



FIRST SECTION

**CASE OF NEDIĆ AND DŽOJIĆ v. CROATIA**

*(Applications nos. 26813/15 and 18153/16)*

JUDGMENT

STRASBOURG

23 September 2021

*This judgment is final but it may be subject to editorial revision.*



**In the case of Nedić and Džojić v. Croatia,**

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

Péter Paczolay, *President*,

Alena Poláčková,

Gilberto Felici, *judges*,

and Attila Teplán, *Acting Deputy Section Registrar*,

Having regard to:

the applications (nos. 26813/15 and 18153/16) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Croatian nationals, Mr Anto Nedić (“the first applicant”) and Mr Dragan Džojić (“the second applicant”), on 28 May 2015 and 29 March 2016 respectively;

the decision to give notice of the applications to the Croatian Government (“the Government”);

the absence of the Government’s objection against the examination of the cases by a Committee;

the parties’ observations;

Having deliberated in private on 31 August 2021,

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

## INTRODUCTION

1. The case concerns a nine-year delay on the part of the Croatian authorities in paying to the applicants the disability pension arrears to which they were entitled on the basis of final decisions.

## THE FACTS

2. The first applicant was born in 1963 and lives in Tolisa, Bosnia and Herzegovina. The second applicant was born in 1967 and lives in Slavonski Brod. The first applicant was represented by Mr S. Nedić, a lawyer practising in Osijek, and the second applicant by Ms S. Dražić Karalić, a lawyer practising in Vinkovci.

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.

5. Both applicants were wounded in the war in Bosnia and Herzegovina as members of the so-called Croatian Defence Council (*Hrvatsko vijeće obrane*), which was, during the war, the main military force of Croats living in that country.

## I. PROCEEDINGS IN THE FIRST APPLICANT'S CASE

### A. Administrative proceedings

6. On 7 July 2006 the first applicant applied to the Regional Office of the Croatian Pension Fund in Zagreb (*Hrvatski zavod za mirovinsko osiguranje, Područna služba u Zagrebu*, hereinafter “the Zagreb Office”) for disability pension on account of his injuries sustained in the war.

7. On 17 November 2008 the Zagreb Office granted the first applicant disability pension with effect from 1 July 2006 in the amount of 2,433.05 Croatian kunas (HRK). It also established that the Croatian Pension Fund (*Hrvatski zavod za mirovinsko osiguranje*, hereinafter “the Fund”) would make the payments from the State budget and that the disability pension was to be paid retroactively on a monthly basis. The first applicant did not appeal, and the decision became final.

8. As the disability pension arrears for the period between 1 July 2006 and 31 October 2008 had not been paid, the first applicant wrote to the Fund in a letter dated 24 May 2011, seeking payment.

9. On 4 December 2012 the Zagreb Office issued a supplementary decision (*dopunsko rješenje*) and specified that the disability pension arrears for the period between 1 July 2006 and 31 October 2008 would be paid to the first applicant once the funds for that purpose had been allocated in the State budget. The first applicant did not appeal, and that decision became final.

### B. Civil proceedings

10. Meanwhile, on 5 September 2011 the first applicant instituted civil proceedings before the Zagreb Municipal Civil Court (*Općinski građanski sud u Zagrebu*), seeking payment of the disability pension arrears for the period between 1 July 2006 and 31 October 2008, together with the statutory default interest. In December 2011 the Fund paid the first applicant the principal amount of the disability pension arrears for 2006, whereupon he withdrew that part of the claim.

11. By a judgment of 31 December 2012, the Zagreb Municipal Civil Court granted the first applicant's claim in full.

12. Upon an appeal lodged by the Fund, on 2 September 2014 the Zagreb County Court (*Županijski sud u Zagrebu*) reversed the first-instance judgment and dismissed the first applicant's claim. It held that the Fund had not been obliged to pay the pension arrears claimed because it was a beneficiary of the State budget, and that the funds for the payment of disability pensions for the period in question had not been secured in the State budget.

13. On 11 November 2014 the first applicant lodged a constitutional complaint with the Constitutional Court (*Ustavni sud Republike Hrvatske*). He complained, relying on Article 1 of Protocol No. 1 to the Convention and the relevant provision of the Croatian Constitution guaranteeing the right of ownership, that his property rights had been breached.

14. By a decision of 31 March 2015, the Constitutional Court declared his constitutional complaint inadmissible, finding that the case did not raise any constitutional issue. The Constitutional Court's decision was served on the first applicant's representative on 20 April 2015.

15. On 11 October and 12 December 2017 respectively, the first applicant was paid the principal amount of the disability pension arrears for 2007 and 2008 in accordance with the Government's decision of 12 October 2016 (see paragraph 30 below). The principal amount of the disability pension arrears owed to the first applicant on the basis of the Croatian Pension Fund's decision of 7 July 2006 (see paragraph 6 above) had thus been paid in full on 12 December 2017.

## II. PROCEEDINGS IN THE SECOND APPLICANT'S CASE

### A. Administrative proceedings

16. On 4 July 2006 the second applicant applied to the Zagreb Office for disability pension on account of his injuries sustained in the war (see paragraph 5 above).

17. On 7 November 2008 the Zagreb Office granted the second applicant a disability pension with effect from 1 July 2006 in the amount of HRK 1,739.31. It also established that the Fund would make the payments from the State budget, and that the disability pension was to be paid retroactively on a monthly basis. As concerns the arrears for the period between 1 July 2006 and 31 October 2008, it established that they would be paid to the second applicant once the funds for that purpose had been allocated in the State budget. The second applicant did not appeal, and the decision became final.

### B. Civil proceedings

18. On 17 September 2014 the second applicant instituted civil proceedings before the Osijek Municipal Court (*Općinski sud u Osijeku*), seeking payment of the disability pension arrears for the period between 1 July 2006 and 31 October 2008, together with the statutory default interest. On 25 October 2011 the Fund paid the second applicant the principal amount of the disability pension arrears for 2006, whereupon the second applicant withdrew that part of the claim.

19. By a judgment of 20 January 2015, the Osijek Municipal Court dismissed the second applicant's claim in its entirety. His claim concerning the payment of the statutory default interest on the disability pension arrears for 2006 was dismissed because the arrears had been paid as soon as the funds for that purpose had been allocated in the State budget. The remaining part of his claim concerning the payment of disability pension arrears for 2007 and 2008 together with the statutory default interest was dismissed on the ground that he had failed to prove that the funds for that purpose had been allocated. The second applicant appealed against that decision.

20. By a judgment of 2 April 2015, the Osijek County Court (*Županijski sud u Osijeku*) upheld the first-instance judgment. It noted that the decision on the basis of which the second applicant's entitlement to receive a disability pension had been recognised had become final (see paragraph 18 above). The second applicant had not therefore been allowed to challenge that decision in the civil proceedings as he had been able to do so in the administrative proceedings. The decision in question had determined that disability pension arrears for the period until 31 October 2008 would become due once the funds had been secured in the State budget. As regards the second applicant's claim for the payment of the statutory default interest on the pension arrears for 2006, the second-instance court confirmed the first-instance court's findings. Regarding the arrears for the years 2007 and 2008, according to the second-instance court, they were not due given that the funds for their payment had not yet been secured. Lastly, the second-instance court observed that the Fund had acted in compliance with its final decision of 7 November 2008 (see paragraph 17 above) and that the payment of disability pension without a prior allocation of funds for that purpose would have been unlawful.

21. On 18 May 2015 the second applicant lodged a constitutional complaint with the Constitutional Court. He relied on Article 58 § 3 of the Croatian Constitution which provides that the State shall dedicate special care to the protection of disabled Croatian war veterans. In particular, he complained that the part of the Fund's decision of 7 November 2008 (see paragraph 18 above) stating that disability pension arrears were to be paid after the funds had been allocated in the State budget had been unconstitutional, unlawful and contrary to morals. He also claimed that the denial of payment of the disability pension constituted an attack on the most vulnerable members of society, namely persons with disabilities.

22. By a decision of 3 February 2016, the Constitutional Court declared his constitutional complaint inadmissible, finding that the case did not raise any constitutional issue. The Constitutional Court's decision was served on the second applicant's representative on 16 February 2016.

23. On 11 May 2017 and 12 December 2017 respectively, the second applicant was paid the principal amount of the disability pension arrears for 2007 and 2008 in accordance with the Government's decision of 12 October

2016 (see paragraph 30 below). The principal amount of the disability pension arrears owed to the second applicant on the basis of the Croatian Pension Fund’s decision of 7 November 2008 (see paragraph 17 above) had thus been paid in full on 12 December 2017.

### III. OTHER FACTS RELIED ON BY THE GOVERNMENT

24. The Government submitted that in the years following the adoption of the decisions recognising the first and the second applicants’ entitlement to disability pension (see paragraphs 7 and 18 above), the monthly amounts of their disability pension had been adjusted and increased in accordance with the relevant domestic legislation. The Government further submitted that the first applicant had been employed in 2012, 2014 and 2015 and that he had received a regular salary in that period. The applicants did not contest these submissions.

### RELEVANT LEGAL FRAMEWORK AND PRACTICE

#### A. Relevant domestic legislation

25. Section 106 of the Act on the Rights of Croatian Homeland War Veterans and their Family Members (*Zakon o pravima hrvatskih branitelja iz Domovinskog rata i članova njihovih obitelji*, Official Gazette no. 174/04, with subsequent amendments, hereinafter the “Veterans Act”), as in force at the material time, provided that the funds for the exercise of the rights of the war veterans and their family members provided by that Act and by other legislation had to be allocated in the State budget.

26. Section 54 of the Pension Insurance Act (*Zakon o mirovinskom osiguranju*, Official Gazette no. 102/98, with subsequent amendments), as in force at the material time, provided that an insured person was entitled to a disability pension from the day when the disability occurred, unless otherwise provided for in that Act.

27. Section 119(1) provided that a decision recognising pension insurance rights was to be enforced immediately after its adoption, unless otherwise provided for in that Act.

28. Section 136(1)(6) provided that pension insurance revenues were revenues from the State budget for covering expenses for rights granted under the more favourable conditions.

#### B. Relevant international law

29. The rights of war victims who were members of the Croatian Defence Council (see paragraph 5 above) are regulated by a bilateral agreement, namely the International Agreement between the Republic of

Croatia and Bosnia and Herzegovina on Cooperation in the Area of Rights of War Victims in Bosnia and Herzegovina who were Members of the Croatian Defence Council and their Families (*Zakon o potvrđivanju Ugovora između Republike Hrvatske i Bosne i Hercegovine o suradnji na području prava stradalnika rata u Bosni i Hercegovini koji su bili pripadnici Hrvatskog vijeća obrane i članova njihovih obitelji*, Official Gazette – International treaties no. 2/2006). That agreement was signed on 23 December 2005 and entered into force on 1 July 2006. Article 4 § 2 of the agreement provides that Croatia is to pay pensions to the members of the Croatian Defence Council from the date the agreement entered into force. Article 6 § 2 provides that Croatia is to pay the difference between the monthly amount of disability benefit granted by the relevant authority of Bosnia and Herzegovina, and the monthly amount of disability pension to which a beneficiary would be entitled under Croatian legislation.

### **C. The Government’s decision concerning the payment of disability pension arrears to the members of the Croatian Defence Council**

30. On 12 October 2016 the Government adopted a decision on the intended use of revenues obtained from the restitution of pensions by the process of pension recalculation through the application of international social security agreements concluded with States formed on the territory of the former Yugoslavia (*Odluka Vlade Republike Hrvatske o namjeni korištenja sredstava ostvarenih od povrata mirovina u postupku preračuna mirovina primjenom međunarodnih ugovora o socijalnom osiguranju s državama nastalim na području bivše Jugoslavije*). According to that decision, the funds obtained by Croatia by the process of pension recalculation were to be used for the payment of unpaid pension arrears to the members of the Croatian Defence Council, starting with the payment of the unpaid arrears for 2007. The arrears for 2007 and for every subsequent year were to be paid once the funds obtained by the process in question became sufficient for the payment of pension arrears to all beneficiaries for a certain year.

### **D. Relevant practice**

#### *1. The Constitutional Court*

31. In decision no. U-III-2662/2003 of 28 June 2004, the Constitutional Court dismissed a constitutional complaint whereby the complainant complained of a breach of her property rights on the grounds that the civil courts had dismissed her claim for the payment of unpaid pension. In that case the relevant authority discontinued the payments of the applicant’s old age pension without adopting any decision concerning her pension entitlement. After she had instituted civil proceedings seeking payment of



the unpaid amounts of pension for the relevant period, the relevant administrative authority adopted a decision finding that she had not been entitled to receive a pension in the period in question. The Constitutional Court established that the civil court was bound by the administrative authorities' decisions when deciding on civil actions for payment of pensions. It also held that pension amounts could not become due when the legal basis for their payment had ceased to exist. It further found that the complainant's allegation concerning the unlawfulness of the administrative authorities' decision suspending the pension payments had been irrelevant in the proceedings before it and before the civil courts, since the review of the lawfulness of that decision was within the exclusive jurisdiction of the administrative courts.

32. In case no. U-III-3347/2008, the Constitutional Court examined a constitutional complaint raising similar factual and legal issues to the present applications. In that case the complainant alleged the breach of the right of equality before the law. By a decision of 24 March 2009, the Constitutional Court dismissed the constitutional complaint finding that the constitutional right relied on had not been breached given that the civil courts had properly interpreted and applied relevant domestic law.

## *2. The Supreme Court*

33. In case no. Rev-1223/2007 of 5 May 2009, the Supreme Court decided an appeal on points of law lodged by the plaintiff, a disabled Croatian war veteran, against the relevant pension authority, concerning his claim for the payment of a supplement to a disability pension. The facts of that case were similar to those of the present applications, as the administrative authority determined that the disability pension arrears and the pension supplement for the period preceding the adoption of the decision granting those rights were to be paid when the funds for that purpose had been allocated in the State budget. The civil courts dismissed the plaintiff's claim for the payment of the pension supplement. The Supreme Court upheld the lower courts' decisions and dismissed the appeal on points of law, finding that the plaintiffs' claim for the payment of the social benefit sought could not have become due before the funds for its payment had been allocated in the State budget.

34. In decisions nos. Rev-3942/1994 of 31 March 1999, Rev-1306/2008 of 17 February 2010 and Rev-x 1048/2012 of 29 May 2013, the Supreme Court adopted the view that an obligation to pay a pension became due when the decision recognising the entitlement to the pension was issued. However, those cases did not concern a situation where the relevant administrative authority had made the payment of a social benefit conditional upon the allocation of funds in the State budget.

## THE LAW

### I. JOINDER OF THE APPLICATIONS

35. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

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

36. The applicants complained that the excessive delay in the payment of the disability pension arrears to which they had been entitled had violated their right to the peaceful enjoyment of their possessions. They 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

##### 1. *The parties' arguments*

###### (a) **The Government**

37. The Government disputed the admissibility of the applications on several grounds. In particular, they argued that both applicants had failed to exhaust domestic remedies, that Article 1 of Protocol No. 1 was inapplicable to the second applicant's case and that he had, in any event, failed to comply with the six-month rule. They also submitted that as regards the first applicant the matter had been resolved, and that the second applicant was no longer a victim of the violation complained of.

38. The Government submitted that the applicants had failed to exhaust domestic remedies in that they had failed to challenge the administrative authorities' decisions of 4 December 2012 and 7 November 2008 (see paragraphs 9 and 18 above). In that regard, the Government relied on the Constitutional Court's decision in case no. U-III-2662/2003 of 28 June 2004 (see paragraph 31 above).

39. In addition, the Government submitted that the second applicant had not properly exhausted domestic remedies because in his constitutional complaint he had not relied on the relevant provision of the Constitution guaranteeing the right of ownership. Instead, he had relied on Article 58 § 3

of the Constitution which provides for the obligation of the State to dedicate special care to the protection of disabled Croatian war veterans, even though members of the Croatian Defence Council were excluded from the scope of that provision (see paragraph 21 above).

40. The Government further argued, relying on domestic case-law (see paragraphs 32 and 33 above), that the second applicant could not have had a legitimate expectation that his claim for pension arrears would be granted before the funds for that purpose had been allocated in the State budget. Given that the payment of those arrears was thus made dependent upon the fulfilment of a future condition, the second applicant's claim constituted a future claim or property which fell outside the scope of Article 1 of Protocol No. 1, since it had not been sufficiently established to be enforceable. The Government therefore proposed that the second applicant's case be declared inadmissible *ratione materiae*.

41. In the alternative, the Government argued that the second applicant had failed to comply with the six-month rule because he had brought a civil action (see paragraph 18 above) which in his case had not been a relevant remedy for him to have recourse to. This was because at the time of bringing his civil action, the Croatian Pension Fund's decision (see paragraph 16 above) had not constituted an enforceable title as concerns the payment of pension arrears. The Fund's decision had specifically stated that the arrears would be paid when a future condition was met, that is when budgetary funds for their payment had been ensured. In support of that argument the Government relied on the Constitutional Court's case-law (see paragraph 32 above). As to the domestic practice the second applicant had relied on (see paragraph 34 above), the Government contended that the Supreme Court decisions in question concerned situations which were not comparable with that of the second applicant and were therefore not applicable in his case.

42. Lastly, the Government argued that in the meantime the principal amounts of the disputed pension arrears had been paid to both applicants in full (see paragraphs 15 and 23 above). For that reason, as concerns the first applicant, the Government deemed the matter resolved and invited the Court to strike out his case, whereas the second applicant could no longer claim to be a victim of the violation complained of.

**(b) The applicants**

43. The first applicant submitted that the Fund's decision of 4 December 2012 (see paragraph 9 above) had never been served either on him or on his representative and that it had been impossible to establish who had signed the notice of receipt provided by the Government. In any event, before the adoption of that decision he had already instituted civil proceedings seeking payment of the disputed arrears (see paragraph 10 above). The Fund had been able to put forward all the relevant arguments before the civil court

which had had the competence to address them. Thus, it had not been necessary for the Fund to issue a supplementary decision specifying when the disputed arrears would be paid (see paragraph 9 above).

44. The second applicant submitted that he had not appealed against the Fund's decision of 7 November 2008 (see paragraph 18 above) because a State budget was adopted every year anew. He could not have known that he would have had to wait for years to be paid the disputed pension arrears. As to the Government's objection that he had not relied on the appropriate provision of the Constitution, the second applicant claimed that there was no hierarchy of constitutional rights and that all of them were equally important. He further submitted that according to the Supreme Court's case-law, pension claims became due with the adoption of a decision recognising the entitlement to a pension (see paragraph 34 above). Thus, his civil action had had a reasonable prospect of success and he had therefore complied with the six-month time-limit.

## 2. *The Court's assessment*

### (a) **Applicability of Article 1 of Protocol No. 1**

45. The Court notes that the Fund adopted decisions recognising that the applicants had qualified for a disability pension, and that those decisions became final (see paragraphs 7 and 18 above). In both cases, the Fund established that the applicants were entitled to be paid their disability pension starting from 1 July 2006. The applicants started receiving their pension regularly on a monthly basis after the adoption of the Fund's decisions recognising their entitlement. However, as concerns the pension arrears for the period preceding the adoption of those decisions (the period between 1 July 2006 and 31 October 2008), these arrears had not been paid immediately due to a lack of funds in the State budget, even though the applicants had been entitled to receive them.

46. In view of the fact that the applicants' entitlement to receive the disability pension for the period between 1 July 2006 and 31 October 2008 was established by the Fund's final decisions, the Court considers that their entitlements to be paid the disability pension arrears at issue constituted "possessions" for the purposes of Article 1 of Protocol No. 1 (see *Moskal v. Poland*, no. 10373/05, § 39, 15 September 2009, and *Béláné Nagy v. Hungary* [GC], no. 53080/13, § 94, 13 December 2016). The fact that the payment of those pension arrears had been made conditional on the allocation of funds in the State budget is an issue that concerns the merits of the applicants' complaint.

47. In reply to the Government's argument to the contrary (see paragraph 40 above), the Court notes that, while it is true that under its case-law a conditional claim cannot be considered an asset and therefore a "possession" protected by Article of Protocol No. 1 (see, among many other

authorities, *Kopecký v. Slovakia* [GC], no. 44912/98, §§ 42, 51 and 58, ECHR 2004-IX), this applies to situations where the acquisition of a certain property right is subject to a condition, and not to situations such as the present one where the right has already been acquired but its exercise was made conditional.

48. It follows that the Government's objection based on incompatibility *ratione materiae* must be dismissed.

**(b) Exhaustion of domestic remedies and compliance with the six-month rule**

49. As to the objection concerning the exhaustion of domestic remedies (see paragraphs 38-39 above), the Court reiterates that a person who has obtained a judgment against the State cannot be required to resort to enforcement proceedings in order to have it executed or to any means to ensure its timely enforcement (see, for example, *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004; *Cocchiarella v. Italy* [GC], no. 64886/01, § 89, ECHR 2006-V; and *Burdov v. Russia (no. 2)*, no. 33509/04, § 98, ECHR 2009). This applies *mutatis mutandis* to the cases of the applicants who, as noted above, obtained final decisions obliging the State to pay them the pension arrears in question (see paragraphs 7, 18 and 45 above). That is because the principle of legal certainty applies to a final legal situation, irrespective of whether it was brought about by a judicial act or an administrative act or, as in the instant case, a social insurance decision which, on the face of it, is final in its effects (see *Moskal*, cited above, § 82).

50. For this reason, the Court considers that the applicants had not been obliged to resort to remedies in order to ensure that the State comply with its payment obligations arising from the Fund's final decisions. Accordingly, all objections by the Government concerning the exhaustion of domestic remedies must be dismissed.

51. As regards compliance with the six-month rule by the second applicant, the Court considers that the alleged violation constituted a continuing situation, in which case the six-month period starts to run from the end of the situation concerned (see, *mutatis mutandis*, *Nazarchuk v. Ukraine*, no. 9670/02, § 20, 19 April 2005, and *Trunov v. Russia*, no. 9769/04, § 15, 6 March 2008). On 29 March 2016, that is to say, on the day the second applicant lodged his application with the Court, the Fund's decision recognising his entitlement to disability pension arrears had not yet been fully executed given that he had still not received the pension arrears for 2007 and 2008 (see paragraph 23 above). Accordingly, this objection by the Government must also be dismissed.

**(c) Victim status**

52. The Court reiterates that a decision or measure favourable to the applicants, such as the enforcement of a decision after substantial delay, is

not in principle sufficient to deprive them of their status as “victims” unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see *Burdov v. Russia* (no. 2), cited above, § 56). Similarly, to be able to conclude that the matter has been resolved and that Article 37 § 1 (b) of the Convention applies, the Court must establish whether the circumstances complained of still obtain and whether the effects of a possible violation of the Convention on account of those circumstances have also been redressed (see, for example, *Konstantin Markin v. Russia* [GC], no. 30078/06, § 87, ECHR 2012 (extracts)).

53. In view of these principles, the Court considers it sufficient to note that the domestic authorities never acknowledged the violation complained of and that the applicants never obtained any compensation for non-pecuniary damage sustained as a result of delayed payment of the disputed disability pension arrears (see paragraphs 15 and 23 above). The Court thus finds that the applicants can still claim to be the victims of the violation alleged and that the matter has not been resolved.

54. The Court therefore dismisses both the Government’s request to strike out the first applicant’s case under Article 37 § 1 (b) of the Convention and their objection as to admissibility based on the alleged loss of the second applicant’s victim status.

**(d) Conclusion**

55. The Court notes that the applications are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

**B. Merits**

*1. The parties’ arguments*

**(a) The applicants**

56. The applicants contested the lawfulness of the domestic authorities’ decisions to make the payment of the disability pension arrears conditional upon the allocation of funds in the State budget (see paragraphs 9, 12, 18 and 20 above). They further submitted that the delay in the payment of those arrears had been excessive.

**(b) The Government**

57. The Government submitted that the domestic authorities’ decisions determining that the pension arrears would be paid once the funds for that purpose were secured in the State budget and the subsequent dismissal of the applicants’ civil claims had a legal basis in section 106 of the Veterans

Act and section 136 of the Pension Insurance Act (see paragraphs 28 and 28 above).

58. The Government further stated that they could not have fulfilled their obligations to disburse pensions to the members of the Croatian Defence Council without endangering the financial stability of the country. The delay in payment of the disability pension arrears to the applicants had been justified since from 2008 onwards the State had been facing the global economic crisis. In addition, by signing the relevant bilateral treaty with Bosnia and Herzegovina (see paragraph 29 above), the State had undertaken the obligation to grant social benefits to a large number of potential beneficiaries.

59. In the Government's view, the delay in payment of the arrears at issue had not imposed an excessive individual burden on the applicants given that after the adoption of the decisions recognising their disability pension entitlement they had received regular monthly payments of the social benefit in question. Also, the amounts of their disability pensions had been adjusted and increased according to the relevant domestic legislation. Moreover, the first applicant had been employed in the years 2012, 2014 and 2015 and he had received a regular salary in that period (see paragraph 24 above).

## 2. *The Court's assessment*

60. The Court reiterates that the impossibility for an applicant of obtaining the execution of a decision making an award in his or her favour constitutes an interference with the right to the peaceful enjoyment of possessions, as set out in the first sentence of the first paragraph of Article 1 of Protocol No. 1 (see, among many other authorities, *Burdov v. Russia*, no. 59498/00, § 40, ECHR 2002-III, and *Jasiūnienė v. Lithuania*, no. 41510/98, § 45, 6 March 2003).

61. The Court further reiterates that some delay in execution may be justified in particular circumstances (see *Burdov*, cited above, § 35). However, it is not open to a State authority to cite the lack of funds as an excuse for not honouring a judgment debt (see *Burdov*, cited above, § 41, and *Burdov v. Russia (no. 2)*, cited above, § 70, with further references).

62. The Court notes that the administrative authorities' decisions in question (see paragraphs 7 and 18 above) remained unenforced for a period of nine years because the related funds had not been allocated in the State budget (see paragraphs 15 and 23 above). Much shorter delays have in the past been considered to be excessive (see *Burdov*, cited above, §§ 36, 37 and 41; *Petrushko v. Russia*, no. 36494/02, § 25, 24 February 2005; and *Sokur v. Ukraine*, no. 29439/02, § 36, 26 April 2005). The Court does not see any reason to depart from that case-law in the present cases.

63. There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention in respect of the first and the second applicants.

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

64. 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**

##### *1. The parties' submissions*

65. The first applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage. The second applicant claimed an unspecified amount of accrued statutory default interest in respect of pecuniary damage and EUR 10,000 in respect of non-pecuniary damage.

66. The Government contested those claims, deeming them excessive, unfounded and unsubstantiated.

##### *2. The Court's assessment*

###### **(a) Pecuniary damage**

67. As regards the second applicant, the Court reiterates that pursuant to Rule 60 § 1 of the Rules of Court, an applicant who wishes to obtain an award of just satisfaction under Article 41 of the Convention in the event of a finding of a violation of his or her Convention rights must make a specific claim to that effect. Since the second applicant failed to specify his claim for pecuniary damage (see paragraph 65 above), the Court does not award him any sum under this head.

###### **(b) Non-pecuniary damage**

68. The Court finds that the applicants must have 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 EUR 5,000 to the first applicant and EUR 6,000 to the second applicant in respect of non-pecuniary damage, plus any tax that may be chargeable.

#### **B. Costs and expenses**

69. The first applicant also claimed EUR 4,000 and the second applicant EUR 6,779.80 for the costs and expenses incurred before the domestic courts and before the Court.



70. The Government contested those claims as excessive and unsubstantiated because they had been lodged without any supporting documents.

71. As to the costs and expenses incurred before the domestic courts, the Court refers to its findings in paragraphs 49 and 50 above that the applicants had not been required to make use of any remedy in order to ensure that the State comply with its payment obligations. For that reason, the Court does not award them any sum on that account.

72. As to the costs incurred before the Court, regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award EUR 2,000 to each applicant, plus any tax that may be chargeable to them.

### **C. Default interest**

73. 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. *Decides* to join the applications;
2. *Rejects* the Government's request to strike the first applicant's case out of its list;
3. *Declares* the applications admissible;
4. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
5. *Holds*
  - (a) that the respondent State is to pay the applicants, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
    - (i) EUR 5,000 (five thousand euros) to the first applicant and EUR 6,000 (six thousand euros) to the second applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;
    - (ii) EUR 2,000 (two thousand euros) to each applicant, 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* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 23 September 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

(signature\_p\_2)

Attila Teplán  
Acting Deputy Registrar

Péter Paczolay  
President