportunity to present his case, including at an oral hearing, under conditions that would not have placed him at a substantial disadvantage

Prepared by the Registry. Does not bind the Court.

STRASBOURG

6 February 2024

FINAL

06/05/2024

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



In the case of Đurić v. Serbia,

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

Gabriele Kucsko-Stadlmayer*, President*,
Tim Eicke,
Branko Lubarda,
Armen Harutyunyan,
Ana Maria Guerra Martins,
Anne Louise Bormann,
Sebastian Răduleţu*, judges*,
and Ilse Freiwirth, *Section Registrar,*

Having regard to:

the application (no. 24989/17) against Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Serbian national, Mr Milan Đurić ("the applicant"), on 23 March 2017;

the decision to give notice to the Serbian Government ("the Government") of the complaints concerning the alleged unfairness of the domestic proceedings, the Government's refusal to recognise the applicant's disability status and the procedural discrimination allegedly suffered by the applicant, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 16 January 2024,

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

INTRODUCTION

1. The application concerns the applicant's alleged entitlement to a disability benefit. In particular, the applicant maintained that at the age of 13, he had been severely injured by an explosive device which had been left behind following a previous armed conflict. He had subsequently sought recognition of his status as a civilian person disabled as a consequence of a war (*civilni invalid rata*) in order to obtain a number of related benefits but his request had ultimately been rejected by the domestic authorities.

2. Under Articles 6 and 14 of the Convention and Article 1 of Protocol No. 1, the applicant complained (a) of the unfairness of the administrative and judicial review proceedings in his case; (b) about the respondent State's refusal to grant him the disability status in question and, consequently, the related benefits, despite his alleged eligibility; and (c) that as a member of a group of persons consisting of civilians disabled as a consequence of war he had been procedurally discriminated against compared with all the other persons seeking justice.

THE FACTS

3. The applicant was born in 1983. He lives in Valjevo and was represented by Mr S. Aleksić, a lawyer practising in the same town.

4. The Government were represented by their Agent, Ms Z. Jadrijević Mladar.

5. The facts of the case may be summarised as follows.

I. THE INCIDENT AND ITS AFTERMATH

6. On 14 April 1996, when he was 13 years old, the applicant was playing by the roadside in the hamlet of Tripkovići in Valjevska Kamenica when he found three blasting caps (*detonatorske kapisle*). The applicant considered that they had been left behind after previous armed conflicts.

7. The applicant then brought the caps home and tried to cut one of them in half with a metal saw. This caused a detonation and the applicant sustained serious bodily injuries. Notably, he lost his left eye and three fingers of his left hand and sustained severe damage to his right eye.

8. The applicant was subsequently treated for his injuries and continued his education in a specialised secondary school for the visually impaired.

II. ADMINISTRATIVE AND JUDICIAL REVIEW PROCEEDINGS

9. According to a witness statement supplied by the applicant's mother and a certain N.Š., in 1999 the applicant and his mother considered submitting a request for recognition of the applicant as a civilian person disabled as a consequence of war. In the end, however, they did not do so since an official employed with the relevant municipal authority dissuaded them from pursuing this course of action, saying that at the material time there had been no war-related activities.

10. On 22 March 2006, having apparently received encouragement from a local association of civilian persons disabled as a consequence of war, the applicant submitted a formal request to the same effect with the Department of Social Affairs of the Municipality of Valjevo and in so doing referred to the relevant legislation (see paragraph 28 below).

11. On 31 March 2006 the above-mentioned administrative authority ruled against the applicant on the grounds that he had not sustained the damage to his health on account of any war-related circumstances.

12. On 6 July 2006 the Ministry of Labour, Employment and Social Policy allowed an appeal by the applicant and quashed the impugned decision. The ministry noted, *inter alia*, the importance of written evidence in this context and referred to the relevant regulations (see paragraph 30 below).

13. On 26 January 2007, in the repeated proceedings at first instance, the applicant's request to be recognised as a civilian person disabled as a consequence of war was rejected once again. In its reasoning, the Department of Social Affairs of the Municipality of Valjevo noted, *inter alia*, that: (a) the applicant had been diagnosed as being 100% disabled on account of his loss of vision in both eyes; (b) a report of 29 November 2006 by the police stated that they had not been able to produce the original police report prepared following the detonation nor could they comment on the type and origin of the blasting caps in question, since the two remaining blasting caps out of the three found by the applicant, as well as the above-mentioned original police report, had all been destroyed during the NATO bombing of the Valjevo police department building in 1999; (c) the public prosecution service, likewise, had not been able to find any reports or complaints concerning the incident; and (d) there was no written evidence from the material time, as required by the relevant legislation (see paragraph 30 below), which would have made it possible to ascertain whether the applicant's injuries had been caused by military ordnance left behind following a war or explosives used for railway construction purposes at the material time.

14. On 20 June 2007 the Ministry of Labour and Social Policy upheld the above-mentioned decision on appeal.

15. On 1 October 2008 the Supreme Court quashed the final decision given by the administrative authorities. The court opined, *inter alia*, that according to the material in the case file, including the Valjevo police department certificate issued on 21 March 2006 (see paragraph 22 below), there was in fact written evidence from the period when the applicant had sustained his injuries. There was also a police statement of 29 November 2006 which referred to an existing on-site investigation report that had been prepared by the police on 16 April 1996 and then forwarded to the public prosecution service (see paragraph 23 below). Lastly, there were numerous medical documents from the time when the injury had occurred, which was why, in the forthcoming administrative proceedings, the authorities, having regard to the relevant provision of the law (see paragraphs 28, 30 and 32-34 below), should correctly and comprehensively establish the facts of the case and then decide as to whether the applicant should be granted the status of a civilian person disabled as a consequence of war.

16. Following additional remittals in the administrative and judicial review proceedings and the repeated rejection of the applicant's request by the administrative authorities, on 28 February 2013 the Administrative Court noted, in response to a complaint by the applicant about the delay, that the administrative authorities had in the meantime adopted the relevant decisions, which was why the applicant's request for an oral hearing had become moot, as had his further request for the Administrative Court itself to adjudicate the matter in question.

17. On 1 November 2013 the first-instance municipal authority in Valjevo again rejected the applicant's request to be recognised as a civilian person disabled as a consequence of war. It essentially restated the reasoning referred to in paragraph 13 above and held that there had thus been no written evidence from the time when the applicant had sustained his injuries from which it could be reliably determined that the explosive device had indeed been a residual explosive remnant of war.

18. On 16 December 2013 the Ministry of Labour, Employment and Social Policy rejected an appeal lodged by the applicant and thus upheld the above-mentioned decision.

19. On 3 November 2014 the Administrative Court ruled against the applicant, his action having been lodged on 14 May 2014. In its reasoning, the court stated, *inter alia*, that the administrative authorities had been correct in their rejection of the applicant's request, notably because the relevant legal requirements had indeed not been met (see paragraphs 28 and 30 below). In particular, the applicant had failed to provide any written evidence from the time of the explosion as regards the origin of the blasting cap in question, that is, whether it was in fact a residual explosive remnant of war or not. The court also stated that given the nature of the applicant's case, there was no need to either hold an oral hearing or to exercise its "full jurisdiction" within the meaning of the law (see paragraph 41 below).

III. PROCEEDINGS BEFORE THE CONSTITUTIONAL COURT

20. On 19 February 2015 the applicant lodged an appeal with the Constitutional Court.

21. On 6 October 2016 the Constitutional Court partly accepted the applicant's appeal. It found a violation of his right to a trial within a reasonable time and awarded him the equivalent of 600 euros (EUR) in Serbian dinars in respect of the non-pecuniary damage suffered. The applicant's remaining complaints were dismissed. The Constitutional Court, *inter alia*, endorsed the judgment of the Administrative Court, as well as its reasoning (see paragraph 19 above), and noted, as regards the applicant's complaint about the "prioritisation of written evidence", that the evidentiary regulations concerning one's status as a civilian person disabled as a consequence of war were *lex specialis* compared with evidence-related provisions regulating the general conduct of administrative proceedings (see paragraphs 30 and 35 below).

IV. OTHER RELEVANT FACTS

22. On 21 March 2006 the Valjevo police department issued a certificate (see paragraph 15 above) stating, *inter alia*, that on 14 April 1996 the applicant had been injured by an explosive device. The injuries had been

severe and the police had carried out an on-site investigation at the material time. The blasting caps in question had been of "unknown origin" (*nepoznatog porekla*) and had been left behind after previous wars (*zostale iz prethodnih ratova*). The police report which had been prepared in this connection had been forwarded to the public prosecution service. The certificate itself was furnished for the purposes of verifying the applicant's "peacetime disability status".

23. On 29 November 2006, in response to a request from the municipal authorities, the Valjevo police department issued an additional written statement (see paragraphs 13 and 15 above) based on, *inter alia*, the testimony of a retired police inspector. The inspector was interviewed by another police officer on 16 October 2006, in the absence of the applicant or his representative. In addition to reaffirming the facts summarised in paragraph 22 above, the statement of the Valjevo police department of 29 November 2006 noted that after the on-site investigation of 16 April 1996, the two remaining blasting caps had been brought to the Valjevo police department premises. However, those items were subsequently destroyed during the bombing of the police building, which was part of the NATO intervention (see paragraph 13 above), and for that reason the police could not provide any clarification as to the kind and origin of the blasting caps.

24. The above-mentioned NATO intervention occurred between 24 March and 10 June 1999.

25. Between 1996 and 2016 the applicant underwent eight operations and medical treatments in Serbia, Belgium and Russia.

RELEVANT LEGAL FRAMEWORK

I. CONSTITUTION OF THE REPUBLIC OF SERBIA (*USTAV REPUBLIKE SRBIJE*, PUBLISHED IN THE OFFICIAL GAZETTE OF THE REPUBLIC OF SERBIA – OG RS – No. 98/06)

26. Article 69 § 1 of the Constitution provides, *inter alia*, that persons and families in need are entitled to assistance on the basis of the principles of social justice, humanism and respect for human dignity.

27. Article 69 § 4 provides, *inter alia*, that disabled persons, war veterans and victims of war are afforded special protection, in accordance with the law.

II. CIVILIAN PERSONS DISABLED AS A CONSEQUENCE OF WAR ACT (*ZAKON O PRAVIMA CIVILNIH INVALIDA RATA*, PUBLISHED IN OG RS No. 52/96), AS IN FORCE AT THE MATERIAL TIME

28. Article 2 of this Act defined a civilian person disabled as a consequence of war as a person who had suffered visible injuries to at least

50% of his or her body owing to wounds, injuries or contusions caused by abuse or deprivation of liberty by an enemy during wartime or during the execution of military operations or on account of "residual explosive remnants of war", enemy sabotage or terrorist acts.

29. Article 4 provided, *inter alia*, that a civilian person disabled as a consequence of war was, depending on the exact circumstances, entitled to, among other benefits, one or more of the following: (i) a personal disability allowance; (ii) an orthopaedic allowance; (iii) an assisted living allowance; (iv) health insurance, together with any other associated allowances; (v) free and privileged transportation services; and (vi) a food and accommodation allowance for travelling at the request of a State body.

30. Article 12 provided that "the fact that a person [had indeed] been killed or [had] been injured under the conditions prescribed by Article 2 of this Act [was to be] determined only ... [through the presentation of] ... written evidence" from the time when the fatality had occurred or the bodily injuries had been sustained.

31. This Act was repealed and replaced by other legislation on 1 January 2021.

III. 1997 GENERAL ADMINISTRATIVE PROCEEDINGS ACT (*ZAKON O OPŠTEM UPRAVNOM POSTUPKU*, PUBLISHED IN THE OFFICIAL GAZETTE OF THE FEDERAL REPUBLIC OF YUGOSLAVIA – OG FRY – Nos. 33/97 AND 31/01 AND IN OG RS No. 30/10), AS IN FORCE AT THE MATERIAL TIME

32. Article 15 of this Act provided, *inter alia*, that the authority in charge of the administrative proceedings was to ensure that a party thereto would not suffer any adverse consequences on account of being unaware of his or her rights guaranteed by law.

33. Article 126 provided, *inter alia*, that throughout the administrative proceedings the official in charge could engage in the determination of "factual circumstances" and the obtaining of evidence in order to establish even those facts which had not been raised or even referred to in the proceedings. The official in question was to order *ex officio* the obtaining of any such evidence if he or she deemed it necessary for the clarification of the matter in hand. The official in charge was also to obtain *ex officio* any information regarding the facts in respect of which official records had been kept by the relevant administrative authorities.

34. Article 127 provided, *inter alia*, that a party to the proceedings had to present the facts on which his or her claim was based in "an accurate, complete and specific manner". If the facts were not generally known, the party was obliged to propose evidence for his or her allegations and produce it, if possible. If the party failed to comply, the official in charge of the proceedings was to invite him or her to do so. The party could not be

requested to obtain and produce evidence that could be obtained more quickly and more easily by the official in charge of the proceedings.

35. Article 149 § 2 provided, *inter alia*, that all resources suitable for the establishment of facts in a particular case could be used as evidence, such as documents, testimonies by witnesses, statements by parties to the proceedings and the findings and opinions of expert witnesses and on-site investigations.

36. This Act was repealed and replaced on 1 June 2017.

IV. 1996 ADMINISTRATIVE DISPUTES ACT (*ZAKON O UPRAVNIM SPOROVIMA*, PUBLISHED IN OG RS No. 46/96), AS IN FORCE AT THE MATERIAL TIME

37. Article 32 of this Act provided, *inter alia*, that the court was to adjudicate administrative disputes in a "non-public session" (*nejavna sednica*).

38. Article 33 provided that depending on the complexity of the administrative matter, or if it otherwise found it necessary to better clarify the "state of affairs", the court could decide to hold an oral hearing. For the same reasons, a party to the administrative dispute could also propose that an oral hearing be held.

39. This Act was repealed and replaced on 30 December 2009 by the 2009 Administrative Disputes Act (see paragraphs 40-43 below).

V. 2009 ADMINISTRATIVE DISPUTES ACT (*ZAKON O UPRAVNIM SPOROVIMA*, PUBLISHED IN OG RS No. 111/09)

40. Article 33 of this Act provides that in an administrative dispute, the court is to decide on the basis of facts established at a public oral hearing. The court can adopt a decision in the absence of an oral hearing only if the subject matter of the dispute is such that it obviously does not require the direct hearing of the parties or a special determination of facts or if the parties themselves expressly agree not to have an oral hearing in the case. The court is obliged to state, in particular, the reasons why it has decided not to have an oral hearing.

41. Article 43 provides, *inter alia*, that when it finds that an impugned administrative decision should be set aside, the court itself is to adjudicate the administrative matter by means of a judgment if the nature of the matter allows it and if the established facts provide a reliable basis for so doing. Such a judgment will replace the impugned administrative decision in all respects (dispute with full jurisdiction). A judgment of this kind must, however, be excluded when the subject of the administrative dispute is a decision adopted at the discretion of an administrative body. In certain matters, a dispute with full jurisdiction may also explicitly be excluded by a *lex specialis*. If a plaintiff requests a court to resolve an administrative matter by exercising its

full jurisdiction, the court must specifically state the reasons why it did not accept a request to this effect. In cases where the setting aside of the impugned administrative decision followed by repeated proceedings before the relevant administrative authorities would cause damage to the plaintiff which could be difficult to compensate for, but where the court itself has already established the facts before it, the court is to adopt a decision exercising its full jurisdiction, unless such dispute is otherwise excluded by law.

42. Article 77 § 1 provides, *inter alia*, that ongoing administrative disputes brought before the date of the entry into force of this Act are to be dealt with by the Administrative Court in accordance with the procedural rules which were applicable until that point in time.

43. This Act repealed and replaced the 1996 Administrative Disputes Act (see paragraphs 37-39 above) on 30 December 2009.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

44. The applicant complained under Article 6 § 1 of the Convention of the unfairness of the administrative and judicial review proceedings in his case, including the lack of an oral hearing and the legal obligation to use only written evidence dating back to the injury, notwithstanding the fact that it had been up to the respondent State authorities themselves to secure this evidence at the relevant time.

45. Article 6 § 1 of the Convention, in so far as relevant, reads as follows:

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

A. Admissibility

1. Submissions by the parties

46. The Government accepted that the applicant's complaint about the lack of an oral hearing, in so far as it concerned the Administrative Court's judgment of 3 November 2014 (see paragraph 19 above) was compatible *ratione materiae* with Article 6 § 1 of the Convention, notwithstanding the State's reservation contained in the instrument of ratification of the Convention deposited in 2004. In particular, those proceedings had been carried out on the basis of the subsequently adopted 2009 Administrative Disputes Act, which had repealed and replaced the previous procedural legislation referred to in the reservation, whereby the courts in Serbia did not, as a rule, hold oral public hearings when deciding in the course of administrative disputes (see paragraphs 37-43 above). In any event, the Serbian government's reservation was withdrawn by May 2011 and the

proceedings resulting in the Administrative Court's judgment were brought on 14 May 2014.

47. The applicant made no comment in that connection.

2. The Court's assessment

(a) The reservation deposited upon ratification

48. As noted in paragraph 46 above, the Government accepted that the applicant's complaint about the lack of an oral hearing, in so far as it concerned the Administrative Court's judgment of 3 November 2014 was compatible *ratione materiae* with Article 6 § 1 of the Convention. Given the explanation provided in this connection, the Court sees no reason to hold otherwise.

(b) Applicability of Article 6 § 1 of the Convention

49. While the Government have not raised an objection as regards the applicability of Article 6 § 1 of the Convention, the Court considers that it has to address this issue of its own motion (see, for example and *mutatis mutandis*, *Studio Monitori and Others v. Georgia*, nos. 44920/09 and 8942/10, § 32, 30 January 2020).

50. As the question of applicability is an issue of the Court's jurisdiction *ratione materiae*, the general rule of dealing with applications should be respected and the relevant analysis should be carried out at the admissibility stage unless there is a particular reason to join this question to the merits (see *Denisov v. Ukraine* [GC], no. 76639/11, § 93, 25 September 2018). In the Court's view, no such reason exists in the present case, and the issue of the applicability of Article 6 § 1 of the Convention therefore falls to be examined at the admissibility stage.

51. The Court reiterates, in this connection, that for Article 6 § 1 in its civil limb to be applicable, there must be a "dispute" ("contestation" in French) regarding a "right" which can be said, at least on arguable grounds, to be recognised under domestic law, irrespective of whether it is protected under the Convention. The dispute must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise; and, finally, the result of the proceedings must be directly decisive for the right in question, mere tenuous connections or remote consequences not being sufficient to bring Article 6 § 1 into play (ibid., § 44, with further references; see also Grzęda v. Poland [GC], no. 43572/18, § 257, 15 March 2022, with further references). Lastly, the right must be a "civil" right (see Grzęda, cited above, § 257).

52. Article 6 § 1 does not guarantee any particular content of "civil rights and obligations" in the substantive law of the Contracting States: the Court may not create through the interpretation of Article 6 § 1 a substantive right which has no legal basis in the State concerned (ibid., § 258).

53. In order to decide whether the "right" in question has a basis in domestic law, the starting-point must be the provisions of the relevant domestic law and their interpretation by the domestic courts. The Court reiterates that it is primarily for the national authorities, in particular the courts, to resolve problems of interpretation of domestic legislation. Unless the interpretation is arbitrary or manifestly unreasonable, the Court's role is confined to ascertaining whether the effects of that interpretation are compatible with the Convention. Thus, where the superior national courts have analysed in a comprehensive and convincing manner the precise nature of the impugned restriction of access to a court, on the basis of the relevant Convention case-law and principles drawn therefrom, the Court would need strong reasons to differ from the conclusion reached by those courts by substituting its own views for theirs on a question of interpretation of domestic law and by finding, unlike them, that the person concerned arguably had a right recognised by domestic law (ibid., § 259, with further references).

54. In carrying out this assessment, it is necessary to look beyond appearances and the language used and to concentrate on the realities of the situation (see *Roche v. the United Kingdom* [GC], no. 32555/96, § 121, ECHR 2005-X, and *Boulois v. Luxembourg* [GC], no. 37575/04, § 92, ECHR 2012, with further reference).

55. It is the right as asserted by the applicant in the domestic proceedings that must be taken into account in order to assess whether Article 6 § 1 is applicable. Where there was a genuine and serious dispute about the existence of that right, a decision by the domestic courts that there was no such right does not remove, retrospectively, the arguability of the claim (see *Károly Nagy v. Hungary* [GC], no. 56665/09, § 63, 14 September 2017, with further references).

56. Turning to the present case, it is now well established that disputes over entitlements to social security or welfare benefits, including, for example, sickness benefits and welfare disability allowances, generally fall within the scope of Article 6 § 1 of the Convention (see, for example, *Fazia Ali v. the United Kingdom*, no. 40378/10, § 58, 20 October 2015; *Tsfayo v. the United Kingdom*, no. 60860/00, § 40, 14 November 2006; *Salesi v. Italy*, 26 February 1993, § 19, Series A no. 257-E; *Schuler-Zgraggen v. Switzerland*, 24 June 1993, § 46, Series A no. 263; *Feldbrugge v. the Netherlands*, 29 May 1986, §§ 25-40, Series A no. 99; and *Deumeland v. Germany*, 29 May 1986, §§ 59-74, Series A no. 100).

57. The Court notes that the proceedings at issue concerned the applicant's request to be recognised as a civilian person disabled as a consequence of war, which in turn, on the basis of the relevant national legislation, would have made it possible for him to obtain a number of related benefits and/or allowances (see paragraph 29 above). At the same time, the applicant's injury as a consequence of the explosion was undisputed by the domestic authorities. The origin, therefore, of the explosive device could have

been either civilian or war-related in nature. Beyond that, the only disputed issues were whether the blasting cap was indeed a "residual explosive remnant of war" and the manner in which proof thereof could be adduced in the proceedings (see paragraphs 19 and 30 above). It follows in this situation that the applicant's request for the recognition of the status in question was arguable (see the case-law quoted in paragraph 51 above). The applicability of Article 6 § 1 of the Convention does not, of course, necessarily entail that an applicant has to be successful in his or her litigation domestically, nor does a decision by the domestic courts to reject a claim necessarily remove, retrospectively, its arguability (see *Grzęda*, cited above, § 268; see also the case-law quoted in paragraph 55 above).

(c) Conclusion

58. In view of the foregoing, the applicant's complaint is compatible *ratione materiae* with the provisions of Article 6 § 1 of the Convention. It is also neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 thereof. The complaint must therefore be declared admissible.

B. Merits

1. Submissions by the parties

(a) The applicant

59. According to the applicant, the national authorities had been too intransigent when it came to the kind of evidence which could be used in the proceedings, that only being written evidence dating back to the time when the injury was sustained. They should instead have relied on the general procedural regulations and the principle of equity and made it possible for the applicant to personally take part in an oral hearing where he could have presented his case and disputed the opposing claims.

60. The relevant provisions of the Civilian Persons Disabled as a Consequence of War Act thus made it effectively impossible for a person in a situation such as the one faced by the applicant to have his or her disability status recognised (see paragraph 30 above).

61. As for the passage of time, it should be noted that the applicant was only 13 years old at the time of the events and that the initial focus of his parents was, quite naturally, on his medical recovery rather than on seeking immediate legal redress. In fact, between 1996 and 2016 the applicant underwent numerous operations and medical treatments (see paragraph 25 above). Nevertheless, in 1999 the applicant and his mother had already considered submitting a request for the applicant's recognition as a civilian person disabled as a consequence of war but were dissuaded from so doing

by an official employed with the municipal authorities (see paragraph 9 above).

62. Lastly, the applicant submitted that the Administrative Court, in its judgment of 3 November 2014, had refused to take into account various other written documents, including medical reports, contemporary witness statements and even documents prepared by the police themselves (see paragraphs 19, 22 and 23 above).

(b) The Government

63. The Government maintained that there had been no violation of procedural fairness in the present case. Notably, whereas Article 149 § 2 of the General Administrative Proceedings Act (see paragraph 35 above) had provided for the possibility of using all types of evidence, Article 12 of the Civilian Persons Disabled as a Consequence of War Act (see paragraph 30 above) had not. It had specified, instead, that the only admissible evidence had been written evidence dating back to the time when the injuries in question had been sustained. The latter piece of legislation had, of course, been *lex specialis* and as such had been directly applicable to the proceedings in the applicant's case. The burden of proof had also been on the applicant, or rather his legal representatives, since he had been a minor at the material time. No relevant evidence, however, had been put forth by them and the assertion that the applicant's injuries had been sustained on account of an "explosive remnant of war" had thus remained unsubstantiated.

64. Turning to the certificate and the statement of the Valjevo police department of 21 March and 29 November 2006 respectively (see paragraphs 22-24 above), the Government noted that they had both been issued some ten years after the incident. Moreover, the former document had been specifically furnished for the purposes of obtaining the applicant's peacetime disability status and had noted, *inter alia*, that the origin of the blasting caps had been unknown. The statement of 29 November 2006, had, for its part, recounted, *inter alia*, that after the on-site investigation the two remaining blasting caps had been brought to the premises of the Valjevo police department where they had remained until they had been destroyed by the NATO bombing in 1999. Since the investigation in respect of those explosive devices had not been carried out up to that point, the Valjevo police department had been unable to provide any information in respect of their type or origin.

65. The Government further stated that they were aware of the importance of the national proceedings for the applicant but still contended that there had been no breach of Article 6 § 1 of the Convention. The applicant had, in fact, had the possibility, in accordance with the law, of providing the necessary evidence regarding the origin of the explosive device in question but had unfortunately failed to do so. It had also taken the applicant some ten years to bring proceedings for the formal recognition of his status as a civilian

person disabled as a consequence of war. The NATO bombing of 1999, which had destroyed the blasting caps, had occurred approximately three years after the applicant's accident, meaning that there had been enough time during which their type and origin could have been established. In any event, it had not been up to any government body or authority to undertake such actions of its own motion.

66. As regards an oral hearing, the Government acknowledged that there had been no oral hearing in the course of the proceedings at issue, but they were of the opinion that this fact alone could not amount to a violation of Article 6 § 1 of the Convention.

67. In particular, although Article 33 of the 2009 Administrative Disputes Act (see paragraph 40 above) provided that, in an administrative dispute, a court of law, as a rule, had to decide on the basis of facts established at an oral public hearing, this obligation was not absolute. A court could also adopt a decision in the absence of an oral hearing if the subject matter of the dispute was such that it obviously did not require the direct hearing of the parties or if the parties themselves expressly agreed not to have an oral hearing. In that situation, however, the court was obliged to state the reasons why no oral hearing was necessary. The proceedings at issue in the present case, in the Government's view, had involved exactly the kind of case which required no oral hearing, as explained by the Administrative Court itself in its judgment of 3 November 2014 (see paragraph 19 above).

68. The Government, lastly, argued that it remained unclear as to what, in any event, could have been the "subject of an oral hearing" in a situation where the relevant legislation (see paragraph 30 above) explicitly required written evidence only, dating back to the injury and where, for example, any witness statements would have had no probative value and could not be used as evidence.

2. The Court's assessment

(a) Relevant principles

(i) As to the adversarial principle and the principle of equality of arms

69. The Court notes that the right to a fair hearing as guaranteed by Article 6 § 1 of the Convention includes the right of the parties to the proceedings to submit any observations that they consider relevant to their case. The purpose of the Convention being to guarantee not rights that are theoretical or illusory but rights that are practical and effective, this right can only be seen to be effective if the observations are actually "heard", that is duly considered by the court in question. In other words, the effect of Article 6 is, among others, to place the "tribunal" under a duty to conduct a proper examination of the submissions, arguments and evidence adduced by the parties, without prejudice to its assessment of whether they are relevant (see

Perez v. France [GC], no. 47287/99, § 80, ECHR 2004-I, with further references).

70. The admissibility of evidence is primarily a matter for regulation by national law and, as a general rule, it is for the national courts to assess the evidence before them. The Court's task under the Convention is rather to ascertain whether the proceedings as a whole, including the way in which evidence was taken, were fair (see, for example, *Elsholz v. Germany* [GC], no. 25735/94, § 66, ECHR 2000-VIII, and *Devinar v. Slovenia*, no. 28621/15, § 45, 22 May 2018, both with further references).

71. The Court reiterates that the adversarial principle and the principle of equality of arms, which are closely linked, are fundamental components of the concept of a "fair hearing" within the meaning of Article 6 § 1 of the Convention (see *Regner v. the Czech Republic* [GC], no. 35289/11, § 146, 19 September 2017). They require a "fair balance" between the parties: each party must be afforded a reasonable opportunity to present his or her case under conditions that do not place him or her at a substantial disadvantage *vis-à-vis* his or her opponent or opponents (see *Andrejeva v. Latvia* [GC], no. 55707/00, § 96, ECHR 2009).

72. However, the rights deriving from these principles are not absolute. The Court has already ruled, in a number of judgments, on the particular case in which precedence is given to superior national interests when denying a party fully adversarial proceedings. The Contracting States enjoy a certain margin of appreciation in this area. However, it is for the Court to determine in the last instance whether the requirements of the Convention have been complied with (see *Regner,* cited above, § 147, with further references).

(ii) As to the "right to a hearing"

73. The right to a hearing is not only linked to the question whether the proceedings involve the examination of witnesses who will give their evidence orally. It is also important for litigants to have the opportunity to state their case orally before the domestic courts. Thus, the right to an oral hearing is one element underpinning the equality of arms between the parties to the proceedings (see *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. 55391/13 and 2 others, § 187, 6 November 2018, with further references).

74. According to the Court's established case-law, in proceedings before a court of first and sole instance the right to a "public hearing" within the meaning of Article 6 § 1 entails an entitlement to an "oral hearing" unless there are exceptional circumstances that justify dispensing with such a hearing (see *Göç v. Turkey* [GC], no. 36590/97, § 47, ECHR 2002-V).

75. A hearing may not be necessary, for example, when the case raises no questions of fact or law which cannot be adequately resolved on the basis of the case file and the parties' written observations (see, for example, *Jussila v. Finland* [GC], no. 73053/01, §§ 41 and 42, ECHR 2006-XIV, and *Bektashi*

Community and Others v. the former Yugoslav Republic of Macedonia, nos. 48044/10 and 2 others, § 80, 12 April 2018, with further references).

76. The exceptional character of the circumstances that may justify dispensing with an oral hearing essentially comes down to the nature of the issues to be decided by the national court, not to the frequency of such situations. The Court has recognised that disputes concerning benefits under social-security schemes are generally rather technical and their outcome usually depends on written opinions given by medical doctors. Many such disputes may accordingly be better dealt with in writing than in oral argument. Moreover, it is understandable that in this sphere the national authorities should have regard to the demands of efficiency and economy. Systematically holding hearings could be an obstacle to the particular diligence required in social-security matters (see *Schuler-Zgraggen*, cited above, § 58; *Salomonsson v. Sweden*, no. 38978/97, § 38, 12 November 2002; *Döry v. Sweden*, no. 28394/95, § 41, 12 November 2002; and *Lundevall v. Sweden*, no. 38629/97, § 38, 12 November 2002).

(b) Application of the above principles to the present case

77. Turning to the circumstances of the present case, the Court notes that Article 2 of the Civilian Persons Disabled as a Consequence of War Act defined a "civilian disabled as a consequence of war" as, *inter alia*, a person who had suffered visible bodily injuries to at least 50% of his or her body caused by a "residual explosive remnant of war" (see paragraph 28 above). Article 12 of the above-mentioned Act further provided, *inter alia*, that the fact that a person had indeed been injured under the conditions prescribed by Article 2 was to be determined only through the presentation of written evidence dating back to the time when the injury had been sustained (see paragraph 30 above).

78. It follows that the above requirement concerning the admissibility of evidence in proceedings such as those brought by the applicant in the present case was not merely a practice of the relevant authorities at a given time with the possibility of being adjusted depending on the particular circumstances of a case, but rather a specific legislative prerequisite which did not provide for any exceptions. This lack of flexibility was even recognised, albeit implicitly and on one occasion only, by the national authorities themselves in the applicant's case, notwithstanding their ultimate adherence to the above-mentioned evidentiary provisions of the Civilian Persons Disabled as a Consequence of War Act. Notably, on 1 October 2008 the Supreme Court held that the relevant administrative authorities could comprehensively establish the facts of the case while additionally having regard to, *inter alia*, some of the more general and certainly less strict rules of evidence contained in the General Administrative Proceedings Act (see paragraphs 15 and 32-34 above).

79. The Court would further note that neither the applicant, a minor at the time with acute medical issues, nor his parents can be blamed for the failure to establish the origin of the blasting caps between 1996 and 1999, when they were destroyed while in the respondent State's custody (see paragraphs 23-25 above). Despite the Government's contention that the authorities had had no legal obligation to establish their origin of their own motion (see paragraph 65 *in fine* above), this is unconvincing in view of the very nature of things, as well as unclear given the wording, *mutatis mutandis*, of Articles 15, 126 and 127 of the General Administrative Proceedings Act (see paragraphs 32-34 above). In addition, even though it took time for the applicant to bring formal proceedings for the recognition of the entitlement claimed, there was apparently no applicable domestic time-limit which would have barred him from so doing. The Government and the national authorities in the present case have not suggested otherwise.

80. In this situation, the Court cannot but conclude that the applicant was effectively faced with both a legal and a factual inability to have his claim properly examined (see the case-law quoted in paragraph 69 above), particularly bearing in mind that the police statement of 21 March 2006 was also not considered procedurally admissible, dating as it did from 2006 and not from the time of the applicant's injury. While that statement noted, on the one hand, that it had been issued for the purposes of verifying the applicant's "peacetime disability status" and that the blasting caps in question had been of unknown origin, it also acknowledged, on the other hand, that the blasting caps had indeed been left behind after previous wars (see paragraph 22 above). The statement thus clearly warranted closer examination by the relevant authorities.

81. Moreover, notwithstanding the particularities of holding an oral hearing in the context of a social security claim and the respondent State's margin of appreciation when it comes to conducting fully adversarial proceedings (see the case-law quoted in paragraphs 76 and 72 above, in that order), it would have also been beneficial, in the Court's view and in the very specific and country-specific circumstances of the present case, for a national court of law to have heard, at an oral hearing and in the presence of the applicant or his legal representative, the retired police officer, referred to in the police statement of 29 November 2006, who might have offered other relevant details (see paragraphs 23 and 19 above, in that order).

82. In view of the foregoing, the Court is of the opinion that the applicant did not have an effective right to a fair trial and was not afforded a reasonable opportunity to present his case, including at an oral hearing, under conditions that would not have placed him at a substantial disadvantage (see the case-law quoted in paragraphs 69, 71 and 74 above). There has accordingly been a violation of Article 6 § 1 of the Convention. It is understood that it is not for the Court to pronounce as to what the actual outcome of the impugned domestic proceedings should have been (see, *mutatis mutandis*, *Rakić and*

Others v. Serbia, nos. 47460/07 and 29 others, § 44, 5 October 2010) and noted that a lack of an oral hearing on 1 October 2008, in particular, was rendered moot by the Supreme Court's quashing judgment of the same date (see paragraph 15 above).

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

83. The applicant also complained under Article 1 of Protocol No. 1 about the respondent State's refusal to grant him the disability status in question and, consequently, the related benefits themselves.

84. The applicant lastly complained under Article 14 of the Convention that as a member of a group of persons consisting of civilians disabled as a consequence of war he had been procedurally discriminated against on the grounds that he had been obliged to only use written evidence dating back to the injury.

85. Article 14 of the Convention and Article 1 of Protocol No. 1 thereto read as follows:

Article 14

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Article 1 of Protocol No. 1

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

86. Having regard to the facts of the case, the submissions of the parties and its findings above, the Court considers that it has examined the main legal questions raised in the present application and that there is no need to give a separate ruling on the admissibility and merits of the complaints raised under Article 14 of the Convention and Article 1 Protocol No. 1 thereto (see, among many other authorities, *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

87. Articles 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."

88. The applicant claimed "approximately" 480,000 euros (EUR) in respect of pecuniary damage and EUR 30,000 in respect of non-pecuniary damage, the former on account of the unpaid disability allowance between 1996 and 2017 and the latter for the mental anguish suffered throughout the material time. The applicant, however, acknowledged that the calculation of pecuniary damage was not simple and asked the Court to award an appropriate amount. The applicant also claimed a total of EUR 3,338 for the costs and expenses incurred in the domestic proceedings and for those incurred before the Court. Lastly, the applicant requested that the Court order the respondent State to desist from any future violations in this context and adopt appropriate amendments to its legislation.

89. The Government contested those claims.

90. The Court notes that the applicant has not shown the existence of a causal link between the procedural violation found and the pecuniary damage alleged; it therefore rejects that claim in its entirety.

91. The Court would also refer to its settled case-law to the effect that when an applicant has suffered an infringement of the rights guaranteed by Article 6 of the Convention, he or she should, as far as possible, be put in the position in which he or she would have been had the requirements of that provision not been disregarded, and that the most appropriate form of redress would, in principle, be the reopening of the proceedings if requested (see, for example, *Öcalan v. Turkey* [GC], no. 46221/99, § 210, ECHR 2005-IV; *Popov v. Russia*, no. 26853/04, § 263, 13 July 2006; *Balažoski v. the former Yugoslav Republic of Macedonia*, no. 45117/08, § 39, 25 April 2013; and *Poposki and Duma v. the former Yugoslav Republic of Macedonia*, nos. 69916/10 and 36531/11, § 63, 7 January 2016).

92. As regards the present case, however, the Court would note that Article 56 of the 2009 Administrative Disputes Act provides, *inter alia*, that a judicial review "procedure finished by means of a final judgment or court decision will be reopened" upon the party's request if the view expressed in the subsequently adopted judgment of the European Court of Human Rights, concerning the same matter, "may have an impact" on the lawfulness of the proceedings in question. Article 57 of the same piece of legislation furthermore states, *inter alia*, that the reopening may be requested within six months from the date of publication of the decision of the European Court of Human Rights in the Official Gazette of the Republic of Serbia, but that after five years have passed since "the finality of the court's decision" a reopening of the proceedings can no longer be requested.

93. Having regard to the above and in particular the temporal aspect of whether the said reopening could still be requested by the applicant, the Court considers that, in the specific circumstances of the present case, the finding

of a violation of the Convention cannot constitute in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant.

94. The Court is also of the opinion that, in any event, the applicant has certainly suffered some non-pecuniary damage. Given the nature of the violation found in the present case and making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the amount of EUR 3,000 in this connection, plus any tax that may be chargeable.

95. As to the applicant's claim for costs and expenses, the Court reiterates that an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and were also reasonable as to their quantum. That is, the applicant must have paid them, or be bound to pay them, pursuant to a legal or contractual obligation, and they must have been unavoidable in order to prevent the violation found or to obtain redress (see, for example, *Stevan Petrović v. Serbia*, nos. 6097/16 and 28999/19, § 186, 20 April 2021). In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 3,000 covering costs and expenses under all heads, plus any tax that may be chargeable to the applicant.

96. Lastly, it is true that a judgment in which the Court finds a breach imposes on the respondent State a legal obligation not just to pay those concerned any sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress, as far as possible, the effects thereof (see, for example, *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII, and *Zorica Jovanović v. Serbia*, no. 21794/08, § 90, ECHR 2013). The Court, however, would also note that the legislation giving rise to the violation established by it (see paragraphs 30 and 77-82 above) was repealed and replaced by other legislation on 1 January 2021 (see paragraph 31 above) and that the latter legislation is clearly outside of the scope of the present case.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 6 § 1 of the Convention admissible;

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

3. *Holds* that there is no need to examine the admissibility and the merits of the complaints under Article 14 of the Convention and Article 1 of Protocol No. 1;

4. *Holds*

(a) that the respondent State is to pay the applicant, 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 the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(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 6 February 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth Registrar	Gabriele Kucsko-Stadlmayer President