



## No violation in conviction for war crimes on the basis of command responsibility

In today's **Chamber judgment**<sup>1</sup> in the case of [Milanković v. Croatia](#) (application no. 33351/20) the European Court of Human Rights held, unanimously, that there had been:

**no violation of Article 7 (no punishment without law)** of the European Convention on Human Rights.

The case concerned the applicant's conviction for war crimes, perpetrated by the police units under his command, against the Serbian civilian population and a prisoner of war, on the territory of Croatia between mid-August 1991 and mid-June 1992. The applicant complained that, in convicting him of those crimes, the domestic courts had applied a protocol applicable only to international armed conflicts, whereas the events had taken place before Croatian independence and thus during a non-international armed conflict.

The Court concluded that the applicant's conviction for war crimes on the basis of his command responsibility had, at the time of the events, a sufficiently clear legal basis in international law also covering non-international armed conflict, and that he should have known that his failure to prevent them from being committed by the police units under his command would make him criminally liable. It was irrelevant whether those crimes had been committed before or after Croatian independence.

### Principal facts

The applicant, Vladimir Milanković, is a Croatian national who was born in 1962 and lives in Sisak (Croatia).

In June 2011 a comprehensive investigation was opened into the killings and other criminal offences committed against individuals of Serb ethnicity in the Sisak and Banovina area of Croatia between mid-August 1991 and mid-June 1992. In that period Mr Milanković was the deputy head of the Sisak-Moslavina Police Department and between 18 July and 1 October 1991 also the commander of all police forces in the broader area of Sisak and Banovina.

Mr Milanković was subsequently indicted and charged with one war crime against a prisoner of war committed before 8 October 1991, the date on which Croatia declared full independence, and a further 22 counts of war crimes against the civilian population, 18 of which had been committed before 8 October 1991. He was found guilty of ordering three and personally participating in two of the 22 crimes, and committing 18 others by omission (including the one against the prisoner of war), namely by failing to prevent them from being committed by the police units under his command. He was sentenced to eight years' imprisonment.

The domestic court convicted him on the basis of the Basic Criminal Code and on the relevant provisions of the Third and Fourth Geneva Conventions, taken in conjunction with the First Additional Protocol to the Geneva Conventions.

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](http://www.coe.int/t/dghl/monitoring/execution).

Throughout the proceedings, Mr Milanković maintained that the Basic Criminal Code had not contained the concept of command responsibility, and the provisions in its relevant articles could not be interpreted in the light of the First Protocol to the Geneva Conventions because that protocol applied only to international armed conflicts, whereas Croatia's declaration of independence had come into effect on 8 October 1991 and the country had not been internationally recognised until 15 January 1992. He also maintained that the Second Protocol applicable to non-international armed conflicts did not provide for command responsibility and, in any case, the concept of command responsibility could not apply because at the time of the crimes, he had been the deputy head of the local police department and not a member of the military.

On the basis of the evidence taken, the domestic court found that Mr Milanković had had formal and actual command authority over the police units that had committed the 18 war crimes in question, and that he had known or had been aware of those crimes. As their commander, he was therefore criminally liable for those crimes. Lastly, the court held that Mr Milanković, who was a military-academy-educated officer, must have been fully aware that his conduct was wrong and in breach of the Geneva Conventions and their Protocols.

The Supreme Court upheld Mr Milanković's conviction upon appeal and increased his sentence to ten years' imprisonment.

Mr Milanković subsequently lodged a constitutional complaint, as the judgment had not addressed the arguments he had submitted. The Constitutional Court dismissed the complaint, holding that, at the time of the events, the command responsibility for war crimes in non-international armed conflicts had already become a rule of customary international law.

## Complaints, procedure and composition of the Court

Relying on Article 7 § 1 (no punishment without law), Mr Milanković complained that, in order to convict him for war crimes, the domestic courts had applied the First Protocol to the Geneva Conventions, which provided for responsibility of commanders, although that protocol was applicable only to international armed conflicts and the events had taken place before Croatian independence and thus during a non-international armed conflict. He also complained that he had been convicted despite his not being an army commander but a police commander. In addition, he contested that command responsibility for war crimes in non-international armed conflicts had, at the time of the events, already become a rule of customary international law.

The application was lodged with the European Court of Human Rights on 24 July 2020.

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

Péter **Paczolay** (Hungary), *President*,  
Ksenija **Turković** (Croatia),  
Alena **Poláčková** (Slovakia),  
Gilberto **Felici** (San Marino),  
Erik **Wennerström** (Sweden),  
Raffaele **Sabato** (Italy),  
Lorraine **Schembri Orland** (Malta),

and also Renata **Degener**, *Section Registrar*.

## Decision of the Court

The Court examined Mr Milanković's complaints chiefly from the perspective of whether his conviction for war crimes based on his command responsibility as a police commander in an internal armed conflict had had a sufficiently clear legal basis in international law at the time of the events

and whether, at the time, he could have known that his failure to prevent the crimes from being committed by the police units under his command would render him criminally liable.

It noted that the Statute of the International Criminal Tribunal for the former Yugoslavia (ICTY), applicable to serious violations of international humanitarian law committed in the former Yugoslavia since 1 January 1991, referred in general terms to a 'superior' and therefore did not restrict its application only to military commanders or make any distinction between international or non-international armed conflict. In its case-law, the ICTY had already held that application of the concept of command responsibility to war crimes committed in an internal armed conflict was already a rule of customary international law in 1991.

Likewise, the principle of superior responsibility reflected in its statute also encompassed political leaders and other civilian superiors in positions of authority, as had also been confirmed in several cases brought before the International Criminal Tribunal for Rwanda.

The Court agreed that there was no doubt that the responsibility of commanders for war crimes committed in international or internal armed conflict was an existing rule of international law at the time of the events. Moreover, the concept of command responsibility was derived from the concept of responsible command, which did not distinguish between international and non-international armed conflict. Furthermore, command responsibility did not apply only to military commanders but also to other, non-military, superiors.

Regarding the nature of the war crimes committed by the police units under his command, the Court considered that it should have been obvious to Mr Milanković, a military-academy-educated officer, that he could be held responsible regardless as to whether those crimes were committed during international or internal conflict or by a military or non-military (police) commander. Also, Croatia's declaration of independence had been made already on 25 June 1991 even though it had come into effect only on 8 October 1991.

The Court therefore concluded that Mr Milanković's conviction for war crimes on the basis of his command responsibility had had a sufficiently clear legal basis in international law at the time of the events, and that he should have known that his failure to prevent the crimes committed by the police units under his command would make him criminally liable. It followed that this conclusion applied regardless of whether those crimes had been committed before or after the war in Croatia in the early 1990s had become an international armed conflict.

As regards the applicant's remaining arguments that he had been convicted for the war crimes on the basis of his command responsibility even though a) as the deputy head of the police department he had not had sufficient powers to be held criminally liable as a commander, and b) the direct perpetrators of most of those war crimes had not been identified, the Court noted that the domestic courts had established that the applicant had had formal and actual command authority over the police units that had committed the crimes in question and that the applicant had been aware of those crimes. There were no elements that led the Court to contradict the findings of the domestic courts.

*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.