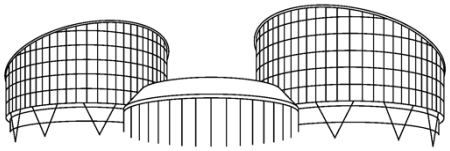

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF PETROVIĆ AND OTHERS v. CROATIA

(Applications nos. 32514/22, 33284/22 and 15910/23)

JUDGMENT

Art 8 • Positive obligations • Private and family life • Continuing failure to ascertain fate of newborn babies who were allegedly abducted in State-run hospitals
Art 46 • Execution of judgment • General measures • Respondent State required, within one year from the judgment's finality, to take all appropriate measures, preferably by mens of a *lex specialis*, to establish a mechanism providing individual redress to all parents in a situation such as, or sufficiently similar to, that of the applicants
Art 41 • Just satisfaction • No award made as applicants claimed an award for non-pecuniary damage as an alternative to an indication for measures under Art 46

Prepared by the Registry. Does not bind the Court.

STRASBOURG

14 January 2025

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 Petrović and Others v. Croatia,

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

Arnfinn Bårdsen*, President*,
Saadet Yüksel,
Pauliine Koskelo,
Jovan Ilievski,
Davor Derenčinović,
Gediminas Sagatys,
Stéphane Pisani*, judges*,
and Hasan Bakırcı, *Section Registrar,*

Having regard to:

the applications (nos. 32514/22, 33284/22 and 15910/23) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by three Croatian nationals, Ms Slađana Petrović, Ms Janja Šarčević and Ms Marica Šesto ("the applicants"), on the various dates indicated in the appended table;

the decision to give notice to the Croatian Government ("the Government") of the complaints under Articles 8 and 13 of the Convention;

the parties' observations;

Having deliberated in private on 10 December 2024,

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

INTRODUCTION

1. The three applications concern women who suspect that their newborn children, born between 1986 and 1994, were abducted in State-run hospitals and unlawfully given up for adoption (compare *Zorica Jovanović v. Serbia*, no. 21794/08, ECHR 2013). The applicants complained of a violation of their rights guaranteed by Articles 8 and 13 of the Convention.

THE FACTS

2. The applicants, Ms Slađana Petrović ("the first applicant"), Ms Janja Šarčević ("the second applicant") and Ms Marica Šesto ("the third applicant"), are Croatian nationals whose details are set out in the appended table. They were represented before the Court by Ms A. Galić Kondža, a lawyer practising in Zagreb.

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

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

I. THE APPLICANTS' GENERAL SITUATION

5. In 1990, 1993 and 1994, respectively, the first and second applicants gave birth in a hospital in Vukovar.

6. Vukovar is a Croatian town near the Serbian border which was heavily attacked by the Yugoslav People's Army and paramilitary Serbian armed forces during the armed conflict in Croatia from August to November 1991.

It was finally occupied at the end of November 1991. Between 1992 and 1996 Vukovar was part of the United Nations Protected Area. In 1996 the United Nations Security Council established the United Nations Transitional Administration in Eastern Slavonia, Baranja and Western Sirmium (UNTAES), which included Vukovar. On 15 January 1998 the UNTAES mandate ceased and the transfer of power to the Croatian authorities began (see *Jularić v. Croatia*, no. 20106/06, §§ 7-8, 20 January 2011).

7. The third applicant gave birth in 1986 in a hospital in Slavonski Brod, a town in Croatia.

8. After giving birth, the three applicants had regular contact with their babies in the hospital, until they were informed by the hospital personnel that the babies had fallen ill and died. In particular, the babies born in Vukovar in 1990 and 1993 had been taken to a hospital in Novi Sad in Serbia, where they had allegedly died, whereas the baby born in Vukovar in 1994 had allegedly died in the Vukovar hospital. The baby born in 1986 in Slavonski Brod had allegedly died in the Slavonski Brod hospital.

9. In late 2018 and in 2019 the applicants saw news reports about women in Serbia searching for their "missing babies", who had been born in the early 1990s in good health and who, according to the doctors, had suddenly fallen ill and died shortly after birth or had urgently been transferred to another hospital where they had died, without the body being given to the family. The applicants suspected that their babies had shared the same fate. They contacted a non-governmental organisation, Parents of Missing Babies of Vojvodina, and started making enquiries with the hospitals and the local authorities and asking for documents. The information gathered led them to suspect that their babies had not died but had been given up for unlawful adoption. The applicants then lodged criminal complaints with the State Attorney's offices in Croatia, arguing that their babies had been abducted by the hospital personnel. In 2022 and 2023 their criminal complaints were rejected on the grounds that prosecution for the alleged offence had become time-barred.

10. The second and third applicants told their stories in a news report of 28 February 2022 (see at https://dnevnik.hr/vijesti/hrvatska/provjereno-bebe-nestajale-u-srbiji-hrvatskoj-i-bih---697586.html, accessed on 1 October 2024). According to that news report, apart from the three applicants, there are other women who suspect that their babies were abducted in the 1980s and early 1990s from State-run hospitals in Croatia. Some of those babies had

been taken from a hospital in Croatia to a hospital in Novi Sad in Serbia, and had allegedly died there.

II. THE APPLICANTS' INDIVIDUAL CIRCUMSTANCES

A. The first applicant (Ms Slađana Petrović, application no. 32514/22)

11. On 27 July 1993 the first applicant gave birth to a baby boy in a hospital in Vukovar (see paragraph 6 above). At that time the hospital was called the Saint Sava Vukovar Health Centre. Today it is called the Dr Juraj Njavro National Memorial Hospital.

12. The first applicant's baby boy was born prematurely, and he was taken to a hospital in Novi Sad in Serbia. The first applicant visited her son in the Novi Sad hospital and considered that he was progressing well. On 8 August 1993 she received a telegram informing her that her son had died. The first applicant and her husband went to the Novi Sad hospital, which did not give them the body of their baby but only medical documentation (autopsy report).

13. On 13 December 1994 the first applicant gave birth to a baby girl in the same Vukovar hospital (see paragraphs 6 and 11 above). On 15 December 1994 the baby was found to have jaundice and was prescribed therapy. On 18 December 1994 the baby was supposed to be transferred to the Novi Sad hospital for treatment, but on the same day the first applicant was informed that her baby had died. The first applicant was in a state of shock after losing a second baby born in the same hospital.

14. The first applicant's husband insisted on being given the baby girl's body. The Vukovar hospital gave the body to him for burial, and the first applicant's mother allegedly noticed that the body belonged to a baby older than theirs. The first applicant never saw the body herself.

15. On 8 November 2018 the first applicant asked the Vukovar hospital to give her the entire medical documentation concerning her childbirths in 1993 and 1994.

16. On 13 November 2018 the first applicant gave a statement to the Vukovar police, submitting that in 1993 and 1994 she had given birth to two babies in the Vukovar hospital who had allegedly died, which she suspected not to be true. She stated that she had never received the body of her baby boy born in 1993. As regards her baby girl born in 1994, she stated that her mother had noticed that the body given to the family had belonged to a baby older than theirs. The first applicant asked that the body of the baby girl, buried at the cemetery in Borovo (Croatia), be exhumed and that a DNA analysis be conducted in order to verify that it belonged to her child.

17. On 16 November 2018 the Vukovar police made a note stating that they had consulted the Vukovar Municipal State Attorney's Office (*Općinsko državno odvjetništvo u Vukovaru*), and that the latter had reported that exhumation would not be possible because the parents did not know the exact

location where the baby's body was buried; that in any event exhumation would be fruitless given the passage of time; and that there was no need to submit a special report because there had been no indication that a criminal offence had been perpetrated.

The police note further stated that the person performing burials at the Borovo cemetery had reported that he knew that several bodies had been buried at a specific location at the cemetery, and that one of them could be that of the baby buried in 1994. The note also stated that the pathology department of the Vukovar hospital had reported that the hospital had not kept a database of tissues taken for the purposes of autopsy in 1994.

18. On 6 December 2018 the Vukovar hospital forwarded to the first applicant the available medical documentation concerning her childbirths in 1993 and 1994.

19. On 4 June 2021 the first applicant gave a statement to the Vukovar Municipal State Attorney's Office submitting, *inter alia*, that her baby girl born in 1994 had never been registered with the birth registry, and that the death certificate issued by the hospital stated that she had died on 18 December 1994 at 10.40 p.m., whereas the discharge letter stated that she had stopped breathing at 9 a.m. The first applicant further specified the exact location of the burial of the baby's body given to the family in 1994 and asked for an exhumation. An unknown woman working in the Vukovar Municipal State Attorney's Office told the first applicant that there was no point in submitting a criminal complaint. In the same conversation the first applicant learned that the woman knew the doctor who had signed the medical documents concerning her children, and that the woman had also been working in the Vukovar Municipal State Attorney's Office at the time of the events.

20. On 15 November 2021 the Vukovar hospital forwarded to the Vukovar Municipal State Attorney's Office the documents concerning the first applicant's baby girl born in 1994, namely: medical history, birth history, newborn status report, report of the Neonatology Department, referral for inpatient treatment and the pathologist's report of 19 December 1994.

21. On 28 February 2022 the Vukovar Municipal State Attorney's Office established that there were no grounds for further action owing to the expiry of the statutory limitation period for criminal prosecution. In particular, it held that the matter, if proven, could amount to the criminal offence of taking away a minor under Article 94 § 1 of the Criminal Code of the Republic of Croatia (see paragraph 47 below), for which the law prescribed a prison sentence of three months to three years. Accordingly, and pursuant to Article 91 § 6 of the Basic Criminal Code of the Republic of Croatia (see paragraph 46 below), the absolute statutory limitation period for prosecution of that offence expired six years after the date on which the offence had been perpetrated, which, in the view of the Vukovar Municipal State Attorney's Office, was 18 December 1994.

22. The first applicant is also in possession of the following documents:

- proceedings for acknowledgment of paternity of the baby boy conducted in September 1994 in Vukovar (one year after his death); the Vukovar Social Welfare Centre official had allegedly confirmed to the first applicant that the law did not allow paternity proceedings to be conducted after the child had already died (see paragraph 51 below) and that any information about the child's adoption could only be given to the adopted child; and
- a letter from the Vukovar hospital dated 30 June 2020 stating that there was no information about an autopsy of the first applicant's babies having been performed, and that the current hospital personnel had not worked in the hospital at the relevant time and therefore had no knowledge of the events.

23. On an unspecified date, the first applicant lodged a request in Serbia under Article 15 of the 2020 Law on establishing facts about the status of newborn children suspected to have disappeared from maternity wards in the Republic of Serbia ("the *Zorica Jovanović* Implementation Act", set out in detail in *Mik and Jovanović v. Serbia* (dec.), nos. 9291/14 and 63798/14, § 27, 23 March 2021), in order to find her baby boy born in 1993. The Court has no information about the outcome of those proceedings.

B. The second applicant (Ms Janja Šarčević, application no. 33284/22)

24. On 24 January 1990 the second applicant gave birth to a baby girl in a hospital in Vukovar, a town in Croatia which was at that time under the control of the Croatian authorities (see paragraph 6 above).

25. The second applicant breastfed her baby several times and everything seemed normal to her. On 26 January 1990 an unknown woman came to the second applicant's room and told her that her baby had "narrowed intestines from the stomach onwards" and would have to be taken to a hospital in Novi Sad in Serbia for emergency surgery. The second applicant stated that she wished to accompany her baby, but the woman said that that was not possible.

26. On 31 January 1990 the second applicant received a phone call from the hospital in Novi Sad informing her that her baby had died from pneumonia and sepsis a day earlier (30 January) at 11.30 p.m.

27. The following day (1 February 1990), the second applicant's husband went to the Novi Sad hospital, where he was shown a baby's body. He was allegedly shown the body of a baby with dark hair, whereas the second applicant's baby had blue eyes, fair skin and blonde hair, with a grey lock on the left side of the head above the forehead. The doctor told the second applicant's husband that the bodies of such small babies were not given to the parents for burial in order to spare them the emotional pain. The second applicant's husband returned home in a state of shock without the baby's body.

28. On 24 October 2019 the second applicant asked the Vukovar hospital to forward her the entire medical documentation concerning her childbirth in 1990 and the transport of her child to Novi Sad.

29. On 6 November 2019 the Vukovar hospital gave the second applicant the following documents: the first page of the second applicant's medical history; a description of the birth; an excerpt from the list of newborn babies, and discharge letters for the second applicant and the baby, the latter of which stated that one day after birth the baby had started vomiting, that a radiology examination had been performed, and that it had been agreed that the baby would be transferred to the Novi Sad hospital.

30. On 21 November 2019 the second applicant asked the Vukovar hospital to forward her the radiology report mentioned in the discharge letter, in order to see the diagnosis on the basis of which her baby had been referred to Novi Sad, the name of the doctor who had referred her baby to Novi Sad, and the names of the persons who had taken her baby there. On 25 November 2019 the Vukovar hospital replied that it did not have that information.

31. The hospital in Novi Sad (Serbia) likewise did not give the second applicant any documents on the basis of which her baby had been referred there from the hospital in Vukovar. They gave her an unsigned autopsy report stating that the baby had undergone an operation on 28 January 1990 but that she had developed pneumonia and died. The second applicant allegedly also received an oral reply that her baby was buried somewhere "around the hospital". The death register in Serbia states that the second applicant's baby was female, without indicating the baby's name.

32. On 12 November 2019 the second applicant lodged a criminal complaint in Serbia, submitting that her baby might have been abducted by the Novi Sad hospital personnel. On 27 January 2020 the Novi Sad Higher Public Prosecutor's Office (*Više javno tužilaštvo u Novom Sadu*) rejected her complaint on the grounds that the prosecution had become time-barred.

33. On 6 October 2021 the second applicant gave a statement to the Vukovar Municipal State Attorney's Office, submitting the documents she had gathered and stating that she suspected that her baby had been abducted.

34. On 8 October 2021 she complained to the Vukovar County State Attorney's Office (*Županijsko državno odvjetništvo u Vukovaru*) of unprofessional and biased behaviour on the part of the prosecutor with whom she had lodged her criminal complaint, who had allegedly told her that there was no point in submitting a criminal complaint because the prosecution had become time-barred; that, even if the child were to be found, she probably would not want to meet her biological mother; and that in any event, the second applicant did not know who was responsible for the disappearance of her child. On 17 November 2021 the Vukovar County State Attorney's Office notified the second applicant that no irregularities had been found in the work of the Vukovar Municipal State Attorney's Office.

35. On 30 November 2021 the Vukovar hospital forwarded to the Vukovar Municipal State Attorney's Office the medical documents concerning the birth of the second applicant's child.

36. On 1 March 2022 the Vukovar Municipal State Attorney's Office dismissed the second applicant's criminal complaint on the grounds that the absolute statutory limitation period for prosecution of the alleged criminal offence of taking away a minor under Article 94 § 1 of the Criminal Code of the Republic of Croatia (see paragraph 47 below) had expired six years after the date on which the offence had been perpetrated, which, in the view of the Vukovar Municipal State Attorney's Office, was 26 January 1990.

C. The third applicant (Ms Marica Šesto, application no. 15910/23)

37. On 30 November 1986 the third applicant gave birth to a baby boy in the Slavonski Brod hospital in Croatia. She breastfed her baby, who seemed perfectly healthy to her. The day after giving birth (on 1 December 1986), she was informed by the hospital doctor that her baby had a heart defect, and that he had died.

38. The third applicant was kept in the hospital until 4 December 1986, and was never shown the baby's body. Her husband insisted on seeing the body, and the hospital gave him the body of a baby which he buried on 3 December 1986. The body handed over to him had a blue mark covering half of the face, whereas the third applicant's baby allegedly had no such mark on his face. The third applicant and her husband were in a state of shock and sorrow and did not raise any suspicions regarding the statements of the hospital personnel. Upon being released from the hospital on 4 December 1986, the third applicant was not given a discharge letter for her or for her baby.

39. In 2019 the third applicant started asking for documents from the hospital and the local authorities, which showed the following:

- the birth registration form issued by the Slavonski Brod hospital on 2 December 1986 was struck through in several places and other handwritten information had been added instead; the local birth registry allegedly told the third applicant that this had occurred when someone had come to inspect the original documents;
- the second page of the birth registration form indicated that the birth had been registered on 29 November 1986, whereas the third applicant's baby was born on 30 November 1986;
- the stamp on the birth registration form bore the date of 11 May 1989, that is, three years after the third applicant's baby had been born;
- the extract from the register of births (given to the third applicant by the Slavonski Brod hospital on 15 March 2021) listed the birth of a baby boy on 30 November 1986 under no. 2082, whereas the third applicant's baby boy

had had the number 2025 on his birth bracelet, in the birth description document and in the document recording the newborn's body temperature;

- the death certificate, which was left unsigned by the person who had certified the death, stated that the baby was born on 30 November 1986 at 9.20 p.m., and that he had died on 1 December 1986 at 9.20 p.m., exactly twenty-four hours later;

- the report on the baby's death stated that the cause of death was a congenital heart defect and respiratory distress syndrome and that this had been established by an autopsy, whereas no autopsy of the third applicant's baby's body had ever been performed;

- the radiologist's report had been issued on 28 April 1987, five months after the third applicant's baby's death, and the forename indicated in the report was different from that of the third applicant's baby;

- the medical history report stated that the third applicant's baby had manifested cyanosis immediately after birth (blue skin and nails), whereas the third applicant stated that she had breastfed her baby on 30 November and 1 December 1986 and had noticed no marks whatsoever on his skin and nails;

- the death certificate stated that the death had been registered in the local death register on 6 January 1987 under number 7, whereas the birth certificate stated that the death had been registered in the local death register under number 41; and

- the address certificate stated that the baby had had a registered address in Croatia from 29 December to 29 December 1986, whereas he had died on 1 December 1986.

40. According to the third applicant, police officials had told her that they could not give her the baby's personal identification number because of data protection considerations, but this could not be considered normal in the event that the child had indeed died.

41. The third applicant and her husband had allegedly also asked for the baby's body to be exhumed but were told that the exhumation would be fruitless, having regard to the passage of time.

42. In their criminal complaint lodged on 4 July 2022, the third applicant and her husband stated that they suspected the Slavonski Brod hospital personnel of having taken away their baby boy on 30 November or 1 December 1986 and faked his death, thereby committing the criminal offences of child abduction or human trafficking.

43. On 17 January 2023 the Slavonski Brod Municipal State Attorney's Office (*Općinsko državno odvjetništvo u Slavonskom Brodu*) rejected their criminal complaint on the grounds that the statutory limitation period for the prosecution of the alleged offence of taking away a minor under Article 94 of the Criminal Code of the Republic of Croatia (see paragraph 47 below) had expired three years after the date on which the offence had been perpetrated, that is, on 1 December 1989, and further held that the criminal offence of

human trafficking set out in Article 106 of the Criminal Code (see paragraph 49 below) had not existed at the material time.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW AND PRACTICE

A. Constitution

44. The relevant provision of the Croatian Constitution (*Ustav Republike Hrvatske*, Official Gazette no. 56/90, as amended) reads as follows:

Article 35

"Everyone has the right to respect for and legal protection of his private and family life, dignity, reputation and honour."

B. Criminal Code of the Socialist Federal Republic of Yugoslavia

45. The relevant provisions of the Criminal Code of the Socialist Federal Republic of Yugoslavia (*Krivični zakon Socijalističke Federativne Republike Jugoslavije*, Official Gazette of the Socialist Federal Republic of Yugoslavia, no. 44/76, with further amendments) read as follows:

Mandatory application of a more lenient criminal law
Article 4

"(1) The law in force at the time of the commission of the criminal offence shall apply to the perpetrator of the criminal offence.

(2) If the law was changed one or more times after the commission of the criminal offence, the law which is more lenient for the perpetrator shall be applied."

Statutory limitation period for criminal prosecution
Article 95

"(1) Unless otherwise specified in this law, criminal prosecution may not be initiated after:

...

4) five years from the commission of a criminal offence for which, in accordance with the law, imprisonment for more than three years may be imposed;

5) three years from the commission of a criminal offence for which, in accordance with the law, imprisonment for more than one year may be imposed;

..."

Running and interruption of the statutory limitation period for criminal prosecution
Article 96

"(1) The statutory limitation period for criminal prosecution shall start running from the date on which the criminal offence was committed.

(2) The statutory limitation period shall not run during the time when, in accordance with the law, the prosecution cannot start or be extended.

...

(6) The statutory limitation period for criminal prosecution shall expire in any event when twice as much time has passed as is required by law for the statutory limitation period for criminal prosecution."

C. Basic Criminal Code of the Republic of Croatia

46. The relevant provisions of the Basic Criminal Code of the Republic of Croatia (*Osnovni krivični zakon Republike Hrvatske*, Official Gazette of the Republic of Croatia, no. 31/1993) read as follows:

Article 90

"(1) Unless otherwise specified in this Code, criminal prosecution may not be initiated after:

...

5) three years from the commission of a criminal offence for which, in accordance with the law, imprisonment for more than one year may be imposed,

..."

Article 91

"(1) The statutory limitation period for criminal prosecution shall start running from the date on which the criminal offence was committed.

...

(6) The statutory limitation period for criminal prosecution shall expire in any event when twice as much time has passed as is required by law for the statutory limitation period for criminal prosecution."

D. Criminal Code of the Republic of Croatia

47. The relevant provisions of the Criminal Code of the Republic of Croatia of 1993 (*Krivični zakon Republike Hrvatske*, Official Gazette of the Republic of Croatia, no. 32/1993) read as follows:

Abduction
Article 41

"(1) Whoever abducts a person with the intention of forcing him or her or someone else (not) to do something ... shall be punished by imprisonment for one to ten years.

(2) Whoever commits the act referred to in paragraph 1 of this Article against a child or minor ... shall be sentenced to at least three years' imprisonment.

..."

Taking away a minor
Article 94 § 1

"Whoever unlawfully detains or takes away a minor from a parent, guardian, institution or person to whom he or she is entrusted ... shall be punished by imprisonment for three months to three years."

Change in family status
Article 95 § 1

"Whoever changes the family status of a child by subterfuge, replacement or in some other way shall be punished by imprisonment for three months to three years."

E. Criminal Code of 1997

48. The relevant provisions of the Criminal Code of 1997 (*Kazneni zakon*, Official Gazette of the Republic of Croatia, no. 110/1997) read as follows:

Abduction
Article 125

"(1) Whoever unlawfully imprisons another person, keeps him or her imprisoned or otherwise deprives him or her of or restricts his or her freedom of movement with the aim of forcing him or her or someone else (not) to do something ... shall be punished by imprisonment for six months to five years.

(2) If the criminal offence referred to in paragraph 1 of this Article was committed against a child or a minor ... the perpetrator shall be punished by imprisonment for one to ten years.

..."

Taking away a child or a minor
Article 210

"(1) Whoever takes a child or a minor from a parent, guardian, person or institution to whom he or she is entrusted, unlawfully keeps the child or minor or persuades the child or minor to go to him or her shall be punished by imprisonment for six months to three years.

(2) If a child or a minor has left the territory of the Republic of Croatia as a result of the criminal offence referred to in paragraph 1 of this Article, the perpetrator shall be punished by imprisonment for three months to five years.

..."

Change of family status
Article 211 § 1

"Whoever changes the family status of a child by subterfuge, replacement or in some other way shall be punished by imprisonment for one to three years."

F. Criminal Code of 2011

49. The relevant provisions of the Criminal Code of 2011 (*Kazneni zakon*, Official Gazette of the Republic of Croatia, nos. 125/2011, with further amendments) read as follows:

Article 106

"(1) Whoever, by using force or threat, deception, fraud, abduction, abuse of power or a difficult position or relationship of dependence, by giving or receiving monetary compensation or other benefits in order to obtain the consent of a person who has control over another person, or otherwise recruits, transports, transfers, hides or receives a person or exchanges or transfers control over a person for the purpose of exploiting his or her labour through forced labour or servitude, by establishing slavery or a similar relationship, or for the purpose of exploiting him or her for prostitution or other forms of sexual exploitation, including pornography, or for the purpose of entering into an illegal or forced marriage, or for taking parts of his or her body, or for using him or her in armed conflicts or for committing an illegal act, shall be punished by imprisonment for one to ten years.

(2) Whoever recruits, transports, transfers, hides or accepts a child, or exchanges or transfers supervision over a child for the purpose of exploiting his or her labour through forced labour or servitude, by establishing slavery or a similar relationship, or for the purpose of exploiting him or her for prostitution or other forms of sexual exploitation, including pornography, or for the purpose of entering into an illegal or forced marriage or for illegal adoption, or for taking parts of his or her body, or for using him or her in armed conflicts, shall be punished by the penalty set out in paragraph 1 of this Article.

(3) If the criminal offence referred to in paragraph 1 of this Article was committed against a child, or if the criminal offence referred to in paragraphs 1 or 2 of this Article was committed by an official in the performance of his or her duties, or was committed in relation to a large number of persons, or knowingly endangering the life of one or more persons, the perpetrator shall be punished by imprisonment for three to fifteen years.

..."

G. Civil Obligations Act

50. The relevant provisions of the Civil Obligations Act (*Zakon o obveznim odnosima*, Official Gazette of the Republic of Croatia nos. 35/2005, with further amendments) provide:

Just monetary compensation
Article 1100

"(1) In the event of a violation of personality rights, the court, if it finds that the severity of the violation and the circumstances of the case justify it, shall award just monetary compensation, regardless of compensation for pecuniary damage, and even when there is no pecuniary damage.

(2) When deciding on the amount of just monetary compensation, the court shall take into account the gravity and duration of the physical pain, mental pain and fear caused,

and the purpose served by such compensation, while also ensuring that it does not favour aspirations which are not compatible with its nature and social purpose.

..."

Persons who are entitled to just monetary compensation in the event of death or particularly severe disability
Article 1101 § 1

"In the event of the death or particularly severe disability of a person, members of his or her immediate family (spouse, children and parents) shall have the right to just monetary compensation for non-pecuniary damage."

H. Marriage and Family Relations Act

51. The relevant provisions of the Marriage and Family Relations Act (*Zakon o braku i porodičnim odnosima*, Official Gazette nos. 11/1978, 27/1978, with further amendments), as in force at the material time, read as follows:

Article 110

"Paternity of a child cannot be recognised after the child's death, unless the child has left descendants."

I. Domestic case-law

52. The Government relied on the following judgments in support of their argument that a civil action for damages was an effective domestic remedy for the applicants' complaint.

The Supreme Court's judgment no. Rev 3325/14-2 of 16 May 2017 was given in a case in which the plaintiffs had sought compensation from a hospital for the non-pecuniary damage suffered on account of the violation of their personality rights in connection with the death of their baby during birth, caused by omissions on the part of the hospital personnel. The Supreme Court upheld the second-instance court's judgment granting the plaintiffs' claim.

The Supreme Court's decision no. Rev x 130/2016-2 of 11 October 2017 was given in a case in which the plaintiffs had sought compensation from a hospital for the pecuniary and non-pecuniary damage suffered on account of the violation of their personality rights in connection with the death of their wife/mother and stillborn son/brother caused by omissions on the part of the hospital personnel. The Supreme Court quashed the lower courts' judgments and instructed them to examine the actions of the assisting medical personnel on duty at the material time.

The Zagreb County Court's judgment no. Gž 763/2021-2 of 23 March 2021 was given in a case in which the plaintiffs had sought compensation from a hospital for the non-pecuniary damage suffered on account of the violation of their right to private and family life in connection with not

receiving information from the hospital about the cause of death of their stillborn baby, and about the location where the baby's body was buried. Relying on the Court's judgment in *Marić v. Croatia* (no. 50132/12, 12 June 2014), the Zagreb County Court upheld the first-instance court's judgment granting the plaintiffs' claim.

The Zagreb County Court's decision no. Gž 2446/2022-6 of 15 November 2022 was given in a case in which the plaintiffs had sought compensation from the State for the pecuniary and non-pecuniary damage suffered on account of the killing of their family member in 1995, allegedly by soldiers of the Croatian army. The Zagreb County Court quashed the first-instance court's judgment and instructed that court to establish whether the killing of the plaintiffs' family member had amounted to a war crime, this being of importance for examining whether a longer statutory limitation period should apply to their civil claim for damages.

53. The Government relied on the following Constitutional Court decisions in support of their argument that a constitutional complaint was an effective domestic remedy for the applicants' complaint.

In decision no. U-IIIBi-1732/2019 of 14 July 2020, the Constitutional Court dismissed a constitutional complaint lodged against the criminal courts' judgments acquitting a private party of the criminal offence of making threats against the complainant. It found that the manner in which the criminal-law mechanism had been applied had been compliant with the State's positive obligations under Article 8 of the Convention.

In decision no. U-IIIBi-5099/2020 of 23 March 2021, the Constitutional Court found that there had been a breach of the procedural aspect of Article 8 of the Convention on account of the protracted length of criminal proceedings against a doctor who had operated on the complainant, leaving the latter's leg paralysed, as a result of which the prosecution had become statute-barred, and on account of the protracted length of the civil proceedings for damages which the complainant had instituted against the hospital. The Constitutional Court awarded the complainant a sum of money for the non-pecuniary damage suffered on account of the violation found.

In decision no. U-IIIBi-5910/2021 of 12 April 2022, the Constitutional Court found that there had been a breach of the procedural aspect of Article 8 of the Convention on account of the protracted length of criminal proceedings against the complainants' father on charges of (sexual) abuse. The Constitutional Court awarded the complainants a sum of money for the non-pecuniary damage suffered on account of the violation found.

In decision no. U-IIIBi-2808/2021 of 12 April 2022, the Constitutional Court found that there had been a breach of the procedural aspect of Article 8 of the Convention on account of the protracted length of minor-offence proceedings against a private party on charges of physically attacking the complainant. The Constitutional Court awarded the complainant a sum of money for the non-pecuniary damage suffered on account of the violation

found and ordered the minor-offences court to decide on the case within sixty days from the publication of the Constitutional Court's decision.

II. INTERNATIONAL LAW

A. Enforced disappearance

54. The relevant provisions of the United Nations Declaration on the Protection of all Persons from Enforced Disappearance (1/Res/47/133, 18 December 1992) read:

Article 17 § 1

"Acts constituting enforced disappearance shall be considered a continuing offence as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and these facts remained unclarified."

55. The United Nations Working Group on Enforced or Involuntary Disappearance has issued, *inter alia*, the following General Comment on the above Declaration:

"General Comment on Article 17 of the Declaration (E/CN.4/2001/68/18 December 2000)

...

28. The definition of 'continuing offence' (para. 1) is of crucial importance for establishing the responsibilities of the State authorities. Moreover, this article imposes very restrictive conditions. The article is intended to prevent perpetrators of those criminal acts from taking advantage of statutes of limitations. ..."

56. The relevant provisions of the United Nations International Convention for the Protection of All Persons from Enforced Disappearance (2006) read as follows:

Article 1

"1. No one shall be subjected to enforced disappearance.

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearance."

Article 2

"For the purposes of this Convention, 'enforced disappearance' is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law."

Article 3

"Each State Party shall take appropriate measures to investigate acts defined in article 2 committed by persons or groups of persons acting without the authorization, support or acquiescence of the State and to bring those responsible to justice."

Article 4

"Each State Party shall take the necessary measures to ensure that enforced disappearance constitutes an offence under its criminal law."

Article 8

"Without prejudice to article 5,

1. A State Party which applies a statute of limitations in respect of enforced disappearance shall take the necessary measures to ensure that the term of limitation for criminal proceedings:

(a) Is of long duration and is proportionate to the extreme seriousness of this offence;

(b) Commences from the moment when the offence of enforced disappearance ceases, taking into account its continuous nature.

2. Each State Party shall guarantee the right of victims of enforced disappearance to an effective remedy during the term of limitation."

Article 9

"1. Each State Party shall take the necessary measures to establish its competence to exercise jurisdiction over the offence of enforced disappearance:

(a) When the offence is committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;

(b) When the alleged offender is one of its nationals;

(c) When the disappeared person is one of its nationals and the State Party considers it appropriate.

2. Each State Party shall likewise take such measures as may be necessary to establish its competence to exercise jurisdiction over the offence of enforced disappearance when the alleged offender is present in any territory under its jurisdiction, unless it extradites or surrenders him or her to another State in accordance with its international obligations or surrenders him or her to an international criminal tribunal whose jurisdiction it has recognized.

3. This Convention does not exclude any additional criminal jurisdiction exercised in accordance with national law."

Article 12

"1. Each State Party shall ensure that any individual who alleges that a person has been subjected to enforced disappearance has the right to report the facts to the competent authorities, which shall examine the allegation promptly and impartially and, where necessary, undertake without delay a thorough and impartial investigation. Appropriate steps shall be taken, where necessary, to ensure that the complainant, witnesses, relatives of the disappeared person and their defence counsel, as well as

persons participating in the investigation, are protected against all ill-treatment or intimidation as a consequence of the complaint or any evidence given.

2. Where there are reasonable grounds for believing that a person has been subjected to enforced disappearance, the authorities referred to in paragraph 1 of this article shall undertake an investigation, even if there has been no formal complaint.

3. Each State Party shall ensure that the authorities referred to in paragraph 1 of this article:

(a) Have the necessary powers and resources to conduct the investigation effectively, including access to the documentation and other information relevant to their investigation;

(b) Have access, if necessary with the prior authorization of a judicial authority, which shall rule promptly on the matter, to any place of detention or any other place where there are reasonable grounds to believe that the disappeared person may be present.

4. Each State Party shall take the necessary measures to prevent and sanction acts that hinder the conduct of an investigation. It shall ensure in particular that persons suspected of having committed an offence of enforced disappearance are not in a position to influence the progress of an investigation by means of pressure or acts of intimidation or reprisal aimed at the complainant, witnesses, relatives of the disappeared person or their defence counsel, or at persons participating in the investigation."

Article 14

"1. States Parties shall afford one another the greatest measure of mutual legal assistance in connection with criminal proceedings brought in respect of an offence of enforced disappearance, including the supply of all evidence at their disposal that is necessary for the proceedings.

2. Such mutual legal assistance shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable treaties on mutual legal assistance, including, in particular, the conditions in relation to the grounds upon which the requested State Party may refuse to grant mutual legal assistance or may make it subject to conditions."

Article 15

"States Parties shall cooperate with each other and shall afford one another the greatest measure of mutual assistance with a view to assisting victims of enforced disappearance, and in searching for, locating and releasing disappeared persons and, in the event of death, in exhuming and identifying them and returning their remains."

Article 19

"1. Personal information, including medical and genetic data, which is collected and/or transmitted within the framework of the search for a disappeared person shall not be used or made available for purposes other than the search for the disappeared person. This is without prejudice to the use of such information in criminal proceedings relating to an offence of enforced disappearance or the exercise of the right to obtain reparation.

2. The collection, processing, use and storage of personal information, including medical and genetic data, shall not infringe or have the effect of infringing the human rights, fundamental freedoms or human dignity of an individual."

Article 24

"1. For the purposes of this Convention, 'victim' means the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance.

2. Each victim has the right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person. Each State Party shall take appropriate measures in this regard.

3. Each State Party shall take all appropriate measures to search for, locate and release disappeared persons and, in the event of death, to locate, respect and return their remains.

4. Each State Party shall ensure in its legal system that the victims of enforced disappearance have the right to obtain reparation and prompt, fair and adequate compensation.

5. The right to obtain reparation referred to in paragraph 4 of this article covers material and moral damages and, where appropriate, other forms of reparation such as:

(a) Restitution;

(b) Rehabilitation;

(c) Satisfaction, including restoration of dignity and reputation;

(d) Guarantees of non-repetition.

6. Without prejudice to the obligation to continue the investigation until the fate of the disappeared person has been clarified, each State Party shall take the appropriate steps with regard to the legal situation of disappeared persons whose fate has not been clarified and that of their relatives, in fields such as social welfare, financial matters, family law and property rights.

7. Each State Party shall guarantee the right to form and participate freely in organizations and associations concerned with attempting to establish the circumstances of enforced disappearances and the fate of disappeared persons, and to assist victims of enforced disappearance."

Article 25

"1. Each State Party shall take the necessary measures to prevent and punish under its criminal law:

(a) The wrongful removal of children who are subjected to enforced disappearance, children whose father, mother or legal guardian is subjected to enforced disappearance or children born during the captivity of a mother subjected to enforced disappearance;

(b) The falsification, concealment or destruction of documents attesting to the true identity of the children referred to in subparagraph (a) above.

2. Each State Party shall take the necessary measures to search for and identify the children referred to in paragraph 1 (a) of this article and to return them to their families of origin, in accordance with legal procedures and applicable international agreements.

3. States Parties shall assist one another in searching for, identifying and locating the children referred to in paragraph 1 (a) of this article.

4. Given the need to protect the best interests of the children referred to in paragraph 1 (a) of this article and their right to preserve, or to have re-established, their identity, including their nationality, name and family relations as recognized by law, States Parties which recognize a system of adoption or other form of placement of children shall have legal procedures in place to review the adoption or placement procedure, and, where appropriate, to annul any adoption or placement of children that originated in an enforced disappearance.

5. In all cases, and in particular in all matters relating to this article, the best interests of the child shall be a primary consideration, and a child who is capable of forming his or her own views shall have the right to express those views freely, the views of the child being given due weight in accordance with the age and maturity of the child."

Article 35

"1. The Committee shall have competence solely in respect of enforced disappearances which commenced after the entry into force of this Convention.

2. If a State becomes a party to this Convention after its entry into force, the obligations of that State vis-à-vis the Committee shall relate only to enforced disappearances which commenced after the entry into force of this Convention for the State concerned."

57. This Convention entered into force on 23 December 2010 and Croatia ratified it in 2022.

B. Trafficking in human beings

1. The Palermo Protocol

58. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children ("the Palermo Protocol"), supplementing the United Nations Convention against Transnational Organised Crime 2000, was ratified by Croatia on 24 January 2003.

59. Article 3(a) defines trafficking in human beings as

"the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs."

60. Article 5 § 1 obliges States to

"adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally."

2. The Anti-Trafficking Convention

61. The Council of Europe Convention on Action against Trafficking in Human Beings ("the Anti-Trafficking Convention") was ratified by Croatia on 5 September 2007.

62. Article 4(a) adopts the Palermo Protocol definition of trafficking in human beings (see paragraph 59 above).

63. Articles 18 to 21 require States to criminalise specified types of conduct and read as follows:

Article 18 – Criminalisation of trafficking in human beings

"Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct contained in article 4 of this Convention, when committed intentionally."

Article 19 – Criminalisation of the use of services of a victim

"Each Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences under its internal law, the use of services which are the object of exploitation as referred to in Article 4 paragraph a of this Convention, with the knowledge that the person is a victim of trafficking in human beings."

64. Article 27 provides that States must ensure that investigations into or prosecution of offences under the Anti-Trafficking Convention are not dependent on a report or accusation made by a victim, at least when the offence was committed in whole or in part on its territory. States must further ensure that victims of an offence in the territory of a State other than their State of residence may make a complaint before the competent authorities of their State of residence. The latter State must transmit the complaint without delay to the competent authority of the State in the territory in which the offence was committed, where the complaint must be dealt with in accordance with the internal law of the State in which the offence was committed.

65. Article 31 § 1 deals with jurisdiction, and requires States to adopt such legislative and other measures as may be necessary to establish jurisdiction over any offence established in accordance with the Anti-Trafficking Convention when the offence is committed

"a. in its territory; or

...

d. by one of its nationals or by a stateless person who has his or her habitual residence in its territory, if the offence is punishable under criminal law where it was committed or if the offence is committed outside the territorial jurisdiction of any State;

e. against one of its nationals."

66. States may reserve the right not to apply, or to apply only in specific cases or conditions, the jurisdiction rules in Article 31 § 1 (d) and (e).

67. Article 32 requires States to cooperate with each other, in accordance with the provisions of the Anti-Trafficking Convention, and through the application of relevant applicable international and regional instruments, to the widest extent possible, for the purpose of

> "– preventing and combating trafficking in human beings;
>
> – protecting and providing assistance to victims;
>
> – investigations or proceedings concerning criminal offences established in accordance with this Convention."

68. Article 33 § 2 provides that States may consider reinforcing their cooperation in the search for missing people, in particular for missing children, if the information available leads them to believe that they are victims of trafficking in human beings. It further provides that, to this end, States may conclude bilateral or multilateral treaties with each other.

3. The Anti-Trafficking Directive

69. Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims ("the Anti-Trafficking Directive") aims to prevent trafficking, to ensure effective prosecution of criminals and to protect victims.

70. As regards the definition of trafficking in human beings, Article 2 of the Directive, in so far as relevant, reads as follows:

> "1. Member States shall take the necessary measures to ensure that the following intentional acts are punishable:
>
> The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.
>
> ...
>
> 3. Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs.
>
> ...
>
> 5. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable offence of trafficking in human beings even if none of the means set forth in paragraph 1 has been used.
>
> ..."

71. As regards the investigation and prosecution of the crime of trafficking in human beings, Article 9 of the Anti-Trafficking Directive reads:

"1. Member States shall ensure that investigation into or prosecution of offences referred to in Articles 2 and 3 is not dependent on reporting or accusation by a victim and that criminal proceedings may continue even if the victim has withdrawn his or her statement.

2. Member States shall take the necessary measures to enable, where the nature of the act calls for it, the prosecution of an offence referred to in Articles 2 and 3 for a sufficient period of time after the victim has reached the age of majority."

72. Article 18 of the Anti-Trafficking Directive requires that Member States promote regular training for officials likely to come into contact with victims or potential victims of trafficking in human beings so that they can identify and deal with such victims and potential victims.

C. Mutual legal assistance

1. European Convention on Mutual Assistance in Criminal Matters

73. The European Convention on Mutual Assistance in Criminal Matters (ETS no. 30) provides as follows, in so far as relevant:

Article 1 § 1

"The Contracting Parties undertake to afford each other, in accordance with the provisions of this Convention, the widest measure of mutual assistance in proceedings in respect of offences the punishment of which, at the time of the request for assistance, falls within the jurisdiction of the judicial authorities of the requesting Party."

2. Agreement between the Republic of Croatia and the Federal Republic of Yugoslavia on Mutual Assistance in Civil and Criminal Matters

74. Pursuant to Article 23 of the Agreement between the Republic of Croatia and the Federal Republic of Yugoslavia on Mutual Assistance in Civil and Criminal Matters of 15 September 1997, effective from 1998, the general forms of legal assistance in criminal matters include, in particular, the execution of certain procedural actions, such as the hearing of the defendant, witnesses and experts, the investigation, searches of premises and persons, the seizure of objects, and the delivery of documents, written materials and other objects relating to criminal proceedings in the petitioner State.

75. Pursuant to Article 28 of the Agreement, if a citizen of one State Party or a person who resides in its territory has committed a criminal offence in the territory of the other State Party that is punishable by a court in both States Parties, the State Party in which the offence was committed may ask the other State Party to take over the prosecution.

III. OTHER RELEVANT INFORMATION

76. In the case of *Zorica Jovanović* (cited above), in which the Court found a violation of the applicant's right to respect for her family life under

Article 8 of the Convention on account of the respondent State's continuing failure to provide her with credible information as to the fate of her son, who had allegedly died three days after his birth in a maternity ward in 1983, the Court noted that there were a significant number of potential applicants (hundreds of parents whose newborn babies had "gone missing" following their alleged deaths in hospital wards between the 1970s and the 1990s; ibid., § 26) and held that the respondent State had to take all appropriate measures, preferably by means of a *lex specialis*, to secure the establishment of a mechanism aimed at providing individual redress to all parents in a situation such as, or sufficiently similar to, that of the applicant – a mechanism which should be supervised by an independent body, with adequate powers, which would be capable of providing credible answers regarding the fate of each child and awarding adequate compensation as appropriate (ibid., § 92).

77. In their most recent action plan of 26 February 2024 (DH-DD(2024)237), submitted to the Committee of Ministers in the process of execution of the *Zorica Jovanović* judgment, the Serbian authorities stated, *inter alia*, that on 29 February 2020 the Serbian Parliament had passed the *Zorica Jovanović* Implementation Act (see *Mik and Jovanović*, cited above, § 27), setting up a two-track fact-finding system – the first track providing individual redress to parents of "missing babies" through the courts, and the second establishing an independent investigation mechanism to establish the fate of the "missing babies".

78. The Serbian authorities further stated that on 14 December 2020 the State Public Prosecutor had issued a General Mandatory Instruction, pursuant to which public prosecutors in Serbia were obliged to re-examine all criminal complaints relating to the alleged abduction of children, including criminal complaints already rejected owing to the statute of limitations. That obligation also related to fresh criminal complaints in cases of "missing babies". The Instruction provided an obligation for public prosecutors to take all procedural actions provided for in the Serbian Code of Criminal Procedure, and in particular, to hear the injured parties and the medical personnel who had performed the delivery or been present in the hospital during the birth, collect all available documentation relating to the births and possible deaths of babies, and order DNA testing. In the explanatory memorandum to the Instruction, the State Public Prosecutor stressed that the limitation period for prosecution of the offence of abduction of children should commence when the offence ceased, taking into account its continuous nature.

THE LAW

I. JOINDER OF THE APPLICATIONS

79. 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 8 OF THE CONVENTION

80. The applicants, suspecting that their babies had not died in State-run hospitals as they had been told, complained about the respondent State's continuing failure to provide them with information about the real fate of their children. They relied on Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life ...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

1. The parties' submissions

(a) The Government

(i) Compatibility ratione personae *with the Convention of the first applicant's application*

81. The Government submitted that Croatia had not had *de facto* control over the Vukovar area from 18 November 1991 until 15 January 1998 (see paragraph 6 above). The Saint Sava Vukovar Health Centre, which had operated in Vukovar during the period of occupation, was neither the legal successor of the former Croatian Vukovar hospital, nor the legal predecessor of today's National Memorial Hospital of Vukovar; it had only used the facilities of the Croatian Vukovar hospital during the occupation.

82. Having regard, accordingly, to the fact that the first applicant had given birth in 1993 and 1994 in Vukovar, while that town had been occupied, and in a hospital unconnected with Croatia, the Croatian authorities could not be held responsible for the alleged disappearance of her babies. In addition, it was a publicly known fact that most of the documentation of the Vukovar hospital during the occupation had been taken to Serbia. Therefore, Croatia could not fully reconstruct the events complained of, nor could it be held responsible for them.

(ii) Compatibility ratione loci *with the Convention of the first and second applicants' applications*

83. The Government submitted that the first applicant's son born in Vukovar in 1993 and the second applicant's daughter born in Vukovar in 1990 had been transferred to a hospital in Serbia. Having regard to the fact that the two babies had allegedly died in a hospital in Serbia, it was the hospital in Serbia which was responsible for providing information to the first and second applicants as to what had happened to their babies.

84. The second applicant had apparently herself considered the Serbian authorities responsible for providing information as to the fate of her baby, given that she had first lodged a criminal complaint in Serbia (see paragraph 32 above). The Croatian authorities had not had any additional information as to what had happened to the first and second applicants' children other than that which those applicants had already collected. The Government pointed to the case of *Mik and Jovanović v. Serbia* ((dec.), nos. 9291/14 and 63798/14, 23 March 2021) and contended that the first and second applicants could have used the remedy established for their specific situation in Serbia.

(iii) Compatibility ratione temporis *with the Convention of the third applicant's application*

85. The Government contended that the facts constitutive of the alleged interference in the third applicant's case had occurred in 1986, that is, prior to 5 November 1997, when the Convention had come into force in respect of Croatia. The Court therefore did not have temporal jurisdiction to deal with the matter.

86. In particular, the Government submitted that the applicant in the case of *Zorica Jovanović v. Serbia* (no. 21794/08, ECHR 2013) had not received her baby's body or any information about the cause of death, which was why the Court had treated her case as an enforced disappearance. The third applicant in the present case, however, had immediately received information about the cause of death of her baby and had been given the baby's body.

87. In the Government's view, the situation in the present case was thus more akin to that in *Polaczkiewicz and Others v. Poland* ((dec.), nos. 15404/15 et al., 18 June 2019), which had concerned baby switches in public health facilities in the 1950s, and the irremediable long-term effects which those incidents had had on the applicants' private and family lives. The Court in that case had held that the legal situation of which the applicants complained had arisen at the time of the baby switches (which had been before Poland had ratified the Convention), and that the decisions given in the subsequent proceedings for compensation, which had post-dated Poland's ratification of the Convention, had merely highlighted the fact that the existing legal situation had arisen in the 1950s.

88. The Government further submitted that the third applicant in the present case had not contacted the domestic authorities or initiated any proceedings before 2022, when prosecution of the criminal offence of abduction of a minor had already become time-barred. Given that the third applicant's baby had died in 1986, and that the statutory limitation period had expired three years later, the International Convention for the Protection of All Persons from Enforced Disappearance was inapplicable, because Croatia had only ratified that Convention in 2022 (see paragraph 57 above). Furthermore, as explained by the domestic authorities, the criminal offence of human trafficking had not existed at the relevant time (see paragraph 43 above).

89. Accordingly, having regard to the fact that prosecution of the criminal offence of abduction of a minor had clearly become time-barred, the State authorities had been prevented from conducting any investigation. If the third applicant had doubted the veracity of the hospital staff's allegations that her baby had died, she should have lodged a criminal complaint immediately after her baby's death in 1986. However, she had not taken any interest in her child's fate until 2022.

(iv) Exhaustion of domestic remedies in respect of all three applications

90. The Government further averred that the applicants had failed to exhaust domestic remedies.

91. Firstly, they could have brought a civil action for damages against the hospital or the respondent State on account of not receiving to this day any relevant information as to what had happened to their children, the cause of their death or what had happened to their bodies. In that connection the Government produced judgments and decisions of the Zagreb County Court and the Supreme Court in which plaintiffs had been awarded compensation for the harm suffered as a result of medical negligence (see paragraph 52 above). According to the Government, that case-law showed that the domestic courts had decided on Article 8 complaints, particularly where parents had not received clear information as to the cause of death of their children. In addition, the domestic courts had applied the standards outlined in *Marić v. Croatia* (no. 50132/12, 12 June 2014). In the Government's view, it would be possible to establish in civil proceedings, by way of a DNA expert examination, whether the bodies given to the applicants were indeed those of their children, as well as other key facts of their cases.

92. Secondly, the applicants could have used a constitutional complaint, not only as a continuation of the civil proceedings for damages which they had failed to institute, but also as a separate remedy whereby they could have complained about the expiry of the limitation period for criminal prosecution (see paragraph 53 above).

93. As to the applicants' insistence that the State should conduct a criminal investigation into their allegations that their babies had been

abducted, the Government reiterated that any kind of criminal investigation was now impossible because the statutory limitation period had expired for prosecution of any kind of criminal offence which could have come into consideration in their case. The Court could not lift the statute of limitations for acts allegedly committed more than thirty years previously, nor could it order the State to carry out any acts which had become subject to statutory limitation. In the *Zorica Jovanović* case, the Court had not placed an obligation on the respondent State to carry out any measures within the criminal sphere, precisely having in mind the statute of limitations for the presumed acts.

(v) Timeliness of the three applications

94. In the event that the Court were to dismiss the Government's objection as to the non-exhaustion of domestic remedies, the Government submitted that, in situations where it was clear that there was no effective remedy available, the six-month period ran from the date of knowledge of the act or its effect on or prejudice to the applicant (they cited *Varnava and Others v. Turkey* [GC], nos. 16064/90 and 8 others, § 157, ECHR 2009).

95. In that connection the Government contended that in *Zorica Jovanović*, the applicant had had no specific information or suspicions that her child had not died as the doctors had told her. The applicants in the present case, however, had immediately had certain suspicions that the bodies given or shown to them by the hospital personnel had not been those of their babies. Furthermore, having regard to the fact that the *Zorica Jovanović* judgment had been published in 2013, and that a number of newspaper articles regarding "missing babies" had been published in the Croatian media in 2019, the Government submitted that the applicants should have brought their suspicions before the Croatian authorities much sooner than 2021 and 2022, when they had lodged their criminal complaints, and should have applied to the Court much earlier than in 2022 and 2023.

(b) The applicants

(i) Compatibility ratione personae *with the Convention of the first applicant's application*

96. The first applicant submitted that the Convention violation imputed to the Croatian authorities had been reflected in those authorities' ongoing failure to provide her with information as to the real fate of her children. In 1998 Croatia had regained control over the town of Vukovar, and therefore any argument regarding Croatia's exclusion from responsibility after 1998 was unfounded. The violation in the period after 1998 had most notably been evident from the manner in which the Croatian authorities had handled the applicants' criminal complaints: instead of investigating the matter, they had summarily dismissed the complaints by referring to the statute of limitations,

even though the statutory limitation period for prosecution in the case of enforced disappearances started to run only when the enforced disappearance ended.

(ii) Compatibility ratione loci *with the Convention of the first and second applicants' applications*

97. The first and second applicants contended that their children could not have been taken from Croatia to Serbia without there being an organised "network" of officials in both countries acting with the intention of selling children for profit.

98. The Convention violation was evident from, *inter alia*, the fact that the Croatian authorities had been unwilling to investigate the matter, even though they had been notified of suspicions that three different children had been abducted in Vukovar during the war. The first and second applicants pointed to the statements of the Association of Parents of Missing Babies of Vojvodina, according to which half a million children had been stolen from maternity wards in the former Yugoslavia, and later in independent States, between 1960 and 2003 (see https://dnevnik.hr/vijesti/hrvatska/provjereno-bebe-nestajale-u-srbiji-hrvatskoj-i-bih---697586.html, accessed on 1 October 2024). It was a well-known fact that wartime events provided fertile ground for crimes against humanity.

99. The second applicant also referred to the document "Natural Population Movement in 1990", according to which in 1990 the Slavonia region had had the highest number of newborn children's deaths, with 201 newborn children's deaths in Vukovar alone. For comparison, in 2000 only one newborn child had died in Vukovar, and in total 324 newborn children had died in the whole of Croatia that year.

(iii) Compatibility ratione temporis *with the Convention of the third applicant's application*

100. The third applicant submitted that the Convention violation in her case was of an ongoing character. Instead of hearing the hospital staff who had been working at the time, or officials of the local authorities, after learning of a suspicion that a baby had been abducted from a maternity ward, the Croatian authorities had summarily dismissed the third applicant's criminal complaint on the grounds of the statute of limitations, even though the limitation period in enforced disappearance cases started to run only from the moment the offence ended, and even though the authorities had been aware of the phenomenon of "missing babies" in Croatian hospitals, which had been the subject of reports in the Croatian media in 2019. Moreover, in 2020 the authorities had illegally interfered with data in the local death register (see paragraph 39 above).

(iv) Exhaustion of domestic remedies

101. The applicants contended that a civil claim for damages was inappropriate because the civil courts could at best have established a violation of the applicants' personality rights and awarded them damages. They could not have taken investigative actions or therefore have provided the applicants with information about the true fate of their babies.

102. The applicants had brought the matter before the domestic authorities by lodging criminal complaints, which, however, had proved to be ineffective because they had been summarily dismissed on account of the statute of limitations.

103. A constitutional complaint was not a legal remedy that could have redressed their situation either. The Constitutional Court could at best have established a violation and awarded compensation, which would have been insufficient to remove the cause of the violation of their rights.

104. In sum, having regard in particular to the fact that the authorities had dismissed their criminal complaints by applying the statute of limitations, the applicants had not had an effective domestic remedy for their complaint.

(v) Timeliness of the applications

105. The applicants emphasised that it was important to take into account the fact that they had believed the hospital personnel when they had been told that their babies had died after birth. No family expected their child to be abducted from hospital.

106. After learning about the "missing babies" in Serbia in late 2018 (the first applicant) and in 2019 (the second and third applicants) (see paragraph 9 above), the applicants had started contacting the domestic authorities and actively collecting medical and other documentation. Upon establishing a number of irregularities and inconsistencies in the documentation gathered, which the Government had not addressed in their submissions before the Court, the applicants had lodged criminal complaints. They had asked for exhumations of the bodies allegedly belonging to their babies, but their requests had been denied on the grounds that exhumation would have been fruitless. Given that exhumation and DNA testing could only be ordered by a court, and that their criminal complaints had been dismissed, the domestic authorities had provided the applicants with no possibility of establishing the fate of their babies and they had turned to the Court.

2. The Court's assessment

(a) Compatibility *ratione personae* and *loci*

107. As to the Government's argument that Croatia could not be held responsible for the alleged disappearances of the first applicant's babies born in 1993 and 1994 in Vukovar because at that time Vukovar was not under the control of the Croatian authorities and the hospital in which the first applicant

gave birth was unconnected with Croatia (see paragraphs 81 and 82 above), the Court notes that the applicants did not complain before it that the respondent State bore responsibility for the disappearances as such, but rather alleged a breach of the respondent State's continuing positive obligation to provide them with definitive and/or credible information as to the fate of their children.

108. In that connection the Court reiterates that the undertakings given by a Contracting State under Article 1 of the Convention include, in addition to the duty to refrain from interfering with the enjoyment of the rights and freedoms guaranteed, positive obligations to take appropriate steps to ensure respect for those rights and freedoms within its territory (see *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 313, ECHR 2004-VII). By way of example, the Court refers to a case in which it examined the compliance of the Croatian authorities with their positive procedural obligation to effectively investigate killings which had occurred in Croatian territory while it had been occupied by the Serbian forces (see *Cindrić and Bešlić v. Croatia*, no. 72152/13, 6 September 2016).

109. The Court further reiterates that, from the standpoint of public international law, the jurisdictional competence of a State is primarily territorial. Accordingly, a State may not generally exercise jurisdiction on the territory of another State without the latter's consent, invitation or acquiescence. Article 1 of the Convention must be considered to reflect this ordinary and essentially territorial notion of jurisdiction (see *Rantsev v. Cyprus and Russia*, no. 25965/04, § 206, ECHR 2010 (extracts), and *Banković and Others v. Belgium and Others* (dec.) [GC], no. 52207/99, §§ 59-61, ECHR 2001-XII).

110. In this connection, and as to the Government's argument that the State responsible for providing the first and second applicants with information as to what happened to their babies was not Croatia, but Serbia, where their babies born in 1990 and 1993 had been transferred and where they had allegedly died (see paragraphs 83 and 84 above), the Court notes that the first and second applicants' complaint is not based on the assertion that Croatia was responsible for acts committed in Serbia or by the Serbian authorities. Instead, their complaint is based on the assertion that the alleged abduction of their babies commenced in a hospital in Croatia, in that the babies could not have been transferred to Serbia without a decision by the hospital personnel in Croatia (see paragraph 97 above). In that connection, the Court also observes that the Vukovar Municipal State Attorney's Office raised no question as to its jurisdiction to examine the alleged abduction of the second applicant's baby, who had been transferred to a hospital in Serbia (see paragraph 36 above).

111. The Court refers to its approach in cases involving the concurrent responsibility of States for alleged breaches of Convention rights, where each State can be held accountable for its share of the responsibility for the breach

in question (see, albeit in other contexts, *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, § 264 and 367, ECHR 2011, and *Razvozzhayev v. Russia and Ukraine and Udaltsov v. Russia*, nos. 75734/12 and 2 others, §§ 160-61 and 179-81, 19 November 2019). It also refers to the principles of international law relating to the plurality of responsible States, according to which the responsibility of each State is determined individually, on the basis of its own conduct and by reference to its own international obligations (see *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* [GC], no. 53600/20, § 443, 9 April 2024).

112. The Court thus considers that it would not be outside its jurisdiction to examine whether Croatia complied with any positive obligation it may have had to provide the first and second applicants with information as to the fate of their babies who were transferred from Croatia to Serbia. It is for the Court to assess, in its examination of the merits of the first and second applicants' Article 8 complaint, the extent of any positive obligation incumbent on the Croatian authorities and whether any such obligation was discharged in the circumstances of the present case (see, *mutatis mutandis*, *Rantsev*, cited above, §§ 205-07, and *Krdžalija and Others v. Montenegro* (dec.), no. 79065/13, § 122, 14 March 2023), it being understood that Serbia is not a party to the proceedings which the applicants instituted before the Court and that the Court therefore cannot pronounce on the issue of whether Serbia may also be held responsible for that situation.

113. In sum, the Court is competent to examine whether Croatia has complied with its positive obligation to provide the applicants with definitive and/or credible information on the fate of their children, including the fate of the first applicant's children born in 1993 and 1994 in Vukovar, when that city was not under the control of the Croatian authorities. Furthermore, and more specifically, the Court is competent to examine the extent to which Croatia could have taken steps within the limits of its own territorial sovereignty to provide information as to the fate of the first and second applicants' babies born in 1990 and 1993 who were transferred to Serbia. Whether the matters complained of give rise to State responsibility in the circumstances of the present case is a question which falls to be determined by the Court in its examination of the merits of the case (compare *Rantsev*, cited above, § 208).

114. The Government's objections as to the lack of jurisdiction *ratione personae* and *ratione loci* must accordingly be dismissed.

(b) Compatibility *ratione temporis*

115. Although the Government raised the issue of the Court's temporal jurisdiction only in respect of the third applicant's application (see paragraph 85 above), having regard to the fact that incompatibility *ratione temporis* is a matter which goes to the Court's jurisdiction, the Court will examine of its own motion whether it has temporal jurisdiction to examine

all three applicants' complaints (see *Blečić v. Croatia* [GC], no. 59532/00, § 67, ECHR 2006-III).

116. The Court reiterates that its jurisdiction *ratione temporis* covers only the period after the ratification of the Convention or the Protocols thereto by the respondent State. From the ratification date onwards, however, the State's alleged acts and omissions must conform to the Convention and its Protocols, meaning that all subsequent facts fall within the Court's jurisdiction even where they are merely extensions of an already existing situation (see *Yağcı and Sargın v. Turkey*, 8 June 1995, § 40, Series A no. 319-A).

117. The Court further reiterates that its temporal jurisdiction must be determined in relation to the facts constituting the alleged interference. To that end it is essential to identify, in each specific case, the exact time of the alleged interference. In doing so, the Court must take into account both the facts of which the applicant complains, and the scope of the Convention right alleged to have been violated (see *Blečić*, cited above, § 82; *Varnava and Others*, cited above, § 131; and *Nešić v. Montenegro*, no. 12131/18, §§ 36-38, 9 June 2020).

118. In this context, the Court reiterates that disappearances are a very specific phenomenon, characterised by a prolonged situation of uncertainty and lack of accountability in which there is a lack of information or even a deliberate concealment and obfuscation of what has happened. This situation is very often drawn out over time, prolonging the suffering of the victim's parents or relatives. It cannot be said, therefore, that an enforced disappearance is, simply, an "instantaneous" act or event; the additional distinctive element of subsequent failure to account for the whereabouts and fate of the person concerned gives rise to a continuing situation. Thus, the positive obligation will potentially persist as long as the whereabouts and the fate of the person is unaccounted for. This is so even after the discovery of the body or the presumption of death (see, albeit in the context of Articles 2 and 3, *Varnava and Others*, cited above, § 148, and *Palić v. Bosnia and Herzegovina*, no. 4704/04, § 46, 15 February 2011).

119. As to the Government's argument that the present case should be distinguished from *Zorica Jovanović* (cited above), where the applicant had not received her baby's body or any information about the cause of death, which was why the Court treated her case as an enforced disappearance (see paragraph 86 above), the Court notes that the applicants in the present case were either not given their babies' bodies, or were given/shown the body of a baby which did not resemble theirs (see paragraphs 12, 14, 27 and 38 above) and that the medical and registry documentation given to the applicants was deficient or inconsistent (see paragraphs 19, 22, 30 and 39 above).

120. It observes that the circumstances of the applicants' cases largely correspond to those of hundreds of parents in Serbia whose newborn babies had "gone missing" following their alleged deaths in hospital wards between the 1970s and the 1990s (see paragraph 9 above, and see *Zorica Jovanović*,

cited above, § 26). For instance, the applicants in *Mik and Jovanović* (cited above) received autopsy reports and a number of (deficient) official documents regarding the alleged death of their babies (ibid., §§ 5-9, 20-22 and 24), like the applicants in the present case.

121. The Court also notes that, apart from the three applicants in the present case, there are other women in similar circumstances who suspect that their babies were abducted in the 1980s and early 1990s in State-run hospitals in Croatia. Some of those babies were taken to a hospital in Novi Sad in Serbia, and allegedly died there (see paragraph 10 above).

122. Accordingly, although the applicants' children allegedly died or went missing between 1986 and 1994, whereas the Convention came into force in respect of Croatia on 5 November 1997, the respondent State's alleged failure to provide the applicants with any definitive and/or credible information as to the fate of their children has continued to the present day.

123. In such circumstances, the Court considers that the applicants' complaint concerns a continuing situation (compare *Zorica Jovanović*, cited above, § 48, and contrast *Polaczkiewicz*, cited above, which concerned instantaneous acts of baby switches in public health facilities in the 1950s).

124. Accordingly, the Government's objection as to lack of jurisdiction *ratione temporis* must be dismissed. The Court is therefore competent to examine the applicants' complaint in so far as it relates to the respondent State's alleged failure to fulfil its positive obligations under the Convention as of 5 November 1997. It may, however, have regard to the facts prior to the ratification inasmuch as they could be considered to have created a continuing situation extending beyond that date or may be relevant for the understanding of facts occurring thereafter (see *Hoti v. Croatia*, no. 63311/14, § 85, 26 April 2018).

(c) Compatibility *ratione materiae*

125. Although the Government made no plea as to the compatibility *ratione materiae* of the applicants' complaint with the Convention, the Court, examining this question of its own motion, reiterates that the concepts of private and family life are broad terms not susceptible to exhaustive definition (see *Marić*, cited above, § 59). It has considered the "private life" aspect of Article 8 to be applicable to the question of whether a mother had the right to change the family name on the tombstone of her stillborn child (see *Znamenskaya v. Russia*, no. 77785/01, § 27, 2 June 2005), and has also found that the excessive delay by the domestic authorities in returning the body of a child following an autopsy amounted to an interference with the parents' private and family life (see *Pannullo and Forte v. France*, no. 37794/97, § 36, ECHR 2001-X), as did the refusal of the investigative authorities to return a suspect's body to his relatives (see *Sabanchiyeva and Others v. Russia*, no. 38450/05, § 123, ECHR 2013 (extracts)). The Court has further considered that a mother's inability to carry out her religious duties on the

grave of her stillborn child raises an issue under the concept of "family life" under Article 8 (see *Yıldırım v. Turkey* (dec.), 25327/02, 11 September 2007), and that the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of "family life" within the meaning of Article 8 of the Convention (see *Monory v. Romania and Hungary*, no. 71099/01, § 70, 5 April 2005 and *Zorica Jovanović*, cited above, 68).

126. In view of the above case-law, the Court finds that the applicants' complaint regarding the alleged failure of the State to provide them with definitive and/or credible information as to the fate of their children, who had allegedly not died after birth but had been given up for unlawful adoption, concerns the applicants' right to respect for their private and family life.

(d) Exhaustion of domestic remedies

127. The Court reiterates that, under Article 35 § 1 of the Convention, it may only deal with an application after all domestic remedies have been exhausted. The purpose of Article 35 is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court (see, for example, *Mifsud v. France* (dec.) [GC], no. 57220/00, § 15, ECHR 2002-VIII). The obligation to exhaust domestic remedies requires an applicant to make normal use of remedies which are effective, sufficient and accessible in respect of his or her Convention grievances. To be effective, a remedy must be capable of remedying directly the impugned state of affairs (see *M.S. v. Croatia (no. 2)*, no. 75450/12, § 118, 19 February 2015). The Court has likewise frequently emphasised the need to apply the exhaustion rule with some degree of flexibility and without excessive formalism (see for example, *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 76, 25 March 2014).

128. As regards the burden of proof, it is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time (see, *inter alia*, *Vernillo v. France*, 20 February 1991, § 27, Series A no. 198). Once this burden has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact used or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances exempting him or her from this requirement (see *Vučković and Others*, cited above, § 77).

129. In the present case, the Court considers that a civil claim could not have remedied the impugned state of affairs. The civil courts could, at best, have acknowledged the violation of the applicants' "personality rights" and awarded them compensation for the non-pecuniary damage suffered (see paragraph 50 above). This, however, could not have effectively remedied the applicants' underlying complaint, which was their need for information as to "the real fate of their children" (compare *Zorica Jovanović*, cited above,

§ 63). The domestic courts' judgments relied on by the Government (see paragraph 52 above) offered no evidence to the contrary.

130. The Court further notes that the Constitutional Court examines constitutional complaints lodged in the context of criminal and minor-offence proceedings and assesses whether the manner in which the criminal-law mechanism was applied in a particular case was compliant with the State's positive obligations under Article 8 of the Convention. However, having regard to the fact that in the applicants' cases the criminal prosecution had become time-barred, the Constitutional Court could, at best, have acknowledged the violation of Article 8 of the Convention and awarded compensation for the non-pecuniary damage suffered (see paragraph 53 above). The Government provided no examples of decisions in which, in situations where the prosecution had become time-barred, the Constitutional Court had imposed any sort of enforceable obligation on the domestic authorities to undertake measures capable of remedying a situation such as that of the applicants, which related to their need for information as to "the real fate of their children" (see paragraph 129 above and compare *Zorica Jovanović*, cited above, § 63).

131. The Government's objection as to the exhaustion of domestic remedies must therefore be dismissed.

(e) Timeliness of the applicants' applications

132. As a rule, the four-month period runs from the date of the final decision in the process of exhaustion of domestic remedies (see *Lekić v. Slovenia* [GC], no. 36480/07, § 65, 11 December 2018). Where it is clear from the outset, however, that no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of, or from the date of knowledge of that act or its effect on or prejudice to the applicant (see *Dennis and Others v. the United Kingdom* (dec.), no. 76573/01, 2 July 2002).

133. Nonetheless, where the alleged violation constitutes a continuing situation against which no domestic remedy is available, it is only when the situation ends that the four-month period starts to run (see *Sabri Güneş v. Turkey* [GC], no. 27396/06, § 54, 29 June 2012, and *Varnava and Others*, cited above, § 159). As long as the situation continues, the four-month rule is not applicable (see *Iordache v. Romania*, no. 6817/02, § 50, 14 October 2008, and *Oliari and Others v. Italy*, nos. 18766/11 and 36030/11, §§ 96-97, 21 July 2015).

134. However, not all continuing situations are the same. As regards disappearances, applicants cannot wait indefinitely before lodging their application with the Court. Where there is a state of ignorance and uncertainty and, by definition, a failure to account for what has happened, if not an appearance of deliberate concealment and obstruction on the part of some authorities, it is more difficult for the relatives of the missing to assess what

is happening, or what can be expected to happen. Allowances must be made for the uncertainty and confusion which frequently mark the aftermath of a disappearance. Still, applications can be rejected as out of time where there has been excessive or unexplained delay on the part of applicants once they have, or should have, become aware that no investigation has been instigated or that the investigation has lapsed into inaction or become ineffective and, in any of those eventualities, there is no immediate, realistic prospect of an effective investigation being provided in the future. Where there are initiatives being pursued with regard to a disappearance situation, applicants may reasonably await developments which could resolve crucial factual or legal issues. Indeed, as long as there is some meaningful contact between families and authorities concerning complaints and requests for information, or some indication, or realistic possibility, of progress in investigative measures, considerations of undue delay will not generally arise. However, where there has been a considerable lapse of time, and there have been significant delays and lulls in investigative activity, there will come a moment when the relatives must realise that no effective investigation has been, or will be provided (see *Varnava and Others*, cited above, §§ 162 and 165).

135. Turning to the present case, and being mindful of the fact that learning about the deaths of their newborn children must have been extremely emotionally disturbing for the applicants and their spouses (compare, *inter alia*, *Hadri-Vionnet v. Switzerland*, no. 55525/00, § 54, 14 February 2008, and *Marić*, cited above, § 63), the Court cannot blame the applicants for accepting at the relevant time as truthful the information provided to them by medical professionals that their babies had died.

136. The Court notes that upon learning of the phenomenon of "missing babies" in Serbia (see paragraph 9 above) and suspecting that their babies had shared the same fate, the applicants started actively making enquiries with the hospitals and the local authorities, asking for documents, exhumations and DNA examinations. The information gathered led the applicants to suspect that their babies might not have died but might instead have been given up for unlawful adoption, and they lodged criminal complaints.

137. The Court does not find it unreasonable that the applicants hoped that the domestic authorities would apply the provisions concerning statutory limitations for prosecution by taking into account the ongoing nature of the offence (see also the Serbian State Public Prosecutor's instruction of 14 December 2020 outlined in paragraph 78 above, according to which public prosecutors in Serbia are obliged to re-examine all criminal complaints relating to the alleged abduction of children, including those already rejected owing to the statute of limitations, on the grounds that the limitation period for prosecution in cases of child abduction should commence only when the offence ceases, taking into account its continuous nature).

138. The Court notes that, once the competent State Attorney's offices in Croatia rejected the applicants' criminal complaints on the grounds that the

criminal offence of taking away a minor had been perpetrated on the day of the applicants' babies' alleged death/disappearance, and that the limitation period had started to run on that day (see paragraphs 21, 36 and 43 above), the applicants turned to the Court.

139. In such, admittedly very specific, circumstances and despite the overall passage of time, it cannot be said that the applicants were unreasonable in awaiting the outcome of their criminal complaints, which could have "resolved crucial factual or legal issues" – at least not until 28 February 2022, 1 March 2022 and 17 January 2023, when their respective criminal complaints were rejected (see paragraphs 21, 36 and 43 above) and it became obvious that no redress would be forthcoming. Since the applications in the present case were lodged on 27 June 2022, 30 June 2022 and 13 April 2023 respectively (see the appended table), the Government's objection must be dismissed.

(f) Conclusion

140. The Court notes that the applicants' 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' submissions

(a) The applicants

141. The applicants reaffirmed their complaint that the failure of the domestic authorities to provide them with definitive and/or credible information as to the fate of their children was in breach of their right to respect for their private and family life.

142. They contended that the respondent State could not claim that there had been no violation of Article 8 merely on account of the applicants' having obtained (certain) documents about their children. The documents which they had managed to obtain, and which they had submitted to the State Attorney's offices with their criminal complaints, contained numerous irregularities and inconsistencies, some also having been subsequently interfered with, thereby raising a suspicion that those documents had been forged and adapted for the purposes of unlawful adoptions.

143. The applicants submitted that the State Attorney's offices in Vukovar and Slavonski Brod had summarily dismissed their criminal complaints on the grounds that the prosecution had become time-barred, without taking into account the nature of the offence in question, the potential number of victims – children taken from maternity wards and broken families – and the impact on the demographics of the countries of former Yugoslavia.

144. In this connection the applicants referred to a case published in the Croatian media in 2021, which in their view confirmed suspicions that children had been stolen from maternity wards in the countries of the former Yugoslavia: the case of a mother who had given birth to a son, M.R., in a State-run hospital in Kruševac (Serbia). The mother had been told that her son M.R. had died a few days after birth. Forty years later, however, the mother and son had found each other through a DNA test; the son had been given up for unlawful adoption after birth.

145. The first and second applicants further contended that Article 14 of the International Convention for the Protection of All Persons from Enforced Disappearance provided that States Parties should provide each other with the widest possible mutual legal assistance regarding enforced disappearances, including the acquisition of all necessary available evidence. In the first and second applicants' view, the Croatian authorities could have requested the Serbian authorities to forward them medical documentation from the hospital in Novi Sad and could also have asked for the bodies allegedly belonging to the first and second applicants' babies to be transferred to Croatia. All three applicants argued that it was in the interest of the Republic of Croatia to determine the true fate of its citizens.

(b) The Government

146. The Government made no separate arguments as to the merits of the applicants' complaint.

2. The Court's assessment

147. The Court reiterates that, although the essential object of Article 8 is to protect the individual against arbitrary interference by public authorities, there may, however, be additional positive obligations inherent in this provision extending to, *inter alia*, the effectiveness of any investigating procedures relating to one's private and family life (see *Zorica Jovanović*, cited above, § 69).

148. Furthermore, in *Zorica Jovanović* the Court found the following considerations from *Varnava and Others* (cited above) in the context of Article 3 to be broadly applicable to the very specific context of positive obligations under Article 8:

> "200. The phenomenon of disappearances imposes a particular burden on the relatives of missing persons who are kept in ignorance of the fate of their loved ones and suffer the anguish of uncertainty. ... The essence of the violation is not that there has been a serious human rights violation concerning the missing person; it lies in the authorities' reactions and attitudes to the situation when it has been brought to their attention ... Other relevant factors include ... the extent to which the family member witnessed the events in question, the involvement of the family member in the attempts to obtain information about the disappeared person ... The finding of such a violation is not limited to cases where the respondent State has been held responsible for the disappearance ... but can arise where the failure of the authorities to respond to the quest

> for information by the relatives or the obstacles placed in their way, leaving them to bear the brunt of the efforts to uncover any facts, may be regarded as disclosing a flagrant, continuous and callous disregard of an obligation to account for the whereabouts and fate of a missing person."

149. With this in mind, and specifically with regard to the scope of Croatia's obligation to provide information to the first and second applicants as to the fate of their babies born in 1990 and 1993 who were taken to Serbia and allegedly died there (see paragraphs 112 and 113 above), the Court is of the view that the Croatian authorities could have verified what had happened to the first and second applicants' babies while they had still been in Croatia, whether they had been taken to Serbia for purposes other than medical treatment, and whether any individuals or networks operating in Croatia had been involved in such transfers (compare, *mutatis mutandis*, *Rantsev*, cited above, §§ 307-09). In so doing, they could also have asked the Serbian authorities for assistance if need be (see paragraphs 73-75 above).

150. The Court also considers that it is not necessary to examine whether there was an obligation under the Convention for Croatia to require more from the Serbian authorities, given that as of 2020 the first and second applicants could have used the legal framework put in place in Serbia on the basis of the *Zorica Jovanović* Implementation Act (see paragraphs 76 and 77 above and *Mik and Jovanović v. Serbia*, cited above, § 27), which is what the first applicant did (see paragraph 23 above). Moreover, it is open to the first and second applicants to report the alleged abductions of their children to the Serbian prosecutors, who since 2020 have been under an obligation to investigate all such crimes, the statute of limitations no longer being an issue in their jurisdiction (see paragraph 78 above). Lastly, it is open to the first and second applicants to lodge an application against Serbia if they consider that they are victims of a breach by Serbia of their rights under the Convention (compare *Cindrić and Bešlić*, cited above, § 74).

151. Turning to the Croatian authorities' reaction to the three applicants' quest for information as to the fate of their children, the Court notes that their response largely consisted in providing the applicants with the (available) medical and registry documentation (see paragraphs 18, 20, 29, 30, 35 and 39 above). It observes that when the applicants pointed out the deficiencies and inconsistencies in those documents and requested exhumations, DNA tests and questioning of medical staff and registry officials, the authorities took no action in any of the applicants' cases, with the exception of the Vukovar police, who initially enquired whether the exhumation of the first applicant's baby girl was possible, whether the local cemetery knew the place of the child's burial and whether the Vukovar hospital kept a database of tissues taken for the purposes of autopsy (see paragraph 17 above).

152. The Court notes that this was mainly due to the fact that the authorities considered that the limitation period for any criminal offence committed in the applicants' cases had started to run on the day of their

babies' alleged death or disappearance, and had long since expired (see paragraphs 21, 36 and 43 above).

153. As regards the first applicant's suspicion, expressed to the Croatian police, that her baby boy born in 1993 had not died but had been given up for unlawful adoption, the Court notes that the authorities completely ignored it and never took any decision in that regard (see paragraphs 16-21 above).

154. The Court notes that the applicants had no other means of ascertaining the fate of their babies (see paragraphs 129-130 above), although it appears that there are other women besides the three applicants who suspect that their babies were abducted in the 1980s and early 1990s in State-run hospitals in Croatia, some of whom were transferred from a hospital in Croatia to a hospital in Novi Sad in Serbia (see paragraph 10 above), and that the authorities were aware of the phenomenon of "missing babies" in Croatian hospitals since at least 2019 (see paragraphs 95 and 100 above).

155. The foregoing considerations are sufficient to enable the Court to conclude that the respondent State has failed to fulfil its continuing positive obligation under Article 8 of the Convention with regard to the applicants' allegations that their babies were abducted from maternity hospitals and were given up for unlawful adoption.

156. There has accordingly been a violation of Article 8 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

157. The applicants further complained, under Article 13 of the Convention, of the respondent State's failure to provide them with any redress for the continuing breach of their right to respect for their private and family life.

158. The Government contested the merits of this complaint (see paragraphs 91 and 92 above).

159. The Court considers that this complaint falls to be examined under Article 13 of the Convention taken in conjunction with Article 8. Article 13 reads as follows:

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

160. Since the applicants' complaint under Article 13 is essentially the same as their complaint under Article 8, and having regard to its findings in respect of the latter Article (see paragraph 156 above), the Court declares the complaint under Article 13 admissible but considers that it does not need to be examined separately on its merits.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

161. 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

162. The applicants submitted that the purpose of their case before the Court was not to obtain financial compensation for the damage suffered, but to obtain information about the true fate of their children. Accordingly, they did not claim any amount in respect of non-pecuniary damage in the event that the Court were to order the respondent State to take all appropriate measures, preferably by means of a *lex specialis*, to secure the establishment of a mechanism aimed at providing individual redress to all parents in a situation such as, or sufficiently similar to, that of the applicants, to be supervised by an independent body with adequate powers which would be capable of providing credible answers regarding the fate of each newborn child suspected to have disappeared from hospitals in Croatia.

163. The applicants submitted that such a *lex specialis* should enable an effective investigation to be carried out, including interviews of the medical and other staff working at the time in hospitals, local registry offices, the police, State Attorney's offices and other institutions who might have information about the practice of abducting children from maternity wards at the time. A DNA database should be set up in which parents and children suspecting that they might be victims of such practices could store their DNA for the purpose of finding each other (see paragraph 144 above), and the public should be informed of the mechanisms established so that presumed victims could make use of them.

164. Alternatively, out of precaution, the applicants claimed 10,000 euros (EUR) each in respect of non-pecuniary damage.

165. The Government contested that claim.

166. Having regard to the manner in which the applicants specified their claim (see paragraphs 162-164 above), and its indication to the respondent State under Article 46 of the Convention (see paragraph 171 below), the Court does not award the applicants any sum in respect of non-pecuniary damage (compare *Mihu v. Romania*, no. 36903/13, §§ 82-84, 1 March 2016).

B. Costs and expenses

167. The applicants also claimed EUR 2,000 each for the costs and expenses incurred before the Court.

168. The Government contested that claim.

169. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum (see, among many other authorities, *L.B. v. Hungary* [GC], no. 36345/16, § 149, 9 March 2023). In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award each applicant the sum of EUR 2,000 for the proceedings before it, plus any tax that may be chargeable to the applicants.

V. APPLICATION OF ARTICLE 46 OF THE CONVENTION

170. The relevant part of Article 46 of the Convention provides:

> "1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
>
> 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.
>
> ..."

171. In view of the number of potential applicants (see paragraph 10 above) and the fact that there is currently no mechanism in Croatia which would enable the applicants to ascertain the fate of their children (see paragraphs 151-154 above), the respondent State must, within one year from the date on which the present judgment becomes final in accordance with Article 44 § 2 of the Convention, take all appropriate measures, preferably by means of a *lex specialis*, to secure the establishment of a mechanism aimed at providing individual redress to all parents in a situation such as, or sufficiently similar to, that of the applicants. This mechanism should be supervised by an independent body with adequate powers, which would be capable of providing credible answers regarding the fate of each child and awarding adequate compensation as appropriate (compare *Zorica Jovanović*, cited above, § 92, and see *Mik and Jovanović* (dec.), cited above, § 27; see also paragraphs 77 and 78 above).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications,

2. *Declares* the applications admissible;

3. *Holds* that there has been a violation of Article 8 of the Convention;

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

5. *Holds*
   (a) that the respondent State is to pay each applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Holds* that the respondent State must, within one year from the date on which the present judgment becomes final in accordance with Article 44 § 2 of the Convention, take all appropriate measures to secure the establishment of a mechanism aimed at providing individual redress to all parents in a situation such as, or sufficiently similar to, that of the applicants (see paragraph 171 of the judgment).

Done in English, and notified in writing on 14 January 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı Registrar	Arnfinn Bårdsen President

APPENDIX

List of cases:

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality	Represented by
1.	32514/22	Petrović v. Croatia	27/06/2022	**Slađana PETROVIĆ** 1973 St Goarshausen (Germany) Croatian	Antonija GALIĆ KONDŽA
2.	33284/22	Šarčević v. Croatia	30/06/2022	**Janja ŠARČEVIĆ** 1962 Tovarnik (Croatia) Croatian	Antonija GALIĆ KONDŽA
3.	15910/23	Šesto v. Croatia	13/04/2023	**Marica ŠESTO** 1963 Slavonski Brod (Croatia) Croatian	Antonija GALIĆ KONDŽA