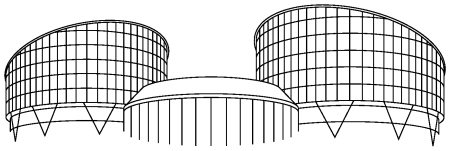

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF CINDRIĆ AND BEŠLIĆ v. CROATIA

(Application no. 72152/13)

JUDGMENT

STRASBOURG

6 September 2016

FINAL

30/01/2017

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

In the case of Cindrić and Bešlić v. Croatia,

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

Işıl Karakaş, *President,*
Julia Laffranque,
Paul Lemmens,
Valeriu Griţco,
Ksenija Turković,
Stéphanie Mourou-Vikström,
Georges Ravarani, *judges,*

and Hasan Bakırcı, *Deputy Section Registrar,*

Having deliberated in private on 5 July 2016,

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

PROCEDURE

1. The case originated in an application (no. 72152/13) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Croatian nationals, Mr Alojz Cindrić and Ms Katarina Bešlić ("the applicants"), on 5 November 2013.

2. The applicants were represented by Ms L. Kušan, a lawyer practising in Ivanić Grad and Ms Nataša Owens, a lawyer practising in Zagreb. The Croatian Government ("the Government") were represented by their Agent, Ms Š. Stažnik.

3. The applicants alleged, in particular, that the procedural obligations under Articles 2 and 14 of the Convention had not been complied with; that, contrary to Article 13 of the Convention, they had no effective remedy in that respect; that they had been deprived of their right of access to a court contrary to Article 6 § 1 of the Convention; and that their right to peaceful enjoyment of their possessions protected under Article 1 of Protocol No. 1 to the Convention had also been violated.

4. On 16 December 2013 the Government were given notice of the application.

5. The President of the Chamber acceded to a request by the Government to grant confidentiality to the case (Rule 33 § 1 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants were born in 1973 and 1975 respectively and live in P.

A. Background to the case

7. The applicants lived with their parents in A, Croatia. In August 1991 the first applicant joined the Croatian Army and left his home, and in November 1991 the second applicant went to live in Germany.

8. In the second half of November 1991 the Yugoslav People's Army, together with Serbian paramilitary forces, gained control of A, which thus became a part of the "Serbian Autonomous Region of Krajina" (hereinafter "the Krajina").

9. On 6 January 1992 two unknown men took the applicants' parents, S.C. and P.C., from their home in A. On 7 January 1992 the bodies of the applicants' parents were driven by municipal employees in a truck to the front of their house. The applicants' uncle was called and he gave the municipal employees clothes for the burial of the applicants' parents.

B. Investigation carried out by the authorities of the "Serbian Autonomous Region of Krajina"

10. On 7 January 1992 the A police carried out a search of a flat occupied by X in A and found an automatic gun, a hand gun and some bullets.

11. On 7 January 1992 the A police interviewed police officers R.B., M.S., D.J., V.K., M.T., D.K. and M.M. The police officers, apart from R.B., had been on duty at a checkpoint in R. Street in A between 7 p.m. on 6 January 1992 and 7 a.m. on 7 January 1992.

12. R.B. said that on 6 January 1992 at about 7 p.m. police officer X had asked him, R.B., as his hierarchical superior, for permission to take a short leave of absence. He, R.B., had granted the request. R.B. did not know when X had returned to duty at the police station, but thought that he had seen him between 11 p.m. and midnight that same evening.

13. M.S. said that at about 8 p.m. on 6 January 1992 a vehicle had approached the checkpoint and D.J. had stopped it. At that time he, M.S., had been in the barracks. D.J. and D.K. had entered and asked him if he knew a police officer with a birthmark on his face or a Volkswagen vehicle with the number 44 as the last digits on its registration plates, which he did not. At about 10 p.m. the same day, however, he stopped a Volkswagen vehicle which had 44 as the last two digits on its registration plates. The vehicle was driven by police officer X, who was known personally to M.S.,

D.J. and D.K. confirmed that it was the same vehicle which had passed from the opposite direction at about 8 p.m.

14. D.J. said that at about 8.10 p.m. on 6 January 1992 a vehicle of Volkswagen make had approached the checkpoint and that he had stopped it. The driver had been dressed in the uniform of the civil police. D.J.'s attention had been diverted by a vehicle which had come from the opposite direction and he had stopped it. At that moment the Volkswagen had suddenly started up and left in the direction of K. D.K. told him that he had not had the time to fully examine the vehicle but that he had seen that the driver and the person in the front passenger seat were dressed in the uniforms of the civil police. He had also seen two civilians in the back seat, a man and a woman. D.K. noted down the registration number of that vehicle. At about 11 p.m. the same day police officer M.S. stopped a vehicle which had arrived from the direction of K and asked the other police officers on duty whether it was the same vehicle they had stopped at about 8 p.m., which D.J. confirmed. The only occupants were the driver and the person in the front passenger seat. D.J. asked them who the other passengers had been and where they had taken them. The driver said that the passengers had been S.C. and P.C. and that they had left them in a village.

15. M.T. and D.K. confirmed the above events.

16. On 8 January 1992 the A police interviewed X and Y, two police officers. They both admitted that on 6 January 1992 they had taken S.C. and P.C. in X's vehicle. On the outskirts of A the police had stopped them. However, the attention of the police had been diverted by another vehicle and X and Y had quickly driven away. They had taken S.C. and P.C. to the village of J. X said that there they had taken S.C. and P.C. out of the vehicle and started walking. He had been carrying an automatic gun and at one point S.C. had attempted to take it from him, resulting in a commotion in which the weapon had fired and killed S.C. After that Y had shot and killed P.C. Y said that X had killed S.C. when they had arrived in J and then forced him, Y, to kill P.C.

17. On 9 January 1992 the A police lodged a criminal complaint with the B public prosecutor against X and Y, alleging that on 6 January 1992 at 10.30 p.m. in J, a village near the town of A, they had killed S.C. and P.C. They had first driven the victims in X's vehicle to J and taken them out of the vehicle. X had then killed S.C. with an automatic gun and Y had killed P.C. with a hand gun.

18. On 28 January 1992 the B County Court opened an investigation in respect of X and Y on suspicion of killing S.C. and P.C.

19. On 13 April 1992 an investigating judge of the B County Court commissioned a ballistics report.

C. Investigation carried out by the Croatian authorities

20. In August 1995 the Croatian authorities regained control of the town of A. In 1996 the United Nations Security Council established the United Nations Transitional Administration in Eastern Slavonia, Baranja and Western Sirmium ("UNTAES"). On 15 January 1998 the UNTAES mandate came to an end and the transfer of power to the Croatian authorities began.

21. On 16 April 1996 the A police interviewed M.C., the brother of the late S.C., who told them that his brother and his brother's wife had been killed on 6 January 1992. Their bodies had been given to him by the police of the "Serbian Autonomous Region of Krajina" and he had been allowed to bury them.

22. On 19 September 2000 the C police interviewed M.M., who said that on 6 January 1992 he had been on duty, together with M.B., at the entrance to village J. At about 9 p.m. he and M.M. had been walking towards a ramp by the barracks where all patrols had their meeting point and had heard a vehicle being driven, followed by several gun shots and then a vehicle starting up again. When they arrived at the meeting point they found Lj.Č., D.J. and M.P. there, who told them that "two fools [had] just brought two people in a car and killed them by the road." None of the officers on patrol dared go to the crime scene. Soon they all went home. In the morning of 7 January 1992 the police from A came to M.M.'s house and took him to A police station, where they interviewed him and told him that X and his friend had killed S.C. and his wife. He had heard that X had moved to Bosnia and Herzegovina.

23. On 21 September 2000 the C police interviewed the applicants, who had learned from B.Ž., who lived with their parents during the relevant period, that X and Y had been charged with the killing of the applicants' parents.

24. On 4 January 2001 an investigating judge of the C County Court (*Županijski sud u C*) ordered an investigation concerning X and Y, who were not available to the Croatian authorities, on suspicion of killing S.C. and P.C. An international arrest warrant was also issued against the suspects, who had absconded.

D. Extradition proceedings concerning Y

25. On 8 February 2002 the Ministry of the Interior asked the Ministry of Justice whether extradition proceedings would be instituted against the suspects.

26. On 14 January 2005 Interpol in Washington informed the Croatian authorities that the Department of Homeland Security in Cleveland, Ohio, had a valid location for Y. On 19 January 2005 the Ministry of the Interior informed the Ministry of Justice, asking the latter to institute proceedings

for Y's extradition. On 20 January 2004 the Ministry of Justice asked the C County Court for the relevant documents with a view to seeking Y's extradition from the United States authorities. All the evidence from the case file was translated into English and on 11 January 2006 the Ministry of Justice sent a "request for [Y's] temporary arrest" to the US Department of Justice through diplomatic channels.

27. On 10 January 2007 the Ministry of Foreign Affairs informed the Ministry of Justice that the US Department of Justice had requested some additional documents. On 10 May 2007 the C County Court sent the requested information and documents to the Ministry of Justice.

28. It appears that on 12 and 13 February 2008 the Croatian and US authorities held consultations in Zagreb in connection with the extradition of Y.

29. On 8 April 2008 the C County State Attorney's Office again asked the Ministry of Justice to seek Y's extradition. On 17 June 2008 the Ministry of Justice sent additional documents to the US Department of Justice in connection with Y's extradition.

30. In April 2009 the US Department of Homeland Security asked the Croatian Ministry of Justice for legal assistance in connection with the criminal investigation pending against Y in the United States on charges of attempted procurement of United States citizenship by fraud, and fraud and misuse of visas, permits and other official documents. They asked for all documents related to any criminal offences Y might have committed. This request was forwarded to the State Attorney's Office on 7 January 2013.

31. On 26 March 2014 the State Attorney's Office forwarded the requested documents, translated into English, to the US Department of Homeland Security.

E. Proceedings in respect of X

32. In 2002 the Ministry of Justice agreed that an international arrest warrant should be issued in respect of X.

33. On 2 January 2008 an investigating judge of the C County Court asked the competent court in Serbia to hear evidence from X in connection with the killing of S.C. and P.C. On 28 July 2008 the Serbian authorities asked for a certified translation of that request and all relevant documents into the Serbian language.

34. On 13 August 2008 the Croatian Ministry of Justice sent a note to the Serbian Ministry of Justice to the effect that, according to an agreement between the two States, each State party had the right to communicate in its own language and to submit documents in that language without the need for translations.

35. On 18 February 2009 the Serbian authorities heard evidence from X. He said that the criminal proceedings against him and Y for the murder of S.C. and P.C. had been instituted in 1992 in the B Municipal Court and that

they had been acquitted. He also denied any involvement in the killing of S.C. and P.C. On 3 March 2009 his statement was forwarded to the Croatian authorities.

F. Civil proceedings for damages

36. On 16 March 2006 the applicants brought a civil action against the State in the C Municipal Court (*Općinski sud u C*), seeking non-pecuniary damages in the amount of 500,000 Croatian kuna (HRK) each (about 65,500 euros (EUR)), in connection with the killing of their parents. They relied on sections 1 and 2 of the 2003 Liability Act.

37. On 9 March 2007 the C Municipal Court granted the applicants' claim and awarded them each HRK 300,000 (about EUR 40,000), finding that the killing of the applicants' parents had been an act of terror. This judgment was reversed by the C County Court on 3 December 2009. The applicants were also ordered to pay the State HRK 52,500 (about EUR 6,800) in costs, comprising the fees chargeable for the State's representation by the State Attorney's Office. The relevant part of that judgment reads as follows:

> "The plaintiffs in the first-instance proceedings based their claim for damages on the provisions of the 2003 Liability Act .... It is necessary to point to the content of section 3 of that Act, which provides that the obligation to compensate for damage exists irrespective of whether the person responsible has been identified, criminally prosecuted or found guilty. However, having regard to the correct establishment of the facts by the first-instance court, which found that the events at issue had occurred on 7 January 1992 in the village of J, in the then occupied territory of the Republic of Croatia which at that time was under the control of illegal formations of the "Serbian Republic of Krajina" and outside the control of the Republic of Croatia and its lawful bodies, the appellant's submission that [the killing of the plaintiffs' parents] ... amounted to war-related damage is well-founded.
>
> Section 2 of the Act on the Assessment of War-related Damage ... provides that war-related damage is damage caused by enemy or illegal groups, or legal bodies of the Republic of Croatia, as well as accomplices of these groups and bodies, where that damage occurred directly or indirectly at the time specified in section 1 of that Act (from 15 August 1990 until the end of hostilities and war operations conducted against the Republic of Croatia). Therefore, given the nature, place and time of the events at issue (the killing of innocent civilians in the occupied territory of the Republic of Croatia during the Homeland war), it is to be concluded that the events at issue are to be legally classified as war-related damage and that the appellant is not responsible for them or for the damage thus caused.
>
> ..."

38. This judgment was upheld by the Supreme Court on 19 June 2012. The court endorsed the County Court's finding that the killing of the applicants' parents amounted to war-related damage and added, in so far as relevant, the following:

> "Even though the act giving rise to the plaintiffs' claim for damages presents certain similarities with a terrorist act since [both] imply [an act of] violence, the act

> of damage [in the present case] differs significantly from terrorist acts in its features since it contains additional elements and amounts to war-related damage for which the defendant is not liable. This is because the damage did not occur in the territory under the *de facto* sovereignty of the Republic of Croatia but in the then occupied territory, where there was no possibility for lawful action by the bodies of the Republic of Croatia; this circumstance excludes the otherwise objective liability of the defendant. Furthermore, the act of damage in the present case was not carried out with the sole aim of seriously disturbing public order (this being the aim characteristic of an act of terror) but also involved the use of force, killing and expulsion of the civilian population on that territory with the aim of destroying the internal security and stability of the Republic of Croatia and preventing its lawful bodies from functioning.
>
> ..."

39. On 1 February 2013 the applicants lodged a constitutional complaint. They argued, *inter alia*, that in a number of its previous judgments the Supreme Court had recognised the plaintiffs' right to compensation for damage caused by death during the Homeland War in Croatia, and cited seven judgments of that court adopted between 2006 and 2010 (see paragraph 52 below). The constitutional complaint was dismissed on 9 May 2013.

II. RELEVANT LAW AND REPORTS

A. Croatia

1. Constitution

40. Article 21 of the Constitution (*Ustav Republike Hrvatske*, Official Gazette nos. 56/1990, 135/1997, 8/1998, 113/2000, 124/2000 and 28/2001) reads as follows:

> "Every human being has the right to life.
>
> ..."

2. State Attorney's Office

41. The report on the work of the State Attorney's Office for the year 2012, submitted to Parliament in September 2013, stated that in the period between 1991 and 31 December 2012 there had been 13,749 reported victims of the war in Croatia, of whom 5,979 had been killed. By the time of the report the Croatian authorities had opened investigations in respect of 3,436 alleged perpetrators. There had been 557 convictions for war-related crimes.

(a) Agreement on cooperation in respect of the prosecution of war crimes, crimes against humanity and genocide

42. On 13 October 2006 the War Crimes Prosecutor of the Republic of Serbia and the State Attorney of the Republic of Croatia concluded the above agreement (*Sporazum o suradnji u progonu počinitelja kaznenih djela ratnih zločina, zločina protiv čovječnosti i genocida*). It covers cooperation as regards evidence, information and documents.

(b) The Civil Procedure Act

(i) Relevant provisions

43. The relevant part of the Civil Procedure Act (*Zakon o parničnom postupku*, Official Gazette of the Socialist Federal Republic of Yugoslavia nos. 4/1977, 36/1977 (corrigendum), 36/1980, 69/1982, 58/1984, 74/1987, 57/1989, 20/1990, 27/1990 and 35/1991, and Official Gazette of the Republic of Croatia nos. 53/91, 91/92, 58/93, 112/99, 88/01, 117/03, 88/05, 02/07, 84/08, 123/08, 57/11 and 148/11) reads as follows:

COSTS OF PROCEEDINGS

Section 151

"(1) The costs of proceedings shall comprise disbursements made during, or in relation to, the proceedings.

(2) The costs of proceedings shall also include a fee for the services of an advocate and other persons entitled to a fee by law."

Section 154

"(1) A party which loses a case completely shall reimburse the costs of the opposing party and his or her representative.

(2) If a party succeeds in the proceedings in part, the court may, having regard to the degree to which it was successful, order that each party shall bear its own costs or that one party shall reimburse the corresponding portion of the costs of the other party and his or her representative.

(3) The court may decide that one party shall reimburse in full the costs incurred by the opposing party and his or her representative, where the opposing party was unsuccessful in respect of only a relatively insignificant portion of his or her claim, and where no special costs were generated on account of that portion.

..."

Section 155

"(1) In deciding which costs shall be reimbursed to a party, the court shall take into account only those costs which were necessary for the conduct of the proceedings. When deciding which costs were necessary and the amount thereof, the court shall carefully consider all the circumstances.

(2) If there is a prescribed scale of advocates' fees or other costs, the costs shall be awarded in accordance with that scale."

Section 156(1)

"Regardless of the outcome of the case, a party shall reimburse the costs of the opposing party which he or she caused to be incurred through his or her own fault or as the result of an event that befell him or her [that is, by accident]."

Section 162

"Where the State Attorney participates in the proceedings as a party, he or she shall be entitled to the reimbursement of costs under the provisions of this Act, but not to payment of a fee."

Section 163

"The provisions on costs [of proceedings] shall also be applicable to parties which are represented by the State Attorney's Office. In that case the costs of the proceedings shall also include the amount that would be awarded to the party as advocates' fees."

(c) The Scales of Advocates' Fees and Reimbursement of their Costs

44. According to the Scales of Advocates' Fees and Reimbursement of their Costs (*Tarifa o nagradama i naknadi troškova za rad odvjetnika*, Official Gazette nos. 91/2004, 37/2005 and 59/2007), an advocate's fees in a civil case are, as a matter of principle, calculated in proportion to the value of the subject matter of the dispute (the amount in issue) for each procedural action. The value of the subject matter of the dispute normally corresponds to the sum the plaintiff is seeking to obtain through his or her civil action.

(d) The Rules on Legal Aid Fees

45. The Rules on Legal Aid Fees (*Pravilik o visini nagrade odvjetniku određenom za branitelja po službenoj dužnosti*, Official Gazette no. 101/2012) were adopted by the Ministry of Justice and concern advocates' fees reimbursed by the State. Rule 1 provides that advocates defending accused in criminal proceedings under the legal aid scheme are entitled only to 30% of their usual fee.

(e) The Obligations Act

46. The relevant provision of the Obligations Act (*Zakon o obveznim odnosima*, Official Gazette of the Socialist Federal Republic of Yugoslavia nos. 29/1978, 39/1985 and 57/1989, and Official Gazette of the Republic of Croatia nos. 53/1991, 73/1991, 3/1994 – "the Obligations Act"), as in force before the 1996 Amendment, read as follows:

Section 180

"Liability for loss caused by death or bodily injury or by damage or destruction of another's property, resulting from acts of violence or terrorist acts ..., shall lie with the ... authority whose officers were under a duty, according to the laws in force, to prevent such loss."

(f) The 1996 Amendment to the Obligations Act

47. The relevant part of the 1996 Amendment to the Obligations Act (*Zakon o izmjeni Zakona o obveznim odnosima*, Official Gazette no. 7/1996 of 26 January 1996 – "the 1996 Amendment"), which entered into force on 3 February 1996, provided as follows:

Section 1

"Section 180 of the Obligations Act (Official Gazette nos. 53/91, 73/91 and 3/94) is hereby repealed."

Section 2

"(1) Any proceedings for damages instituted under section 180 of the Obligations Act shall be stayed.

(2) The proceedings referred to in paragraph 1 of this section shall be resumed after the enactment of special legislation which will regulate liability for damage resulting from terrorist acts."

(g) The 2003 Liability Act

(i) Relevant provisions

48. The relevant parts of the Act on Liability for Damage Resulting from Terrorist Acts and Public Demonstrations (*Zakon o odgovornosti za štetu nastalu uslijed terorističkih akata i javnih demonstracija*, Official Gazette of the Republic of Croatia no. 117/2003 of 23 July 2003 – "the 2003 Liability Act"), which entered into force on 31 July 2003, provide as follows:

Section 1

"(1) This Act regulates liability for damage caused by acts of terrorism or other acts of violence committed with the aim of seriously disturbing public order by provoking fear or stirring up feelings of insecurity in citizens ...

(2) A terrorist act within the meaning of this Act is in particular an act of violence committed for political reasons with a view to stirring up fear, terror or feelings of personal insecurity in citizens."

Section 2

"The Republic of Croatia shall be liable for the damage referred to in section 1 of this Act on [the basis of] the principles of social solidarity, equal distribution of public burdens and fair and prompt compensation."

Section 3

"The obligation to compensate damage under this Act exists irrespective of whether the perpetrator has been identified, criminally prosecuted or found guilty."

Section 7(1)

"The victim shall have the right to compensation [in the form of damages] for damage resulting from death, bodily injury or impairment of health."

Section 10

"Judicial proceedings for damages stayed pursuant to the 1996 Amendment shall be resumed in accordance with the provisions of this Act."

(ii) The Supreme Court's case-law

49. In its judgments nos. Rev-348/05-2 of 31 January 2006, Rev-356/07-2 of 18 April 2007, Rev-1133/04-2 of 3 July 2007, Rev-130/08-2 of 10 December 2008, and Rev-104/08-2 of 7 January 2009 the Supreme Court found the State liable for damage caused by terrorist acts committed during the war in Croatia. The relevant parts of these judgments read as follows.

Judgment no. Rev-348/05-2 of 31 January 2006:

"It has been established that on ... in G.G. the claimants' parents were killed ... That day between 8 p.m. and 10 p.m. unknown persons fired weapons and threw explosive devices at a large number of houses, with the result that serious material damage was caused and the claimants' parents were killed in the ruins of their house.

...

In the view of this court the events described above (the firing of weapons at houses and the throwing of explosive devices into a number of houses in the village by unknown persons) amount to a terrorist act within the meaning of the statutory provisions. The Republic of Croatia is liable for damage caused by terrorist acts on the basis of the principles of social solidarity, equal distribution of public burdens and fair and prompt compensation (section 2 of the [Liability] Act), and that liability exists irrespective of whether the perpetrator has been identified, criminally prosecuted or found guilty (section 3 of the [Liability] Act)."

Judgment no. Rev-356/07-2 of 18 April 2007:

"It is undisputed that ... J.B. and M.F. were found guilty of ... throwing an anti-tank mine into the house of the claimant's parents. The mine exploded and caused serious bodily injuries to the claimant's mother, from which she died, and serious bodily injuries to the claimant's father, who survived.

...

In the case at issue the liability of the State is objective – irrespective of [anyone's] guilt. However, the State is not liable for failure to prevent the damage but on the

basis of the principles of solidarity, fairness and equal distribution of public burdens (section 2 of the [Liability] Act)."

Judgment no. Rev-130/08-2 of 10 December 2008:

"Given that war-related damage and damage caused by a terrorist act both result from violence, it being one of the essential elements (so that there is a basic similarity in the nature of the act which is reduced to violence), [the question] whether a specific instance of damage is war-related damage or damage caused by a terrorist act [is to be answered] by assessing the act of violence in the broader context of the circumstances and the events during which such an act was committed; [the answer] will depend in particular on the means used, the motives, the damage caused, and the time and place of the events.

...

The courts have established the following facts:

- that the late D.J. ... was living alone in the family's summer house in V. ... that ... a bomb thrown through a window of the house by an unknown person killed D.J., and that at that time there had been no war-related activity in the area of V. ...

Given the above facts and the manner in which the deceased was killed, the lower courts correctly established that [the killing of D.J.] amounted to a terrorist act aimed at provoking fear and feelings of insecurity in citizens ..."

Judgment no. Rev-104/08-2 of 7 January 2009:

"The lower courts established that the late M.V. was injured while working in her garden by an explosive device that had been planted ...

Given the circumstances of the damage, the conclusion of the lower courts that the damage was caused by a terrorist act is correct."

B. Serbia

1. War Crimes Act 2003

50. The War Crimes Act 2003 (*Zakon o nadležnosti državnih organa u posutpku za ratne zločine*, published in Official Gazette of the Republic of Serbia no. 67/2003, amendments published in Official Gazette nos. 135/04, 61/2005, 101/2007 and 104/2009) entered into force on 9 July 2003. The War Crimes Prosecutor, the War Crimes Police Unit and the War Crimes Sections within the Belgrade Higher Court and the Belgrade Court of Appeal were set up pursuant to this Act. They have jurisdiction over serious violations of international humanitarian law committed anywhere in the former Yugoslavia, regardless of the nationality of the victims or perpetrators.

2. Mutual Assistance in Criminal Matters Act 2009

51. The Mutual Assistance in Criminal Matters Act 2009 (published in Official Gazette of the Republic of Serbia no. 20/2009) entered into force on 27 March 2009. Under section 16 of this Act, Serbian citizens cannot be

extradited. The Act repealed the corresponding provision of the 2001 Code of Criminal Procedure (published in Official Gazette of the Federal Republic of Yugoslavia no. 70/2001, amendments published in Official Gazette of the Federal Republic of Yugoslavia no. 68/2002 and Official Gazette of the Republic of Serbia nos. 58/2004, 85/2005, 115/2005, 49/2007, 20/2009 and 72/2009), which was in force between 28 March 2002 and 27 March 2009.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

52. The applicants complained that the authorities had not taken appropriate and adequate steps to investigate the death of their parents and to bring the perpetrators to justice. They also claimed that their parents had been killed because of their Croatian ethnic origin and that the national authorities had failed to investigate that factor. The applicants further complained that they had no effective remedy at their disposal in respect of the alleged violation of Article 2 of the Convention. They relied on Articles 2, 13 and 14 of the Convention. The Court, being master of the characterisation to be given in law to the facts of the case, will examine this complaint under the procedural aspect of Article 2 of the Convention which, in so far as relevant, reads as follows:

> "1. Everyone's right to life shall be protected by law. ..."

A. Admissibility

1. The parties' submissions

53. The Government argued that the applicants had not complied with the six-month time-limit since they had lodged their application with the Court almost twenty-two years after their parents had been killed and almost sixteen years after the Convention had entered into force in respect of Croatia.

54. They further maintained that the applicants had not exhausted all the relevant domestic remedies available to them because they had not lodged a complaint about the conduct of any of the State bodies such as the police or the State Attorney's Office, nor had they lodged a criminal complaint against the persons who had conducted the investigation. As to protection against alleged unlawfulness in the conduct of the domestic authorities, the Government pointed out that the applicants could have sought damages from the State.

55. The applicants argued that they had complied with all the admissibility criteria. With regard to the six-month rule, they contended that at the time they had lodged their application with the Court the investigation into the killing of their parents had still been pending and the authorities had been taking steps in order to establish the relevant facts.

56. As to the exhaustion of domestic remedies, they maintained that the State authorities, once they had become aware of the killing of the applicants' parents, had been under an obligation to conduct an official and effective investigation.

2. The Court's assessment

(a) Compliance with the six-month rule

57. The Court observes that in a number of cases concerning ongoing investigations into the deaths of applicants' relatives it has examined the period of time from which the applicant could or should start doubting the effectiveness of a remedy and its bearing on the six-month time-limit provided for in Article 35 § 1 of the Convention (see *Şükran Aydın and Others v. Turkey* (dec.), no. 46231/99, 26 May 2005; *Elsanova v. Russia* (dec.) no. 57952/00, 15 November 2005; *Narin v. Turkey*, no. 18907/02, § 50, 15 December 2009; *Grubić v. Croatia* (dec.), no. 56094/12, §§ 30-41, 9 June 2015; *Žarković v. Croatia* (dec.), no. 75187/12, §§ 24-35, 9 June 2015; *Damjanović v. Croatia* (dec.), no. 5306/13, §§ 23-34, 25 August 2015; and *Vuković and Others v. Croatia* (dec.), no. 3430/13, §§ 23-34, 25 August 2015). The Court has found that in cases concerning instances of violent death, the ineffectiveness of the investigation will generally be more readily apparent than in cases of missing persons; the requirement of expedition may require an applicant to bring such a case to Strasbourg within a matter of months or at most, depending on the circumstances, just a few years after the events (see *Varnava and Others v. Turkey* [GC], nos. 16064/90 et al., § 158, ECHR 2009).

58. As can be seen from the case-law referred to above, the Court has refrained from indicating a specific period beyond which an investigation is deemed to have become ineffective for the purposes of assessing the date from which the six-month period starts to run (see *Bogdanović v. Croatia* (dec.), no.72254/11, § 43, 18 March 2014). The determination of whether the applicant in a given case has complied with the admissibility criteria will depend on the circumstances of the case and other factors such as the diligence and interest displayed by the applicant, as well as the adequacy of the investigation in question (see *Narin*, cited above, § 43).

59. As to the case in issue, the Court notes that the investigation into the death of the applicants' parents by the Croatian authorities commenced in 1996 and is still pending. In 2014 the Croatian authorities were still corresponding with the United States authorities with a view to having one

of the suspects extradited to Croatia. It cannot therefore be said that the six-month time-limit expired at any time during the period between 5 November 1997, when the Convention entered into force in respect of Croatia, and the date when the present application was lodged with the Court, on 5 November 2013. It follows that the applicants have complied with the six-month time-limit.

(b) Exhaustion of domestic remedies

60. The Court has already addressed the same objections as regards the exhaustion of domestic remedies in other cases against Croatia and rejected them (see *Jelić v. Croatia*, no. 57856/11, §§ 59-67, 12 June 2014). The Court sees no reason to depart from that view in the present case.

61. It follows that the Government's objection must be dismissed.

(c) Conclusion as to admissibility

62. The Court notes that the complaint under the procedural aspect of Article 2 of the Convention is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

63. The applicants argued that the investigation into the killing of their parents had not been effective. They pointed in particular to a delay that had occurred between 1996 and 2000 and then again between May 2001 and January 2004. Furthermore, the Croatian authorities had not taken effective measures to have Y, a suspect, extradited from the United States to Croatia.

64. The Government contended that the national authorities had complied with their procedural obligation under Article 2 of the Convention. The applicants' parents had been killed in territory outside the control of the Croatian authorities. Once those authorities had regained control over the territory, an investigation into the killing of the applicants' parents had been launched. However, the evidence gathered by the authorities of the "Serbian Autonomous Region of Krajina" had been the result of police inquires which, under Croatian law, could not serve as valid evidence in criminal proceedings in Croatia. The Croatian authorities had taken all available steps in order to identify the perpetrators. However, the two suspects, X and Y, were unavailable to the Croatian authorities.

2. The Court's assessment

(a) General principles

65. The Court reiterates that Article 2 ranks as one of the most fundamental provisions in the Convention. It enshrines one of the basic values of the democratic societies making up the Council of Europe. The object and purpose of the Convention as an instrument for the protection of individual human beings require that Article 2 be interpreted and applied so as to make its safeguards practical and effective (see, among many other authorities, *Anguelova v. Bulgaria*, no. 38361/97, § 109, ECHR 2002-IV).

66. The obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force (see, *Armani Da Silva v. the United Kingdom* [GC], no. 5878/08, § 230, 30 March 2016).

67. The State must therefore ensure, by all means at its disposal, an adequate response – judicial or otherwise – so that the legislative and administrative framework set up to protect the right to life is properly implemented and any breaches of that right are repressed and punished (see *Armani Da Silva*, cited above, § 230).

68. In order to be "effective" as this expression is to be understood in the context of Article 2 of the Convention, an investigation must firstly be adequate. This means that it must be capable of leading to the establishment of the facts, a determination of whether the force used was or was not justified in the circumstances and of identifying and – if appropriate – punishing those responsible. This is not an obligation of result, but of means. The authorities must take whatever reasonable steps they can to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of the clinical findings, including the cause of death. Moreover, where there has been a use of force by State agents, the investigation must also be effective in the sense that it is capable of leading to a determination of whether the force used was or was not justified in the circumstances. Any deficiency in the investigation which undermines its ability to establish the cause of death or the person responsible will risk falling foul of this standard (see *Armani Da Silva*, cited above, § 233).

69. In particular, the investigation's conclusions must be based on thorough, objective and impartial analysis of all relevant elements. Failing to follow an obvious line of inquiry undermines to a decisive extent the investigation's ability to establish the circumstances of the case and the

identity of those responsible. Nevertheless, the nature and degree of scrutiny which satisfy the minimum threshold of the investigation's effectiveness depend on the circumstances of the particular case. The nature and degree of scrutiny must be assessed on the basis of all relevant facts and with regard to the practical realities of investigation work. Where a suspicious death has been inflicted at the hands of a State agent, particularly stringent scrutiny must be applied by the relevant domestic authorities to the ensuing investigation (see *Armani Da Silva*, cited above, § 234).

70. A requirement of promptness and reasonable expedition is implicit in this context (see Yaşa v. Turkey, 2 September 1998, §§ 102-104, Reports 1998-VI; and *Mahmut Kaya v. Turkey*, no. 22535/93, §§ 106-107, ECHR 2003-III). It must be accepted that there may be obstacles or difficulties which prevent progress in an investigation in a particular situation. However, a prompt response by the authorities in investigating a use of lethal force may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see *Armani Da Silva*, cited above, § 237).

71. It cannot be inferred from the foregoing that Article 2 may entail the right to have third parties prosecuted or sentenced for a criminal offence or an absolute obligation for all prosecutions to result in conviction, or indeed in a particular sentence. Indeed, the Court will grant substantial deference to the national courts in the choice of appropriate sanctions for homicide by State agents. Nevertheless, it must still exercise a certain power of review and intervene in cases of manifest disproportion between the gravity of the act and the punishment imposed (see *Armani Da Silva*, cited above, § 238).

(b) Application of these principles to the present case

72. As there is no indication that the investigation into the death of the applicants' relatives lacked independence, the Court will turn to the question of its adequacy.

73. The Court would note, first of all, that the events at issue occurred in January 1992 in the territory which at that time was not under the control of the Croatian authorities. When, in 1995, the Croatian authorities regained control of the town of A and the surrounding area, where the events at issue had taken place, the two suspects identified by the authorities of the "Serbian Autonomous Region of Krajina" had fled Croatia and become unavailable to the Croatian authorities. However, the Court is able to examine only the facts that occurred after 5 November 1997 when Croatia ratified the Convention.

74. The Court would note further that the Croatian authorities have followed the available leads in the case in issue, making enquiries with official bodies as well as updating the statements made by the witnesses and relatives of the deceased and tracking down as far as possible the names of

potential suspects which were mentioned by witnesses (see paragraphs 21-24 above). One of the two suspects, X, is living in Serbia and has become a Serbian national; as such he cannot be extradited (see paragraph 54 above), but Croatia cannot be held responsible for that (see *Nježić and Štimac v. Croatia*, no. 29823/13, § 68, 9 April 2015). The Croatian authorities have asked the Serbian authorities to hear evidence from X (see paragraphs 33-35 above). The Court also considers that it is not necessary to examine whether there was an obligation under the Convention for Croatia to require more from the Serbian authorities, given that the applicants could have reported the case themselves to Serbia's War Crimes Prosecutor, who has jurisdiction over serious violations of international humanitarian law committed anywhere in the former Yugoslavia (see paragraph 53 above). Moreover, it is open to the applicants to lodge an application against Serbia if they consider that they are the victims of a breach by Serbia of their Convention rights (compare *Palić v. Bosnia and Herzegovina*, no. 4704/04, § 65, 15 February 2011; and *Nježić and Štimac*, cited above, § 68).

75. As regards the second of the two suspects, Y, the Court notes that he resides in the United States and that the Croatian authorities issued an international arrest warrant against him. The Croatian authorities have been taking adequate steps and corresponding with the United States authorities with a view to having him extradited to Croatia (see paragraph 25-31 above).

76. The applicants' principal complaint appears to be that the investigation has not resulted in any prosecutions. The Court can understand that it must be frustrating for the applicants that potential suspects have been named but not prosecuted as yet. However, Article 2 cannot be interpreted as imposing a requirement on the authorities to bring a prosecution in every case since the procedural obligation under that Article is one of means and not of results (see paragraph 68 above).

77. The Court notes, further, that Croatia declared its independence on 8 October 1991 and that all military operations ended in August 1995. In January 1998 the UNTAES mandate ceased and the peaceful transfer of power to the Croatian authorities began (see paragraph 20 above).

78. The Court accepts that any obstacles to the investigation into the killings during the war and post-war recovery, and any delays in the investigation (see paragraph 66 above), were attributable to the overall situation in Croatia, a newly independent and post-war State which needed time to organise its apparatus and for its officials to gain experience (compare *Palić*, cited above, § 70).

79. As to the requirement of promptness, the Court accepts that the investigation in the present case was aggravated by the fact that the suspects of the crimes that are the subject of the present application appear to have been members of Serbian paramilitary forces who fled Croatia in August 1997 and are not available to the Croatian authorities, since one of them

lives in Serbia as a Serbian national and the other resides in the United States.

80. The Court finds that, taking into account the special circumstances prevailing in Croatia in the post-war period and the large number of war-crimes cases pending before the local courts (see paragraph 41 above), as well as all the steps the domestic authorities have taken in the present case, the investigation has not been shown to have failed to meet the minimum standard required under Article 2 (compare *Palić*, cited above, § 71; *Gürtekin and others v. Cyprus* (dec.), no. 60441/13 et al., § 32, 11 March 2014; *Mujkanović and Others v. Bosnia and Herzegovina* (dec.), nos. 47063/08 et al., § 42, 3 June 2014; *Fazlić and Others v. Bosnia and Herzegovina* (dec.), nos 66758/09 et al.,, § 40, 3 June 2014; and *Šeremet v. Bosnia and Herzegovina* (dec.), no. 29620/05, § 38, 8 July 2014). It follows that there has been no violation of that provision.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

81. The applicants further complained that the sum they had been ordered to pay to the State had been in breach of their right to peaceful enjoyment of their possessions. They relied on Article 1 of Protocol No. 1, which reads as follows:

> "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."

A. Admissibility

82. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

83. The applicants complained that the order imposed on them by the domestic courts to pay the costs of the State's representation in the civil proceedings in which they sought damages in connection with the killing of

their parents had violated their right to peaceful enjoyment of their possessions. In support of their complaint the applicants submitted the following arguments.

84. The applicants maintained that the application of the rule that the loser had to pay the costs of the opposing party's representation had resulted, in the particular circumstances of their case, in an excessive individual burden on them. They submitted that the manner in which that rule had been applied in their case was not proportionate to the legitimate aim pursued. While acknowledging a legitimate aim behind the "loser pays" rule, the applicants submitted that their claim had been in accordance with the case-law at the time they had submitted it, and as such could not be regarded as ill-founded.

85. The applicants further submitted that they had brought the civil action at issue in connection with the killing of their parents. At that time the Supreme Court had already accepted several such claims. This approach had been followed by the first-instance court, which had allowed the applicants' claim. Only later had the national courts developed the view that in cases where individuals had been killed in the occupied territories the State was not liable for damages since such killings were to be regarded as war-related damage.

86. The risk of having to bear the costs of the State's representation in civil proceedings made parties in general reluctant to bring civil actions against the State, in particular regarding issues where there was no established practice on the part of the domestic courts or where the hitherto established practice had been changed.

87. The applicants also argued that the opposing party in the proceedings at issue had been the State, represented by the State Attorney's Office. It had not been fair to assess the costs of the State's representation on the basis of the Scales of Advocates' Fees and Reimbursement of their Costs, since the State Attorney's Office was not in the same position as advocates. Unlike the State bodies, advocates had to pay income tax and other expenses while the State Attorney's Office was financed from the State budget.

88. They maintained further that the Croatian legal system recognised situations which called for the reduction of fees in the public interest. Thus, when advocates' fees were to be reimbursed from the State budget (as was the case when they were representing the accused in certain criminal proceedings), they were entitled to 30% of their usual fee only.

89. The amount of HRK 52,500 in costs that they had been required to reimburse to the State was an excessive burden on the applicants, in particular given that the maximum amount of non-pecuniary damage awarded by the national courts in connection with the death of a close relative was HRK 220,000. Moreover, the monthly income of the first applicant's household, comprising the applicant, his wife and two children,

was HRK 12,600 and that of the second applicant's household, comprising the applicant, her husband and three children, was HRK 5,200. Therefore, the sum required from the applicants would have had a significant impact on their financial situation.

90. The Government maintained that the applicants had lost a civil case against the State and had therefore been ordered to reimburse the costs of the State's representation in those proceedings, all in accordance with the relevant rules of civil procedure. The amount of those costs had been assessed on the basis of the value of the applicants' claim.

2. The Court's assessment

(a) Whether there was an interference with the applicants' right to peaceful enjoyment of their possessions

91. The Court reiterates that Article 1 of Protocol No. 1, which guarantees the right to the protection of property, contains three distinct rules: "the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest. The three rules are not, however, 'distinct' in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule" (see *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, § 62, ECHR 2007-I).

92. The Court notes that the applicants' complaint in the present case concerns a costs order obliging them to pay the costs of the State's representation into the State's budget. The Court considers therefore that the order to pay these costs at all levels of jurisdiction has amounted to an interference with the applicants' right to the peaceful enjoyment of their possessions. Since the costs of the State's representation are not costs related to the court system as such, the reimbursement of these costs is not a contribution within the meaning of the second paragraph of Article 1 Protocol No. 1 (see *X and Y v. Austria*, no. 7909/74, Commission decision of 12 October 1978, *Decisions and Reports* (DR) 15, pp. 160, 163 and 164; and *Aires v. Portugal*, no. 21775/93, Commission decision of 25 May 1995, DR 81, p. 48). The Court will examine the case in the light of the general rule under the first sentence of the first paragraph of Article 1 of Protocol No 1 (see *Hoare v. the United Kingdom* (dec.), no. 16261/08, § 59, 12 April 2011).

(b) Whether the interference was lawful

93. The Court reiterates that the first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of someone's possessions should be lawful (see *Iatridis v. Greece* [GC], no. 31107/96, § 58, ECHR 1999-II). The Court notes that the applicants did not dispute the lawfulness of the national courts' decisions ordering them to reimburse the costs of the State's representation. The Court sees no reason to hold otherwise since these decisions were based on section 154(1) of the Civil Procedure Act.

(c) Whether the interference pursued a legitimate aim

94. Any interference with a right of property, irrespective of the rule under which it falls, can be justified only if it serves a legitimate public (or general) interest. The Court reiterates that, because of their direct knowledge of their society and its needs, national authorities are in principle better placed than any international judge to decide what is "in the public interest". Under the system of protection established by the Convention, it is thus for the national authorities to make the preliminary assessment as to the existence of a problem of public concern warranting measures that interfere with the peaceful enjoyment of possessions (see *Elia S.r.l. v. Italy*, no. 37710/97, § 77, ECHR 2001-IX, and *Terazzi S.r.l. v. Italy*, no. 27265/95, § 85, 17 October 2002).

95. The Court notes that section 154(1) of the Civil Procedure Act embodies the "loser pays" rule, according to which the unsuccessful party has to pay the successful party's costs. Furthermore, according to the Scales of Advocates' Fees, in civil cases those fees are, as a matter of principle, calculated in proportion to the value of the subject matter of the dispute (see paragraphs 43 and 44 above).

96. The Court notes that the rationale behind the "loser pays" rule is to avoid unwarranted litigation and unreasonably high litigation costs by dissuading potential plaintiffs from bringing unfounded actions without bearing the consequences. The Court considers that, by discouraging ill-founded litigation and excessive costs, those rules generally pursue the legitimate aim of ensuring the proper administration of justice and protecting the rights of others. The Court is therefore of the view that the "loser pays" rule cannot in itself be regarded as contrary to Article 1 of Protocol No. 1 (see Hoare, cited above, § 59; and *Klauz v. Croatia*, no. 28963/10, §§ 82 and 84, 18 July 2013). This view is not altered by the fact that those rules also apply to civil proceedings to which the State is a party, thus entitling it to recover from an unsuccessful party the costs of its representation. The State should not be considered to have limitless resources and should, like private parties, also enjoy protection from ill-founded litigation (see *Klauz*, cited above, § 85).

97. The Court therefore considers that the costs order in the present case pursued a legitimate aim (see, *mutatis mutanids*, *Stankov v. Bulgaria*, no. 68490/01, § 52, 12 July 2007, and *Klauz*, cited above, § 82). It will proceed to examine the key issue, namely whether a "fair balance" was struck between the general interest and the applicants' rights under Article 1 of Protocol No. 1.

(d) Whether the interference was proportionate to the legitimate aim pursued

98. It therefore remains to be determined whether the measures complained about were proportionate to the aim pursued. Any interference must achieve a "fair balance" between the demands of the general interest of the community and the requirement of protecting the individual's fundamental rights (see *Beyeler v. Italy* [GC], no. 33202/96, § 107, ECHR 2000-I; and *Hoare*, cited above, § 60). There must be a reasonable relationship of proportionality between the means employed and the aim pursued. In each case involving an alleged violation of Article 1 of Protocol No. 1, the Court must ascertain whether by reason of the State's interference, the person concerned had to bear a disproportionate and excessive burden (see *James and Others v. the United Kingdom*, 21 February 1986, § 50, Series A no. 98, and *Amato Gauci v. Malta*, no. 47045/06, § 57, 15 September 2009). In assessing compliance with Article 1 of Protocol No. 1, the Court must make an overall examination of the various interests in issue (see *Perdigão v. Portugal* [GC], no. 24768/06, § 68, 16 November 2010), bearing in mind that the Convention is intended to safeguard rights that are "practical and effective" (see, for example, *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, § 100, ECHR 1999-III). It must look behind appearances and investigate the realities of the situation complained of (see *Zammit and Attard Cassar v. Malta*, no. 1046/12, § 57, 30 July 2015).

99. The central issue in the present case concerns the fact that the applicants were ordered to reimburse the costs of the State's representation by the State Attorney's Office in an amount equal to an advocate's fee, because their claim for damages in connection with the killing of their parents had been dismissed in its entirety on the grounds that the State was not liable for damage resulting from the killings committed on the territory of the Krajina, which at the material time had been outside the control of the Croatian authorities.

100. The Court emphasises that the applicants did not challenge as such the rule contained in section 154(1) of the Civil Procedure Act. They rather claimed that the manner in which the rule was applied in the particular circumstances of their case had placed an excessive individual burden on them.

101. The Court notes that section 154(1) of the Civil Procedure Act does not allow for any flexibility as regards the reimbursement of the costs of the

opposing party by the party which has lost a case, since it provides that "a party which loses a case completely shall reimburse the costs of the opposing party and his or her representative" (see paragraph 43 above).

102. Further to this the Court notes that the State Attorney's Office is entitled to the reimbursement of both costs and fees when it represents another party, but only to the reimbursement of costs when it itself participates in the proceedings as a party (see sections 162 and 163 of the Civil Procedure Act, paragraph 43 above).

103. The applicants brought their claim for non-pecuniary damage under the Liability Act. That Act provides that the State is liable for damage resulting from death caused by "acts of terrorism or other acts of violence committed with the aim of seriously disturbing public order by provoking fear or stirring up feelings of insecurity in citizens". In paragraph 2 of section 1 it defines a terrorist act as "an act of violence committed for political reasons with a view to stirring up fear, terror or feelings of personal insecurity in citizens" (see paragraph 51 above).

104. The Court notes that it was alleged that the applicants' parents had been abducted from their home in A by two police officers of the "Serbian Autonomous Region of Krajina" during the war in Croatia, and that they had been taken to a nearby village and shot dead, solely because of their Croatian ethnic origin.

105. The Supreme Court which ultimately held against the applicants agreed that the killing of their parents bore certain similarities to an act of terrorism (see paragraph 38 above).

106. In the present case the Croatian Government, in their observations, cited a number of Supreme Court judgments in which that court had dismissed claims for compensation in respect of damage caused by the killing of the plaintiffs' relatives in the occupied territory during the war. However, these judgments were adopted mainly in 2007 and 2008. Thus, at the time the applicants lodged their civil action for damages, in March 2006, it could be said that the position of the Supreme Court as to what constituted an act of terror and what constituted war-related damage was not entirely clear. Furthermore, in their constitutional complaint, the applicants cited several judgments of the Supreme Court in which State liability for damage caused by killings during the Homeland War in Croatia had been established.

107. It cannot therefore be said that the applicants' civil action against the State was devoid of any substance or manifestly unreasonable. The applicants' view that the damage caused to them by the killing of their parents was covered by the Liability Act was not unreasonable, since at that time it was not possible for the applicants to know whether the killing of their parents would be regarded as a terrorist act or as war-related damage.

108. Furthermore, the national courts ordered the applicants to pay for the State's representation the amount that would be awarded to the opposing

party as advocates' fees. The Court attaches considerable importance to the fact that the opposing party in the proceedings at issue was the Croatian State, represented by the State Attorney's Office and that the costs of that office in the civil proceedings at issue were assessed on the basis of the Advocates' fees. However, as rightly pointed out by the applicants, that office, since it is financed from the State budget, is not in the same position as an advocate. The Court notes that in a comparable situation the Supreme Court has already held that an insurance company was not entitled to reimbursement of its legal representation by advocates in a dispute concerning a claim for damages because it could have ensured its legal representation in these proceedings by its own employees (see paragraph 46 above).

109. Another factor of importance is the applicants' individual financial situation. Given their arguments in that regard (see paragraph 89 above), the Court accepts that paying the amount ordered by the national courts in respect of the costs of the proceedings at issue appears burdensome for the applicants.

(e) Conclusion

110. In the particular circumstances of the present case and given that the Supreme Court accepted that the acts at issue which amounted to a war crime bore certain similarities to terrorist act; that the definition of what constituted a terrorist act was subject to the courts' interpretation and at the relevant time was not clarified; that the applicants' opponent was the State represented by the State Attorney's Office; and that the amount of the costs to be reimbursed was not insignificant in light of the applicants' financial situation the Court considers that ordering the applicants to bear the full costs of the State's representation in the proceedings at issue amounted to a disproportionate burden on them.

111. There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention in the particular circumstances of the present case.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

112. The applicants further complained that their right of access to a court had been violated. They relied on Article 6 § 1 of the Convention, the relevant part of which reads as follows:

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

A. Admissibility

113. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

114. The applicants reiterated their arguments summarised in paragraphs 82-88 above.

115. The Government maintained that the applicants had had access to a court in connection with their civil claim for damages, which had been examined at three levels of jurisdiction. The fact that the applicants' claim had been dismissed could not be seen as depriving them of the right of access to a court. It had been the established practice of the Supreme Court to dismiss claims for damages against the State in connection with the killing of civilians in the occupied territories, since this was regarded as war-related damage for which the State was not liable. In that connection the Supreme Court had adopted several judgments concerning the killings in the area around the town of A. These judgments had been adopted between 2007 and 2010.

2. The Court's assessment

(a) General principles

116. Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. In this way, that provision embodies the "right to a court", of which the right of access, that is, the right to institute proceedings before a court in civil matters, is one aspect (see *Golder v. the United Kingdom*, 21 January 1975, §§ 34 *in fine* and 35-36, Series A no. 18; and *Z and Others v. the United Kingdom* [GC], no. 29392/95, §§ 91-93, ECHR 2001-V).

117. The right of access to the courts is not absolute but may be subject to limitations; these are permitted by implication since the right of access "by its very nature calls for regulation by the State, regulation which may vary in time and in place according to the needs and resources of the community and of individuals". In laying down such regulation, the Contracting States enjoy a certain margin of appreciation. Whilst the final decision as to observance of the Convention's requirements rests with the Court, it is no part of the Court's function to substitute for the assessment of the national authorities any other assessment of what might be the best policy in this field. Nonetheless, the limitations applied must not restrict the

access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see *Stanev v. Bulgaria* [GC], no. 36760/06, § 230, ECHR 2012).

118. The Court has already held that the imposition of a considerable financial burden after the conclusion of proceedings, such as an order to pay fees for the representation of the State according to the "loser pays" rule could well act as a restriction on the right to a court (see *Klauz*, cited above, § 77; and, *mutatis mutandis*, *Stankov* , cited above, § 54).

(b) Application of these principles in the present case

119. The Court considers that it is not its task to rule on the "loser pays" rule as such, but to determine whether, in the circumstances of this case, the applicants' right of access to a court within the meaning of Article 6 § 1 of the Convention was respected (see, *mutatis mutandis*, *Malige v. France*, 23 September 1998, § 30, *Reports* 1998-VII). The Court accepts that imposition on the applicants to pay the costs of the State representation may be viewed as a restriction hindering the right of access to court (see *Klauz*, cited above, § 81).

120. As the Court has underlined on a number of occasions, a restriction affecting the right to court will not be compatible with Article 6 § 1 unless it pursues a legitimate aim and there is a reasonable relationship of proportionality between the means employed and the legitimate aim sought to be achieved (see paragraph117 above and in particular with respect to the "loser pays" rule, *Klauz*, cited above, § 83). The Court must therefore examine whether this was achieved in the present case.

121. The Court accepts that the "loser pays" rule pursues a legitimate aim of ensuring the proper administration of justice and protecting the rights of others by discouraging ill-founded litigation and excessive costs (see *Klauz*, cited above, § 84; see also paragraph 93 above).

122. As to the question whether the limitation was proportionate to the legitimate aim pursued, the Court refers to its finding under Article 1 of Protocol No. 1 (see paragraphs 97-107 above). On the same grounds on which it found a violation of Article 1 of Protocol No. 1 (see paragraph 108 above) the Court emphasizes once again that ordering the applicants to bear the full costs of the State's representation in the proceedings at issue amounts to a disproportionate restriction of the applicants' right of access to court.

123. There has therefore been a violation of Article 6 § 1 of the Convention as regards the applicants' right of access to a court.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

124. Article 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."

A. Damage

125. The applicants each claimed: 30,000 euros (EUR) in respect of non-pecuniary damage as regards the procedural aspect of Article 2 of the Convention; EUR 10,000 in respect of non-pecuniary damage as regards the procedural aspect of Article 14 of the Convention; EUR 10,000 in respect of non-pecuniary damage as regards Article 13 of the Convention; EUR 10,000 in respect of non-pecuniary damage as regards Article 6 § 1 of the Convention; EUR 10,000 in respect of non-pecuniary damage as regards Article 1 of Protocol No. 1; and HRK 26,250 (about 3,500 euros) in respect of pecuniary damage as regards Article 1 of Protocol No. 1.

126. The Government deemed the sums claimed excessive and unfounded.

127. The Court, having regard to its case-law (see *Stankov*, cited above, § 71; and *Perdigão*, cited above, §§ 85-86), considers it reasonable to award the applicants jointly EUR 5,000 on account of non-pecuniary damage and EUR 3,400 on account of pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

128. The applicants also claimed EUR 5,090 for the costs and expenses incurred before the Court. They submitted a copy of a legal fees agreement between them and their lawyer.

129. The Government objected to the amount claimed.

130. According to the Court's case-law, 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 reasonable as to quantum. 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 for the proceedings before the Court.

C. Default interest

131. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 2 of the Convention;

3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

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

5. *Holds*
   (a) that the respondent State is to pay the applicants jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 5,000 (five thousand euros) in respect of non-pecuniary damage;
      (ii) EUR 3,400 (three thousand four hundred euros) in respect of pecuniary damage;
      (iii) EUR 3,000 (three thousand euros) in respect of costs and expenses, payable directly into the bank account of the applicants' representative;
      (iv) any tax that may be chargeable on the above amounts;
   (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;

6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 6 September 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı	Işıl Karakaş
Deputy Registrar	President