



## Twelve-year-old collateral victim in 2003 shooting incident, amid widespread illegal possession of firearms in Croatia

In today's Chamber judgment<sup>1</sup> in the case of [Svrtan v. Croatia](#) (application no. 57507/19) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 2 (right to life) of the European Convention on Human Rights.**

The case concerned the death of a Croatian couple's 12-year-old son in 2003 in a shooting incident. The man responsible, S.K., had a history of alcohol abuse, violent behaviour and suspected unlawful possession of firearms.

The Court concluded that the authorities had not done everything within their power to safeguard public safety and, ultimately, the life of the applicants' son. The police had searched S.K.'s house several weeks before the tragic incident after the local police stopped him carrying a gas pistol. They had however only searched the house for half an hour, failing to find and confiscate the automatic rifle used in the subsequent shooting. Indeed, the authorities had not questioned S.K., his family members or neighbours, or taken any other measures, despite the police having been ordered just a few days after the search to make further enquiries, and specifically having been told that S.K. had had unlicensed weapons in his attic.

The Court bore in mind in particular the general post-war context and the phenomenon of widespread illegal possession of weapons in Croatia at the time.

### Principal facts

The applicants are a couple, Željko and Biljana Svrtan, who were born in 1967 and 1968, respectively. They are both Croatian nationals.

On 12 October 2003 the applicants' son was riding on his bicycle past the house of a man, S.K., who was firing shots in the direction of his ex-brother-in-law. The applicants' son was caught in the firing line and shot in the head. He died later in hospital. S.K.'s brother-in-law was killed on the spot.

It transpired that S.K. had been reported to the police in the months prior to the incident, with several persons alleging that he had been in possession of unlicensed weapons, including an automatic rifle. The reports stated that he had been using the weapons to randomly fire shots in his neighbourhood, and that he had become dangerous since his wife had left him, threatening her, his mother and grandmother. He had also apparently been known to the police because of his alcohol problems and anti-social behaviour.

Similar accounts were given by the witnesses heard in the ensuing criminal proceedings brought against S.K. and the civil proceedings instituted by the applicants for damages.

S.K. pleaded guilty in the criminal proceedings. He said that he had come into possession of the automatic rifle during the war in Croatia. He also stated that the police had cursorily searched his

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).

house – on 1 September 2003 – before the incident but had not found the rifle which he had kept in his attic most of the time, but which on that day he had been hiding in a rolled-up carpet.

S.K. was found guilty on 16 March 2004 of murdering his brother-in-law, of committing a serious criminal offence against public safety, specifically the applicants' son, and of the unauthorised possession of weapons and explosives. He was sentenced to 20 years' imprisonment.

In the civil claim for damages the applicants argued that the State had been responsible for their son's death because the police had not thoroughly searched S.K.'s house or found the weapon used to shoot their son. The first-instance court allowed the claim in full in March 2014, finding the State liable. The applicants' claim against the State was however overturned by the second-instance court, which found that the search had been thorough and lawful. Their appeal on points of law against this ruling and their constitutional complaint were subsequently unsuccessful.

## Complaints, procedure and composition of the Court

Relying on Article 2 (right to life), the applicants complained that their son's death had been the result of police negligence. In particular, if they had properly searched S.K.'s house, found and confiscated his illegally owned automatic rifle, the killing of their son could have been prevented.

The application was lodged with the European Court of Human Rights on 24 October 2019.

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

Arnfinn **Bårdsen** (Norway), *President*,  
Pauliine **Koskelo** (Finland),  
Jovan **Ilievski** (North Macedonia),  
Péter **Paczolay** (Hungary),  
Davor **Derenčinović** (Croatia),  
Gediminas **Sagatys** (Lithuania),  
Stéphane **Pisani** (Luxembourg),

and also Hasan **Bakırcı**, *Section Registrar*.

## Decision of the Court

The Court noted that the regulatory framework in force in Croatia at the time had been satisfactory; in particular the Weapons Act prohibited individuals from possessing automatic weapons and such possession was a criminal offence under the Criminal Code. Furthermore, there had been a system of adequate and effective safeguards designed to prevent misuse of firearms.

The authorities had however failed to apply rigorously that system in the applicants' case, resulting in an accumulation of shortcomings. In particular, despite being faced with serious allegations that S.K. had been violent and probably in illegal possession of weapons, they had not acted promptly and decisively by taking a number of measures that could have altered the tragic outcome.

Firstly, the search had been problematic. None of the police officers who had carried out the search had remembered unrolling the carpet in which, according to S.K., the automatic rifle had been hidden. It was therefore difficult to understand how the second-instance court had concluded that the search, which had lasted only 30 minutes, had been thorough.

Similarly, it was hard for the Court to comprehend why the authorities had not even considered questioning S.K. about the very serious allegations against him, as they could and should have done under domestic law. No other witnesses or S.K.'s former wife or family members had been interviewed.

Nor had any of the courts examined the broader issue in the case, namely whether the authorities had taken sufficient measures to identify and prevent the misuse of unlicensed weapons, with potentially fatal consequences. The second-instance court in the civil proceedings had instead focused on the applicants' proving that the automatic rifle had been hidden in the rolled-up carpet, setting an excessively high, if not impossible, burden of proof for them to meet since they had in no way participated in the search.

Lastly, the Court was particularly struck by the fact that, just several days after the search, the local police had been ordered to conduct further field checks based on reports that S.K. had been hiding unlicensed weapons in his attic. The local police had, however, replied that a search had already been carried out, no weapons had been found and they considered the matter closed.

The Court therefore concluded that the authorities had not done everything within their power to safeguard public safety and, ultimately, the life of the applicants' son, in violation of Article 2. Against that conclusion, it bore in mind the specific circumstances of the case, namely the general post-war context and the phenomenon of widespread illegal possession of weapons in Croatia at the time.

### Just satisfaction (Article 41)

The Court held that Croatia was to pay the applicants 30,000 euros (EUR) in respect of non-pecuniary damage and EUR 830 in respect of costs and expenses.

*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.