



Croatian authorities' investigations into two 1991 war crimes were inadequate

In today's Chamber judgments in the cases [Jularić v. Croatia](#) (application no. 20106/06) and [Skendžić and Krznarić v. Croatia](#) (no. 16212/08), which are not final¹, the European Court of Human Rights held, unanimously, that there had been:

A violation of Article 2 (right to life – lack of an effective investigation) of the European Convention on Human Rights in both cases.

Both cases concerned crimes committed during the Croatian Homeland War²: in the first case, the killing of the applicant's husband by members of the Serbian paramilitary forces (or the Yugoslav People's Army); and, in the second case, the disappearance of the applicants' husband and father following his arrest by the Croatian police.

Principal facts

Jularić

The applicant, Marta Jularić, is a Croatian national who was born in 1936 and lives in Osijek.

She alleges that on 3 October 1991 three members of the Yugoslav People's Army took her husband, A.J, away from the family home in Vukovar, a Croatian town near the Serbian border which came under heavy attack during the Homeland War and was occupied. A few minutes later she heard shots from an automatic weapon. On being herself taken away, she saw her husband – his head battered – lying dead on a path in front of a house.

She immediately reported the killing to Vukovar police station and, in March 1992, a criminal complaint was lodged with the Osijek military prosecution authorities against ten individuals for committing a war crime against the civilian population, and notably the killing of Ms Jularić's husband. In August 1992 Osijek Military Court launched an investigation and issued arrest warrants for the suspects' detention. Between 1993 and 1997 the applicant and her son, as well as other witnesses, gave evidence in court and the investigation was extended to further suspects. In May 1997, however, the investigation was stayed on the ground that the suspects and some of the witnesses

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

² The Croatia War of Independence from 1991 to 1995.

resided in the occupied territory of Croatia where the authorities could not exercise their power³.

Following Croatia regaining control of that territory in January 1998, jurisdiction in the case was transferred to Vukovar County Court and the investigation was resumed in November 2000.

In October 2001 one of the suspects was arrested and gave evidence before the County Court. Shortly after, three further suspects were also heard. All denied any involvement in the murder of Ms Jularić's husband. In September 2002 a further witness, D.K., gave evidence stating that he had been arrested by members of the Serbian paramilitary forces and ordered to bury the dead body of Ms Jularić's husband. He could not, however, name any of the men who had been standing next to the body and issued the order. Ms Jularić gave evidence again in April 2005 indicating that a certain A.M. had witnessed her husband being taken away. A.M. has never been called to testify.

Ms Jularić's constitutional complaint alleging a lack of progress in the investigation was rejected as being unsuitable.

The proceedings were terminated in July 2010 under the Amnesty Act, the charges against the suspects having, in the meantime, been reclassified as armed rebellion.

Skendžić and Krznarić

The applicants are three Croatian nationals who live in Otočac (Croatia). They are Josipa Skendžić, born in 1957, and her two children, Tamara Krznarić and Aleksandar Skendžić, born in 1985 and 1982 respectively.

They have not seen their husband and father, M.S., born in 1948 of Serbian ethnic origin, since his arrest on suspicion of terrorism by the Croatian police on 3 November 1991 at the family flat in Otočac.

In the days following the arrest Ms Skendžić telephoned the local authorities asking about her husband's whereabouts, without success. Since then she has repeatedly contacted numerous official bodies: the Ministries of the Interior and of Justice, the Ombudsman and the Vice-President of the Government. An inquiry was launched soon after the disappearance with enquiries being made both to the Otočac and Gospić Police departments. The Head of Otočac Police Station, J.O., confirmed that M.S. had been arrested on 3 November 1991 and taken to his station. From December 1991 to October 1992 there were diverging reports as to where he had been taken next: either Gospić or Zagreb County Prisons or Gospić Operational Headquarters.

Following a letter by Ms Skendžić addressed to the Minister of Justice in July 1999, Gospić County State Attorney's Office ordered investigative measures in July 2000 into the disappearance and asked the Otočac police to interview the Head of the Otočac Police Station and a former police officer, D.R., present at the station at the time.

D.R., interviewed in June 2002, stated that M.S. had been briefly detained at Otočac police station, and then transferred to Gospić by two police officers.

First unable to interview J.O. in July 2000 as he had moved to Zagreb, Otočac police finally managed to interview him in June 2004. He stated that he had not seen M.S. at

³ At that time a transitional administration established under a United Nations Security Council mandate was operating in the area of Eastern Slavonia, Baranja and Western Sirmium, which included Vukovar. That mandate ceased in January 1998 and the transfer of power to the Croatian authorities began.

Otočac police station but knew that he had been transferred to Gospić Police. He had no knowledge of his whereabouts from that point on.

In November 2004 the two Otočac police officers who had dealt with the transfer testified that they had taken M.S. to Gospić and handed him over to the Head of the Operational Headquarters, I.O.. They had seen I.O. handcuffing M.S. and then left.

The last known attempt to identify those responsible for M.S was in February 2005 when the investigating judge assigned to the case heard evidence from a number of witnesses. The criminal investigation into the disappearance is still pending.

Most recently – in 2006 and 2007 – Ms Skendžić has made complaints to the OSCE Mission to Croatia and the Constitutional Court about the lack of progress in the investigation and its ineffectiveness. The constitutional complaint is still pending.

In the meantime, in May 2005 the courts awarded the applicants 230,000 Croatian kunas (the equivalent of approximately 31,121 euros (EUR)) each following civil proceedings for damages which established that M.S. had been arrested by the Otočac police and that, given the lack of evidence that he had been handed over to any other body, the State was responsible for his disappearance and death. In that decision the courts acknowledged the applicants' mental suffering owing to the fact that they still do not know the exact circumstances of their husband and father's death or the place of his grave.

At the request of the family, the domestic courts issued a decision in March 1998 that M.S. was to be presumed dead from 2 November 1996.

The applicants allege that during the Homeland War a number of people of Serbian ethnic origin disappeared or were killed in the area of Gospić.

Complaints, procedure and composition of the Court

Relying in particular on Article 2 (right to life) of the European Convention, the applicants complained that the authorities' investigation into the disappearance and deaths of their relatives had been inadequate and had failed to bring those responsible to justice. Further relying on Article 2 as well as on Articles 5 (right to liberty and security) and 13 (right to an effective remedy), the applicants in the case of **Skendžić and Krznarić** also alleged that Croatia was responsible for the arrest, disappearance and presumed death of their husband and father.

The applicants in the case of **Skendžić and Krznarić** further claimed that they had been caused continual anxiety and fear on account of the prolonged uncertainty as to M.S.'s whereabouts, in breach of Article 3 (prohibition of inhuman or degrading treatment). Lastly, they also alleged that M.S. had been arrested because of his Serbian ethnic origin and that the authorities had failed to investigate whether such a motive had been behind his arrest and disappearance, in breach of Article 14 (prohibition of discrimination).

The applications were lodged with the European Court of Human Rights on 24 April 2006 and 22 February 2008, respectively.

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

Jularić

Christos **Rozakis** (Greece), *President*,
Nina **Vajić** (Croatia),
Anatoly **Kovler** (Russia),
Elisabeth **Steiner** (Austria),
Khanlar **Hajiyev** (Azerbaijan),
Giorgio **Malinverni** (Switzerland),
George **Nicolaou** (Cyprus), *Judges*,

Skendžić and Krznarić

Christos **Rozakis** (Greece), *President*,
Nina **Vajić** (Croatia),
Khanlar **Hajiyev** (Azerbaijan),
Dean **Spielmann** (Luxembourg),
Sverre Erik **Jebens** (Norway),
Giorgio **Malinverni** (Switzerland),
George **Nicolaou** (Cyprus), *Judges*,

And, in both cases, also Søren **Nielsen**, *Section Registrar*.

Decision of the Court**Article 2**

In the case of ***Jularić*** the Court examined only the part of the inquiry that had taken place after January 1998 as, before then, the Croatian authorities had had no real authority in the town of Vukovar.

In the case of ***Skendžić and Krznarić*** the applicants' husband and father disappeared in November 1991 and was declared dead from November 1996. The alleged violation of M.S.'s right to life had therefore occurred prior to the entry into force – on 5 November 1997 – of the European Convention in respect of Croatia. This part of the applicants' complaint therefore had to be rejected as inadmissible.

However, all relevant investigative steps, first ordered by Gospić County State Attorney's Office in July 2000, occurred after the entry into force of the Convention in respect of Croatia. The applicants' complaint under Article 2 concerning the ineffectiveness of the investigation was therefore declared admissible.

The Court found that there had been substantial shortcomings in the conduct of both investigations, which had in particular been plagued by inexplicable delays.

Jularić

The inquiry had been launched soon after the reported killing in 1991. However, no steps whatsoever had been taken between January 1998 and October 2001 when finally one of the suspects was arrested and gave evidence. Even taking into account the need for Croatia to have time to organise its judicial system in the newly regained territories, three years and nine months of inactivity was unreasonable.

Furthermore, the investigating authorities had made no effort to identify – by organising an identification parade for example – the men who had ordered D.K. to bury Ms Jularić's husband. Nor had A.M., who had witnessed Ms Jularić's husband having been taken away, ever been called.

Skendžić and Krznarić

Similarly, although the inquiry had started soon after M.S.'s disappearance, it had come to a standstill in October 1992 with the first investigative steps only having been ordered in July 2000. Police officer D.R. had only been interviewed in June 2002, almost two years after the request made by the State Attorney's Office. As regards the interview of the Head of Otočac Police Station, J.O., nothing had been done to locate him until June 2004, despite information as early as July 2000 that he had moved to Zagreb.

Furthermore, the authorities had not seen fit to bring together the two Otočac police officers responsible for M.S.'s transfer to Gospić and I.O., the Head of the Operational Headquarters, for confirmation of whether I.O. had indeed been the man they had seen handcuffing M.S..

Indeed, no serious effort had been made to identify the police officers or others present at the time of M.S.'s detention in the Gospić Police Department. Nor had there been any specific activity since February 2005 aimed at identifying those responsible for M.S.'s disappearance.

Lastly, there had been an obvious conflict of interest in the fact that the inquiry into M.S.'s arrest and disappearance had been entrusted to the same police station as had detained and transferred him.

The Court therefore found that the inquiries into the killing of Ms Jularić's husband as well as the disappearance of M.S. had been ineffective, in violation of Article 2. The inquiry into M.S.'s disappearance had also lacked independence.

Other articles

Skendžić and Krznarić

The Court found that the domestic judgment of May 2005 had taken into account the applicants' suffering following M.S.'s arrest and subsequent disappearance and therefore the national courts had expressly acknowledged a violation of Article 3 in respect of the applicants. The resulting compensation awarded had actually exceeded the amount the European Court usually awarded in similar cases.

Given the finding of a violation of Article 2, the Court held that there was no need to examine the applicants' complaints under Articles 5, 13 or 14.

Article 41 (just satisfaction)

Jularić

The Court held that Croatia was to pay Ms Jularić EUR 30,000 in respect of non-pecuniary damage. No claim for costs and expenses was submitted.

Skendžić and Krznarić

The Court held that the compensation awarded by the national courts in the civil proceedings for damages was sufficient and therefore rejected the applicants' claim in respect of non-pecuniary damage. It further held that Croatia was to pay the applicant EUR 3,000 for costs and expenses.

The judgments are available only in English.

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Press contacts

echrpress@echr.coe.int | tel: +33 3 90 21 42 08

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Emma Hellyer (tel: + 33 3 90 21 42 15)

Kristina Pencheva-Malinowski (tel: + 33 3 88 41 35 70)

Céline Menu-Lange (tel: + 33 3 90 21 58 77)

Frédéric Dolt (tel: + 33 3 90 21 53 39)

Nina Salomon (tel: + 33 3 90 21 49 79)

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.