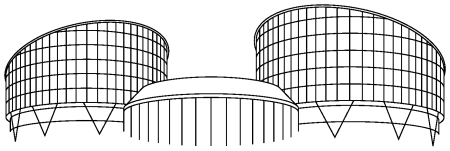

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF B. AND OTHERS v. CROATIA

(Application no. 71593/11)

JUDGMENT

STRASBOURG

18 June 2015

FINAL

19/10/2015

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

In the case of B. and Others v. Croatia,

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

Isabelle Berro, *President*,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Paulo Pinto de Albuquerque,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 26 May 2015,

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

PROCEDURE

1. The case originated in an application (no. 71593/11) 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 three Croatian nationals ("the applicants"), on 11 November 2011.

2. The applicants were represented by Mr L. Šušak, 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 incumbent on the respondent Government under Articles 2 and 14 of the Convention had not been met and that they had no effective remedy in that respect, as required under Article 13 of the Convention.

4. On 30 October 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1960, 1979 and 1987 respectively and live in Petrinja.

A. Killing of V.B. and investigation

6. The documents submitted by the parties reveal the following facts.

7. On 9 August 1991 the Sisak Police lodged a criminal complaint with the Sisak County State Attorney's Office against a person or persons unknown, alleging that at about 11 p.m. on 4 August 1991 V.B., who was driving a coach, had been stopped by a road patrol; he had allegedly not complied with the orders given and had been beaten up. He had been taken to the Sisak Hospital where he died soon afterwards. The autopsy was carried out on 5 August 1991. V.B. was the applicants' respective husband and father.

8. On 9 August 1991 the Sisak Police interviewed Vl.P., who told them that on 4 August 1991 he had been in a bar in Odra when V.H. and M.S., both dressed in Croatian Army uniforms and armed with automatic guns, asked him to drive a coach to Sisak. They had kept the driver, V.B., with them. Vl.P. had complied with the order and two other Croatian soldiers, I.C. and M.B., had accompanied him in the coach while Mi.T., another Croatian soldier, followed them in a vehicle. There had been about ten passengers on the coach. When he subsequently returned to Odra, V.B. was no longer there.

9. In 1996 the United Nations Security Council established the United Nations Transitional Administration in Eastern Slavonia, Baranja and Western Sirmium (the "UNTAES"). On 15 January 1998 the UNTAES mandate ceased and the transfer of power to the Croatian authorities began.

10. V.H. died in 1997.

11. The documents submitted by the parties do not indicate that any steps were taken between 9 August 1991 and 22 October 2002.

12. M.B. (see paragraphs 13, 15, 22, 25 and 26 below) died on 25 June 2002.

13. Between 22 October 2002 and 4 March 2003 the Sisak Police interviewed ten former Croatian soldiers who had been stationed in the Sisak area. D.M., interviewed on 19 February 2003, said that in 1991 he had worked in the Sisak Police. One night he and two of his colleagues, H. and K., had been instructed by Croatian soldiers to go to the Odra Community Centre (*Društveni dom Odra*), where they had arrested one person. On their arrival, V.H., one of the soldiers who was personally known to D.M., told him that the arrested person could not walk. There had been about twenty men in camouflage uniforms. He had recognised M.B., who was commander of the unit. The arrested man, named [V.]B., had been put into the back of the vehicle. He had been covered in blood, was unconscious and could hardly breathe. They had taken [V.]B. to the police station in Sisak and then to a hospital.

14. D.K., interviewed on 20 February 2003, said that he knew who had beaten up V.B. and that he had told an inspector everything at the material

time, and would not reveal the identity of the perpetrators to the police. He described in detail the events of 4 August 1991 with regard to the killing of V.B. and said that it had occurred in the Odra Community Centre where a Croatian Army unit had been stationed. He had been upstairs and heard some noise downstairs. He had gone down to see what was happening, and had seen V.B. lying in blood and surrounded by some soldiers.

15. Several of the soldiers interviewed identified M.B. as the commander of the unit which was stationed in the Odra Community Centre.

16. On 20 February 2003 the Sisak Police also interviewed M.S., who denied any involvement in the abduction and killing of V.B.

17. On 26 February 2003 the Sisak Police again interviewed Vl.P. He stated that he had joined the Croatian Army during the summer of 1991, probably in June, and had been with a unit that was stationed in the Odra Community Centre. The commander of that unit was D.K. On the night when V.B. had been stopped at the checkpoint in Odra, Vl.P. had been in a bar at a crossroads. There had been a lot of people in the bar, but he could not remember any of them. At one point someone had approached him and told him that he must drive a coach back to Sisak because the driver had been apprehended. When he exited the bar he had seen a coach parked on the street and V.B. standing next to it. He had not seen that V.B. had been physically ill-treated. He did not remember who had been there.

18. On 1 October 2003 the Sisak Police compiled a report on the investigation into the killing of V.B. in which the documents from the case-file were listed and described.

19. On 29 July 2005 the State Attorney's Office issued a document concerning enquiries into the killings of civilians between 1991 and 1995. The document was addressed to the County State Attorney's Offices, which were required to examine all of the information collected to date on the killings of civilians during that period and to concentrate their activities on identifying the perpetrators and gathering the relevant evidence in order to initiate criminal proceedings.

20. On 9 October 2008 the State Attorney's Office issued an instruction for implementation of the Criminal Code and the Code of Criminal Procedure to the County State Attorney's Offices, in which they stated that an inspection of their work had indicated two main problems: possible partiality of the persons involved in the pending proceedings as regards the ethnicity of the victims or the perpetrators; and the problem of trials *in absentia*. The instructions favoured impartial investigations of all war crimes, irrespective of the ethnicity of those involved, whether victims or perpetrators, and stressed the duties of those working for the State Attorney in that respect.

21. In January 2009 the Sisak Police interviewed six former policemen or Croatian soldiers who had been stationed in the Sisak area in 1991. S.Š., interviewed on 28 January 2009, said that he had been one of the soldiers in

the Croatian Army unit stationed in the Odra Community Centre in 1991 when V.B. had been killed. He had not personally witnessed the event, but had later heard that M.S. and V.H. had taken V.B. from a coach and beaten him, and that J.B. (who died in 2002) had also been present.

22. When interviewed by the Sisak Police on 29 January 2009, D.M. (see paragraph 12 above) reiterated that he had been a policeman between 1981 and 1998, when he had retired. As regards the killing of V.B., one night in August 1991 he had been ordered to go to Odra together with two other officers, H. and K. They had parked a police wagon in front of the Odra Community Centre and he, D.M., had stayed in the vehicle, while H. and K. had entered the building. A certain N.H. had approached him and they had spoken for few moments. He had heard some noise from inside the Odra Community Centre. A member of the special police, M.B., had approached him and told him to park the police wagon at the entrance of the Odra Community Centre. H. and K. had got into the vehicle, saying that "these people are not normal". A person had been pushed into the back of the police wagon. He had not seen who had done it, but supposed that they had been the members of the special police whose commander had been M.B. When they had arrived in Sisak, the police officers had opened the wagon and D.M. had seen V.B. covered in blood and breathing with difficulty. They had then driven him to the emergency ward.

23. Vl.P. died on 8 February 2009.

24. N.H. died on 13 September 2009.

25. On 13 December 2010 the Osijek County State Attorney's Office asked the Sisačko-moslavača Police Department to collect the relevant information regarding various cases concerning war crimes committed by unknown perpetrators. With regard to the killing of V.B., they asked the police to interview D.B., who had been the duty officer of the Sisak Police between 10 p.m. on 4 August 1991 and 6 a.m. on 5 August 1991, and who had allegedly informed his superiors about the arrest of V.B. He was to be asked in particular which of his superiors he had informed, what had been ordered by the superiors, which operative officer had been in charge and why M.B. and the person called D.[V.H.] – who had been identified by witness D.K. as possible direct perpetrators – had not been interviewed.

26. On 28 December 2010 the Sisačko-moslavača Police Department submitted a report to the Osijek County State Attorney's Office. The relevant part concerning the killing of V.B. reads:

> "... a report on the interview with D.B., who was the duty officer of the Sisak Police between 10 p.m. on 4 August 1991 and 6 a.m. on 5 August 1991 is enclosed. In the register of operative duty it is stated that on that day police officers M., K., H., S. and Nj. were in charge of the inquiry into the case of V.B. A criminal complaint against an unknown perpetrator was lodged by officer R.Š. She was interviewed on 5 August 1991 by officer Z.S. who carried out interviews in connection with the B. case. It has not been established why M.B. and the person called D.[V.H.] have not been interviewed."

B. Proceedings on indictment

27. On 20 June 2011 the Sisak County Police lodged a criminal complaint against Đ.B., V.M and D.B. on charges of war crimes against the civilian population. This included the killing of the applicants' relative. On the same day Đ.B., Head of the Sisak Police Department in 1991 and 1992, V.M., police commander at the border territory of Sisak and Banovina in 1991 and 1992 and Deputy of Sisak Police Department, and D.B., a member of the "Wolves" Unit of the Croatian Army, were arrested.

28. On an unspecified date the investigation was opened and on 13 July 2011 Đ.B. died.

29. On 16 December 2011 the Osijek County State Attorney's Office lodged an indictment against V.M. and D.B. at the Osijek County Court, alleging that they had been in command of the unit whose unknown members committed a number of crimes against the civilian population between July 1991 and June 1992, including the killings of the applicants' relative. They were charged with war crimes against the civilian population.

30. On 9 December 2013 a first-instance judgment was delivered. V.M. was found guilty of war crimes against the civilian population in that he, in his capacity as "the commander of police forces in the broader area of Sisak and Banovina" and "Deputy Head of the Sisak Police", had allowed the killings of persons of Serbian origin and had failed to undertake adequate measures to prevent such killings. The relevant part of the judgment concerning the applicants' close relative:

> "on 4 August 1991 in Odra Sisačka [the police] unlawfully arrested and took from a 'Slavijatrans' coach its driver, V.B., who was then brutally beaten by several unidentified members of the reserve police, stationed in Odra, under the command of M.B., and who died of the injuries thus sustained the same evening in the Sisak Hospital."

V.M. was sentenced to eight years' imprisonment. D.B. was acquitted of all charges.

31. On 10 June 2014 the Supreme Court upheld the conviction of V.M. and increased his sentence to ten years' imprisonment.

C. Civil proceedings

32. On 15 February 2005 the applicants brought a civil action against the State in the Petrinja Municipal Court, seeking compensation in connection with the death of their close relative. The claim was dismissed on 6 April 2005 and was upheld on appeal by the Sisak County Court and the Supreme Court on 11 September 2008 and 19 May 2010 respectively. The national courts found that the claim had been submitted after the statutory limitation period had expired.

33. A subsequent constitutional complaint lodged by the applicants was dismissed on 18 May 2011.

34. Following the criminal conviction of V.M., the applicants sought the reopening of these proceedings in the Petrinja Municipal Court. Their request is now pending.

II. RELEVANT DOMESTIC LAW AND REPORTS

35. 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.
>
> ..."

36. Article 34 of the Criminal Code (*Krivični zakon*, Official Gazette nos. 25/1977, 50/1978, 25/1984, 52/1987, 43/1989, 8/1990, 8/1991, and 53/1991) prescribes imprisonment of at least five years for murder. Qualified murder was punishable by up to twenty years' imprisonment.

37. The relevant provisions of the Code of Criminal Procedure (*Zakon o kaznenom postupku*, Official Gazette nos. 110/1997, 27/1998, 58/1999, 112/1999, 58/2002) provide:

Article 174(2)

> "In order to ... decide whether to request an investigation ... the State Attorney shall order the police to collect the necessary information and take other measures concerning the crime [at issue] with a view to identifying the perpetrator ..."

Article 177

> "Where there is a suspicion that a criminal offence liable to public prosecution has been committed, the police shall take the necessary measures with a view to identifying the perpetrator ... and collect all information of possible relevance for the conduct of the criminal proceedings..."

Article 185

Urgent Investigative Steps

> "When the perpetrator of a criminal offence is unknown, a state attorney may ask the police to carry out certain investigative steps where, given the circumstances of the case, it would be useful to carry out such steps before instituting an investigation. If the State Attorney considers that certain investigative steps should be carried out by an investigating judge ... he or she will invite an investigating judge to carry out these steps. ..."

Article 187

> "(1) An investigation shall be opened in respect of a particular individual where there is a suspicion that he or she has committed a criminal offence.

(2) During the investigation evidence and information necessary for deciding whether an indictment is to be brought or the proceedings are to be discontinued shall be collected ..."

Article 243

"(1) If a properly summoned witness does not appear and does not offer a good reason for his or her absence, or if he or she leaves the place where he or she is to give his or her evidence without approval or a good reason, an order may be issued that he or she be brought using force, or he or she may be fined up to 20,000 Croatian kuna.

(2) If a witness appears and, after having been warned about the consequences of the refusal to give his or her evidence without a good reason prescribed by law, refuses to give his or her evidence, he or she may be fined up to 20,000 Croatian kuna. If the witness still refuses to give his or her evidence, he or she may be imprisoned. The imprisonment shall last as long as the witness refuses to give his or her evidence or until his or her evidence becomes irrelevant, or until the conclusion of the criminal proceedings, but no longer than one month.

..."

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

III. RELEVANT INTERNATIONAL LAW

39. The Statute of the International Criminal Court (Article 25), the Statute of the International Criminal Tribunal for Rwanda (Article 6) and the Statute of the International Criminal Tribunal for the Former Yugoslavia refer to individual criminal responsibility. Article 7 of the latter reads:

Individual criminal responsibility

"1. Anyone planning, instigating, ordering, committing or otherwise aiding and abetting the planning, preparation or execution of a crime referred to in Articles 2 to 5 of the present Statute shall be individually responsible for the crime.

2. The official position of any accused person, whether as Head of State or Government or as a responsible Government official, shall not relieve such person of criminal responsibility nor mitigate punishment.

3. The fact that any of the acts referred to in Articles 2 to 5 of the present Statute was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

4. The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him of criminal responsibility, but may be considered in

mitigation of punishment if the International Tribunal determines that justice so requires."

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 2 OF THE CONVENTION

40. The applicants complained about the killing of V.B. and insufficiencies in the investigation in that respect. They relied on the substantive and the procedural aspects of Article 2 of the Convention, the relevant part of which provides:

"1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

..."

A. Admissibility

1. The parties' arguments

41. The Government argued that the applicants had failed to exhaust all available domestic remedies. They contended that the applicants could have lodged a complaint against the individual police officers or employees in the State Attorney's Office who were in charge of the investigation into the death of their relative. Such a complaint could have led to the institution of disciplinary proceedings. As regards 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 pursuant to the State Administration Act (*Zakon o sustavu državne uprave*). They argued that such a combination of remedies had been found effective by the Court in the case of *D.J. v. Croatia* (no. 42418/10, 24 July 2012).

42. In reply, the applicants submitted that the relevant authorities had been made aware of the killing of their relative as early as 1991 and that they had a duty to conduct an official State-assisted investigation. The remedies relied on by the Government were not relevant.

2. The Court's assessment

43. Before turning to the points raised by the parties in respect of the exhaustion of domestic remedies, the Court will first address the issue of its temporal jurisdiction.

(a) Compatibility *ratione temporis*

44. The Court has already addressed its temporal jurisdiction as regards both the substantive and the procedural aspect of Article 2 in similar circumstances and found that it had no temporal jurisdiction in respect of the alleged substantive violation of that Article, but had such jurisdiction in respect of the alleged procedural violation in respect of the facts that occurred after 5 November 1997, the date of the ratification of the Convention by Croatia (see of *Jelić v. Croatia*, no. 57856/11, §§ 47-56, 12 June 2014). The Courts sees no reason to depart from such conclusions in the present case.

45. It follows that the complaint under the substantive aspect of Article 2 of the Convention is incompatible *ratione temporis* with the provisions of the Convention within the meaning of Article 35 § 3(a) and must be rejected in accordance with Article 35 § 4.

(b) Exhaustion of domestic remedies

46. 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*, cited above, §§ 59-67). The Court sees no reason to depart from that view in the present case.

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

(c) Conclusion as to the admissibility

48. 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

49. The Government argued that there had been no violation of the procedural aspect of Article 2 in the present case. They maintained that the case at issue was very complex and sensitive and that the indictment brought against V.M. and D.B. concerned thirty-four victims. The main suspects in the case, Đ.B. and V.M, had held senior official positions until 1999, and this had impeded the investigation. Furthermore, one of the specific features of investigations into war crimes was a lack of material evidence and the prosecution was highly dependent on witness evidence. However, witnesses had often been reluctant to give evidence for fear of reprisals.

50. After Croatia became independent, the State apparatus comprised many young and inexperienced officials, who had not known how to

address those serious problems. In these difficult circumstances the authorities had done everything they could to identify the perpetrators and bring them to justice. Those who had given orders for the killings had been indicted, and one of the accused had been found guilty of war crimes against the civilian population and sentenced to ten years' imprisonment.

51. As regards the killing of V.B., all possible leads had been followed up and all available witnesses interviewed by the police. Individual investigations into the killing of a number of persons in the town of Sisak and its area in 1991 and 1992 had – for lack of conclusive evidence – failed to lead to the identification of the direct perpetrators. The witness statements had amounted to mere gossip and rumours. The law-enforcement authorities had therefore joined these individual investigations and concentrated their efforts on identifying those responsible at a higher level of command in the police. That had led to the indictment of three persons, Đ.B., a former Head of the Sisak Police, V.M., his Deputy as well as D.B.

52. At the time when V.B. had been killed, Đ.B. had been the Head of the Sisak Police and he had personally obstructed the investigation

53. The applicants argued that the investigation into the death of their respective husband and father had so far yielded little result. None of the direct perpetrators had been indicted, although some of the witnesses had identified them. There had been many witnesses present when V.B. had been beaten but the authorities had not been genuinely willing to identify the direct perpetrators and bring them to justice.

54. The indictment relied on by the Government concerned only those who had given orders. The war had ended some eighteen years previously, and the Government's justification that the officials were young and inexperienced could not be accepted.

55. The inquiry by the police had not been independent.

2. The Court's assessment

(a) General principles

56. 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).

57. 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, *mutatis mutandis*, *McCann and Others*, 27 September 1995, § 161, Series A no. 324, and *Kaya v. Turkey*, 19 February 1998, § 86, *Reports* 1998-I). The essential purpose of such an investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. This investigation should be thorough, independent, accessible to the victim's family, carried out with reasonable promptness and expedition, effective in the sense that it is capable of leading to a determination of whether the force used in such cases was or was not justified in the circumstances or otherwise unlawful, and afford a sufficient element of public scrutiny of the investigation or its results (see *Hugh Jordan v. the United Kingdom*, no. 24746/94, §§ 105-09, ECHR 2001-III (extracts); *Douglas-Williams v. the United Kingdom* (dec.), no. 56413/00, 8 January 2002; *Esmukhambetov and Others v. Russia*, no. 23445/03, §§ 115-18, 29 March 2011; and *Umarova and Others v. Russia*, no. 25654/08, §§ 84-88, 31 July 2012).

58. Article 2 imposes a duty on the State to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offences against the person, backed up by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions (see *Osman v. the United Kingdom*, § 115, 28 October 1998, *Reports* 1998-VIII; *Mastromatteo v. Italy* [GC], no. 37703/97, §§ 67 and 89, ECHR 2002-VIII; and *Menson v. the United Kingdom* (dec.), no. 47916/99, ECHR 2003-V).

59. Compliance with the State's procedural obligations under Article 2 requires the domestic legal system to demonstrate its capacity to enforce criminal law against those who have unlawfully taken the life of another (see *Nachova and Others*, cited above, § 160).

60. There must also be an implicit requirement of promptness and reasonable expedition (see *Yaşa*, cited above, §§ 102-04, and *Mahmut Kaya v. Turkey*, no. 22535/93, §§ 106-07, ECHR 2000-III). The Court does not underestimate the undeniable complexity of the circumstances surrounding the present case. However, while there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, an adequate response by the authorities in investigating allegations of serious human rights violations, as in the present case, 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 *El Masri v. "the former Yugoslav Republic of Macedonia"* [GC], no. 39630/09, § 192, ECHR 2012). The effective investigation required under Article 2 also serves to secure the effective implementation of the domestic laws which protect the right to life and, in the cases involving State agents or bodies, to ensure their accountability for

deaths occurring under their responsibility (see, among many other authorities, *McKerr v. the United Kingdom*, no. 28883/95, §§ 111 and 114, ECHR 2001-III; and *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, §§ 69 and 72, ECHR 2002-II).

61. The requirements of Article 2 go beyond the stage of the official investigation, where this has led to the institution of proceedings in the national courts: the proceedings as a whole, including the trial stage, must satisfy the requirements of the positive obligation to protect lives through the law. While there is no absolute obligation for all prosecutions to result in conviction or in a particular sentence, the national courts should not under any circumstances be prepared to allow offences concerning violent deaths to go unpunished (see, *mutatis mutandis*, *Öneryıldız v. Turkey* [GC], no. 48939/99, § 96, ECHR 2004-XII; *Okkalı v. Turkey*, no. 52067/99, § 65, ECHR 2006-XII (extracts); and *Türkmen v. Turkey*, no. 43124/98, § 51, 19 December 2006).

(b) Application of these principles to the present case

62. The Court first notes the Government's argument that the case was very complex and concerned thirty-four victims and that the Croatian State apparatus at the beginning of the country's independence had been mainly comprised of inexperienced and young officials who had not known how to deal with such a difficult situation. The Court accepts that the case indeed is a complex one and that there are elements indicating that it concerned targeted killing of Serbian civilians by members of the Croatian police and army in the Sisak area in a prolonged period during 1991 and 1992 (see *Jelić*, cited above, § 78). The Court is aware that this situation was sensitive for a country that was in war and also accepts that during the war and at the beginning of the county's independence the State authorities were faced with a difficult situation which was aggravated by the fact that the perpetrators of the crimes subject to the present application appear to have been those same persons who were entrusted with the duty to protect citizens from such crimes, to conduct preliminary enquiries and carry out the initial fact findings, namely some highly-ranked officials of the Sisak police. The facts of the case indeed suggest that the very Head of that police and his deputies were the instigators of the atrocities committed (see paragraphs 26-30 above).

63. In this connection the Court notes that Croatia declared its independence on 8 October 1991 and 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 9 above). The Court accepts that certain delays in the investigation into the killing of Serbian civilians during the war and post-war recovery were attributable to the overall situation in Croatia, a newly-independent and post-war State which needed certain time to organize its

apparatus and for its officials to gain experience. The Court also notes that the town of Sisak was never occupied and has since the independence of Croatia been under the control of the Croatian authorities.

64. The Court acknowledges the efforts of the State Attorney's office which, in July 2005, required the County State Attorney's Offices to concentrate their activities on identifying the perpetrators and gathering the relevant information (see paragraph 19 above). A further global measure by the State Attorney's Office occurred in October 2008 when it instructed the County State Attorney's Offices to favour impartial investigation of all war crimes, irrespective of the ethnicity of those involved (see paragraph 20 above). The Court also acknowledges that the prosecuting authorities by 31 December 2012 opened investigations in respect of altogether 3,436 alleged perpetrators and that there had been 557 convictions (see paragraph 38 above).

65. As regards the killing of the applicants' respective husband and father, the Court notes that it occurred during the war, on 4 August 1991 in in Odra, near Sisak. On 9 August 1991 the police lodged a criminal complaint with the Sisak County State Attorney's Office against a person or persons unknown. Thus the investigation was instigated. In this connection, the Court notes at the outset that it has no temporal jurisdiction to examine the facts that occurred before 5 November 1997, the date on which Croatia ratified the Convention. Therefore, it will examine only the part of the inquiry which has taken place since that date (compare to *Jelić*, cited above, § 81). Further to this, the Court notes that after the date of ratification of the Convention by Croatia, the first steps were taken on 22 October 2002. The Court will therefore examine the effectiveness of the investigation since that date.

66. When it comes to the procedural aspect of Article 2 of the Convention, the Court notes that one person, V.M., was convicted by the first- instance court of war crimes against the civilian population in his capacity as the Commander of the Police Forces in the broader area of Sisak and Banovina and the Deputy Head of Sisak Police in that he had allowed the killings of persons of Serbian origin and had failed to undertake adequate measures to prevent such killings. However, it had not been established who were the direct perpetrators. In this connection the Court reiterates that in the context of war crimes the superior (command) responsibility is to be distinguished from the responsibility of their subordinates. The punishment of superiors for the failure to take necessary and reasonable measures to prevent or punish war crimes committed by their subordinates cannot exonerate the latter from their own criminal responsibility (see *Jelić*, cited above, § 88; and paragraph 39 above).

67. As regards the killing of V.B., the Court notes that Vl.P. had told the police in 1991 that the Croatian soldiers who took V.B. had been V.H. and M.S. (see paragraph 8 above). When interviewed in 2003, Vl.P. could not

name any of the persons who had been present in Odra at the time when V.B. was killed (see paragraph 17 above). A Croatian soldier, D.M., interviewed on 19 February 2003 by the police, said that in 1991 he had seen V.B. – who had been arrested by the Croatian soldiers – covered in blood in the presence of V.H. (see paragraph 13 above). Another Croatian soldier, S.Š., interviewed on 28 January 2009 by the police, said that he had been one of the soldiers in the Croatian Army unit stationed in Odra in 1991 when V.B. had been killed. He had not personally witnessed the event, but had later heard from some members of his unit that M.S. and V.H. had taken V.B. off a coach and had beaten him (see paragraph 21 above).

68. The above-cited statements indicate that V.H. and M.S. were possible direct perpetrators who had arrested and beaten V.B. V.H. died in 1997 and M.S., when interviewed by the police on 20 February 2003, denied any involvement in the killing of V.B. However, that denial cannot be seen as conclusive as regards M.S.'s true involvement into the killing of V.B. Furthermore, there is no indication that the prosecuting authorities made an attempt to identify the members of S.Š.'s unit who had told him about the alleged involvement of M.S. and V.H. into the killing of V.B. (see paragraphs 21 and 66 above). Given that S.Š. was a member of Croatian army whose credibility was not called into question, it would have been expected from the authorities to closely follow the lead provided by him (see, *a contrario*, *Mujkanović and Others v. Bosnia and Herzegovina* (dec.), nos. 47063/08, 47067/08, 47091/08, 47094/08, 47096/08 and 47099/08, §39, 3 June 2014; *Fazlić and Others v. Bosnia and Herzegovina* (dec.), nos. 66758/09, 66762/09, 7965/10, 9149/10 and 12451/10, § 37, 3 June 2014; *Šeremet v. Bosnia and Herzegovina, Montenegro and Serbia* (dec.), no. 29620/05, §35, 8 July 2014; and *Žerajić and Gojković v. Bosnia and Herzegovina* (dec.), nos. 16503/08 and 67588/09; §30, 13 November 2014, where the only available evidence were rumour and gossip).

69. The Court also notes that D.K., likewise interviewed on 20 February 2003, said that he knew who had beaten up V.B. but would not reveal the identity of the perpetrators to the police. He described in detail the events of 4 August 1991 with regard to the killing of V.B. and stated that it had occurred in the Odra Community Centre, where a Croatian Army unit had been stationed. He was a direct eyewitness of V.B.'s killing.

70. The Court notes that the facts of the case, and in particular the above-described interviews with the police, strongly suggest that the Croatian soldiers stationed in the Odra Community Centre and present there on the night when V.B. was killed had relevant information about the circumstances of this killing. D.K. in particular, who had been a direct eyewitness of V.B.'s killing, explicitly said that he knew who had killed V.B. but would not reveal the names of the perpetrators. The court also notes that the facts of the case show that a large number of Croatian soldiers were present at the crime scene.

71. Given the large number of direct witnesses of the beating of V.B., the Court considers that the authorities did not do their utmost to identify the direct perpetrators. In this connection the Court notes that the examination of the circumstances surrounding the killing of the V.B. by the national authorities remained at the level of a police inquiry. However, the Code of Criminal Procedure allows for an urgent investigation against unknown perpetrators (see Article 185 of the Code of Criminal Procedure cited in paragraph 37 above). The difference between a police enquiry and an investigation is that in the former, statements given to the police amount only to informal statements and cannot be used as evidence in criminal proceedings. An investigation, however, is conducted by an investigating judge and statements given before him or her amount to valid evidence. An investigating judge may, moreover, punish a witness who refuses to give his or her statement or refuses to tell all he or she knows about the relevant facts (see Article 243 of the Code of Criminal Procedure cited in paragraph 37 above).

72. The Court has also held that among the main purposes of imposing criminal sanctions are retribution as a form of justice for victims and general deterrence aimed at prevention of new violations and upholding the rule of law. However, neither of these aims can be obtained without alleged perpetrators being brought to justice. Failure by the authorities to pursue the prosecution of the possible direct perpetrators undermines the effectiveness of the criminal-law mechanism aimed at prevention, suppression and punishment of unlawful killings. Compliance with the State's procedural obligations under Article 2 requires the domestic legal system to demonstrate its capacity and willingness to enforce criminal law against those who have unlawfully taken the life of another (see *Nachova and Others*, cited above, § 160; *Ghimp and Others v. the Republic of Moldova*, no. 32520/09, § 43, 30 October 2012; and *Jelić*, cited above, § 90).

73. The Court notes that the police inquiry into the circumstances of V.B.'s death was not independent. In particular, the inquiry was entrusted to the Sisak Police, the same force the heads of which were suspected to have been implicated in the events surrounding the killing of V.B. The Deputy of it had been convicted of organising and tolerating acts that included the killing of V.B. In the Court's view, those factors constituted an obvious conflict of interests and a lack of independence on the part of the investigating authorities (see, *mutatis mutandis*, *Gharibashvili v. Georgia*, no. 11830/03, § 68, 29 July 2008). This conflict of interests supports the view of a lack of genuine willingness on the part of the police to identify the direct perpetrators (see paragraphs 70 and 71 above).

74. Having regard to the above, the Court considers that the deficiencies described above are sufficient to conclude that the national authorities failed to carry out an adequate, independent and effective investigation into the circumstances surrounding the killing of the applicants' relative. There has

accordingly been a violation of the procedural obligation of Article 2 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION IN CONJUNCTION WITH THE PROCEDURAL ASPECT OF ARTICLE 2 OF THE CONVENTION

75. The applicants complained that their respective husband and father had been arrested and killed purely because of his Serbian ethnic origin and that the national authorities had failed to investigate that factor, contrary to Article 14 of the Convention, which reads:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

76. The Court considers that this complaint is closely linked to the one concerning the procedural aspect of Article 2 of the Convention and must also therefore be declared admissible. However, the Court has already examined the same complaint in the *Jelić* case and concluded that, in view of the finding of a violation of the procedural aspect of Article 2 of the Convention, it was not necessary to examine any further complaint under Article 14 of the Convention (see *Jelić*, cited above, §§ 101 and 102). The Court does not see any reason to depart from that view in the present case.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

77. The applicants 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 Article 13 of the Convention, which provides:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

78. The Court considers that this complaint is closely linked to the one concerning the procedural aspect of Article 2 of the Convention and must also therefore be declared admissible. However, the Court has already examined the same complaint in the *Jelić* case and concluded that, in view of the finding of a violation of the procedural aspect of Article 2 of the Convention, it was not necessary to examine any further complaint under Article 13 of the Convention (see *Jelić*, cited above, §§ 107-109). The Court does not see any reason to depart from that view in the present case.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

79. The applicants also complained that the death of their respective husband and father caused them suffering. They relied on Article 3 of the Convention which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

80. The Court has already examined the same complaint in the *Jelić* case in circumstances comparable to those in the present case and concluded that:

> "112. ...the Court is not persuaded that in the present case, despite its gruesome circumstances, the applicant sustained uncertainty, anguish and distress characteristic of the specific phenomenon of disappearances (see, by contrast, Luluyev and Others v. Russia, no. 69480/01, § 115, ECHR 2006-XIII (extracts)).
>
> 113. In such circumstances, the Court considers that it cannot be held that the applicant's suffering reached a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human-rights violation."

81. The Court does not see any reason to depart from that view in the present case.

82. It follows that this complaint must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

V. OTHER ALLEGED VIOLATIONS

83. The applicants complained under Article 6 § 1 of the Convention that the national courts by wrongly finding that their claim for damages had been lodged after the statutory limitation period had expired, deprived them of the right of access to court because they had not examined their claim on the merits. They also invoked Article 5 of the Convention in relation to the taking of their respective husband and father by uniformed persons in August 1991.

84. As regards the complaint under Article 6 § 1 of the Convention, the Court notes that the same issue was resolved in the *Bogdanović* case where the same complaint was found to be manifestly ill-founded (see *Bogdanović. Croatia* (dec.), no. 72254/11, 18 March 2014; and *Orić v. Croatia* (dec.), no. 50203/12, 13 May 2014). The Court sees no reason to depart from that approach in the present case. It follows that this complaint is inadmissible under Article 35 § 3(a) and must be rejected pursuant to Article 35 § 4 of the Convention.

85. As regards the complaint under Article 5 of the Convention, the Court notes that it relates to the events that took place in 1991 whereas the Convention entered into force in respect of Croatia on 5 November 1997. It

follows that this complaint is incompatible *ratione temporis* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

86. 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

87. The applicants claimed 3,000 euros (EUR) in respect of pecuniary damage as regards the expenses incurred for the stone erected on the grave of their relative; and EUR 30,000 in respect of non-pecuniary damage.

88. The Government deemed the sums claimed excessive, unfounded and unsubstantiated.

89. The Court reiterates that there must be a clear causal connection between the damages claimed by the applicants and the violation of the Convention, and that this may, in an appropriate case, include compensation in respect of loss of earnings. However, in the present case the Court has found a violation of the procedural aspect of Article 2 only. Therefore, the Court finds that there is no causal link between the pecuniary damage claimed and the violation found and dismisses the claim for pecuniary damage.

90. On the other hand, having regard to all the circumstances of the present case, the Court accepts that the applicants suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation. Making its assessment on an equitable basis, the Court awards the applicants jointly EUR 20,000 in compensation for non-pecuniary damage, plus any tax that may be chargeable to them.

B. Costs and expenses

91. The applicants also claimed EUR 1,000 for the costs and expenses incurred before the Court and EUR 12,300 for those incurred in the civil proceedings whereby she claimed damages in connection with the death of their respective husband and father.

92. The Government submitted that the costs and expenses claimed concerned the domestic proceedings, which had no connection with the proceedings before the Court, and should therefore be rejected.

93. As to the costs and expenses, the Court has to establish first whether the costs and expenses indicated by the applicants' representative were actually incurred and, second, whether they were necessary (see *McCann and Others*, cited above, § 220, and *Fadeyeva v. Russia*, no. 55723/00, § 147, ECHR 2005-IV).

94. As regards the claims of costs, the Court accepts the applicants' claim for the costs and expenses incurred before it and awards them EUR 1,000 in that respect. However, as regards the costs and expenses incurred before the national courts in the civil proceedings for damages, the Court notes that no violation has been found as regards these proceedings and accordingly rejects the claim for costs incurred in them.

C. Default interest

95. 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,

1. *Declares* unanimously the complaints concerning the procedural aspect of Articles 2 and 14 as well as the complaint under Article 13 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds*, by five votes to two, that there has been a violation of Article 2 of the Convention under its procedural aspect;

3. *Holds* unanimously that there is no need to examine the complaint under Article 14 of the Convention;

4. *Holds* unanimously that there is no need to examine the complaint under Article 13 of the Convention;

5. *Holds*, by five votes to two,
   (a) that the respondent State is to pay the applicants jointly, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Croatian kunas at the rate applicable at the date of settlement:
      (i) EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses;

(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*, unanimously, the remainder of the applicants' claim for costs and expenses.

Done in English, and notified in writing on 18 June 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Isabelle Berro
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Møse and Turković is annexed to this judgment.

I.B.L.
S.N

JOINT DISSENTING OPINION OF JUDGES MØSE AND TURKOVIĆ

1. We do not agree with our colleagues in finding that there has been a violation of Article 2 of the Convention in its procedural aspect (see paragraphs 62 to 74 of the present judgment).

2. The present case, which is similar to that of *Jelić v. Croatia* (no. 57856/11, 12 June 2014), concerns the killing of a person of Serbian ethnic origin in the broader Sisak area in 1991. The investigation into the killings in these two cases, as well as thirty-two other killings in the area, led to the indictment of three individuals, of whom one died, one was acquitted and one (V.M.) was convicted (see paragraph 31 of the judgment). V.M. was thus found guilty of war crimes against the civilian population in his capacity as Commander of the Police Forces in the broader area of Sisak and Banovina and as Deputy Head of the Sisak Police, in that he had allowed the killings of persons of Serbian origin and had failed to take adequate measures to prevent such killings (see paragraph 30 of the judgment). In the present case, as in *Jelić,* the direct perpetrators have not yet been brought to justice.

3. We certainly agree with the majority that in the context of war crimes the superior (command) responsibility is to be distinguished from the responsibility of subordinates, and that the punishment of superiors for failure to take necessary and reasonable measures to prevent or punish war crimes committed by their subordinates cannot exonerate the latter from their own criminal responsibility (see paragraph 66 of the judgment relying on *Jelić*, cited above, § 88). However, the circumstances of the present case are very different from those of the *Jelić* case when it comes to the prosecution of possible direct perpetrators who are still alive.

4. In *Jelić* three witnesses had stated during the criminal investigation that A.H. had personally shot and killed Vaso Jelić. Some of them were direct eyewitnesses. A unanimous Chamber found that the authorities had failed to take appropriate steps in order to bring those responsible to justice (see *Jelić*, cited above, §§ 89-95). In the present case, however, the police have followed numerous leads, updating witness statements, looking for witnesses and tracking down as far as possible the names of potential suspects which have been mentioned by witnesses. Inevitably, given that more than twenty years have elapsed since the events, some of the witnesses and two out of three potential suspects have died in the meantime (compare *Gürtekin and Others v. Cyprus* (dec.), nos. 60441/13 et al., § 25, 11 March 2014).

5. As regards the statements given to the police which could indicate the possible direct perpetrators, it should be emphasised that in August 1991 Vl.P., who was asked by soldiers to drive a coach to Sisak, said that Croatian soldiers V.H. and M.S. had apprehended the victim V.B. (see

paragraph 8 of the judgment). In February 2003 D.M., another Croatian soldier, confirmed the presence of V.H. at the crime scene and also identified M.B. as the commander of the unit of the Croatian army whose members had been involved in the beating of V.B. (see paragraph 13 of the judgment). Several other Croatian soldiers confirmed that M.B. had indeed been in command (see paragraph 15 of the judgment). In January 2009 a Croatian soldier, S.Š., told the police that he had heard that V.H. and M.S. had beaten V.B. (see paragraph 21 of the judgment).

6. These statements gave a certain indication that Croatian soldiers V.H., M.B. and M.S. could have been implicated in the beating of V.B. which soon led to his death. In this connection it is important to bear in mind that V.H. died in 1997 and M.B. died in 2002 (see paragraphs 10 and 12 of the judgment). Both passed away before October 2002.

7. As regards M.S., the only survivor of the three potential suspects, it is important to note that his implication was indicated by Vl.P. when he was interviewed by the police in 1991. However, when interviewed again by the police in 2003 Vl.P. could not name any of the persons present at the crime scene at the critical time (see paragraph 17 of the judgment). Vl.P. died in 2009 (see paragraph 23 of the judgment), while S.Š., the only other witness implicating M.S. during his interview in 2009, had no direct knowledge about the beating of V.B. but had only later heard that M.S. and V.H. had beaten him (see paragraph 21 of the judgment). When interviewed in February 2003 M.S. denied any involvement in the killing of V.B. (see paragraph 16 of the judgment).

8. Thus, the police, after conducting a number of interviews, did not have any firm evidence, beyond the hearsay evidence of S.Š., about the direct involvement of M.S. in the beating of V.B. (see, in this regard, *Gürtekin and Others*, cited above, § 20). This leads us to conclude that the present case is not comparable to *Jelić*, but rather to the whole line of cases emphasising that Article 2 cannot be interpreted such as to impose a requirement on the authorities to initiate a prosecution irrespective of the evidence which is available. Bearing in mind the presumption of innocence, a prosecution on such a serious charge as involvement in war crimes should never be embarked upon lightly and irrespective of the standard of evidence required. The impact on a defendant who thus comes under the weight of the criminal justice system is considerable, as he or she is held up to public obloquy, with all the attendant repercussions on his or her reputation and private, family and professional life. Reference is made to *Palić v. Bosnia and Herzegovina* (no. 4704/04, § 65, 15 February 2011), where the Court held that the investigation had been effective, despite the fact that there had not been any convictions (see also *Gürtekin and Others*, cited above, § 27; *Mujkanović and Others v. Bosnia and Herzegovina* (dec.), nos. 47063/08 et al., § 39, 3 June 2014; *Fazlić and Others* v. *Bosnia and Herzegovina* (dec.), nos. 66758/09 et al., § 37, 3 June 2014; *Šeremet v. Bosnia and Herzegovina*

(dec.), no. 29620/05, § 35, 8 July 2014; *Muratspahić v. Bosnia and Herzegovina* (dec.), no. 31865/06, § 31, 2 September 2014; *Demirović and Others v. Bosnia and Herzegovina* (dec.), no. 35732/09, § 32, 2 September 2014; *Zuban and Hamidović v. Bosnia and Herzegovina* (dec.), nos. 7175/06 and 8710/06, § 32, 2 September 2014; and *Žerajić and Gojković v. Bosnia and Herzegovina* (dec.), no. 16503/08 et al., § 30, 13 November 2014).

9. Indeed, as the Court has held on many occasions (see *Hugh Jordan v. the United Kingdom*, no. 24746/94, § 107, ECHR 2001-III, and *Palić*, cited above, § 65), the procedural obligation under Article 2 is not an obligation of result, but one of means. What is relevant is that the domestic authorities have done all that could be reasonably expected of them in the circumstances of this particular case.

10. The majority rightly point out the complexity and sensitivity of the case concerning thirty-four victims (see paragraph 62 of the judgment); 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 (see paragraph 63 of the judgment, compare *Palić*, cited above); and the efforts of the State Attorney's office in prosecuting war crimes (see paragraph 64 of the judgment). However, in our view they have not given sufficient weight to these circumstances in the concrete assessment of the present case.

11. It should also be pointed out that the domestic authorities have pursued a strategy of investigation and prosecution of war crimes committed in the period from 1991 to 1995 (see the document available on the website of the State Attorney's Office entitled "Actions in Prosecution of War Crimes"[1]). This public document, which the Government did not supply to the Court, sets out a systematic approach to solving the problem of the large number of pending war-crime cases. An order of priority was assigned to each case at national and regional levels, taking into consideration the seriousness of the offence, the number of victims and the degree of sensitivity, with the aim of systematically investigating the crimes in which the perpetrators had not been identified. Cases against those in command in the Sisak area were assigned national priority, and as a consequence V.M. was convicted. Meanwhile investigations into all war crimes have been continuing.

12. In so far as the applicants make reference to a lack of expedition, we agree with the majority that the Court should take into consideration only the inquiry which took place after 22 October 2002 (see paragraph 65 of the judgment). It should be reiterated, in this connection, that the standard of expedition in such historical cases is very different from the standard applicable in respect of recent incidents, where time is often of the essence

[1] http://www.dorh.hr/fgs.axd?id=1342 (English version)

in preserving vital evidence at a scene and questioning witnesses while their memories are fresh and detailed (see *Varnava and Others v. Turkey*, [GC], nos. 16064/90 et al., §§ 191-92, 18 September 2009; *Gürtekin and Others*, cited above, §§ 21-22; *Mujkanović and Others*, cited above, § 41; *Fazlić and Others*, cited above, § 39; *Šeremet*, cited above, § 37; *Muratspahić*, cited above, § 33; *Demirović and Others*, cited above, § 34; *Zuban and Hamidović*, cited above, § 34; and *Žerajić and Gojković*, cited above, § 32). Nevertheless, many war criminals have already been brought to justice in Croatia. The prosecuting authorities, by 31 December 2012, had opened investigations in respect of a total of 3,436 alleged perpetrators and there had been 557 convictions (see paragraphs 38 and 64 of the judgment).

13. In our view the present case does not reveal any substantial period of inaction after 2002 on the part of the domestic authorities (see paragraphs 13-31 of the judgment), particularly in the light of the concurrent investigations conducted in relation to thirty-three other victims. During that period, the domestic authorities questioned more than 100 persons, issued indictments against three and finally convicted one of them. That being the case, the criminal investigation can be considered to have been conducted with reasonable promptness and expedition (compare for example *Mujkanović*, cited above).

14. As to the applicants' allegation that the Sisak Police did not satisfy the requirement of independence, we note that some of the perpetrators of the crimes at issue in the present application appear to have been highly ranked officials of the Sisak police force during the war and at the beginning of the country's independence**.** However, we do not consider this factor sufficient in itself to conclude that the domestic criminal investigation was not independent at the material time. The fact that the efforts of that same police force resulted in the indictment of its former Deputy, who was subsequently convicted on the basis of the evidence collected by that same force (see paragraph 2 above), strongly indicates that the Sisak police had acted independently of its former heads, at least since 2002 (the time under consideration in this judgment).

15. The Court has already held that the procedural obligation under Article 2 must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities (see *Osman v. the United Kingdom*, 28 October 1998, § 116, Reports 1998-VIII; *Palić*, cited above, § 70; and *Žerajić and Gojković*, cited above, § 31). Consequently, having regard to the facts of the case, the Court's case law (see paragraph 8 above), the special circumstances prevailing in Croatia in the post-war period, the large number of war-crimes cases pending before the local courts and the large number of victims (see paragraphs 62-64 of the judgment), we do not find any reason in the present case to reach a different conclusion from that reached in cases raising similar issues, where the Court has found that the

investigation had not been shown to have infringed the minimum standard required under Article 2 (see paragraphs 8 and 12 above).

16. There has accordingly been no violation of Article 2 of the Convention under its procedural limb.