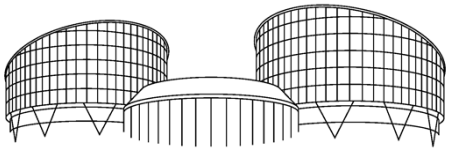

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF DABIĆ v. CROATIA

(Application no. 49001/14)

JUDGMENT

Art 1 P1 • Peaceful enjoyment of possessions • Failure to compensate for property damage and plundering by a refugee, placed temporarily in the applicant's property after sequestration by the State • Positive obligations not discharged

STRASBOURG

18 March 2021

DÉFINITIF

18/06/2021

Cet arrêt est devenu définitif en vertu de l'article 44 § 2 de la Convention. Il peut subir des retouches de forme.

In the case of Dabić v. Croatia,

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

Krzysztof Wojtyczek, *President,*
Ksenija Turković,
Linos-Alexandre Sicilianos,
Alena Poláčková,
Péter Paczolay,
Gilberto Felici,
Raffaele Sabato, *judges,*

and Renata Degener, *Section Registrar,*

Having regard to:

the application (no. 49001/14) 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 Nikola Dabić ("the applicant"), on 25 June 2014;

the decision to give notice to the Croatian Government ("the Government") of the complaint concerning the right to the peaceful enjoyment of possessions and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 26 January and 9 February 2021,

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

INTRODUCTION

1. The case concerns the extent of the State's positive obligations under Article 1 of Protocol No. 1 to the Convention in the situation where the State had sequestered the applicant's house and had used it to provide accommodation for a refugee who later on damaged it and stole some items from it before the house was returned to the applicant.

THE FACTS

2. The applicant was born in 1949 and lives in Sunja. He was represented by Mr D. Rupčić, a lawyer practising in Sisak.

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

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

I. EVENTS GIVING RISE TO THE DISPUTE

5. The applicant, who is of Serbian origin, is the owner of a house in Sunja, Croatia. He lived there until 4 August 1995, when he left Croatia –

that is to say a day before the start of a military operation (known as "Operation Storm").

6. On 27 September 1995 the Temporary Takeover and Administration of Certain Property Act ("the Sequestration Act") entered into force. It provided that property belonging to persons who had left Croatia after 17 October 1990 was to be sequestered – that is to say, taken into the care of and controlled by the State. It also entitled local authorities (sequestration commissions) to temporarily accommodate other persons in such property.

7. On 23 March 1996 the Sunja Municipality Sequestration Commission issued a decision allocating the applicant's house for temporary use to a certain D.V. and his family, refugees from Bosnia and Herzegovina. Shortly afterwards, D.V. and his wife, six children and sister moved into the house. D.V., his wife and sister continued to live in the house, while his children moved out over time but continued to live in Croatia.

8. On 5 August 1998 the Act on the Termination of the Sequestration Act ("the Termination Act") entered into force. It repealed the Sequestration Act and provided that persons whose property had, during their absence from Croatia, been sequestered and used to accommodate others should apply to the relevant local authorities – the housing commissions – for the recovery of their property.

9. The applicant returned to Croatia in 1999 and on 17 August 2000 lodged an application for the recovery of his house with the Sunja Municipality Housing Commission, as provided by the Termination Act.

10. In a decision of 25 April 2001 the Housing Commission set aside the Sequestration Commission's decision of 23 March 1996 (see paragraph 7 above) and ordered D.V. to vacate the applicant's house within fifteen days of being provided with alternative accommodation by the State. On the same day, the Housing Commission conducted an on-site inspection of the applicant's house and determined that it was undamaged.

11. In June 2002 the authorities in Bosnia and Herzegovina returned D.V.'s house to him. The obligation of the Croatian authorities to provide him with alternative accommodation in Croatia was thereby extinguished.

12. On 21 March 2003, D.V. and his family moved out of the applicant's house; three days later, on 24 March 2003, the applicant repossessed it. On both occasions employees of the relevant Ministry drew up handover records using a standardised form that contained a section regarding the state of (repair of) the property. On 21 March 2003, an official of the Ministry and D.V. signed such a record; however, on 24 March 2003 the same official and the applicant signed another record. The section concerning the state of (repair of) the property was left blank on both occasions.

13. The applicant submitted that after entering into possession of the house he had found it almost completely empty. Almost all movable property in the house, as well as some vehicles and livestock, had been

missing or had been destroyed, and parts of the house had been damaged. The Government submitted that the applicant had not notified the authorities that the house was damaged or that items were missing from it.

14. On 24 March 2003, a neighbour of the applicant drew up a handwritten record in the presence of two witnesses in which he indicated that a representative of the relevant authorities had previously given the applicant a key to the house. The said neighbour specified all damage, listed all the items missing from the house and calculated the amount of the damage sustained. Neither any representatives of the authorities nor the applicant were present when the record was made.

II. CIVIL PROCEEDINGS

15. On 17 July 2003 the applicant brought a civil action in the Sisak Municipal Court (*Općinski sud u Sisku*) against the State, Sunja Municipality and D.V. seeking 224,400 Croatian kunas (HRK) as compensation for all the property that D.V. had stolen, destroyed or damaged, and HRK 48,000 as compensation for his inability to use his house during the period between 1 September 2000 until its repossession on 23 March 2003 (see paragraphs 9 and 12 above). The applicant – who was throughout the proceedings represented by an advocate – argued that the State, the local authorities and the temporary occupant were jointly and severally liable for the damage incurred. He also referred to the record drawn up by his neighbour and proposed that the court summon the latter and the two witnesses who had been present when that record had been drawn up (see paragraph 14 above).

16. On 11 April 2005 the court stayed the proceedings because D.V. had died. The proceedings were to be resumed when his heirs took over the proceedings.

17. On 12 May 2005 the applicant withdrew his action in so far as it concerned D.V. On 16 June 2005 the court delivered a decision declaring that the action was to be considered withdrawn in so far as it concerned D.V.

18. At the hearing held on 27 February 2006 the court heard the applicant, who testified that he had requested that police be present when he would move in but that the police had told him that they had not been authorised to do so and had advised him to take photographs of the house, which he had done.

19. In a judgment of 20 February 2008 the Sisak Municipal Court dismissed the applicant's action.

20. On 23 October 2008 the Sisak County Court (*Županijski sud u Sisku*) dismissed an appeal by the applicant and upheld the first-instance judgment in the part concerning compensation for his missing and damaged property.

21. On the other hand, the second-instance court quashed the first-instance judgment in respect of the applicant's claim for compensation for his inability to use his house. In the resumed proceedings the applicant withdrew part of that claim and was eventually awarded HRK 18,905.12 as compensation for not being able to use his house.

22. In a judgment of 31 August 2011 the Supreme Court (*Vrhovni sud Republike Hrvatske*) dismissed an appeal on points of law (*revizija)* lodged by the applicant. It held that under the legislation in force neither the State nor the local authorities could be held liable for damage inflicted on sequestered property by third persons, including temporary occupants. The relevant part of the Supreme Court's judgment read as follows:

> "In the proceedings before the lower courts it was established:
>
> ...
>
> - that at the time of the return of the property a large number of household items were found to be missing or destroyed.
>
> ...
>
> In the appeal on points of law the plaintiff contests the lower courts' decisions because he considers that the liability of the State lies in its failure to supervise the use of temporarily sequestered property.
>
> The plaintiff bases his claim for compensation for pecuniary damage resulting from the destruction of [various] items of movable property in the house on the fact that the defendants – Sunja Municipality and the State – temporarily sequestered the property and failed to supervise its use.
>
> ...
>
> [The relevant provisions of the Sequestration Act provided that] persons to whom [sequestration] commissions allocated property ... for temporary use (occupants) had to use that property with the care of a prudent administrator [*pažnjom dobrog gospodara*] (which follows from section 7(1) of the said Act). Section 10 of the said Act stipulates cases in which the further use of property may be denied by setting aside the decision allocating that property ... for temporary use. ... [It] follows that the Act prescribes the duty of the occupant of a property and of the persons to whom [its use] was entrusted to [do so] with the care of a prudent administrator. However, it does not follow from the aforementioned legal provisions that the occupant's non-compliance ... with this legal obligation would result in the State being liable in tort. This is because no legislation provides the (vicarious) liability of the State for damage inflicted by occupants ... on the property entrusted to them.
>
> ...
>
> The fact that the State enacted the Sequestration Act, which is primarily intended to protect abandoned property, as follows from its sections 1 and 2, does not in the present case render it liable to compensate the plaintiff for the damage [sustained]. The mere fact that, pursuant to the said Act, the plaintiff's property temporarily came under the administration of the State does not suggest that the State is liable for damage incurred ..."

23. On 30 April 2012 the applicant lodged a constitutional complaint against the Supreme Court's judgment. Relying, *inter alia*, on Article 1 of

Protocol No. 1 to the Convention he complained of a violation of his right to the peaceful enjoyment of his possessions.

24. By a decision of 9 January 2014 the Constitutional Court (*Ustavni sud Republike Hrvatske*) dismissed the applicant's constitutional complaint and on 29 January 2016 served its decision on his representative.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC LAW

A. Sequestration Act

25. Section 1 of the Sequestration Act (*Zakon o privremenom preuzimanju i upravljanju određenom imovinom*, Official Gazette nos. 73/95 and 7/96), which was in force between 27 September 1995 and 4 August 1998, provided that the Act regulated the temporary takeover, use, administration and supervision of certain property defined in the Act in order to protect it and secure the creditor's claims in connection with that property.

26. Section 7 obliged temporary occupants to use the property entrusted to them with the care of a prudent administrator (*bonus pater familias*) and prohibited them from disposing of such property or from creating any encumbrances on it.

27. Section 10 provided that the relevant sequestration commission could set aside its decision awarding sequestered property for temporary use, *inter alia*, if temporary occupants did not use the property with the care of a prudent administrator, or if they otherwise used it in a manner that was contrary to the Sequestration Act.

B. Relevant criminal legislation

28. The Criminal Code (*Kazneni zakon*, Official Gazette no. 110/97 with subsequent amendments), which was in force from 1 January 1998 until 31 December 2012, in Article 216 defined theft and in Article 222 the destruction or damaging of another's property as criminal offences and prescribed criminal sanctions for them. The criminal offence of theft was subject to State-assisted prosecution, whereas the criminal offence of the destruction or damaging of another's property was subject to private prosecution.

C. Other relevant legislation

29. Other relevant domestic law and practice concerning property sequestered by the State is set out in the cases of *Radanović v. Croatia*,

no. 9056/02, §§ 28-33, 21 December 2006, and *Kunić v. Croatia*, no. 22344/02, §§ 40-43, 11 January 2007.

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

II. RELEVANT INTERNATIONAL INSTRUMENTS

31. The UN Principles on Housing and Property Restitution for Refugees and Displaced Persons (Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, 28 June 2005, E/CN.4/Sub.2/2005/17, Annex), also known as the Pinheiro Principles, are the most complete standards on the issue. The aim of these Principles, which are grounded within existing international human rights and humanitarian law, is to provide international standards and practical guidelines to States, UN agencies and the broader international community on how best to address the complex legal and technical issues surrounding housing and property restitution. The relevant part of the Pinheiro Principles read as follows:

> **20. Enforcement of restitution decisions and judgements**
>
> "...
>
> 20.4 States should adopt specific measures to prevent the destruction or looting of contested or abandoned housing, land and property. In order to minimize destruction and looting, States should develop procedures to inventory the contents of claimed housing, land and property within the context of housing, land and property restitution programmes.
>
> 20.5 States should implement public information campaigns aimed at informing secondary occupants and other relevant parties of their rights and of the legal consequences of non-compliance with housing, land and property restitution decisions and judgements, including failing to vacate occupied housing, land and property voluntarily and damaging and/or looting of occupied housing, land and property."

III. RELEVANT COUNCIL OF EUROPE INSTRUMENTS

32. Relevant Council of Europe Instruments addressing issues of the restitution of property to IDPs and refugees are cited in *Sargsyan v. Azerbaijan* [GC], no. 40167/06, §§ 97-100, ECHR 2015, and *Chiragov and Others v. Armenia* [GC], no. 13216/05, §§ 99-102, ECHR 2015.

THE LAW

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

33. The applicant complained that that his property had been stolen, destroyed and damaged and that the State bore liability for that. He relied on Article 1 of Protocol No. 1 to the Convention, which reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. Admissibility

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

B. Merits

1. The parties' arguments

(a) The applicant

35. The applicant asserted that from the facts of the case it was evident that:

- it was the temporary occupant, D.V., who had damaged his house and had plundered or destroyed numerous items of movable property contained in it;

- that destruction and plundering had occurred in the period between 25 April 2001, when the Housing Commission had allowed his repossession request (see paragraph 10 above), and the actual repossession on 24 March 2003 (see paragraph 12 above) – that is to say in the period of almost two years that it took the authorities to implement that decision.

The applicant asserted that those facts had not been disputed by the Government.

36. The applicant furthermore emphasised that he considered the State, the local authorities and D.V. jointly and severally liable for the pecuniary damage caused by D.V.'s actions (see paragraph 15 above). In his view, on the basis of the legislation in force, he could have legitimately expected that the authorities would take measures to ensure the protection of his property

during the period that D.V. had been using it. In particular, he could expect that a positive obligation of the State could follow from certain provisions of the Sequestration Act – namely, those (i) proclaiming that its main purpose was to protect abandoned property from deterioration, and (ii) obliging temporary occupants to use the property entrusted to them with the care of a prudent administrator and entitling the relevant sequestration commissions to deny the further use of property to those who failed to comply with that obligation (see paragraphs 25-27 above).

37. The applicant also cited the judgment in the case of *Radanović v. Croatia* (cited above, §§ 27-33), where the Court held that the State was liable to pay compensation to the applicant for her inability to use her flat, which the State had sequestered and used to accommodate persons in need of housing. In the applicant's view, if the State could be held liable to compensate an owner of sequestered property for his or her inability to use it, the State must be likewise be held liable for damage to such property caused by a person to whom the State had entrusted that property.

38. As regards the Government's argument that given the large number of sequestered properties the State could not have supervised their use (see paragraph 44 below), the applicant pointed out that it was precisely for that reason that the State had delegated its powers regarding such properties to the local authorities. In any event, if the State had been unable to supervise the use of the property that it had sequestered and thus prevent damage being caused to it, the least it could have done was to provide compensation if such damage occurred.

39. Lastly, the applicant submitted that he had, after D.V.'s death, withdrawn his civil action against him for the sake of efficiency (see paragraph 17 above). D.V. had a number of heirs and waiting for the conclusion of inheritance proceedings and then locating and inviting the heirs to take over the civil proceedings in question would have considerably protracted those proceedings. The fact that he had withdrawn his civil action against D.V. was of no relevance because, in his opinion (see paragraphs 15, 17 and 36 above), all three defendants were jointly and severally liable for the damage to his property, which meant that each of them was fully liable.

(b) The Government

40. They first submitted that the State's sequestering of the applicant's house and temporarily accommodating D.V. and his family in it had pursued a legitimate aim in the general interest – namely, that of satisfying the housing needs of a large number of refugees and internally displaced persons. The Government also stressed that the applicant had received compensation for his resultant inability to use his property (see paragraph 21 above).

41. However, providing temporary accommodation for refugees and internally displaced persons had not been the only purpose of the

Sequestration Act. Its aim had also been to protect from deterioration and devastation property that had been left behind by its owners (see paragraph 25 above). By temporarily housing refugees and internally displaced persons in such property, the State had simultaneously ensured that each abandoned piece of real estate would be assigned to a specific person, who would be tasked with caring for it and protecting it against deterioration. Therefore, the Sequestration Act had provided that temporary occupants could not use the property entrusted to them as they saw fit. Rather, they had been required to look after it with the care of a prudent administrator (see paragraph 26 above).

42. At the same time, temporary occupants had not been exempted from the general rules of tort law, which had forbidden them to damage the property entrusted to them. Those rules had also entitled the owners of such property to claim compensation from temporary occupants for any damage to their property and to institute civil proceedings against such occupants to that end. If a temporary occupant had died, the owner could seek compensation from his or her heirs.

43. The Government argued that, by setting the standard of care expected of temporary occupants regarding sequestered property and by providing for their liability in tort, the State had discharged all its positive obligations in relation to such property. In addition, the owners of sequestered property had also had at their disposal criminal-law mechanisms to protect their possessions. Provisions of the criminal law had prohibited the theft and destruction and damaging of property owned by others (see paragraph 28 above), whereas the law of criminal procedure had enabled the owners to initiate State-assisted prosecution or to institute criminal proceedings themselves as private prosecutors.

44. The Government furthermore argued that the State had been neither required nor in a position to undertake preventive measures to protect sequestered property. No provision of the Sequestration Act had given rise to any self-imposed obligation on the part of the State to prevent damage to sequestered property by temporary occupants or to compensate owners for such damage.

45. The Government argued that the State could not have prevented the damage to the applicant's property caused by its temporary occupant, D.V., as nothing short of a constant physical police presence would have been capable of doing that. Therefore, the applicant's argument (see paragraph 36 above) that the local authorities had failed to supervise the use of his property by D.V. and his family was ill-founded. The applicant had not even explained in what manner he had expected them to exercise that supervision (on a daily basis, intermittently, by posting guards or in some other way).

46. However, the State had provided for a possibility for the applicant to obtain compensation from D.V. The applicant had brought a civil action to that end but – even though he had been represented by a qualified

representative (an advocate) – had decided to withdraw it after D.V.'s death (see paragraphs 15-17 above), even though he could have pursued it against his heirs.

2. The Court's assessment

47. The Court notes that it had already dealt with a number of cases concerning the effects of the Sequestration Act (see, notably, *Radanović v. Croatia*, no. 9056/02, 21 December 2006; *Kunić v. Croatia*, no. 22344/02, 11 January 2007, and *Brajović-Bratanović v. Croatia*, no. 9224/06, 9 October 2008). In those cases the Court found violations of Article 6 § 1 of the Convention and/or Article 1 of Protocol No. 1 thereto on account of the applicants' prolonged inability to regain possession and use their property resulting either from the excessive length of civil proceedings for repossession or the State's inability to secure alternative accommodation for temporary occupants in a timely manner (ibid.). The Court has also acknowledged (see *Radanović*, cited above, § 49) that:

> "... the Croatian authorities faced an exceptionally difficult task in having to balance the rights of owners against those of temporary occupants in the context of the return of refugees and displaced persons, as this involved dealing with socially sensitive issues. Those authorities had, on the one hand, to secure the protection of the property rights of the former and, on the other, to respect the social rights of the latter, both of them often being socially vulnerable individuals."

48. In the present case the applicant's house was returned to him and he was awarded compensation for the inability to use it (see paragraphs 9-10 and 21 above). He did not complain of the prolonged inability to regain possession of his house or that the compensation awarded was too low. Rather, he complained that his house had been damaged and plundered (see paragraphs 33 and 35 above).

49. The Court firstly notes that, in view of the domestic courts' findings in the present case (see paragraph 22 above), it has no reason to question the fact that some time during the period before the applicant's house – which had been sequestered by the State – was returned to him, numerous items of movable property belonging to the applicant went missing from the house or were destroyed and that the house itself was damaged.

50. Both the applicant and the Government seemed to agree that the house had been damaged and plundered by D.V., the temporary occupant to whom the State had entrusted the applicant's house in 1996 (see paragraphs 7, 35 and 45-46). The point of contention is however whether the State could be held liable for that interference and if so, to what extent.

51. In that connection the Court first reiterates that the genuine, effective exercise of the right protected by Article 1 of Protocol No. 1 does not depend merely on the State's duty not to interfere, but may require positive measures of protection, particularly where there is a direct link between the

measures an applicant may legitimately expect from the authorities and his effective enjoyment of his possessions (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 134, ECHR 2004‑XII, and *Broniowski v. Poland* [GC], no. 31443/96, § 143, ECHR 2004‑V).

52. In particular, where an interference with the right to the peaceful enjoyment of possessions is perpetrated by a private individual, a positive obligation arises for the State to ensure that under its domestic legal system property rights are sufficiently protected by law and that adequate remedies are provided whereby the victim of an interference can seek to vindicate his or her rights – including, where appropriate, by claiming damages in respect of any loss sustained (see *Kotov v. Russia* [GC], no. 54522/00, § 113, 3 April 2012 and *Blūmberga v. Latvia*, no. 70930/01, § 67, 14 October 2008).

53. The Court notes that the damage to the applicant's house and its plundering occurred in the context of the return of refugees and displaced persons where specific obligations may arise for the State to prevent the destruction or looting of contested or abandoned property (see the international and Council of Europe instruments referred to in paragraphs 31-32 above).

54. The Court further notes that the proclaimed purpose of the Sequestration Act was to protect and preserve the property left behind by their owners who left Croatia during or after the war (see paragraph 25, 36 and 41 above), and that it was the State which initially seized (sequestered) the applicant's house for its own needs related to providing accommodation for refugees and IDPs (see paragraphs 6-7 above). Consequently, the State gave the applicant's sequestered property, without his consent, to D.V. for temporary use (see paragraph 7 above). D.V. later on plundered and damaged that property (see paragraphs 13 and 49-50 above). The Court therefore considers that the said damage and looting cannot be disassociated from the interference which preceded it, that is, from the initial seizure of the applicant's property by the State based on the Sequestration Act.

55. In that context the Court would reiterate that it has also held that when the authorities seize property, they also take on a duty of care in respect of it and are liable for the damage and/or loss of such property (see *Dzugayeva v. Russia*, no. 44971/04, §§ 27-28, 12 February 2013). In such cases the actual damage sustained should not be more extensive than that which is inevitable, if it is to be compatible with Article 1 of Protocol No. 1 (see *Raimondo v. Italy*, 22 February 1994, § 33, Series A no. 281 A; *Jucys v. Lithuania*, no. 5457/03, § 36, 8 January 2008, and *Tendam v. Spain*, no. 25720/05, § 50, 13 July 2010). In consequence, when seizing property, the authorities must not only take the reasonable measures necessary for its preservation, but domestic legislation must also provide for the possibility of instituting proceedings against the State in order to obtain compensation

for the damage resulting from the failure to keep such property in relatively good condition (see *Tendam*, cited above, § 51, 13 July 2010).

56. It was in light of these principles that the Court has in *East West Alliance Limited v. Ukraine*, no. 19336/04, § 204-207, 23 January 2014 found a violation of Article 1 of Protocol No. 1 to the Convention on account of the fact that an aircraft seized by the authorities had gotten damaged and vandalised while in their custody. The Court held that the responsibility for the physical damage of the plane rested with the State as there was nothing to show that the damage was inevitable (ibid., § 206).

57. In the Court's view, these considerations (see paragraphs 55-56 above) apply equally, if not *a fortiori*, in the circumstances such as those of the present case where the State had sequestered and given use of the applicant's property to an individual who later on plundered and damaged it.

58. In view of the foregoing, the Court finds that the responsibility for the loss resulting from the damage to and the looting of the applicant's house rests not only with the direct perpetrator but with the State as well. It further notes that the loss that occurred cannot be seen as inevitable. However, the domestic courts held that the State was not liable for such loss and dismissed the applicant's action for compensation (see paragraphs 19-20, 22 and 24 above).

59. It follows that in the present case the State has not discharged its positive obligations under Article 1 of Protocol No. 1 to the Convention.

60. Accordingly, there has been a violation of that Article.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

61. 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

62. The applicant claimed 29,920 euros (EUR) in respect of pecuniary and 20,000 in respect of non-pecuniary damage. The applicant explained that the claim for pecuniary damage corresponded to the amount of compensation sought in the domestic proceedings (see paragraph 15 above) an account of the damage to the house and the value of the items stolen from it.

63. The Government contested these claims. Specifically, they submitted that the value of the items stolen from the applicant's house had never been assessed by an expert.

64. The Court reiterates that a judgment in which it finds a breach imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences. If the national law does not allow – or allows only partial – reparation to be made, Article 41 empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, §§ 32-33, ECHR 2000-XI).

65. In this connection the Court notes that under section 428a of the Civil Procedure Act (see paragraph 30 above), an applicant may file a petition for reopening of the civil proceedings in respect of which the Court has found a violation of the Convention. Given that the applicant did not submit relevant evidence to prove, as far as possible, the amount or value of the damage, the Court considers that in the present case the most appropriate way of repairing the consequences of that violation is to reopen the proceedings complained of. As it follows that the domestic law allows such reparation to be made, the Court considers that there is no call to award the applicant any sum in respect of pecuniary damage (see, for example, *Lelas v. Croatia*, no. 55555/08, § 86, 20 May 2010).

66. On the other hand, the Court finds that the applicant must have sustained non-pecuniary damage which cannot be sufficiently compensated for by the reopening of the proceedings. Ruling on an equitable basis, the Court therefore awards the applicant EUR 3,200 under that head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

67. The applicant also claimed EUR 833 for the costs and expenses incurred before the Court.

68. The Government contested that claim.

69. 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 the quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum sought for the proceedings before the Court, plus any tax that may be chargeable to the applicant.

C. Default interest

70. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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

3. *Holds,*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Croatian kunas at the rate applicable at the date of settlement:
      (i) EUR 3,200 (three thousand two hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 833 (eight hundred and thirty-three euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 18 March 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court. {signature_p_2}

Renata Degener
Registrar

Krzysztof Wojtyczek
President