



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

SECOND SECTION

CASE OF SVRTAN v. CROATIA

(Application no. 57507/19)

JUDGMENT

Art 2 (substantive) • Positive obligations • Life • Death of the applicants' twelve-year-old son, accidentally shot by a person with an alleged history of alcohol abuse, violent behaviour and unlawful possession of firearms • Court unable to conclude the existence of a real and immediate risk to the victim's life of which the authorities knew or ought to have known • General post-war context and phenomenon of widespread illegal possession of weapons at the relevant time • Authorities' failure to act promptly and decisively despite serious allegations that the perpetrator possessed illegal weapons • Non-compliance with the special duty of diligence in the protection of public safety and, ultimately, the applicants' son's life, in view of the particularly high level of risk to life inherent in the use of firearms • Failure to apply rigorously a system of adequate and effective safeguards designed to counteract and prevent any misuse or dangerous use of firearms

Prepared by the Registry. Does not bind the Court.

STRASBOURG

3 December 2024

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 Svrtnan v. Croatia,

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

Arnfinn Bårdsen, *President*,

Pauliine Koskelo,

Jovan Ilievski,

Péter Paczolay,

Davor Derenčinović,

Gediminas Sagatys,

Stéphane Pisani, *judges*,

and Hasan Bakırcı, *Section Registrar*,

Having regard to:

the application (no. 57507/19) 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 Željko Svrtnan and Ms Biljana Svrtnan (“the applicants”), on 24 October 2019;

the decision to give notice to the Croatian Government (“the Government”) of the complaint concerning their son’s right to life and to declare the remainder of the application inadmissible;

the parties’ observations;

Having deliberated in private on 12 November 2024,

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

INTRODUCTION

1. The case concerns the death of the applicants’ 12-year-old son, who was accidentally shot by a certain S.K. who had an alleged history of alcohol abuse, violent behaviour and unlawful possession of firearms. It raises an issue under Article 2 of the Convention.

THE FACTS

2. The applicants were born in 1967 and 1968, respectively, and live in Osijek. They were represented by Mr T. Filaković, a lawyer practising in Osijek.

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

4. The facts of the case may be summarised as follows.

I. BACKGROUND TO THE CASE

5. On 25 August 2003 an anonymous citizen wrote to the chief of the Osijek-Baranja Police Department, Second Police Station (*Policijaska uprava osječko-baranjska, II. Policijska postaja*) stating that he was a neighbour of

a certain S.K. who possessed illegal weapons, including an automatic rifle, a pistol and several bombs. The letter specified that on 5 August 2003, which was a public holiday, S.K. had fired several burst shots from the automatic rifle in front of his house, following which four police officers came and left without taking the weapon from him, which S.K. subsequently mocked. The letter also stated that on 19 August 2003 S.K. was again shooting at around 11.45 p.m. The letter urged the police to take action to protect S.K. and his neighbours, explaining that he had become very dangerous since his wife had left him and that he had threatened his mother and grandmother that he would kill them if they reported him to the police.

6. In a special operative report issued by the Osijek-Baranja Police Department, Second Police Station signed by police officer T.K., it was stated that through interviews with two citizens he had learned that S.K. possessed a gun and probably also an automatic rifle. Both citizens had seen S.K. carrying weapons while he was drunk. Officer T.K. also stated that he was personally aware that S.K. possessed a gas pistol.

7. On 31 August 2003, while carrying out an identity check on S.K., police officers from the Osijek Second Police Station ascertained through direct observation that he was carrying a gas pistol. They established that S.K. had thereby committed a minor offence under the Weapons Act (*Zakon o oružju*) and lodged a request to institute minor-offence proceedings against him. It was also established that the S.K. had 2,06 g/kg of alcohol in his blood at the said occasion.

8. On the following day, the police asked the Osijek Minor Offences Court (*Prekršajni sud u Osijeku*) to issue a warrant to search S.K.'s house, in view of information obtained by the police indicating that S.K. was keeping weapons in his home without a licence.

9. On the basis of a warrant issued on 1 September 2003, on the same day police officers P.B., Z.Š. and D.R. carried out a search of S.K.'s house, witnessed by civilians M.K. and I.M. During the search, which according to official records lasted for 30 minutes, no weapons were found and no objects were confiscated.

10. By a letter dated 5 September 2003, the Organised Crime Department of the Osijek-Baranja Police wrote to the Osijek Second Police Station, stating that, according to the information received and the special operative report (see paragraphs 5 and 6 above), S.K. was in possession of several unlicensed weapons, which were hidden in the attic of his house. The letter also stated that S.K. was violent towards his mother and grandmother who lived with him, and that he had threatened to kill them if they ever reported him to the police. The police were instructed to carry out field enquiries in order to verify that information and to take the necessary steps should they establish suspicion of a minor-offence or a criminal act.

11. By a letter dated 29 September 2003 the chief of the Osijek Second Police Station replied to the above letter (see paragraph 10) stating that the

police had searched S.K.'s house on 1 September 2003, but did not find any weapons.

12. It does not appear that any further checks or searches of S.K.'s house took place in the period that followed.

II. THE CIRCUMSTANCES OF THE APPLICANTS' SON'S DEATH

13. On 12 October 2003, at around 5.30 p.m., S.K. called his ex-wife, Sa.K., and told her to come to his house to pick up their daughter.

14. Shortly afterwards, at around 5.45 p.m., Sa.K. arrived at S.K.'s house with her brother D.K. S.K. opened the door holding an automatic rifle with its muzzle pointed at the ground. His young daughter stood in the hallway behind him covering her ears with her palms and crying. Sa.K. entered the hallway and took her daughter in her arms. S.K. approached them and pushed Sa.K. away. Since the door to the house had been left open, D.K. saw what was happening, stepped out of the car and told S.K. to let Sa.K. and her child out of the house. While S.K. and D.K. were arguing, Sa.K. left the house with her daughter and sat in the parked car.

15. Shortly afterwards, S.K. went into the house and closed the front door, but D.K. went back to S.K.'s door, kicked it open and told S.K.: "Shoot if you have the courage, you motherfucker." D.K. then turned around and started walking towards his car, at which point S.K. stepped out of his house onto the street. He fired between seven and nine bullets in the direction of D.K., killing him on the spot. His blood alcohol level was subsequently found to be approximately 2,15 g/kg.

16. At the same time, the applicants' minor son, M.S., who was passing by on a bicycle, was shot in the head by one of the bullets fired by S.K. He subsequently died in hospital.

17. On 12 October 2003 the police questioned S.K. He admitted that he had shot D.K. using an automatic rifle and said that he had subsequently learned that a stray bullet had hit a child whom he did not know. On that occasion, he stated that he had found the rifle, together with the ammunition, five or six days prior to the event in a ditch near the Danube while he was fishing. He had brought it home, placed it on the cupboard in the hallway and had not touched it until the day of the incident.

18. On 13 October 2003, on the basis of a warrant issued by the Osijek County Court (*Županijski sud u Osijeku*), police officers searched S.K.'s house. They found thirty rounds of automatic rifle ammunition and one automatic rifle extension.

19. On 14 October 2003 the police lodged a request to institute minor offence proceedings against S.K. for unlawful possession of ammunition, a minor offence referred to in section 75(1) and (2) of the Weapons Act.

20. S.K. was subsequently convicted in the minor-offence proceedings.

III. CRIMINAL PROCEEDINGS AGAINST S.K.

21. On 13 October 2003 the police lodged a criminal complaint against S.K. with the Osijek County State Attorney's Office (*Županijsko državno odvjetništvo u Osijeku*) for the murder of D.K., a serious criminal offence against public safety committed against the applicants' son and the unauthorised possession of weapons and explosives.

22. On 5 November 2003 S.K. was indicted. He pleaded guilty on all counts. Before the court, S.K. stated that he had come into possession of the automatic rifle in question during the war in Croatia and had kept it in the attic of his house ever since. A few days before the incident, he had taken the rifle down from the attic in order to clean it and had placed it on the table in the hallway. S.K. further stated that some twenty days before that event, the police had conducted a search of his house, but the search had been cursory and they had not found the rifle. At that time, the rifle had been in a room he did not normally use, rolled up in a carpet. He added that, on the day in question, he had taken the rifle out of that room and had placed it on a shelf in the hallway. He had then taken it from the shelf and had placed it on the hallway table with the intention of cleaning it.

23. A number of witnesses were examined during the criminal proceedings. Witness T.K., S.K.'s former father-in-law, stated that after the divorce from his daughter, S.K. had often called her on the phone and had threatened to kill them all and detonate a bomb. He also stated that S.K. had been prone to conflict and problematic behaviour owing to his alcohol consumption. Witness K.K., S.K.'s mother, had not been aware that S.K. had kept an automatic rifle in the house and stated that she had first seen it on the hallway table, where he had placed it about half an hour prior to the incident. She pointed out that she did not know where the rifle had been earlier, but that she had the impression that S.K. had brought it in from the courtyard.

24. On 16 March 2004 the County Court found S.K. guilty as charged and sentenced him to twenty years' imprisonment. The court instructed the applicants to lodge a claim for damages in civil proceedings.

IV. CIVIL PROCEEDINGS

25. On 16 December 2004 the applicants brought a civil claim for damages against S.K. and against the State under section 13 of the State Administration Act. They claimed jointly and severally from S.K. and the State some 60,000 Croatian kunas (HRK; equivalent to some 7,960 euros (EUR)) in respect of pecuniary damage for funeral-related costs. They also claimed from the State HRK 220,000 each (equivalent to EUR 29,199) in respect of non-pecuniary damage for the mental pain and anguish suffered due to the loss of their son. The applicants argued that the State had been responsible for the death of their son in particular because the police had not

found the automatic rifle used to shoot him during their search of S.K.'s house shortly before the incident (see paragraph 9 above).

26. During the civil proceedings, the applicants stated that they had heard that S.K. had owned firearms and had been known to use them. During the criminal proceedings they had learned that S.K. had allegedly purchased the rifle with which their son had been killed from a common acquaintance and neighbour of theirs a few years before the incident. However, they had personally never seen S.K. with weapons and had therefore never lodged a criminal complaint against him for unauthorised possession of weapons.

27. A number of other witnesses were heard during the civil proceedings. Witness S.M. stated that S.K. would often drink beer in front of the shop where she worked. She described him as annoying but not aggressive. Although she had heard that he possessed firearms and that he had been bragging that the police had searched his house but had not found the weapons he had hidden, she had never seen him with one. Witness S.V. described S.K. as being a loudmouth who tended to drink and harass others, and confirmed that she herself had a number of arguments with him. She stated that she had seen S.K. carrying a gun, rumoured to be a gas pistol, and that he had once asked her to wrap up a box containing a rifle for him in the shop where she was employed. However, she had never heard of S.K. firing any other weapons prior to the tragic event. The witness added that, after one of the searches conducted in his house, S.K. had threatened to break her legs if she had been the one who had reported him. Witness S.P. stated that she had heard that the police had visited S.K. for disturbance of public order and peace, but that she had not witnessed the events in question. She had also heard stories that S.K. used to shoot guns during the New Year celebrations, but she did not have any direct knowledge of this. She pointed out that whenever shots were heard, everybody in the neighbourhood immediately thought that S.K. had fired them, although nobody knew for sure.

28. The court also heard evidence from police officers P.B., Z.Š. and D.R., who had conducted the search of S.K.'s house on 1 September 2003 (see paragraph 9 above). Officer P.B. explained that the day before the search, someone had fired a gas pistol, which was why the search of S.K.'s house had been ordered and that they had in fact gone in to look for that particular weapon. They had asked S.K. to hand over any weapons he might have had, but he had refused to cooperate. Officer P.B. recalled seeing a rolled-up carpet in one of the rooms, but he did not know for certain whether the carpet had been inspected, although he believed it must have been. Officer P.B. added that he knew S.K. because of his alcohol abuse and behaviour towards his wife and mother, but not because of his possession of weapons. Officer Z.Š. confirmed that S.K. had been known to the police on account of his alcohol problems and anti-social behaviour. He did not remember a rolled-up carpet from the search, but he stated that everything must have been thoroughly searched. Officer D.R. stated that he had searched the woodshed and the attic,

but he had not seen a rolled-up carpet; it must have been inspected by his colleagues. He also added that, following the tragic event, he had personally conducted the search of S.K.'s house, during which a rifle extension and ammunition had been found (see paragraph 18 above). To his knowledge, no searches had been conducted between 1 September 2003 and the day of the shooting.

29. Witness I.M., who had been present during the search of S.K.'s house on 1 September 2003, stated that the police officers had searched each room in a very thorough manner; they had opened cupboards, lifted mattresses and examined the firewood in the shed. He recalled that there had been a rolled-up carpet in one of the rooms, which the police officers had unrolled and stepped on while searching for objects, but they had found nothing in it. He added, however, that the police had not unrolled the carpet completely and that it had been left partly rolled up. The witness noted that he himself had stepped on the carpet and that there had definitely been no weapons hidden in it, in particular not a rifle. The witness also stated that he knew that there had been several previous searches of S.K.'s house and that S.K.'s father had told him that the police had found a bomb in one of the cupboards during one of the searches.

30. Following a remittal of the case, S.K. was heard again and stated that the search of his house of 1 September 2003 had not been carried out carefully or in accordance with the rules of the profession. The police officers had examined the rooms superficially and had not found the automatic rifle which had been rolled up in a carpet. He said that a police officer had even walked on the carpet, but had not noticed the rifle, the handle of which had been partly sticking out. S.K. added that he had obtained the rifle and some other weapons during the war in Croatia, sometime in 1992 on the battlefield in Eastern Slavonia. He had subsequently handed over other weapons to the authorities, but had kept the automatic rifle for safety reasons because many people in the area kept weapons at home. He had kept it in the attic for many years but had brought it down from the attic after his daughter had moved away and put it in a room that needed to be renovated, which nobody except for him ever entered. He had rolled the rifle up in a carpet so that it was not immediately visible, being aware that he had possessed it unlawfully.

31. S.K.'s former wife, Sa.K., stated that she had not been present during the search because she had moved to her parents' home earlier that year. She confirmed that the police would come to S.K.'s house four or five times a month on account of his outbursts. When she had lived with him, she had been aware that he possessed some sort of weapon; however, he had told her that it was an air rifle, which was kept in a cupboard and did not work.

32. On 12 March 2014 the Osijek Municipal Court allowed the applicants' claim in full. The relevant parts of the judgment read as follows:

“Considering the evidence presented, each item separately, as well as all the evidence together, the court finds that S.K. had been reported to the Ministry of the Interior ... for

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disturbing public order and peace by firing automatic firearms, and that the employees of the Osijek-Baranja police had intervened several times following reports from citizens, and conducted searches of S.K.'s house ... and the last [such] search ... was carried out by three police officers in the presence of two witnesses, the defendant and his mother on 1 September 2003, following an order issued by the Osijek Minor Offences Court, and on that occasion no weapons were found. During the search, all the rooms of the house, as well as the woodshed, the attic and the basement, were inspected, furniture was inspected, and a rolled-up carpet on the floor of one room was not completely unrolled, as transpires from the testimony of witness I.M., who was present during the search.

The court has accepted the material evidence as credible, and therefore true, because its credibility was not challenged by any party, so it accepts the [above] factual situation as established.

Applying substantive law to [that] established factual situation, the court takes the position that the claim is well-founded in its entirety.

That is to say, during the proceedings it has undoubtedly been established that S.K. had unauthorised possession of a weapon – the automatic rifle from which the bullet that killed the claimants' son was fired ... S.K. had been reported several times to the ... police for disturbing public order and peace by firing from automatic firearms, and the police intervened several times, according to reports from citizens, and searched S.K.'s house ... and the last search ... was carried out on 1 September 2003, when the police conducted a search superficially and contrary to the rules of the profession ... and did not find the automatic rifle in question, which had been in the house, in a room not used for habitation – rolled up in a carpet – and which was superficially searched by the police officers, as also emerges from the testimony of Officer P.B., who remembers a rolled-up carpet in the room but does not remember whether it was inspected, Officer Z.Š., who does not remember whether he saw the rolled-up carpet in the house, Officer D.R., who remembers seeing a rolled-up carpet, but did not examine it, and witness I.M., who remembers that the police did not completely unroll the rolled-up carpet in the room, even though they stepped on it.

As a result of the above, the State's [objection *ratione personae*] is not accepted. The State's liability for damages stems from the provisions of section 13 of the State Administration Act ... as in force at the material time, since it is apparent from the testimony of the police officers who conducted the search that they did not examine the rolled-up carpet or unroll it completely, and also from the testimony of witness I.M., from which it follows that the carpet was not fully unrolled, while the court fully believes the testimony of S.K. that the automatic rifle had always been in his house, and that he kept it in the attic and occasionally took it down for cleaning, and that on the day of the search, that is, 1 September 2003, the rifle was in the rolled-up carpet in a room which he did not use and the carpet was not fully unrolled during the search."

33. Following an appeal by the State, the Osijek County Court (*Županijski sud u Osijeku*) upheld the first-instance judgment in its part concerning S.K. but reversed the remainder of the judgment dismissing in full the applicants' claim against the State. The court concluded that the search of S.K.'s house had been conducted lawfully since it had been in accordance with the relevant provisions of the domestic law, and stressed that the mere fact that the search had not resulted in finding the object being searched for did not render the search unlawful. Pointing out that only S.K. had claimed that the said rifle had been hidden in the rolled-up carpet in his home, the court also noted that

S.K. had changed parts of his statement between the criminal and civil proceedings against him. The applicants had not proved that the search had been conducted unlawfully, thereby failing to prove the existence of a causal link between the actions of the police officers during the search of S.K.'s house and the death of their son. The murder of the applicants' son had been committed through the willing and conscious acts of S.K. and not because the police had failed to find his weapon during the search. The court also noted that S.K. had failed to hand over the rifle in question despite the numerous requests the State had made to its citizens via the media to turn over any illegally possessed weapons, as well as the warnings issued concerning the dangers of their possession. Finally, as regards the costs of the proceedings the second-instance court explained that it did not order the applicants to cover the State's costs of representation since they were already unlikely to ever be paid the awarded compensation for pecuniary damage by S.K. who was purging a long-term prison sentence and possessed no property.

34. The applicants lodged an appeal on points of law against the second-instance judgment, which the Supreme Court (*Vrhovni sud Republike Hrvatske*) dismissed as ill-founded on 22 November 2017. In doing so, the Supreme Court accepted the conclusion of the second-instance court that the search had been carried out lawfully and that there had been no causal link between the search and the damage caused.

35. On 23 May 2018 the applicants lodged a constitutional complaint with the Constitutional Court of the Republic of Croatia (*Ustavni sud Republike Hrvatske*). In their complaint, they stated that the lower courts' judgments had violated their constitutional right of equality before the law (Article 14 of the Constitution), as well as their right to a fair hearing (Article 29 of the Constitution). In the reasoning of their complaint, they also stated as follows:

“The damage suffered by the complainants up to the present day is not in issue. [S.K.] killed their son ... The harmful act as a result of which their son M. was killed was a shot fired from an automatic rifle by [S.K.].

The causal link between the responsibility of [the State] and the damage incurred stems from the fact that the police officers did not find the automatic rifle during the search of [S.K.'s] house, although the rifle was undisputedly in the house and the police officers ought to have found it. Had they found the automatic rifle during the search, and they should have done so since it had undisputedly been in [S.K.'s] house, then [S.K.] would not have even been able to fire the lethal shot... The complainants truly do not know how they could have explained the causal link better to the second-instance court and the Supreme Court in order for them to accept the liability of the Republic of Croatia in this case.

Through those actions the complainants were put in an unequal position compared with other citizens of the Republic of Croatia. The complainants and their son were not granted the basic safety which should have been ensured, namely the protection of life, and it is precisely for police officers to guarantee such protection. A basic principle of the Constitution of the Republic of Croatia, as set out in Article 21 § 1 of the Constitution, reads: ‘Every human being has the right to life’. [The complainants' minor

son] also had the right to life. But that right was taken away from him as a result of the police officers' negligence in failing to properly search [S.K.'s] house."

36. On 17 April 2019 the Constitutional Court declared the applicants' constitutional complaint inadmissible as being manifestly ill-founded. The applicants' lawyer received the Constitutional Court's decision on 29 April 2019.

RELEVANT LEGAL FRAMEWORK

I. RELEVANT DOMESTIC LAW AND REPORTS

37. The relevant provisions of the Constitution (*Ustav Republike Hrvatske*, Official Gazette no. 56/1990 with subsequent amendments) read as follows:

Article 14 § 2

"All persons shall be equal before the law."

Article 21

"Every human being has the right to life."

Article 29 § 1

"Everyone shall be entitled to have his or her rights and obligations, or suspicion or accusation of a criminal offence, decided upon fairly and within a reasonable time by an independent and impartial court established by law."

38. The relevant provisions of the Criminal Code (*Kazneni zakon*, Official Gazette nos. 110/97, 27/98, 50/00 and 129/00), as in force at the material time, read as follows:

Endangerment of life and property through a generally dangerous act or means

Article 263

"(1) Anyone who endangers the life or limb of people or property of substantial value by fire, flood, explosives, poison or poisonous gas, ionising radiation, mechanical force, electricity or other energy or by some generally dangerous act or generally dangerous means shall be punished by imprisonment for a term of between six months and five years.

...

(3) If criminal offences referred to in paragraphs 1 and 2 of this Article are committed in a place where many persons are gathered, the perpetrator shall be punished by imprisonment for a term of between one and eight years."

Serious criminal offences against general safety
Article 271

“(2) If, as a result of the criminal offence referred to in Article 263, paragraphs 1, 2 and 3, Article 264, paragraph 1, Article 265, paragraphs 1 and 2, and Article 266, paragraph 1, of this Code, the death of one or more persons is caused, the perpetrators shall be punished by imprisonment for a term of between three and twelve years.”

Unauthorised possession of weapons and explosive substances
Article 335

“(1) Anyone who unlawfully constructs, acquires, possesses, sells or in any other way obtains for himself or another a firearm, ammunition or explosive substances, the acquisition, sale or possession of which is unauthorised for citizens, shall be punished by a fine or imprisonment for up to three years.”

39. The relevant provisions of the Code of Criminal Procedure (*Zakon o kaznenom postupku*, Official Gazette nos. 110/97, 27/98, 112/99, 58/02, 143/02 and 178/04), as in force at the material time, read as follows:

Article 211

“(1) The search of a dwelling, other premises, movable property or a person shall be undertaken with the purpose of finding the perpetrators of a criminal offence or finding objects relevant for the criminal proceedings if it is likely that they are to be found on certain premises or with a certain person.

(2) A search represents the investigation of the searched object by means of senses and aids under the conditions and in the manner prescribed by this [Code] and other regulations.

(3) The search of a person must be carried out in a manner preserving the dignity of the searched person. The search of a person shall be carried out by a person of the same sex.

(4) The search must be carried out in a manner that enables the least possible violation of house rules and disturbance of citizens.

(5) Should it not be possible to achieve the purpose of the search of a dwelling, other premises and movable property in any other manner, the authority carrying out the search shall dismantle the object of the search with the help of an expert. Unnecessary damage shall be avoided when dismantling the object of the search.”

Article 211a

“(1) The search of a dwelling shall include the search of one or more rooms used by a person as his or her home, as well as rooms connected with these premises by the same purpose of usage.”

40. The relevant parts of the 1997 Weapons Act (*Zakon o oružju*, Official Gazette no. 46/97, with subsequent amendments), as in force at the material time, read as follows:

Section 11

“(1) It is prohibited to acquire, hold, carry, manufacture, repair and modify, trade and transport, unless otherwise specified by this Act:

1. all types of automatic weapons;

...”

Section 38(2)

“Weapons shall not be carried without a licence and an identity card or other identification document.”

41. The State Administration Act (*Zakon o sustavu državne uprave*, Official Gazette nos. 75/93, 92/96, 48/99, 15/00, 127/00, 59/01 and 199/03), as in force at the material time, read as follows:

Section 13

“Damage suffered by a citizen, a legal person or another party owing to unlawful or irregular operations of State administration bodies or bodies of local and regional self-government units, namely legal persons vested with public authority in State administration affairs entrusted to them, shall be compensated for by the Republic of Croatia.”

42. The relevant provision of the Civil Procedure Act concerning the reopening of proceedings following a final judgment of the European Court of Human Rights (namely, section 428a) is cited in *Lovrić v. Croatia* (no. 38458/15, § 24, 4 April 2017).

43. Since 1992 the Croatian authorities have organised a number of special campaigns to encourage citizens to surrender illegally possessed weapons. It would appear that in the first ten years, over 33,500 weapons were handed over voluntarily. On 31 May 2001 the Government adopted the National Programme to increase general security through the voluntary surrender of weapons, ammunition, mines and explosives (*Nacionalni program povećanja opće sigurnosti dobrovoljnom predajom oružja, streljiva i minsko-eksplozivnih sredstava*), popularly called “Farewell to Arms”. According to official statistics, during 2001 and 2002 over 6,500 firearms were voluntarily handed over.

44. The relevant parts of the National Strategy and Action Plan for the Control of Small Arms and Light Weapons (*Nacionalna strategija i Akcijski plan za kontrolu malog i lakog oružja*, Official Gazette no. 113/09), adopted by the Government of the Republic of Croatia on 10 September 2009, read as follows:

“Suppression of illegal possession and effective control of small and light weapons represent one of the key prerequisites for the security and stability of every country, including the Republic of Croatia. In Croatia, this need is particularly pronounced owing to the relatively large number of small arms and light weapons that were

accumulated during the Homeland War, as well as the specific geostrategic position of the Republic of Croatia as a transit area for arms smuggling to western Europe.

Recognising the above-mentioned danger, and respecting the recommendations and efforts of the international community directed against organised crime and terrorism, there is a need for an effective and coordinated undertaking of all available measures and activities with the aim of more effectively suppressing the illegal production, procurement, possession, trade and smuggling of small arms and light weapons, as well as all other abuses and negative phenomena in this connection. It is a very complex process that requires the continuous cooperation of all ministries and other State administration bodies in order to achieve the maximum effect.

For this purpose, the Government of the Republic of Croatia is adopting the National Strategy for the Control of Small Arms and Light Weapons with the associated Action Plan. The National Strategy is a strategic document that defines the key goals and priorities of the national policy on the control of small arms and light weapons, and the Action Plan contains clearly defined measures to improve the current activities in this area, with the aim of creating the safest possible environment for Croatian citizens and enabling uninterrupted economic and social development.

...

2. Current situation

...

2.2. Spread of weapons in the Republic of Croatia

During the Homeland War, large quantities of various firearms, ammunition, mines and explosives were found on the territory of the Republic of Croatia. At the end of the war, most of the weapons were placed under the control of the Armed Forces of the Republic of Croatia and the Ministry of the Interior, but some of the weapons remained in the illegal possession of citizens.

With the aim of systematically reducing the illegal possession of weapons, the Republic of Croatia has, over the years, carried out a number of activities and measures. Multiple amendments and additions to legal regulations have been made, through which citizens have been able to voluntarily hand over weapons in their illegal possession, and numerous actions have been carried out for this purpose. In 2002 the Ministry of the Interior carried out a campaign called 'Goodbye arms' in which citizens could hand over unregistered weapons to the local police department or station, or legalise them. The 'Fewer weapons - fewer tragedies' campaign, implemented in 2007 in cooperation with the UN Development Programme (UNDP), has also been successful.

When it comes to the number of weapons that are still in the illegal possession of citizens, despite many years of repeated actions carried out to encourage the voluntary surrender and/or legalisation of weapons, it is impossible to give a precise estimate. They are mainly weapons whose acquisition, registration and possession by citizens is prohibited by the Weapons Act. In addition to the prohibited weapons, there are still many weapons in the illegal possession of citizens, the acquisition and possession of which is permitted by law (with appropriate authorisation). In the above-mentioned circumstances, the Weapons Act ... still allows citizens to permanently surrender all types of firearms, by reporting them to the nearest police department or police station, after which the police take possession of them at the place where they are located. If citizens report their weapons before the police launch investigative actions under the Minor Offences Act or Code of Criminal Procedure, that is, before the beginning of the

application of the police powers established by the Police Act, no minor offence or criminal charges will be brought against them ...”

II. RELEVANT INTERNATIONAL LAW AND REPORTS

45. The relevant part of General comment no. 35 on Article 9 of the International Covenant on Civil and Political Rights, issued by the UN Human Rights Committee on 16 December 2014 (footnotes omitted) reads as follows:

“9. The right to security of person protects individuals against intentional infliction of bodily or mental injury, regardless of whether the victim is detained or non-detained. For example, officials of States parties violate the right to personal security when they unjustifiably inflict bodily injury. The right to personal security also obliges States parties to take appropriate measures in response to death threats against persons in the public sphere, and more generally to protect individuals from foreseeable threats to life or bodily integrity proceeding from any governmental or private actors. States parties must take both measures to prevent future injury and retrospective measures, such as enforcement of criminal laws, in response to past injury. For example, States parties must respond appropriately to patterns of violence against categories of victims such as intimidation of human rights defenders and journalists, retaliation against witnesses, violence against women, including domestic violence, the hazing of conscripts in the armed forces, violence against children, violence against persons on the basis of their sexual orientation or gender identity, and violence against persons with disabilities. They should also prevent and redress unjustifiable use of force in law enforcement,¹⁸ and protect their populations against abuses by private security forces, and against the risks posed by excessive availability of firearms. The right to security of person does not address all risks to physical or mental health and is not implicated in the indirect health impact of being the target of civil or criminal proceedings.”

III. RELEVANT EUROPEAN UNION LAW AND REPORTS

46. The relevant parts of the Directive (EU) 2021/555 of the European Parliament and of the Council of 24 March 2021 on control of the acquisition and possession of weapons read as follows:

“...

(23) For the most dangerous firearms, strict rules should be laid down in this Directive in order to ensure that those firearms are, with some limited and duly reasoned exceptions, not allowed to be acquired, possessed or traded. Where those rules are not respected, Member States should take all appropriate measures, which might include the impounding of those firearms.

...

Article 6

1. Without prejudice to Article 3, Member States shall permit the acquisition and possession of firearms only by persons who have good cause and who:

(a) are at least 18 years of age, except in relation to the acquisition, other than through purchase, and possession of firearms for hunting and target shooting, provided that in

that case persons under 18 years of age have parental permission, or are under parental guidance or the guidance of an adult with a valid firearms or hunting licence, or are within a licensed or otherwise approved training centre, and the parent, or an adult with a valid firearms or hunting licence, assumes responsibility for proper storage pursuant to Article 7; and

(b) are not likely to be a danger to themselves or others, to public order or to public safety; the fact of having been convicted of a violent intentional crime shall be considered to be indicative of such danger.

...

Article 9

1. Without prejudice to Article 2(2), Member States shall take all appropriate measures to prohibit the acquisition and possession of the firearms, the essential components and the ammunition classified in category A. They shall ensure that those firearms, essential components and ammunition unlawfully held in contravention of that prohibition are impounded.

...

Annex I

...

II. For the purposes of this Directive, firearms are classified in the following categories:

Category A – Prohibited firearms

...

2. Automatic firearms

...“

IV. OTHER RELEVANT MATERIALS

47. The South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons (SEESAC) had a mandate from the United Nations Development Programme (UNDP) and the Stability Pact for South Eastern Europe (SCSP) to further support all international and national stakeholders by strengthening national and regional capacity to control and reduce the proliferation and misuse of small arms and light weapons, and thus contribute to enhanced stability, security and development in South Eastern and Eastern Europe. In 2006 SEESAC published a report entitled “Small arms and light weapons Survey of Croatia”, the relevant parts of which read as follows:

“It is estimated that there are approximately 968,000 weapons in civilian hands, comprising 371,000 registered and 597,000 unregistered weapons. The number of registered firearms, per capita, is 20% of the figure in the United States, 40% of the figure in Serbia, 50% of the figure in BiH, 100% of the figure in Bulgaria and Switzerland, and 800% of the figure in Hungary. The estimated number of

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unregistered weapons present significant public safety threats as evidenced by a comparatively high number of armed assaults, murders, robberies and suicides, and a challenge to state and regional security through the ongoing activities of serious and organised crime.

...

Overall, the level of reported and investigated crime in Croatia has not changed significantly over the course of the previous four years; however, the level of serious and organised armed crimes has increased by more than 50% over five years with armed assault, armed robbery, armed murder all rising year on year with one exception. More than 95% of organised armed crime is committed with unlicensed handguns. The increased incidence of armed crime versus other types of crime demonstrates the need to continue supporting initiatives designed to tackle the symbiotic problems of organised crime and illicit firearm (particularly handgun) ownership through more effective law enforcement, a more robust penal code and an enhanced judicial system.

It is estimated that approximately half a million people remain traumatized by the armed conflict of the 1990s. Traumatic disorders are more prevalent in the male population, especially among war veterans. Auto aggressive behaviour and the wide availability of weapons have led to a high number of male suicides with guns. In general, the rate of suicides per capita is substantively above the EU average. Current support to veterans and sufferers of Post Traumatic Stress Disorder (PTSD) should be intensified, and the Law on Arms should include a robust provision to ensure PTSD sufferers are not able to access firearms.

There continues to be a high and disturbing level of armed domestic assaults, often involving people suffering from PTSD. No conclusive statistics exist on the exact number of such incidents, however, a sample period in early 2006 revealed an average of 12 incidents per month involving firearms used against family members or neighbours. In contrast to the type of firearm used to commit organised criminal acts, firearms used in domestic assaults and murders are a mixture of both registered and unregistered, with an apparently high number of firearms remnant from the war. This trend demonstrates the continuing need to tackle the linked problems of PTSD, domestic violence and unregistered firearms through enhanced law enforcement, awareness raising, support to victims and a firearms collection.

...

A strong image of the male defender of the country prevails in Croatia with firearm ownership clearly linked to this image. Fifty percent of respondents in the survey consider the protection of their family and property as the main reason for keeping a firearm, despite comparatively high levels of overall security. This apparent contradiction can likely be attributed to a failure of the state to sufficiently outreach to the public through effective, community-based policing and proactive local administration.

...

The majority of the public support a future weapons collection and amnesty, which is envisioned in the draft of the Weapons Law. The only criticisms were that previous programmes were too short and that, since 2003, there was no longer an option to turn in illegal weapons without fine or punishment resulting in an increased number of 'abandoned' firearms. A collection will never reach all illegal weapons, as those used for criminal end will not be surrendered for fear of punishment; only aggressive law enforcement can tackle this problem."

48. The Balkan Homicide Study (BHS) was a prosecution and court casefile-based international homicide study conducted by the University of Zagreb, Faculty of Law (headed by Ms A.M. Getoš Kalac) between 2016 and 2019 in Croatia, Hungary, Kosovo, North Macedonia, Romania, and Slovenia. According to the BHS dataset, which focuses only on Croatia, 47.8% of cases were committed using cold weapons, 24.5% using firearms out of which 64.1% of offenders did not have a license to use a firearm. Among these firearm cases, 80.8% of attempted homicides and 64% of completed homicides were committed without a firearm license.

49. According to another national court casefile-based violence study conducted by the University of Zagreb, Faculty of Law (headed by Ms R. Bezić) between 2021 and 2023 in 4 major Croatian cities (Zagreb, Split, Rijeka and Osijek), the CroViMo Violence Lab, of all violent acts committed using a firearm, 73.3% were committed without a license.

THE LAW

V. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

50. The applicants complained that their son’s death had been caused by the failure of the domestic authorities to prevent S.K.’s violent acts and, in particular, to confiscate his illegally possessed automatic rifle, contrary to Article 2 of the Convention, which reads as follows:

“1. Everyone’s right to life shall be protected by law ...”

A. Admissibility

1. The parties’ observations

51. At the outset, the Government invited the Court to examine the scope of the applicants’ case before it. In that connection, they noted that in their application to the Court, the applicants had complained only about the outcome of the civil proceedings for damages which they had instituted against the State. In doing so, the applicants had relied solely on Articles 6 and 13 of the Convention. They had mentioned the death of their son only in the context of the legal basis of their claim for damages and had not expressly or in substance complained of a violation of his right to life. In the light of the above, the Government invited the Court to declare the complaint under Article 2 of the Convention inadmissible.

52. The Government further maintained that the applicants had not exhausted domestic remedies, because in their constitutional complaint they had not expressly or in substance relied on Article 2 of the Convention or the corresponding provision of the Constitution (Article 21). Instead, they had merely raised complaints under Articles 14 and 29 of the Constitution,

claiming a violation of their right to a fair hearing and to equality before the law, allegedly committed as a result of the civil proceedings they had brought against the State (see paragraph 35 above).

53. The applicants maintained that they had essentially complained both before the Court and before the Constitutional Court of a violation of their son's right to life. They explained that their only legal avenue of redress had been to lodge a civil claim against the State for compensation in respect of non-pecuniary damage, which was why they had had to frame their arguments so as to relate to the civil proceedings that had preceded their constitutional complaint.

2. *The Court's assessment*

54. The Court considers that the above objections raised by the Government are inextricably linked with one another and that they should consequently be dealt with together.

55. The Court observes that in their constitutional complaint, while expressly relying on Articles 14 and 29 of the Constitution, the applicants also stated that they and their son had not been "granted the basic safety which should have been ensured, namely the protection of life, [which is] for police officers to guarantee". Citing Article 21 of the Croatian Constitution, which guarantees the right to life (see paragraph 37 above), they further maintained that their son "also had the right to life, but that right was taken away from him as a result of the police officers' negligence in failing to properly search [S.K.'s] house" (see paragraph 35 above). The Court further notes that the applicants repeated the same statements in their application lodged with it, while explicitly relying in the complaints part of the application form solely on Articles 6 and 13 of the Convention.

56. In this connection, the Court reiterates that by virtue of the *jura novit curia* principle it is not bound by the legal grounds adduced by the applicant under the Convention and the Protocols thereto. The Court has the power to decide on the characterisation to be given in law to the facts of a complaint by examining it under Articles or provisions of the Convention that are different from those relied upon by the applicant (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018). Consequently, the Court communicated the present case to the parties solely under Article 2 of the Convention, and the parties exchanged observations on the matter.

57. Moreover, the Court has already held in a number of cases against Croatia that the rule that the Constitutional Court may only examine violations of the constitutional rights expressly alleged in the constitutional complaint is not absolute and that it is sometimes sufficient for a violation of a constitutional right to be apparent from the complainant's submissions and the case file (see *Mesić v. Croatia (no. 2)*, no. 45066/17, § 45, 30 May 2023, and the cases cited therein).

58. Applying the above principles to the present case, and given the facts the applicants complained of and the legal arguments they put forward both in their constitutional complaint and in their application, the Court is satisfied that they have in substance raised a complaint under Article 2 of the Convention both before it and before the Constitutional Court (compare with *Akdeniz v. Turkey*, no. 25165/94, § 90, 31 May 2005).

59. In addition, the way in which the applicants expressed their grievances before the Constitutional Court leaves no doubt that the same complaint was subsequently submitted to the Court (see paragraph 35 above, and compare with the applicants' arguments summarised in paragraphs 62-69 below; contrast *Merot d.o.o. and Storitve Tir d.o.o. v. Croatia* (dec.), nos. 29426/08 and 29737/08, § 36, 10 December 2013). Therefore, by raising the same issue in substance at domestic level, the applicants provided the national authorities with the opportunity which is in principle intended to be afforded to Contracting States by Article 35 § 1 of the Convention, namely to put right the violations alleged against them (see *Mesić*, cited above, § 47; *Lelas v. Croatia*, no. 55555/08, §§ 45 and 47-52, 20 May 2010; and *Žaja v. Croatia*, no. 37462/09, § 71, 4 October 2016).

60. It follows that the Government's objections of inadmissibility must be dismissed and that the Court is competent to examine the present case under Article 2 of the Convention.

61. The Court notes that this complaint 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' observations

(a) The applicant

62. The applicants maintained that both they and their son were guaranteed the protection of life by the police. However, their son had been denied his right to life as a result of the negligence of the police, who had not properly conducted the search of S.K.'s house.

63. In the applicants' view, the causal link between the search of S.K.'s home which had not been thorough and the damage caused to them, namely the death of their son, had been proved in the domestic proceedings. This was reflected in the fact that the police officers had not found the automatic rifle during the search, although it was undisputed that it had been in S.K.'s house at the time of the search and that the police should therefore have found it. If the police had found the automatic rifle, S.K. would not have been able to use it to shoot the applicants' son.

64. Furthermore, contrary to the conclusions of the second-instance court and the Supreme Court to the effect that the applicants should have proved

that the rifle had been hidden in the rolled-up carpet, the applicants argued that it was completely irrelevant where exactly in S.K.'s house the rifle had been hidden. Had the police properly searched S.K.'s house, they would have found it and prevented the tragic killing of their son.

65. The applicants further contended that the domestic courts had wrongly concluded that the search had been conducted properly. Firstly, as confirmed by witness I.M., the police officers had not unrolled the carpet completely. Secondly, it was apparent from the testimonies of the police officers that none of them had actually inspected the rolled-up carpet. Lastly, the mere fact that witness I.M. had stepped on that carpet indicated that the search had not been conducted lawfully, since witnesses to a search were merely spectators and were not allowed to actively participate in the search.

66. The applicants maintained that the second-instance court and the Supreme Court decisions had been arbitrary since they had not taken into account the final judgment of the criminal court declaring S.K. guilty, despite the fact that the civil courts were bound by the final criminal judgment in its entirety. In that connection, the applicants criticised the fact that the second-instance court had held that S.K.'s testimony during the civil proceedings was unreliable, despite it being consistent with the testimony he had previously given in the criminal proceedings.

67. Moreover, the applicants submitted that the State had failed to use the mechanisms at its disposal to prevent violations of the criminal-law provisions in force. Specifically, it had failed to prevent the violation of the provisions prohibiting the possession of weapons, because it had failed to properly monitor S.K. and subsequently prevent him from using the weapons unlawfully in his possession.

68. The applicants maintained that the State could not absolve itself of responsibility merely because it had enacted criminal-law provisions in order to deter individuals from committing criminal offences; it was also obliged to actively protect the lives of persons under its jurisdiction. In this particular case, this meant that the State had been obliged to take all available measures through the relevant authorities, and, given that S.K. had been repeatedly reported for illegal possession and use of weapons, to take all available measures in order to find those weapons and seize them, which the State had failed to do.

69. Lastly, the State's responsibility in their case also stemmed from the fact that, following the search of S.K.'s house on 1 September 2003, the relevant police department had sent another letter on 5 September 2003 to the local police station indicating the need to conduct field checks in relation to information they had obtained that S.K. was in unlawful possession of firearms for which he had not had a licence, and which he had been hiding in the attic of his house. However, between 5 September 2003 and 12 October 2003, the date on which the tragic event had occurred, the competent domestic authorities had not taken any further action in order to search S.K.'s

house, despite explicit instructions from the relevant police department to that effect. The Government's assertion that, prior to the event in question, the competent domestic authorities had not had a single report from which they could have deduced that S.K. was in possession of a weapon was therefore incorrect.

(b) The Government

70. The Government argued that for the State to incur responsibility under Article 2 of the Convention, it had to be established that the domestic authorities had omitted to take reasonable measures in order to provide a real opportunity to change the outcome or mitigate the danger, which had not been the case in the applicants' situation. The authorities had not failed in their positive obligations under Article 2 of the Convention since they had not known, nor could they have known, that S.K. posed a risk to the lives of others.

71. The Government first pointed out that, despite all the information available to the applicants to the effect that S.K.'s behaviour had been problematic, that he had been prone to conflict and that he had possessed illegal weapons, the applicants had clearly stated during the civil proceedings that they had never made a criminal complaint against him for unauthorised possession of weapons. Moreover, they had stated that they had never personally seen him with a weapon.

72. Submitting excerpts from S.K.'s criminal and minor-offence records dated 2020, the Government argued that before the event in question, the competent domestic authorities had no knowledge of any criminal charges or situations from which they could have deduced that S.K. had been violent or possessed weapons. Consequently, the domestic authorities could not have been aware that S.K. posed a potential danger to other people, including the applicants' son, and they had therefore not failed to take the necessary steps to protect the lives of others.

73. In addition, the Government maintained that the police had carried out the search of S.K.'s house in accordance with the provisions of the Code of Criminal Procedure, following a warrant issued by the relevant court. The fact that, on this occasion, the police had not found the automatic rifle with which S.K. had killed two people some days later did not render the search unlawful or improperly conducted. Moreover, the relevant domestic authorities had not established any omissions in the conduct of the police during the search of S.K.'s house. No internal action had been taken against the police officers who had carried out the search – nor had there been any orders to take such action – and the domestic courts had not established that there had been any irregularities or unlawful actions in the course of the search. There had therefore been no decisions by any domestic authority indicating any omission on the part of the police in the conduct of the search or determining their liability.

74. The Government pointed out that the allegation that the automatic rifle with which S.K. had committed the criminal offences had been rolled up in a carpet, and that the police officers had therefore conducted the search superficially, had been raised exclusively by S.K. himself in his attempt to avoid responsibility. However, given that S.K. had changed his testimony on several occasions as to the exact place where he had kept the automatic rifle, his statements could not be considered reliable.

75. Moreover, the Government noted that all the applicants' allegations, including those about the conduct of the search, had already been thoroughly examined by the domestic courts, which had given reasoned judgments that had not been arbitrary. The domestic courts had sufficiently clarified all the relevant facts and circumstances, and had provided clear and understandable reasons for their decisions, which had been based on the evidence presented.

76. Lastly, the Government emphasised that there was no evidence, except for S.K.'s statement, indicating that he had had the automatic rifle in his house at the time of the search. He could have acquired the rifle after the search, as he himself had initially mentioned in his testimony given to the police, when he had stated that he had found it a few days prior to the tragic event.

2. *The Court's assessment*

(a) **General principles**

77. The Court observes that Article 2 of the Convention, which safeguards the right to life, ranks as one of the most fundamental provisions in the Convention. The first sentence of Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see *L.C.B. v. the United Kingdom*, 9 June 1998, § 36, *Reports of Judgments and Decisions* 1998-III; *Osman v. the United Kingdom*, no. 23452/94, § 115, *Reports* 1998-VIII; and *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 71, ECHR 2002-II).

78. Such positive obligations entail above all the primary obligation to have in place an appropriate set of preventive measures geared to ensuring public safety. This entails a duty on the part of the State to adopt and implement a legislative and administrative framework designed to provide effective deterrence against threats to the right to life (see *Öneryıldız v. Turkey* [GC], no. 48939/99, §§ 89-90, ECHR 2004-XII, and *Masneva v. Ukraine*, no. 5952/07, § 64, 20 December 2011).

79. The Court has, however, also emphasised that the positive obligation is to be interpreted in such a way as not to impose an excessive burden on the authorities, bearing in mind, in particular, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources (see *Öneryıldız*, cited above, § 107, and *Ciechońska v. Poland*,

no. 19776/04, §§ 63 and 64, 14 June 2011). Accordingly, not every potential risk to life can entail for the authorities a Convention requirement to take preventive measures to deter that risk from materialising. The extent of the positive obligations in a given context depends on the kind of risks concerned and the possibilities of mitigating them (see *Cavit Tınarlıoğlu v. Turkey*, no. 3648/04, § 90, 2 February 2016).

80. In this context, the Court has held that where a Contracting State has adopted an overall legal framework and legislation tailored to the protective requirements in the specific context, matters such as an error of judgment on the part of an individual player, or negligent coordination among professionals, whether public or private, could not be sufficient of themselves to make a Contracting State accountable from the standpoint of its positive obligation under Article 2 of the Convention to protect life (see *Kotilainen and Others v. Finland*, no. 62439/12, § 68, 17 September 2020).

81. In addition, there is a further substantive positive obligation to take preventive operational measures to protect an identified individual from another individual (see *Osman*, cited above, § 115, and *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 136, 25 June 2019) or, in particular circumstances, from himself or herself (see *Fernandes de Oliveira*, cited above, §§ 103 and 108-15). In order to engage this positive obligation, it must be established that the authorities knew, or ought to have known at the time, of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk (see *Osman*, cited above, §§ 115-16; *Öneryıldız*, cited above, §§ 74 and 101; *Bône v. France* (dec.), no. 69869/01, 1 March 2005; *Tagayeva and Others v. Russia*, nos. 26562/07 and 6 others, § 483, 13 April 2017; *Cavit Tınarlıoğlu*, cited above, §§ 91-92; and *Fernandes de Oliveira*, cited above, § 109).

82. In this connection, the Court has drawn a distinction between cases concerning the requirement of personal protection of one or more individuals identifiable in advance as the potential target of a lethal act, and those in which the obligation to afford general protection to society was in issue (see *Maiorano and Others v. Italy*, no. 28634/06, § 107, 15 December 2009; *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 247, ECHR 2011; *Gorovenky and Bugara v. Ukraine*, nos. 36146/05 and 42418/05, § 32, 12 January 2012; and *Bljakaj and Others v. Croatia*, no. 74448/12, § 111, 18 September 2014). In the latter context, the Court has stressed the duty of diligence incumbent on the State authorities, in dealing with the danger emanating from the potential acts of certain individuals in their charge, to afford general protection of the right to life (see *Mastromatteo v. Italy* [GC], no. 37703/97, § 74, ECHR 2002-VIII, and *Maiorano and Others*, cited above, § 121).

83. For instance, the Court has also found that the obligation to afford general protection to society against potentially lethal acts was engaged in respect of the danger emanating from a person with a history of violence, unlawful possession of firearms and alcohol abuse, who was apparently mentally disturbed and had been under the control of the police on the day of the killing committed by him (see *Bljakaj and Others*, cited above, § 121). In another case concerning a police officer who had deliberately shot two people with his police gun while off duty, it found a violation of Article 2 on the grounds that the officer had been issued with the gun in breach of the existing domestic legislation governing police weapons and that there had been a failure to properly assess his personality in the light of his known history of disciplinary offences (see *Gorovenky and Bugara*, cited above, § 39).

84. Lastly, in *Kotilainen and Others v. Finland* (cited above, § 75) the Court held that, given its high level of inherent risks to the right to life, the use of firearms was a form of dangerous activity which must engage the States' positive obligation to adopt and implement measures designed to ensure public safety.

85. For a positive obligation to arise, it must in any event be established that the authorities failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk (see, among other authorities, *Kotilainen and Others*, cited above, § 73).

(b) Application of those principles in the present case

86. The applicants' main grievance in the present case is that the domestic authorities must have been aware of S.K.'s dangerousness and that they did not do everything they should have done to find his illegally possessed weapon, which he subsequently used to kill their minor son.

87. The Court notes at the outset that there seems to be no issue concerning the State's regulatory framework in force at the material time: the possession of automatic weapons was prohibited for individuals in accordance with section 11 of the Weapons Act, and possession of such weapons was a criminal offence punishable under Article 335 of the Criminal Code. It can therefore not be said that the framework as such was unsatisfactory.

88. Turning to the State's positive obligation to adopt preventive operational measures, the Government maintained that the authorities had had no way of knowing that S.K. had posed a real and immediate threat to others by way of illegal possession or use of firearms (see paragraph 72 above).

89. In that connection, the Court notes that the Osijek Police Station had in its possession, prior to the tragic event, ample evidence that S.K. had been violent and probably in illegal possession of weapons (see paragraphs 5 and 6 above; see also the facts as established by the first-instance civil court cited at paragraph 32 above). In particular, the police had received reports from several private individuals alleging that S.K. illegally possessed weapons,

including an automatic rifle, the possession of which is prohibited for private individuals under both domestic law and international standards (see paragraphs 5 and 6 above). The said reports also stated that S.K. had used the weapons in his possession to shoot in the neighbourhood, and that he had made serious threats against his mother, former wife and other family members (ibid.). Police officers had also personally witnessed him carrying around a gas pistol while he was under the influence of alcohol (see paragraph 7 above). Similar accounts, albeit mainly based on hearsay, were put forward by virtually all the witnesses heard in both the criminal proceedings against S.K. and in the civil proceedings instituted by the applicants (see paragraphs 23, 27 and 31 above). What is more, the mere fact that the Osijek Minor Offences Court had issued a search warrant for S.K.'s home aimed at finding illegal weapons indicates that the authorities had been aware of the possibility that he possessed illegal weapons.

90. However, as the Court has stated on numerous occasions, it must be cautious about revisiting events with the wisdom of hindsight (see *Kurt v. Austria* [GC], no. 62903/15, § 160, 15 June 2021). Analysing the situation from the point of view of what was known to the competent authorities at the relevant time, despite relevant and serious indications that S.K. had been in possession of illegal weapons, the Court is unable to discern any decisive stage in the sequence of events leading up to the fatal shooting when it could have been said that the authorities had known or ought to have known of a real and immediate risk to the life of the applicants' son (see *Kotilainen and Others*, cited above, § 81). Consequently, the domestic authorities cannot be faulted for having failed to fulfil their duty to protect the applicants' son, as set out in the Court's case-law (see paragraph 81 above).

91. However, in the light of the State's positive obligations relating to the control of dangerous activities (see paragraph 84 above), the Court further needs to examine whether the authorities of the respondent State have complied with their duty of diligence in the protection of public safety, taking into account the specific context of the present case, namely the use of firearms, where a particularly high level of risk to life is inherent (see *Kotilainen and Others*, § 84, and *mutatis mutandis*, *Bljakaj and Others*, § 121, both cited above) as well as S.K.'s abusive nature and alcohol abuse.

92. In this context, the Court considers it crucial to consider the facts of the present case against the background of the post-war situation in Croatia at the material time. Indeed, the tragic event occurred in 2003, only five years after the end of the war in Croatia. It is clear that at the material time large numbers of undeclared weapons were illegally in the possession of individuals who had been invited to surrender them during several disarmament campaigns spanning over two decades (see paragraphs 43 and 44 above).

93. Although the parties in this case did not expressly argue that the State had failed to fulfil a general obligation to reduce the number of weapons

illegally possessed by its citizens in the areas affected by the war, the Court deems it important to consider the facts of the present case in the light of the overall situation in that particular region at the material time.

94. In assessing the State's duty of diligence in the protection of public safety in the context of the present case (see paragraph 91 above), the Court notes that, faced with serious allegations that S.K. was in possession of illegal weapons (see paragraphs 89 above), the authorities ordered and conducted a search of his home on 1 September 2003 (see paragraph 9 above). The Court notes that the parties disagreed as to whether that search had amounted to unlawful or wrongful conduct by the State authorities. Whereas the applicants maintained that the search had not been sufficiently thorough – because the carpet in which S.K. claimed to hidden the rifle had never been fully unrolled and because the witness I.M. had walked on the carpet, against the rules governing such searches – the second-instance court held that the search had been lawful, since the applicants had not proved otherwise.

95. At this juncture, the Court reiterates that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see, for example, *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). As a general rule, where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and it is for the latter to establish the facts on the basis of the evidence before them (see, among many other authorities, *Ražnatović v. Montenegro*, no. 14742/18, § 39, 2 September 2021). Though the Court is not bound by the findings of domestic courts and remains free to make its own appreciation in the light of all the material before it, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by the domestic courts (see *Giuliani and Gaggio*, cited above, § 180). However, where allegations are made under Article 2 of the Convention, the Court must apply a particularly thorough scrutiny even if certain domestic proceedings and investigations have already taken place (see *Şimşek and Others v. Turkey*, nos. 35072/97 and 37194/97, § 102, 26 July 2005).

96. In that connection, the Court cannot but note, on the basis of the facts as presented by the parties and as established in the domestic proceedings, that none of the three police officers who had conducted the search specifically remembered unrolling the carpet in which, according to S.K., the automatic rifle at issue had been hidden (see paragraph 28 above). Only witness I.M. had such a recollection but he also noted that the carpet had not been unrolled completely (see paragraph 29 above). It is therefore difficult to understand on the basis of which facts the second-instance court concluded that the search at issue, which lasted for about 30 minutes, had been sufficiently thorough. On the contrary, it transpires from the wording employed by that court that the applicants' civil claim was dismissed because

they had failed to prove that there had been any irregularities or omissions during the search of S.K.'s home which led to the death of their son (see paragraph 33 above). In the Court's view, such a requirement amounted to an excessively high, if not impossible, burden of proof for the applicants to meet since they had in no way participated in the search in question (compare, *mutatis mutandis*, *Baljak and Others v. Croatia*, no. 41295/19, §§ 36, 37 and 39, 25 November 2021, and the cases cited therein in the context of burden of proof in enforced disappearance cases). What is more, the second-instance court limited its examination of the matter to the particular rifle and its whereabouts during the search, without any of the courts ever examining the broader issue in the case, namely whether the authorities have taken sufficient measures to identify and prevent the potentially lethal abuse of illegally possessed weapons by S.K.

97. Moreover, the Court cannot but note that the authorities do not appear to have taken any further measures which they could reasonably have been expected to take to avoid the risk to life arising from the very serious allegations that S.K. had possessed illegal weapons at a time when such weapons were widespread in that particular region of Croatia (see paragraphs 12 and 44 above; see also research studies cited at paragraphs 47-49 above indicating the proportions of violent acts committed with illegal firearms in the respondent State). Taking into account the fact that S.K. had failed to cooperate with the police during the search (see paragraph 28 above) and that there had been a number of reports to the police about his alleged illegal possession of weapons and serious threats to family members (see paragraphs 5 and 6 above), it is difficult to understand why the authorities did not even consider questioning him about those allegations, as they could and should have done under domestic law, bearing in mind that some of the reported suspicions concerned criminal acts which are to be prosecuted *ex officio*.

98. The Court is particularly struck by the fact that the authorities remained passive even after they received a very clear instruction from the Organised Crime Department of the Osijek-Baranja Police ordering the local police station to conduct further field checks on the basis of credible reports that S.K. was abusive and hiding illegal weapons (see paragraph 10 above). Not only did this instruction come several days after the search of 1 September 2003 had taken place, but it also contained specific information indicating that S.K. had hidden the illegal weapons in his attic, a version of events which he himself confirmed in both the criminal and the civil proceedings against him (see paragraphs 22 and 30 above). Instead of carrying out further on-site checks, possibly interviewing potential witnesses or at the very least the persons who lived with him and who, according to the anonymous reports, had also been victims of threats by S.K., the police simply referred in their reply to their 30-minute search of S.K.'s house on 1 September 2003 and considered the matter closed (see paragraph 10 above).

99. The foregoing considerations are sufficient to enable the Court to conclude that, in the specific circumstances of the present case, bearing in mind the general post-war context and the phenomenon of widespread illegal possession of weapons in the respondent State at the relevant time (see paragraphs 92 and 93 above), the authorities did not do everything within their power to safeguard public safety and, ultimately, the life of the applicants' son. In particular, they failed to act promptly and decisively in the face of serious allegations that S.K. had illegal weapons in his possession by not undertaking a number of reasonable measures which could have had a real prospect of altering the outcome or the mitigation of harm (see paragraphs 96-98 above), despite the fact that further enquiries had been requested in a police report subsequent to the search of S.K.'s home (see paragraph 10 above). In light of the foregoing, the Court considers that the cumulative effect of such omissions resulted in the failure of the authorities to apply rigorously a system of adequate and effective safeguards designed to counteract and prevent any misuse or dangerous use of firearms (compare, *mutatis mutandis*, *Kotilainen and Others*, cited above, §§ 88).

100. There has accordingly been a violation of Article 2 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

101. 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

102. In their observations, the applicants asked the Court to award them the sums which they had indicated in their proposal for a friendly settlement of the case received by the Court during the non-contentious procedure on 28 October 2020. In that submission, they claimed 60,193.40 Croatian kunas (HRK – equivalent to 7,988 euros (EUR)) in respect of pecuniary damage. They also claimed HRK 660,000 (EUR 87,597) in respect of non-pecuniary damage.

103. The Government contended that the applicants had failed to formulate a claim for just satisfaction in line with the requirements of Rule 60 of the Rules of Court.

104. The Court reiterates that the general principles and established practice on the existence of a “claim” for just satisfaction are summarised in *Nagmetov v. Russia* ([GC], no. 35589/08, §§ 57-59, 30 March 2017).

105. In the circumstances of the present case, it is true that the applicants claimed specific amounts in respect of pecuniary and non-pecuniary damage, as well as costs and expenses, only during the non-contentious proceedings before the Court. However, in their observations submitted within the requisite deadline, when expressly invited to formulate their just satisfaction claims, the applicants clearly stated that they wished to maintain the sums specified during the previous stage of the proceedings. It cannot therefore be said that they failed to submit any claims for just satisfaction within the requisite deadline in line with Rule 60 (contrast *Staykov v. Bulgaria*, no. 16282/20, § 128, 8 June 2021, where the applicant's lawyer failed to address the issue of just satisfaction altogether before the expiry of the time-limit for such submissions), it being reiterated that non-pecuniary damage does not lend itself to precise calculation and that any such claim need not always be quantified by the applicants (see point 11 of the Practice Direction on Just Satisfaction Claims, issued by the President of the Court in accordance with Rule 32 of the Rules of Court on 28 March 2007).

106. Turning to the claim in respect of pecuniary damage, the Court notes that under domestic law, the applicants may request the reopening of the civil proceedings if the Court has found a violation of their Convention rights (see paragraph 42 above). It considers that in the circumstances of the present case this would be the most appropriate way of repairing the consequences of the violation it has found.

107. At the same time, the Court accepts that the applicants must have suffered significant non-pecuniary damage on account of the loss of their son. Ruling on an equitable basis, and without prejudice to any additional amounts they may claim in the domestic proceedings if reopened, the Court awards the applicants jointly EUR 30,000 in respect of non-pecuniary damage, plus any tax that may be chargeable to them.

B. Costs and expenses

108. The applicants also claimed HRK 124,798.50 (EUR 16,563) in respect of the costs of the civil proceedings and HRK 6,250 (EUR 830) in respect of the constitutional complaint. They also claimed HRK 10,800 (EUR 1,432) in respect of the enforcement costs. They made no claim in respect of costs and expenses incurred before the Court.

109. The Government maintained that the applicants had failed to formulate any claim for just satisfaction in line with the requirements of Rule 60 of the Rules of Court.

110. The Court notes that if the proceedings are reopened (see paragraph 106 above), the applicants will be able to claim the costs imposed on them in the civil proceedings giving rise to the violation found. As to the costs and expenses incurred before the Constitutional Court, the

Court considers it reasonable to award the applicants EUR 830, plus any tax that may be chargeable to them.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 2 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicants, 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 30,000 (thirty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 830 (eight hundred and thirty euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 3 December 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı
Registrar

Arnfinn Bårdsen
President