



No breach of the Convention in case concerning claim for damages following killings in military operation by the Croatian army in 1993

In today's **Chamber** judgment¹ in the case of [Vujnović v. Croatia](#) (application no. 32349/16) the European Court of Human Rights held, by four votes to three, that there had been:

no violation of Article 6 § 1 (right to a fair trial/access to court) of the European Convention on Human Rights.

The case essentially concerned the civil proceedings for damages following the death of the applicant's parents during a military operation by the Croatian army in 1993. The applicant's claim was ultimately dismissed as statute-barred.

The applicant argued that the Supreme Court had been inconsistent when deciding on cases concerning compensation for the death of family members, as it had not used the same approach each time for calculating the statutory limitation period, and that the manner in which this time-limit had been calculated in his case had deprived him of access to a court.

The Court found that the cases relied on by the applicant as examples of inconsistency had concerned disappearances which had never been elucidated, whereas he had known that his parents had been killed in the 1993 operation several years before bringing his claim for damages. The Supreme Court cases referred to by the applicant had therefore involved different facts to the case concerning his parents and there could be no conflicting case-law.

Moreover, the manner in which the statutory limitation period had been calculated in his case, namely from 2001 when an indictment by the International Criminal Tribunal for the former Yugoslavia ("the ICTY") against a Croatian general had listed his parents among the victims of the operation, had not amounted to a disproportionate restriction on his right of access to court. The indictments against the Croatian generals had been widely reported in the media, and yet the applicant had not contacted the authorities for information about his parents' fate until 2007 in the context of the proceedings for damages. Nor had he instituted proceedings with a view to having his parents declared dead until 2011, some 18 years after their disappearance.

Principal facts

The applicant, Dušan Vujnović, is a Croatian national who was born in 1963 and lives in Zagreb.

The applicant's parents were killed during the war in 1993 when the Croatian army conducted a military operation to regain control from the Serbian forces over territory known as the "Medak Pocket".

Several years later investigations were carried out into the role of the Croatian army generals in the Medak Pocket military operation during which 51 people had been killed. The ICTY indicted several generals and passed the cases to the Croatian authorities for prosecution.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

In particular, a Croatian general, R.A., was indicted in 2001 by the ICTY and then in 2006 by the Croatian authorities with crimes against humanity and violations of the laws and customs of war in the course of “Operation Pocket-93”, notably for failing to prevent the massacring of civilians of Serbian ethnicity. Both indictments listed the applicants’ parents among the victims. The Croatian courts acquitted General R.A. of the charges in 2008, which decision became final in 2009.

In 2008 the applicant brought a civil claim against the State seeking damages for the killing of his parents by Croatian soldiers. The courts ultimately ruled against him in 2015. In particular the Supreme Court held that the applicant had had an objective possibility to learn about the death of his parents in 2001 when the ICTY indictment against General R.A. had listed both of them among the victims and that the five-year statutory limitation period should therefore have run from this point. As he had brought his claim in 2008, it was statute-barred.

In 2011 the applicant brought proceedings before the courts to have his parents declared dead and the courts issued decisions to that effect which became final in 2012 and 2013.

Complaints, procedure and composition of the Court

Relying on Article 2 (right to life), the applicant complained that the investigation into the death of his parents had been ineffective as it had failed to identify those responsible.

Also relying on Article 6 § 1 (right to a fair trial/access to court), he complained about the civil proceedings for damages, alleging that the practice of the Supreme Court for 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.

The application was lodged with the European Court of Human Rights on 2 June 2016.

Judgment was given by a Chamber of seven judges, composed as follows:

Krzysztof **Wojtyczek** (Poland), *President*,
Ksenija **Turković** (Croatia),
Aleš **Pejchal** (the Czech Republic),
Pere **Pastor Vilanova** (Andorra),
Pauliine **Koskelo** (Finland),
Tim **Eicke** (the United Kingdom),
Jovan **Ilievski** (North Macedonia),

and also Abel **Campos**, *Section Registrar*.

Decision of the Court

Article 2 (right to life/investigation)

The Government submitted that although the State Attorney’s Office had continued to investigate crimes committed during Operation Pocket-93 after General R.A.’s acquittal in 2008, as of that time the applicant’s parents had not been considered to be victims of a criminal offence. Moreover, despite a criminal complaint lodged by three persons (not the applicant) in September 2015, to date no new information had come to light which would undermine such a conclusion.

The Court reiterated that applicants whose close relatives had been killed could be expected to display due diligence and take the initiative as far as necessary to obtain information about the progress made in the related investigation.

However, the applicant had not attempted to request information after the criminal proceedings against General R.A. had ended in November 2009, only turning to the Court with his complaint in June 2016, long after its six-month deadline for lodging applications.

The Court therefore rejected the applicant's complaint about the ineffectiveness of the investigation into his parents' death as inadmissible for being lodged out of time.

Article 6 § 1

Legal certainty

The applicant argued that the statutory limitation period for lodging a civil claim for damages in his case should have been calculated from the date on which the decisions declaring his parents dead had become final, as in several other cases decided by the Supreme Court concerning compensation for the death of family members.

The Court reiterated that it had previously accepted that giving two disputes different treatment could not be considered to give rise to conflicting case-law when they concerned different facts.

It noted that the applicant had relied on Supreme Court judgments concerning the disappearance of plaintiffs' family members whose fate remained unknown, whereas it was known what had happened to the applicant's parents. Information that they had been killed in September 1993 became known before the applicant had instituted civil proceedings for damages (in 2008) and certainly before he had sought to have them declared dead (in 2011). Indeed, he had admitted that he had learned about his parents' fate in 2006, when the indictment against General R.A. had been brought before the Croatian criminal courts.

The cases relied on by the applicant had therefore involved different facts to the case concerning his parents. The fact that the domestic courts had not calculated 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 could not therefore be considered to give rise to conflicting case-law and there had been no breach of the principle of legal certainty. There had accordingly been no violation of Article 6 § 1 on that account.

Access to court

The applicant argued that calculating the statutory limitation period for lodging his claim from 2001, when the Supreme Court considered that he had had an objective possibility to learn of his parents' death, had deprived him of access to a court.

First, the Court did 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.

Furthermore, it noted that the indictments filed against the Croatian army generals before the ICTY for crimes committed in the Medak Pocket in September 1993 had been widely covered by the media in Croatia. The applicant, as the son of persons who had gone missing during the 1993 military operation, could not have remained unaware of those publications. Nor had it been unreasonable to expect that he should show due diligence and turn to the Croatian authorities for information.

However, he had not contacted the police or the State Attorney's Office about their fate, except in the context of the civil proceedings for damages in 2007. Nor had he instituted proceedings with a view to having them declared dead until 2011, some 18 years after their disappearance.

Had he turned to the State authorities for information regarding his parents' fate at any point after November 2001 when the ICTY indictment had been filed against general R.A., he could have learned

that they had been killed by Croatian soldiers and therefore could have obtained all the information necessary to seek damages from the State.

The Court therefore concluded that the manner in which the Supreme Court had calculated the statutory limitation period for the applicant to lodge his claim for damages had not constituted a disproportionate restriction on his right of access to court.

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

Separate opinions

Judges Ksenija Turković, Aleš Pejchal and Jovan Ilievski expressed a joint partly dissenting opinion. This opinion is annexed to the judgment.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.