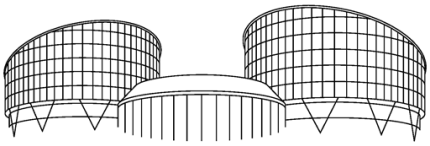

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF MILANKOVIĆ v. CROATIA

(Application no. 33351/20)

JUDGMENT

Art 7 • Nullum crimen sine lege • Foreseeable and sufficiently clear legal basis in international law for applicant's conviction for war crimes perpetrated in the territory of Croatia in the early 1990s, based on command responsibility

STRASBOURG

20 January 2022

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 Milanković v. Croatia,

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

Péter Paczolay, *President,*
Ksenija Turković,
Alena Poláčková,
Gilberto Felici,
Erik Wennerström,
Raffaele Sabato,
Lorraine Schembri Orland, *judges,*
and Renata Degener, *Section Registrar,*

Having regard to:

the application (no. 33351/20) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Croatian national, Mr Vladimir Milanković ("the applicant"), on 24 July 2020;

the decision to give notice to the Croatian Government ("the Government") of the complaint under Article 7 of the Convention, and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 7 December 2021,

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

INTRODUCTION

1. The case concerns the applicant's conviction, on the basis of his command responsibility, for war crimes against the Serbian civilian population and a prisoner of war, perpetrated in the territory of Croatia in the period between mid-August 1991 and mid-June 1992.

THE FACTS

2. The applicant was born in 1962 and lives in Sisak. He was represented first by Ms Lj. Planinić, and then, from 12 February 2021, by Mr M. Domjanović, both lawyers practising in Zagreb.

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

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

5. On 25 June 1991 Croatia declared independence but was requested by the European Economic Community to postpone implementation of the declaration for three months from 7 July 1991. Therefore, the full implementation of the declaration only came into effect on 8 October 1991, after the three-month moratorium, when Croatia definitively severed all ties with the Socialist Federal Republic of Yugoslavia.

6. On 15 January 1992 Croatia was internationally recognised as an independent State by all twelve States which were at that time members of the European Economic Community, as well as by six other States. Even though Croatia was internationally recognised even before that date by eight other States, 15 January 1992 is considered and commemorated in Croatia as the date of its international recognition.

7. In June 2011 a comprehensive investigation was opened into the killings and other criminal offences committed against individuals of Serb ethnicity in the Sisak and Banovina area in the period between mid-August 1991 and mid-June 1992. In that period the applicant was the deputy head of the Sisak-Moslavina Police Department and in the period between 18 July and 1 October 1991 also the commander of all police forces in the broader area of Sisak and Banovina.

8. On the basis of the evidence obtained during the investigation, on 16 December 2011 the Osijek County State Attorney's Office (*Županijsko državno odvjetništvo u Osijeku*) indicted the applicant before the Osijek County Court (*Županijski sud u Osijeku*). He was accused of having, in the period between 18 August 1991 and 20 June 1992, personally ill-treated civilians, ordered attacks against them, ordered their illegal arrests and detentions, and of having failed to prevent a number of illegal arrests and detentions, the ill-treatment and killings of civilians and the ill-treatment and killing of a prisoner of war perpetrated by the police units under his command.

9. The indictment was modified during the trial, on 26 November 2013. Specifically, the State Attorney's Office eventually charged the applicant with twenty-two counts of war crimes against the civilian population, eighteen of which had been committed before 8 October 1991 (see paragraph 5 above), and one count against a prisoner of war which had also been committed before that date.

10. The applicant was accused of ordering three and personally participating in the commission of two of the above-mentioned twenty-two crimes against the civilian population. For those five crimes the State Attorney's Office sought the applicant's conviction on the basis of Article 120 § 1 of the Basic Criminal Code (see paragraph 27 below).

11. As regards the remaining seventeen crimes against the civilian population, the State Attorney's Office argued that the applicant had committed them by omission, namely by failing to prevent them even though as the commander of the police units which had committed those crimes he had been under a duty to do so. In respect of those crimes, the State Attorney's Office sought the applicant's conviction on the basis of Article 120 § 1 taken in conjunction with Article 28 § 2 of the Basic Criminal Code (ibid.).

12. Lastly, in respect of the remaining crime, that is, the war crime against a prisoner of war, the State Attorney's Office also argued that the applicant had committed it by omission, that is, by failing to prevent it. In respect of

that crime, the State Attorney's Office sought the applicant's conviction on the basis of Article 122 taken in conjunction with Article 28 § 2 of the Basic Criminal Code (ibid.).

13. Since Article 120 § 1 and Article 122 of the Basic Criminal Code were referencing (blanket) provisions[1] referring to the rules of international law (ibid.), the State Attorney's Office also relied on "universally recognised rules of customary international law of war and [of customary international] humanitarian law relative to ... the responsibility of commanders for the acts of their subordinates in times of armed conflict".

14. The State Attorney's Office also referred to certain specific provisions of the two Geneva Conventions of 12 August 1949 and their Protocols of 8 June 1977, namely:

– Article 3 § 1 (a) and (c) and Article 13 of the Geneva Convention relative to the Treatment of Prisoners of War ("the Third Geneva Convention");

– Article 3 § 1 (a) and (c) and Articles 13, 27, 31 and 32 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War ("the Fourth Geneva Convention");

– Articles 75, 86 and 87 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts ("the First Protocol", see paragraph 30 below);

– Article 4 §§ 1 and 2 (a) and Article 13 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts ("the Second Protocol").

15. The applicant responded to the charges and maintained, *inter alia*, the following arguments throughout the proceedings:

– the Basic Criminal Code had not contained the concept of command responsibility, and the referencing (blanket) provisions in its Articles 120 and 122 could not be interpreted in the light of Articles 86 and 87 of the First Protocol to the Geneva Conventions (see paragraphs 27 and 30 below) because that Protocol applied only to international armed conflicts, it being understood that Croatia's declaration of independence had come into effect on 8 October 1991, that the country had not been internationally recognised until 15 January 1992 (see paragraphs 5-6 above) and that the Second Protocol applicable to non-international armed conflicts did not provide for command responsibility (see paragraph 14 above);

– the concept of command responsibility could not be applied to him because at the time when the offences had been committed (*tempore criminis*)

[1] For the notion of a referencing (blanket) provision, see *Advisory opinion concerning the use of the "blanket reference" or "legislation by reference" technique in the definition of an offence and the standards of comparison between the criminal law in force at the time of the commission of the offence and the amended criminal law* [GC], request no. P16-2019-001, Armenian Constitutional Court, § 31, 29 May 2020.

he had been the deputy head of the local police department and not a member of the military (see paragraph 7 above);

– he had been charged on the basis of his command responsibility even though the direct perpetrators of most of the criminal offences in question had not been identified, which meant that they could have been members of several other military, police, or even paramilitary or informal units, present in the Sisak area at the time, for whom he had not been responsible; and

– as a deputy head he had had fewer powers than a head of a police department, making it impossible for him to have committed the offences with which he had been charged.

16. In a judgment of 9 December 2013, the Osijek County Court found the applicant guilty as charged and sentenced him to eight years' imprisonment.

17. As regards the eighteen war crimes the applicant had been accused of having committed by omission (see paragraphs 11-12 above), the court convicted him on the basis of Article 120 § 1 and Article 122 of the Basic Criminal Code and on the relevant provisions of the Third and Fourth Geneva Conventions and the Additional Protocols (see paragraph 14 above), taken in conjunction with Article 28 § 2 of the Basic Criminal Code and Articles 86 and 87 of the First Protocol to the Geneva Conventions (see paragraphs 27 and 30 below).

18. Specifically, on the basis of the evidence taken, the court found that the applicant had had formal and actual command authority over the police units which had committed the eighteen war crimes in question, and that he had known or had been aware of those crimes. As their commander he was therefore criminally liable for those crimes on the basis of the principle of guarantor liability (*garantna odgovornost*, see paragraph 28 below). Lastly, the court held that the applicant, who was a military-academy-educated officer, had known very well that his conduct had been prohibited and in breach of the Geneva Conventions and the Protocols thereto.

19. The applicant appealed, complaining of a number of substantive and procedural errors. He also reiterated his main arguments made before the trial court (see paragraph 15 above). The State Attorney's Office also appealed, seeking that the sentence be increased.

20. In a judgment of 10 June 2014, the Supreme Court (*Vrhovni sud Republike Hrvatske*) upheld the applicant's conviction and increased his sentence to ten years' imprisonment.

21. In reply to the applicant's argument that he had been convicted of the war crimes in question on the basis of command responsibility even though the direct perpetrators had not been identified (see paragraphs 15 and 20 above), the Supreme Court held that all the evidence taken together unequivocally pointed to the conclusion that the perpetrators of those war crimes had been members of the police units under the applicant's formal and actual command.

22. The Supreme Court did not address the applicant's argument (see paragraph 15 above) that *tempore criminis* the war in Croatia had not had an international character and that therefore the referencing (blanket) provisions in Articles 120 and 122 of the Basic Criminal Code could not be interpreted in the light of Articles 86 and 87 of the First Protocol to the Geneva Conventions providing for responsibility of commanders, because that Protocol applied only to international armed conflicts (see paragraph 30 below).

23. The applicant subsequently, on 24 July 2014, lodged a constitutional complaint against the Supreme Court's judgment. He complained of a number of violations of his rights guaranteed by the Convention and the Croatian Constitution. He again repeated the arguments he had made previously (see paragraphs 15 and 20 above).

24. In a decision of 10 March 2020, the Constitutional Court (*Ustavni sud Republike Hrvatske*) dismissed the applicant's constitutional complaint. It first held that the war in Croatia had not had an international character before 8 October 1991 (see paragraph 5 above). Consequently, Articles 86 and 87 of the First Protocol to the Geneva Conventions (see paragraph 30 below) could not serve as the legal basis for the applicant's conviction for the war crimes which had been committed before that date and for which he had been found guilty on the basis of his command responsibility (see paragraphs 9 and 11-12 above).

25. However, the Constitutional Court held that at the time of the commission of those offences the command responsibility for war crimes in non-international armed conflicts had already become a rule of customary international law. In that regard the Constitutional Court referred to *Hadžihasanović and Others* case (see paragraphs 37-38 below) and other judgments of the International Criminal Tribunal for the former Yugoslavia (*Delalić and others*, no. IT-96-21-T of 16 November 1998, §§ 333-343, and *Duško Tadić*, no. IT-94-1-T of 7 May 1997) and judgments of the International Criminal Tribunal for Rwanda (*Akayesu*, no. ICTR-96-4-T of 2 September 1998, §§ 612-613).

26. On 9 March 2020 the Constitutional Court notified the applicant's representative of its decision.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW

27. The relevant provisions of the Basic Criminal Code of Croatia (*Osnovni krivični zakon Republike Hrvatske*, Official Gazette of the Socialist Federal Republic of Yugoslavia no. 44/76 with further amendments, and Official Gazette of the Republic of Croatia no. 53/91 with further

amendments), which was in force from 1 July 1977 until 31 December 1997, provided as follows:

Article 28
Manner of committing a criminal offence

"1. A criminal offence may be committed by an act or omission.

2. A criminal offence may be committed by omission only when the perpetrator failed to act when under a duty to do so."

Article 120 § 1
War crime against the civilian population

"Whoever, in violation of the rules of international law, in time of war, armed conflict or occupation, orders ... that the civilian population be killed, tortured or treated inhumanely ... or that great sufferance or [serious] injuries to the body or health be inflicted ... or ... that measures of intimidation and terror be used ... or whoever commits any of the foregoing acts shall be punished by imprisonment of at least five years or of twenty years."

Article 122
War crime against prisoners of war

"Whoever, in violation of the rules of international law ... orders ... that prisoners of war be killed, tortured or treated inhumanely ... or that great sufferance or [serious] injuries to the body or health be inflicted [on them] ... or whoever commits any of the foregoing acts shall be punished by imprisonment of at least five years or of twenty years."

28. In a number of judgments, Croatian criminal courts, relying on Article 28 § 2 of the Basic Criminal Code (see paragraph 27 above) and the related concept of guarantor liability (a well-known concept of criminal law in the former Yugoslavia), have taken the view that war crimes are types of offences which can also be committed by omission when a perpetrator is under duty to act but failed to do so. Therefore, the national courts have convicted commanders for war crimes they committed by omission, specifically on the basis of their failure to prevent, supress or report war crimes committed by the units under their command. In such crimes the criminal liability of commanders was based on their guarantor obligation, derived from the relevant rules of international law, to protect the civilian population and prisoners of war from the acts prohibited by international humanitarian law and the law of war, both in the course of international and non-international armed conflict. For example, in judgment no. Kž-743/03-6 of 23 October 2003, the Supreme Court held as follows:

"As regards the ... accused's manner of committing the criminal offence, [he] is [wrong in arguing] that [the offence] was a so-called *delictum commissivum*. Namely, the criminal offence [defined in Article 120 of the Basic Criminal Code] ... is ... [an offence which can be committed both by an act or by omission], in which a military commander during war, armed conflict or occupation has a specific guarantor

obligation to the civilian population in the area where the unit under his command undertakes military operations.

This conclusion follows from the [link between] domestic criminal law [and] international law and [from] the possibility of committing a criminal offence [by an act or omission] as provided in Article 28 §§ 1 and 2 of the Basic Criminal Code. It should be borne in mind that war or armed conflict ... is ... regulated by instruments of international law, including the Geneva Convention referred to in the operative part of the judgment and its Additional Protocol. ... [T]hese instruments ... prescribe the protection of civilians both in times of war and in times of non-international armed conflict. The guarantor of the protection of civilians ... according to these international standards are the commanders ... [such as] the accused. His role as a commander is not limited to the soldiers he commands, but international law extends it to civilians in the territory where the units he commands operate.

Both the provisions of international law and ... Article 120 of the Basic Criminal Code prescribe the prohibited consequences (death, serious injuries to the body or health ..., etc.) of an order given to act contrary to international law during war or armed conflict. Therefore, whoever has guarantor obligation is obliged to do everything to prevent the occurrence of such consequences which are ... [covered by] the criminal offence defined in Article 120 of the Basic Criminal Code.

Since, as stated in the introduction, the duty of a commander of military units participating in war or armed conflict is, according to the provisions of international law, not limited only ... to his subordinates [within] the military structure but, precisely because of the actual possibility of commanding and thus directing his military subordinates, also bestows on him guarantor obligations ... to the population in the area of military operations, the failure to take action to prevent the consequences described in the statutory definition of the criminal offence [set out in] Article 120 of the Basic Criminal Code is [in terms of criminal law] equivalent to taking an action [to commit that offence]."

29. The Supreme Court adopted the same view in its subsequent judgments and decisions nos. Kž-238/02-8 of 6 November 2003, Kž 679/12-8 of 20 February 2013, and Kž-rz 4/2018-10 of 12 June 2018.

II. INTERNATIONAL LAW

A. First Protocol to the Geneva Conventions

30. The relevant Articles of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, of 8 June 1977, read as follows:

Article 86
Failure to act

"1. The High Contracting Parties and the Parties to the conflict shall repress grave breaches, and take measures necessary to suppress all other breaches, of the Conventions or of this Protocol which result from a failure to act when under a duty to do so.

2. The fact that a breach of the Conventions or of this Protocol was committed by a subordinate does not absolve his superiors from penal or disciplinary responsibility, as

the case may be, if they knew, or had information which should have enabled them to conclude in the circumstances at the time, that he was committing or was going to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach."

Article 87
Duty of commanders

"1. The High Contracting Parties and the Parties to the conflict shall require military commanders, with respect to members of the armed forces under their command and other persons under their control, to prevent and, where necessary, to suppress and to report to competent authorities breaches of the Conventions and of this Protocol.

2. In order to prevent and suppress breaches, High Contracting Parties and Parties to the conflict shall require that, commensurate with their level of responsibility, commanders ensure that members of the armed forces under their command are aware of their obligations under the Conventions and this Protocol.

3. The High Contracting Parties and Parties to the conflict shall require any commander who is aware that subordinates or other persons under his control are going to commit or have committed a breach of the Conventions or of this Protocol, to initiate such steps as are necessary to prevent such violations of the Conventions or this Protocol, and, where appropriate, to initiate disciplinary or penal action against violators thereof."

B. Statutes of International Criminal Tribunals

31. The relevant Article of the Statute of the International Criminal Court reads:

Article 28
Responsibility of commanders and other superiors

"In addition to other grounds of criminal responsibility under this Statute for crimes within the jurisdiction of the Court:

(a) A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, where:

(i) That military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and

(ii) That military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

(b) With respect to superior and subordinate relationships not described in paragraph (a), a superior shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where:

(i) The superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes;

(ii) The crimes concerned activities that were within the effective responsibility and control of the superior; and

The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution."

32. The relevant Articles of the Statute of the International Criminal Tribunal for the former Yugoslavia (ICTY) read as follows:

Article 1
Competence of the International Tribunal

"The International Tribunal shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991 in accordance with the provisions of the present Statute."

Article 7(3)
Individual criminal responsibility

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

Article 8
Territorial and temporal jurisdiction

"The territorial jurisdiction of the International Tribunal shall extend to the territory of the former Socialist Federal Republic of Yugoslavia, including its land surface, airspace and territorial waters. The temporal jurisdiction of the International Tribunal shall extend to a period beginning on 1 January 1991."

33. The relevant part of the Report of the Secretary-General on the establishment of the ICTY reads as follows:

A. Competence *ratione materiae* (subject-matter jurisdiction)

"33. According to paragraph 1 of resolution 808 (1993), the international tribunal shall prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991. This body of law exists in the form of both conventional law and customary law. While there is international customary law which is not laid down in conventions, some of the major conventional humanitarian law has become part of customary international law.

34. In the view of the Secretary-General, the application of the principle *nullum crimen sine lege* requires that the international tribunal should apply rules of international humanitarian law which are beyond any doubt part of customary law so that the problem of adherence of some but not all States to specific conventions does not arise. This would appear to be particularly important in the context of an

international tribunal prosecuting persons responsible for serious violations of international humanitarian law."

...

Individual criminal responsibility

...

"56. A person in a position of superior authority should, therefore, be held individually responsible for giving the unlawful order to commit a crime under the present statute. But he should also be held responsible for failure to prevent a crime or to deter the unlawful behaviour of his subordinates. This imputed responsibility or criminal negligence is engaged if the person in superior authority knew or had reason to know that his subordinates were about to commit or had committed crimes and yet failed to take the necessary and reasonable steps to prevent or repress the commission of such crimes or to punish those who had committed them."

...

C. Competence *ratione loci* (territorial jurisdiction) and *ratione temporis* (temporal jurisdiction)

...

"62. With regard to temporal jurisdiction, Security Council resolution 808 (1993) extends the jurisdiction of the International Tribunal to violations committed 'since 1991'. The Secretary-General understands this to mean anytime on or after 1 January 1991. This is a neutral date which is not tied to any specific event and is clearly intended to convey the notion that no judgement as to the international or internal character of the conflict is being exercised."

34. Article 6 § 3 of the Statute of the International Criminal Tribunal for Rwanda and Article 6 § 3 of the Statute of the Special Court for Sierra Leone, which regulate criminal responsibility of superiors, are almost identical to Article 7 § 3 of the Statute of the ICTY. The Statute of the International Criminal Tribunal for Rwanda applies to serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994. The Statute of the Special Court for Sierra Leone applies to serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996.

C. Relevant customary international law

35. The relevant part of the *Customary International Humanitarian Law* study by the International Committee of the Red Cross reads as follows:

Rule 153
Command Responsibility for Failure to Prevent, Repress or Report War Crimes

"Commanders and other superiors are criminally responsible for war crimes committed by their subordinates if they knew, or had reason to know, that the subordinates were about to commit or were committing such crimes and did not take all necessary and reasonable measures in their power to prevent their commission, or if such crimes had been committed, to punish the persons responsible."

36. The relevant parts of the commentary to that rule read as follows:

Summary

"State practice establishes this rule as a norm of customary international law applicable in both international and non-international armed conflicts."

International armed conflicts

"The criminal responsibility of commanders for war crimes committed by their subordinates, based on the commanders' failure to take measures to prevent or punish the commission of such crimes is a long-standing rule of customary international law. It is on this basis that a number of commanders were found guilty of war crimes committed by their subordinates in several trials following the Second World War.

This rule is to be found in Additional Protocol I, as well as in the Statutes of the International Criminal Court and of the International Criminal Tribunal for the former Yugoslavia. It has also been confirmed in several cases before the International Criminal Tribunal for the former Yugoslavia.

Military manuals, military instructions and the legislation of a number of States specify the responsibility of commanders for the crimes of their subordinates, including States not, or not at the time, party to Additional Protocol I.

This rule was recalled in resolutions on the conflict in the former Yugoslavia adopted by the UN General Assembly and UN Commission on Human Rights."

Non-international armed conflicts

"Practice with respect to non-international armed conflicts is less extensive and more recent. However, the practice that does exist indicates that it is uncontroversial that this rule also applies to war crimes committed in non-international armed conflicts. In particular, the Statutes of the International Criminal Court, of the International Criminal Tribunals for the former Yugoslavia and for Rwanda and of the Special Court for Sierra Leone and UNTAET Regulation No. 2000/15 for East Timor explicitly provide for this rule in the context of non-international armed conflicts. The fact that this rule would also apply to crimes committed in non-international armed conflicts did not occasion any controversy during the negotiation of the Statute of the International Criminal Court.

In the *Hadžihasanović and Others* case, the International Criminal Tribunal for the former Yugoslavia held that the doctrine of command responsibility, as a principle of customary international law, also applies with regard to non-international armed conflicts. This rule has also been confirmed in several cases brought before the International Criminal Tribunal for Rwanda.

..."

Interpretation

"This rule has been interpreted in case-law following the Second World War and also in the case-law of the International Criminal Tribunals for the former Yugoslavia and for Rwanda. This includes, but is not limited to, the following points:

(i) Civilian command authority. Not only military personnel but also civilians can be liable for war crimes on the basis of command responsibility. The International Criminal Tribunal for Rwanda, in the *Akayesu* case in 1998 and in the *Kayishema and Ruzindana* case in 1999, and the International Criminal Tribunal for the former Yugoslavia, in the *Delalić* case in 1998, have adopted this principle. It is also contained in the Statute of the International Criminal Court. The Statutes of the International Criminal Tribunals for the former Yugoslavia and for Rwanda and of the Special Court for Sierra Leone refer in general terms to a 'superior', as do many military manuals and national legislation.

..."

D. Practice of the International Criminal Tribunal for the former Yugoslavia

37. In its decision on joint challenge to jurisdiction in *Prosecutor v. Hadžihasanović and Others* (IT-01-47, 12 November 2002), the Trial Chamber of the ICTY held that

"the doctrine of command responsibility [was] already in – and [has been] since – 1991 ... applicable in the context of an internal armed conflict under customary international law".

38. That view was upheld on appeal by the ICTY's Appeals Chamber in a decision of 16 July 2003 (decision on interlocutory appeal challenging jurisdiction in relation to command responsibility). The relevant part of that decision reads as follows:

II. COMMAND RESPONSIBILITY IN INTERNAL ARMED CONFLICTS

"10. ... the Appellants ... submit in substance that the Trial Chamber erred in two respects, in that:

a) it wrongly found that there was a basis in customary international law for the applicability of the doctrine of command responsibility in internal armed conflicts at the time material to the indictment; and

b) it failed to respect the principle of legality ...

(a) Whether customary international law provides for command responsibility in internal armed conflicts

11. ... the parties disagree ... on the question whether the doctrine [of command responsibility] applies, as part of customary international law, in an internal armed conflict.

12. In considering this question, the Appeals Chamber ... appreciates that to hold that a principle was part of customary international law, it has to be satisfied that State practice recognized the principle on the basis of supporting *opinio juris*. However, it

also considers that, where a principle can be shown to have been so established, it is not an objection to the application of the principle to a particular situation to say that the situation is new if it reasonably falls within the application of the principle ...

13. ... at all times material to this case, customary international law included the concept of command responsibility in relation to war crimes committed in the course of an international armed conflict ... It is difficult to see why the concept would not equally apply ... in the course of an internal armed conflict.

14. In the view of the Appeals Chamber, the matter rests on the dual principle of responsible command and its corollary command responsibility ...

15. The position is no different as regards internal armed conflicts ...

...

17. It is true that, domestically, most States have not legislated for command responsibility to be the counterpart of responsible command in internal conflict. This, however, does not affect the fact that, at the international level, they have accepted that, as a matter of customary international law, relevant aspects of international law (including the concept of command responsibility) govern the conduct of an internal armed conflict, though of course not all aspects of international law apply. The relevant aspects of international law unquestionably regard a military force engaged in an internal armed conflict as organized and therefore as being under responsible command. In the absence of anything to the contrary, it is the task of a court to interpret the underlying State practice and *opinio juris* (relating to the requirement that such a military force be organized) as bearing its normal meaning that military organization implies responsible command and that responsible command in turn implies command responsibility.

18. In short, wherever customary international law recognizes that a war crime can be committed by a member of an organised military force, it also recognizes that a commander can be penally sanctioned if he knew or had reason to know that his subordinate was about to commit a prohibited act or had done so and the commander failed to take the necessary and reasonable measures to prevent such an act or to punish the subordinate. Customary international law recognizes that some war crimes can be committed by a member of an organised military force in the course of an internal armed conflict; it therefore also recognizes that there can be command responsibility in respect of such crimes.

...

20. Thus, the fact that it was in the course of an internal armed conflict that a war crime was about to be committed or was committed is not relevant to the responsibility of the commander ... The basis of the commander's responsibility lies in his obligations as commander of troops making up an organised military force under his command, and not in the particular theatre in which the act was committed by a member of that military force.

21. ...

22. The Appeals Chamber recognizes that there is a difference between the concepts of responsible command and command responsibility. The difference is due to the fact that the concept of responsible command looks to the duties comprised in the idea of command, whereas that of command responsibility looks at liability flowing from breach of those duties. But, as the foregoing shows, the elements of command responsibility are derived from the elements of responsible command.

...

26. The applicability of command responsibility to internal armed conflict is not disputed in the cases of the tribunals established for Rwanda, Sierra Leone and East Timor. ... the establishment of these bodies was consistent with the proposition that customary international law previously included the principle that command responsibility applied in respect of an internal armed conflict.

27. Taken as a whole, the Appeals Chamber agrees with the survey and analysis made by the Trial Chamber of various sources (including decided cases) concerning the development of State practice and *opinio juris* on the question whether command responsibility forms part of customary international law in relation to war crimes committed in the course of an internal armed conflict ...

28. The Appellants have placed reliance on the fact that the doctrine of command responsibility was referred to in Articles 86 and 87 of the 1977 Protocol I Additional to the Geneva Conventions ... but was not referred to in Protocol II. The former being directed to international armed conflicts while the latter is directed to internal armed conflicts, the Appellants contend that the difference tends to support the view that State practice regarded command responsibility as part of customary international law relating to international armed conflicts and did not regard command responsibility as part of customary international law relating to internal armed conflicts.

29. The Appeals Chamber affirms the view of the Trial Chamber that command responsibility was part of customary international law relating to international armed conflicts before the adoption of Protocol I. Therefore ... Articles 86 and 87 of Protocol I were in this respect only declaring the existing position, and not constituting it. In like manner, the non-reference in Protocol II to command responsibility in relation to internal armed conflicts did not necessarily affect the question whether command responsibility previously existed as part of customary international law relating to internal armed conflicts. The Appeals Chamber considers that, at the time relevant to this indictment, it was, and that this conclusion is not overthrown by the play of factors responsible for the silence which, for any of a number of reasons, sometimes occurs over the codification of an accepted point in the drafting of an international instrument.

30. Were it otherwise, the Appeals Chamber would have to uphold that, 'as argued by the Defence, it is not a crime for a commander in an internal conflict to fail to prevent or punish the killings committed by his subordinates,' i.e., even if the commander knows or has reason to know of the killings. The Appeals Chamber does not consider that it is required to sustain so improbable a view in contemporary international law...

31. ... the Trial Chamber was correct in holding ... that command responsibility was at all times material to this case a part of customary international law in its application to war crimes committed in the course of an internal armed conflict.

(b) The principle of legality

32. As to this issue, the Appellants contend that, if command responsibility for war crimes committed in the course of an internal armed conflict was not part of customary international law at the time when the acts were allegedly done by the Appellants, the principle of legality was necessarily breached. ... it would follow that the Appellants were indicted for something that was not a crime under customary international law at the time when the relevant acts were allegedly committed.

33. ... The argument assumes that such responsibility did not form part of customary international law at the material times. If the assumption goes, so does the argument which is based on it.

> 34. The Appellants argued ... that the principle of legality requires that the crime charged be set out in a law that is accessible and that it be foreseeable that the conduct in question may be criminally sanctioned at the time when the crime was allegedly committed. ... As to foreseeability, the conduct in question is the concrete conduct of the accused; he must be able to appreciate that the conduct is criminal in the sense generally understood, without reference to any specific provision. As to accessibility, in the case of an international tribunal such as this, accessibility does not exclude reliance being placed on a law which is based on custom ..."

39. The applicability of the concept of command responsibility to non-international armed conflicts was later confirmed in other ICTY's judgments. In particular, in *Prosecutor v. Radoslav Brđanin*, IT-99-36-T, 1 September 2004, § 275, the ICTY held:

> "275. The Appeals Chamber has held that "[t]he principle that military and other superiors may be held criminally responsible for the acts of their subordinates is well-established in conventional and customary law. This applies both in the context of international as well as internal armed conflicts. The jurisprudence of the Tribunal has established the following three-pronged test for criminal liability pursuant to Article 7(3) of the Statute:
>
> 1. the existence of a superior-subordinate relationship between the superior (the accused) and the perpetrator of the crime;
>
> 2. the accused knew or had reason to know that the crime was about to be or had been committed; and
>
> 3. the accused failed to take the necessary and reasonable measures to prevent the crime or punish the perpetrator thereof."

In *Prosecutor v. Pavle Strugar*, IT-01-42-T, 31 January 2005, § 357 the ICTY held:

> "357. Article 7(3) of the Statute reads:
>
> The fact that any of the acts referred to in articles 2 to 5 of the present Statute was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.
>
> The principle of individual criminal responsibility of superiors for failure to prevent or to punish crimes committed by subordinates is an established principle of international customary law, applicable to both international and internal armed conflicts."

40. The applicability of the concept of command responsibility to non-military commanders was confirmed by the ICTY in the so-called *Čelebići* case. In particular, in *Prosecutor v. Delalić*, *Mucić et al*. IT-96-21-T, 16 November 1998, the Trial Chamber of the ICTY held:

> "333. That military commanders and other persons occupying positions of superior authority may be held criminally responsible for the unlawful conduct of their subordinates is a well-established norm of customary and conventional international law ...
>
> ...

a. The Responsibility of Non-Military Superiors

355. ... the Trial Chamber deems it appropriate first to set out its reasoning in relation to the question of the application of the principle enshrined in Article 7(3) to persons in non-military positions of authority.

356. It is apparent from the text of this provision that no express limitation is made restricting the scope of this type of responsibility to military commanders or situations arising under a military command. In contrast, the use of the generic term 'superior' in this provision, together with its juxtaposition to the affirmation of the individual criminal responsibility of 'Head[s] of State or Government' or 'responsible Government official[s]' in Article 7(2), clearly indicates that its applicability extends beyond the responsibility of military commanders to also encompass political leaders and other civilian superiors in positions of authority. This interpretation is supported by the explanation of the vote made by the representative of the United States following the adoption of Security Council resolution 827 on the establishment of the International Tribunal. The understanding of the United States was expressed to be that individual criminal responsibility arises in the case of 'the failure of a superior – whether political or military – to take reasonable steps to prevent or punish such crimes by persons under his or her authority'. This statement was not contested. The same position was adopted by Trial Chamber I in its review of the Indictment pursuant to Rule 61 in *Prosecutor v. Milan Martić*, where it held that:

'[t]he Tribunal has particularly valid grounds for exercising its jurisdiction over persons who, through their position of political or military authority, are able to order the commission of crimes falling within its competence *ratione materiae* or who knowingly refrain from preventing or punishing the perpetrators of such crimes.'

357. This interpretation of the scope of Article 7(3) is in accordance with the customary law doctrine of command responsibility. As observed by the Commission of Experts in its Final Report, while '[m]ost legal cases in which the doctrine of command responsibility has been considered have involved military or paramilitary accused, [p]olitical leaders and public officials have also been held liable under this doctrine in certain circumstances'. Thus, the International Military Tribunal for the Far East (hereafter 'Tokyo Tribunal') relied on this principle in making findings of guilt against a number of civilian political leaders charged with having deliberately and recklessly disregarded their legal duty to take adequate steps to secure the observance of the laws and customs of war and to prevent their breach. ...

...

359. In *United States v, Friedrich Flick and others,* the six accused, all leading civilian industrialists, were charged with the commission of war crimes and crimes against humanity in that they were said to have been principals in, accessories to, to have ordered, abetted, taken a consenting part in, or to have been connected with plans and enterprises involving the enslavement and deportation to slave labour of civilians from occupied territory, enslavement of concentration camp inmates and the use of prisoners of war in work having a direct relation to war operations. More specifically, it was alleged that the defendants sought and utilised such slave labour programmes by using tens of thousands of slave labourers in the industrial enterprises owned, controlled or influenced by them.

361. Similarly, civilian superiors were found criminally liable for the ill-treatment of forced labourers employed in the German industry in an appellate decision by the Superior Military Government Court of the French Occupation Zone in Germany, in the *Roechling* case. ...

...

363. Thus, it must be concluded that the applicability of the principle of superior responsibility in Article 7(3) extends not only to military commanders but also to individuals in non-military positions of superior authority."

41. The Appeals Chamber in its judgment in the same case (*Prosecutor v. Delalić*, *Mucić et al*. IT-96-21-A, 20 February 2021) held:

"195. Based on an analysis of World War II jurisprudence, the Trial Chamber also concluded that the principle of superior responsibility reflected in Article 7(3) of the Statute encompasses political leaders and other civilian superiors in positions of authority. The Appeals Chamber finds no reason to disagree with the Trial Chamber's analysis of this jurisprudence."

THE LAW

ALLEGED VIOLATION OF ARTICLE 7 OF THE CONVENTION

42. The applicant complained that his convictions for war crimes on the basis of his command responsibility had not had a legal basis in national or international law at the time when they had been committed. He relied on Article 7 of the Convention, which reads as follows:

"1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations."

A. Scope of the case

43. The Court notes that even though the applicant mainly complained of his convictions for war crimes committed in the period before the war in Croatia had become an armed conflict of international character (see paragraphs 9 and 11-12 above), taken as a whole his arguments (see paragraphs 15, 20 and 23 above and 37 and 67 below) show that he also complained of his convictions for war crimes committed after that date (see paragraph 9 above).

B. Admissibility

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

C. Merits

1. The parties' arguments

(a) The applicant

45. The applicant reiterated the arguments he had made before the domestic courts (see paragraphs 15, 20 and 23 above). In addition, he averred that the Constitutional Court had accepted, without conducting its own examination, the ICTY's view that command responsibility for war crimes in non-international armed conflicts had *tempore criminis* already become a rule of customary international law (see paragraph 25 above).

(b) The Government

46. The Government submitted that the applicant's conviction had been based on Article 120 § 1 and Article 122 taken in conjunction with Article 28 § 2 of the Basic Criminal Code (see paragraphs 11-12, 16-17, 20, 23-25 and 27 above) and the relevant rules of customary international law.

47. The Government further submitted that *tempore criminis* command responsibility for war crimes in non-international armed conflicts had already become a rule of customary international law. In that regard they referred to the decision of the ICTY in the *Hadžihasanović and Others* case (see paragraphs 37-38 above).

48. Alternatively, the Government averred that the applicant's conviction had in any event been justified under Article 7 § 2 of the Convention.

49. As regards the applicant's arguments based on his alleged lack of powers as the deputy head of a police department and the impossibility of identifying the direct perpetrators (see paragraphs 15, 20, 23 and 37 above), the Government submitted that they concerned the assessment of the facts by the domestic courts and were thus of a fourth-instance nature.

2. The Court's assessment

50. The relevant principles emerging from the Court's case-law under Article 7 of the Convention are summarised in *Advisory opinion concerning the use of the "blanket reference" or "legislation by reference" technique in the definition of an offence and the standards of comparison between the criminal law in force at the time of the commission of the offence and the amended criminal law* ([GC], request no. P16-2019-001, Armenian Constitutional Court, §§ 60-62, 29 May 2020), as well as in *Vasiliauskas v. Lithuania* ([GC], no. 35343/05, §§ 153-55, ECHR 2015), *Kononov v. Latvia* ([GC], no. 36376/04, §§ 185-87, ECHR 2010) and *Jorgic v. Germany* (no. 74613/01, §§ 100-02, ECHR 2007-III).

51. Having regard to its case-law, the Court considers that its main task in the present case is to examine whether *tempore criminis* (see, *mutatis mutandis*, *Kononov*, cited above, § 187):

– the applicant's conviction for war crimes had a sufficiently clear legal basis; and

– it was foreseeable for the applicant that his failure to prevent the war crimes committed by the police units under his command would render him criminally liable.

(a) As regards the legal basis for the applicant's conviction and its foreseeability

52. The Court observes that the applicant's conviction for war crimes was based on Article 120 § 1 and Article 122 taken in conjunction with Article 28 § 2 of the Basic Criminal Code according to which persons having guarantor obligation (duty to act) could commit war crimes by omission (see paragraphs 11-12, 16-17, 20, 22, 27 and 28 above). Article 120 § 1 and Article 122 were referencing (blanket) provisions which referred to the relevant rules of international law. Even though the County Court and the Supreme Court held that the relevant referenced rules of international law in the applicant's case were those contained in Articles 86 and 87 of the First Protocol to the Geneva Conventions (see paragraphs 11-12, 17 and 20 above), the Constitutional Court finally found that the relevant rules were those of customary international law and in support of its finding relied, among others, on the ICTY's decisions in the *Hadžihasanović and Others* case (see paragraphs 24-25 and 37-38 above).

53. The applicant's conviction for war crimes was, therefore, primarily based on international law and must, in the Court's view, be examined chiefly from that perspective (compare *Kononov*, cited above, § 196).

54. In the present case the Court must satisfy itself that the applicant's conviction for war crimes based on his command responsibility as a police commander in an internal armed conflict had sufficiently clear basis in international law at the time when those crimes were committed, that is, having regard to the state of international law in 1991 (see, *mutatis mutandis*, *Korbely v. Hungary* [GC], no. 9174/02, § 78, ECHR 2008).

55. In this regard the Court first reiterates that the Convention cannot be interpreted in a vacuum and should so far as possible be interpreted in harmony with other rules of international law of which it forms part (see, regarding the rules of international humanitarian law, *Hassan v. the United Kingdom* [GC], no. 29750/09, § 77, ECHR 2014).

56. It further notes that the Statute of the ICTY in its Article 7 § 3 refers in general terms to a 'superior' and therefore does not restrict its application only to military commanders (see paragraph 32 above) or make any distinction between international or non-international armed conflict. The Statute applies to serious violations of international humanitarian law committed in the former Yugoslavia since 1 January 1991, the date "clearly intended to convey the notion that no judgement as to the international or internal character of the conflict is being exercised" (see the Report of the Secretary General of the United Nations cited in paragraph 33 above).

Moreover, the Statute was intended to reflect the existing international law, namely the rules which were "beyond any doubt part of customary law" at the time (ibid.).

57. In *Hadžihasanović and Others* the ICTY held that application of the concept of command responsibility to war crimes committed in an internal armed conflict was already in 1991 a rule of customary international law (see paragraphs 37-38 above). Likewise, in the *Čelebići* (*Delalić*) case the ICTY, based on an analysis of World War II-related jurisprudence, held that the principle of superior responsibility reflected in Article 7 § 3 of its Statute encompassed also political leaders and other civilian superiors in positions of authority (see paragraphs 40-41 above).

58. This was later confirmed by a number of other ICTY's judgments (see paragraph 39 above) as well as in several cases brought before the International Criminal Tribunal for Rwanda (see *Prosecutor v. Akayesu*, no. ICTR-96-4-T of 2 September 1998, §§ 630-634 and 640, and *Prosecutor v. Kayishema and Ruzindana*, no. ICTR-95-1-T of 21 May 1999, §§ 213-216). The Court sees no reason to hold otherwise, emphasising that it is not its role to establish authoritatively the state of international law at the time (see, *mutatis mutandis*, *Korbely*, cited above, § 78).

59. However, the Court is sensitive to the applicant's argument that the above legal developments regarding command responsibility in internal armed conflicts (see the paragraphs 57-58) occurred after the events in the present case took place. On that issue the Court finds particularly relevant the ICTY's view in *Hadžihasanović and Others* that, where a principle can be shown to have been established, it is not an objection to the application of the principle to a particular situation to say that the situation is new if it reasonably falls within the application of the principle (see paragraph 38 above). The Court has itself held that Article 7 of the Convention cannot be read as outlawing such gradual clarification of the rules of criminal liability through judicial interpretation from case to case, provided that the resultant development is consistent with the essence of the offence and could reasonably be foreseen (see, among many other authorities, *Jorgic*, cited above, § 101). In the Court's view this applies equally to the development of national as well as of international law.

60. It is beyond doubt that the responsibility of commanders for war crimes committed in the course of an international armed conflict was *tempore criminis* an existing rule of international law (see, notably, the First Protocol to the Geneva Conventions cited in paragraph 30 above). The Court agrees with the ICTY's view in *Hadžihasanović and Others* that it is difficult to see why the concept would not equally apply in the course of an internal armed conflict (see paragraph 38 above) and finds that the above interpretation, which prevents impunity of commanders in internal armed conflicts (see, *mutatis mutandis*, *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, §§ 105 and 182, ECHR 2012), is consistent

with the essence of the command responsibility (see, *mutatis mutandis*, *Jorgic*, cited above, § 101). In particular, as pointed out by the ICTY in the *Hadžihasanović and Others*, the concept of command responsibility is derived from the concept of responsible command, which does not make any distinction between international and non-international armed conflict (see paragraph 38 above).

61. Furthermore, the Court agrees with the ICTY's conclusion in the *Čelebići* case – which was primarily based on the pre-existing (World War II-related) jurisprudence – that command responsibility does not apply only to military commanders but also to other, non-military, superiors (see paragraphs 40-41 above).

62. As regards foreseeability and accessibility, the Court first reiterates that the scope of the concept of foreseeability depends to a considerable degree on the content of the instrument in issue, the field it is designed to cover and the number and status of those to whom it is addressed (see *Kononov*, cited above, § 235). It furthermore reaffirms that, in the context of a commanding officer and the laws and customs of war, the concepts of accessibility and foreseeability must be considered together (ibid.).

63. In this light the Court affirms the ICTY's position in *Hadžihasanović and Others* that, in cases such as the present one, foreseeability means that the accused must be able to appreciate that his conduct is criminal in the sense generally understood, without reference to any specific provision, and that accessibility does not exclude reliance being placed on a law which is based on custom (see paragraph 38 above).

64. Having regard to the flagrant unlawful nature of the war crimes committed by the police units under his command, the Court considers that even the most cursory reflection by the applicant would have indicated that, at the very least, the impugned omissions on his part risked involving command responsibility regardless whether those crimes were committed during international or internal conflict or by a military or non-military (police) commander (compare *Kononov*, cited above, § 238, and *Šimšić v. Bosnia and Herzegovina* (dec.), no. 51552/10, § 24, 10 April 2012).

65. That is especially so in the applicant's case having regard to:

– the fact that he was a police commander, and that persons carrying out a professional activity must proceed with a high degree of caution when pursuing their occupation and can be expected to take special care in assessing the risks that such activity entails (see *Kononov*, cited above, § 235, and *Šimšić*, cited above, § 24);

– the domestic courts' finding that the applicant was a military-academy-educated officer who had thus known very well that his conduct could make him criminally liable (see paragraph 18 above); and

– the fact that Croatia's declaration of independence had been adopted already on 25 June 1991 even though it came into effect only on 8 October 1991 (see paragraph 5 above).

66. The foregoing considerations are sufficient to enable the Court to conclude that the applicant's conviction for war crimes on the basis of his command responsibility had *tempore criminis* a sufficiently clear legal basis in international law (compare *Šimšić*, cited above, § 23), and that it was foreseeable for him that his failure to prevent the war crimes committed by the police units under his command would make him criminally liable. It also follows from these considerations that this conclusion applies regardless of whether those crimes were committed before or after the war in Croatia in the early 1990s became an international armed conflict.

(b) As regards the applicant's remaining arguments

67. The applicant also argued that he had been convicted for the war crimes in question on the basis of his command responsibility even though (a) as the deputy head of the police department he had not had sufficient powers to be held criminally liable as a commander, and (b) the direct perpetrators of most of those war crimes had not been identified (see paragraphs 15, 20, 23 and 45 above).

68. In this regard the Court first reiterates that it is not its task to substitute its own assessment of the facts for that of the domestic courts, and as a general rule it is for those courts to assess the evidence before them. Although the Court is not bound by the findings of domestic courts, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts (see, for example, *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 150, 20 March 2018).

69. The Court further notes that the domestic courts established (see paragraphs 18 and 22 above) as follows:

– that the applicant had had formal and actual command authority over the police units which had committed the war crimes in question;

– that, even though the direct perpetrators of some of the war crimes the applicant had been charged with could not be identified, the evidence examined in the course of the trial suggested that those crimes had been committed by members of the police units under his command; and

– that the applicant knew or had been aware of those crimes.

70. For the Court, in the present case, there are no elements that would lead it to contradict these factual findings of the domestic courts.

(c) Conclusion

71. There has accordingly been no violation of Article 7 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 7 of the Convention.

Done in English, and notified in writing on 20 January 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener	Péter Paczolay
Registrar	President