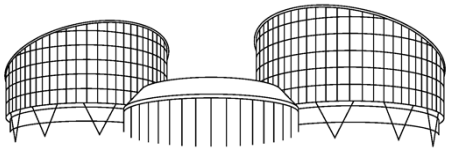

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ZAKLAN v. CROATIA

(Application no. 57239/13)

JUDGMENT

Art 1 P1 • Peaceful enjoyment of possessions • Prolonged stay of proceedings, in the context of succession of States, preventing applicant from recovering money temporarily confiscated by the former Socialist Federal Republic of Yugoslavia ("SFRY") • Administrative-offence proceedings against applicant suspended and then time-barred • Violation attributable to Croatia which took over administrative-offence proceedings against the applicant after declaring independence

STRASBOURG

16 December 2021

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Zaklan v. Croatia,

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

Péter Paczolay, *President,*
Ksenija Turković,
Krzysztof Wojtyczek,
Alena Poláčková,
Gilberto Felici,
Erik Wennerström,
Raffaele Sabato, *judges,*
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 57239/13) 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 a Croatian national, Mr Đorđe Zaklan ("the applicant"), on 29 July 2013;

the decision to give notice to the Croatian Government ("the Government") of the complaint concerning the peaceful enjoyment of possessions;

the parties' observations;

Having deliberated in private on 19 January and 23 November 2021,

Delivers the following judgment, which was adopted on the last-mentioned date:

INTRODUCTION

1. The case concerns the applicant's inability to recover the foreign currency temporarily confiscated from him by the customs authorities of the former Yugoslavia on 28 January 1991 on the territory of Croatia while it was still a part of Yugoslavia.

THE FACTS

2. The applicant was born in 1944 and lives in Pakrac. He was represented by Ms I. Bilandžić Arbutina, an advocate practising in Garešnica.

3. The Government were represented by their Agent, Ms Š. Stažnik.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. BACKGROUND TO THE CASE

5. On 28 January 1991 the customs authorities of the former Socialist Federal Republic of Yugoslavia (hereafter "the SFRY") at the border crossing between what was then the SFRY (now Croatia) and Hungary temporarily

confiscated 4,350 Deutschmarks and 100 US dollars (USD) from the applicant as he had, when leaving the SFRY, attempted to take those sums across the State border, in contravention of the law.

6. On 27 March 1991 administrative-offence proceedings (*prekršajni postupak*) against the applicant were instituted before the Zagreb department of the Federal Foreign-Currency Operations Inspectorate (*Savezni devizni inspektorat, Odjel u Zagrebu* – hereinafter "the Zagreb Department") for an administrative offence defined in section 177(1)(5) of the 1985 Foreign-Currency Operations Act (see paragraph 28 below).

7. At the request of the Zagreb Department, on 29 April 1991 the applicant and a witness were heard by the Pakrac magistrate (*sudac za prekršaje u Pakracu*).

8. On 8 October 1991 Croatia declared independence and severed all ties with the SFRY.

9. On 13 November 1992 the Government of Croatia issued a decree, which entered into force on the same day, whereby it stayed all administrative-offence proceedings pending before the Zagreb Department until the completion of the succession process following the dissolution of the SFRY (see paragraph 32 below).

10. On 3 December 1993 the decree was superseded by legislation having the same effect (see paragraph 33 below).

11. On 2 June 2004 the Agreement on Succession Issues between the successor States to the SFRY entered into force (see paragraph 55 below).

12. In a letter of 16 February 2005 addressed to the Governor of the Croatian National Bank, the Chief Foreign Currency Inspector wrote:

> "In 1992 Croatia took over administrative-offence cases of the Zagreb Department of the former Federal Foreign-Currency Operations Inspectorate in respect of which the administrative-offence proceedings had not been concluded ... because the money that had been temporarily confiscated from Croatian nationals as the object of an offence had remained deposited in the account of the Foreign-Currency Operations Inspectorate in Belgrade.
>
> The money confiscated on those grounds ... has to, after the conclusion of the proceedings and under a final decision, be either returned to the owner or be permanently confiscated [and added to] the [State] budget.
>
> In respect of administrative-offence cases of the former Foreign-Currency Operations Inspectorate we could not have issued a decision earlier because the money [in question] was in Belgrade.
>
> Given that the Succession Agreement has entered into force we are sending you (enclosed herewith) a list of cases taken over in 1992 in respect of which the administrative-offence proceedings have not been concluded ... together with a table listing the amounts in question, by currency (the total amount in euros is 1,135,474.79), so that you can, as the representative of Croatia on the Joint Financial Committee, seek the return of the funds that have remained in the account of the Foreign-Currency Operations Inspectorate in Belgrade."

13. In a letter of 2 March 2005 addressed to the Minister of Finance of Serbia, the Minister of Finance of Croatia wrote:

> "In 1992 the Foreign-Currency Operations Inspectorate of Croatia took over the unfinished administrative-offence cases of what was then the Zagreb Department of the Federal Foreign-Currency Operations Inspectorate ... All those cases concern administrative offences involving the illegal purchase of foreign currency or attempts to take [such currency] abroad in an amount exceeding that allowed.
>
> In view of the fact that the temporarily confiscated funds remained in the account of the Foreign-Currency Operations Inspectorate in Belgrade, the Croatian Parliament on 10 November 1993 adopted [the Stay of Proceedings Act]. Section 2 of that Act provided that [such administrative-offence proceedings] would remain stayed until the completion of the succession process following the dissolution of the SFRY. Therefore, in the cases taken over we could not issue a decision to permanently confiscate those funds or to return them to the owners.
>
> Given that the succession process has commenced we are providing you with a list of cases in which the administrative-offence proceedings have not been concluded...
>
> ...
>
> The total amount of temporarily confiscated foreign currency that we are seeking is 1,135,474.79 euros...
>
> That money has to be returned to the citizens from whom it was confiscated, because in the meantime prosecution for administrative offences had become time-barred."

14. In a letter of the same day, 2 March 2005, the Chief Foreign Currency Inspector informed the Governor of the Croatian National Bank of the above-mentioned letter from the Minister of Finance of Croatia (see the previous paragraph), wherein the Minister had sought from his Serbian counterpart the return of 1,135,474.79 euros (EUR). She wrote:

> "At the moment when the ties between Croatia and the former SFRY were severed the Zagreb Department of the Federal Foreign-Currency Operations Inspectorate had a large number of unfinished cases in which administrative-offence proceedings had been conducted against Croatian citizens, pursuant to the Federal Administrative Offences Act. Those cases were in 1992 taken over by the Croatian Foreign-Currency Operations Inspectorate. ...
>
> At the time all temporarily confiscated funds were being deposited in the account of the Federal Foreign-Currency Operations Inspectorate held with Jugobanka in Belgrade. ... After the Croatian Foreign-Currency Operations Inspectorate took over those cases they could not be dealt with because the temporarily confiscated funds were in Belgrade.
>
> In the given situation, on 10 November 1993 the Croatian Parliament adopted [the Stay of Proceedings Act] ... Section 2 of that Act provided that [such administrative-offence proceedings] would remain stayed until the completion of the succession process following the dissolution of the SFRY. Since this process got under way we have established that Croatia is seeking from Serbia and Montenegro a total amount of EUR 1,135,474.79. Those funds have just been requested from the Federal Foreign-Currency Operations Inspectorate in Belgrade so that Croatia can return them to the citizens from whom they were confiscated, because the prosecution for administrative offences has become time-barred. A copy of the request is enclosed."

15. On 16 March 2005 the Governor of the Croatian National Bank replied to the above-mentioned letters from the Chief Foreign Currency Inspector (see paragraphs 12 and 14 above). He wrote:

> "Following your letters of 16 February and 2 March 2005 concerning the return of funds that were temporarily confiscated as objects of administrative offences from Croatian citizens, and which have remained deposited in the account of the Federal Foreign-Currency Operations Inspectorate, I wish to inform you of the following:
>
> From your letters and the enclosed lists it is evident that what is at issue are the funds confiscated from Croatian citizens, which should be returned to them. Those funds cannot be included in the financial assets category referred to in Annex C of the Succession Agreement which [assets] are to be distributed between the successor States of the former SFRY in proportions set out in Article 5, paragraph 2 of Annex C. This is not the case with the present request because it cannot be decided multilaterally, given that it concerns an allocated debt.
>
> However, in the opinion of the Legal Affairs Directorate of the Croatian National Bank, since the issue concerns citizens' claims, they are regulated by Annex G of the Succession Agreement, which concerns private property and acquired rights.
>
> ...
>
> ... [Given that I am] the authorised representative of Croatia on the Committee for the Distribution of Financial Assets and Liabilities of the former SFRY referred in Annex C of the Succession Agreement, the implementation of other Annexes to the Succession Agreement is not in my power. I would therefore suggest that you contact the Office for the Implementation of the Succession Project."

16. On 13 May 2005 the Minister of Finance of Serbia replied to the letter from his Croatian counterpart of 2 March 2005 (see paragraph 13 above) in the following terms:

> "Regarding your request for the return of the funds deposited in the account of the Department for Foreign-Currency Operations Inspection in relation to administrative-offence proceedings conducted before the Zagreb Department of the Federal Foreign-Currency Operations Inspectorate, I would point out the following relevant facts:
>
> ...
>
> Cases in respect of which administrative-offence proceedings before the Zagreb Department of the Federal Foreign-Currency Operations Inspectorate have not been concluded, [and having been] stayed by the [Stay of Proceedings Act] until the completion of the succession process following the dissolution of the SFRY, should be examined during the succession process."

II. CIVIL PROCEEDINGS

17. On 11 December 2007 the applicant, in an attempt to reach an out-of-court settlement, wrote to the Pakrac Municipal State Attorney's Office (*Općinsko državno odvjetništvo u Pakracu*) requesting that the sums confiscated on 28 January 1991 be returned to him.

18. On 10 January 2008 the State Attorney's Office replied that it was unable to meet the applicant's request because the confiscated funds had been immediately deposited in (and remained in) the account of the Federal Foreign-Currency Operations Inspectorate in Belgrade. It explained that the State had tried to retrieve such funds confiscated on the territory of Croatia but had not succeeded. It therefore suggested to the applicant that he either lodge his request with the Serbian Foreign-Currency Operations Inspectorate or bring a civil action against Serbia in Belgrade.

19. On 15 May 2008 the applicant brought a civil action against the State in the Pakrac Municipal Court (*Općinski sud u Pakracu*) seeking payment of EUR 2,218.50 and USD 100, plus the accrued statutory default interest.

20. By a judgment of 1 July 2010 the Municipal Court dismissed the applicant's action and ordered him to pay the State 3,500 Croatian kunas (HRK) in costs. It held that under the relevant legislation governing administrative offences the applicant could bring an action seeking the retrieval of the confiscated sums only after the administrative-offence proceedings had been concluded, and only in the event that the final decision did not order the permanent confiscation of those sums. Given that the proceedings in the applicant's case had been stayed pending the completion of the succession process (and given that the succession process had not yet been completed), those proceedings had not ended and his action against the State seeking the retrieval of the confiscated sums had therefore been premature. The relevant part of the court's judgment concerning the succession process reads as follows:

> "Article 2 of Annex G [of the Succession Agreement] speaks of the right to movable and immovable property and stipulates that the rights to movable and immovable property located in a successor State and to which citizens of the SFRY or other legal persons were entitled on 31 December 1990 shall be recognised, and protected and restored by that State, in accordance with established standards and norms of international law, and that any transfer of rights to movable or immovable property made after 31 December 1990 shall be null and void. [The] agreement regulates the issue of the recognition of ownership rights between successor States of the SFRY in general terms, whereas the manner by which these provisions will be implemented is to be dealt with by concluding bilateral agreements with other successor States, pursuant to Article 4 of Annex G.
>
> ... As can be seen from the letter of the Croatian representative on the Committee for the Distribution of Financial Assets and Liabilities of the SFRY [provided by] Annex C to the Succession Agreement ... confiscated funds cannot be regarded as financial assets within the meaning of Annex C to the Agreement because they constitute an 'allocated debt', which cannot be settled multilaterally.
>
> In the view of this court, even though the Succession Agreement has been concluded ..., it [only] establishes general principles, whereas the issue of the confiscated funds [held] in an account in Belgrade has to be regulated separately.
>
> ... [S]ince that issue has not yet been legally regulated so that the defendant would be liable to return the money and the statutory five-year prescription period would begin to run, the defendant cannot be ordered to return the money in these proceedings ..."

21. On 14 April 2011 the Bjelovar County Court (*Županijski sud u Bjelovaru*) dismissed an appeal by the applicant and upheld the first-instance judgment, which thereby became final. On 11 May 2011 the applicant paid the State HRK 3,500 for the costs of the proceedings.

22. The applicant then lodged a constitutional complaint alleging, *inter alia*, a violation of his constitutional right of ownership.

23. The Constitutional Court (*Ustavni sud Republike Hrvatske*) dismissed the applicant's constitutional complaint on 15 May 2013 and served its decision on his representative on 29 May 2013.

RELEVANT LEGAL FRAMEWORK

I. CROATIAN LAW

A. Legislation relating to foreign-currency operations

1. 1985 Foreign-Currency Operations Act

24. The federal Foreign-Currency Operations Act (*Zakon o deviznom poslovanju*, Official Gazette of the Socialist Federal Republic of Yugoslavia no. 66/85 with subsequent amendments – "the 1985 Foreign-Currency Operations Act") was, following Croatia's declaration of independence (see paragraph 8 above), incorporated into the Croatian legal system by the Federal Financial Legislation Incorporation Act (*Zakon o preuzimanju saveznih zakona iz oblasti financija koji se u Republici Hrvatskoj primjenjuju kao republički zakoni*, Official Gazette of the Republic of Croatia no. 53/91 – "the Incorporation Act"), which entered into force on 8 October 1991. The 1985 Foreign-Currency Operations Act remained in force in Croatia until 15 October 1993, when it was replaced by the 1993 Foreign-Currency Operations Act (see paragraph 34 below).

25. Section 7 of the Incorporation Act provided that the powers of the federal authorities in respect of the implementation and application of the former federal legislation referred to in the Incorporation Act became powers of the Croatian authorities.

26. Section 164(1) of the 1985 Foreign-Currency Operations Act provided that the customs authorities had to temporarily confiscate foreign currency that travellers tried to take across the State border without declaring it to customs officers or without proof that the currency had been withdrawn from a foreign-currency account or foreign-currency savings account or had been bought from a certified bank.

27. Section 164(2) provided that a decision to either permanently confiscate or to return temporarily confiscated foreign currency had to be delivered in administrative-offence proceedings.

28. Section 177(1)(5) of the 1985 Foreign-Currency Operations Act provided that a fine for an administrative offence should be imposed on

anyone who attempted to take or took across the State border foreign currency without proof that the currency had been withdrawn from a foreign-currency account or foreign-currency savings account or had been bought from a certified bank.

29. Section 181(1) provided that proceedings to prosecute administrative offences defined in the 1985 Foreign-Currency Operations Act could not be instituted more than three years after the commission of an offence. That provision also stipulated that such offences would in any event (that is to say even if proceedings had been instituted) become time-barred six years after the commission of the offence.

30. Section 185(1) provided that foreign currency temporarily confiscated as the object of a criminal or administrative offence had to be temporarily deposited in the bank account of the Federal Foreign-Currency Operations Inspectorate or deposited with the National Bank of Yugoslavia.

2. Foreign-Currency Operations Inspectorate Act

31. Sections 15-16 of the Foreign-Currency Operations Inspectorate Act (*Zakon o Deviznom inspektoratu Republike Hrvatske*, Official Gazette no. 33/92), which was in force between 12 June 1992 and 29 July 2008, provided that proceedings in respect of foreign-currency-related administrative offences were to be conducted at first instance before the Foreign-Currency Operations Inspectorate by applying the rules of procedure set out in the Administrative Offences Act (see paragraphs 40-44 below).

3. The Government Decree of 13 November 1992

32. The Government Decree staying administrative-offence proceedings instituted under legislation taken over by Croatia governing foreign-exchange operations (*Uredba o stavljanju u prekid prekršajnog postupka u predmetima po propisima o deviznom poslovanju koje je preuzela Republika Hrvatska*, Official Gazette no. 77/92) reads as follows:

Section 1

> "Administrative-offence proceedings [instituted] under legislation governing foreign-exchange operations that were taken over by Croatia from the Zagreb Department of the Federal Foreign-Currency Operations Inspectorate [and] that have not been completed, or in respect of which enforcement has not been completed and [involving] temporarily confiscated cash not [held] in Croatia, shall be stayed."

Section 2

> "The administrative-offence proceedings referred to in section 1 of this Decree shall remain stayed until the process of determining mutual rights and obligations between Croatia and other republics of the former SFRY, or [between Croatia and] the [SFRY], is completed."

Section 3

"This Decree shall enter into force on the day of its publication in the Official Gazette."

4. The Stay of Proceedings Act

33. Sections 1 and 2 of the Act Staying Administrative-Offence Proceedings [instituted] under Legislation Taken Over by Croatia Governing Foreign-Currency Operations (*Zakon o prekidu prekršajnog postupka u predmetima po propisima o deviznom poslovanju koje je preuzela Republika Hrvatska*, Official Gazette no. 106/93 – "the Stay of Proceedings Act"), which entered into force on 3 December 1993, are identical to sections 1 and 2 of the Government Decree of 13 November 1992. Section 3 provides that the decree in question shall be repealed upon the Act's entry into force.

5. 1993 Foreign-Currency Operations Act

34. The Act on the Basics of the Foreign-Currency Operations System, Foreign-Currency Operations and Trading in Gold (*Zakon o osnovama deviznog sustava, deviznog poslovanja i prometu zlata*, Official Gazette no. 91A/93 – "the 1993 Foreign-Currency Operations Act"), which was in force between 15 October 1993 and 18 June 2003, replaced the 1985 Foreign-Currency Operations Act (see paragraph 24 above).

35. Section 99 in conjunction with section 73 provided that a fine for an administrative offence should be imposed on any natural person who attempted to take or took across the State border cash or securities in foreign or domestic currency of a value exceeding DEM 1,000 without declaring them to customs officers.

36. Section 104(2) provided that administrative offences defined in that Act became time-barred six years after the commission of such an offence.

37. Section 109(1) provided that pending administrative-offence proceedings for acts that no longer constituted administrative offences under that Act had to be discontinued.

38. Section 109(2) provided that pending administrative-offence proceedings that were not to be discontinued pursuant to paragraph 1 of that section had to be determined under the legislation that had been in force before that Act had come into effect – that is to say by applying the 1985 Foreign-Currency Operations Act (see paragraph 24 above).

39. Section 109(3) provided that the return of funds temporarily confiscated in pending proceedings that had had to be discontinued pursuant to paragraph 1 of that section (see paragraph 37 above) and that had been stayed by the Government Decree of 13 November 1992 (see paragraph 32 above) would be regulated by special legislation to be adopted after the completion of the succession process following the dissolution of the SFRY.

B. Legislation setting out general rules governing administrative offences

1. 1973 Administrative Offences Act

40. Section 118(1) of the Administrative Offences Act (*Zakon o prekršajima*, Official Gazette no. 2/73 with subsequent amendments), which was in force between 30 January 1973 and 30 September 2002, provided that a decision to discontinue administrative-offence proceedings had to be issued, *inter alia*, when the offence in question became time-barred.

2. 2002 Administrative Offences Act

41. The relevant provisions of the Administrative Offences Act (*Zakon o prekršajima*, Official Gazette no. 88/02 with subsequent amendments), which was in force between 1 October 2002 and 1 January 2008, provided as follows:

42. Section 185(4) read as follows:

Treatment of confiscated items
Section 185(4)

> "Upon the conclusion of [administrative-offence] proceedings, temporarily confiscated items shall be returned to the person from whom they were confiscated, unless the decision on the administrative offence [in question] orders their permanent confiscation."

43. Section 196(1)(9) provided that a decision to discontinue administrative-offence proceedings had to be issued, *inter alia*, when there were circumstances prescribed by law under which the accused could not be found guilty (such as, for example, when the offence had become time-barred).

44. Section 196(2) provided that temporarily confiscated items had to be returned under a decision to discontinue the proceedings, unless grounds for their permanent confiscation existed.

3. 2007 Administrative Offences Act

45. Section 251(2) of the Administrative Offences Act (*Prekršajni zakon*, Official Gazette no. 107/07 with subsequent amendments), which has been in force since 1 January 2008, provides that administrative-offence proceedings instituted before its entry into force have to be concluded by applying the rules of procedure set out in the 2002 Administrative Offences Act (see paragraphs 41-44 above).

C. Obligations Act

46. The Obligations Act (*Zakon o obveznim odnosima*, Official Gazette of the Socialist Federal Republic of Yugoslavia no. 29/78 with further amendments, and Official Gazette of the Republic of Croatia no. 53/91 with further amendments), which was in force between 1 October 1978 and 31 December 2005, was the legislation that governed contracts and torts and other non-contractual obligations. The relevant provisions of the Obligations Act governing unjust enrichment read as follows:

ENRICHMENT WITHOUT CAUSE
General rule
Section 210(1)

"(1) When part of the property of one person passes, by any means, into the property of another, and that transfer has no basis in a legal transaction or in legislation [that is to say, it is without cause], the person who received it [the beneficiary] shall return it. If restitution is not possible, he or she shall provide compensation [in the amount] corresponding to the value of the benefit obtained.

(2) ...

(3) The obligation to return [the property] or to provide compensation for its value shall also arise when something was received on the basis which did not materialise, or which subsequently ceased to exist."

47. On 1 January 2006 the new Obligations Act (*Zakon o obveznim odnosima*, Official Gazette of the Republic of Croatia, no. 35/05 with further amendments – "the 2006 Obligations Act") entered into force. Its section 1111(2) and (3) contain the same provisions as section 210(1) and (3) of the 1978 Obligations Act.

D. Other relevant legislation

48. The Act on the Liability of Croatia for Damage Arisen in the Former SFRY for which the former SFRY was Liable (*Zakon o odgovornosti Republike Hrvatske za štetu nastalu u bivšoj SFRJ za koju je odgovarala bivša SFRJ*, Official Gazette no. 117/03 – "the 2003 Liability Act"), which has been in force since 31 July 2003, sets out the criteria under which Croatia is liable for damage for which the former SFRY was liable under the legislation in force at the relevant time. More specifically, the Act provides that Croatia is liable for such damage if, of all the successor States, it has the closest connection with the damage. The Act lists certain criteria for establishing when Croatia has the closest connection.

49. Section 1(2) provides that the closest connection is presumed to exist where the victim was, at the time that the damage arose, a national of what was then the Socialist Republic of Croatia and the damage arose on the territory of present-day Croatia.

50. Section 6(2) provides that this Act does not affect the right of Croatia to seek reimbursement from other successor States for compensation paid under this Act, depending on the agreement between the successor States.

E. Relevant practice

51. In a judgment no. Gzz-49/02-2 of 11 February 2003 the Supreme Court (*Vrhovni sud Republike Hrvatske*) held that in the situation where an administrative offence had become time-barred, the owner could seek the return of temporarily confiscated foreign currency by bringing a civil action only after the relevant authority issued a final decision to discontinue the administrative-offence proceedings but failed to decide on the return of the confiscated money. The relevant part of that judgment reads as follows:

> "In this court's view, the lower courts correctly concluded that [civil] courts [have jurisdiction in the matter], because the administrative-offence court, after the discontinuation of the administrative-offence proceedings on the grounds that the offence had become time-barred, should have issued a decision to return [the temporarily confiscated] foreign currency to the plaintiff. Since it did not do so, the plaintiff is entitled to seek its return from the defendant in [civil] proceedings.
>
> ...
>
> In the situation where the relevant authorities temporarily confiscate an item on a statutory basis, their action was not unlawful, nor illegal, because there is a valid legal basis for holding temporarily confiscated items until a final decision of the relevant authority to discontinue the administrative-offence proceedings. This means that the default on the [obligation to] return the temporarily confiscated money occurs only when the decision to discontinue the proceedings becomes final, and [if in that decision] it was not decided to return [that money]. This is because after that moment there is no longer a valid legal basis for retaining the money."

II. SERBIAN LAW

A. Administrative Offences Act

52. Relevant provisions of the Administrative Offences Act (*Zakon o prekršajima*, Official Gazette of the Republic of Serbia no. 65/13 with subsequent amendments), which has been in force since 1 March 2014, read as follows:

Treatment of confiscated items
Section 232

> "(1) Temporarily confiscated items or the money obtained by [their] sale shall be returned to the owner if the administrative-offence proceedings are not concluded by a judgment finding the accused guilty, unless the interests of public safety or morals require otherwise, of which the court shall render a separate decision.
>
> (2) If the owner is unknown, and no one applies for the return of the item or the money obtained from [its] sale, within a year from the day of the publication of the

[relevant] announcement, a decision to make the item public property or to transfer the money into the [the State] budget shall be adopted. This decision shall not affect the right of the owner to pursue his property rights in civil proceedings."

53. Section 248(1)(6) provides that a decision to discontinue administrative-offence proceedings must be issued when the offence becomes time-barred.

B. Obligations Act

54. Section 210(1) and (2) of the Obligations Act (*Zakon o obligacionim odnosima*, Official Gazette of the Socialist Federal Republic of Yugoslavia no. 29/78 with further amendments, Official Gazette of the Federal Republic of Yugoslavia no. 31/93 and Official Gazette of the Republic of Serbia no. 18/20), which has been in force since 1 October 1978, contain the same provisions as those referred to in paragraphs 46-47 above.

III. INTERNATIONAL LAW

55. The relevant Articles of the Agreement on Succession Issues between the Successor States to the SFRY, which entered into force on 2 June 2004, can be found in *Mladost Turist a.d. v. Croatia* (dec.), no. 73035/14, §§ 26-29, 30 January 2018. Other relevant provisions read as follows:

"ANNEX C. FINANCIAL ASSETS AND LIABILITIES

Article 1

"The SFRY's financial assets comprised all financial assets of the SFRY (such as cash, gold and other precious metals, deposit accounts, and securities), including, in particular –

(a) accounts and other financial assets in the name of the SFRY Federal Government Departments and Agencies;

...;

(c) foreign currency assets ...

..."

...

ANNEX F. OTHER RIGHTS, INTERESTS AND LIABILITIES

...

Article 2

"All claims against the SFRY that are not otherwise covered by this Agreement shall be considered by the Standing Joint Committee established under Article 4 of this

Agreement. The successor States shall inform one another of all such claims against the SFRY."

ANNEX G. PRIVATE PROPERTY AND ACQUIRED RIGHTS

Article 1

"Private property and acquired rights of citizens and other legal persons of the SFRY shall be protected by successor States in accordance with the provisions of this Annex."

Article 2

"(1) (a) The rights to movable and immovable property located in a successor State and to which citizens or other legal persons of the SFRY were entitled on 31 December 1990 shall be recognised, and protected and restored by that State in accordance with established standards and norms of international law and irrespective of the nationality, citizenship, residence or domicile of those persons. This shall include persons who, after 31 December 1990, acquired the citizenship of or established domicile or residence in, a State other than a successor State. Persons unable to realize such rights shall be entitled to compensation in accordance with civil and international legal norms.

(b) Any purported transfer of rights to movable or immovable property made after 31 December 1990 and concluded under duress or contrary to sub-paragraph (a) of this Article shall be null and void.

..."

Article 4

"The successor States shall take such action as may be required by general principles of law and otherwise appropriate to ensure the effective application of the principles set out in this Annex, such as concluding bilateral agreements and notifying their courts and other competent authorities."

THE LAW

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

56. The applicant complained that the refusal of the domestic courts to order the return of the sums temporarily confiscated from him on 28 January 1991 by the authorities of the former SFRY had been contrary to his right to the peaceful enjoyment of his possessions. He relied on Article 1 of Protocol No. 1 to the Convention, 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

57. The Government disputed the admissibility of this complaint, arguing that it was incompatible *ratione personae* with the provisions of the Convention.

58. The Court finds that the question of compatibility *ratione personae* is inextricably linked to the merits of this complaint. Therefore, to avoid prejudging the latter, both questions should be examined together. Accordingly, the Court holds that the question of compatibility *ratione personae* should be joined to the merits.

59. The Court further notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

60. The applicant submitted that the relevant Croatian authorities should have discontinued the administrative-offence proceedings against him because the administrative offence he had been charged with had become time-barred. Had the relevant authorities issued such a decision Croatia would have been obliged to return the money confiscated from him. The responsibility of the respondent State lay precisely in the failure of the Croatian authorities to discontinue the administrative-offence proceedings and to return him the money in question.

61. The applicant furthermore argued that, even assuming that Annex G to the Succession Agreement (see paragraph 55 above) was applicable to his case, it was not directly applicable but required implementing measures in the form of legislation or bilateral agreements (see the extract from the Pakrac Municipal Court's judgment of 1 July 2010 in paragraph 20 above). Croatia had therefore been obliged to pass implementing legislation or to conclude bilateral agreements with a view to giving effect to the Succession Agreement. The need to comply with that obligation was even more pressing, given that:

- Croatia had stayed all administrative-offence proceedings in cases such as his until the completion of the succession process following the dissolution of the SFRY (see paragraphs 32-33 above); and
- more than twenty-seven years had passed since Croatia had declared its independence from the SFRY (see paragraph 8 above).

62. In the applicant's view, since Croatia had not thus far concluded a bilateral agreement with Serbia with a view to regulating the return of funds deposited in the account of the former Federal Foreign-Currency Operations Inspectorate in Belgrade, it was Croatia's responsibility to return those funds,

regardless of the fact that the money was not located in Croatia. The delay on the part of the Croatian authorities in regulating that issue should not have had detrimental effects on its citizens, including him.

63. The applicant pointed out that from the letters of the Chief Foreign Currency Inspector of Croatia to the Croatian National Bank of 16 February and 2 March 2005 (see paragraphs 12 and 14 above) it was evident that the Croatian authorities considered it their obligation to return confiscated sums in cases such as his.

64. The applicant concluded that for the reasons set out above (see paragraphs 60-63) he was not required to seek the return of the confiscated money from Serbia, as the Government suggested (see paragraph 70 below). Rather, it was for Croatia to issue a decision to discontinue the administrative-offence proceedings against him and to return to him the confiscated sums.

(b) The Government

65. The Government submitted that the alleged violation could not be attributed to the respondent State because:

- the confiscation had occurred on 28 January 1991 – that is to say before Croatia had declared independence and severed all ties with the former SFRY (see paragraphs 5 and 8 above);

- the foreign currency belonging to the applicant had been confiscated by the federal authorities (see paragraph 5 above) and not by the Croatian authorities, it being understood that, while Croatia had at the time constituted a federal unit of the former SFRY, it had had its own State authorities separate from the federal ones;

- administrative-offence proceedings against the applicant had been instituted before the federal authorities in respect of an offence defined by federal legislation (see paragraphs 6, 24 and 28 above);

- the confiscated funds had been immediately deposited in the account of the Federal Foreign-Currency Operations Inspectorate in Belgrade (see paragraph 30 above) and had never been accessible to the Croatian authorities.

66. The Government furthermore submitted that the respondent State had not taken over administrative-offence proceedings instituted before the former Federal Foreign-Currency Operations Inspectorate and had never issued any decision in the course of such proceedings. Moreover, Croatia had never assumed any obligation to return funds confiscated in connection with such proceedings.

67. In order to ensure legal certainty and because the case files had been physically located in Croatia, the respondent State nevertheless had to issue a decision regarding ongoing administrative-offence proceedings instituted before the Zagreb Department of the former Federal Foreign-Currency Operations Inspectorate. Given that the temporarily confiscated funds had

been located in Belgrade, and given that those cases had involved federal offences, the respondent State had issued the only decision it could have issued – to stay the proceedings until the matter was resolved with the other State successors of the former SFRY.

68. In reply to the applicant's argument that, if the State had terminated the proceedings or decided on the charge against him, he would have had legal grounds to claim the money from Croatia (see paragraph 60 above), the Government submitted that in such a situation the State would have indeed assumed the responsibility, at least tacitly, to restore money to individuals, including the applicant. However, the State had not done so but instead had explicitly postponed the question of the return of money until the succession process was completed (see paragraphs 32-33 above).

69. The Government furthermore submitted that the temporarily confiscated money had remained the private property of those from whom it had been confiscated until such time as a decision on its permanent confiscation became final. Therefore, Annex C to the Succession Agreement setting out the rules governing the distribution of financial assets and liabilities of the former SFRY was not relevant in the present case (see paragraph 55 above). Rather, the relevant annex was Annex G, which dealt with private property and acquired rights (ibid.).

70. The issues dealt with in Annex G were not to be addressed multilaterally between all successor States. That followed from the text of Annex G and the letter of 16 March 2005 from Croatia's representative on the Committee for the Distribution of Financial Assets and Liabilities (see paragraphs 15, 20 and 55 above). Specifically, Article 2 paragraph 1 (a) of Annex G provided that private property had to be restored by the successor State on whose territory it was located (see paragraph 55 above). Therefore, since the money temporarily confiscated from the applicant on 28 January 1991 (see paragraph 5 above) was located in present-day Serbia, he should have requested the return of his money from Serbia, not from Croatia.

71. The Government furthermore clarified that by requesting the return of temporarily confiscated funds from Serbia's Minister of Finance (see paragraph 13 above) Croatia had not assumed liability for their return but had merely sought to assist its citizens in exercising their rights. The Government pointed out that Serbia's Minister of Finance had not contested the debt and had suggested that the return of the temporarily confiscated funds be dealt with in the course of the succession process (see paragraph 16 above).

72. In sum, the Government submitted that the only link between the respondent State and the violation complained of was the fact that the applicant was a Croatian national, which was not sufficient for the alleged violation to be attributed to Croatia.

73. The Government acknowledged that Croatian law governing administrative offences (see paragraphs 24-25, 31 and 40-45 above),

including the relevant statutory limitation periods (see paragraphs 29 and 36 above), applied in the present case (despite the fact that the administrative offence the applicant had been charged with had been defined – and the proceedings had commenced – under the relevant legislation of the former SFRY). However, that was not decisive for the question of whether Croatia had to return to him the confiscated money. Normally, in cases where Croatian authorities temporarily confiscated the money, they had to return it if the administrative offence became time-barred (see paragraphs 40-44 above). Those authorities would have been obliged to do so even if they had failed to issue a decision to discontinue administrative-offence proceedings because in such situations the rules of civil law on unjust enrichment applied (see paragraphs 46-47 above). However, unjust enrichment entailed the transfer of an item or portion of one's property to someone else, without justification; in such instances, the recipient was thus obliged to return it. In the applicant's case the confiscated money had not passed to Croatia because it had been confiscated by the former federal authorities and remained in a bank account in Serbia. Thus, Croatia could not have been obliged to return it even though the administrative offence with which the applicant had been charged had indeed become time-barred (see paragraphs 29 and 36 above).

74. In the light of the foregoing, the Government averred that the refusal of the domestic courts to order the return of the sums temporarily confiscated from the applicant on 28 January 1991 by the authorities of the former SFRY had been lawful, had pursued a legitimate aim, had been in the general interest and had not placed an excessive burden on the applicant, especially in view of the possibility (of which he had been informed – see paragraph 18 above) of seeking the return of those sums from Serbia.

2. The Court's assessment

(a) Regarding the issue of whether the violation complained of could be attributed to the respondent State

75. The Court firstly notes that it was not disputed between the parties that the foreign currency confiscated on 28 January 1991 by the customs authorities of the former SFRY belonged to the applicant. Likewise, both parties agreed that the confiscation had been only temporary, and that the money had therefore remained the property of the applicant until the present day (see paragraphs 60-64 and 69 above).

76. Furthermore, the Government also admitted that Croatian law governing administrative offences – including in respect of statutory limitation periods – applied in the present case and that the administrative offence that the applicant had been charged with had become time-barred (see paragraph 73 above).

77. The Government nevertheless argued that the alleged violation could not have been attributed to the respondent State as it had resulted from actions

undertaken by the federal authorities of the former SFRY before Croatia had declared independence (see paragraph 65 above) and because Croatia had not taken over the administrative-offence proceedings that the former federal authorities had instituted against the applicant (see paragraph 66 above).

78. In this connection the Court firstly notes that the applicant did not complain of the temporary confiscation itself. Rather, he complained of the inability to recover the confiscated sums once the administrative offence that he had been charged with had become time-barred (see paragraphs 56 and 60-64 above).

79. Furthermore, in view of the overwhelming evidence to the contrary, the Court considers unconvincing the Government's argument that Croatia did not take over the administrative-offence proceedings conducted before the Zagreb Department of the former federal Foreign-Currency Operations Inspectorate, including those against the applicant (see paragraph 66 above). In particular, the Government Decree of 13 November 1992 and the Stay of Proceedings Act – both in their title and provisions – refer to such proceedings as having been taken over by Croatia (see paragraphs 32-33 above). Besides, if Croatia had not taken over those proceedings, it is difficult to understand how it nevertheless could have regulated their conduct by means of those two legislative acts and by the 1993 Foreign-Currency Operations Act (see paragraph 39 above). What is more, various Croatian (financial) authorities, in correspondence between them and with Serbia's Minister of Finance, referred to such proceedings as having been taken over by Croatia (see paragraphs 12-14 above).

80. Having therefore established that Croatia did take over the administrative-offence proceedings against the applicant, the Court further notes that those proceedings were first stayed on 13 November 1992 and then again on 3 December 1993 by legislative acts of the Government of Croatia and the Croatian Parliament, respectively, until the completion of the succession process following the dissolution of the SFRY (see paragraphs 32-33 above); they have in fact remained stayed until the present day. The stay of the proceedings interrupted their normal course and eventually prevented the relevant Croatian authorities from convicting or acquitting the applicant because, owing to the passage of time, the administrative offence that he had been charged with became, as acknowledged by the Government (see paragraph 73 above), time-barred. It appears that the statutory limitation period expired, at the latest, on 28 January 1997 (see paragraphs 29 and 36 above), which was more than five years after Croatia's declaration of independence (see paragraph 8 above).

81. Under Croatian and Serbian law, if an administrative offence becomes time-barred, temporarily confiscated property must be returned (see paragraphs 40-44 and 51-53 above). The Government submitted that under Croatian law such obligation would arise even if the relevant authority

had failed to issue a decision to discontinue administrative-offence proceedings because in such situation the rules of civil law on unjust enrichment applied (see paragraphs 46-47 and 73 above).

82. Since under the rules of unjust enrichment it was for the recipient to return the funds received (see paragraphs 46-47 above) and because in the applicant's case the money had remained in a bank account in Serbia, the Government argued that the obligation to return the money to him had not been on the Croatian but on the Serbian authorities (see paragraph 73 above). That is why, they averred, the applicant should have seized the Serbian courts (see paragraphs 70 and 74 above).

83. In this regard the Court notes that, contrary to the Government's argument (see paragraphs 73 and 81 above), the case-law of the Croatian Supreme Court (see paragraph 51 above) suggests that the obligation to return temporarily confiscated sums could arise only when the relevant authority issued a final decision to discontinue administrative-offence proceedings on the grounds that the offence in question had become time-barred. Such a decision could not have been issued in the applicant's case because the administrative-offence proceedings have been stayed (by two consecutive legislative acts of Croatian authorities) since 13 November 1992 until the completion of the succession process.

84. This prolonged stay of the proceedings thus prevented the applicant from seeking the return of the temporarily confiscated sums both from the Croatian and from the Serbian authorities, which in deciding the case would need such a decision as a proof that under Croatian law the confiscation of his money was no longer justified.

85. To sum up:

- the Croatian authorities took over the administrative-offence proceedings against the applicant from the federal authorities of the former SFRY (see paragraph 79 above);
- from that moment the proceedings have been conducted in accordance with Croatian substantive and procedural law governing administrative offences (see paragraphs 24-25, 31, 40-45 and 73 above);
- those proceedings were stayed by the Croatian authorities and have remained stayed until the present day, which has resulted in the administrative offence with which the applicant had been charged becoming time-barred (see paragraph 80 above);
- under Croatian and Serbian law temporarily confiscated items have to be returned once the offence in question becomes time-barred (see paragraphs 40-44, 51-53 and 81 above); and
- the stay of proceedings imposed by Croatian legislation has been preventing the relevant authorities from issuing a decision to discontinue the administrative-offence proceedings against the applicant, which prevented him from recovering the temporarily confiscated money both from the Croatian and from the Serbian authorities (see paragraph 84 above).

86. In the Court's view those elements are sufficient to conclude that the situation the applicant complained of is attributable to the Croatian authorities, it being understood that Serbia is not a party to the proceedings the applicant instituted before the Court and that the Court therefore cannot pronounce itself on the issue whether Serbia may as well be held responsible for that situation.

87. In view of this conclusion, the Government's inadmissibility objection as to the incompatibility *ratione personae* (see paragraphs 57-58 above) must be dismissed.

88. Thus, the only issue to be examined is whether the prolonged stay of the administrative-offence proceedings against the applicant and his resultant inability to recover the sums temporarily confiscated from him was in compliance with Article 1 of Protocol No. 1 to the Convention.

(b) Regarding the issue of whether the prolonged inability by the applicant to recover temporarily confiscated money was in compliance with Article 1 of Protocol No. 1

89. The Court notes that the Government did not dispute that the confiscation in question had been of temporary character and thus did not amount to deprivation of property (compare and contrast with *Mladost Turist a.d.*, cited above, §§ 34 and 49-50, where the Court declared the applicant company's complaint inadmissible as incompatible *ratione temporis* in so far as it concerned the alleged deprivation of property). Likewise, they did not dispute that the money confiscated from the applicant belonged to him and that it has remained his private property until the present day (see paragraphs 69 and 75 above). The Court therefore finds it established that the confiscated money has constituted the applicant's "possessions" within the meaning of Article 1 of Protocol No. 1.

90. As the Court has stated on many occasions, Article 1 of Protocol No. 1 comprises three 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 the deprivation of property and subjects it to conditions; the third rule, stated in the second paragraph, recognises that the States are entitled, among other things, to control the use of property in accordance with the general interest. The second and third rules, which are concerned with particular instances of interference with the right to peaceful enjoyment of property, must be read in the light of the general principle laid down in the first rule (see, among many other authorities, *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia* [GC], no. 60642/08, § 98, ECHR 2014). Given that the applicant in the present case has not been able to use the money temporarily confiscated from him for more than thirty years, and having regard to its case-law on the matter (see *Ališić and Others*, cited above, § 99),

the Court considers that the applicant's prolonged inability to recover that money should be examined in the light of the general principle laid down in the first rule of Article 1 of Protocol No. 1.

91. Furthermore, the Court does not find it necessary to categorise that inability as an interference, a failure to discharge the State's positive obligations under Article 1 of Protocol No. 1 to the Convention, or a combination of both (see, *mutatis mutandis*, *Ališić and Others*, cited above, § 102). Regardless of the category it falls into, the Court must examine whether this inability was in compliance with that Article – namely, whether it was lawful, pursued an aim that was in the general interest and whether a "fair balance" was struck between the general interest in question and the applicant's property rights.

(i) Lawfulness

92. As regards the issue of whether the applicant's inability to recover the money resulting from the stay of the administrative-offence proceedings against him was in accordance with the law, the Court notes that there was no dispute between the parties as to whether the principle of lawfulness has been respected in this case. The Court sees no reason to hold otherwise as the stay of the proceedings has been based on the Government Decree of 13 November 1992 and the Stay of Proceedings Act (see paragraphs 32-33 above).

(ii) Aim in the general interest and fair balance

93. Having regard to its case-law in similar cases (see *Ališić and Others*, cited above, §§ 106-107) and the wide margin of appreciation enjoyed by the States in implementing economic policies, the Court is ready to accept that by delaying the repayment of temporarily confiscated sums deposited in accounts outside its territory until the succession of the former SFY was completed and the assets of the former federation distributed, the respondent State pursued an aim that was in the general interest, namely that of protecting the public purse and the national economy.

94. Whereas some delays may be justified in exceptional circumstances, the Court finds that the applicant has been made to wait too long. What is more, the Court reiterates that the prolonged stay of the proceedings prevented the applicant from seeking the return of the temporarily confiscated sums not only from Croatian but also from the Serbian authorities (see paragraph 84 above). Preventing the applicant from seeking the return of that money from Serbia can hardly be justified by the above aim of protecting the public purse and the national economy (see paragraph 93 above).

95. The Court further refers to the case of *Ališić and Others* (cited above, § 123), in which it noted that the succession negotiations had not prevented the successor States from undertaking measures at the national level aimed at

protecting the interests of individuals within their respective jurisdictions. In that case the Court noted that Croatia had repaid a large part of its citizens' "old" foreign-currency savings in the Zagreb branch of Ljubljanska Banka. For the purposes of the present case the Court also finds it important that Croatia has also assumed liability for damage caused by the authorities of the former SFRY in so far as it had the closest connection with the damage – notably, where the wrongful act occurred on its territory, and the victim was a Croatian national (see paragraphs 48-50 above). This shows that solutions have been found as regards some categories of individuals whose rights were affected by the dissolution of the former SFRY, but not with regard to the present applicant (see, *mutatis mutandis*, *Ališić and Others*, cited above).

96. The Court is therefore not satisfied that the Croatian authorities, notwithstanding their wide margin of appreciation (see paragraph 93 above), struck a fair balance between the general interest of the community and the property rights of the applicant, who was made to bear a disproportionate burden (see, *mutatis mutandis*, *Ališić and Others*, cited above, § 124).

97. The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 1 of Protocol No. 1 to the Convention in the present case.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

98. 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

99. The applicant claimed EUR 2,218.50 euros (EUR) and 100 United States dollars (USD), together with accrued statutory default interest running from 15 May 2008 (see paragraph 19 above), in respect of pecuniary damage. He also claimed 10,000 Croatian kunas (HRK) in respect of non-pecuniary damage.

100. The Government contested these claims.

101. In so far as the applicant's claim for pecuniary damages concerns the statutory default interest, the Court notes that he did not specify either the amount or the rate or the method of its calculation. It therefore does not award him any sum on that account.

102. As regards the remainder of the applicant's claim for pecuniary damages, the Court reiterates that it has found a violation of Article 1 of Protocol No. 1 in the present case because the prolonged stay of the proceedings imposed by the Croatian authorities prevented the applicant from

seeking the return of the temporarily confiscated sums both from Croatian and from the Serbian authorities (see paragraphs 84 and 94 above). That being so, the Court finds that there is no direct causal link between this part of the applicant's claim for pecuniary damages and the violation found.

103. On the other hand, the Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, the Court awards him EUR 1,327 under that head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

104. The applicant also claimed HRK 3,500 together with accrued statutory default interest running from 11 May 2011 (see paragraph 21 above) and HRK 29,400 for the costs and expenses incurred before the domestic courts and those before the Court.

105. The Government contested these claims.

106. 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 have been actually and necessarily incurred and are 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 4,365 covering costs under all heads.

C. Default interest

107. 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. *Joins to the merits* the Government's objection as to the incompatibility *ratione personae* and *rejects* it;

2. *Declares* the application admissible;

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

4. *Holds,*
   (a) that the respondent State is to pay the applicant, 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 1,327 (one thousand three hundred and twenty-seven euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Croatian kunas at the rate applicable at the date of settlement;

(ii) EUR 4,365 (four thousand three hundred and sixty-five euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be converted into Croatian kunas at the rate applicable at the date of settlement;

(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;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 16 December 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt
Deputy Registrar

Péter Paczolay
President